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Debates & Proceedings

Wednesday, November 30, 1977

Speaker: The Honourable Donald Taylor

Whitehorse, Yukon Territory

November 30, 1977

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

We will proceed at this time with morning Prayers.

Prayers

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

ROUTINE PROCEEDINGS

Mr. Speaker: Are there any Documents for Tabling? The Honourable Member from Whitehorse South Centre?

TABLING OF DOCUMENTS

Mr. Hibberd: Mr. Speaker, I have for tabling this morning, correspondence between the Committee on Rules, Elections and Privileges and the Minister of Indian Affairs and Northern Development.

Mr. Speaker: Are there any further documents or correspondence for tabling?

Are there any Reports of Committees?

Petitions?

Introduction of Bills?

Notices of Motion for the Production of Papers?

Notices of Motion or Resolution? The Honourable Member from Ogilvie?

NOTICES OF MOTION

Ms Millard: Mr. Speaker, notice of Motion, moved by myself, seconded by the Member from Hootalinqua, that the papers dealing with the Alberta Heritage Fund be moved into Committee of the Whole for discussion.

Mr. Speaker: The Honourable Member from Whitehorse Riverdale?

Mr. Lengerke: Yes, a Notice of Motion, moved by myself, seconded by the Honourable Member from Kluane, that the Green Paper entitled The Establishment of the Yukon Pipeline Impact Information Centre be referred to Committee of the Whole.

Mr. Speaker: The Honourable Member from Whitehorse South Centre?

Mr. Hibberd: Mr. Speaker, I would give Notice of Motion, seconded by the Honourable Member from Mayo, that the correspondence between the Committee on Rules, Elections and Privileges and the Minister of Indian Affairs and Northern Development be moved into Committee.

Mr. Speaker: Are there any further Notices of Motion or Resolution?

Are there any Statements by Ministers?

This then brings us to the Question Period, have you any questions?

The Honourable Member from Mayo.

Question re: Mine Safety Inspections Transfer

Mr. McIntyre: Mr. Speaker, in an interview with the Minister of Indian Affairs and Northern Development, published in the Yukon Indian News, the Minister stated that arrangements were currently being made for the transfer of Mine Safety inspections to the Yukon Territorial Government.

I wonder if any Member of the Executive Committee could tell me at what stage these arrangements are at the present time.

Mr. Speaker: The Honourable Minister of Human Resources.

Hon. Mrs. Whyard: Mr. Speaker, I asked the same question and I was informed that there are now discussions taking place between the proper Territorial Government departments and the Federal department involved.

Mr. Chairman: The Honourable Member from Kluane.

Mrs. Watson: Mr. Speaker, supplementary, what are the proper Territorial departments that would be involved in these negotiations?

Mr. Speaker: The Honourable Minister of Human Resources.

Hon. Mrs. Whyard: Mr. Speaker, the department is under the Territorial Secretary's officer, and the Executive Committee Member responsible is Mr. Bell.

Mr. Speaker: The Honourable Member from Klondike.

Question re: Tourist Department Decentralization

Mr. Berger: Yes, Mr. Speaker, an oral question for anyone of the Ministers: I think everybody received a letter this morning from the City of Dawson with a negative reply, more or less, on the decentralization for the Tourist Department in the move to Dawson.

I was wondering if any one of the Ministers could tell me if they are maybe contemplating the Commissioner's Officer to Dawson City?

Mr. Speaker: The Honourable Minister of Highways and Public Works.

Hon. Mr. McKinnon: Mr. Speaker, I have not received such a letter from Dawson at this time so I do not know the facts contained in such a letter.

However, I might say that I have long been a proponent of moving the capital back to Dawson and would support such a motion on the floor of this House.

Mr. Speaker: The Honourable Member from Hootalinqua.

Mr. Fleming: Yes, Mr. Speaker, supplementary, more or less, to the question of Mr. McCall, on November 21st, where he is asking about "has your office or any department of the Government of the Yukon received any representation from any part of the private business sector at large, with a view to asking the Administration of this Government to introduce legislation or regulations which would, in effect, restrict the movement of any person already working from seeking employment on any part of the pipeline?"

My question, Mr. Speaker, has the Government of the Yukon made a decision as to whether they would introduce legislation that would restrict the movement of any person already employed from seeking work on the pipeline project?

Mr. Speaker: The Honourable Minister of Highways and Public Works?

Hon. Mr. McKinnon: No, Mr. Speaker, and if I could answer the Honourable Member from Pelly's inquiry at the same time. The Commissioner did reply to the question in the negative that he had not received any such representations. I know of none, I have checked with my department heads, they know of none. If Honourable Members can bring information forward that we can give a yes or no answer to, we would be happy to do that because we are in the dark and do not know where this question is leading at the present time.

Mr. Speaker: The Honourable Member from Whitehorse Riverdale?

Question re: Indian Land Claims Negotiation Method

Mr. Lengerke: Mr. Speaker, a question for any of the Ministers this morning. We have heard that the process for

negotiation or the method for negotiation with respect to the Indian land claims is going to be changed. I am wondering if this is going to alter Yukon's position at the table, or what effect that will have. Possibly we could have a comment from one of the Ministers on that.

Mr. Speaker: The Honourable Minister of Highways and Public Works?

Hon. Mr. McKinnon: Mr. Speaker, the first I heard was the same report the Honourable Member did, and I am sure that it will be a topic at the Executive Committee this Friday morning.

Mr. Speaker: The Honourable Member from Klondike?

Question re: Legal Advice to Commissioner's Office

Mr. Berger: Mr. Speaker, I have a written question for the Minister of Local Government. I wonder if the Minister could advise me if it is true or not that the Commissioner's office is using the services of the Federal Department of Justice for legal advice. If it is true, could the Minister advise this House: a) where does this leave the YTG legal department, b) is this a move by the Commissioner's office to separate itself from the YTG affairs, c) who will pay for the services, will it be charged to YTG, d) will this Legal Advisor reside in Yukon, e) will YTG pay for the housing and maybe even for the salary?

Mr. Speaker: The Honourable Member from Kluane?

Question re: Indian Land Claims Negotiations Report

Mrs. Watson: Mr. Speaker, I have a question for any one in the Executive Committee and they may want to take it under advisement. In the Speech from the Throne there was a sentence with reference to the Indian land claim negotiations and it stated: "A draft agreement in principle should be developed by year end and hopefully a final agreement in principle by the spring of 1978."

Mr. Speaker, there was some announcement in the paper yesterday that they expected the draft agreement in principle to be completed now by the end of January, however, my question: the Yukon's representative at the negotiations is the Commissioner of the Yukon Territory and my specific question is, will the Commissioner be bringing forward a report on the negotiations before the draft agreement in principle is signed and will his report be in the form of a white paper or green paper so that in fact he can report to the people that he represents at the negotiating table.

Hon. Mr. McKinnon: Mr. Speaker.

Mr. Speaker: The Honourable Minister of Highways and Public Works.

Hon. Mr. McKinnon: That question will have to be taken as notice.

Question re: Corrections Officers' Rates of Pay

Ms Millard: Mr. Speaker, a question for the Minister of Human Resources: last Spring I put forward a motion, which for some obscure reason was defeated but the Minister of Human Resources promised then to look into the motion and act upon some of the recommendations, which were to allow female corrections officers to be paid at the same rate as male corrections officers, and that their position title be the same.

I would like to ask the Minister what action has been taken on that motion?

Mr. Speaker: The Honourable Minister of Human Resources.

Hon. Mrs. Whyard: Mr. Speaker, action has been taken on this motion, within the Public Service Commission, regarding classification of the positions, but I would have to bring in written details. I don't have the classes at my fingertips, or the details, available, this morning.

While I am on my feet, Mr. Speaker, I have for tabling a

Legislative Return, in answer to written question 11116, concerning dental treatment.

Mr. Speaker: The Honourable Member from Oglivie?

Question re: Study Involving Special Education for Native Students

Ms Millard: Mr. Speaker, a question for the Minister of Education: in reply to a question by Mrs. Watson, the Minister has said that the Department of Education is going to be identifying the special needs of Indian Students. I am wondering who is doing this study and what kind of native involvement is in the study?

Mr. Speaker: The Honourable Minister of Education?

Hon. Mr. Lang: Mr. Speaker, I don't know where it is at the present time. I should point out, Mr. Speaker, that my department is awfully busy at the present time. They have just gone through arbitration in respect to the collective agreement with the members of the teaching staff and at the same time we are looking at an inservice for the administrators of all the schools throughout Yukon. I will have to bring back more information in respect to that particular question.

Mr. Speaker: The Honourable Member from Pelly River?

Question re: Statement to CBC

Mr. McCall: Yes, Mr. Speaker, I would like to direct a question to the Honourable Member from Whitehorse Riverdale. My question is: this morning there was a radio interview on the CBC whereas the Honourable Member made a statement they would not be supporting Bill 101 and the Honourable Member being the seconder of Bill 101, I was wondering if the Honourable Member could give this House an explanation as to his statement?

Mr. Speaker: The Honourable Member from Whitehorse Riverdale.

Mr. Lengerke: Yes, Mr. Speaker, I would be glad to and I welcome the question. It was very unfortunate this morning on the interview and I did, as a result of it, phone back to CBC quite frantically because I really was cut off at my answer, and my answer was that I will vote against it if the issue was only with respect to the name, but it is too important to lose otherwise, so I will no doubt be supporting it. It was unfortunate that the answer came out that I will vote against it.

I must say, Mr. Speaker, that I was caught off guard on the question, however, that is my answer to it, and I corrected it, and I think it was restated after the interview.

Mr. Speaker: The Honourable Member from Whitehorse South Centre?

Mr. Hibberd: Supplementary, Mr. Speaker, am I to understand from what the member has said that as a Member of this Committee he is only giving his conditional support to the Bill that he is helping to sponsor?

Mr. Speaker: The Honourable Member from Whitehorse Riverdale?

Mr. Lengerke: I didn't even hear the question, I am sorry, Mr. Speaker.

Mr. Speaker: Perhaps the question could be restated?

Mr. Hibberd: It was a supplementary, Mr. Speaker, it would appear from the Member's answer so far that he is giving conditional support to the Bill and I am wondering if this is his attitude, that he is going to give conditional support to a Bill that he is himself helping to sponsor?

Mr. Speaker: I don't think I will permit that question. I think it would be considered to be out of order.

Are there any further questions? The Honourable Member from Whitehorse North Centre?

Hon. Mr. McKinnon: Mr. Speaker, I have for tabling two

Legislative Returns in response to 1) a motion made by Ms Millard that the Annual Report of the Northern Yukon Research Project be tabled in this House and 2) a question for Mr. Lengerke concerning community pastures. Mr. Speaker, also an oral return if I may be permitted, does the restriction concerning agreements for sale for undeveloped lots refer to any type of lot, residential, et cetera, or does it just refer to other industrial lot transactions, which was asked by Mr. Lengerke yesterday. The answer to the above question is as follows, in reference to the above sale, the restriction concerning agreements for sale for undeveloped lots refers only to industrial lots.

Thank you, Mr. Speaker.

Mr. Speaker: Are there any further questions? The Honourable Member from Kluane?

Mrs. Watson: Yes, Mr. Speaker, a supplementary question regarding the transfer of Mine Safety to the administration and control of the Territorial Government. Can we expect a white paper or a green paper on the progress, and what the terms and conditions of this transfer will be, tabled in this House during this session?

Mr. Speaker: The Honourable Minister of Human Resources?

Hon. Mrs. Whyard: Mr. Speaker, I would be happy to refer that question to the Executive Committee Member responsible.

Mr. Speaker: Are there any further questions?

We will then proceed on the Order Paper to Motions.

ORDERS OF THE DAY

MOTIONS

Madam Clerk: Item Number 1, standing in the name of the Honourable Member Mr. Fleming.

Mr. Speaker: Is the Honourable Member prepared to deal with Item 1?

Mr. Fleming: Yes, Mr. Speaker.

Mr. Speaker: Order please. It has been moved by the Honourable Member from Hootalinqua, seconded by the Honourable Member from Klondike, THAT the Fourth Report of the Standing Committee on Statutory Instruments, presented November 29th, be concurred in.

The Honourable Member from Hootalinqua?

Mr. Fleming: Yes, Mr. Speaker, I am a little out of sorts this morning, however, I would ask with Mr. Speaker's permission that the Fourth Report of the Standing Committee be read at this time into the record by one of the members of the Committee, the Honourable Mr. McCall.

Mr. Speaker: Proceed.

Mr. McCall: Thank you, Mr. Speaker.

The Fourth Report: your Committee has examined the draft *Motor Vehicles Regulations*, and the proposed *Motor Vehicles Ordinance*, Bill 1, (1977, Second Session).

It is the responsibility of this House to insure that a fair and proper application of the legislation passes. It is particularly the responsibility of this House, to supervise the subordinate legislation, created by the use of regulation-making powers and to establish the criteria that will be applied in the exercise of any discretion with power that permits or create a reporting system.

Since the *Motor Vehicles Bill* is presently before the House and since the regulations are only presented as a draft, both have been reviewed by your Committee. This is necessary to determine the regulation-making power granted under which regulations must be made.

Your Committee has also considered any section where discretionary power exists which affects the rights and privileges of individuals or a segment of the population for which the House must ensure criteria or establish how a reporting system is provided.

Draft Regulations: The draft Motor Vehicle Regulations as presented are incomplete. They have been presented in three separate packages. One set being general regulations, one set dealing with School Bus Regulations, and one set dealing with the proposed Demerit Point System.

Your Committee recommends that as a general policy there should be one set of regulations under each Ordinance. Since the draft Regulations were presented in the three separate sets your Committee recommends that if all material presented is accepted as Regulations they should be combined. Because of the length of the Ordinance and the broad variety of subjects covered, your Committee recommends that the Regulations be divided into Parts for easy reference as the Ordinance has them.

The authority for every Regulation should be cited. Your Committee is pleased to note that this is done in Sections 3 and 4, of the draft Regulations.

Sections 5 to 25 of the Regulations appear to be under Section 35 of the Ordinance. Where several sections of a Regulation are made under one Section of the Ordinance this should be reflected in the Regulations either in the text or by use of marginal note.

Your Committee considers any general statements of law should be contained in the Ordinance and not in the Regulations. Therefore your Committee has recommended many Sections of the draft Regulations be included in the Ordinance.

Regulations should only be used where the subject matter is too detailed and cumbersome (such as lengthy tables) or where the subject matter is likely to require change before legislative amendments could be scheduled - such as fees or technical standards.

A number of sections of these regulations are redundant, since they were written for the existing Ordinance and not the proposed bill.

Section 5 of the Regulations is unnecessary and simply restates Section 8 of the Ordinance.

Section 6 of the Regulations makes an incorrect reference to the Ordinance. Your Committee recommends that Sections 6 and 7 of the Regulations establishing the Classes of licences and the standards for obtaining each Class of licence should be included in the Ordinance.

