

YUKON LEGISLATIVE ASSEMBLY

SELECT COMMITTEE

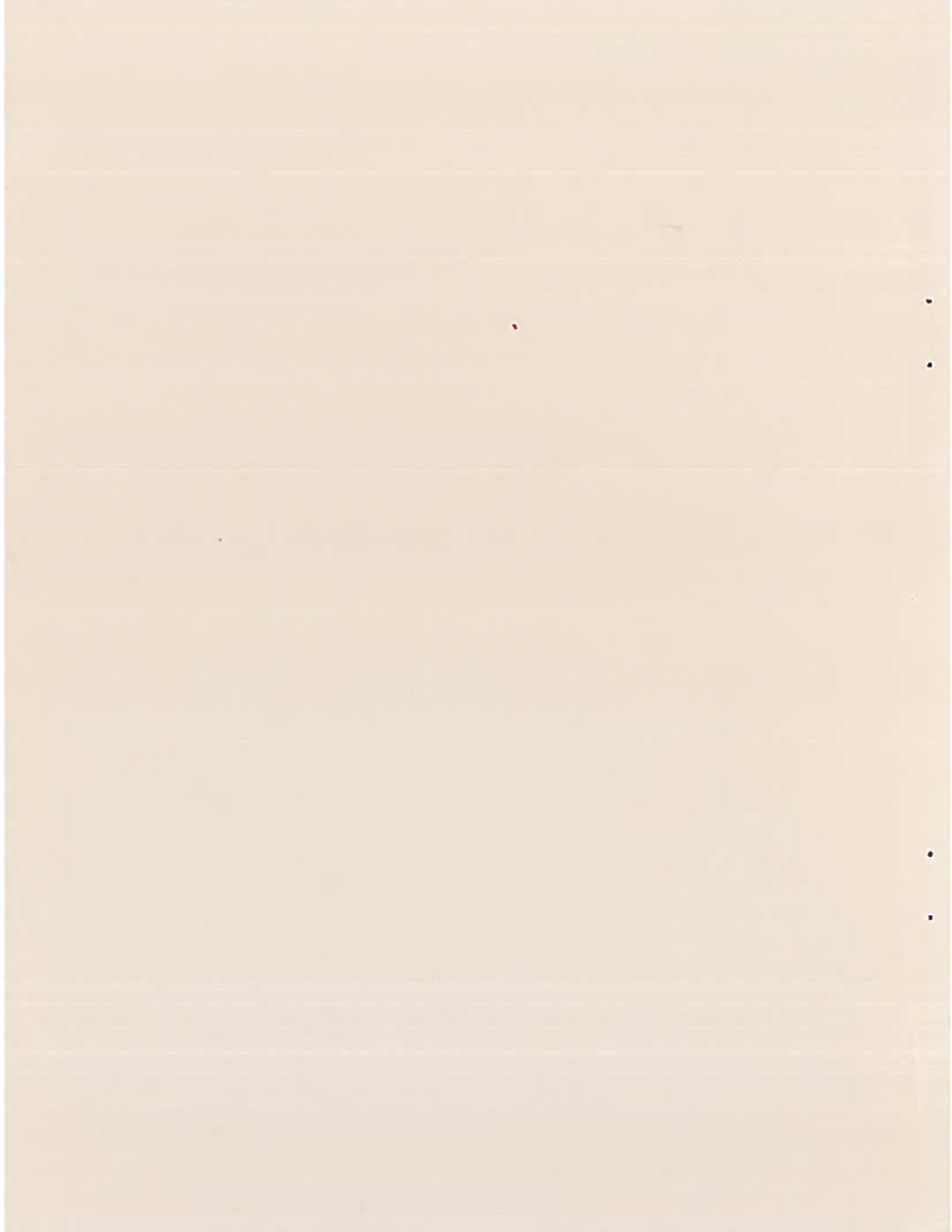
ON

LABOUR STANDARDS

REPORT ON "GREEN PAPER ON THE
EMPLOYMENT STANDARDS ORDINANCE"

