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Yukon Territorial Council

Third Session 1969

Notes + Proceedings

Volume 1

I N D E X

1969 - Third Session

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Session Dates - Wednesday, November 12, 1969 - Thursday, December 18, 1969

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ERRATUM

Page 4	Last Paragraph - overall legality, should be overall majority
Page 4	Line 23 - happy phrase, should be hackneyed phrase
Page 9	Line 3, Paragraph 7 - to the office, should be through the office
Page 9	Line 15 - to partition, should be petition
Page 9	Line 16 - Governments of Canada, should be Government of Canada

VOTES AND PROCEEDINGS  
OF THE  
COUNCIL OF THE YUKON TERRITORY

Page 1.

Wednesday, November 12, 1969.  
10:00 o'clock a.m.

The Third Session of the Council for the year 1969, being the Eighth Session of the Twenty-First Wholly Elective Council of the Yukon Territory, was convened in the Council Chambers at 10:00 o'clock a.m. on Wednesday, November 12, 1969.

The Members present were:

Mr. John O. Livesey, Carmacks-Kluane  
Mr. John Dumas, Whitehorse West  
Mrs. G. Jean Gordon, Mayo  
Mr. Donald E. Taylor, Watson Lake  
Mr. George O. Shaw, Dawson  
Mr. Norman S. Chamberlist, Whitehorse East  
Mr. J. Kenneth McKinnon, Whitehorse North

Mr. Clerk reads the Proclamation.

Mr. Speaker enters the Council Chambers, announced by the Sergeant-at-Arms.

Mr. Speaker: Good morning. You may be seated. Mr. Clerk, is there a quorum present?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: The Eighth Session of the Twenty-First Wholly Elective Council of the Yukon Territory will now come to order. Mr. Clerk, will you please advise the Commissioner that the House is now prepared to hear his Opening Address.

Mr. Clerk leaves the Chambers to advise Mr. Commissioner and returns.

Mr. Clerk: Mr. Speaker, the Commissioner will deliver his Address in the Court Room in ten minutes.

Mr. Speaker: Thank you, Mr. Clerk. Before we adjourn, I would request that visitors in the gallery this morning wait until the Council session has passed the far door before proceeding towards the Court Room. Gentlemen, the House now stands adjourned in order that we may hear the Commissioner's Opening Address in the Court Room.

Mr. Speaker and the Councillors were escorted to the Territorial Court Room by the Sergeant-at-Arms.

The Commissioner of the Yukon Territory, Mr. James Smith, and the Minister of Indian Affairs and Northern Development, Mr. Jean Chretien, are ushered into the Territorial Court Room by the Aide-de-Camp.

The Commissioner gives his Opening Address. (Set out as Sessional Paper No. 19)

The Minister of Indian Affairs and Northern Development gives his Address.

The Councillors return to the Chambers.

Mr. Speaker: I will now call Council to order, and I will advise you at this time that I have a copy of the Commissioner's Opening Address. You may proceed.

Mr. Taylor: Mr. Speaker, I would beg leave to move that the Commissioner's Opening Address be considered on a day following.

Mr. Chamberlist: I will second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Watson Lake, seconded by the Honourable Member for Whitehorse East, that the Commissioner's Opening Address be considered on a day following. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Shaw: Mr. Speaker, I beg leave to introduce Bill No. 2, An Ordinance to Amend the Coroners Ordinance.

Mr. Speaker: Is there a seconder?

Mrs. Gordon: I will second that motion, Mr. Speaker.

BILL #2 Mr. Speaker: Moved by the Honourable Member for Dawson, seconded  
INTRODUCED by the Honourable Member for Mayo, for leave to introduce Bill No. 2, An Ordinance to Amend the Coroners Ordinance. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. McKinnon: Mr. Speaker, under Standing Order No. 26 of this House, I would ask leave to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance, namely constitutional development in the Yukon and the address of the Minister of Indian Affairs and Northern Development.

Mr. Chamberlist: Mr. Speaker, I will second that motion.

MOTION RE Mr. Speaker: May I have a copy of your motion? It has been moved  
ADJOURNING by the Honourable Member for Whitehorse North, seconded by the  
HOUSE Honourable Member for Whitehorse East as follows: I beg leave to move the adjournment of the House to discuss a matter of urgent public importance, namely constitutional development in the Yukon and the address of the Minister of Indian Affairs and Northern Development. May I remind the House that in this case the answer must be unanimous. Are we agreed? Are there any who oppose the motion? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: You may proceed.

Mr. McKinnon: Mr. Speaker, it was not my intention at this moment to discuss the address of the Honourable Minister of Indian Affairs and Northern Development, however, Mr. Speaker, I do not believe that the case for the Yukon and of the Yukon can go one minute longer without being fully aired and fully debated in this House, so that those visitors here from outside the Yukon, the Minister's party and his assistant, know clearly and specifically what the elected representatives of the people of the Yukon want and desire and what they feel the just demands of their constituents are. Mr. Speaker, when I was first elected to this House in 1961, when I was scarcely old enough to cast a ballot myself, it was with absolute naivens, with the gullibility and with the impetuosity of youth that I came charging in on my white mount, with my lancer hoisted, going to change the Government of the Yukon, going to change the

world for the betterment of the people of the Yukon and bring democratic institutions to the Yukon. Unfortunately, Mr. Speaker, one of the things one learns in very short order is that one does not change things over night no matter how right and how just and how proper your cause is. Mr. Speaker, I found that I was incapable at that time of meeting arguments that were put to me by Deputy Ministers and Ministers who had all the facts and figures and the staff and the bureaucracy to back up what they were going to say. Accordingly, I returned to university to be able to be on a plane where I could meet the arguments that were put forward and perhaps attack them and meet them on their own grounds. In 1964, Mr. Speaker, when I returned to this Council, and these are things that I have never made public before because I always thought and always believed that rational people acting in a constitutional manner could get their just dues without becoming militant about it, and if you'll remember in 1964, just after one Council had gone to Ottawa to negotiate a future five-year agreement with the Federal Government, and there still is cause for debate whether that Council in Ottawa agreed to raise taxes, and when they came back from Ottawa saw a change in the political wind and reversed their opinion. The Minister of Indian Affairs and Northern Development then, Mr. Laing, said that this was exactly what they did, and at my first meeting with the Minister of Indian Affairs and Northern Development I said, "Well, certainly, sir, that's all water under the bridge. Here we have a new Council willing to agree, willing to work, willing to co-operate with the Federal Government, in order that we can bring about an evolutionary system of constitutional change to the Yukon." The answer from the Minister was, "The resources of the north in perpetuity belong to the people of Canada. There is no way we are going to give up our responsibility in the north, and we are going to control the destiny of the north in perpetuity, and if you think anything else about it, you'd better have another look, sonny boy." Mr. Speaker, since that time this Council has co-operated, we have bent over backwards, we have essentially formed a viable, effective, efficient system of government in the Yukon Territory. When the Minister of Indian Affairs and Northern Development addressed this Council and says that the only thing that he wants and desires is full rights and privileges for the Indian people in this country, I couldn't agree with him more, but, Mr. Speaker, how can he completely reverse the philosophy which he states in the opening of his address when it comes to the rights and the privileges of the people of this Yukon. Mr. Speaker, we live in a stultifying aura of colonialism here and there is nothing in the Minister's address that will do anything to change this aura of colonialism that everyone in the Yukon is subjected to. Mr. Speaker, what was it that the Yukon had asked the Minister of Indian Affairs and Northern Development to do for the Yukon? Two things, two things only, and they are to let us have the administrative and the executive control over those matters which we now have legislative function. In other words, the elected members of the people would set educational policy, would set welfare policy, would set public works policy, and if the people of the Yukon didn't like it, they threw them out in the next election, the rights and the privileges that every other Canadian has anywhere in the country. What did we receive, Mr. Speaker? We received the concession that one of us was going to be allowed ... of, the magnanimity of it all ... going to be allowed to sit in the Ivory Tower with the two appointed Administrative Assistants of Ottawa, with the Commissioner of the Yukon Territory, the Governor of the Yukon Territory, whose King is the Minister of Indian Affairs and Northern Development, and going to be allowed to sit there as a junior executive to find out how administration goes. What an insult. What a galling insult to every Member of the Yukon Council and to every citizen of the Yukon Territory, bar none. The second thing we asked for was Section 24 of the Yukon Act to be repealed so that the people of the Yukon could have a say in how the tax dollar that they are given the legislative authority to create could be spent. You tell people from outside the Yukon that it's taxation

without representation, and it is a classic form of taxation without representation. One of the bills that the Commissioner introduced, the Administration, Ottawa, is going to see fit to place before this Council, is that we take away the exemption from mining companies. In effect, we are going to raise \$200,000 more in this Territory yet we aren't going to have one say in how one penny of that tax dollar that we raise is going to be spent or what priority it is going to be given in the Yukon. This right is reserved, reserved now, and it looks like it's going to be reserved in perpetuity for people that are appointed from Ottawa, and policies that are going to continue to be set by people from Ottawa. Mr. Speaker, if this is radical, and if this is asking too much, then I fail to see it. If asking for the rights and privileges that the Minister seeks for Indians is not enough for Her Majesty's loyal subjects in the Yukon Territory, then, Mr. Speaker, I am sorry, I just fail to see it. The arguments that were used again by the Minister are the arguments that we have faced again and again and again from the people in Ottawa. The first one is that you don't pay your own way so you can't have self-government. Why doesn't the Federal Government go down to every province in the Maritimes and tell them that; why don't they go to Quebec and tell them that; why don't they go to Manitoba and Saskatchewan and tell them that; because it's exactly the same. You use the happy phrase over and over again that there is no price tag on democracy and, Mr. Speaker, it has to hold true. You can't, if you believe in democratic institutions and you believe in a country that holds itself up to all of the world as a model of democracy in action, believe that price has any bearing on whether you have democratic institutions or not. It's a fallacy of the Federal Government that they prove in different areas where they provide every type of grant and aid and subsidy imaginable so that the federal system of government will be maintained, that they completely refute this and change the rules of federalism for the Yukon and the Northwest Territories. Mr. Speaker, perhaps it is unwise to debate in the emotion of the moment, however, every Member of this Council has been working in constructive fashion, has spelled out in specifics what they feel is a minimal evolutionary transitory period at this time. Mr. Speaker, we were just completely thrown to the wolves by the Minister's speech this morning, completely negated of our feelings and our aspirations and the type of society that we want to build and that we want to see in the Yukon. Mr. Speaker, any elected Member who accept the position of being a junior executive to appointed Administration from Ottawa in the Yukon Territory, I think the Yukon Territory should try that man for treason. Thank you, Mr. Speaker.

Mr. Chamberlist: Mr. Speaker, I would like to assure all Members of Council here that under no circumstances am I going to become the Commissioner's office boy. I agree with Councillor McKinnon that if any other Member of this Council participates in this particular sphere, he shouldn't be certainly tried for treason... we haven't the capacity to do that here, but certainly there are many other ways where his comforts in this Council Chambers would be most upsetting to himself. I have to speak with somewhat mixed feelings because although I recognize that the Minister's statement is a statement pointing to a direction, the point is pretty blunt. It seems to me that each time a Minister makes a statement on Northern Affairs, it a replica of one made by a previous Minister, and I say this whatever the political aspirations or political standings of the Minister of Northern Affairs at the time. When one political party has an overall legality where they could have given to the Yukon Territory the areas of government that the people should have, they didn't do it, and the consecutive administrative heads of government of another party do exactly the same. What is wrong? The thing that really is wrong is the fact that the Civil Service, the Federal Civil Servants of Canada wish to maintain the empire that it has built up in the northern area of Canada; that the colonial status which for seventy years or more, a hundred years, has been in effect and is being maintained by Federal Civil Servants who do not

wish to lose that control over a group of people who cannot help themselves because we wish to abide by the law as it is written. To me, there's an affront that has been made and I am not going to blame the Minister directly because I say, and I will maintain to blame the continuing heads of the Northern Department who want to see and want to continue to see the people in the Yukon Territory restrained from growing, restrained from developing, restrained from taking care of their own affairs. You know, when the Minister says the time is clearly right to strengthen these links further, and as an immediate step in this direction I propose to constitute formally the Commissioner and his two Assistants as an Executive Committee, well what have they been all this time. They've been that Executive Committee. To suggest that one Member can do any more now under a new proposed system than what has been done is really laughable. The Minister is not aware of this because unfortunately I think he is being misled, misled completely by, as I say, those Civil Servants who advise him four thousand miles away. I can only accept one piece of this particular area of the Minister's statement and that it is pointing in the right direction. But, I repeat, the point is very blunt. Thank you, Mr. Speaker.

Mr. Speaker: Thank you, Mr. Chamberlist.

Mr. Taylor: Mr. Speaker, I'm a little puzzled at this moment as to just exactly what the Minister has told us today. Certainly he has not come down with a form of a White Paper, and I note that the Minister had stated, I quote, Mr. Speaker, "I intend today, therefore, to give you an indication of my own thinking concerning northern development". Now, this seems to be the usual government way of sliding out from under when things get a little rough, and I think the Minister could well slide out from under on that one. I, too, as other Members, feel extremely disappointed. After all these years of negotiation, discussion and frustration basically, trying just about every approach in the book, we have now once again failed. The program that is suggested in the Minister's address would have the tendency to retrogress rather than progress the Territory, and I'm surprised that the Administration had doubted the intelligence of the people of the Yukon to this extent. I think that it should be made clear just where our position stands. It stands today just where it did many years ago judicially, and I quote from the decision set down by Justice Sissons, bearing the date October 5th, 1962, in which he declared, "The Yukon is still a Crown Colony. The legislation and administration are controlled by the Dominion Government. There is no Legislative Assembly. The Executive Body and the Legislative Body are one in the same. The Council is to aid and advise the Commissioner. It is not a Legislative Assembly and it is not responsible to any Legislative Assembly. I know of no government of the Yukon Territory distinct from the Commissioner or the Commissioner in Council, and the home government of the colony is the Government of Canada.", and that today is the judicial bearing, the judicial answer to the true position of the Yukon Territory in relation to the rest of the Dominion, Mr. Speaker. As I stated today, we had expected much more than the Minister's address, and it is my personal opinion, and I have expressed this many times in this Chamber, that we have now reached a point in time where the Federal Department of Northern Affairs, the Civil Service side of that department, from the Deputy Minister level down, has become stronger than the elected representatives of the people, that being the Federal Parliament of Canada and the Councils of the two territories, and indeed the Legislatures of the provinces in which this department operates. It's ever proliferating. It provides for duplication of services both in the resource field ... we have a Department of Mines, Energy and Resources. If the Federal Government wishes to hold these resources in trust for the people of the Yukon for some day in the future, there's no reason why that department can't administrate them, but Northern Affairs is now in the resource business and doing pretty well at it, investing money in Pan Arctic

and having themselves a gay old time and, indeed, proliferating, growing, ever expanding, like an octopus, until it will completely some day strangle the north. The north is their play-thing, Mr. Speaker. So, the only thing I can see to do, we have one negative power, refuse the budget. That's the only power we've got; refuse the budget. We're not permitted to do anything else. We pass a bill in this Legislature and the Minister has the right to refuse assent. Refuse the budget. Put the Civil Service out of work. They did that in Manitoba one time. All the Civil Service went and cut wood and by gosh they got a province out of it. Indeed, they had a total population I'm told of fifteen thousand people at that time, of which not many more than a thousand were eligible voters. We're told today that eighteen thousand people in the Yukon, with the technical gains, with all we have with us, isn't enough to be a province. I don't know. Manitoba did it with less of a voting population. It's either that or set ourselves down on partisan political lines and get everybody into the act. I don't know, as I say. As the Honourable Member from Whitehorse North has stated, maybe in the emotion of the moment, one should not debate this issue, but, I'm completely disappointed as I know all other Members are. We'll just have to find a way to get around this somehow.

Mr. Shaw: Mr. Speaker, this is a little too early to assess all the ramifications in the Minister's speech, however, we do come to certain conclusions, or at least I do myself, and that is that the Canadian Government, the Federal Government, has taken a very firm stand in respect to the Yukon Territory. The proposition of furthering the government, or a more responsible form of government, has taken the form of a step forward, but it's a very small step and I do not think that it's too practical a step at this time. The speeches indicated also that the Canadian or the Federal Government is not going to tolerate any extension of boundaries. That was made very clear, both in the Northwest Territories and the Yukon. The amount of advance that has been shown in my estimation, Mr. Speaker, looking at it from a practical point of view, I do not think will work very well insofar as a Member of Council having to portray the views of all the Members of Council and the electorate is not going to work in theory ... it might work in theory, but I do not think it will work in practice. In other words, you have three of an appointed Executive, and one elected Executive, all by himself, sitting up there trying to resolve things for eighteen thousand people and the balance of the Council itself. In my opinion, it will not work and that it will have to be increased. It should certainly be increased to at least two or possibly three Members on this Executive, and then I think it would be a step forward and could work out to practical advantages. You always have to look at how the thing is going to work out, and it's certainly going to be difficult, any transitional stage of advance of government, but we must look at it as to how it will work out from day to day. Myself, I would hate to be the lone Member of Council on this Committee. I think the responsibility is just too much for one person to undertake, and he could not do that job as it should be done without some of his elected colleagues with him. Therefore, I would feel that certainly see if we can get a larger boot in this. Whether we can do this, I don't know. I know that we have had consultations with the Federal Government before and they are certainly, and have proven in the past, that they are all-powerful. We are just nattering on the heels and trying to get these changes. Now, the changes that we have proposed, I do not think go far enough. I think it should be extended. Until we can debate this matter further, and sit on it and think it out, I have nothing further to say on the matter. Thank you.

Mr. Speaker: Thank you, Mr. Shaw. Does the House wish to further debate on the question?