The Classes and standards set out here have simply been copied from existing Regulations and do not appear likely to change. Your Committee further recommends that the whole list of written test questions be prescribed, by Regulation and not as policy, as is set out in Section 13 of the Regulations. Testers can then select questions as appropriate.

Section 8 is acceptable.

Section 9 should be placed in the Ordinance if Sections 5 and 6 are placed in the Ordinance.

Section 10 of the Regulations is redundant of Section 12 of the Ordinance.

Section 11 of the Regulation appears to usurp the function of the Medical Review Board to some extent. This Section should be rewritten to fit the proposed bill.

Sections 14, 15 and 16 should be reconsidered for inclusion in the Ordinance since they are not likely to change.

Also, the Section reference in Section 16 is incorrect. Section 17 must be placed in the Ordinance since presently only a general power to prescribe time periods for licence validity exists. Otherwise the Registrar would be exercising discretion under Section 12 of the Ordinance.

Section 18 should be considered for inclusion in the Ordinance since it creates a serious exemption from the law for a class of individuals.

Section 19 should be in the Ordinance.

Section 20 is now unnecessary.

Section 21 is appropriate and simply details the requirements of the prescribed form.

Section 22 is unnecessary as this is dealt with in the Ordinance.

Section 23 is taken from the old Ordinance and no longer has any statutory authority which could be found.

Section 24 is entirely appropriate, however, in many cases the forms are missing and only the heading exists.

Section 25 - The reference to the Ordinance in this Section is incorrect, otherwise it is quite proper.

Part II, Registration of Motor Vehicles and Trailers.

Your Committee recommends that Sections 26 to 29 of the Regulations be considered for inclusion in the Ordinance, since they deal with classification only in a general way and are similar to the sections dealing with brakes and lights in the new Ordinance.

Section 30 is generally appropriate. However, changes to paragraph 30(2)(b) are illegible.

Section 32 - Sub-Section (1) is appropriate. Sub-Sections (3) and (4): Your Committee questions what persons other than the RCMP would be entitled to obtain such information on a bulk basis and recommends an explanation be requested.

Section 33 is very general and appears to be quite appropriate for inclusion in the Ordinance.

Section 34 and 35(1)(3) and 36 since they are very general should be included in the Ordinance.

Sub-Sections 35 (2)(4)(5)(6)(7) and (8) should then be Regulations under those Sections of the Ordinance.

Section 37 - the Section reference to the Ordinance is wrong.

Section 38 should be redrafted to eliminate the use of "and/or". Your Committee also questions what standards are to be applied to the exemption in Section 39(1)(d).

Section 40(1)(a) and (c) requires some redrafting.

Your Committee further recommends that where a "standard" for safety or construction is applied as it is in Section 40(1)(c) that standard be included in the Regulations since it is easily amended when new standards are set.

This practice would ensure that the applicable standards are always readily available for reference.

Section 41 - either the number of flags and flares required per unit should be included in Section 41, or the standard referred to incorporated in the Regulations.

Sections 42, 43 and 44 appear to be acceptable.

Section 45 is redundant of Section 133 of the Ordinance. Section 46 is redundant of Section 123 of the Ordinance.

Section 47 - your Committee questions why passen-

gers carrying liveries are totally exempt from the Fire Extinguisher part of the Regulations.

Section 48 is acceptable if necessary.

Section 49 - Should be included in Part XIII of the Ordinance.

Section 50 - 52 the standards described should be included.

Section 53 - 59 should be considered for inclusion in the Ordinance with the standards referred to included in regulations made thereunder. In any event, the standards should be included in the Regulations.

Section 60 - Section reference to this Ordinance is incorrect.

Sections 61 - 63 standards referred to should be in the Regulations.

Section 64 should be included in Ordinance since it is a serious matter and will not change.

Section 65 - acceptable.

Section 66 - 67 includes standards.

Section 68 - phrase "required by this division" is inconsistent with organizational plan of the Regulations.

Section 69 - 81 should be considered for inclusion in the Ordinance with regulations used to set distances, pressures, etc.

Sections 82 - 86 appear to be redundant of the Ordinance.

"School Bus Regulations"

These are basically a copy of the existing Regulations. With the exception of the standards referred to in Section 2 they are very general and suitable for inclusion in the Ordinance. Since the subject matter is particularly important and as in some cases there are exemptions to the general rules of the road your Committee recommends that they be included in Part XI. If they are left as Regulations they should be included as "Part" of the Motor Vehicle Regulations.

"Demerit Point System"

These regulations involve a considerable change in the law as it has been enforced in this jurisdiction. Your Committee recommends that the whole of the Regulations be placed in the Ordinance. If it is necessary to allow implementation time, include them as Sections which will be proclaimed into force separately from the rest of the Ordinance. As sections of the Ordinance, Regulation making powers should be included to prescribe the schedule of offences and demerit points applicable, passing requirements for defensive driving courses, etc.

Your Committee further recommends that Sub-Section be extended to give every driver and every parent required to sign a licence application a right to search their own or their child's records.

Your Committee further recommends that consideration be given to including Criminal Code Sections relating to dangerous driving and criminal negligence in the demerit point system. This has been done in B.C. Your Committee further wishes to draw the attention of the House to the following Sections of Bill 1. These Sections are either regulating making Sections or sections where a broad discretion is granted to the Commissioner, the Registrar or a public body. The exercise of either of which would substantially affect the application of the Ordinance.

Section 4: Your Committee is concerned with the

complete discretion given to the Commissioner to order micro-filming of documents. Although usefulness of micro-filming for record storage is recognized by your Committee, the Committee would suggest that some time frame be included in the Ordinance before this procedure is implemented.

Section 5: As will be seen from your Committee's comments on the following Sections, your Committee is concerned with the broad discretions given to the Commissioner. This section further enables the Commissioner to delegate all his powers as he sees fit, removing the operation of the Ordinance one step further from control by this House. At no point in the Bill is there a provision for reporting back to this House on the operation of the Ordinance or on the exercise of any of the discretion given.

Section 8: Your Committee notes that no mention of presenting the prescribed fee with the application is made in this Section as is the usual practice.

On Section 10: Your Committee notes that after the formalities are completed the matter of the issuance of the licence is left completely to the discretion of the Registrar. Your Committee would like to suggest that some general criteria under which the Registrar would exercise this discretion should be established and made known to this House. Your Committee would further suggest that an Annual Report to the House by the Registrar of the cases where this, and all other discretions have been exercised would enable the House to fulfill its responsibility for the operation of the Bills that it passes.

Section 12 subsection (1)(a): Your Committee is concerned with the phrase (and other competency) found in this subsection. Your Committee's comments with respect to Section 10 apply.

Section 12 subsection (2): Your Committee is concerned that the payment of payments for medical examination required by the Registrar is at the discretion of the Commissioner.

Section 12 subsection (3): Your Committee is extremely concerned with the function of the Medical Review Board as expressed in paragraph 12(3)(b) and (c). While the general concept expressed in paragraph 12.(3)(a)—

Mr. Speaker: Order please. The Honourable Member from Whitehorse West?

Hon. Mrs. Whyard: Mr. Speaker, I would ask for a ruling. I believe that this report has now transgressed and gone far beyond the terms of reference given to the Standing Committee on Statutory Instruments. They are now dealing with the body of the Bill which is before the Committee of the Whole and have gone far past any draft Regulations.

Mr. Speaker, I would like a ruling on the powers of Committee, is it supplanting the Committee of the Whole to review legislation in this House.

Mr. Speaker: I would have to take that matter under advisement, and I will report back to the House at the earliest possible moment.

The Honourable Member from Pelly River?

Mr. McCall: Can I proceed, Mr. Speaker?

Mr. Speaker: Proceed.

Mr. McIntyre: No, let's have the ruling first, Mr. Speaker.

Mr. Speaker: Unfortunately I am not in a position at this time to give you a ruling until I have researched the question raised by the Honourable Member from Whitehorse West. Perhaps the House would give me the time to do this and we

could deal with this report perhaps tomorrow morning.

Mrs. Watson: Mr. Speaker, the Committee is allowed to read the report into the record. I would suggest that the Member from Pelly River continue.

Mr. Speaker: The Honourable Member from Kluane also makes a point. It is the privilege of the Committee to have their report read into the record. With that representation, I would ask that the Honourable Member from Pelly River continue.

Mr. McCall: Thank you, Mr. Speaker, for the opportunity.

Section 12 subsection (3): Your Committee is extremely concerned with the function of the Medical Review Board as expressed in paragraph 12(3)(b) and (c). While the general concept expressed in paragraph 12(3)(a) is admirable, the power of this review board to select qualified physicians seems to throw doubt on the application and enforcement of the *Medical Professions Ordinance*. Your Committee is also concerned with the wide open discretion expressed in paragraph (c).

Section 13(2): Your Committee is concerned with the interpretation that will be applied to the word "guardian" in paragraph (a). It is well known that many young people are raised by relatives who do not have a formal order of custody or guardianship over the child. Your Committee would suggest that either the term "guardian" be defined as it will apply to this Ordinance or the Section be re-written. Paragraph (b) already contains a wide open discretion by the Registrar. Perhaps paragraph (a) could be written in a similar fashion. Your Committee would also suggest that an Annual Report on the operation of Section 13 would enable the House to keep informed on any problems developing in the application of legislation.

Section 18: Your Committee is concerned with the discretion given to the Registrar to issue an order prohibiting a person from applying for a licence, after having been refused by the Registrar for an indefinite period. Your Committee would suggest that some time period be included in this Section.

Section 19: Your Committee is concerned with the broad discretion given to the Registrar under this Section by the requirement that he "be satisfied as to the person's ability to drive" before any licence which has been suspended is re-instated. Since this could occur in a situation where the Driver Control Board has not been involved there appears to be no appeal from the Registrar's exercise of his discretion. At a minimum this House should be in receipt of an Annual Report on the exercise of this discretion and consideration should be given to an appeal procedure.

Section 22: Your Committee is concerned that the function of the Driver Control Board as constituted can be exercised by one member of that Board and that there is no requirement for a report from the Board to this House.

Section 23: Your Committee is concerned that while this Board has complete power to suspend or place other restrictions on a licensee it may base its decision on such nebulous terms as the "driver attitude" and "any other factors it considers relevant". Your Committee is further concerned that this Board can consider driver's records without their knowledge as long as they do not restrict or suspend the licence. In other words a driver's record can be under consideration before the formal hearing.

Section 24 subsection (3): Your Committee is concerned that where a driver chooses not to appear he is

subject to contempt proceedings. Surely the Board has enough power if after proper notice has been given and a driver does not appear, a proper hearing is held and his licence is suspended. The object of the Board which is to ensure reasonable standards on our highways is just as well served.

Section 24, subsection (4): In view of the comments above, on subsection 23 (3) particularly, it is not reasonable to expect that the rules of evidence as are applied to judicial proceeding should be applied to this Board.

Section 25 subsection (4): Your Committee is concerned that the appeal granted by this Section could in fact be heard by a Justice of the Peace who is untrained in legal procedure and who in a small community outside Whitehorse may well have been the individual who has tried the driver on various offences.

Your Committee feels that if the Driver Review Board is in fact effective it is unnecessary for the Registrar to have such open-ended suspension powers.

Section 35 paragraph (1)(e): Your Committee recommends that the general classifications of licences and the requirements for obtaining licences should be included in the Ordinance.

Section 36 subsection (2): Your Committee is concerned that such wide open discretion can be used to circumvent the purpose of the Ordinance. Some limitations should be placed on this power.

Section 36 subsection (4) and (5): For uniformity your Committee would suggest that the word "knowingly" be included in subsection (4).

Section 37 subsection (2)(b): Your Committee is concerned that the Commissioner has an absolute power to cancel reciprocal agreements. Such power would seem to weaken the ability of the Yukon to enter into meaningful agreements with other jurisdictions.

Section 40: Your Committee is particularly concerned with the regulation making powers contained in paragraphs 40 (1)(d) and (e). Your Committee can see no reason for any trailer used on a public highway to be exempt completely and further can see no reason why the basic requirement for display of plates is not included in the Ordinance. Your Committee can see that some regulation making powers in this area are necessary but they should be clearly defined.

Section 41 subsection (2): Your Committee is concerned that the use of the word 'may' defeats the purpose of requiring proof of financial responsibility before registration of vehicles. Your Committee would suggest that the section be written in terms of shall. If the House wishes to give the Registrar a limited power to register vehicles where he is satisfied that the requirements will be met to enable documents lost or late in the mail to be received your Committee would be glad to consider such a section.

Section 49: Your Committee notes that the way is being paved for the use of decals on licence plates in the future. Your Committee respectfully suggests that a section authorizing the use of decals be included in the proposed Bill with provision that the section come into force at a later date. This technique will give this House the opportunity to consider the matter in full and not have its full terms contained in a Regulation.

Section 59: Your Committee would draw to the attention of the House the broad discretion granted to the Commissioner under this section. In view of the comments on the powers granted to the Driver Review

Board and the Registrar it is quite clear that the only purpose of this Section is to enable the administration to more easily obtain compliance with other legislation. Your Committee asks the House to carefully consider the full implications of this section.

Section 61(1) paragraph (a), sub-paragraphs (i)(ii) and (v) are very broad at this time. Your Committee suggests that if the basic sections authorizing validating tabs were included in the Ordinance, even to be proclaimed at a later date, the Registrar would be better able to define the regulation making powers which are needed.

Section 61.1(d): Your Committee has reviewed the Ordinance and draft regulations, relating to the establishment of the demerit point system and considers the implications serious enough to merit inclusion in the Ordinance, thereby giving the members of this House full opportunity for debate.

Section 61.1(k): Your Committee is concerned with the implications behind this power and would suggest that the paragraph be explained and possibly included in the Ordinance.

Section 64 and 65: Your Committee is concerned with the broad discretion granted to the Commissioner under these sections, since no criteria are set out, under which the discretion will be exercised. Although the apparent object of the sections is commendable, the exercise of the discretion can involve substantial social costs. For this reason, your Committee suggests that some criteria be established and a reporting system to this House be included.

Section 68: Your Committee is concerned that this Section does not clearly specify the individual's right to search his own records. If such a section were included, the problems of employers, lawyers, or insurers requiring searches, could be simply solved by requiring written authorizations. Certainly, insurers and employers should have no difficulty in obtaining these and lawyers would have no difficulty with respect to their own clients.

Your Committee would also suggest that responsible parenting would require parents to be able to search their off-springs' driving record, not have the matter dependent upon the Registrar's discretion.

Section 102: Your Committee respectfully points out that this section gives the Commissioner a broad discretion and that, to enable the House to carry out its responsibility for subordinate legislation, some system of reporting, either directly to the House, or to a committee, should be included with this section.

Section 103(3): Your Committee respectfully suggests that, where any standards are being adopted in regulations, they should be included in the text of the regulations for clarity, and, further, that such standards be readily available from the Registrar and all acting under him.