MARCH, 1982

24TH LEGISLATIVE ASSEMBLY



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The Select Committee on Labour Standards was created by the following resolution of the Yukon Legislative Assembly on December 17, 1981:

THAT the Green Paper on Employment Standards Ordinance be referred to the Select Committee chaired by Mr. Hanson;

THAT, during periods when the Legislative Assembly is in adjournment, Green Papers on the subjects of industrial relations and occupational health and safety may be transmitted, as they become available, to the Select Committee by the Minister of Consumer and Corporate Affairs;

THAT Messrs. Falle, Fleming, Penikett and Veale be appointed to the said Committee; and

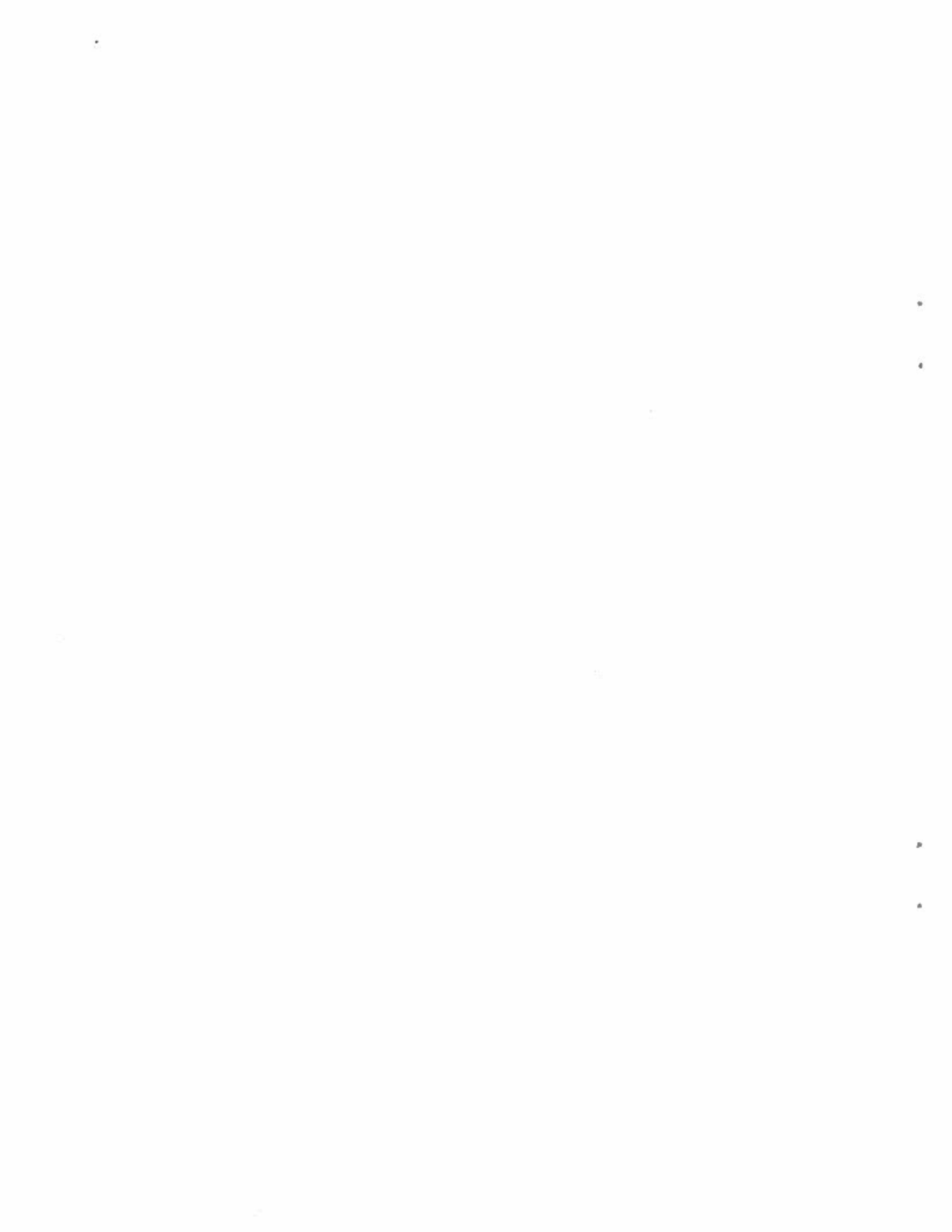
THAT the said Committee report to the Legislative Assembly its findings and recommendations during the Fifth Session of the 24th Legislature.