Mrs. Gordon: Mr. Speaker, we sat around this Council Chamber as previous Councils have, made out statements and our facts known, and no one has paid any attention. In August, I attended a conference in Northern Ontario, and while I was there I spoke to one young woman who was very disturbed that their provincial capital or authorities paid no attention to them whatever. They were the forgotten area of the province. I said to her, "Where do you think we are in Yukon?". I said, "At least you can get out on the highway and hitch-hike to your capital and make your voices heard where your capital is, but we live four thousand miles from our capital and it's pretty darn cold to start hitch-hiking when it's sixty below." But, maybe this is what we should do. We can't make our voices heard from here. Maybe we'll have to go down there and start banging on the doors. Thank you, Mr. Speaker.

Mr. Speaker: Thank you, Mrs. Gordon.

Mr. Dumas: Mr. Speaker, it is seldom that a politician finds himself at a loss for words. For the first few minutes after the Minister's statement, that was the situation as far as I'm concerned. The proposal is that we elect a Civil Servant to sit and be responsible to a Civil Servant appointed by Ottawa. It's an impractical, stupid, inconsiderate proposal. It's impractical because no elected representative would dare join up with this bunch of beagles that work for the Ottawa Hierarchy. It's inconsiderate because the people of the Yukon would have no more say, and probably less in what's happening in their Territory than what they've had before. I say it's a giant step ahead, yes, for the bureaucracy that resides in Ottawa and, prior to being appointed to various posts in the Northern Affairs Department, probably hadn't been outside the environs of Ottawa or Montreal. I say it's a giant step back for the people of the Yukon. It's leading us nowhere; it's going to get us nowhere. What's wrong with a country like Canada that, as the Honourable Member from Whitehorse North said, holds itself up as a democracy? What's wrong with a country that will allow this thing to go on within its own borders? Eighteen thousand people in the Yukon are second class citizens, third class citizens, or worse. Directives are issued from Ottawa as to what will happen in our educational system and what will happen in our whole system of government up here. We're told, we're not asked. Seventy percent of the people of the Yukon were at one time or another living under a truly democratic system, that is, within the provinces they were aware of the federal system of government and the provincial system of government. They now live in the Yukon and they find it in direct opposition as to what they're used to. How long can this go on. How long will the people of Canada allow it to go on. How long can we preserve a country that allows not only the Indian people to be suppressed and oppressed, but eighteen thousand citizens of the Yukon including the Indians, and another thirty-two thousand citizens of the Northwest Territories including Indians and Eskimos. How can the rest of Canada hold its head up knowing that this type of thing is going on. Well, I say this to Ottawa, and I feel safe in saying that I speak for all the Council and for all the people of the Yukon Territory, "We're not going to give up, and we're not going to quit." I don't know what the next move is. Maybe it's physical action. Maybe if we were to blow up some postoffice boxes if we could find any, we might get somewhere. That seems to have gotten some reaction in one of the eastern provinces. So, now that the whole Ottawa government seems to be geared to plicating that province, maybe if we resort to violence, which is something that I never thought I'd hear myself say, we might get somewhere. Heaven knows we've tried everything else, Mr. Speaker. We've gotten nowhere. But, I say again, we will keep on trying, and we will try and try again until finally we can take our position along with the rest of Canada as full-fledged Canadians.

Mr. Speaker: Thank you. The Chair will now entertain a motion for adjournment.

Mr. Shaw: Mr. Speaker, I would move that we adjourn at this time.

Mr. Speaker: Is there a seconder?

Mr. McKinnon: I'll second that motion, Mr. Speaker.

Mr. Speaker: Before I call the question, is the motion in relation curtailment of further activities today?

All: Agreed.

Mr. Speaker: Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: The House now stands adjourned until ten a.m. tomorrow morning.

Mr. Speaker read the daily prayer and Council was called to Order. All Councillors were present.

Mr. Speaker: Mr. Clerk, is there a quorum present?

Mr. Clerk: There is Mr. Speaker.

Mr. Speaker: I will now call Council to Order and I would like to draw your attention to the fact that I intend to table the following: 1. Sessional Papers 1 - 19, 2. Yukon Lands Transactions, 3. Regulations and 4. Public Accounts. Are there any Reports of Committee? Introduction of Bills? Notices of Motion or Resolution? Notices of Motion for the Production of Papers? Under Orders of the Day, **Motion** for the Production of Papers, **Motions** for the Production of Papers Passed and all others are not before us? Are there any questions? There are no questions, may we proceed to the next business at hand.

Mr. Taylor: Mr. Speaker, in light of the fact that some of my col-  
leagues have prepared a motion and would wish to proceed with  
the matter today, I would move that Standing Order number 41  
would be suspended in order that we may proceed with the motion.

STANDING  
ORDER #41  
SUSPENDED.

Mr. Dumas: I'll second the motion.

Mr. Speaker: Moved by the Honorable Member for Watson Lake,  
seconded by the Honorable Member for Whitehorse-West, that  
Standing Order number 41 be suspended. Is the House prepared for  
the question on the motion? Are we agreed. I will declare  
the motion carried.

MOTION CARRIED

MOTION  
CARRIED.

Mr. Chamberlist: Mr. Speaker, I would move that the following  
communication be speedily dispatched to the Right Honorable  
Pierre Elliot Trudeau, Prime Minister of Canada, to the office  
of the Speaker of the Council. The communication is as follows:  
"It is with profound regret that we the elected members of the  
Council of the Yukon Territory after full and extended consideration  
of the proposals for constitutional change, brought to our atten-  
tion by the Honorable Minister of Indian Affairs and Northern  
Development, find them unacceptable. We find them incompatible  
and the expressed views and desires of the elected representatives  
of the people and in opposition to the democratic rights and  
privileges that all other Canadians enjoy. We would therefore,  
with the utmost sincerity and in earnest desire, ask that provision  
be made through the privilege of your high office that time be  
arranged that the Council may attend upon your person to partition  
Parliament and the Governments of Canada for a more realistic  
and acceptable constitutional change. In view of the urgency of  
the present situation, we would sincerely appreciate your  
immediate consideration."

COMMUNICA-  
TION TO  
PRIME  
MINISTER.

Mr. McKinnon: I will second that motion.

Mr. Chamberlist: Mr. Speaker, I believe in democracy in the  
full concept of its meaning. I believe that the Prime Minister  
is a firm adherent of the concept of democracy. I believe that  
the Prime Minister in expressing his ideas of a just society  
has done that with the utmost sincerity and I further believe that  
the Prime Minister recognizing the fact that this legislative body,

Mr. Chamberlist cont.

that this Yukon Territory has not, for all its existing years been in a position to be able to take care of its own affairs. I'm sure that the Prime Minister must harken to the call that this Territorial Council has now made to him and it is my hope, Mr. Speaker, that the Prime Minister will recognize that we all are sincere in our wishes to be able to serve the Yukon and Canada in the same light that every good Canadian citizen wishes to serve. It is my hope, Mr. Speaker, that the Prime Minister will, as quickly as possible, ask that he meet with Council.

Mr. McKinnon: Mr. Speaker, in seconding the motion, I think having got the emotional arguments off my chest yesterday, I would like to deal with the practical aspects of what the Minister offered in his statement to Council yesterday. I think that the paradox when the history of this period of the Yukon is written if it ever is, is that the Federal Government was truly sincere in their desire to bring about democratic institution in the Yukon, however, through advice that was not probably the right advice at the time, have misread the feeling and the temper of the Yukon people and the ability of the Yukon people to govern local affairs at this time. I think that the Budget Programming Committee and the formation of it, though there is no constitutional precedent under the Yukon Act for the formation of such a committee, has really served the first bridge, to function as the first bridge where the elected member and the appointed department heads got together and they ....the molding of the executive and the legislative branches of government. There has been three members on the Financial Advisory Committee which meets with the Budget Programming Committee. One man elected could not meet and do the job properly on the Budget Programming Committee. It has been the most interesting experience of mine in government so far, the confrontation with the appointed members at the Budget Programming Committee level. It has been a real give and take and argument on both sides and finally a consensus is won over. The important part of sharing **now** in the legislative programming and the executive and administrative branches of government means that one member elected as the Minister prefers it, would have to deal with ten or more appointed members of the civil service. The person trying to do this job, would find it completely impossible to represent the feelings of the elected members of this Council to such a committee. This is the reason that Council in the past has asked for a representation of a minimum of three at an executive capacity to deal with the administration. I feel that there are practical and workable aspects that can be found between the Federal Government and the Government of the Yukon Territory to make democratic institutions become a reality in the Yukon Territory. I believe that if these are presented to the Prime Minister of Canada, in a manner that shows that they are workable and completely practical to the Yukon at the present time, that the concept of an executive system of Government can be brought to the Yukon Territory. I'm seconding the motion of the Member from Whitehorse East, I believe that now that we have had the decision from the Minister of Indian Affairs and Northern Development, that the only way that we can have this decision changed at this time is to be able to present our case to the Prime Minister of Canada. Thank you Mister Speaker.

Mr. Taylor: Mr. Speaker, I think it is recognized by all concerned that we have sought some further assistance from the Federal Government in gaining more responsible government in the Yukon for some time. Two years ago or two and a half years ago, we

Mr. Taylor cont.

forwarded and extended to the Federal Government, a program by which we thought that this could be achieved. During these past two and a half years we have entered discussions, we have awaited white papers, we have indeed bent over backwards to negotiate and deal with the Federal Government and this all culminated yesterday in the announcement of the Honorable Minister of Indian Affairs and Northern Development and as we all know it was unacceptable. There was some thought, I know that all of us were burning the midnight oil last night trying to consider what the best move for the people of the Yukon might be at this time and it was felt as other members have expressed, that a direct appeal should be made to the Honorable Prime Minister so that we might enter into direct discussions with him in this regard, in a very honorable, intelligent and proper manner. This is possibly our last chance without becoming militant. As I pointed out yesterday, that we are not looking for full autonomy, we are merely looking for a partnership with the administration in the day to day operation and function of the Territory. We waited seventy years for this Mr. Speaker, we have waited a long time and the time has come when we must resolve this question. There can be no more turning back. We must stand and fight and so it is with full accord that I most heartily endorse this motion with a prayer that this matter will be given the most immediate consideration by the Honorable Prime Minister and that in due course we might achieve for the people of the Yukon at least a share in the destiny which will come to pass for both themselves, their families and the people of the Yukon in general in the years to come. Thank You.

Mr. Shaw: Mr. Chairman, I wish to rise in support of this particular motion. I will not reiterate what some of my colleagues have just said is quite right. It is a fact, I shouldn't really say fact except that I believe the proposal which the Honorable Minister made yesterday, will not operate in a practical sense having one member of Council to represent the balance of Council. It cannot work in my estimation from a practical point of view. There either must be more of Council on this committee or I would feel that you might as well forget about it. It just cannot work. I have been in this Council now for a period of years, seen the operation of government and particularly have I seen the operations of the Financial Advisory Committee and the Budgetary Planning Committee and where we have three members of Council with the members of the Administration, I have never seen anything that worked so smoothly. It was just perfect. I would feel that the same thing could apply in an executive capacity, but not with one member. It just isn't something that can work and the object of this motion is to take it to the highest person in the land to discuss it with him. A very reasonable suggestion and I fully endorse this message....motion, Mr. Speaker.

Mrs. Gordon: There is very little that I can add to what has been said and I can only say that I heartily concur the remarks of the previous members. I feel that the Prime Minister will be the man who can and must listen to the Council of the Yukon Territory.

Mr. Dumas: Mr. Speaker, in supporting the motion I would like very briefly to discuss the concept of a just society. I believe putting aside the politics of the thing and everything else, I believe like most Canadians in justice and in a just society, but I believe that it really must mean something and I believe that the Prime Minister of Canada intends it to mean something for all Canadians. Not only for caucasian Canadians living south of the sixtieth parallel, but for the native Canadians all across the

Mr. Dumas cont.

country and for the Eskimos, for all the people living north of sixty, for all the people living within the boundaries of Canada. We do not have a just society in Canada as long as there are second or third or fourth class citizens, whether they are native people or Eskimos or Caucasians or whatever, living under the system that we live under now. For the term just society, to be meaningful there must be some very definite moves made in our area toward responsible government, otherwise it is an unequal society, an unjust society that treats some Canadians better than others. It's not fair and as a human being, it's not fair, it's not just, it's not right and I think that given the opportunity to discuss this matter with the Prime Minister, he may come to see that in fact to achieve a just society in Canada, constitutional reform must be near the top of the list as far as the Yukon Territory and the Northwest Territories is concerned.

Mr. Speaker: How do you now wish to proceed?

Mr. McKinnon: Question.

Mr. Speaker: Question has been called. Are we agreed? I will declare the motion carried.

MOTION  
CARRIED.

MOTION CARRIED.

Mr. Taylor: Mr. Speaker, in light of the fact that we are not likely to receive a reply from the Prime Minister to the contents of the last motion, I would move that we adjourn until ten o'clock tomorrow morning.

Mr. Speaker: Does the House agree? The House now stands adjourned until ten a.m. tomorrow morning.

ADJOURN.

ADJOURN.

Page 13.  
November 14, 1969.  
10:00 o'clock a.m.

Mr. Speaker read the daily prayer. All Councillors were present.

Mr. Speaker: Mr. Clerk, is there a quorum present?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: I will now call Council to order.

Mr. Chamberlist: Mr. Speaker, I wish to rise on a point of privilege. Mr. Speaker, on page 4, the last paragraph, of Votes and Proceedings, reads "When one political party has an overall legality where they could have given to the Yukon Territory...", I said, "When one political party has an overall majority...", and I would ask that that be corrected, Mr. Speaker.

Mr. Speaker: Thank you, Mr. Chamberlist. Are there any reports of Committee? Introduction of Bills?

Mr. Shaw: Mr. Speaker, I would like to introduce Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance.

Some Members: Explain.

Mr. Shaw: Mr. Speaker, would it be necessary to have a seconder before I can discuss this motion?

Mr. Speaker: It would, Mr. Shaw.

Mr. Chamberlist: It's an explanation of the introduction that I would like to hear, Mr. Speaker.

Mr. Shaw: Shall I explain, Mr. Speaker, or is it necessary that I wait for a seconder?

Mr. Speaker: Try your best, Mr. Shaw.

Mr. Shaw: Not having had any business in creating this particular Bill, it is emanated from the Administration, I don't know too much about it, Mr. Speaker. There are explanatory notes here; it would be a long time to read them all. That is what is given. I did not have anything to do with composition of this particular Bill, but perhaps we could say that it is a case of that I've seen my duty, and I've done it. I have introduced this because that is the accepted way of doing things as a matter of form, Mr. Speaker.

Mr. Speaker: Is there a seconder for the motion of the Honourable Member for Dawson.

Mr. McKinnon: After that very perceptive explanation, Mr. Speaker, it gives me great pleasure to second the introduction of the Bill.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse North, that Bill No. 1 ... that they beg leave to introduce Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

BILL #1  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: May I have your further pleasure?

Mr. Shaw: Mr. Speaker, I beg leave to introduce Bill No. 3, An Ordinance to Amend the Fuel Oil Tax Ordinance.

Some Members: Explain.

Mr. Shaw: The explanation, Mr. Speaker, is very much the same as before. We have to process these Bills. We have nothing much to do about the introduction, but somewhere along the line it says that we introduce these and if we don't introduce them, well, of course, we're not getting anyplace with it. I couldn't tell you why I didn't have any say in its being put here. It's just a matter of having to process them. I can't tell you why. If I were introducing them, I might introduce other Bills besides this, but I just didn't have any say.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mr. Chamberlist: Mr. Speaker, because the Administration requires of the elected Members that somebody seconds the introduced Bills, I will second it.

BILL #3  
INTRODUCED Mr. Speaker: I thank the Honourable Member for Whitehorse East. It has been moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, for leave to introduce Bill No. 3, An Ordinance to Amend the Fuel Oil Tax Ordinance. Is the House prepared for the question on the motion? Are we agreed? I'll declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. McKinnon: Mr. Speaker, I would move the introduction of Bill No. 4, An Ordinance to Amend an Ordinance Respecting the Reciprocal Enforcement of Maintenance Orders.

Some Members: Explain.

Mr. McKinnon: Mr. Speaker, I know nothing of the contents of the Bill. I had no hand in the formation of the Bill. It was presented to us by the Administration, and as a courtesy to that Administration of which I have no part, I will introduce the Bill at this time.

Mr. Taylor: I will second the Honourable Member's motion.

BILL #4  
INTRODUCED Mr. Speaker: Moved by the Honourable Member for Whitehorse North, seconded by the Honourable Member for Watson Lake, for leave to introduce Bill No. 4, An Ordinance to Amend an Ordinance Respecting the Reciprocal Enforcement of Maintenance Orders. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: May we proceed, gentlemen?

BILL #5  
INTRODUCED Mr. McKinnon: Mr. Speaker, I would move the introduction of Bill No. 5, An Ordinance to Amend an Ordinance Respecting the Protection of Forests.

Some Members: Explain.

Mr. McKinnon: Mr. Speaker, as with all Bills, I know nothing of the contents of them. I have had no hand in the formation of the policy which brings them before this House. I am merely introducing them as a courtesy to the Administration so the business of this House may be conducted.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mr. Shaw: I second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Whitehorse North, seconded by the Honourable Member for Dawson, for leave to introduce Bill No. 5, An Ordinance to Amend an Ordinance Respecting the Protection of Forests. Is the House prepared for the question on the motion? Are we agreed? Are there any contrary? I will declare the motion carried. BILL #5  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Mr. Dumas: Mr. Speaker, I beg leave to introduce Bill No. 7, An Ordinance to Provide the Welfare of Children.

Some Members: Explain.