Section 104(1)(h): Your Committee respectfully suggests that, before regulations under this section be implemented, they should receive the approval of the House, since their scope is so broad.

Section 105: Since the regulation-making power here is so broad, and since the need for its use may arise quite suddenly, your Committee respectfully suggests that a reporting provision be included, as previously outlined.

Section 106: Your Committee respectfully suggests that, since there are presently no driving schools in operation in the Territory, that either the basic re-

quirements be included in the Ordinance now, or that, if they are left to come in by regulation, that a time limit be placed on this Regulation making power to ensure that the matter is covered in the Ordinance as soon as is reasonably convenient.

Section 107: Your Committee respectfully suggests that, if it is intended to move into the field of compulsory vehicle testing, that proper provision for this should be included in the Ordinance, so that the matter be fully debated in this House. The Committee realizes that such an undertaking requires proper financing and suggests that if necessary such sections could be proclaimed in force at a later date.

Section 139: Your Committee respectfully refers to its comments about paragraph 61(1)(k). Your Committee respectfully suggests that the House enquire into the reasons for the inclusions of these sections in the Ordinance.

Sections 239 and 240: Your Committee wishes to point out that both the Ordinance and the Regulations generally and in relation to a large number of specific sections can be enforced by criminal prosecution. For this reason your Committee respectfully suggests that most serious consideration be given to every regulation making power and to the exercise of discretion given to the Commissioner, the Registrar, and the Driver Control Board. The same applies to the Demerit Point System and the other matters contained in this report.

Your Committee further recommends that a copy of the recommendations contained in this Report be transmitted to the Executive Committee Member responsible for the portfolio which includes the administration of Motor Vehicles.

Respectfully, on behalf of the Chairman, Mr. Fleming.

Thank you, Mr. Speaker.

Mr. Speaker: The Honourable Member from Whitehorse North Centre?

Hon. Mr. McKinnon: Mr. Speaker, I would like to rise on a Point of Order to seek direction of the Chair. The Report of the Standing Committee on Statutory Instruments was presented yesterday, notice of the report for tabling, and the Report was received, a very comprehensive Report I might add, yesterday afternoon. There was also a motion yesterday morning that the Standing Report of the Committee be concurred in.

Mr. Speaker, I have not had the ability nor the time, I don't think all members have, except those members who are on that Committee of examining the Report in detail. I now understand, Mr. Speaker, that there has been a Point of Personal Privilege raised as to whether or not the Committee's report exceeded the terms of reference that this House had given to them.

I would like to know, with these matters in consideration, what is the ability of the House to move on this report at this time? Should anything progress on it while the Point of Personal Privilege has been raised? Is it within the ability of this House to move it into Committee where the Bill now stands? Does the question have to be put today as to whether it is concurred in or not? All of these present certain difficulties at the present time with the lack of the ability of it, I am sure of all Honourable Members, except those who serve on this Committee to examine a very comprehensive report, Mr. Speaker.

Mr. Speaker: The question of Privilege raised during this debate by the Honourable Member from Whitehorse West has yet to be determined by the Chair. This will take some time as well. It would be appropriate that the question do not be called on Item 1 this morning, but that the debate on Item 1 do be

adjourned, perhaps until tomorrow. If the House so desires, the Chair would receive such a motion.

The Honourable Member from Whitehorse West?

Hon. Mrs. Whyard: Mr. Speaker, I would move that debate be reserved until tomorrow on Item 1.

Hon. Mr. Lang: I second that.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse West, seconded by the Honourable Member from Porter Creek, that the debate on Item 1 be adjourned until tomorrow.

Motion agreed to

Mr. Speaker: I shall declare that the motion is carried. We will now proceed further with Motions.

Madam Clerk: Item Number 2, standing in the name of the Honourable Member Mr. Berger.

Mr. Speaker: Is the Honourable Member prepared to discuss Item 2?

Mr. Berger: Yes, Mr. Speaker.

Mr. Speaker: It has been moved by the Honourable Member from Klondike, seconded by the Honourable Member from Mayo, THAT the Green Paper on "Gambling in the Yukon" be referred to the Committee of the Whole.

Motion agreed to

Madam Clerk: Item Number 3, standing in the name of the Honourable Member Mr. Hibberd.

Mr. Speaker: Is the Honourable Member prepared to discuss Item 3?

Mr. Hibberd: Yes, Mr. Speaker.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse South Centre, seconded by the Honourable Member from Mayo, that the Special Report on Refusal of Royal Assent by the Standing Committee on Rules, Elections and Privileges, be concurred in.

The Honourable Member from Whitehorse South Centre.

Mr. Hibberd: Mr. Speaker, I don't wish to take up the Assembly's time, but I think, because it such an important issue, it would be important if the Report were read in.

I would like permission at this time to read the report.

Mr. Speaker: Proceed.

Mr. Hibberd: Your Standing Committee on Rules, Elections and Privileges has within its terms of reference, the authority to examine the practices and procedures of this House. The procedure surrounding "Royal Assent" came under study as a result of the recent action taken by the Commissioner on instruction from the Minister of Indian Affairs and Northern Development to refuse Royal Assent to Private Member's Public Bill Number 102, *An Ordinance to Amend the Public Inquiries Ordinance*.

First of all, was Royal Assent refused or withheld?

On November 15th, 1977, Private Member's Public Bill 102 was introduced and given first reading. The Bill progressed through second reading with clause-by-clause discussion in the Committee of the Whole. Third reading was given to the Bill on November 21st, 1977, and the Bill was subsequently included in a list of bills for which Royal Assent was asked.

The Commissioner stated, in response to the request for assent to Bill Number 102:

"On the instruction from the Minister of Indian and Northern Affairs that the proposed amendment to the *Public Inquiries Ordinance* constitutes an erosion of the

Commissioner's power, contrary to the intent and wording of Section 4 of the *Yukon Act*. I have been instructed to refuse or withhold assent to Private Member's Public Bill Number 102".

Dr. Hibberd, M.A for Whitehorse South Centre, rose on a point of privilege the following day to ask for clarification as to whether the Commissioner was "refusing" or "withholding" assent. The Speaker ruled that these were two separate and distinct actions and that he would communicate with the Commissioner to determine which action was intended. Later in the day, Mr. Speaker tabled correspondence from the Commissioner in which the Commissioner stated:

"What I meant to say was that I have been instructed to refuse assent to Private Member's Public Bill 102".

On Wednesday, November 23, on a point of privilege, Mr. McIntyre, MLA from Mayo, clarification was sought again. Mr. McIntyre asked, "Would the Speaker please advise me when the Commissioner will now attend this House to actually, in his own person, refuse assent to the Bill in question." Upon the direction of the House, the Speaker was to determine again from the Commissioner the disposition of Bill Number 102.

In the history of Yukon, there are no precedents surrounding the refusal of Royal Assent.

At the 1964 (1st) Session, the Commissioner of the Day "reserved" assent on a Private Member's Bill, *An Ordinance to Amend an Ordinance Empowering the Commissioner of the Yukon Territory to Grant a Franchise to the Yukon Electrical Company Limited to Sell and Distribute Electrical Energy in the Teslin Area, Yukon Territory*.

In 1971, in the absence of Commissioner James Smith, the Administrator "withheld" assent to Bill Number 15, *An Ordinance to Amend the Labour Standards Ordinance*.

At the present session, Commissioner Pearson expressly "refused" Royal Assent to *An Ordinance to Amend the Public Inquiries Ordinance*, a law passed on behalf of the people of the Yukon.

Purpose of Bill Number 102.

The purpose of Bill Number 102 was to provide the Yukon Legislative Assembly the power to direct the Commissioner to call a public inquiry under the *Public Inquiries Ordinance*. This was done through an addition of subsection (2) to Section 3 of the *Public Inquiries Ordinance*. The proposed subsection (2) read as follows: "(2) The Commissioner shall, upon the recommendation of the Territorial Council, cause an inquiry to be made into any matter,

- (a) connected with the conduct of the public business of the Territory, or
- (b) any matter of public concern, as the Territorial Council may direct."

In no way does this amendment affect the power of the Commissioner to call an inquiry on his own initiative.

It was noted during debate on Bill 102, that there exists, in at least two pieces of legislation, the power to direct the Commissioner to call an inquiry. This principle is the same as the principle outlined in Bill Number 102. Section 28(2) of the *Legal Professions Ordinance* states that:

"The Commissioner shall, on the advice of the Chief Justice of the Supreme Court of British Columbia, appoint a Discipline Committee consisting of a Chairman and not less than eight members."

Section 16(2) of the *Medical Professions Ordinance* states that:

"The Commissioner shall appoint a Board of Inquiry pursuant to subsection (1) if he is requested to do so in writing by three members in good standing of the Yukon Medical Association."

It is, therefore, clear that Bill 102 would empower the Members of the Legislative Assembly, the highest democratically elected law making body in the Yukon, the same powers already granted to members of the legal and medical professions. The *Legal Professions Ordinance* was proclaimed in force only days before this same power was denied the Members of this Assembly.

Effect of the proposed amendment on other Yukon Ordinances:

It should be noted that the refusal of Royal Assent to Bill Number 102 could and, in fact, probably will lead to challenges of the validity of other Yukon Ordinances which include similar provisions. The possibility now exists that actions under similar statutes could be overturned. The *Medical Professions Ordinance*, the *Legal Professions Ordinance*, and the *Municipal Ordinance* fall into this category.

Statements have been made indicating a concern with the wording of Bill 102, which states that the Assembly may cause an inquiry to be made into "any matter of public concern". It is apparently felt that this wording could lead to ridiculous lengths with the Yukon Legislative Assembly calling inquiries into any matter in Canada. Every ordinance is construed to give it effect only in the Territory and interpreted so that it does not effect matters outside the Territory's jurisdiction. Clearly, any Commission which attempted to investigate something beyond the jurisdiction of the Territory would be acting without authority. That does not mean that the legislation under which the Commission was constituted was invalid. In any event this argument would equally apply against the present Ordinance.

Role of the Commissioner as to Assent:

The Commissioner of the Yukon Territory has a dual responsibility. He is Chief Executive Officer of the Territorial Government, and also occupies a position equivalent in many ways to a Lieutenant Governor for Yukon.

A Chief Executive, the Commissioner by virtue of Section 4 of the *Yukon Act*

"...shall administer the government of the Territory under instructions from time to time given him by the Governor in Council or the Minister".

The part of his role which equates to that of a Lieutenant Governor entails many responsibilities quite separate and distinct from that of the Chief Executive Officer ranging from prerogative to ceremonial functions. The granting of Royal Assent to ordinances passed by the Assembly is an exercise of Royal Prerogative relating to legislation. It is not an executive power.

Authorities writing on the subject of Royal Assent in the provinces make it clear that the Lieutenant Governor must act upon the advice of the Governor General and his staff in deciding whether to give or withhold assent or whether to reserve the Bill for the consideration of the Governor General. Assent is not a power which is exercised by a Lieutenant Governor upon his own discretion. If the Lieutenant Governor does question the validity of a bill, he should seek the instructions of the Governor General, as stated by the Prime Minis-

ter of Canada after a bill was reserved in Saskatchewan in 1961. In exercising the power, he is a federal officer and a representative of the Crown. The Supreme Court has determined that the Lieutenant Governor's right to reserve a bill for the pleasure of the Governor General still subsisted in 1938. The most recent exercise of the power in a Province was the instance mentioned above in 1961.

However, assent has been reserved in Canadian provinces very rarely in the last 50 years and refused even more rarely. Being a matter of Royal prerogative, it should be used in strict accordance with established procedure.

The Yukon Act:

The *Yukon Act* does not expressly provide for assent, but does provide for disallowance in Section 20 which provides for disallowance of an ordinance within a Year after passage:

"20.(1) A copy of every ordinance made by the Commissioner in Council shall be transmitted to the Governor in Council within thirty days after the passing thereof and shall be made before both Houses of Parliament as soon as conveniently may be thereafter.

"(2) Any ordinance made after the 25th day of June 1970, or any provision of such ordinance may be disallowed by the Governor in Council at any time within one year after its passage".

This alternate power of Royal prerogative that exists is therefore one which is applied after a Bill has been enacted and allows some time for consideration and consultation whereas refusal of assent is, of necessity, an act which is done in haste and without time for discussion or, apparently, full and careful legal consideration.

A further check against possibly illegal legislation is a challenge in the courts as to the validity of an existing ordinance.

Options Available to the Commissioner:

There are then four courses that the Commissioner can be advised to take if it is considered that a bill is *ultra vires*. He can be advised:

- 1 To refuse assent outright on the advice of the Governor General;
- 2 To reserve the Bill for the consideration of the Governor General who can give or refuse assent after further consideration;
- 3 To give assent, with the power of disallowance being used after further consideration;
- 4 To give assent with the matter to be determined by court challenge.

The first course of action, to refuse assent, is the only one which leaves no time for full and careful legal consideration and discussion. It is the most autocratic and the most aggressive course available. It is also by far the most rarely used of all the constitutional checks. It was quite unnecessary to take this alternate, and for the Minister to instruct the Commissioner to take it without even seeking the advice of the Governor General, and therefore of the Privy Council, was an abuse of constitutional power. It indicates an amazingly aggressive attitude toward Yukon and an almost savage use of Federal power.

Validity of the Grounds Stated for the Refusal to give Royal Assent to Private Member's Public Bill Number 102:

In our opinion, the statement that the proposed Ordinance would erode the Commissioner's power and thereby be contrary to Section 4 of the *Yukon Act* has no basis in law.

Section 4 of the *Yukon Act* reads:

"4. The Commissioner shall administer the Government of the Territory under instructions from time to time given him by the Governor General or the Minister."

The *Public Inquiries Ordinance* grants to the Commissioner the power to establish public inquiries. If it were thought that the holding of public inquiries was purely an administrative matter in the Territory, then that Ordinance would have been refused assent in the first place as being an attempt to legislate in an area where the Commissioner already had power. This was not done and the clear implication is that the original ordinance was a valid grant of legislative authority to the Commissioner to hold inquiries. If the Legislative Assembly can pass ordinances to grant the Commissioner authority in this respect it can also pass ordinances to add or to limit or in some other way vary that authority. The Bill to amend the *Public Inquiries Ordinance* does so by adding a different route by which a public inquiry can come into being. It has already been established that provision for public inquiries is a proper matter for the Legislative Assembly to legislate. The proposed amendment, (Bill 102) does not reduce the Commissioner's power but would have provided an alternate origin for the calling of public inquiries. Private Member's Public Bill Number 102 would appear to be valid.

Recommendations:

Your Committee recommends that this report be forwarded to the following people:

The Rt. Honourable Jules Leger, Governor General of Canada

The Rt. Honourable Pierre Elliott Trudeau

The Honourable Renaude Lapoint, Speaker of the Senate

The Honourable James Jerome, Speaker of the House of Commons

The Honourable Hugh Faulkner, Minister of Indian Affairs and Northern Development

The Honourable R. Basford, Minister of Justice

Joe Clark, Leader of the Official Opposition

Ed Broadbent, Leader of the New Democratic Party

Eric Nielsen, Member of Parliament for Yukon.