The Committee held eleven meetings to consider the Green Paper on the Employment Standards Ordinance. Five of those meetings took the form of public hearings during which the Committee heard oral evidence from 12 witnesses and accepted a further 12 written submissions. All of those submissions which were received during the Committee hearings will be tabled in the Assembly with this report. A list of all those who appeared or sent submissions is attached as Appendix I to this report.

To present as clear a report as possible the Committee has chosen to repeat each page of the Green Paper including proposals and argument. Below each of these pages the Committee Recommendations will be stated. A final section will deal with a few topics which could not be located specifically in the Green Paper and on which the Committee wished to comment.

Peter "Swede" Hanson
Chairman

March 25, 1982



PART I

CHANGE TITLE

PROPOSAL: To change the title of the Ordinance from Labour Standards Ordinance to Employment Standards Ordinance.

We are recommending a change in title to the Ordinance to better reflect the topic matter and to avoid confusion with other legislation pertaining to labour which may be developed in future.

Committee Recommendation

1. THAT the proposal to change the title of the ordinance be accepted.
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INTERPRETATION

PROPOSAL: The following changes be effected in the Interpretation section to clarify certain issues and facilitate procedures. Only those definitions affected are addressed.

- "day" means any period of twenty-four hours. ADD; "after commencement of work."
- "employee" CHANGE to; "includes
(a) a person, including a deceased person, in receipt of or entitled to wages for employment or services performed for another,
(b) a person being trained by an employer for the purpose of the employer's business, and
(c) a person who was an employee."
- "employer" CHANGE to; "means a person who employs an employee and includes a former employer".
- "conditions of employment" NEW; "means all matters and circumstances in any way affecting employers and employees in respect of the employment relationship."
- "pay period" NEW; "means any period of employment not exceeding 16 calendar days, established by an employer for the computation of wages."
- "qualified medical practitioner" NEW; "means a person entitled to engage in the practice of medicine under the laws of a province or territory."
NOTE: The word "province" included by reason of the number of Yukon residents who obtain medical services outside Yukon.
- "wages" AMEND; "includes,
(a) salaries, commissions or compensation, paid or payable by an employer to an employee for his services or labour,
(b) money required to be paid by an employer to an employee under this Ordinance,
(c) money required to be paid by order of the Employment Standards Advisory Board,
(d) money required to be paid for an employee's benefit under a contract of employment or a collective agreement, to a fund, insurer or other person,

BUT DOES NOT INCLUDE,
(e) gratuities,
(f) money that is paid at the discretion of the employer and that is not related to hours of work, production or efficiency,
(g) travelling allowances or expenses, or
(h) other expenses.
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Committee Recommendations

1. THAT, to provide clarity to the definition of "employee", a further definition of "self-employed or independent contractor" be added.
2. THAT the proposed definition of "pay period" be amended to include the phrase "16 consecutive calendar days".
3. THAT seasonal bonuses should be identified as "wages" to ensure that they can be collected under the wage collection procedures established by the Ordinance.

HOURS OF WORK

PROPOSAL: To remove the current restrictions concerning the maximum hours of work of 10 per day, 60 per week and 260 per month and replace them with other safeguards.

Order-in-Council 1981/128 issued in May 1981 removed these restrictions from the organized sector.

The Labour Standards Advisory Board has recommended the complete removal of these restrictions. It is recognized however, that certain safeguards must be in place to protect the employee in certain circumstances.

The most effective safeguard is seen as an increase in overtime pay to double time after a specific number of overtime hours worked.