Mr. Dumas: Mr. Speaker, this Bill did not emanate in any way from the people of the Yukon Territory who under a normal democratic society would set the policies that their elected representatives would then have placed before the House by a body of their peers; however, in this situation, the Bill probably emanated in Ottawa and was discussed and sat upon here by the local Administration of appointed civil servants, so I really can't explain the Bill. I present it, I introduce it as a courtesy to the Administration and to the Ottawa Bureaucracy.

Mr. Taylor: Mr. Speaker, in light of that explanation, I'll be pleased to second the Honourable Member's motion.

Mr. Speaker: It has been moved by the Honourable Member for Whitehorse West, seconded by the Honourable Member for Watson Lake, for leave to introduce Bill No. 7, An Ordinance to Provide for the Welfare of Children. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried. BILL #7  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Mr. Chamberlist: Mr. Speaker, I beg leave to introduce Bill No. 8, An Ordinance to Amend the Municipal Ordinance.

Some Members: Explain.

Mr. Chamberlist: Mr. Speaker, I really don't understand the Ordinance itself because I took no part in its preparation. I notice there are some explanatory notes. I don't know who made them. I understand that the Territorial Administration has no Legal Adviser. The only Legal Adviser is the Legal Adviser to the Territorial Council, so I'm really just doing my best to try and show the Administration that we are capable of co-operating with them to help them in their difficult situation which they have managed to create for themselves by not having the elected Members as part of the Executive Committee of the Yukon Territory.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mrs. Gordon: In light of that explanation, Mr. Speaker, I would second the motion.

Mr. Speaker: Moved by the Honourable Member for Whitehorse East, seconded by the Honourable Member for Mayo, for leave to introduce Bill No. 8, An Ordinance to Amend the Municipal Ordinance. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried. BILL #8  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Mr. Shaw: Mr. Speaker, I would beg leave to introduce Bill No. 9, An Ordinance to Amend the Motor Vehicles Ordinance.

Some Members: Explain.

Mr. Shaw: Mr. Speaker, the only explanation I can give is that the people that introduce this or created this Ordinance are not here at the present moment, or are not able to stand up here and introduce the Ordinance, so I'm doing it for them.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mr. Dumas: It's not much of an explanation, Mr. Speaker, but I'll second the motion at any rate.

BILL #9  
INTRODUCED Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse West, for leave to introduce Bill No. 9, An Ordinance to Amend the Motor Vehicles Ordinance. Is the House prepared for the question on the motion? Are we agreed? I'll declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. McKinnon: Mr. Speaker, I would like to move the introduction of Bill No. 10, An Ordinance to Amend the Taxation Ordinance.

Some Members: Explain.

Mr. McKinnon: Mr. Speaker, the explanation of this Bill is for a continuation of taxation without representation. It gives me great pleasure to be able to introduce such a measure in this House at this time.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mr. Chamberlist: Although I am reluctant, Mr. Speaker, I will give the courtesy, for the courtesy to the Administration, and second their Bill.

BILL #10  
INTRODUCED Mr. Speaker: Moved by the Honourable Member for Whitehorse North, seconded by the Honourable Member for Whitehorse East, for leave to introduce Bill No. 10, An Ordinance to Amend the Taxation Ordinance. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. McKinnon: Mr. Speaker, I would like to move the introduction of Bill No. 11, the Liquor Ordinance.

Some Members: Explain.

Mr. McKinnon: Mr. Speaker, I introduce this Bill because I had a great hand in the writing of it. I found out through appointed Cabinet leaks that there were certain aspects of the Bill that would be obnoxious to the people of the Yukon Territory, and fortunately I was able to catch them in time and prevail upon the offices of the Administration who wrote the Bill to remove several of these obnoxious features that I knew the elected representatives would not agree to. I feel really proud to be able to introduce this Bill to this House at this time.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mr. Shaw: Under the circumstances, I would be very glad to second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Whitehorse North, seconded by the Honourable Member for Dawson, for leave to introduce Bill No. 11, known as the Liquor Ordinance. Is the House prepared for the question on the motion? Are we agreed? I'll declare the motion carried. BILL #11  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Mr. Dumas: Mr. Speaker, I beg leave to introduce Bill No. 12, An Ordinance Respecting the Expropriation of Lands and the Determination of Compensation for the Expropriation or Injurious Affection of Lands.

Mr. McKinnon: He can't even say it.

Mr. Speaker: Order.

Some Members: Explain.

Mr. Dumas: The Honourable Member from Whitehorse North took my next line. I was going to explain that I couldn't even say it, let alone explain it, Mr. Speaker, but, once again, it's a matter of a courtesy to whoever drew the thing up.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mr. McKinnon: As long as I don't have to repeat the title, Mr. Speaker, it gives me great pleasure to second the motion.

Mr. Speaker: Moved by the Honourable Member for Whitehorse West, seconded by the Honourable Member for Whitehorse North, for leave to introduce Bill No. 12, An Ordinance Respecting the Expropriation of Lands and the Determination of Compensation for the Expropriation or Injurious Affection of Lands. Is the House prepared for the question on the motion? Are we agreed? I'll declare the motion carried. BILL #12  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Mr. Dumas: Mr. Speaker, I beg leave to introduce with great pleasure Bill No. 14, An Ordinance to Amend the Labour Standards Ordinance.

Some Members: Explain.

Mr. Dumas: I'll be very happy to explain this one, Mr. Speaker. It's the result of a proposal that I've made on two separate occasions at two difference Sessions of Council, that the minimum hourly wage be increased.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mr. Shaw: I'll second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Whitehorse West, seconded by the Honourable Member for Dawson, for leave to introduce Bill No. 14, An Ordinance to Amend the Labour Standards Ordinance. Is the House prepared for the question on the motion? Question has been called. Are we agreed? I will declare the motion carried. BILL #14  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: May I have your further pleasure?

Mr. Shaw: Mr. Speaker, could we proceed with the Daily Routine, the next item?

Mr. Speaker: I'm guided by the House.

Some Members: Agreed.

Mr. Speaker: Notices of Motion or Resolution? Are there any Notices of Motion or Resolution? Notices of Motion for the Production of Papers? We have no purpose under Orders of the Day at present for your attention. Questions, are there any questions?

Mr. Dumas: Yes, Mr. Speaker, I have a question if the Commissioner is available.

Mr. Speaker: I wonder, Mr. Clerk, if you could advise the House whether the Commissioner is available for the Question Period today?

Mr. Legal Adviser: Mr. Speaker, I don't think he is at the moment. He's at a meeting.

Some Members: Explain.

Mr. Legal Adviser: There is no ulterior motive in his not being in this particular building. I could send a telephone message to him and I'm sure he would come and give his own explanation as he is quite well able to do as the Honourable Members know.

Mr. Chamberlist: He should be here at any rate.

Mr. Legal Adviser: Mr. Speaker, shall I try to get him down?

Mr. Speaker: I believe the House usually requires the presence of the Commissioner for the Question Period. I wonder if it could be explained why he's not here?

Mr. Legal Adviser: He's at a meeting at another building. He's not physically present in this building at the moment, at least not on this floor.

Mr. Chamberlist: Where is the importance, Mr. Speaker, this Legislative House or his other meeting? Where does the importance lie. This is an example again, Mr. Speaker, of where the Administration sets aside the requirements of this House for other meetings. At the beginning of this Session, when the Commissioner should be here to answer questions, he's not here to answer the questions, with a lame excuse that he is at another meeting. We are placed again in a secondary position.

Mr. Legal Adviser: Mr. Speaker, I wasn't tendering this as an excuse for the Commissioner not being present. I was merely saying that it would take some minutes to bring him here to attend the House.

Mr. McKinnon: Mr. Speaker, a Member of this Legislative Assembly has asked that the Commissioner be present to answer questions, and I would ask that this House would see fit to ask the Commissioner to attend Council to answer their questions at this time.

Mr. Speaker: How do you wish to proceed, gentlemen?

Mr. Chamberlist: Let us adjourn until the Commissioner arrives.

Mr. Speaker: Are we agreed? The House now stands adjourned until further notice.

RECESS

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11:15 o'clock.

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Mr. Speaker: Are we now prepared to proceed. I will now call Council to order and we are at present at the question period.

Mr. Dumas: I have a question Mr. Speaker. What steps are being taken to correct the pollution of the water supply in the Territorially controlled subdivision of Hillcrest?

QUESTION #1  
WATER POLLU-  
TION --HILL-  
CREST.

Mr. Taylor: Mr. Speaker, I have a question to direct to the chair. I'm wondering if Mr. Speaker could advise Council this morning as to whether we have received a reply from the Right Honorable Prime Minister respecting our communication to him yesterday?

QUESTION RE:  
REPLY FROM  
PRIME MINIS-  
TER.

Mr. Speaker; The answer is the Office of the Speaker has received no reply whatsoever.

ANSWER RE:  
PRIME MINIS-  
TER.

Mr. McKinnon: If I could address a question to the Commissioner. I think it was approximately two sessions ago that arrangements were finalized for the take over of fisheries by the Yukon Territorial Government by Federal authorities. Has this decision been passed by Cabinet to this date?

QUESTION RE:  
FISHERIES.

Mr. Commissioner: Mr. Speaker, the best information that I can give you was that which was conveyed to me by my minister, that the finalizing of this decision was not approved by the minister in the department concerned and that at the present time correspondence has been passing between the Prime Minister and the Minister of Fisheries on this subject. As soon as more information is conveyed to me on it, I will be very pleased to see that it is brought to Council's attention.

ANSWER RE:  
FISHERIES.

Mr. Chamberlist: I have a question for the Commissioner. Would you please explain the status of the Legal Adviser, whether he is indeed the Legal Adviser to this legislative body or the Administration of the Territorial Government?

QUESTION RE:  
STATUS OF  
LEGAL ADVISER.

Mr. Commissioner: Mr. Speaker, as far as I am aware of this gentlemen possibly the finest legal brain north of the sixtieth parallel in North America acts in a duel, triple and sometimes quadruple capacity the same as all the rest of us do and I am not aware of anything that would indicate that he is not the Legal Adviser to this body and to myself.

Mr. Chamberlist: Supplementary Mr. Speaker, I wonder if Mr. Commissioner would indicate whether or not he considers that there is a conflict of interest if the Legal Adviser advises the Administration and the legislative body at the same time.

Mr. Commissioner: Mr. Speaker, could I suggest that this is possibly a hypothetical question and therefore devise answering in a definitive manner.

Mr. Chamberlist: I wonder Mr. Speaker, if Mr. Commissioner would be prepared to give a written answer to the question that has been put?

Mr. Commissioner: Mr. Speaker: If we were requested to do this, then we will certainly do our best to provide such.

Mr. Chamberlist: It is a request Mr. Speaker.

QUESTION RE: Mr. Taylor: Mr. Speaker, supplementary to the questions that have STATUS OF LEGAL ADVISER. been asked on this subject. In light of section 2, subsection (e) of the Legal Profession Ordinance, which it states Legal Adviser means a person who holds the office of Legal Adviser to the Council of the Yukon Territory, I'm wondering if Mr. Legal Adviser could advise me if he is indeed the Legal Adviser for the Council of the Yukon Territory and under the control and management of this Council in light of this section of the Legal Profession Ordinance?

ANSWER RE: Mr. Legal Adviser: Mr. Speaker, I think the answer will be found STATUS OF LEGAL ADVISER. in the Public Service Ordinance.

Question Re: Mr. McKinnon: Mr. Speaker, I wonder if I could ask the Commissioner LOW COST HOUSING MONIES. whether if a motion which is passed at every session of this House concerning the better distribution of Low Cost Housing monies were again made at this session, whether there is any indication that those who govern these monies in Ottawa would accept the change of thinking at this time?

Answer Re: Mr. Commissioner: Mr. Speaker, it would certainly be most improper LOW COST HOUSING MONIES. for me to advise Council of what motions they should or should not put, however, I would comment concerning the Low Cost Housing Program and this very apparent inadequacies at the present time. It is almost inconceivable that the Federal Government using one source of funds, namely the consolidated revenue funds of the Dominion of Canada, are going to extend one program into a field which is literally speaking the legislative and administrative responsibility of another corporation the government has set up to take care of that and I think that the only way that this matter can be reasonably resolved as far as Council is concerned is to see what can be done in dealing with officers of the Crown Corporation, namely Central Mortgage and Housing Corporation to see just how far they are prepared to extend the surfaces that they are administratively competent and have the managerial capability of doing it.

QUESTION RE: Mr. Taylor: I'm wondering if Mr. Commissioner could advise me COUNCIL DIS- CUSS FISCAL AGREEMENT. this morning as to whether it will be the practice as it has been in the past that the courtesy will be allowed to Council to discuss with the administration in full, the forth coming fiscal agreement with Ottawa?

ANSWER RE: Mr. Commissioner: The answer is yes. COUNCIL DIS- CUSS FISCAL AGREEMENT.

Question Re: Mr. Chamberlist: Supplementary Mr. Speaker, Mr. Commissioner FED. PEOPLE DISCUSS FISCAL AGREEMENT ALSO. would you care to indicate the forth coming fiscal agreement will be discussed also with those Federal people that are working on that fiscal agreement.

Mr. Commissioner: Mr. Speaker, I think that in the first instance, before I make any attempt to go any further in answering questions along this line that I would like to have the benefit of discussing this with the Council Committee, Advisory Committee on Finance and then at that time I would be in a much better position to answer further questions of this matter.

Mr. McKinnon: Mr. Speaker, as Chairman of the Financial Advisory Committee, the feelings of the elected members are made known to the Minister and his Party when he was here of the lack of discussion on the next fiscal arrangement with the Yukon Territory. Subsequent to this, the Financial Advisory Committee has been advised that Mr. Davidson and Mr. Yates from the Inter-departmental Committee on Yukon-Federal affairs are in the Yukon now and the

Mr. McKinnon cont.

Financial Advisory Committee is meeting with them this afternoon to devise some formula whereby the lack of communication between Ottawa and the Yukon Territory on matters fiscal, will not be there in further years. I hope to be able to report, as the Chairman of the Financial Committee, to the House following this meeting.

Mr. Taylor: One supplementary question that I would like to direct to the Commissioner and that is, is there an existence at this time a book similar to a draft agreement from the Inter-departmental Committee on Federal-Territorial fiscal relations. Is this published, is it available or will it be distributed to Council?

QUESTION RE:  
BOOK ON  
FEDERAL-  
TERR. FISCAL  
RELATIONS.

Mr. Commissioner: Mr. Speaker, I think all members of Council have the book that is presently in existence. It is a yellow covered book, I'm sorry I don't remember the dates that are on that and there will be a supplement to that book which is in effect at the present time. This is for this current fiscal year and copies of this will be made available to Council. I am not just too sure if we have sufficient copies here at the present time.

ANSWER RE:  
BOOK ON  
FEDERAL-TERR.  
FISCAL  
RELATIONS.

Mr. Taylor: Supplementary again, am I to understand then that there is no...the next five year fiscal agreement will take the form of a supplement to the existing agreement. What I'm concerned with Mr. Speaker, is the forth coming fiscal agreement for three years, five years, this we don't even know yet, that's what I'm referring to.

Mr. McKinnon: Mr. Speaker, if I may clarify this speaking again as the Chairman of the Financial Advisory Committee. If the honorable members look at the fourth year of the five year agreement with the Federal Government, it was not signed by this legislative body for the reason that they felt a two year agreement was all that could be looked forward to in the future. They look at the fourth year agreement in 70/71, they will find the Budget that the Federal Government has proposed for the Yukon Territory for the year 70/71. To which I may add Mr. Speaker, I objected most strenuously on behalf of the members of the Council.

Mr. Speaker: Any further questions? I wonder if the Honorable Member from Watson Lake would please take the Chair.

Mr. Speaker: Councillor Livesey.

Mr. Livesey: Mr. Speaker, I have one question this morning addressed to the Administration and it is, what is the purpose of the road survey now in progress in the vicinity of Mile 1148 on the Alaska Highway. A written reply is requested.

QUESTION #2.  
ROAD SURVEY  
MILE 1148.

(Councillor Livesey resumes the Chair.)

Mr. Chamberlist: Mr. Speaker, I have one further question that has come to mind, addressed to Mr. Commissioner. Could you please give information on the construction of the Old Crow proposal.... proposed Old Crow Airport and whether it is going to be constructed or tended by private enterprise or whether it is the intention of the government to go into the contracting industry and do this work themselves?

QUESTION RE:  
OLD CROW  
AIRPORT.

Mr. Commissioner: Mr. Speaker, with respect in this regard, I do not want to refrain from answering the Councillors question but could I suggest that the item in question subject to prior review by the Budget Programming Committee will in all likelihood be presented to this Council at this session in the form of a supplementary estimate at which time full explanation and full discussion along the lines that the Councillor has asked for will be forth coming.

Mr. Chamberlist: Mr. Speaker, am I to understand from Mr. Commissioner that this work will not commence in any way until such time as that supplementary has been dealt with. I would like to have assurance.

Mr. Commissioner: This assurance Mr. Speaker, I am quite happy to give.

QUESTION #3  
FRONTIER  
PACKAGE T.V.  
TESLIN, AND  
L.P.R.T. AT  
ROSS RIVER.

Mr. Taylor: I have one final question, written question, Mr. Speaker, to which I would request a written reply. The Administration is respectfully requested to advise Council as to what progress is being made relevant to motions presented at the 1969 first session respecting Frontier Package T.V. at Teslin and L.P.R.T. facilities at Ross River.

Mr. Speaker: Are there any further questions? How do you wish to proceed? May I remind you from the Chair that we do have one Bill before us, Bill No. 2 for first and second reading.

Mr. Shaw: Mr. Speaker, I would like to give first reading to Bill No. 2, An Ordinance to Amend the Coroners Ordinance.

Mr. Dumas: I'll second it Mr. Speaker.

BILL #2  
FIRST  
READING.

Mr. Speaker: Moved by the Honorable member for Dawson, seconded by the Honorable member for Whitehorse-West, that the first reading be given to Bill No. 2, An Ordinance to Amend the Coroners Ordinance. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED.