The Honourable Paul Lucier, Senator for Yukon

The Honourable Eugene Forsey, Senator for Nepean

The Stanley Knowles, Member of Parliament for Winnipeg North Centre

The purpose of this form of communication is to make

certain that the Governor General, Members of the House of Commons and Members of the Senate are aware of the details of the situation in Yukon whereby the rights of a democratically constituted Assembly are being denied through the dictatorial and unlawful use of the power by the Minister of Indian Affairs and Northern Development through the Commissioner of Yukon.

2. Your Committee recommends that detailed letters appealing the refusal of Royal Assent to Bill Number 102 be sent to the Right Honourable Jules Leger, Governor General of Canada and the Right Honourable Pierre Elliot Trudeau, Prime Minister of Canada.

3. Your Committee recommends that as a furtherance of the process of communication, that Mr. Eric Nielsen, Member of Parliament for Yukon be asked to table this report in the House of Commons.

4. Your Committee recommends this report to be printed in all local newspapers for the purpose of making the general public aware of our position.

Thank you, Mr. Speaker.

Mr. Speaker: Is there any debate?

The Honourable Member from Whitehorse North Centre.

Hon. Mr. McKinnon: Mr. Speaker, as Honourable Members know that I have stated before in this House, that the political advice of the elected Members of the Executive Committee were that assent should be given to this Bill. Under written instructions from the Minister of Indian Affairs and Northern Development, assent was refused.

So, I think that the report puts it right on. That is exactly where we are, that the power of the federal government came down and said, this is where you are, boys, and that is the way it is going to be. It was exercised in the manner which the Honourable Chairman of the Committee of Rules, Privileges and Elections has so succinctly put it.

All of that I agree with, in that the broadest number of people responsible for making decisions, as far as the Yukon is concerned, and in a position to change our position, should be made aware of the constitutional position that we still find ourselves in, regardless of what we would like to think and the public of the Yukon would like to think.

I do have problems, and this is where I do have the problems in receiving a report late in the afternoon on one day, then not knowing what we can do if we see an area in the report which could be strengthened, or, perhaps, is not quite capable of being implemented. In this area, just having received the report late last afternoon, in recommendation number three, it suggests that "your Committee recommends that, as a furtherance of the process of communication, that Mr. Eric Nielsen, Member of Parliament for Yukon, be asked to table this report in the House of Commons".

Mr. Speaker, if I am correct, I think that it is impossible, constitutionally, for a Member of Parliament to table such a report in the Commons. In fact, I believe, Mr. Speaker, that it would be impossible for a member of the Government to table such a report in Parliament, and I believe only a Cabinet Minister, if we could entice such a person to do so, is capable of tabling such a report in the House of Commons.

It would seem to me with this understanding that I have, that it would be difficult to agree to a Report on constitutional issues suggesting a constitutional recommendation that is not valid in the House of Commons.

I would like, Mr. Speaker, before this is done, whether once again I could seek direction of the Chair to find out whether that representation is acceptable as an approach. It is my understanding that the Member of Parliament for Yukon, even if he was desirous, which I am sure he is, of tabling this

Report, that he would find himself in an impossible position to be able to do so.

Mr. Speaker: I don't believe that the House has received, from the Standing Committee on Rules, Privileges and Elections, a report offering recommendations. Whether those recommendations may rightly be constituted or wrongly constituted, I don't believe is the question here. I believe that the question before the House is whether the Report can be concurred in or not concurred in. I really don't see the relevance of the point raised by the Honourable Member in respect of the Report offering a recommendation.

The Honourable Member from Pelly River?

Mr. McCall: Thank you, Mr. Speaker, I have some reservations as to the comments that the Minister just made a moment ago. I think all members will recall, it wasn't very long ago, when a report was tabled in this House and the same Minister got up and said we should not interfere with that report and shouldn't try to take out pertinent sections because of its importance and that was the accepted practice of this House that we either concur in the report or we do not accept it.

Now, the Minister is saying the opposite. I have reservations as to his statement and the remarks which he has just made on this particular report. I highly commend that particular Committee, Mr. Speaker, because they worked very, very hard and hopefully this will be concurred in unanimously.

Mr. Speaker: The Honourable Member from Whitehorse Riverdale?

Mr. Lengerke: Mr. Speaker, I can appreciate the problem that the Minister might be having but I think recommendation just suggests, as it says here "The Committee recommends that as a furtherance," and it goes on that the "Member of Parliament for Yukon be asked to table this report in the House of Commons." Now that's exactly what we will be doing. Now if he has the ability to table it or a

his decision. But I expect, Mr. Speaker, and I am not the expert, but I would expect that he will be able to table it. That is our recommendation, that we are asking him. That's the end of it.

Mr. Speaker: Is there any further debate?

The Honourable Member from Klwane?

Mrs. Watson: Yes, Mr. Speaker, the Committee who prepared this Report, I think, has done a very good job and spent considerable time and I think there has been very good advice from various sources. The reason for the Report, of course, is the refusal to assent to a Private Member's Public Bill. I think that everyone in this House is just disgusted. I think that is about the best word you could use.

Whether there is a legal point to it or not, and many of us believe very strongly there was no legal basis for the refusal of assent, but it was a small disgusting type of action.

Now, if they had turned around and refused Royal Assent to a bill, such as the *Legislative Assembly Bill*, where there was actually a question, really not that much of a question, but this type of a bill, the amendments to the *Inquiries Ordinance* to give us the power that is shared with the Commissioner, and that we have already given to other professions to share with the Commissioner, was a very small type of thing to do.

I think our Minister had some very, very poor advice and I think that the less, I am so disgusted with it, I don't really want to be bothered with it any more. That is how I feel about it. I don't know whether many members feel that way about it. You are going to fight it, you are going to say it isn't right, but, when you have to get down to that kind of small, icky-picky day after day type of fighting, you just wonder whether it is worth it all.

Mr. Speaker, this is an excellent report and it required a report. The actions of the Commissioner and the Minister required investigation and required a good report, and this is one. But, Mr. Speaker, we must not all forget that the other report that was tabled in this House this morning, is also an excellent report.

Mr. Speaker, let us not forget that it is that report that is going to affect the day to day lives of the people that we represent in this House. This report will, in the long term, and we can never lose sight of the fact that Royal Assent was refused, but, Mr. Speaker, we cannot also lose sight of the fact that there are day to day things that are happening, and we have to be alert and take care of them.

The only way that we can defeat this attitude, by our Minister and his department, is by us proving, through the types of thing that were done in the other report, that we, in fact are capable and responsible enough to provide the direction for the Yukon Territory, and they don't have to have that maternalistic type of attitude to us that they seem to portray in not even questioning whether they should give Royal Assent to a stupid little bill.

Well, it was. It is the most ridiculous, small type of action that the federal government could have ever done, and they are going to be nothing but the losers out of this. What are they gaining?

But we can gain a lot by fighting this action, completely, but by not forgetting the things that were brought up in the other report today.

Thank you, Mr. Speaker.

Mr. Speaker: Is there any further debate? The Honourable Member from Hootalinqua?

Mr. Fleming: Yes, Mr. Speaker, I will be rising very much in support of the Report, because I think basically, in my mind, which is probably not very high up in many areas, but there is one basic thing that I look at here and that is that under the concept of our government structure, we are here today, and the Ministers more or less at the whim or whatever, can just stomp on us and I don't agree with it.

I think we have been colonial sons long enough, and it was time that we fought back a little. If we just stand back and take decisions, such as this one which really I don't feel had very much legality, very little that I can see at all, and I think as the Report states and proves that this is right, and I, Mr. Speaker, am quite prepared to commend the people that made it.

Mr. Speaker: Any further debate?

Motion agreed to

Mr. Speaker: The Honourable Member from Pelly River?

Mr. McCall: Thank you, Mr. Speaker, I would move that Mr. Speaker do now leave the Chair and the House resolve into Committee of the Whole.

Mr. Fleming: I second that.

Mr. Speaker: It has been moved by the Honourable Member from Pelly River, seconded by the Honourable Member from Hootalinqua, that Mr. 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

Mr. Chairman: I will call Committee to order and declare a brief recess.

Recess

Mr. Deputy Chairman: I call this Committee to order.

We have with us today as witnesses, Mr. MacDonald and Mr. Clegg.

We left off in Committee yesterday, with the reading of the *Elections Ordinance* and Section 59 was cleared through so we are now in discussion on Section 60.

On Clause 60

Mr. Deputy Chairman: Ms Millard.

Ms. Millard: Mr. Chairman, just a small matter but it is just in the back of my mind, since it is so easy to assign a person to be an agent, when would the circumstance be that an elector would have to act as an agent?

Mr. Deputy Chairman: Mr. MacDonald.

Mr. MacDonald: Well, Mr. Chairman, if no official agent or scrutineer is present at the polls, any elector can volunteer to be a scrutineer for a particular candidate and he can be so accepted and sworn by the deputy returning officer and remain at the polls as a scrutineer for the candidate.

Now, I don't know whether that happens very often. I doubt if, in my memory, I have ever heard of it happening. I submit that it is possibly a display of support by an elector for a certain candidate who doesn't happen to have a scrutineer there, or, on the other hand, he may be looking for a job at the election. I don't know.

Mr. Deputy Chairman: Ms Millard.

Ms Millard: Well then why wouldn't that elector just simply be called an agent then, at that point, once it has been okayed.

Mr. Deputy Chairman: Mr. Clegg.

Mr. Clegg: Mr. Chairman, we have in this Ordinance defined an agent as somebody who is appointed by the candidates, in writing and therefore, there is a distinction. A person who is appointed specifically by the candidate is agent or somebody who steps in the place there on his own volition and with the agreement of the deputy returning officer.

But there might well be a possibility that, although a candidate had appointed three or four agents, at a certain time during the day there might be nobody there and if a deputy returning officer was being asked to mark a paper for an incapacitated voter, he would much prefer to have somebody there on behalf of every candidate so that nobody could question his neutrality in that respect and it would be in his interest to have someone volunteer to be in place of the agent.

Mr. Deputy Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, isn't there a necessity for a candidate to fill out the forms appointing an agent some time before the election, and if they don't do that, if they neglect to do that, they can on polling day in fact have an elector as their agent. They can request it, can't they?

Mr. MacDonald: That's quite correct, Mr. Chairman.

Mr. Deputy Chairman: Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, in respect to that question then, would it not be fair to say that the elector would have to be appointed by the candidate to be an agent, or they can just volunteer? Is this the way the Alberta Statute reads at the present time?

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, this is the way the Alberta Statute reads at present, or this is the effect it has.

Mr. Deputy Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, I believe that it is rather important that when the ballots are being counted that there is someone representing or on behalf of each one of the candi-

dates. I think that is the time when it is really needed. I know I have had phone calls and asked to come over if I would be witness to the counting of the ballots.

Mr. Deputy Chairman: Clear on 60? Mrs. Watson?

Mrs. Watson: Mr. Chairman, I certainly like the concept of 60. I think that is going to make a difference. The people have been acting in these capacities but the general public doesn't actually know who they are, but I think with the badges it is going to make a difference.

Clause 60 agreed to

On Clause 61

Mr. Deputy Chairman: Mrs. Watson?

Mrs. Watson: Subsectin (3) is certainly a deviation from the *Canada Elections Act* isn't it? I don't believe the returning officer in the *Canada Elections Act* is allowed to open that large envelope that is in the ballot box.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, subsection (3) is taken from the *Canada Elections Act*.

Mrs. Watson: Is it?

Mr. Clegg: Yes.

Mr. Deputy Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, is the poll book in the large envelope?

Mr. MacDonald: I can't be certain, Mr. Chairman, but I don't believe so.

Mrs. Watson: Well, Mr. Chairman, when they have an official, when a judge has an official count of votes, the judge is not permitted to look at any of the other documents within the ballot box, other than the ballots and I thought that the poll book was one of the things that he had to have a special order in order to have a look at it, from a Chief Electoral Officer.

It was my understanding, that that poll book was in a special envelope, sealed.

Mr. MacDonald: Well, Mr. Chairman, we are going to get to that when we tackle the recount procedure, which, as you know, is laid out in step by step.

Mr. Clegg: Mr. Chairman, the previous section 59.(16) provides that the poll book, the envelopes contained in the ballot papers, the proxy certificates and the envelopes containing the official list of electors "shall be placed in the large envelope supplied for the purpose". So, the poll book is in the large envelope, but the large envelope is opened and the poll book is then available. It is not specially wrapped.

Mrs. Watson: It is very interesting.

Mr. MacDonald: The poll book, excuse me, Mr. Chairman, the poll book is open to scrutiny at all times by scrutineers at the poll and therefore is not a particularly sensitive document.

Mrs. Watson: Mr. Chairman.

Mr. Deputy Chairman: Mrs. Watson.

Mrs. Watson: It may be open on polling day, but there are, it might be valuable to use at a controverted election, to have it available to someone and I think this is one thing where the judge is very, very, very fussy about that he does not, just the ballots, when they recount.

Anyway, that is what happened.

Mr. MacDonald: I have no further comment, Mr. Chairman. I will wait until we get to the recount section.

Clause 61 agreed to

On Clause 62

Mr. Deputy Chairman: I believe there is a typo error

there, Mr. Clegg, on the second line, on subsection 5 of 62.

Mr. Clegg: Yes, Mr. Chairman, I will have that altered to meantime.

Mr. Deputy Chairman: Very well.

Clause 62 agreed to

On Clause 63

Clause 63 agreed to

On Clause 64

Mr. Clegg: The Committee may recall that we have been requested to prepare an amendment providing that where a recount is requested, under 64.(1)(b), the returning officer is advised forthwith by the judge and that, I will prepare an amendment for this for the consideration of the Committee.

Mr. Deputy Chairman: I take it then that this is on stand-over, this particular section.

Mr. Lang, you are standing over 64?

Hon. Mr. Lang: Correct.

Mr. Deputy Chairman: Very well.

Clause 64 stood over

Mr. Deputy Chairman: We shall go on and do Section 65.

On Clause 65

Mr. Deputy Chairman: Mr. Clegg, could you give me clarification on Section 65.(2), subsection (c), the recapitulation sheets?

Mr. Clegg: Mr. Chairman, my understanding is that these are summary sheets on which it is shown in respect of each polling division, the number of votes cast for each candidate and the totals of those.

Mr. Deputy Chairman: Thank you.

Mr. McIntyre?

Mr. McIntyre: In the same Section, (f), should that not be the enumerator's record books?

Mr. Clegg: Mr. Chairman, that is correct, the semi-colon there is a typographical error.

Mr. Deputy Chairman: Thank you.

Mr. Clegg: It should be an apostrophe after the 's' of enumerators.

Mr. Deputy Chairman: Mr. McIntyre?