This proposal retains the present Standard Hours of Work at 8 hours per day and 40 hours per week.

It is proposed that an employee who works more than 8 hours in a day and 40 hours in a week be paid one and one-half times his regular wage for those excess hours to a maximum of 12 hours in a day and 60 hours in a week. For those hours worked in excess of 12 hours in a day and 60 hours in a week the employee will be paid at double his regular rate of pay.

Other safeguards include:

- (a) an employee will be ensured of an eating period of at least one-half hour at intervals that will result in no employee working longer than 5 consecutive hours without an eating period;
- (b) except for emergencies, an employer shall ensure that each employee has at least 6 hours from work between each shift worked, and
- (c) where an employee works a split shift, the employer shall limit the employee's regular hours of work to the 12 hours immediately following commencement of his shift.

Committee Recommendations

1. THAT a worker's right to refuse overtime, except in the case of an emergency as defined by the Canada Labour Code, be recognized in the ordinance with the proviso that an employee, if he so desires, may sign a contract for overtime.
2. THAT the ordinance be amended to allow for an "averaging" of hours of work if an agreement for such "averaging" is reached between employer and employee. (ex. an employee

might agree to work 10 hours per day at regular pay so that he might complete his 40 hour workweek in four days and, subsequently, be entitled to three days off)

3. THAT the proposal found in the Green Paper for a minimum of six hours rest between each shift worked be rejected and that a minimum of eight hours rest be required.

MINIMUM WAGE

PROPOSAL: To remove the current link to the Canada Labour Code and provide for local determination of a minimum wage.

The entire issue of minimum wages needs to be evaluated as to policy and practice.

The present linkage with the Canada Labour Code does not permit this evaluation at a local level and the determination of a minimum wage based on local needs and conditions.

Other jurisdictions utilize the services of commissions, tribunals or minimum wage boards to arrive at a minimum wage rate.

It is proposed that the Employment Standards Ordinance provide for local determination of a minimum wage and the issuance of Minimum Wage Regulations.

Since it is proposed to expand the Employment Standards Advisory Board, in numbers and mandate, this representative Board will be charged with the recommendation of minimum wage rates subject to the approval of the Commissioner-in-Executive Council.

The minimum wage will continue to apply only to those employees 17 years and over.

Committee Recommendations

1. THAT the concept of "local determination of a minimum wage" be implemented.
2. THAT the base rate for the minimum wage be established in the Employment Standards Ordinance as \$6.00 per hour.

FAIR WAGE SCHEDULE

PROPOSAL: To attach an apprentice wage addendum to the Federal Fair Wages and Hours of Labour Regulations applicable to a public work of the Territory.

Section 12(1) of the Labour Standards Ordinance requires an employer, with a contract for the performance of a public work of the Territory, to pay his employees who are engaged on or in connection with that public work, not less than the prevailing wages set out by the Director of Labour Standards, Labour Canada, pursuant to the Fair Wages and Hours of Labour Regulations.

The Wage Schedule is produced by Labour Canada, by region. It sets out the rate of pay for 66 separate trade and work classifications employed in construction. These rates are arrived at by a survey of various employers in the unorganized sector and a review of collective agreements.

At the present time, there is no provision for the payment of employees at apprenticeship levels. Regulations under our Apprenticeship Training Ordinance require the payment of apprentices at specific percentages of the journeyman level, dependent upon the trade and level of apprenticeship.

The inclusion of an apprentice wage addendum to the Fair Wage Schedule is seen as a method of encouraging employers to hire registered apprentices since this addendum will allow employers to hire apprentices at the rates set out in the regulations of the Apprenticeship Training Ordinance, rather than at the full journeyman rate set out in the Schedule.

This is also viewed as a method of enhancing employment opportunities for our local apprentices which in turn may encourage entrance into the apprenticeable trades.

Committee Recommendation

1. THAT the proposal to attach an apprentice wage addendum to the Federal Fair Wages and Hours of Labour Regulations applicable to a public work of the Territory be accepted.