MOTION CARRIED

Mr. Speaker: When shall the Bill be read for the second time? Now? Moved by the Honorable Member for Dawson, seconded by the Honorable Member for Whitehorse-West, that the second reading be given to Bill No. 2, An Ordinance to Amend a Coroners Ordinance.

Mr. Taylor: Mr. Speaker, I wonder if the Honorable mover and seconder of the Bill would advise me as to what the principles are behind this bill?

Mr. Shaw: Mr. Speaker, this is the same as I have said before. It is a Bill that I did not introduce for a member of this Council wanted \_\_\_\_\_ by the Administration and as it is put before us, it is necessary that we process it.

MOTION  
CARRIED.

Mr. Speaker: Any further discussions? Is the House prepared for the motion on Bill No. 2? Are we agreed? I will declare the Motion carried.

MOTION CARRIED.

Mr. Shaw: Mr. Speaker, I would move that the Speaker do now leave the Chair, Council resolve itself in the Committee of the Whole to discuss Bill No. 2.

Mr. Dumas: I'll second the motion Mr. Speaker.

Mr. Speaker: Moved by the Honorable Member for Dawson, seconded by the Honorable Member for Whitehorse-West that Mr. Speaker do now leave the Chair for the purpose of convening in the Committee of the Whole to discuss Bill No. 2. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried and the Honorable member for Watson Lake will please take the Chair in Committee.

MOTION CARRIED.

MOTION  
CARRIED.

Mr. Chairman: I will proceed with the reading of the only matter before us at this time in Committee of the Whole is Bill No. 2 and I will proceed with the reading of the Bill. BILL #2

(reads Bill No. 2, An Ordinance to Amend the Coroners Ordinance)

Mr. Chamberlist: I had the pleasure in 1961, a very eventful Council, of introducing this amendment which committed women to sit on juries as a private members bill. I think that it was an oversight that women were not also allowed to sit on other juries and I support the principle of the Bill itself.

Mr. McKinnon: Mr. Chairman, I remember, we were discussing I think it was the Mine Safety Ordinance where we were involved in a debate on whether or not it was anti-feminine and against women's rights not to allow women down in the mines working and I took the attitude that it was being pro-feminine in not allowing women to go down dark in the mine to earn their daily bread. I had an extremely disturbing experience, one of the most traumatic and one that I will never forget in my life about a month ago when I was called out at about three on Saturday morning to serve on a Coroner's jury where a twenty-four ton loaded United Keno ore truck had run over the body of a 16 year old boy. Acting on a Coroner's jury, it was my duty to go down to the yard at three in the morning and I don't think anyone with any feeling could ever get through the emotion of seeing a body of about a 120 pound, 16 year old boy completely smashed into a pulp of absolute nothingness by a twenty-four ton load. It's something that I would not ever wish upon my mother to see, upon my wife if I had one or upon my girl friend. I can see of no useful purpose in allowing this type of procedure where a female is subjected to attending upon a duty which is onerous and as disturbing as this duty was for me and I don't mind admitting that I was sick on the sight of what I saw and that I spent a few sleepless nights after viewing the tragedy that I did. Now whether this is being anti-feminine and not believing in equal rights for women, I don't think it is, I think it is pro-feminine and I say vive la difference and I'll continue to say it as long as I'm a member of this legislative body and because of this I'm going to vote against it at this time.

Mr. Shaw: When we come to having juries on the normal course of events in trials and whatnot, I would feel that that is a duty of anyone, all people when called upon to serve on that particular jury. However, when we come to the matter of viewing dead bodies, and I've had the displeasure of having to do that myself, I think that a person should be given the right of refusing it if they so want. I would not say that women should be excluded from the particular frill. I think that they should have the same rights and responsibilities on all matters that it is possible to introduce them. However, when we are talking about Coroner's juries, in my estimation it is just a little bit different to the normal trials. There are occasions when you have to look on the

BILL #2. Mr. Shaw cont.

results of accidents that are extremely sickening to some people. Some people's constitution can stand it, others can not, and as Councillor McKinnon just stated, it was an extremely traumatic experience and I would very much like to see this bill go through providing it would be possible to make an amendment to this particular Bill Mr. Chairman, to effect that it is not mandatory that a person attends a Coroner's jury, either male or female, except the Coroner of course.

Mr. Dumas: Mr. Chairman, I think the honorable member from Whitehorse-North has brought up a good point, maybe the Legal Adviser can advise Council on this point as to whether it is mandatory at this point that a person summoned to attend on a Coroner's jury must do so.

Mr. Legal Adviser: Yes, it is mandatory to view the body. This is the main purpose of the investigation to view the body and then determine the cause of death.

Mr. Dumas: Well, Mr. Chairman, I'm going to go along with the Honorable Member from Whitehorse-North. I think that as long as the mandatory clause is in there that we should not force a woman to undergo this traumatic type of event and I'm not quite sure whether there are those of the female sex that will say that this is being anti-feminine or not but none the less I would like to reserve the forcing of anybody to do this thing, for the male persons, not because it's an honour or anything but I think we should try to some extent to shelter the womenfolk.

Mr. Chamberlist: Mr. Chairman, I think that members of Committee are forgetting that there is a discretion given to the person who calls the jury together if the coroner asks for a jury, sometimes a coroner attends to matters without calling a jury, but where he decides that there is an inquest, surely it would be his discretion to say, "Now this is a pretty nasty case don't bring any women in on this jury". I think that this is the type of thing that must rest with the intelligence of the coroner in a case that is like that, but the principle really in this is that we must give equal rights to women. Women make up a large percentage of our community, most of us who are married are married to women. It's necessary that they be supported. I think that a woman wants the right to be treated in like manner, but perhaps she wouldn't want to go on a particular case and she could say to a coroner or to the officer who hands the summons to the jury that she is not well and couldn't stand that sort of thing and I think it would be taken into proper consideration. No woman would be taken in chains to attend a jury, but the principle is whether or not we should give to women the understanding that they are people who can consider and come up with a verdict as to how this particular person died. This is the real meaning of a jury. I think it is a civil responsibility to all people to serve on juries when called upon and this is the reason why I support it. You must keep in mind the discretion that would be used. Thank you Mr. Chairman.

Mrs. Gordon: In the sections under consideration, I think we have missed a small point here. Under the new section 3, it says, in a mandatory way that the coroner shall issue warrants for six persons, but in the new section 3 under section 18, it says where less than six persons are present if the coroner has issued mandatorily sommons to six people and they do not all show up, what happens to these people? Are they brought before the court?

Mr. Legal Adviser: Yes, this would be....capable of being enforced. A summons is a summons and means you must come. If they don't come then proceedings may be taken, but the section 18 is the section enabling the inquest to go on not withstanding the fact that someone has refused to turn up. BILL #2

Mrs. Gordon: In accord with various points made by the speakers prior, particularly in accord with the suggestion of the Councillor from Dawson, Mr. Shaw, because in a normal court room, a person who has been called for jury duty is not necessarily forced to stand on the jury and the same should apply to.....In a court room, if you feel you are prejudiced, you can be excused from this duty. You have to appear, but you don't have to take part in the proceeding and I would ask if Mr. Legal Adviser would clarify this point.

Mr. Legal Adviser: A coroner's jury is possibly the most, apart from the Justice of the Peace Court, is probably the most ancient court in Canada or Great Britain, but I would express the opinion that they must answer the summons and they may then ask the coroner to be excused and he might exercise his discretion on the matter but it would be a matter for the discretion of the Coroner acting in a judicial capacity to give the excuse or not. Probably if he had sufficient other people he would give it on very light grounds, but he need not. There is no way of compelling him to exercise his discretion in allowing the person to stand down.

Mr. Shaw: There are two kinds of people in this world. Men and women and that is broken up into many sub categories. There are people who take great pleasure, and I'm sincere in saying that, in viewing the remains of accidents and there are people that it is repulsive to them. They don't want to do it and that includes both of the categories that I have mentioned in the first place and I have been assisted with some members of Council in arriving at the conclusion. I agree with the fact that women can sit on coroner's duty, but I see no reason why we cannot include an amendment to this Bill that will not force either male or female to sit on a coroner's jury if they do not wish to, because in most cases, I suppose in all cases, it concerns dead people who are sometimes smashed up and sometimes not. I don't like the job myself. I have done it, I have disliked it heartily, whereas to attend the trial, I would have no objection. I figure that is my duty and I should be there, but with a coroner's jury we have a different situation and I would like to pose a question to the Legal Adviser. Would he find it within his competence to be able to, I'm not asking him to do it if it is within his competence to draft a section that would not make it mandatory. Is it possible to put it in here and make it work?

Mr. Legal Adviser: It is quite possible to put it in, but I would suggest with respect that it is not a desirable thing to do. It's going at the root of the authority of the coroner's courts and of course in general to make it discretionary on the part of the person who receives a summons to attend at his own discretion. I mean we have to keep the principle that if he doesn't want to attend, he comes and explains why he can't attend and then he is excused or otherwise. The excuse he might have might be a fictitious one.

Mr. Dumas: I would think that most people would not want to sit on a coroner's jury if given the choice. There are a few sick ones that would, but they should be in an institution not on a coroner's jury. I'm going to definitely vote against this amendment

Mr. Dumas cont:

BILL #2

now. I feel that leaving this type of decision to the discretion of an appointed coroner might have ramifications that are undesirable. I would very much hate to see the very fine wife for instance of the Honorable member of Whitehorse-East forced on a coroner's jury, or the fine wife of the Honorable member from Dawson. I think that it is an undesirable thing and there is always the possibility that an appointed coroner, whoever he may be, might abuse his position. It's been done before many times and it could be done again. I wouldn't like to see this power put into this appointed civil servant's hands and I am going to vote against the bill for that reason. I don't think that women should be forced to sit on coroner's jury.

Mr. Livesey: Mr. Chairman, I think it is quite proper to say that there are many men with squeamish stomachs as there are women. I belonged to the field ambulance corps in Vancouver for a number of years and we had to go down to the General Hospital and we had to watch people get their legs sawn off and occasionally we saw sesarians and I saw as many men keel over as soon as they saw this great fountain of the inner emotional material spewing all over everywhere. They just passed out, that is all there was to it. They were grown up male individuals. Ordinarily they looked as strong as anyone and I know in my area where I first went to live a number of years ago, the first few years I saw three suicides and one bashed in brain with a wheel wrench. After being called to look and view these things, I could hardly see anyone wanting their girlfriend or their wife to look at this mess. I certainly wouldn't advise it. I don't think it is right to force women to view such a gory mess as that. I think it is terrible, it is bad enough for anyone else to have to look at it and I personally feel that as far as women are concerned, if there is an outlet whereby they can refuse this duty under the circumstances I'm quite sure that there are more of the male sex that can take this sort of thing than there are of the opposite sex. That is only my own feeling about it, but I personally don't feel that they should be forced into a position of this nature. I'm sorry if others feel that I may be wrong on this, but I feel that way about this particular Bill.

Mr. Chamberlist: Members...some members of Council are of the opinion that women are the weaker sex. Let me say they are stronger at times, but women.... I have seen women during the war years that dealt with some of the most terrible situations, but they have been strong. The point that I am making is that it is a duty, I feel, to us as a legislative body to give equal rights to women in all spheres and I say that it is up to the coroner who is a judicial officer to grant absolution from attending on a jury if he feels that for medical reasons it wouldn't be in the interest of the women called for jury duty. This is the reason why I wish to support it is to give the women the right to be equally on a footing with men when it comes to forming a function which is a civil responsibility.

Mr. McKinnon: I can't think of an instance where being on a coroner's jury, a coroner's jury could be anything else but an onerous duty, if I could have been out of viewing or being attending on the coroner's jury at the time that I was called, I would have done it, but I felt that as a citizen, and I knew what my reaction was going to be, that it was my duty to be on that coroner's jury. Now I accept that if this bill were passed that there would not be

Mr. McKinnon cont:

BILL #2

a woman who did not accept it as her duty to stand on that coroner's jury if they were called, but why if they don't have to be subjected to an onerous task in the first place, make them subject to one that even most males would rebel against. This is the way I feel. If the marching mothers of the Yukon want to petition this Council that they feel we are being anti-equal rights, anti-feminine by taking this stand of just trying not to subject our wife, our mothers, and our girlfriends to a very sickening, onerous, task, then I will be willing to change my mind at that time. I think this a pro-feminine stand not an anti one and I am going to vote against this Bill for those reasons.

Mr. Dumas: Mr. Chairman; I would like to move that Bill No. 2 be left to die in Committee.

Mr. Shaw: Why cannot an amendment be put in this Bill which will permit women to ....not to serve if they so wish. It just doesn't seem sensible to me that an amendment can't be put into that, that will serve a dual purpose. It will serve the purpose of allowing those who do consider it a public duty to attend to it and it will allow those who cannot or do not wish to see something like that get away from it in relation to the women themselves, I'm not talking about the men, I guess we are going to have to take those kind of things. As far as the women are concerned, I say they should be exempt if they so wish and if we cannot put this amendment then I'll have to also vote against it.

Mr. McKinnon: Mr. Chairman, if we are talking about equal rights if such an amendment is drawn, I demand for equal rights, the same right of refusal not to have to serve on a coroner's jury as a woman would receive.

Mr. Chairman: I have before me a motion that has been moved by Councillor Dumas, seconded by Councillor Livesey that Bill No. 2 be left to die in committee. Any further discussion on that? Are you prepared for the question? Are we agreed? Contrary?

Mr. Chamberlist: Contrary.

Mr. Chairman: I will declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED.

This now concludes the work of Committee. What is your further pleasure? It has been moved by Councillor Shaw, seconded by Councillor Chamberlist that Mr. Speaker do now resume the Chair. Are you prepared for the question? Are you agreed? I'll declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED.

Mr. Speaker: I will now call Council to Order. May we have a report from the Chairman of Committee?

Mr. Taylor: Mr. Speaker, Committee convened at 11:30 a.m. this morning to discuss Public Bills. It was moved by Councillor Dumas seconded by Councillor Livesey that Bill No, 2 be left to die in Committee. It was moved by Councillor Shaw, seconded by Councillor Chamberlist that Mr. Speaker do now resume the Chair and this motion was also carried.

Mr. Speaker: Are we agreed with the report of the Chairman of Committee? May I have your further pleasure.

Mr. Taylor: In view of the agenda, the Committee have now concluded all work before in Committee of the Whole, but I would suggest that when next we sit more work will be coming into Committee and we should be able to proceed at that time.

Mr. Chamberlist: Mr. Speaker, I move that we call it five o'clock.

Mr. Speaker: Are we agreed? The House now stands adjourned until ten a.m. Monday morning.

ADJOURN

ADJOURN

Mr. Speaker read the daily prayer. All Councillors were present.

Mr. Speaker: Is there a quorum present, Mr. Clerk?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: I will now call Council to order. I have for your attention this morning three corrections on page 9 of the Votes and Proceedings. On the third line of the seventh paragraph, it reads, "to the office of the Speaker of Council", and it should read, "through the office of the Speaker of Council". On line 15, "arranged that the Council may attend upon your person to partition", should be the word "petition". On line 16, "parliament and the Governments of Canada for a more realistic and acceptable constitutional change", should be singular, "parliament and the Government of Canada". Those are the corrections.

Mr. McKinnon: Mr. Speaker, I wonder if I may rise on a point of privilege. On page 4 of the Votes and Proceedings of the House... it's not usual that I rise to correct if it's just a simple matter of a mistake, however, this upsets the whole meaning of the line. The line reads, "you use the happy phrase over and over again that there is no price tag on democracy and, Mr. Speaker, it has to hold true". Mr. Speaker, the word used was "hackneyed phrase". I don't know what line it is, on page 4 about half way through the first paragraph. That no price tag is on democracy, Mr. Speaker, is not a happy phrase.

Mr. Speaker: Are there any Reports of Committee: Introduction of Bills? Are there any Introduction of Bills this morning? Notices of Motion or Resolution: Notices of Motion for the Production of Papers? We have nothing under Orders of the Day until we come to Questions. I wonder, Mr. Clerk, if we could ascertain whether Mr. Commissioner will be able to attend at this time for questions? I'll call a five minute recess.

RECESS

Mr. Speaker: I'll now call Council to order. Are there any questions?

Mr. Dumas: Yes, Mr. Speaker, I have a question regarding a group that is coming to the Yukon from the Department of Mines, Energy and Resources in Ottawa, and I believe they'll be here on November 26th. I'm wondering if there is a meeting arranged between the Councillors and this group. I believe it's to discuss conservation practices in the Yukon.

QUESTION  
RE MEETING  
WITH DEP'T  
OF MINES,  
ENERGY AND  
RESOURCES  
GROUP

Mr. Commissioner: Mr. Speaker, I'm afraid that you have me without knowledge on this matter. Could I bring forward a verbal reply on this tomorrow morning, Mr. Speaker.

Mr. Speaker: Agreed.

Mr. Taylor: I have a question I would like to direct to the Chair this morning, Mr. Speaker, and that would be, have we to receive a reply from the Honourable... Right Honourable Prime Minister with respect to our communication to him several days ago?

QUESTION  
RE ANSWER  
TO PETI-  
TION FROM  
OTTAWA

Mr. Speaker: We are still awaiting an answer from Ottawa. Are there any further questions? Are there any further questions, gentlemen? If not, would the Honourable Member for Watson Lake please take the Chair?

Mr. Taylor takes the Chair.

Mr. Speaker: Councillor Livesey.