Mr. McIntyre: In the next subsection (g), is there more than one revising officer at a poll.

Mr. MacDonald: There would not normally be.

Mr. McIntyre: Then the apostrophe is in the wrong place. If there is only one, it should be between the 'r' and the 's'.

Mr. MacDonald: No, but there would be revising officers for—, yes, there would be revising officers for each polling division in the whole electoral district.

Mr. Deputy Chairman: Mr. McIntyre was saying, Mr. MacDonald, that we are looking at the general application and not the singular, and the comma is in the wrong place.

Mr. MacDonald: In (g)?

Mr. Deputy Chairman: Yes.

Mr. Clegg: Mr. Chairman, my impression is that there will be a number of revising officers for the electoral district and that the words revising officers is plural.

Clause 65 agreed to

On Clause 66

Mr. Deputy Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, I was waiting for the senior member from Mayo to point out the redundancy of the word 'and' in line 15. I bow to his judgment, Mr. Chairman.

Mr. Deputy Chairman: Are you seeking clarification, Mrs. Whyard, from Mr. McIntyre?

Clause 66 agreed to

On Clause 67

Mr. Deputy Chairman: Mr. Clegg, could we get clarification on subsection 8 of 66? It makes reference to "records upon payment for the preparation of those certified copies at the rate of twenty cents per page". Clarification as to the twenty cents, Mr. Clegg. Why that figure?

Mr. Clegg: Mr. Chairman, could you give me the reference again?

Mr. Deputy Chairman: It is subsection 8 of 66, 67, sorry. Why the figure of twenty cents?

Mr. Clegg: It was a suggestion, it is approximately, it is something over the full cost of a xerox copy and to allow for the time necessary for the certification. It is an approximation, just in my opinion, as to what it would probably cost to do this on an administrative point of view.

Mr. Deputy Chairman: Thank you.

There is a typo error in the subsection 7, second line.

Mr. Clegg: Yes, Mr. Chairman, I have that one on my list.

Clause 67 agreed to

On Clause 68

Hon. Mr. Lang: Mr. Chairman, in respect to 68, in reference to the costs of running the election, at least in the forthcoming election if it is to be run under our piece of legislation, Members should be interested to note that we do have a commitment from the Federal Government that monies would be transferred to the Yukon Consolidated Revenue Fund to pay for the election.

Presently, the money is voted through the Chief, the Electoral Officer's department, because it is run under the federal statute, but in the event that we run our own election, which it appears we may be, then it is transferred to us.

Mr. Deputy Chairman: Mrs. Whyard.

Hon. Mrs. Whyard: In 68.(8), the Board shall audit all accounts and who audits them?

Mr. Deputy Chairman: Mr. Clegg or Mr. MacDonald.

Mr. MacDonald: Who audits whom, Mr. Chairman.

Hon. Mrs. Whyard: The Board.

Mr. MacDonald: Who audits the Board? Well, I presume, since the accounts will be paid at least out of a Consolidated Revenue Fund, your Territorial Auditor...

Hon. Mrs. Whyard: Internal auditor.

Mr. MacDonald: ...additionally audits the accounts. This is a pre-audit done in any office of any proportion, before sending it to, you know, Treasury.

Hon. Mrs. Whyard: Thank you, Mr. Chairman.

Mr. Deputy Chairman: Mr. Lengerke.

Mr. Lengerke: Yes, Mr. Chairman, I would like to ask the witnesses a question with respect to the expenses, and also in relation to the comment by the Minister.

He said that the federal government are going to reimburse the Yukon Fund for the cost of running an election? Is that correct, Mr. Chairman? The first one.

Mr. Deputy Chairman: Mr. Lang.

Hon. Mr. Lang: Mr. Chairman, this is correct. All it would mean is a transfer to the Yukon Consolidated Revenue Fund, because up to now, they have had the money voted for them to run the election. The monies will be available and they will be transferred to the Yukon Consolidated Revenue Fund in respect to running the next election.

Mr. Lengerke: That is for just the running of the next election? That is not, because my question to the witnesses is going to be this certainly is not the case in the provinces. They pay their own elections, don't they?

Mr. Clegg: That is correct, Mr. Chairman.

Clause 68 agreed to

On Clause 69

Mr. Deputy Chairman: Mr. McIntyre?

Mr. McIntyre: Mr. Chairman, I would like to know what an executory contract, in this particular sense, is?

Mr. Clegg: Mr. Chairman, the wording is taken from other election ordinances, election acts. The executory contract means the contract which has not been completed.

Mr. Deputy Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, does that apply to promises and undertakings of elected candidates?

Mr. Deputy Chairman: Mr. McIntyre, if I may, I could read out the Standard College Dictionary of the word executory: relating to, or entrusted with carrying out plans, et cetera, administrative, executive, to be naturally in effect, operative, law designed assigned to take effect after some future time; an executory contract.

Mr. Clegg: Mr. Chairman, thank you for your support, although I notice that you are using an American dictionary. Canadian Statutes are normally interpreted from the Oxford Dictionary, but it is the same in this regard. But with regard to the question asked by the Honourable Minister, this would in fact prevent, save a member who had been elected from being obliged to carry something out as a result of having been elected, and this is one of the purposes of the Section, so that a Member is not under a contractual obligation to do something as a result of having been elected. This is to prevent undue patronage in an election.

A member who has said to somebody, if you elect me, I will do this for you, cannot be sued for not doing it, because it is necessary that he remains independent after his election.

Clause 69 agreed to

On Clause 70

Mr. Deputy Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, we are on what Section now?

Mr. Deputy Chairman: Section 70, page 74.

Mrs. Watson: Thank you.

Mr. Deputy Chairman: Mr. McIntyre?

Mr. McIntyre: Mr. Chairman, I have noticed at election time that there very often replicas of ballot papers with the certain candidate's name already marked with an 'X' that are circulated outside of polling stations with the object of getting people to vote the way the ballot paper shows. Would this be a forged ballot paper in this connection?

Mr. Clegg: Mr. Chairman, it is my opinion that the judicial interpretation which has been placed on the word "forged" is that the document, a document which is in fact a replica is not necessarily a forgery. The word "forgery" implies that the document is telling a lie about itself, that the document is purporting to be something which it is not.

I don't think that a ballot paper which is produced, in fact, similarly for advertising purposes would necessarily be regarded as a forgery unless it was supplied in such a way that it would be pretending that it was a ballot paper.

If one appeared in the polling station on the poll clerk's table, I think that would be a very serious matter and it could be deemed to be a forgery or to have been forged if, in fact, the

person who made it or uttered it intended it to be taken as a ballot paper, but otherwise not.

Mr. Deputy Chairman: Typo error in (g), Mr. Clegg.

Mr. Clegg: Yes, Mr. Chairman, "otherwise interferes".

Clause 70 agreed to

On Clause 71

Mr. Clegg: In line three, the line should be "to procure".

Mr. Deputy Chairman: Thank you.

Mr. Clegg: Mr. Chairman, a minor typographical error, a coma after the word "at", in line four, on page 77, should be removed.

Mr. Deputy Chairman: Thank you.

Shouldn't there be a comma after "from", in the fifth line?

Mr. Clegg: I think it is normal useage, Mr. Chairman, at the end of a list of things, there isn't a comma.

Clause 71 agreed to

On Clause 72

Mr. Clegg: Mr. Chairman, our suggestion is that the word "ordinary", or, in fact the words "the ordinary" should be struck from this section because it would also apply on a polling day that was deferred for some reason or was a polling day which was held after the death of a candidate.

Mr. Deputy Chairman: Are you suggesting that is a typing error?

Mr. Clegg: Yes.

Mr. Deputy Chairman: Thank you, Mr. Clegg.

Hon. Mrs. Whyard: Clarification, this section then would apply to clubs, private clubs.

Mr. Deputy Chairman: Mr. Clegg.

Mr. Clegg: Mr. Chairman, any place which is a licenced premise and if the club is a licenced premise, then it would apply there.

Mr. Deputy Chairman: Mr. Berger.

Mr. Berger: Yes, Mr. Chairman, I was just wondering, shouldn't we put Section 2 first and then the Section 1 as 2. I think, the way I read it it is backwards here.

Hon. Mrs. Whyard: Yes, it reads better.

Mr. Deputy Chairman: Clarification, Mr. Clegg on those Sections?

Mr. Clegg: Mr. Chairman, I am afraid I didn't hear.

Mr. Deputy Chairman: It was suggested that subsections (1) and (2) reverted the other way around for better clarity I would say for reading purposes of Section 72.

Mr. Clegg: Very well, Mr. Chairman, I will arrange that typographical change.

Mr. Deputy Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Could we go a little further then and ask what about a dining room, a licenced dining room? Are you going to require that it not be open during polling hours or open only for meals without any liquor during polling hours.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, the licensed dining room would be covered under the present subsection (1) which will be making subsection (2) and it could be open but could not serve liquor during polling hours.

Mr. Deputy Chairman: Mr. McKinnon?

Hon. Mr. McKinnon: Mr. Chairman, the dining room was open but there was no liquor that was available for sale, then wouldn't it just, it would have during the hours the poll was open "gives, offers or provide an alcohol beverage at any

licensed premise within an electoral district where a poll is being held is guilty of an offence." That means that even if the proprietor gives a person at the table, without selling, that that also is an offence. Should this legislation be countered, or is it presently in force in the *Liquor Ordinance*. I thought there was a section in the *Liquor Ordinance* that dealt with polling, and if not, should it be similar legislation, consistent legislation in both the *Liquor Ordinance* and in the *Elections Ordinance* so a person looking in either Ordinance would find all sections dealing with liquor, whether it pertains just to election days or generally.

I always thought there was a section in the *Liquor Ordinance*. I may be wrong, that dealt with liquor on polling day.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, my recollection at this moment is that I checked the *Liquor Ordinance* and found no reference and that is why I put in notwithstanding the *Liquor Ordinance*, which is an alternate to making a consequential amendment in the *Liquor Ordinance*. I will undertake to check the point again. I can't remember specifically what I saw in the *Liquor Ordinance*, but an alternate way of dealing with this would have been to make an amendment to the *Liquor Ordinance*, but it seemed a simpler matter to do it in this Ordinance.

Mr. Deputy Chairman: Mr. McKinnon?

Hon. Mr. McKinnon: Mr. Chairman, I just thought if and when the *Liquor Ordinance* is opened up again, would you suggest that this section should be found in the *Liquor Ordinance* and in the *Elections Ordinance* or more properly found in both, or just tie *Liquor Ordinance*, or just the *Elections Ordinance*?

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, if it is put into the *Liquor Ordinance*, I don't believe it should be in here as well. Things should not be forbidden by two separate ordinances. The advantage of putting it in this Ordinance is that it becomes an offence under this Ordinance enforceable by the officers of the election, as opposed to being an offence under the *Liquor Ordinance* which has to be enforced in the normal manner by the Crown.

Mr. MacDonald: If I might add, Mr. Chairman, I think from the point of view of the election administrator it would be quite a happy situation to have it in the *Liquor Ordinance* where it would become enforceable by liquor boards officers, rather than elections officers.

Mr. Deputy Chairman: Thank you.

Mr. Berger.

Mr. Berger: Yes, Mr. Chairman, I really can't see any problem in the point of view of a restaurant. The restaurant licence is the primary licence. The liquor licence is actually a secondary licence.

So, in other words, when he is operating on an election day, he is operating under the restaurant licence and we specifically say he is not allowed to sell any liquor on that particular day here. So, in other words, the secondary licence, the liquor licence would cover that particular thing.

Clause 72 agreed to

On Clause 73

Clause 73 agreed to

On Clause 74

Mr. Deputy Chairman: Ms Millard.

Ms Millard: Mr. Chairman, I would just like to know on this printing if the printing includes something that could be run off, for instance, by hand on a Gestetner? Is that included?

Mr. Deputy Chairman: Mr. Clegg.

Mr. Clegg: Yes, Mr. Chairman, that is the intention.

Mr. MacDonald: I might add, Mr. Chairman, the Honourable Member has raised a rather interesting point. I can recall during election when a teacher who rather favoured a certain candidate during an election, prevailed on his classroom as an art study, to draw some little posters favouring that particular candidate.

I don't know how he made out with the parents of the children, but one of the opposition agents approached me, very wrathful about these posters because there were no printers names on them, only the children's names were at the bottom. I asked him if he thought we should prosecute the children.

Clause 74 agreed to

On Clause 75

Mr. Berger: Who are we referring to when we are saying "every person who erects, posts or affixes a proclamation notice, poster or advertisement"?

I can see where there is picture, campaign pictures of a candidate being erected by a person unknown to the candidate. Will the candidate be held responsible for the removal of those things?

Mr. Deputy Chairman: Mr. Clegg.

Mr. Clegg: Mr. Chairman, my interpretation of this section, as worded, would be that it would be only the person who had caused this to be done or who had done it and if the candidate had not asked anybody to do it and the person could not be found who had done it, there could be no person who could be prosecuted for the offence.

Mr. Deputy Chairman: Mr. Berger?

Mr. Berger: Well, how are the candidates going to prove this? His picture is obviously on the campaign poster and he is obviously going to be accused of being the instigator of his poster being erected on his behalf. The way subsection (3) says: "Any person who fails to comply with subsections (1) or (2) is guilty of an offence."

Mr. Clegg: Mr. Chairman, a person accused of an offence is not required to prove he did not do it. The prosecution is required to prove that he did do it.

Mr. Deputy Chairman: Mr. Berger?

Mr. Berger: Mr. Chairman, we could cause a lot of grief for the candidates, I mean if I don't like a person or so, I could put up posters all over the place.

Mr. Deputy Chairman: Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, it is my understanding of this section and I think it is drawn straight from the *Canada Elections Act* or a very similar section to that Act and really what it is is to attempt to let people know that these signs do have to come down in a certain timeframe. In respect to enforcing it, I think we would all realize it is difficult, but at the same time I think we all accept the fact that you know three months or six months after an election, when you see posters of various candidates on telephone polls then it is really not relevant to the situation and they should have been taken down. So this is really what this section does. It just states you have thirty days.

Mr. Clegg: Mr. Chairman, I may have misled the Minister by my nodding. I am not certain of my own recollection whether this is in the *Canada Elections Act*. It may be something which was an independent proposal by Mr. MacDonald or myself and with all due respect to members here who have been candidates, it is an anti-litter provision.

Mr. Deputy Chairman: Mr. MacDonald?

Mr. MacDonald: Mr. Chairman, I was just about to inter-

cede, but Mr. Clegg did it for me. It is definitely my own personal proposal as an anti-litter campaign.

Mr. Deputy Chairman: Wouldn't that come under the interpretation of nuisance grounds in the *Municipal Ordinance*?

Mr. MacDonald: It could well be, Mr. Chairman.

Mr. Deputy Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, 75.(1) and (2) could also apply to DROs and election officials. They are quite guilty of these things also. They walk away and leave these things pinned up.