EQUAL PAY

PROPOSAL: Amend Section 12.1(1) of the Ordinance to prohibit discrimination in pay between male and female workers, or vice versa, performing similar or substantially similar work in the same establishment.

The key issue of this amendment is the substitution of the wording, "similar or substantially similar work in the same establishment" for the word "same".

The criteria for similar or substantially similar work is based on similar skill, effort and responsibility for work that is performed under similar working conditions in the same establishment.

In effect this revision prohibits any difference in salary based on sex but a difference in salary based on experience, seniority, merit, productivity or overtime would be permitted.

Committee Recommendation

1. THAT the proposal on "Equal Pay" be accepted.

PAYMENT OF WAGES

PROPOSAL: To amend Section 34(1) to require the payment of wages not later than 7 days after each pay period.

"Pay Period" defined in the Interpretation Section as "any period of employment, not exceeding 16 days, established by the employer for the computation of wages."

Under the present legislation the payment of wages owing to an employee is not required until 10 days after the expiration of a calendar month in which the work was performed. For an employee commencing work on the first of the month, no wages need be paid for up to 41 days except on termination.

While the employer will be required to institute semi-monthly pay periods the furnishing to the employee of a statement in writing setting out details of earnings and deductions will only be required on a monthly basis or on termination.

The establishment of a definite pay period, and the requirement to pay at the end of that pay period, provides employees the ability to better manage their financial affairs.

Committee Recommendation

1. THAT the proposal for payment of wages not later than seven days after each pay period be adopted excepting those occasions when the seventh day is not a banking day, in which case payment of wages should be made at such earlier day as would be a banking day.

WAGE COLLECTION PROCEDURES

PROPOSAL: To remove wage collection procedures from the judicial system, to the greatest extent possible, by the adoption of a "Certificate System".

The current process by which a court order is obtained directly through the justice system is time consuming, inefficient and imposes an increased burden on the courts.

It is proposed to institute a Certificate System, now in wide use in other jurisdictions, whereby a "Director of Employment Standards" or a "Board" would issue a Certificate, outlining wages due.

In the first instance, a claimant would be required to set out a Statement of Claim in a statutory declaration to an Employment Standards Officer.

The employer would then be afforded the opportunity to respond to the Statement of Claim.

Where a wage claim is substantiated by investigation and an Employment Standards Officer is unable to effect a settlement between the claimant and his employer, or where the employer absconds, the Certificate is issued.

Should the employer dispute the Certificate he may appeal to the Employment Standards Advisory Board.

Upon failure of the employer to satisfy the Board that the wages are not due, the Certificate is filed in a Court and becomes enforceable as an Order of the Court.

Where, after appeal to the Board, the issuance of the Certificate by the Director of Employment Standards is upheld by the Board, any employer affected by a decision of the Board may appeal to a judge.

Not only will this be a more expedient and fair method of wage collection but there is also the opportunity to enter into reciprocal agreements with neighbouring provinces for enforcement of such Certificates outside Yukon.

In conjunction with the Certificate System the priority of wages will be enhanced over most other creditors with prior claims.

These measures are contemplated to deal primarily with the minority of employers who deliberately attempt to avoid the legislation and employers whose insolvency renders payment of wages impossible without extraordinary measures.

Committee Recommendations

1. THAT the Employment Standards Ordinance should provide, to the extent constitutionally possible, for the greatest

possible priority to be given to the settlement of wages before any other claims on a business are recognized.

2. THAT the Employment Standards Ordinance should provide that the directors and officers of corporations be personally liable for the wages of employees.
3. THAT the Government examine three options, being wage bonds, wage insurance and an unsatisfied judgements fund, in an effort to provide some protection for employees who do not receive wages which are rightfully theirs.

NOTICE OF TERMINATION

PROPOSAL: The intent is to provide employees with at least six months continuous service with an employer the right to a one week notice of termination; and a requirement for the employee under the same term of employment to give a one week notice of termination.

This is a new provision.