QUESTIONS #4, #5, #6, #7, #8, #9, #10

Mr. Livesey: Thank you, Mr. Speaker. I have a few questions here addressed to the Administration. Could the Administration advise why no action has been taken to reduce the price of lots in the Beaver Creek Subdivision? Could the Administration advise why street lights were erected in Beaver Creek without the knowledge of the elected representative for the area, or any local consultation reference need and requirement? Could the Administration advise the House why previously accepted arrangements reference insect control at Beaver Creek, where the community had committed themselves to doing the work themselves with fogging equipment, was changed to the use of aircraft without notice and initiated and carried out without notice? What provision has been made for a waste disposal area under the control of the Territorial Government at Destruction Bay? When will the ditch in front of the fire-hall at Destruction Bay be removed in order that the unit may be made available in the event of a fire emergency? What action has been taken since the meeting in Carmacks of the Administration, the Councillor for Carmacks-Kluane Lake and members of the Community Club on September 22nd to open the subdivision for the use of trailers and provide a reasonable purchase price for lots? Has the Administration received any detailed information from the Women's Institute of Carmacks on the alleged improper use of the river and extent of pollution presently said to exist in the area? Thank you, Mr. Speaker.

Mr. Speaker: I wonder if you have more than five questions, I believe we have a rule ...

Mr. Livesey: I believe, Mr. Speaker, if I may say so with respect, that your question is in relation to not questions, but questions for the return of papers. This is what I believe you are referring to. Questions, I don't believe are controlled in that manner.

Mr. Speaker: Would you kindly resume the Chair?

Mr. Livesey: Thank you, Mr. Speaker.

Mr. Livesey resume the Chair.

Mr. Speaker: Are there any further questions?

QUESTION RE EARLY ELECTION

Mr. Chamberlist: Mr. Speaker, a question addressed to the Commissioner. Mr. Commissioner, in view of the previous questions that were asked, I wonder if the Commissioner could indicate whether there is to be a very early election?

Mr. Speaker: Are there any further questions, gentlemen? If not, may we proceed to Public Bills and Orders?

BILL #1 FIRST READING

Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance, be given First Reading at this time.

MOTION CARRIED

MOTION CARRIED

BILL #1 SECOND READING

Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance, be given Second Reading at this time.

MOTION CARRIED

MOTION CARRIED

Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 3, An Ordinance to Amend the Fuel Oil Tax Ordinance, be given First Reading at this time.

BILL #3  
FIRST  
READING

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 3, An Ordinance to Amend the Fuel Oil Tax Ordinance, be given Second Reading at this time.

BILL #3  
SECOND  
READING

Mr. McKinnon: Mr. Speaker, I think the point should be made that on the Second Reading of the Bills, it is generally the principle in any democratically elected House that the Minister, through the department the Bill emanated from, explains the principles behind the Bill to the House assembled. However, as none of us are allowed the privilege of sitting on the Legislative Programming Committee and deciding the policies and the priorities the people of the Yukon shall live under, we cannot speak on the principle of this Bill at this time as it had nothing to do with the elected Members in its emanation.

Mr. Dumas: Mr. Speaker, I might add further to that that normally Second Reading indicates approval in principle of a Bill. Because of the peculiar situation that we find ourselves in, in order to discuss this Bill at all, it must be given Second Reading, and for the purposes of discussion, I seconded the motion for Second Reading.

Mr. Speaker: Any further discussion? Are we agreed? I will declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Shaw, seconded by Councillor McKinnon, that Bill No. 4, An Ordinance to Amend an Ordinance Respecting the Reciprocal Enforcement of Maintenance Orders, be given First Reading at this time.

BILL #4  
FIRST  
READING

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Shaw, seconded by Councillor McKinnon, that Bill No. 4, An Ordinance to Amend an Ordinance Respecting the Reciprocal Enforcement of Maintenance Orders, be given Second Reading at this time.

BILL #4  
SECOND  
READING

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Dumas, seconded by Councillor Shaw, that Bill No. 5, An Ordinance to Amend an Ordinance Respecting the Protection of Forests, be given First Reading at this time.

BILL #5  
FIRST  
READING

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Dumas, seconded by Councillor Shaw, that Bill No. 5, An Ordinance to Amend an Ordinance Respecting the Protection of Forests, be given Second Reading at this time.

BILL #5  
SECOND  
READING

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: May I remind the House that Bill No. 6 was not introduced yesterday?

Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 7, An Ordinance to Provide for the Welfare of Children, be given First Reading at this time.

BILL #7  
FIRST  
READING

MOTION CARRIED

MOTION  
CARRIED

BILL #7  
SECOND  
READING

Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 7, An Ordinance to Provide for the Welfare of Children, be given Second Reading at this time.

MOTION  
CARRIED

MOTION CARRIED

BILL #8  
FIRST  
READING

Moved by Councillor Dumas, seconded by Councillor McKinnon, that Bill No. 8, An Ordinance to Amend the Municipal Ordinance, be given First Reading at this time.

MOTION  
CARRIED

MOTION CARRIED

BILL #8  
SECOND  
READING

Moved by Councillor Dumas, seconded by Councillor McKinnon, that Bill No. 8, An Ordinance to Amend the Municipal Ordinance, be given Second Reading at this time.

MOTION  
CARRIED

MOTION CARRIED

BILL #9  
FIRST  
READING

Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 9, An Ordinance to Amend the Motor Vehicles Ordinance, be given First Reading at this time.

MOTION  
CARRIED

MOTION CARRIED

BILL #9  
SECOND  
READING

Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 9, An Ordinance to Amend the Motor Vehicles Ordinance, be given Second Reading at this time.

MOTION  
CARRIED

MOTION CARRIED

BILL #11  
FIRST  
READING

Moved by Councillor Dumas, seconded by Councillor Shaw, that Bill No. 11, the Liquor Ordinance, be given First Reading at this time.

Mr. Speaker: Moved by the Honourable Member for Whitehorse West, seconded by the Honourable Member for Dawson, that First Reading be given to Bill No. 10, An Ordinance to Amend the ... No. 11, excuse me. Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse West, that First Reading be given to Bill No. 11, the Liquor Ordinance. Is the House prepared for the question on the motion?

Mr. Dumas: Mr. Speaker, I moved that First Reading be given, and the Honourable Member for Dawson seconded the motion.

Mr. Speaker: Oh, excuse me. Are we agreed to the change? Are we agreed that the Bill should be read for the first time? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

BILL #11  
SECOND  
READING  
MOTION  
CARRIED

Moved by Councillor Dumas, seconded by Councillor Shaw, that Bill No. 11, the Liquor Ordinance, be given Second Reading at this time.

MOTION CARRIED

BILL #12  
FIRST  
READING

Moved by Councillor Chamberlist, seconded by Councillor McKinnon, that Bill No. 12, An Ordinance Respecting the Expropriation of Lands and the Determination of Compensation for the Expropriation or Injurious Affection of Lands, be given First Reading at this time.

MOTION  
CARRIED

MOTION CARRIED

Moved by Councillor Chamberlist, seconded by Councillor McKinnon, that Bill No. 12, An Ordinance Respecting the Expropriation of Lands and the Determination of Compensation for the Expropriation or Injurious Affection of Lands, be given Second Reading at this time.

BILL #12  
SECOND  
READING

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Dumas, seconded by Councillor Chamberlist, that Bill No. 14, An Ordinance to Amend the Labour Standards Ordinance, be given First Reading at this time.

BILL #14  
FIRST  
READING

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Dumas, seconded by Councillor Chamberlist, that Bill No. 14, An Ordinance to Amend the Labour Standards Ordinance, be given Second Reading at this time.

BILL #14  
SECOND  
READING

MOTION CARRIED

MOTION  
CARRIED

Mr. Shaw: Mr. Speaker, could you advise me whether or not Bill No. 13 has received First and Second Reading?

Mr. Speaker: Bill No. 13? Bill No. 13 has not received Introduction as yet to my knowledge.

Mr. Shaw: Thank you, Mr. Speaker.

Mr. Speaker: May I have your further pleasure?

Mr. Shaw: Mr. Speaker, I would move that the Speaker do now leave the Chair and Council resolve itself in Committee of the Whole to discuss Bills ... I beg your pardon, I would include in that, Bills and Sessional Papers, Mr. Speaker.

Mr. Chamberlist: No Sessional Papers have been introduced.

Mr. Shaw: I was informed, Mr. Speaker, that no Sessional Papers have been introduced. I thought you tabled the Sessional Papers the other day.

Mr. Speaker: Yes. Is there a seconder for the Honourable Member's motion?

Mr. McKinnon: I will second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse North, that Mr. Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bills and Sessional Papers. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION CARRIED

Mr. Speaker: The Honourable Member for Watson Lake will please take the Chair in Committee.

Mr. Taylor takes the Chair.

Mr. Chairman: The first item of business this morning will be Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance. I'm wondering if you require any witnesses or any assistance with this Bill.

BILL #1

BILL #1 Mr. Dumas: Mr. Chairman, there is a Sessional Paper that has to do with the Social Assistance Ordinance. It hasn't yet been moved into Committee, and I wonder if we could leave this Bill until such time as we get that Paper moved into Committee which I propose to do tomorrow.

BILL #3 Mr. Chairman: Do you concur? We will then proceed with Bill No. 3, namely, An Ordinance to Amend the Fuel Oil Tax Ordinance. I will proceed with the reading of the Bill. (Reads Section 1 of Bill No. 3)

Mr. Chamberlist: Mr. Chairman, I wonder if Mr. Legal Adviser will indicate why an arbitrary amount of fifteen passengers was placed in this particular section?

Mr. Legal Adviser: It was chosen to include inter-provincial buses but not to include the smaller vehicles that would be technically, occasionally, come under this if you reduce the number. It's the big buses that we are trying to control, and not to include the smaller buses. Fifteen is the number that we came up with.

Mr. Chairman: May we proceed? (Reads Section 2 of Bill No. 3)

Mr. McKinnon: Mr. Chairman, I would like to ask whoever can answer what this will mean in revenue to the Yukon Territory.

Mr. Legal Adviser: Mr. Chairman, I couldn't give an answer to what it would mean in revenue, but it means a small saving. The effect of this amendment is not to increase the payments by anybody; it's to allow the owners of pilot cars who accompany as a group the mobile homes and so on where they've got to have a pilot car at present in front and a pilot car behind. They at present are calculated for duty purposes as running at five miles per gallon when in fact they run at fifteen or twenty miles per gallon. Representations have been made and the recommendation has been made to reduce their liability by increasing their mileage from five miles to fifteen miles, but there's no extra gain to the Territory in this amendment.

Mr. Dumas: Mr. Chairman, the pilot cars have been brought into discussion, and I'd like to find out from the Administration as to just why our Regulations seem to be directly opposite of those of B.C. In B.C., during the periods of peak traffic, two pilot cars are required. I think that after September 1st, only one pilot car is required, and it was as of September 1st, the Yukon started realizing two pilot cars. Of course, this adds a great deal of expense to the carrier and this expense is passed on to the consumer in the Yukon when two pilot cars are required for this type of movement. I wonder if the Department of Motor Vehicles could look into this problem and see if we can't come to some sort of mutual understanding with B.C. so that carriers, particularly those from Alberta who pass through B.C. and into the Yukon, can expect some consistency in requirements.

Mr. Chairman: Councillor Livesey ... oh, pardon me, there is a question here.

Mr. Legal Adviser: By a happy coincidence, the first memo I dictated when I came in this morning was dealing with the question of pilot cars, because a firm has made representations that the necessity for the second pilot car be eliminated and as a result of this letter the question is being examined. What the result will be, I don't know. But, this requirement is not new here. It's been in force since 1959.

Mr. Livesey: Now we're talking about pilot cars, Mr. Chairman, I would like to know why the Regulations are not being carried out. Where pilot cars run ten feet in front of the vehicle of wide load capacity, and why you have four or five others behind with no pilot car, and the last pilot car is behind in the dust so far you can't see it. Now, this is what has been going on this summer. While I'm on my feet, Mr. Chairman, I'd also like to point out that no matter how many regulations they're posting in Watson Lake, or posting down there at Iron Creek, it's still not solving the problem on the Alaska Highway because this is the only point where we have any check station, and I'd like to repeat what I brought up last spring about the check station being only one check station.

Mr. Chairman: Is there anything further on this Bill?

Mr. McKinnon: Mr. Chairman, I believe the Legal Adviser answered question ... or, subsection 2 of my question, but in subsection 1 is there no added increase in revenue to the Territory by the tax on inter-provincial carriers?

Mr. Legal Adviser: We wouldn't expect an increase of revenue in a direct sense. By the more efficient collection of tax in this way the more revenue would accrue, but this is not a new subsection. The section is in force so no doubt the Treasurer could give you the current amount of tax collected under this particular head. But, it's not a new introduction; it's already been in force for some time.

Mr. Livesey: Mr. Chairman, I wonder if the Legal Adviser could answer the question I raised, why the Regulations are not being carried out?

Mr. Chairman: I believe Councillor Livesey requires an answer to the question he raised.

Mr. Legal Adviser: I was getting clarification, Mr. Chairman, of Mr. McKinnon's question. The buses are new. We don't expect so far as I know that many will be covered but we close the classification. Perhaps the question may be more better addressed to Mr. MacKenzie because the buses are new.

Mr. Chairman: I believe Councillor Livesey had a question related to enforcement. I wonder if you have any answer to that?

Mr. Legal Adviser: Well, it's difficult to provide an answer. The point was made in the letter which I read this morning that it's particularly difficult and dangerous for the driver of the rear pilot car, who if inclined to hang as far as possible back, because he's in a particular difficulty following in the dust behind the vehicle he's guarding, and he must stay some distance behind, so he would be complying with common sense to give advance notice of the heavy load as great a distance ahead as he could. Now, so far as enforcement of the law is concerned, we have no reason to think it's not being enforced to the best of our ability as far as the Administration is concerned. Each individual officer does his best. But, the matter of providing a second checking station is largely a matter for the Financial Advisory Committee.

Mr. Livesey: Mr. Chairman, I'm not satisfied with that answer. The point I brought up was that three or four of these wide mobile homes, one after the other, and a pilot car is ten feet ahead of the first vehicle and the last one is so far back in the dust you couldn't find him. Now, is it within the meaning of the Regulations that four or five of these homes can be dragged one behind the other with one pilot car in front. I wonder if Mr. Legal Adviser is listening to what I'm saying. This is the question that I raise: Is this within the meaning of the Regulations that you can have one pilot car in front of four or five of these wide load homes dragged through the dust. Now, that's what I'm asking.

BILL #3 Mr. Legal Adviser: The Regulations say there should be a pilot car in front of the load and a pilot car behind. It might be an economical thing to have two or three loads with two pilot cars as the pilot cars are particularly expensive. But, so far as the carrying out of the Regulations and the law are concerned, this is primarily a matter for the R.C.M.P. who have the function of controlling the highways and administering justice here. I think the matter might be better raised with them.

Mr. Dumas: Mr. Chairman, once again the inability of the elected body and indeed of the Administration even to influence the carrying out and enforcement of the laws which we pass is shown, and I think that the problem might be satisfied if we could urge those who carry out and enforce our laws to in fact enforce them to the letter as the wishes of this Council are shown. Again, it's a matter of appealing and asking the Inspector of Police here or going to the Justice Department in Ottawa to have one of our Yukon laws enforced properly.

Mr. Shaw: Mr. Chairman, I would like to direct a question to the Legal Adviser. I don't know whether the Legal Adviser has had the pleasure of endeavouring to pass one of these trailer homes. What usually happens is that it is about fifty or sixty feet long and it's being towed by a tractor and the back end is flipping all over the country. That possibly can't be helped, but on different occasions I have passed after many exasperating miles one of these types of vehicles and I find that where this trailer behind, this mobile home, is probably twelve feet wide, the rear vision mirrors on these tractors cannot see back any further than if the thing was ten feet wide. In other words, they do not extend far enough out that the driver of the vehicle knows whether or not anybody wants to pass them, and in my estimation could care less. I was wondering if there is a Regulation that states very clearly that these tractors must have rear vision mirrors that extend beyond the width of the vehicle because it's not complied with, I can assure you.

Mr. Legal Adviser: There is a Regulation on the subject that says that they must be able to see behind them by the use of mirrors at all times, but it's not easy for a person without a tape measure to measure the size of a load sometimes. The Regulations force pilot cars to accompany loads when the load is more than ten feet wide. Now, the difference in ten and twelve feet in width is not readily apparent in a cloud of dust when you're passing such a load. The increase is in fact one foot on each side of the axle so it's smaller still when you're passing it out. Drivers tend to hang well outside the load when they're passing on both sides and exaggerate the difficulties for safety reasons.

Mr. Shaw: Mr. Chairman, what amazes me then is that sometimes I'll be travelling and I'm possibly within twenty miles of Dawson or fifty miles or a hundred miles, these vehicles cannot, positively could not see behind and yet they have travelled fifteen hundred miles through the Yukon Territory. That is why I raised the question, Mr. Chairman, because I didn't think there would be a Regulation for this. It certainly isn't in force anyway.

Mr. Livesey: Well, another point, Mr. Chairman, is what is the purpose of the checking station if they're not doing their work.

Mr. Chairman: I wonder if Councillor Chamberlist would take the Chair for a moment?

Mr. Chamberlist takes the Chair.

Mr. Taylor: Mr. Chairman, in relation to what the checking station is doing, I think it's doing a real fine job. It's also collecting revenues which before were streaming through the Territory. As a matter of fact it's picking up revenue in very large amounts. But, these people are checked at the checking station. It's what happens from the checking station on; it's from that point on that there's trouble. We have pilot car operators that come into the Territory and they use volkswagons in one instance, and they got away with it pretty well all summer. They'd run through with their two little volkswagons and their signs up and get their loads by the check station. Then one would take off out in front of this convoy and the other would park itself behind the local theatre in Watson Lake. Everybody was content that these two pilot cars were chugging up the road but indeed they weren't. In some cases, people were going through and not sending out a pilot car at all, sending vehicles on up the Ross River Road. This road, of course, is too narrow in many spots to pass traffic and can be quite dangerous. This is why we have to have pilot cars, but I don't think the problem lies at the check station. I think it lies with the highway enforcement. Possibly we don't have highway patrols as frequently as we could. But, this matter of pilot cars has been a rather contentious one most of the summer, I think, because when the check station did go in, people had to knuckle down and obey the rules. I think in respect to the Bill, I just wanted to comment that this is quite an equitable section, particularly subsection 2, inasmuch as these people running smaller vehicles are paying tax now on fifteen miles per gallon rather than five. It became rather expensive for a gas burning vehicle. I'm pleased to see that the larger commercial vehicles, that is vehicles that bring in Atco trailers and this type of thing which are gas driven, still have to pay the tax. So, that's all my comments on the situation.