Mr. Deputy Chairman: Mr. Fleming?

Mr. Fleming: Yes, Mr. Chairman, this 74.(1), this whole section, however, goes on to say "reference to an election shall bear the name and address of its printer or publisher" and that would be in printed matter or something, then "every person printing, publishing, distributing or posting up." I am just wondering when they say that a poster or banner, if you are carrying a flag, or something to that effect when you are campaigning, that would also have to have the name and the address of the maker I would presume.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Yes, Mr. Chairman, of the printer or publisher.

Mr. Deputy Chairman: Mr. Berger?

Mr. Berger: I don't want to get stuck on this particular Section, but I was just thinking back on the last campaign I received by mistake from the printer, a package of campaign literature for another candidate. I could actually, I mean if this happens again in the next election, distribute the thing all over the Territory and make this person liable for this thing. I mean this is what we are saying here.

Hon. Mrs. Whyard: Then they will get elected.

Mr. Clegg: Mr. Chairman, I would point out if the Honourable Member were to do this, he would also be liable under the same Section.

Mr. Deputy Chairman: Mr. Berger?

Mr. Berger: Mr. Chairman, I have a lot experience in European elections, Mr. Chairman, and the thing is we used to do those things at midnight when there was nobody around. Usually if you want to do mischief like this, you do it when nobody observes you.

Mr. Clegg: Again, Mr. Chairman, I would mention that a person whose poster is put up by somebody else and who is accused of an offence under this Ordinance, does not have to prove that he did not do it. The prosecution has to prove that he did do it. If it has appeared mysteriously, that does not affix him with the responsibility.

Mr. Deputy Chairman: Mrs. Whyard.

Hon. Mrs. Whyard: I can see why the Honourable Member from Klondike is concerned about 75.(1), because he after puts up all those posters for opposition he is going to have to go around and take them all down again. That is what it says here.

Mr. MacDonald: I think, Mr. Chairman, it should be fairly clear that the fact of requiring the printer's name on such documents is really to prevent such activities as the Honourable Member has suggested might take place, where false posters about another candidate might be put up. That is why the printer's name is on it, because it then becomes possible to trace who ordered the material.

Mr. Deputy Chairman: Yes, Mr. MacDonald, from personal experience, many people go to great extremes to spread malicious propaganda.

Mr. McKinnon.

Hon. Mr. McKinnon: Mr. Chairman, why don't we go one

step further in Section 75. (1) and (2)? The biggest offender of putting all this election garbage is public utility poles and it is a dangerous and a stupid practice and it is also not a very good election type of practice, I don't think, where all of the public utility poles just go right up to the top, until, people trying to get the last stop and they all start ripping them down and putting them on together again.

As I say, it is an extremely and a very dangerous practice towards climbers from the utilities companies and why isn't it against the law and why shouldn't it be, to put election propaganda posters on public utility poles? I see no reason at all why it shouldn't be included in this section. It would take a dangerous campaign practice away. People would know right from the beginning that they can't start the stupid game that goes on at every election that I have ever seen anywhere in the country, of getting to the public utility poles and trying to get as many of your candidates' posters up as high as you can, as fast as you can, and then start ripping them all down again and start all over again.

I just see no rhyme nor reason, sense to this whole procedure and it would seem to me that everybody should know right from the beginning that public utility poles, to put those posters on is a dangerous practice that most union agreements, I think, state that a climber doesn't even have to go on the pole if there are any of these types of attachments on it, because of the danger and what would be the problem? If other jurisdictions don't do it, I think it would be a great anti-litter and an anti-stupid election practice for the Yukon to take the lead on. Plus, I may be back climbing poles pretty quick.

Mr. Deputy Chairman: I never thought of that, Mr. McKinnon.

Mr. McIntyre.

Mr. McIntyre: Yes, Mr. Chairman, I think you could probably go a step farther and say that the only place that you could put one of these signs is on private property. That would eliminate an awful lot of them.

Mr. Deputy Chairman: With the Committee's concurrence, maybe we should ask Mr. Lang if he would take this under review, Section 75?

Hon. Mr. Lang: Well, Mr. Chairman, I am prepared to look at it.

The only comment that I would like to make is that I know, I must speak from personal experience just like the Honourable Member, is that in respect to the making available to the public the elector' list and this kind of thing, in some cases, only telephone poles are available.

I know in one particular area, in the riding that I represent, that this is the case.

At any rate, we are prepared to look at it, Mr. Chairman, and we will see what we can do about your propaganda.

Mr. Deputy Chairman: Very well, Mr. Clegg?

Mr. Clegg: It may well be that it is already illegal to affix something to a utility pole under some other provision of the Ordinances. In fact, if that is so, it probably applies to all other material and we may find that we do not need to make any provision here to achieve what the Honourable Member has raised.

Mr. Deputy Chairman: There has been some valid points made by Members of the Committee and Mr. Lang is prepared to review that Section.

Clause 75 stood over

On Clause 76

Mr. Deputy Chairman: Clear on 76?

Some Members: No.

Mr. Deputy Chairman: Some clarification, Mr. Clegg on

the second line. It reads: "When a document referred to in subsection 70(1)(aa) is posted up..." Up what? On where? Is that in a window or on a building?

Mr. Clegg: Mr. Chairman, this was drafted to mean posted up anywhere. In other words, placed in a position where it is posted.

Mr. Deputy Chairman: Does that tend to defeat 75?

Mr. Clegg: Mr. Chairman, the intention is that the text of Section 70(1)(aa) which prevents mutilation of posters should be printed and placed by it. I think that the first mention of 70(1)(aa) is in error and it should be replaced by Section 75.

Mr. Deputy Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, I would certainly go along with that if you were talking about documents that are being posted by election officials, but you are wanting this, if I put up a poster, I must also have a copy of 70(1)(aa) printed on the poster which is going to make printing extremely expensive. I will take my chances, but election documents like voters lists and the proclamation, a copy of the proclamation, this type of thing, yes I can see where there would be requirements for that.

Mr. Clegg: Mr. Chairman, I suggest that the first line should read: "where an election officer posts a document referred to in Section 75."

Mr. Deputy Chairman: You are suggesting redrafting then?

Mr. Clegg: Yes, Mr. Chairman.

Mr. Deputy Chairman: Thank you.

Clause 76 stood over

Mr. Deputy Chairman: Ms Millard?

Ms Millard: Just in passing, Mr. Chairman, I am just wondering about someone who tears down other people's posters. There is no provision for an offence for that is there?

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Yes, Mr. Chairman, the provisions of 70(1)(aa) only refer to documents authorized or required by this Ordinance and they are not protected by that particular section, and there is no protection in this Ordinance for candidates' posters.

It would be possible for a person to enforce legal protection of the poster that he puts up himself, because it is his property. There would be other routes, both by civil action or by criminal action against a person who deliberately destroys or damages your property.

But, our intention was to make the damaging of election materials a specific offence under this Ordinance.

On Clause 77

Mr. Deputy Chairman: Mr. Clegg.

Mr. Clegg: Mr. Chairman, on line 16, the word "qualified" is misspelled, a typographical error.

Mr. Deputy Chairman: Mr. McKinnon.

Hon. Mr. McKinnon: Were all those terms defineable in law, Mr. Chairman, "good faith", "reasonable", "bonafide"?

Mr. Clegg: Mr. Chairman, they are terms which have been interpreted judiciously many times, and they have acquired a reasonably certain meaning in law.

Clause 77 agreed to

On Clause 78

Clause 78 agreed to

On Clause 79

Mr. Deputy Chairman: Mr. McIntyre.

Mr. McIntyre: On 79, I don't think the reference to a com-

missioner, under the *Public Inquiry Ordinance* is correct, because there is no commission that is appointed. It is a board that is appointed, so maybe we should say the boarder.

Mr. Deputy Chairman: A slight typo error there, Mr. Clegg.

Mr. Clegg: Mr. Chairman, it is a typographical.

Mrs. Watson: That is a very interesting section, Mr. Chairman, and on the basis of the Royal Assent being refused on the amendments to the *Public Inquiry Ordinance*, you are doing exactly what the amendment to the *Public Inquiry Ordinance* purported to do in the amendment, and yet we are doing it in 79, exactly the same thing. We are giving the board the same powers as the commissioner and that was what was attempted in the amendment, where the Legislative Assembly has the same power as the Commissioner.

Now, is this whole Bill going to be thrown out?

Mr. Clegg: Mr. Chairman, the intention in Section 79.(1) is that the words should read, "the Board, under the *Public Inquiry Ordinance*", which is the inquiring unit under your *Public Inquiry Ordinance* and it is not intended to refer to the Commissioner.

This was a typographical error and that is the reason why that word is there.

Mr. Deputy Chairman: Thank you, Mr. Clegg.

Mrs. Watson: No, Mr. Chairman.

Mr. Deputy Chairman: Mr. Berger.

Mr. Berger: Mr. Chairman, I have one worry in this particular section. We are assuming that the board is above all criticism and is infallible and is pure, perfect and all sorts of things.

I think there should be one section in there also that requires the Commissioner to conduct an inquiry in case the board commits an offence. I was wondering what the witness had to say on that.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: In Section 79.(1), the Board mentioned in the last line is the Board under the *Public Inquiries Ordinance*, but as I understand the member's question, who is going to check the Board's proceedings, the Board itself is not exempt from the provisions of the Ordinance, and if they commit an offence under the Ordinance, they could be prosecuted in the normal way under the Ordinance. The Ordinance does not provide that the Board carries out prosecutions. This Section relates to inquiries and that inquiry would not have the power to punish.

Mr. Deputy Chairman: Mr. Berger?

Mr. Berger: Mr. Chairman, with all due respect, we are sort of laying it out. Every election officer is guilty of an offence and where this may appear to the Board that any person, I would never say what may appear to a person that the Board may commit an offence. I think this is what I am really getting at.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, the intention of Sections 78 and 79 is to allow the Board to investigate situations where if an offence may have occurred. It is not intended to substitute here the enforcement of the Ordinance. The enforcement of the Ordinance against any person, including against the Board, would be carried out by a normal prosecution under your *Summary Convictions Ordinance*.

Mr. Deputy Chairman: Mrs. Watson?

Mrs. Watson: Yes, Mr. Chairman, I can't completely agree. I can see how you are trying to phrase 79, that the Board in 79 would be the Board under the *Public Inquiries Ordinance*,

however, if you look at 77.(3): "Where it is made to appear to the Board that an election officer has been guilty of an offence under this Ordinance, the Board shall make such inquiries as appear necessary under the circumstances. Now that may include an inquiry under the *Public Inquiries Ordinance* and yet how can they? You are saying they shall when they can't call a public inquiry, they have to tell the Commissioner to call one and they have no authority under the *Public Inquiries Ordinance* to tell the Commissioner.

Then you go further in (b): "if it appears that proceedings for the punishment of the offence have not been properly taken or should be taken and that its intervention would be in the public interest, assist or intervene in the carrying on of such proceedings or cause them to be taken..." But you are telling them to cause an inquiry of the circumstances, and yet they don't have the authority to do that under the *Public Inquiries Ordinance*.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, the intention of this section is not to give them the authority to carry out an inquiry under the *Public Inquiries Ordinance*. It is authority to give them the inquiry under this Ordinance. The effect of Section 79 is only to give them equivalent powers to a Board under the *Public Inquiries Ordinance*, but it would not be a *Public Inquiries Ordinance* inquiry, it would have been an inquiry pursuant to this Ordinance.

I would also like to explain the purpose of 77.(3)(b) and that is that they would do what they could to have proceedings commenced in the normal way and by that it means that if they felt that an offence had been committed, it would be their duty under this Ordinance to lay an information before the commencement of proceedings in the normal way as provided under the *Summary Convictions Ordinance*.

Mr. Deputy Chairman: Clause 77 has been cleared through already, Mr. Clegg.

Mrs. Whyard.

Hon. Mrs. Whyard: Mr. Chairman, this election board which is going to look into these matters in all these sections and subsections, really is dealing with offences committed by election officers or people appointed by the board and would never, in any way, interfere with a court action brought by a candidate against other—. This is only dealing with election officers named by the board?

Mr. Deputy Chairman: Mrs. Watson.

Mrs. Watson: Mr. Chairman, a candidate could bring people on the board, information and evidence that they should take action against an election official. There is provision for that in the legislation, isn't there? I believe so.

But, Mr. Chairman, getting back to 79 again. "For the purpose of any inquiry held pursuant to Section 77 or 78". I understand that, that is your election officials, something has gone wrong, somebody has brought something to the board's attention. That is the board under this Ordinance. They have an inquiry, they have an internal inquiry, the board, and I believe there the board means the election board. I think that is the board, or any person nominated by it.

For example, the three people on the board may have an in-house inquiry into it, look into it, or they might appoint some lawyer or somebody to look into it.

Okay, nominated for the purpose of conduction the inquiry, has the power of a commissioner under the *Public Inquiry Ordinance*". I think that is where we have our hang-up. Don't you think we should word it a little differently, that they can carry on the inquiry in the same manner and using the same powers, but not the power of a commissioner under the *Public Inquiry Ordinance*.

Mr. Clegg: Mr. Chairman, the meaning of this subsection, in my opinion is that the board or the person nominated by it would have equivalent powers to a board under the *Public Inquiry Ordinance*. It does not mean that that person is placed in the same position as a board under the *Public Inquiry Ordinance*. The powers given to them by this section are the same as the powers given to a board under the *Public Inquiry Ordinance*.

Mrs. Watson: Mr. Chairman, with all respect, I don't think we are exactly saying that.

Hon. Mr. Lang: Mr. Chairman, I can see why there is a few difficulties with this particular section and we will take it back and have a look at it.

Clause 79 stood over

On Clause 80

Mr. Clegg: Mr. Chairman, if I may intervene, there is a typographical error in here, in subsection 2, the reference made to paragraph (1)(b) or (c), should be a reference to paragraph (b).

Mr. Deputy Chairman: Paragraph (b) of what?

Mr. Clegg: It should be in reference to paragraph 1(b).

Mr. Deputy Chairman: I see, sorry.

Mr. McIntyre?

Mr. McIntyre: In this particular Section, I wonder if the summary conviction proceedings might involve too much of a penalty for summary conviction proceedings? Summary conviction usually implies six months or \$500 fine and these fines are way in excess of the normal summary conviction penalties. It seems to me these are more in line with indictments.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, I cannot recall at this moment whether or not I have checked this against the limits of summary conviction jurisdictions. It is something that I would have expected to have done, but I can't state definitely to the committee—

Mr. Deputy Chairman: Do you wish that opportunity?

Mr. Clegg: Yes, I would.

Mr. Deputy Chairman: Mr. Lang?

Hon. Mr. Lang: Agreed.

Clause 80 stood over

On Clause 81

Mr. Deputy Chairman: Mr. Berger?

Mr. Berger: Mr. Chairman 81.(3)(b): "the taking of poll", I can understand that, but "the counting of the votes", could I get a better explanation because I can see where an election could be declared void if there is a mistake made in the count of the votes.