It is expected that these provisions, which are in effect in some form in all jurisdictions except Yukon, Northwest Territories and New Brunswick, will have the effect of reducing unjust and arbitrary dismissals.

We know that this is an area of concern to employers and employees as 10% of all enquiries received by the Branch seek clarification of the legislation.

These provisions will also afford employers an opportunity to seek replacements and employees an opportunity to seek alternate employment.

Notice would not be required where the employee is dismissed for just cause or where the employer fails to abide by the terms of the employment contract.

Certain employment sectors will be excluded from these provisions, such as the construction industry, any employer carrying on an undertaking of a seasonal or intermittent nature and operating less than six months of the year, or where the term of employment is fixed.

Notice of termination by employer and employee will be in writing.

In lieu of notice of termination, one week's regular earnings may be paid or forfeited.

Where either party claims that the employment has been terminated in violation of this proposal he may, within ninety days, make a written charge addressed to the Minister.

The Minister may himself enquire into the matter or refer it to the Employment Standards Officer or to the Board.

Committee Recommendations

1. THAT, in the case of a permanent layoff, an employer must provide a further notice of one week for each additional year an employee has worked.
2. THAT the provision for forfeiture of one week's pay in lieu of notice of termination as suggested in paragraph eight not be accepted.

MATERNITY LEAVE

PROPOSAL: The intent is to provide female employees with at least one year's continuous service with an employer, the right to a period of seventeen weeks leave without pay surrounding her pregnancy.

This is a new provision.

Statistics indicate that 68% of women in Yukon work, and comprise 38% of the total labour force.

The labour market of the 1980's will present both challenges and opportunities. Measures must be taken to ensure that Yukon women can participate and continue to participate in emerging employment.

Committee Recommendation

1. THAT the proposal outlined for maternity leave be accepted.

TRANSPORTATION FROM EMPLOYMENT AREAS

PROPOSAL: To provide employees the right to free transportation upon termination to the nearest point at which regularly scheduled transportation services are available.

This is a new provision.

This unique provision is a requirement due to the particular aspects of Yukon's developing economy where considerable employment occurs at locations where regularly scheduled transportation is not available.

Committee Recommendations

1. THAT, in cases where the employer pays the transportation of employees to the job site, the employer must provide free transportation upon termination (meaning "laid off or fired") to the point of hire.
2. THAT the description in the proposal of "regularly scheduled transportation services" be amended as "daily scheduled transportation services."

EMPLOYMENT STANDARDS ADVISORY BOARD

PROPOSAL: The Employment Standards Advisory Board be expanded in size and general mandate.

The present Board functions under Section 47(1) of the Ordinance, with specific authority under Section 6(1) and a recommendation role under Section 7(1).

It is proposed that the Advisory Board:

1. be the appeal board for decisions or orders of the Employment Standards Officer, with authority to confirm, revoke or modify orders;
2. be responsible to the Commissioner-in-Executive Council for recommendations regarding the determination of a Yukon minimum wage;
3. advise the Minister on matters relating to Employment Standards policy;
4. be required to make recommendations to the Minister regarding any application for exemption made under any provision of the legislation;
5. be given the authority to hold hearings into matters referred to it by the Minister;
6. be given the authority to determine its own procedures, providing that employers and employees retain the opportunity to present evidence and make recommendations;
7. provide an annual report on activities to the Minister.

It is proposed to expand the Advisory Board to five members, consisting of two representatives of employers and two representatives of employees respectively with an impartial chairman.

Committee Recommendations

1. THAT the title of the Employment Standards Advisory Board be amended to read "Employment Standards Board".
2. THAT the membership of the Employment Standards Board be established using the following criteria:
 - (a) at least two members should be women,
 - (b) two members should represent employer organizations and, of those two, one should reside in a community other than Whitehorse,
 - (c) two members should represent employees and, of those two, one should be from the ranks of organized labour, and

(d) the Chairman should be chosen from a list formulated by labour and business groups who should be asked to cooperate in submitting names of impartial nominees for the position.