Mr. Dumas: Mr. Chairman, while far be it for me to increase taxes in any way in the Territory, I think that the Bill as presented is more a Bill to equalize what is already going on and because of this I would like to move that Bill No. 3 be passed out of Committee without amendment.

Mr. Shaw: Mr. Chairman, I have a question before we process the Bill. I'd like to get this matter resolved that I first rose on.

Mr. Chairman: Well, Councillor Shaw, I wonder if we can get a seconder for the motion and then we can discuss the motion.

Mr. Shaw: Well, it wasn't the motion ... I didn't have the opportunity to get your ear before the Honourable Member made the motion.

Mr. Chairman: Would you agree that Councillor Shaw proceed? Please proceed.

Mr. Shaw: I wanted to know, Mr. Chairman, if I could be advised as to whether the persons who are checking these vehicles out in Watson Lake do in fact check whether these rear vision mirrors are functioning as the law provides as a part of their duty.

Mr. Taylor: Well, this is true. It could be part of their duty, but I really don't think that there is a general inspection of any vehicles at the check point. That would require a much greater staff and this type of thing. We must remember that there is only one person on duty there all the time and you can't be sitting by the money drawer and doing the necessary paper work and running out checking a whole stream of vehicles. It's just impossible. But, if the Administration saw fit to add two or three more personnel to a shift, I think that this would be quite possible.

BILL #3

Mr. Shaw: Mr. Chairman, I think the Honourable Member for Watson Lake advised me that they were checking these vehicles out just a moment ago and doing such a good job. It would appear to me that for someone who is checking the vehicle through that all you need is a twelve foot pole to see whether these ... or a thirteen foot pole to see whether these rear vision mirrors are standing far enough out so that they can see behind the vehicle.

Mr. Taylor: Mr. Chairman, as I have said before, these people are checking these vehicles through, making sure that they're permitted and properly equipped with pilot cars where necessary. As I say, it would take additional staff in order to give the vehicle a going over such as suggested by the Honourable Member for Dawson.

Mr. Shaw: Well, Mr. Chairman, I would suggest that this would be done, and these people be instructed to do it. Safety is the most essential thing that we have on the highway, and when you can't see what's behind you, what's the purpose of having the check station. You might as well lay off the whole works. I say that these should be checked.

Mr. Dumas: Mr. Chairman, before I put my motion again, I think maybe this can be partially resolved insofar as this Council has power to resolve anything at all, if we ask the Administration to ask the R.C.M.P. to enforce the Regulations as much as possible.

Mr. Taylor: I'll resume the Chair.

Mr. Taylor resumes the Chair.

Mr. McKinnon: I'll second the motion, Mr. Chairman.

Mr. Livesey: Well, Mr. Chairman, I'd certainly like to reiterate what I said last spring, and what I said last spring is no more wrong now than it was then, and that is you've got one checking station at Watson Lake. I understand the Administration said this is a pilot project. We're going to have a little experimentation down there to find out whether it's going to work or not. Sure, so they have a little experimentation. What do you wind up with? You wind up with the same ridiculous, impossible situation on the Alaska Highway as they have anywhere else. We get one checking station in Watson Lake, fine, so, if you happen to go through Watson Lake, okay, you go along with the ball. But, if you enter the Yukon Territory from the Port of Haines or you enter the Yukon Territory from the Customs Port of Beaver Creek, of course, you're safe, you're home-free. It's just like having a free home run. No problems at all, you just walk. You have a home run or you have something, but you get something for nothing. There's no check there whatsoever, and the whole thing is made ridiculous by this impossible situation where we have a check station down in Watson Lake and nothing anywhere else. If you happen to come into one section of the Yukon, you're breaking the law, and if you come into another section of the Yukon, it doesn't matter. If you can get away with it, fine. Now this, to me, is totally inequitable, and as far as I'm concerned, it makes the law into a laughing-stock. Either the law applies to everybody or it doesn't apply to anybody. That's the way I think of the law anyway. If I'm wrong, well, tell me where I'm wrong.

Mr. Chairman: I have before me a motion, moved by Councillor Dumas, seconded by Councillor McKinnon, that Bill No. 3 be reported out of Committee without amendment. Is there anything further on this Bill? Question has been called. Are you agreed? Any contrary? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Chairman: Gentlemen, I think I'll call a short recess at this time.

Mr. Chairman: I will now call Committee back to order, and we will proceed to Bill No. 4. I will proceed with the reading of the bill and I think we better take this section by section due to the fact that there are some seven sections to the Bill. "An Ordinance to Amend an Ordinance Respecting the Reciprocal Enforcement of Maintenance Orders Ordinance" and I believe the word Ordinance at the end of the title is to be deleted. Is this correct? Yes. The Commissioner of the Yukon Territory by and with the advice and consent of the Council of the said Territory, enacts as follows: (Reads Section 1 of Bill No. 4). BILL #4

Mr. Chamberlist: Question. I think Mr. Legal Adviser should explain whether reciprocating state is meant a state outside the Federal Canadian jurisdiction or whether it includes a province which is inside Canadian Federal jurisdiction. It would seem to me that when we are talking about a state in a broad sense, we are talking about another country or one of the United States. Now, the omission in this particular section and I don't know ... it might mean different, but it would read to me right now reciprocating state means that it is a state declared under Section 14 to be a reciprocating state. Now while I turn to Section 14, it says that Section 14 of the said Ordinance is repealed and the following substitute is thereof. Now if that Section is repealed... where are we?

Mr. Legal Adviser: Mr. Chamberlist, we're back at first base. If I may digress from the direct question for just a second, it so happens that in the Magistrate's Court an order can't be enforced from outside which had been made by a Supreme Court of one of the Canadian Provinces, and the Magistrate was of the opinion that his court could only enforce orders made by a court of its own level and could not enforce orders made by a Supreme Court. His reasoning was that within the Territory there was no statutory provision enabling him to carry out a Supreme Court Order, a Supreme Court meaning within the Territorial Court. Now that forced us into an examination of the precise provisions of the Reciprocal Enforcement of Maintenance Orders Ordinance, and I found out that in going through it that we introduced our original ordinance on around about 1958. We did it as a recommendation by the Conference of the Commission of Uniform Law, but for some reason which I don't know the Province of Alberta introduced a similar type of Ordinance but with certain changes from the recommended order. Since that time on checking the Alberta Statutory, we found that the Alberta people had amended their own Ordinance back into the form recommended by the Commissioners. So, I made the assumption that probably what was happening at the time was that Alberta and whoever was doing the drafting here on advice or legislation from Alberta were getting their own Ordinance at the same time the Commissioners were getting their Ordinance and it just so happened that the particular one we have and the Alberta one came in just before the recommendation came out. Now, Alberta made all the necessary changes to bring their Ordinance into line with the uniform Ordinance throughout Canada. We didn't and not only did we not do that but there were amendments made as a result of judicial decisions in the recommended act itself. These in turn were carried out by the Provinces but were overlooked in this jurisdiction, so we thought it would be a proper thing to make sure that even though they were minor changes, that in view of the fact that this dispute arose over the ... a particular section, that it was proper for us to introduce exact, precise legislation to make our law exactly the same as every other Province. So, some of these changes may appear in the particular context un-

BILL #4 necessary or meaningless but since a large body of people throughout Canada have seen fit to have a precise statute in precise terms, we should go along with them. Now, as far as state is concerned, it caused a certain amount of difficulty, not in the Yukon but in other jurisdictions where they run into the problem of deeming a state to be a jurisdiction. Now in Court, say the District Court of Alberta, a Court has the jurisdiction within five different judicial districts each of which is sometimes termed "the jurisdiction of the Court", that is, the jurisdiction of the judge who is speaking who cannot deal with a case from outside his particular jurisdiction. The American Court ran into trouble because they have got a different term for the word jurisdiction and they overlap in districts. You have got the Federal Courts in the first instance, you have got the State Courts the first instance and we don't create the enforcing Court in the opposite state they do. But by using the word jurisdiction difficulties are encountered in the receiving state at the other end. Therefore, Section 14 would change to change the word "jurisdiction" to "state" and to make the word "state" consistent throughout the Ordinance. The meaning of state was a jurisdiction in or outside Canada. **It is** now a state in or outside Canada and this embraces any state. Now by a further coincidence that happened, I was drafting a letter this morning to be sent to the Governor of New Jersey because we have received a request to introduce reciprocating legislation here in order to allow a resident here to be able to enforce a maintenance order against her husband who has deserted her, and who is now living in the Maryland district of New Jersey. This is only a draft letter to the Commission to make this request, because this is continually done from state to state. We have reciprocating legislation in force by Commissioner's Order with the state of Jersey, which is a state in the United Kingdom of Great Britain and Northern Ireland has its own independent legislation. They have a reciprocation with us but not with.. as present as yet, New Jersey in the United States of America.

Mr. Chamberlist: The interpretation section which interprets a reciprocating state means a state declared under Section #14 to be a reciprocating state. Now this is at the beginning. If Section #14 when we come to read that area, it starts off in No. 7 of this Ordinance --Section #14 of the said Ordinance is repealed. Now its repealed nor is the interpretation in this Ordinance the Section #14 of the old Ordinance or within the new Amendment. Now this is the question I am asking because you might have a position taken later on ...somebody will say "well, Section #14 has been repealed. The new Section #14 doesn't show exactly what a reciprocating state is, all it says in Section #14 - reciprocal positions will be made in a state in or outside of Canada. Now I would strongly suggest that the interpretation section clearly defines what is meant by a reciprocating state, that it means a state outside of Canada or a Province within Canada. Internationally, one recognizes and we had a position where France tried to deal with Quebec as a separate state, yet we the Federal Government say no, you cannot deal with Quebec as a separate state. I think there is a necessity to .... its Chapter 96 of the ... 1958 Consolidated Ordinances that the ... this Section is in ...somehow it would appear quite ... it would be mixed up to the ordinary layman. We're talking about a state, actually I think of a state as a foreign country another state as a foreign country nor if somebody was speaking in the state would say, what state are you from .. then you're from another state and I think we should clarify this by having Mr. Legal Adviser draw up an Amendment to make it quite clear that we're referring to a Province within Canada as well another country or another state in the United States. This is my feeling on it Mr. Chairman.

Mr. Legal Adviser: Mr. Chairman, I think that the suggestion of the Honorable member has merit, but we are dealing with something which has been tried and tested and appears to have worked well. This is one of the Ordinances or Acts throughout the Provinces which is efficient and worthwhile and everyone seems to be satisfied with it, although it has been amended once. But to lift that rock might allow more worms to creep out than one would reasonably wish to do. Now ... state, for **all practical** purposes has an everyday meaning, it is known what the meaning is and the Commissioner can declare any place to be a state provided it has a legal jurisdiction, a legal capacity to reciprocate the law. That is, where he satisfied the reciprocal provision to be made by a state in or outside Canada for the enforcement of Orders, he may declare it to be a reciprocating state. So, in the last resort if the Commissioner would make the decision as to whether it was a state or not a state **in the first place** and then whether it was a reciprocating state or **not in the second place**, and this would leave sufficient flexibility. I think it will be a .. a ... **somewhat** unwise to raise the question of the provision of what is a state and what is not a state, because we are not **primarily** dealing with foreign relations, we are dealing with reciprocal enforcement of law. BILL #4

Mr. Chamberlist: Mr. Chairman, necessity might be that we might have to deal with foreign relations here if .. things in this Territory go on the way they are. Another doubt I have in mind of this is that if we, and maybe Mr. Legal Adviser can clarify this, if Section #14 is repealed there are one set of Orders made under Section #14 dealing with the different areas where there are reciprocal states existing. Would that not in effect cancel out Orders specifically made under that Section until such time as other Orders are made?

Mr. Legal Adviser: No. There's provision in the **Interpretation** Ordinance. This problem has been foreseen, it often **arises** and there is a provision there which says pending making further Orders, all Orders in a repealed statute remain in force. Where there is **repealed** a substantial enactment, all the regulations made under the old one continue in force. We have at the moment a provision, for instance, a whole complete set of regulations in **force** which were made under a Health Act repealed at least six years ago, but the health regulations made under that Act have in fact remained in force.

Mr. Chairman: May I proceed? (Reads Section 2 of Bill No. 4).

Mr. Livesey: Question. An appropriate question at this time Mr. Chairman would be the state of confusion as a reciprocating state. However, I would like to point out that I don't believe there is such a word as "solely". Whoever put that in there has no soul whatsoever. I think a little check with the dictionary might help things better. Thank you Mr. Chairman.

Mr. Chairman: Are we clear on Section 2. (Reads Section 3 of Bill #4). I am wondering Mr. Legal Adviser if you could clarify sub (a) of Section 3.

Mr. Legal Adviser: Anything that I would add to that particular paragraph would only cloud the matter over with **great appall**. The conflict of Law rules are the rules **by** which a Court in one Province or Country can carry laws relating to events of persons from another. If two people get married in California, they cannot get a divorce in the Yukon unless they put themselves **within the**

BILL #4 Mr. Legal Adviser continues:

jurisdiction of the Court some way. By the conflict of Law rules which were applicable before the present Divorce Act, as all of the members here will remember, "A woman had to take a divorce action in the place of her domicile". Domicile is an international law concept and it means where a person is residing with the intention of continuing to reside there or where he intends to make his eventual home if he retires. So great injustices were done to women in the Yukon who married people here from Ontario and might have to actually sue in Ontario. Now, sometimes the Court in the place they resided would deem them to have jurisdiction for ... through a legal fiddle. The conflict of laws rules also apply in dealing with all forms of contact with people, where by telephone Mr. Dumas makes a purchase of land in the state of Washington, and he is dealing with a person who is on the telephone in New York who says he is an agent for a resident in Chicago. It is a very fine point where the contract was made or if the contract is broken by either party, in which state of the American Union or which Province of Canada the Court action would be taken. Now they are very, very complicated. To make them further complicated still, Canada this year was talking to an International Conference in the Hague to discuss the International conflict of rules as so far as to bring them up to date, and even a cursory explanation of the conflict of laws rules would run maybe to six, eight, ten fine print pages of a legal textbook. So what it really means is this that you have got to accept just the expression the conflict of laws rules of the Territory, and I could not and I don't think any lawyer in Canada could tell you what the conflict of laws rules are at the moment in the Territory because they are actually changing, because we will be following cases outside the Territory. So we just don't know what they are, they have got to be interpreted in each individual case by the Judge who signs the case.

Mr. Chamberlist: Mr. Chairman, I follow Mr. Legal Adviser's point but he hasn't seen the point that you have raised, Mr. Chairman. It reads, "under the conflict of laws rules". I would suggest that the "s" off the law is wrong there.

Mr. Legal Adviser: This may be. I looked up the original draft of the conflict, but I am not sure. It may have been written deliberately conflict of laws rules, it may have been because it takes two laws to conflict but it might be a typed error because they make that assumption. Contrary of laws does not necessarily mean contrary of law; it means a place where a particular law is inflicted on a particular person. It is not conflict in the sense altogether of contrasting or not running the same.

Mr. Chamberlist: I've read this expression before Mr. Chairman and it is a conflict of law rules. This is why it is.

Mr. Chairman: Possibly Mr. Clerk and Mr. Legal Adviser could get together and check it out and bring it to our attention later. Do you have anything further on Section 3.

Mr. Livesey: Well, before we go any further Mr. Chairman I would like to ask Mr. Legal Adviser if this is an important repeal and if it is an important Amendment and why it is coming in at this time. Is there any important urgency other than the fact we're trying to equalize or bring our Legislation up to date with other areas. I mean just what position does this type of Legislation hold at the moment as far as importance is concerned in the Territory. Now I wonder if he can answer that? Is it brought into being everyday it is required, every week, every month or had we need of it in the last ten years or just what position is it?

Mr. Legal Adviser: These sections are in everyday use and I would BILL #4 with respect Mr. Chairman draw the attention of the House to what this new section is providing. Section 3 (a) is in fact a special form of appeal to the person against who the Order has been made. Now in the next section, Section 4, there again is a regular appeal. Now these two rights of appeal are missing in our Order and I think it is of sufficient importance that if any one single person is either wronged or could be wronged, I think that that has importance and justifies bringing this into the House.

Mr. Chairman: May I proceed? (Reads Section 4 of Bill No. 4).

Mr. Chamberlist: Why is the Commissioner in this picture at all in the particular thing? Here is a Maintenance Order that the Court is issuing. This is a bit of ancient stuff where the Commissioner was the all powerful man, but he is not all so powerful now. I don't see the point of having the Commissioner even being in the type of piece of legislation as this.

Mr. Legal Adviser: The reason of Commissioner there is because in the model Ordinance in the Provinces, the word that appears there is Attorney-General.

Mr. Chamberlist: Are we suggesting that the Commissioner is now the Attorney-General of the Yukon Territory.

Mr. Legal Adviser: I'm not suggesting that is what should be substituted, but it's a bit awkward since the Attorney-General has the superintendence of the Criminal Law. This is not from the law but the Territory has superintendence of the Civil Law so I have no particular wish, I am not giving the Commissioner any power but I felt that the word Attorney-General should be omitted and the word Commissioner come in because the Attorney-General will not in effect exercise any superintendence over this legislation.