Mr. Deputy Chairman: Mr. Clegg?

Mr. Clegg: Mr. Chairman, where there is a mistake detected in the counting of the votes, there should either be a recount held or this will be determined at the recount and there will be determination of the correct result of the election at that time and the purpose of this is to prevent the need to hold a second election, where the counting of the votes has been found to be in error and the correct counting has been established.

Clause 81 agreed to

Mr. Deputy Chairman: Committee stands recessed.

Recess

Mr. Chairman: I call Committee to order.

On Clause 82

Mr. Chairman: Mrs. Whyard.

Hon. Mrs. Whyard: Mr. Chairman, a candidate has been disqualified and then the person who gave the evidence is convicted of perjury, is there any kind of satisfaction or compensation for the candidate who lost a career because of somebody's perjury?

Mr. Chairman: Mrs. Watson might want the answer to that.

Mrs. Watson: It is not the career, it is the dollars and cents.

Mr. Clegg: Mr. Chairman, it might be possible to bring an action against a person for defamation and if that person had any assets that were attachable, you might get some satisfaction there, but that is a difficult question.

If, my immediate opinion is that it would be something that would be covered by the law of defamation.

Clause 82 agreed to

On Clause 83

Mr. Chairman: Mrs. Watson.

Mrs. Watson: Mr. Chairman, I am very concerned, particularly here, you may not know the background of a person and if, it goes back seven years and yet the candidate is held responsible for it.

Mr. Clegg: Mr. Chairman, the word there is "knowing". It is included in the section and he has to know that that agent had been convicted.

Mrs. Watson: "Knowing".

Mr. Clegg: In Line 3.

Mrs. Watson: Thank you, that's better.

Clause 83 agreed to

On Clause 84

Clause 84 agreed to

On Clause 85

Clause 85 agreed to

On Clause 86

Mr. Chairman: What is meant by "notwithstanding the *Evidence Ordinance*", in this context?

Mr. Clegg: Mr. Chairman, the *Evidence Ordinance* says that person may be compelled to give evidence, notwithstanding the fact that it may tend to incriminate him, but that evidence may not, in this, if he claims a protection of that Ordinance, that evidence which he gives may not be used against him in other proceedings.

The purpose of this section is to say that in no circumstances may a person be forced to say for whom he voted. This is one of the very rare things which a person cannot be forced to give evidence on.

Clause 86 agreed to

On Clause 87

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: I wonder if I could have clarification of how one or more electors could step in and carry on such proceedings?

Mr. Clegg: Mr. Chairman, the purpose of this Section is to establish legal standing for the Board or electors to bring actions under the Ordinance where the Commissioner does not do so, and it provides that if an action is not progressing, there is another person who may step in and continue it. It just gives them standing and permits the court to allow them to become parties to the action. It is a wide grant of standing to enforce the terms of this Ordinance and it ensures that the

Ordinance can be enforced by any interested person even if the Commissioner chooses not to enforce it against a person.

Hon. Mrs. Whyard: Mr. Chairman, I am sorry, I may be dense, but in 87.(1) you are giving the qualified elector the opportunity to commence proceedings, and then in (2) we say if there is any delay or suspension after they have commenced, one or more electors can step in and carry it on.

Mr. Clegg: Mr. Chairman, the two powers to commence proceedings and to intervene in an existing proceeding are regarded as separate things and therefore the right to do so has to be granted separately. If we merely provided that somebody could commence proceedings, it would not permit somebody to intervene in existing proceedings that were not being prosecuted. This is why the two matters or the two rights are granted separately in this section.

Hon. Mrs. Whyard: Mr. Chairman, I think my problem is with the competence of one or more electors to carry on such proceedings where the Board isn't doing it.

Mr. Clegg: Mr. Chairman, this places the electors, if they choose to place themselves in the position of the Commissioner who normally has the enforcement of Ordinances as his duty, or the Board, if they are failing to enforce the—, if there is an instance where they are not enforcing a provision of the Ordinance or failing to prosecute somebody for a breach. If a person feels that somebody should be prosecuted and nobody is doing this, he can do it himself.

This is similar to the provisions of the *Criminal Code*. Any person may commence proceedings under the *Criminal Code* if the Attorney General or any other person whose public duty it is to do so does not do so.

Hon. Mrs. Whyard: Well, Mr. Chairman, I won't belabour it further, but my interpretation of this is if you use your court situation as a simile, proceedings have commenced, but then they begin to drag or suspend it, or delay, but an ordinary person cannot step in then and conduct the court. What I am reading here in 87.(2) is that: "One or more electors may intervene and carry on such proceedings to a final determination." My interpretation is that they are sitting upon the facts and conducting the inquiry, and I am sure that can't be right.

Mr. Clegg: Mr. Chairman, I would agree that if that was the interpretation it wouldn't be correct.

Hon. Mrs. Whyard: Thank you.

Mr. Clegg: The intention is not what they stand in the place of the court, but they stand in the case of the prosecutor.

Hon. Mrs. Whyard: Thank you, Mr. Chairman.

Mr. MacDonald: I might add, Mr. Chairman, from experience that this is not altogether a useless piece of legislation. One of the most difficult things for the Government to undertake is enforcement under an election act because a Government is composed of those people who were elected. Many times matters dealing with an election and following an election brought to light that were, in fact, illegal, did not, however, cause enough disturbance to provide for the upset of any particular election, are brought to the Chief Electoral Officer and from him to the only person whom he can contact in the matter is the Attorney General of the day, are followed through, but only to a degree. I have yet to see anyone take it into court and prosecute it for failing to file their election expense statement or a number of other things, failing to have the printer's name on the poster.

This, in fact, authorizes one of the electorate, if they feel strongly enough about it to proceed.

Clause 87 agreed to

On Clause 88

Mr. Chairman: Mr. Lengerke.

Mr. Lengerke: Clause 88.(1), the word "commission", is that meaning the act of the offence, is that what that...?

Mr. Clegg: Yes, Mr. Chairman, this is the word which is used in the *Criminal Code* to describe the act of carrying out an offence or crime, as being when it was committed.

Clause 88 agreed to

On Clause 89

Clause 89 agreed to

On Clause 90

Mr. Chairman: Mrs. Watson.

Mrs. Watson: Mr. Chairman, I have a question for 90.(1)(f). "Any act of Canada, any other ordinance or act of Canada under which members of the legislative assembly have been elected". That means members of the House of Commons, and does it include the provinces?

Mr. Clegg: Mr. Chairman, does this question relate to 90.(1)(f), (e)?

Mrs. Watson: Yes, right.

Mr. Lengerke: We haven't got to that yet.

Mrs. Watson: Oh, I am sorry.

Mr. Lengerke: Have we cleared 89.(1)?

Mr. Chairman: Yes, we have, but we can go back to it if you want.

Mr. Clegg: Mr. Chairman, in answer to the question with relation to Section 90.(1)(e), this relates to a person who has been convicted of any offence under this Ordinance or any other ordinance, which includes the old *Elections Ordinance* or the present *Elections Ordinance*, which will become the old *Elections Ordinance*, or any act of Canada, and that is included to cover the *Canada Elections Act* under which you Members have been elected.

Then it says, "Under which members of the Legislative Assembly have been elected." Therefore, it would only include an act under which members of this body have been elected and not an Act under which Members of the Parliament of Canada have been elected. We do have to import the expression "Act of Canada" because members have been elected to this Assembly under an Act of Canada in the past.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, does that mean that if a person has been convicted of an offence under the *Canada Elections Act* as far as this *Elections Ordinance* is concerned, they can never act as an election officer?

Mr. MacDonald: We should make that clear: under the *Canada Elections Act* in its operation on behalf of Yukon Territory.

Mr. Clegg: Mr. Chairman, maybe the witnesses should ask direction as to what you wish this to mean. My intention in drafting this was that any person who had been convicted under the *Elections Act/Canada* whether or not the conviction was in connection with an election of a member to this House. That is the way it reads at the moment. If you wish the person only to be disqualified if his offence and conviction related to an election of members of this House, the wording then perhaps should be reviewed.

In that case, the wording would read: "of an offence under this Ordinance or any Act of Canada relating to an election of members to the Legislative Assembly", or words to that effect.

My concept in drafting this was that a person who has been convicted under an *Election Act/Canada*, even if he was convicted with respect to an election to a Member of Parliament in Ontario would not be a fit person as an election officer.

Mrs. Watson: Mr. Chairman, that is how it is drafted now?

Mr. Clegg: Yes, Mr. Chairman.

Mrs. Watson: That's fine, but Mr. Chairman, it is rather interesting, if a person is convicted and part of the sentence may be that they do not have the right to vote or to run as a candidate in an election for seven years, is that correct?

Mr. Clegg: Refer back for reference purposes only to Section 82. It is explained there that the court may order a person to be ineligible as a candidate, but it does not give the court the power to order that the person may not vote mainly because disenfranchisement is not normally used as a separate form of punishment, but denial from public office is commonly used as a form of punishment.

Mrs. Watson: Mr. Chairman, what section is that where a candidate can be denied the right to—

Mr. Clegg: Section 80, subsection (2).

Mr. Chairman: Mr. Lang.

Hon. Mr. Lang: Mr. Chairman, this phraseology, in this particular section, doesn't that apply to any of the provincial jurisdictions, as well as, roughly the wording that is spelled out in all the provinces.

Mr. Clegg: Yes, Mr. Chairman, that is correct.

On Clause 90

Clause 90 agreed to

On Clause 91

Mr. Chairman: Mr. Lengerke.

Mr. Lengerke: I wonder if the witness could give us an example of 91.(1)?

Mr. MacDonald: Mr. Chairman, I can't give a specific example. It may be, for example, reasonable for a returning officer to make a notice in a newspaper. It may be that he doesn't have the time to reach the newspaper or the newspaper cannot handle it in time for him to make the notice useful to the people to whom the notice is going to apply. He may then use other means to give such notice, either by hand, by handbill, or in any other way that he feels effective, perhaps by radio. Unless, of course, as this section points out, there is a prescribed manner by some regulation of a sort, drafted pursuant to this act, by which the notice must be given, then he is bound.

This is simply to broaden his scope in the matter of notice, so that he can apply judgment according to the circumstances, the environment, the conditions.

Clause 91 agreed to

On Clause 92

Mr. Chairman: Mrs. Whyard.

Hon. Mrs. Whyard: Does that include Anik?

Mr. Clegg: Mr. Chairman, I am not qualified to give expert opinion on scientific matters, but my understanding is that Anik is a form of radio communication.

Hon. Mrs. Whyard: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Fleming.

Mr. Fleming: If I may, I am a little behind, but in the 91.(2), "Any notice which is posted up pursuant to this Ordinance may be posted up, in or at, or affixed to any public building or structure by any means provided that it can be later removed as provided in Section 75".

I am wondering if that doesn't conflict with what we were speaking of just before recess, where a structure actually is a public structure...a telephone pole or anything of this type?

Mr. Clegg: Mr. Chairman, this subsection covers notices which are required by this Ordinance to be posted up and

includes proclamations. The intention of this is to authorize an election officer to place a list of electors or a proclamation on a public building or structure, or even a utility pole, where he would otherwise not be allowed to do so. He has to use his discretion to place his notice in an appropriate place in his polling district or electoral district.

This subsection gives him protection from any bylaw or other Ordinance which might prevent him from doing that, thereby preventing him from giving proper notice as required by this Ordinance. In many places, the only appropriate location to affix a notice is on a public building. It may be that he can't get the consent of local, or private building owners to put those notices up, and it is perhaps more appropriate that they should be affixed to public buildings and not to private buildings if they are indeed official notices.

Clause 92 agreed to

On Clause 93

Mr. Chairman: Mr. McIntyre?

Mr. McIntyre: Mr. Chairman, I would suggest that a commissioner of oaths be deleted as the authority for appointing a commissioner of oaths has ceased to exist in the Territory.

Clause 93 agreed to

On Clause 94

Mr. MacDonald: Mr. Chairman, I am not familiar with the disappearance of commissioners of oaths from the Yukon Territory. Does the Honourable Member envisage that it will be that way for a considerable length of time? Would we be required to seek an amendment in a few years. If it does no harm to leave it in, it might be wise to leave it in as an omnibus part of the whole clause. I am not familiar enough with your affairs to be—

Mr. McIntyre: Well, Mr. Chairman, there just aren't any commissioners for oaths. The legislation that provided for the appointment of commissioner of oaths was repealed a number of years ago and all appointments of commissioners were cancelled at the same time. The only persons authorized to take oaths in the Territory basically are notary publics, except for these other specifically mentioned ones. There is a provision that barristers and solicitors are *ex officio* commissioners of oaths, but that is just a hang-over from the old Ordinance.

Mr. Clegg: Mr. Chairman, I was aware that the *Commissioners for Oaths Ordinance* had been repealed, but I had noted that barristers and solicitors were also commissioners for oaths. I was not certain whether all barristers and solicitors were also notary public, so I left this in to enable them to act as signing officers in either capacity which they might hold.

Although you do not have appointed commissioners of oaths, you do still, as I understand it, have *ex officio* commissioners of oaths.

For example, any member of the Yukon Bar is *ex officio* a Commissioner of Oaths and, for that reason it is not specifically incorrect to leave it in.

Mr. Chairman: Anymore comment, Mr. McIntyre?

Mr. McIntyre: I am not fussy. I am just pointing out that this appointment no longer exists, Mr. Chairman.

Clause 94 agreed to

On Clause 95

Hon. Mrs. Whyard: Just to reaffirm my own understanding of the word "publisher broadcast", in this context it can mean one person speaking to another person.

The reason I am asking is that I recall on an election some

years ago, when someone phoned from the far east and discussed the results they had heard in their province, on a federal election, and the person at this end of the telephone mentioned this to someone else and there were threats of being taken to court on this, as having published a result. I am just wondering how far down the line you go with this kind of thing?

Mr. Clegg: Mr. Chairman, obviously this is intended for a broader kind of publication. The main purpose we are bringing this in is for a broader kind of publication or broadcast than the Honourable Minister mentions.

However, I think I would have to agree that it probably could be used against a person who had, just on their own accord, and personally, published or broadcast the thing by giving information to somebody else.

The interpretation of the word "publish", in the only other connection I can think of, which might be relevant in interpreting this, is in the way in which it is used in the law of defamation. If a person publishes a libel or a slander, it means that he is communicating it to somebody else.

If I make a slanderous comment to Mr. MacDonald about somebody else, that is a publication of the slander and I think it would, in fact, be held to apply to one person talking to another.