3. THAT the members of the Board be appointed for two years through a method of staggering which would always leave the Board with at least two experienced members.
4. THAT the legislation specify that the Employment Standards Board is the final source of appeal for decisions or orders of the Employment Standards Officer.

PART II

This section deals with a number of topics which are not covered by the Green Paper and on which the Committee wishes to make comments.

- (1) The Committee has already recommended that the definition section of the ordinance be expanded to include a definition of "self-employed or independent contractor" which would stand in contradistinction to the definition of "employee". The rationale for this recommendation is found in the Committee's concern that there are workers who lose the protection of the Labour Standards Ordinance because they sign contracts with their employers. By most criteria these workers should still be classified as employees and receive the benefits and protections of this ordinance but, through "phoney labour contracts", they supposedly become self-employed and no longer fall within the scope of the Labour Standards Ordinance.

The Committee, therefore, recommends:

THAT a provision be added to the proposed Employment Standards Ordinance making it illegal for an employer to force an employee to sign a contract of self-employment.

The Committee recognizes that some flexibility may be necessary in dealing with this issue and, within the broad policy stated in the recommendation, proposes that the Government give consideration to empowering the Employment Standards Board to grant exemptions on joint application from employer and employee.

- (2) The Committee believes that bereavement leave and sick leave should be a recognized right for all employees and recommends:

THAT five days bereavement leave without pay be granted to any employee when a member of his immediate family has died

THAT every employee be entitled to one day's unpaid sick leave for every month he completes on the job.

- (3) On the subject of vacation pay, the Committee recommends:

THAT the ordinance be amended to require an employer to pay an employee vacation pay once the employee has been continuously employed for 10 work days rather than for the current "period of thirty days or more".

- (4) The Committee has also considered the position of the part-time worker in relation to receiving general (or statutory) holiday pay. Pursuant to paragraph 30(1)(e) of the Labour Standards Ordinance an employee must work an average of at least 24 hours per week for four weeks prior to a general holiday before he is entitled to any pay for that holiday. The Committee feels this is unfair to casual or part-time employees and recommends:

THAT the ordinance be amended to require employers to pay part-time workers general holiday pay, the amount to be established by calculating the average number of hours worked per day during the previous two weeks.

- (5) The subject of sexual harassment was raised with the Committee by the Status of Women Council. Although the Committee considers this a most serious issue it feels the Employment Standards Ordinance is not the correct place to deal with it. The Committee, therefore, recommends that the Government bring forward legislation which would place a prohibition against sexual harassment within the Fair Practices Ordinance.