Mr. Chamberlist: Well, neither should the Commissioner exercise any jurisdiction over this at all. All we are really doing is we're confirming what is in Section 6 of the original Ordinance, and there is no reason for it to be there at all. As a matter of fact, I would have been much happier if this Amendment would have clearly said in place of the Commissioner, should be the Legal Advisor of the Territory acting as the Attorney-General but as it is now, you have the Commissioner taking part in the family domestic problems now. He would be given the power to settle domestic problems. What have we got here, a family Court or something. This seems to be absolutely superfluous and I don't think that on this particular item there I couldn't support that type of thing. We're trying to get the Commissioner out of various areas and now we we're going to keep maintaining him into an area of Court Maintenance Order. It's ridiculous.

Mr. Legal Adviser: The Commissioner made into effect that the documents sent to and fro reciprocating states in the Provinces, they are sent to the Attorney-General's office, that is the Attorney-General of the Province concerned. They are sent to and from reciprocating states through the Commissioner here to an Attorney-General's department outside, so the Commissioner is involved willy-nilly in the efficacy of this Legislation and if we were to substitute the word Attorney-General here, it would mean we would have to define Attorney-General because in our Legislation we have no such word appearing as Attorney-General. We would have to then define Attorney-General and Attorney-General of Canada and we would have to then hold back this Legislation to ask the Attorney-General would he act in this Legislation. He might or he might not, I just don't know what is involved but having no statutory officers

BILL #4 Mr. Legal Adviser continues:  
with this type of jurisdiction, the appropriate word to go in there in carrying out a parallel provision of a reciprocating Ordinance same as the rest of Canada, in my opinion for what its worth, the Commissioner has the par.

Mr. Chamberlist: I can't agree he only has the power because this Ordinance gives him the power and that's what he shouldn't be doing. It means that the Commissioner acts when the Court gives a copy of the Order of the proceeding to the Commissioner. Then the Commissioner acts. In the Provinces, the Court would send a copy to the Attorney-General. This Mr. Legal Adviser is agreed is a situation. Now all of a sudden we find ourselves in a position that we are recognizing in the civil aspects of Law that the Commissioner becomes a quasi Attorney-General for the purpose of this Ordinance. Now this is something we should not do. I would prefer to see an officer of the Territorial Government in his legal capacity appointed to receive those things. Now there is a beginning where we can say we are setting up our own legal department. We can say that right early and if we give the power to the Commissioner we're saying to him, okay we are accepting the situation as it is and we don't intend to change it. Here is an opportunity to change it and we should continually change little by little all these things where the powers of the Commissioner gets expanded and this is one of them. I would suggest that somehow or another this section be removed so that the Commissioner's powers under this particular Ordinance be removed completely.

Mr. Chairman: Any further questions.

Mr. Chamberlist: Well Mr. Chairman, would Mr. Legal Adviser take note of this and come back with a suggestion on what can be done with this.

Mr. Legal Adviser: Well Mr. Chairman, what the Honorable Member is really asking me to do is to come up with a change all be it a minor change that might amount to a minor change of the Constitution. I don't think its up to me, especially when it would appear to be self-serving on my part if I suddenly produce a change to take the Commissioner out and put the Legal Adviser in, I just couldn't do it. But I will certainly discuss the matter with the Administration.

Mr. Livesey: Mr. Chairman, isn't the Legal Adviser the Legal Adviser to the Council.

Mr. Legal Adviser: Yes, this is correct.

Mr. Chamberlist: I don't want to go on with this until I get something definite from the Legal Adviser Mr. Chairman, whether he will be taking another look at this or whether we as a Committee as a whole come up with suggestions so as to take away the power of the Commissioner and make this Constitutional change that we can do ourselves. Here is an area where we can act, here is an area where we can say to the Administration now we are starting from this one, for this particular purpose we are going to have the Legal Adviser to the Territorial Council receiving these orders from the Court. Now I would suggest that after we go through these areas we do not attempt to pass this out of Committee until we have some arrangement respecting this particular section.

Mr. Legal Adviser: Well Mr. Chairman, I will bring the point made to the attention of the Administration but from a practical point of view, when the Court sends notice to the Commissioner the Commissioner is the person with the Legal capacity to act. The Legal Adviser acts in somebody else's name and he hasn't got a statutory

Mr. Legal Adviser continues:

existence in that sense but I would find it personally embarrassing to bring forward a suggestion to the Council that would affect me personally. It is very hard to take a disinterested view of this, but I will certainly bring the wishes of the Honorable Members to the attention of the Administration.

Mr. Shaw: Mr. Chairman, one question in respect to this Section 6A, is this not where the Court is asking a person not a state,... would it be that the Court is asking the jurisdiction of the state, I would put that to the Legal Adviser.

Mr. Legal Adviser: Well Mr. Chairman, it is a question of the state, now the Commissioner is mentioned several times in this Ordinance, in some places he is acting as the person who makes the rules through the Court and so on under which these are made in that capacity. As an Executive Officer of the Government he is making the decision as to whether or not a reciprocating state is in fact a reciprocating state. In this particular portion he is acting or mentioned not as the rule making authority, he is mentioned as the official who represents the Territory in a Court. In a Province the Attorney-General does this, we have not got a Attorney-General, the Commissioner is the person who is sued and can sue and a suit would be commenced, as a rule, in the name of the Commission. In the Provinces they have the Crown, the Attorney-General of the Province acts really on behalf of the Queen on behalf of say the Province of Manitoba. The Federal Attorney-General acts on behalf of the ...of Canada or the Federal Government or a department of state of the Federal Government so he would be mentioned if it was possible, the particular function or power at this moment of our Constitutional development would appear to be a Commissioner.

Mr. Livesey: Mr. Chairman, I think there seems to be a conflict of ideas between our Legal Adviser and the present Minister of Justice. I believe when the present Minister of Justice last visited the Yukon Territory, he declared himself publicly to be the Attorney-General of the Yukon.

Mr. Legal Adviser: For criminal purposes, the Attorney-General of the Yukon is the Attorney-General of Canada by definition under the Criminal Code. The attributes of an Attorney-General through the Common Law apply in Canada to this day and all those attributes are transferable in the Federal sense into the hands of the Attorney-General of Canada and in a Provincial sense into the hands of the Attorney-General of the Province, but the Yukon and the Northwest Territories, particularly the Yukon, are grey areas left untouched where the Attorney-General of Canada is acting on behalf of the Crown of Canada, he is acting as the prosecutor by virtue of the Criminal Code for the Crown of Canada. In regard to Legislation for and against the Territory itself, we are not the Crown. There could be a point in time where the Territory was involved in a legal conflict with the Crown of Canada in which case the Commissioner would act on one side and the Attorney-General of Canada would act on the other on behalf of the Crown of Canada in the same way as you might have a conflict in a Court between the Attorney-General of Manitoba and the Attorney-General of Canada. Its just that this is a grey area of Constitutional Law as to who is at civil function for many purposes the Attorney-General of the Territory, I think it would be the Commissioner.

Mr. Chamberlist: Well Mr. Chairman, I wonder if Mr. Legal Adviser can say what would be improper if this Territorial Council appointed from amongst their own membership somebody to act as Attorney-General of the Yukon Territory.

BILL #4 Mr. Legal Adviser: It would be very wrong of me to suggest that the Council would act improperly or would even think to act improperly, but an appointment as such by this Council of anybody to do anything unless there is a statutory basis for it would be of no effect. There would have to be a statute saying the Council could appoint and then they appoint just the same way there has to be a statute giving the Commissioner general powers of appointing the Civil Service and the post must be created and money allocated to pay that post, then the Commissioner may make an appointment to fill that post, it wouldn't be enough no matter what the Council was doing to make an appointment, it would be like a puff of smoke.

Mr. Chamberlist: Well if this Council was able Mr. Chairman to, in Legislation via private members Bill to appoint from amongst themselves various and different Council members to head different departments, how then would the Administration feel about impropriety or otherwise?

Mr. Legal Adviser: The Legislation is already in existence and the Legislation allows the Commissioner to make appointments in the Public Service in the normal way. I take it you are thinking in terms of an Attorney-General. To appoint an Attorney-General would give him no powers unless you introduced Legislation saying what functions he has. Now this I suppose could be done but then the Attorney-General would have to act as .....in certain fields under the direction of the Commissioner so then you have a clash and I couldn't see such Legislation ill thought out as it might be or well thought out would have a ghost of a chance of getting past first base. You would need the prior agreement of the Administration to doing anything because the Administration, as an Administration, acts in certain fields under the direction of the Minister. You would be running into a type of clash which would be much the same as the type of clash which was involved between the officers of state in the American colonies prior to the Declaration of Independence.

Mr. Chamberlist: What I want to get from Mr. Legal Adviser Mr. Chairman is whether although there is a question as to whether there is a statutory act permitting this, I'm asking whether there is any impediment any legal impediment to the members of Council setting up from amongst themselves various quasi cabinet positions.

Mr. Legal Adviser: Its not the same as an legal impediment. You see the Council in its frame of reference can do anything in the list of powers which are in Section 16 of the Yukon Act. But wherever it would offend against superior Legislation it would be null and void so to say that no legal impediment is doing it is the right answer to the wrong question. This needs more than just a quick answer because there are lots of things the Council can do by passing a law they can do it, but that doesn't mean that it is done effectively.

Mr. Livesey: Well Mr. Chairman it would be de facto Legislation in as much as it existed would it not?

Mr. Legal Adviser: If it were assented to yes, but it is not conceivable. I cannot conceive of the Administration willingly assenting to Legislation which would have the foreseen result of a clash of that nature.

Mr. Chairman: Is there anything further on this section. (Reads Section 5 of Bill No. 4).

Mr. Chairman: Clear on Section 5. (Reads Section 6 of Bill No. 4).

Mr. Chamberlist: Mr. Chairman, my remarks in reference to the earlier section that we had under discussion is the same because the proposed new section 9 (d) will include the Commissioner as one of the provisions in this Ordinance. BILL #4

Mr. Chairman: Clear. (Reads Section 7 of Bill No. 4).

Mr. Livesey: Mr. Chairman, I don't believe that there is any state within the boundaries of Canada and neither do I see the word state properly defined. I see a definition of the words reciprocating state but I don't understand the word state on its own nor do I understand where it says where the Commissioner is satisfied that reciprocal provisions will be made by a state in or outside Canada. Now I don't understand what's meant by a state in Canada, does this mean in relation to any discussions or any provisions made in Canada by a state outside of Canada just what does it mean because I am not aware Mr. Chairman of any state within Canada at all from the Pacific to the Atlantic and from the southern border to the north. I know of no state in Canada.

Mr. Legal Adviser: Well Mr. Chairman, I can add little to what I have said before because I regard the word state pretty similar to the word jurisdiction except it may have a number of jurisdictions within it, but it will be the Commissioner who will decide what is a state and he will be guided by the fact, was it a unit which could create law within itself of application to this private or quasi private sector so to give an example in say the United Kingdom there would be Northern Ireland, Scotland, England, Jersey, Guernsey, the Isle of Man and possibly one more, there might be seven states within the United Kingdom where people in fact think there is only one, it has a wide meaning. We have already got them in force, as far as my recollection goes, the list is there of three or four parts of the United Kingdom as separate entities.

Mr. Chamberlist: Well Mr. Chairman, the regulations were first ..... there is a Commissioners Order 1966/125 which brought into being as a state Southern Rhodesia and in 1964/191 the state of Jersey and in 1969 the state of New York and then there is also a list of those areas which have been referred to as a reciprocal state. I understand what the Legal Adviser is saying but I agree with what the Honorable Member from Carmacks-Kluane has said that the interpretation is insufficient for the man in the street to understand. He looks at that particular section that refers to a state and people commonly refer to a state in Canada as one of the United States and I think that consideration should be given to make the language of Legislation clear so that the ordinary man on the street can understand it and I don't think that would take to much of an amendment to include that in not withstanding the fact that if the man in the street had a copy of these tabs he would find that the Province of Manitoba was recognized in 1951, New Zealand in 1951, Cook Island in 1951 and so on so that they have been recognized as a state but it is not clear to the Layman and we have a responsibility to make it clear for them.

Mr. Legal Adviser: I agree, we have a responsibility to make it clear except in the instant case where we are attempting to make a Law exactly in parallel with the ten provinces, this is what we are attempting to do and they have gone to the trouble of using the word state so possibly although the Yukon people might not understand what the word state means, it would appear to me that generally speaking people regard a state as a state and this includes a province and it would also include a Territory. Now I hesitate to tinker with a piece of legislation that has worked.

Mr. Chairman: At this point in time I will declare Committee in recess until two o'clock this afternoon.

November 17, 1969.

2:00 P.M.

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Mr. Chairman: I will now call Committee back to order. Have Bill #4 you anything further on Section 7? Councillor Dumas.

Mr. Dumas: Mr. Chairman, I suggest that we leave Bill No. 4 in Committee and have a look at it at a future date.

Mr. Livesey: I second the Motion.

Mr. Chairman: Is Committee agreed that we leave this Bill at this time and proceed with another Bill?

All: Agreed.

Mr. Chairman: Is there any direction you would wish to give to Mr. Legal Adviser in respect of this Bill? Are we waiting for additional information.

Mr. Dumas: Yes, we are.

Mr. Legal Adviser: Is that the main block....change of word "Commissioner" to "Legal Adviser".

Mrs. Gordon: In four, six and seven.

Mr. Chamberlist: The main block to the legislation, Mr. Chairman, I would suggest that the main block to all pieces of legislation placed before this Council, but in the meantime at least, I think Mr. Legal Adviser should recognize the points that have been raised and let him think about it for a while until he comes in with something that will be more satisfactory to the wishes of the Council.

Mr. Legal Adviser: It is extremely vague...

Mr. Chairman: We will proceed to Bill No. 5, namely "An Ordinance to Amend an Ordinance Respecting the Protection of Forests". (Reads Bill No.5). BILL #5 Councillor Dumas.

Mr. Dumas: Mr. Chairman; what is the use of putting the Bill in if the Commissioner is going to decide whether it is going to be shortened or extended or whatever. Maybe the Legal Adviser can tell us.

Mr. Chairman: Mr. Legal Adviser.

Mr. Legal Adviser: The real reason for this Bill is the improving climate in the Yukon. Apparently at the time this Bill was drafted, the summer commenced in May and we now have a summer which commences in April as far as the fire danger is concerned. The Commissioner can make an order extending or shortening it but when the Commissioner makes an order which is in conflict with an Ordinance, he prefers to see it take a statutory form when this is the proper method of doing it. This is the case where the Commissioner is attempting to give away some of his power.

One Member: To whom?

Mr. Legal Adviser: To the Council.

Mr. Dumas: Probably the way they give away some of the power to end this Subsection 10 of Section 10 at September, period. That would be really giving away some of the power- giving it away with one hand and taking it back on the other.

BILL # Mr. Chairman: Councillor Gordon.

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Mrs. Gordon: Well if this come about as a result of the improved weather conditions in the Yukon, I think that they didn't wait quite long enough because we had a fire season in the Yukon Territory in the month of October that was just as drastic and just as real as it probably was in the month of April. We could have had a fire the first two weeks in October that could have been just as, burned as much Territory as what had burned during the summer months.

Mr. Chairman: Councillor Chamberlist.

Mr. Chamberlist: Mr. Chairman, it would appear to me that this is a piece of superflous legislation placed before this Council to give us the impression that there is something for the Council to do, and the only reason. You have exactly the same words, except for April instead of May. The Commissioner has got the power to reduce it to May or to extend it to another date in its existing form; why alter it to another month. It is unnecessary; there is no point in going any further with this piece of legislation

Mr. Legal Adviser: Mr. Chairman, legislation is a growing thing. The reason for this amendment is because the Forestry Service asked the Administration to change the date of the fire season and this was done. At the same time it was done it was adverted to the fact that it is a permanent forest season they wanted; by the Statutes it is April, it's May and by the Commissioner's Order it's April, so in what you might call a normal housekeeping good drafting fashion, this section was put forward for amendment. There is no suggestion about ulterior motives in this. I am not sure at what point even the Commissioner would have become aware that this Bill was in draft.

Mr. Chamberlist: Mr. Chairman, if Mr. Legal Adviser can explain where this particular amendment can in any way alter the situation as far as the rest of the Ordinance is concerned, it is necessary to make the existing Ordinance speak.

Mr. Legal Adviser: There has been no other suggestion for a change for that particular Ordinance. The suggestion is that the permanent fire season should be changed and not have a Commissioner's Order to do it from year to year, so to speak. So this suggestion is put forward, it is a routine housekeeping amendment. There is no suggestion of an ulterior motive at all, that is just to make the Ordinance reflect the realities of Yukon life today.

Mr. Chairman: Is there anything further on this Bill?

Mr. Shaw: Well, Mr. Chairman, listening to the conversation; if this is a practical thing that it should be on May 1st, it should be on the 1st of April and each year it has to be changed by Commissioner's Order, it would appear to me that to accept it on this particular date put here, that that would be a sensible way of doing it; I can't see any objection to it and it would put things in their proper perspective. It would save the time that is involved in running up to the Commissioner and getting an order signed each year. If it is necessary to have fire prevention starting on the first day of April instead of the first day of May, as far as I am concerned it would appear to me it is a sensible piece of legislation. It tidies up the situation and you don't have to run around getting Orders. I would be quite in agreement with the Bill myself.

Mr. Chairman: What is your pleasure in relation to this Bill? BILL #

5

Mr. Livesey: Mr. Chairman, before we go any further, I wonder if we could ascertain what percentage of the Yukon Territory had any dry ground in April of this last year. I know certainly where I live there was snow in every direction all of April and even into May, still snow on the ground. It would seem to me that when we are talking about a fire season we are not necessarily talking about all of the Yukon, we are talking about varying conditions in various parts of the Territory so that I would think that the way the Ordinance stands is just as good as it could possibly be so that in April where there is snow covering everything, surely we need no fire season, and where we have bone dry ground, then it is within the power of the Commissioner to declare that area as being in an area that would need a permit to have a fire permit, to burn rubbish or whatever you are going to do. So, I don't see any problem. I would go along with those who suggest the Ordinance is just as good the way it is right now without the amendment.