I believe that that is not inconsistent with the intention. I think that the intention of this is to prevent people making decisions or announcing decisions or putting voters off voting, before the polls are closed, by telling them that the decision had already been reached and that their vote was redundant. I believe that to be the purpose of this type of legislation and, therefore, I believe it is not inconsistent to make it apply against one person who says to another, there is no point in coming, it has already been decided. I don't think that should be done.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, I am very interested in that advice because faster than the speed of light, the mocassin telegraph works, faster than publishing by any other means, the mocassin telegraph works in the Yukon. One person telling another is publishing in the Yukon. It seems to me that you are absolutely right, it is consistent with the purpose of this section, because it could certainly affect somebody's decision as to how they would vote.

Mr. Chairman: For what it is worth, I think the election Mrs. Whyard is referring to is used as grounds for possible controversion and the election was not controverted.

Hon. Mrs. Whyard: I have been through so many I am forgetting which one.

Clause 95 agreed to

On Clause 96

Clause 96 agreed to

On Clause 97

Mr. Chairman: I understand by subsection (4) that the claim must be approved by both the official agent and the candidate?

Mr. Clegg: Yes, Mr. Chairman, that is correct.

Clause 97 agreed to

On Clause 98

Clause 98 agreed to

On Clause 99

Clause 99 agreed to

On Clause 100

Clause 100 agreed to

On Clause 101

Mr. Clegg: Mr. Chairman, if I may draw attention to the Committee, the Chief Electoral Officer of Canada has advised us that if an agreement were to be concluded, it would be concluded with the Chief Electoral Officer of Canada and not with the Government of Canada, and he has therefore requested us to strike the words: "the Government of Canada providing for".

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, we will take this section back.

Clause 101 stood over

On Clause 102

Mr. Clegg: Mr. Chairman, the Law Clerk has asked me to add at the end of this section the words: "unless the context otherwise requires" to make clear which references ought to be applied to this new Ordinance, because there are one or two cases where it should not be applied. That will cover the situation which might arise if certain other legislation does not come into force at the same time as this legislation.

Clause 102 stood over

On Clause 103

Clause 103 agreed to

On Clause 104

Mrs. Watson: Mr. Chairman, I wonder why we have 103 in there? If wonder if we could have an explanation.

Mr. Clegg: Mr. Chairman, the reason for that is the *Controverted Elections Ordinance*, Section 5.(1) refers to publication of a name of a person pursuant to some different authority and this should now be in the manner provided in the *Elections Ordinance*.

I believe it says "as prescribed by the Commission or some other reference". The new words that we are putting in are the words, "in the manner provided in the *Elections Ordinance*, 1977.

That is the only change which is affected in Section 5, by this amendment. It is just merely a consequential change of reference.

Mrs. Watson: Mr. Chairman.

Mrs. Watson: But, Mr. Chairman, you use Legislative Assembly, members of a Legislative Assembly all of the way through, but you use Council in 103.

Mr. Clegg: Mr. Chairman, the reason why that is done is that, throughout the *Controverted Elections Ordinance*, at present, it had the word "Council", and we felt the drafting should remain consistent.

Mrs. Watson: Mr. Chairman.

Mr. Chairman: Mrs. Watson.

Mrs. Watson: Is this common to amend another piece of legislation from, like, rather than doing it this way you could have amended the *Controverted Elections Ordinance* by having a special ordinance.

Mr. Clegg: Mr. Chairman, it is possible to do it either way. In this case it was recommended that it be done this way, rather than opening the *Controverted Elections Ordinance*.

Mr. Chairman: This is quite commonly done.

Mr. Clegg: This is quite common and it is really a true consequential amendment to the *Controverted Elections Ordinance*, as a result of a different provision of this Ordinance. It is quite common.

It is not uncommon for an ordinance to have consequential amendments to a large number of others.

Mr. Chairman: Shall Clause 104 carry?

Mr. Clegg: Mr. Chairman, it may be recommended by the law clerk that the repeal of the old *Elections Ordinance* be carried out partly under this Ordinance, where this Ordinance would repeal the sections which are to be replaced by this Ordinance, and other sections of the *Elections Ordinance* be repealed by the *Legislative Assembly Ordinance*, which will be before you.

Therefore, the repeal has been split in half so that if, when this Ordinance passes, it will repeal certain parts of the *Elections Ordinance*, and when the *Elected Assembly Ordinance* passes, it will repeal the balance of the *Elections Ordinance*.

The law clerk has therefore suggested that 104 be reworded to read, "Sections 1 to 3 and Section 5 to 14 of the *Elections Ordinance* are repealed."

Hon. Mr. Lang: Mr. Chairman, we will take that back and bring in the amendments. We will apply them accordingly.

Mr. Chairman: We will conclude our first go at the *Elections Ordinance*.

I would suggest that we go onto Bill Number 11, which is quite brief. *An Ordinance to Amend the Interpretations Ordinance*.

The witnesses are excused and thank you very much.

Hon. Mr. Lang: Mr. Chairman, I wonder if it would be all right if we went into Bill Number 101, the *Yukon Legislative Assembly Ordinance*, because apparently their time is limited. They will be leaving Friday morning, so, in respect to the work, maybe we should be discussing this particular Bill.

Mr. Chairman: Yes, I think that would be good. This should only take a few minutes, in which case we would need Mr. Clegg.

Bill Number 11, *An Ordinance to Amend the Interpretation Ordinance*.

On Clause 1

Clause 1 agreed to

On Clause 2

Clause 2 agreed to

Mr. Chairman: The Commissiner of the Yukon Territory, by and with the advice and consent of the Council of the said Territory, enacts as follows: *An Ordinance to Amend the Interpretation Ordinance*. Shall the title carry?

Some Members: Agreed.

Hon. Mr. Lang: Mr. Chairman, in respect to moving this out of Committee, I would like to go through the *Yukon Legislative Assembly Ordinance*. In respect to moving it out of Committee, I would like to wait until we discuss the *Yukon Legislative Assembly Ordinance*.

Mr. Chairman: It has cleared Committee.

Hon. Mr. Lang: I don't want it put into third reading yet.

Mr. Chairman: When shall the Bill be cleared from Committee then?

Hon. Mr. Lang: Mr. Chairman, once we have discussed the *Yukon Legislative Assembly Ordinance*, next sitting day, Mr. Chairman.

Mr. Chairman: Bill Number 101. The Chair declares a two minute recess.

Recess

Mr. Chairman: Mr. Lengerke.

Mr. Lengerke: Mr. Chairman, I move that Mr. Speaker do now resume the Chair.

Mr. Fleming: I second the motion.

Mr. Chairman: It has been moved by Mr. Lengerke, seconded by Mr. Fleming, that Mr. Speaker do now resume the Chair.

Motion agreed to

Mr. Chairman: Thank you, Mr. Clegg.

Mr. Speaker resumes Chair

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

May we have a report from the Chairman of Committee?

Mr. Hibberd: Mr. Speaker, the Committee of the Whole have considered Bill Number 10, 11 and 101 and have asked permission to report progress on same and ask leave to sit again.

Mr. Speaker: You have heard the report of the Chairman of Committees. Are you agreed?

Some Members: Agreed.

Mr. Speaker: Leave is so granted.

Prior to rising, I, unfortunately must mention to the Honourable Member from Ogilvie that Motion Number 10 this morning, asking for papers dealing with the Alberta Heritage Fund would be, unfortunately, out of order inasmuch as those papers have not yet been tabled in the House. But, perhaps the Honourable Member would wish to obtain a set of the papers and table them and re-introduce her motion.

Ms Millard: Thank you, Mr. Speaker.

Mr. Speaker: What is your further pleasure.

The Honourable Member from Whitehorse Riverdale.

Mr. Lengerke: Mr. Speaker, I move that we do now call it five o'clock.

Ms Millard: I second that.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse Riverdale, seconded by the Honourable Member from Ogilvie, that we do now call it five o'clock.

Motion agreed to

Mr. Speaker: This House now stands adjourned until 10 a.m. tomorrow.

Adjourned

The following Legislative Returns were Tabled (November 30, 1977)

77-2-28

Dental Care in Outlying Areas
(Written Question No. 9)

77-2-29

Annual Report of the Northern Yukon Research Project - unavailable
(Reply to Motion for the Production of Papers No.4)

77-2-30

DREE Meetings re Community pastures
(Oral Question - Page 262 - November 23, 1977)

The following Sessional Paper was Tabled (November 30, 1977)

77-2-29

Correspondence between the Standing Committee on Rules, Elections and Privileges and the Minister of Indian Affairs and Northern Development

LEGISLATIVE RETURN # 28
(1977 Second Session)

Mr. Speaker,
Members of The Assembly

On November 14th, 1977, Ms. E. Millard asked the following questions concerning dental treatment:

1. Has the Minister had any success in efforts to have the Yukon Dental Association set up regular visits of dentists to outlying areas?
2. Can we anticipate a subsidy from this government for dental patients who now are required to travel to Whitehorse from other areas for treatment?
3. Will the Government consider changing the regulations governing dental treatment so that dental therapists can be allowed to do more complex dental treatment?
4. Would the Government commit itself to subsidizing by means of housing or office facilities a dentist who may wish to reside in an outlying area in the same manner as the subsidy to the doctor at Dawson?
5. Will the Government provide dental work facilities and equipment in any of the outlying districts?
6. Will the Government consider establishing a scheme of dental therapy costs insurance?

The answers to the questions above are as follows:

1. The Department of Health and Human Resources has been corresponding with the Yukon Dental Association recently offering to assist in their efforts to provide dental services to outlying areas and asking what practical methods they would recommend.

A system was set up some years ago whereby members of the Yukon Dental Association would travel out on a regular basis from their headquarters in Whitehorse to communities in the Yukon. Yukon Region, Medical Services, subsidizes the travel expenses and time in travel relating to these visits under the program of cost sharing with YTG -- the Territorial share of these costs is 69%.

This year the dentists in Whitehorse have not been able to make all the visits that they would like to make to the communities in the Yukon because of a shortage in staff and difficulties in recruiting additional dentists for private practice.

A dentist from the Dental Clinic of Whitehorse will be providing dental services in Dawson for one week in December, 1977.

An effort has been made to find a dentist in practice in the Vancouver area and subsidize a brief trip to Dawson where he would see dental patients for a two week period. It now appears that this can be arranged to take place early in the year 1978.

The current situation should become less acute in the Spring of 1978 when a dentist who has undertaken to join the Whitehorse Dental Clinic arrives for work. It is possible that this dentist will be available to provide some coverage in Dawson.

2. (a) Travel for Medical Treatment Ordinance would have to be amended.
- (b) Control and prevention of abuse would be very difficult, if not impossible, to achieve. i.e. Can the procedures be limited to, for example, extractions only? If not, how could the frequency of visits be regulated?

When the urgent need for dental care is affecting a person's medical health, and the doctor in the community so certifies, it is possible for the person to have his travel to the point of care. e.g. Whitehorse -- subsidized under the Medical Travel Ordinance.

3. If action were to be taken in this matter it would require considerably more than a change in the regulations. The dental therapists in the Yukon are carefully trained to carry out the scope of preventive and treatment activities which they now carry out. This work is closely related to the academic and professional background that each therapist possesses. Should the government decide that more complex dental care is to be carried out by the dental therapists, then a new and expanded training program in specific complex dental techniques would have to be planned and carried out. This would clearly require planning and would require a number of years to implement.
4. The real crux is whether or not an outlying area could or would generate sufficient income to retain a resident dentist.

The precedent for housing exists and office space could possibly be made available, but this should be at the current rental rate for the location.

5. If by dental work facilities is meant a completely equipped room with instruments, dental chair, etc., the answer would have to be "no". Any other private entrepreneur has to provide his own specialist equipment or tools of his trade and if government were to provide this for a dentist, why not for everyone?
6. We have difficulty in obtaining sufficient numbers of dental therapists to expand the school dental program to our goal of grade 12.

It would not be feasible to embark on an insurance program at this time.

Nov 29/77 _____
Date Signature

LEGISLATIVE RETURN # 27
1977 (Second) Session

Mr. Speaker,
Members of the Assembly

On November 14, 1977, the Honorable Member from Ogilvie moved, seconded by the Honorable Member from Hootalinqua:

That the Annual Report of the Northern Yukon Research Project be tabled in this House.

Mr. Speaker, this report is not yet available but will be tabled as soon as it is available.

November 29, 1977

_____ *AMT* _____
Signature

LEGISLATIVE RETURN # 70
(1977 Second Session)

Mr. Speaker,
Members of The Assembly

On November 23rd, 1977, Mr. W. Lengerke asked the following question:

What were the results of recent meetings held with people from DREE concerning the setting up of community pastures?

The answer to the question above is as follows:

Officials from the Prairie Farm Rehabilitation Act met with Y.T.G. officials on June 7 and 8, 1977, in Whitehorse to discuss and review grazing requirements and P.F.R.A. pasture developments.

The three problems reviewed in detail were:

- 1. Inadequate summer pasture
- 2. Shortage of hay supplies for winter feed
- 3. Livestock having free access to open range.

It was concluded from these discussions by P.F.R.A. officials that the conventional P.F.R.A. community pasture approach is not applicable to Yukon.

Further investigations should include:

- (a) Co-operative pastures
- (b) Grazing capabilities and potentials (identification of possible locations)
- (c) Range management and overall agricultural development.

Reports and maps on soil and grazing information in the obvious problem areas have just been made available in the last week. This information is the result of the survey carried out in Yukon during the summer of 1976. This information is being reviewed this winter to analyze grazing capabilities and potentials. Some difficult decisions will undoubtedly have to be made by Members of this Assembly following a thorough review of this new information.

29/11/77
Date

[Signature]
Signature

cc: A. Stubbs
L. Pratt

Yukon Region Headquarters
3117 10th Ave
601-1/2 Main Street East
Whitehorse, Yukon
Y1A 0B3

June 18, 1977

Mr. C. W. (Harry) Murphy
Director
Inter-governmental Affairs
Yukon Territorial Government
Whitehorse, Yukon
Y1A 0C6

Dear Mr. Murphy:

In response to your letter of May 17, 1977 and Mr. Stubbs and my visit to the Yukon on June 7th and 8th, 1977 I must say that the conventional P.F.R.A. community pasture approach is not applicable to the Yukon.

The reasons for this are: 1) The limited summer pasture, 2) the shortage of hay supplies for winter feed and 3) livestock having free access to open range. The quality of range and the setting of both cattle and horses are poor in the Yukon Territorial Government area. It will be necessary to implement some control on overall range management.

Future plans might include the investigation of a cooperative pasture including the identification of potential pastures, i.e. pastures, etc., the identification of possible locations, i.e. land availability in areas of sufficient livestock numbers; and the development of a policy related to livestock, range management and overall agricultural development. Because of the limited number of livestock and because they are relatively scattered, consideration might be given to one or two modest developments. The applicability and feasibility of such a development in the Yukon will require the Territorial Government to pursue such a development further and will require the establishment of the necessary policies.

Finally, I'd like to have you thank Lynn Chambers for so kindly spending so much of his time with us. Also thank Manfred Hoofs and Ken Steele for being of assistance.

Yours sincerely,
[Signature]
C. W. Murphy
Director