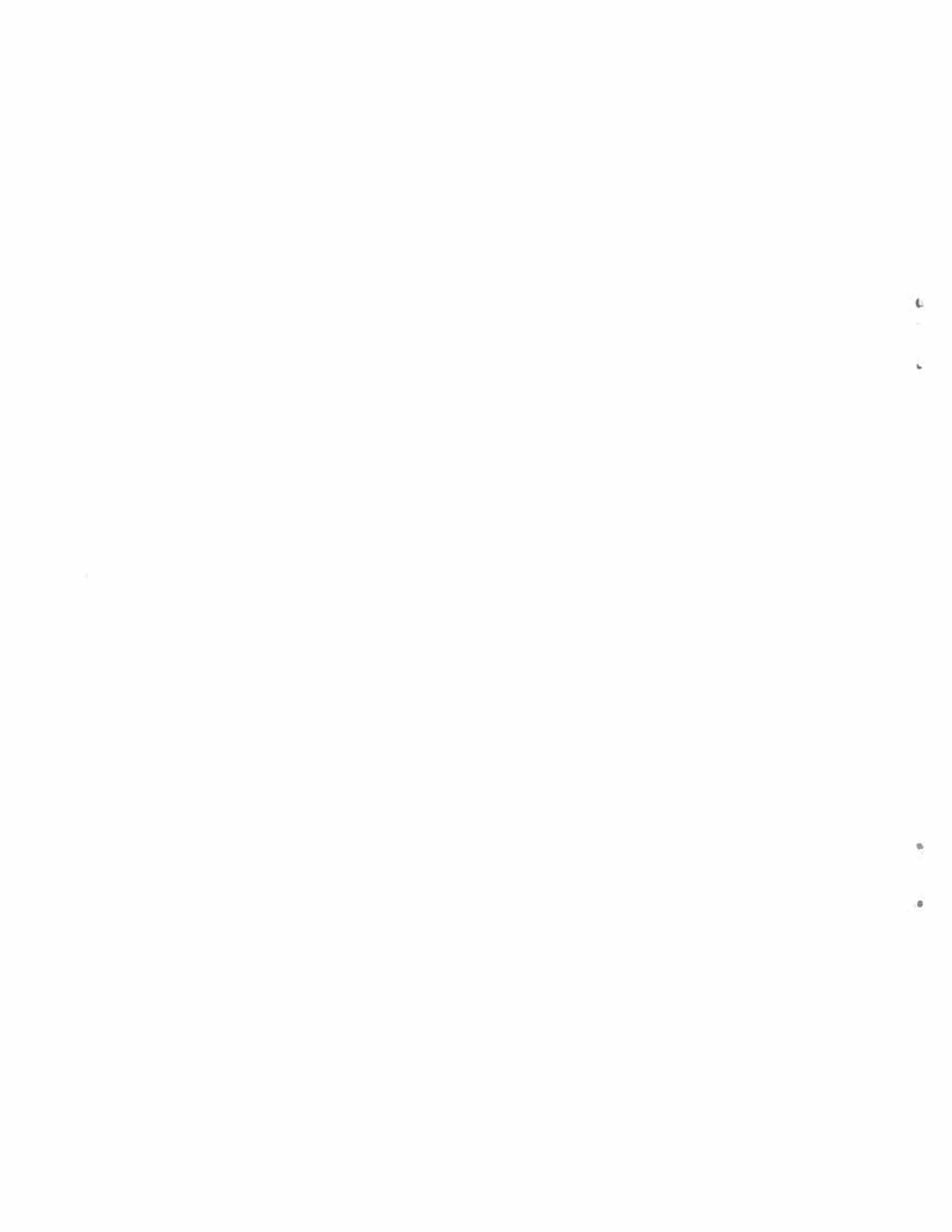
- (6) The issue was raised as to whether it is proper to exclude employers of handicapped persons from the requirement to pay the minimum wage when those employers are participating in the training of the handicapped. The Committee does not believe it just to provide, in the legislation, a blanket exemption to the employers of the handicapped. It does, however, understand the need for training exemptions and recommends:

THAT the proposed Employment Standards Board be assigned the responsibility for receiving and judging upon applications from employers of the handicapped for exemption from the minimum wage laws.

Appendix I

Organizations and Individuals who presented either oral or written submissions to the Select Committee on Labour Standards during public hearings on the "Green Paper on Employment Standards Ordinance" (listed in order of appearance or of tabling of submission):

1. Yukon Federation of Labour
2. Karl Janus
3. Yukon Status of Women Council
4. Whitehorse Chamber of Commerce
5. Maurice Byblow, M.L.A. for Faro
6. Labour Standards Advisory Board
7. Gerry Bierman and Gordon Bradshaw
8. Mike Murray
9. Cyprus Anvil Mining Corporation
10. Ms. A. Nonimous (sent brief entitled "Who Will Speak for the Babies?")
11. Whitehorse and Yukon Area Building and Construction Trades Council
12. Ibex Contracting Ltd.
13. Jim Cameron
14. Peter Kole
15. Yukon Citizen's Committee for International Year of Disabled Persons (post hoc)
16. B.C. and Yukon Chamber of Mines
17. Klondike Outreach Sponsoring Committee
18. John Irving
19. Foothills Pipe Lines (Yukon) Ltd.
20. Whitehorse Copper Mines
21. Utah Mines Ltd.
22. Caron Diamond Drilling Ltd.



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