Mr. Chairman: Councillor Chamberlist, will you please take the Chair.

Mr. Taylor: Well, there is this area in the Ordinance and that is that of burning permits. In April, and I mean this is just one aspect of it that I can see, in April, people who now burn slash in April are free of the encumbrance of a burning permit until the fire season starts where they require to take a burning permit for that. So, by extending this to April it would bring under the control of the Forest Section officer anyone who is burning slash or trees or this type of thing during that month and hold them responsible for that fire if it creates a hazard, you know, if it burns on all through the April and gets into the fire season. Well then he is still responsible for it. But I agree with Councillor Shaw that if we don't pass it it places an imposition on the Forest Service people to keep running to the Commissioner to get permits. I for one would rather see this thing spelt out in legislation, and even though the Commissioner has the right to alter or extend the period, why at least we have taken the initiative and said well, OK, we will extend your fire season to April if you so desire, so I support the Bill.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, that is precisely correct. The Council for many years complained about the fact that we had legislative powers, then we had regulatory powers by the Commissioner where he can change them, ...has the opportunity to spell it out. Apparently there are danger inherent in certain districts in April and I think we quite understand that in the Yukon Territory we have localities that are subject to certain regulations at certain times; in other words dry, or extreme or whatnot as far as humidity is concerned, that permits are not issued. In other words it is more or less localized and it does appear sensible to me if the Commissioner can make regulations and start this on the first of May and has to be gone through each year, this does seem somewhat redundant and wastes time and this does appear sensible and I will be quite prepared, Mr. Chairman, to move this out of committee without amendment.

Mr. Taylor: I second it.

Mr. Chairman: Anything further?

Mr. Taylor: I will resume the Chair.

BILL #5 Mr. Chairman: Is there a seconder?

Mr. McKinnon: Always willing, Mr. Chairman, to make the Commissioner's job a little bit easier, I will gladly second the motion.

Mr. Chairman: Is there any further discussion on this Bill? I have before me then a motion that has been moved by Councillor Shaw, seconded by Councillor McKinnon that Bill No. 5 be reported out of Committee without amendment. Are you prepared for the question? Are you agreed? Any contrary? I will declare the Motion carried. May I have an indication of hands as to those in favour of the Motion? (3) May I have an indication of those contrary to the Motion? (3). That being a tie vote I will vote in favour of the motion.

BILL # Mr. Chairman: Next Bill is Bill No. 6, "An Ordinance to  
6 Amend the Insurance Ordinance".

Mr. Chamberlist: Bill No. 6 has not been introduced, Mr. Chairman. Did you look at your records?

BILL # Mr. Chairman: Correct, the next will be Bill No. 7. "The  
7 Child Welfare Ordinance".

Mr. McKinnon: Mr. Chairman, I wonder if we should request the presence of Mr. Murphy for discussion regarding this Bill?

Mr. Chairman: Mr. Clerk, would you see if it is possible to get Mr. Murphy? I will declare a brief recess.

RECESS

Mr. Chairman: At this time we will call Committee back to order and we have with us our Director of Welfare, Mr. Murphy to assist us in the Bill and I will proceed with the reading of the Bill and we will deal with it section by section. (Reads Bill No. 7, 1, 2(a),(b)).

Mr. Dumas: Question, Mr. Chairman, I wonder if Mr. Murphy, or possibly Mr. Legal Adviser, going back to subsection (a), could explain just why, or on what traditional grounds, born out of wedlock, means born to a mother who at the time of conception of the child was unwed. It seems to me if a mother were married at the time the child was born, then in fact the child wouldn't be born out of wedlock. It may be a stigma that is not necessary.

Mr. Legal Adviser: Well, this is the equation of a definition, a classification, and to the presumption at law that where a child is born to a woman who is married, that child is legitimate, regardless of whether or not she is at that time living with her husband. This is the equation of an artificial classification.....which leads to certain obtuseness of language. Now, 'unmarried mothers' are also defined later on in another way. So, what we are attempting to do here is to create the practical situation where a child is conceived at a point of time when the woman is living apart from her husband, then from a practical point of view that is a child of another father. If we allow these normal presumptions to fall back into play, if she resumes cohabitation with her husband at any time after the birth of the child, because then it is presumed that the misconduct will have been condoned. It is a very carefully thought out definition which is being widely adopted.

Mr. Chairman: Councillor Livesey.

Mr. Livesey: Mr. Chairman, something that baffles me is BILL #7 if a woman is married and she is living separately, apart from her husband; does that make her not married just because she is living separate from her husband. I fail to see it. Once a person has given their consent to a marriage, I would say that that person is married irrespective of whether she lives with her husband or does not live with her husband for the simple reason you can't disallow or null anything until it has been annulled and as long as the fact that her marriage to her husband, and irrespective of the fact that she is not living with him has not been annulled, it would be my opinion that she is still married irrespective. I don't understand the wording of this Ordinance to the effect that she is not now married apparently just because she is not living with her husband. If this is so, all the Ordinance is saying is all you have to do to be unmarried is to leave your husband. I don't think this is true; in fact I know darn well it isn't and I would certainly like to hear the Legal Adviser tell me that it is. Thank you Mr. Chairman.

Mr. Legal Adviser: To give an analysis of this section or paragraph would take the rest of the day. We are not attempting to deal in this particular definition with the status of the woman. We are attempting to deal with the status of the child. Now, there are two cases of illegitimate children, so far as this Ordinance and this part of the Ordinance is concerned. The child who was born to a woman who clearly is unmarried and I think there would be no discussions that that child is born out of wedlock. The second classification is where you are dealing with a woman who is widowed or divorced. If she is widowed or divorced at least three months before the date of conception, not of birth, before the date of conception, then the child is deemed to have been born out of wedlock and I think clearly this will be generally agreed. You then come into the grey area, so beloved of draftsmen. You are dealing with an attempt to classify as born out of wedlock the child of a woman who in fact is married. The woman herself is no less married. She is still a married woman and marries the same husband but if she moves away from her husband a year before the birth of her child, that is, three months before date of conception, then clearly there is a presumption in favour of some other person being the father. So, for the purpose of welfare we are dealing with this unfortunate child, we need the power to move in to deal with that child and ignore what in fact is the legal father for all other purposes except this Ordinance. She is a married woman, legally married, he is legally the father of the child. But for welfare purposes we are deeming that child to be born out of wedlock and therefore put in the same classification as if she was unmarried. Now, if the woman who leaves her husband a year before the birth.

Mr. Livesey: Mr. Chairman, what the Legal Adviser is saying, appears to be saying is that it is negative and positive, both at the same time. I don't understand how this could possibly be. A person is either in law married or they are not married. I do not understand how we can say in this legislation that because of the legislation we can twist the evidence to mean something which we know perfectly well, legally, it is not, so I don't understand how we can be expected to agree to something which is impossible. As long as a woman is married, whether she is married five months prior to the date of conception, three months, two months, are at that date to me makes no difference

BILL #7

Mr. Livesey continues....

I don't understand how you could create conflicting legislation that were both pieces of legislation taken to court one would be contradicting the other. Now it either is or it isn't, it is not grey, it is either black or it is white. We should establish that fact before we go on with this Ordinance.

Mr. Chairman: Councillor Chamberlist.

Mr. Chamberlist: I think we should keep away from the color of the children.

Mr. Livesey: It was legislation I was referring to, not the color of the child.

Mr. Chamberlist: It surprises me that Administration puts forward a piece of legislation like this, it is actually saying to us that we must legislate against a child in such a way that **might** do that child considerable harm in later years. Now, when we talk about the conception of the child, we are saying that at the time that the child was conceived, it doesn't come within the category of the period of time, it means the child becomes illegitimate. Now, I can't see really, dealing firstly with sub-paragraph (a)(i) that if a child was conceived the time the mother was unmarried but that six months after, for some reason, the mother is able to marry, that child is still in the mother's womb should not be classed as a child born out of wedlock. Now, whatever way you look at it, this is what the Ordinance is saying. This clause reads to me quite clearly that in this Ordinance, born out of wedlock, now means born to a mother who, at the time of the conception of the child, was unmarried-even though that child is born, and it goes on to say, or, and it gives widowed or divorced, at least prior, at least three months prior to that date, and the same thing is applicable. The widow, or the divorcee may marry after the time of conception has taken place but the child is still referred to as a child born out of wedlock although actually the conception may have taken place out of wedlock but the birth, the actual birth took place after the mother was married. Now, this is how I look at it. Now it goes on in sub-section (a)(iii) a married woman, who for a period of at least three months immediately prior to that date was living separate and apart from her husband, the possibility always has been where parents split up, they get together and they have a memorable occasion and then they split up again, so the child then is still born out of wedlock although they are still husband and wife. This, again is another way where this particular section is open to criticism. And then it goes on, and who has continued to be unmarried or to live apart from her husband up to the date of the birth of the child. So, if a person is living apart from her husband, and this doesn't **clearly** say that it is only when the conception is between a spouse and some other person, because it doesn't say that in that legislation; it just refers to husbands and women. I think that this particular section has to be clarified in such a way that it only applies to those people who have conceived a child when, without the lawful wife or husband being an active party in the conception, and this is where I think it does harm to the unborn child. Thank you Mr. Chairman.

Mr. Legal Adviser: Mr. Chairman, with respect, this applies, again I have to repeat this partly, to three classes of women, to the children of three classes of women, that is,

Mr. Legal Adviser continues....

where an unmarried woman conceives a child and continues to be unmarried until after the birth of the child, that child is meeting the requirement of paragraph (i) of (a). In the widowed or divorced case, she has to be widowed or divorced three months before conception and remains widowed or divorced until after the birth of the child. In the case of the married woman, she must have separated from her husband for three months, then after conception takes place she must continue to be in that separate and apart state until after the birth of the child. So in each of these cases we are dealing with a person who is not living with a husband for a period of one year. Now, there is a lot of law arguing in various cases as to how long is the period of gestation of a child and in some cases, in default of proof otherwise, courts have held that gestation period of twelve months is not unreasonable and children have been deemed to be illegitimate although the conception took place twelve months before. These would arise in cases where a husband is absent on Army service or Naval Service or travelling for holiday ...and spent a year down there. These cases have arisen but this Section is trying to create a class of child born out of wedlock to remove it from a period of doubt so that each child is a year apart from its father.

Mr. Dumas: Yes, Mr. Chairman, I think that clarifies the thing because it does say that the person must be unmarried at the time that the baby is not only conceived, but born and apart from the point that the Honourable Member from Carmacks-Kluane brought up, which is probably a valid point, the rest of it now has been clarified as far as I am concerned, Mr. Chairman.

Mr. Chairman; Councillor Shaw.

Mr. Shaw: Mr. Chairman, I would like to ask a question of Mr. Legal Adviser. I am thinking about that sub-subsection (i) of subsection (a). I should say subsection (a), born out of wedlock. Now, this, we are talking about the conception of the child. Now, if this person marries and the child is born one month after she is married and according to this, that child is illegitimate. Could you explain how come, it appears to me that that is the way it is and of course in the event of inheritance or something like that, we have a law that states that child is not the child of the marriage, it's an illegitimate child and therefore is not entitled to the estate or something to that effect so that is the part, 'unmarried', born out of wedlock and unmarried. Could the Legal Adviser explain that, Mr. Chairman?

Mr. Legal Adviser: My second assistant will explain that.

Mr. Dumas: The last part of the section says "the woman must continue to be unmarried or to live apart from her husband up to the date of the birth of her child. Therefore she has not gotten together with her husband or anybody else or been married or remarried or rejoined or anything. The child was conceived out of wedlock and was born out of wedlock, both.

Mr. Legal Adviser: There are two conditions for born out of wedlock; one is conception out of wedlock and the second is birth out of wedlock. And if both conditions are fulfilled the section operates. The person who conceived the child must be the same person who bears the child and must continue to be unmarried or in the case of a separate woman, must continue to live apart from her husband up to the date of the birth of the child, so it is conception out of wedlock and birth out of wedlock that is being covered. Under the

Mr. Legal Adviser continues...  
normal rules of status they only deal with birth out of wedlock. If you are married to a woman, the law operates that if you marry a woman the day before, the minute before the birth of the child, that child is by law to be a legitimate child.

Mr. Chamberlist: A legitimate, it is not illegitimate.

Mr. Legal Adviser: Legitimate, and this does not contravene the normal law.

Mr. Shaw: Thank you Mr. Chairman, Legal Adviser and Assistant Legal Adviser. I quite understand that second section coming up to be clarified.

Mr. Livesey: Mr. Chairman, that still doesn't solve the fact; that a married woman living apart is still a married woman and I haven't heard Mr. Legal Adviser tell me how he can possibly conceive of her being anything else, no. If anybody can leave home they are unmarried, now this is ridiculous. That part of it is completely wrong, it can't be right. Another part I would like to ask the Legal Adviser about is, when he says 'conception' does he mean artificial insemination as well? Of when he is talking about marriage, does this include the Scotch custom of joining hands on a railroad train and saying 'we are married'. Now, that is the whole thing, that is an absolute example of the type of legislation that is created by administrators who are looking for something to make their office work; this is why, if it doesn't work we won't have it in the law. That is about the size of it. In other words this is, just give us the tools and we will run the office. That is about it.

Mr. Chamberlist: Mr. Chairman, I don't agree with the .....way that the Honourable Member from Carmacks-Kluane has put it, but I do agree that that last area does not clarify the situation as far as the birth of the child to a woman who conceived at a given date and was separated from her husband continually after that date, and never lived with her husband after the day of conception. Is that child a child born out of wedlock? That is the point that I want to make.

Mr. Legal Adviser: It says conceived at a moment of time when she has left her husband and if she continues not to come together with her husband then it is out of wedlock.

Mr. Chamberlist: That is right, but shouldn't be because..

Mr. Legal Adviser: But it can't be her husband's child if it is conceived three months after she left him and she never meets him again. Common sense dictates that the child is a child of someone else, unless, as you say you use artificial insemination for the purpose and the husband is the doner.

Mr. Chamberlist: The point is that because a woman conceives through her husband it doesn't necessarily mean that she was living with him. This might have been a get together idea for one particular evening to see if they were both compatible again. Now, also, keep in mind that it quite often happens to people of a certain type of religion where divorce is not permitted so that therefore they are not living together. Now they had intercourse, they conceived a child, they are not living together any longer; the child is born but the child is termed 'born out of wedlock' because they were living separate and apart. So this is how it appears to me to be.

Mr. Legal Adviser: She has got to be apart from her husband for three months before the date of conception and if she meets him for this mythical five minutes somewhere that the Honourable Member states, she has not been living apart from him.

Mr. Chamberlist: .....starts again, is that what you mean?

Mr. Chairman: Councillor Dumas.

Mr. Dumas: I think the point has been made, Mr. Chairman,

Mr. Chairman: I wonder if I might proceed at this time.  
(reads Subsection (c). Councillor Gordon.

Mrs. Gordon: I note in some of the sections further on where the definition of 'child' doesn't quite fit this interpretation of the word 'child'. I wonder if there is any particular reason for that at that time or whether this particular definition should be the one that is used.

Mr. Legal Adviser: Mr. Chairman, when you are dealing with Part (iii), children born out of wedlock, and section 41, you will see there is a definition there in part (a), in this part. Now this is only the particular part, not the rest of the Ordinance; "child" means a child of an unmarried woman and..... Now the reason for that is you are dealing with constitution, you are dealing with babies, you are not dealing with grownup children. You are dealing with the order which can be made by a Justice of Maintenance and the various procedures for dealing with children born out of wedlock. But 'child' in the ordinary meaning of the Ordinance means a person under the age of eighteen or up to twenty-one under certain circumstances. Now this is a change from the present position; the present position is sixteen and the suggestion is that it be moved to eighteen. It is existing legislation pretty well as far as that is concerned.

Mr. Chairman: Next is 'day nursery (reads ((d),(e),(f),(g), (h),(i),(j)).

Mr. Chamberlist: Question, under (i) 'justice' means a judge of a juvenile court and includes a police magistrate or any justice of the peace.' Mr. Legal Adviser, does this include the Judge of the Territorial Court?

Mr. Legal Adviser: Except he was appointed as a Judge of the Juvenile Court.

Mr. Chamberlist: Well, should it not include the Judge of the Territorial Court?

Mr. Legal Adviser: No, we have had to make a distinction Mr. Chairman, between Judge and Justice in the Ordinance. There are certain parts of the Ordinance that apply only to the Territorial Court, in particular appeals from the Justice to the Judge and in the sections dealing with adoption. They go to the Territorial Court so we use the expression "judge" as meaning and 'justice' as meaning a Magistrate or Justice of the Peace, because the maintenance, the various orders that you take in the normal course of events come at that level.

Mr. Chamberlist: Mr. Chairman, if a Judge of the Territorial Court, through some piece of litigation, let us say through a divorce proceedings, ordered a child to, ordered the Director to take a child, wouldn't he be giving an order for this to be done, wouldn't it not conflict with only those

BILL #7 : Judges that can take care of this type of order.

Mr. Legal Adviser: No, this is merely a definition of the word 'justice' when it appears. Apart from this Ordinance altogether, the Judge of the Territorial Court has the inherent jurisdiction vesting in a High Court Judge of the Court, an English Court in 1870. So he has vast jurisdiction which is untapped and not controlled by Statute. This is truly the definition as we go along to save using the word wherever it occurs - police magistrate and so on. We just picked a short word. It is not to define power, just to have a short expression.

Mr. Chamberlist: Don't you think that in the interpretation in 'justice' should also include the interpretation of 'justice' instead of just saying 'means a judge of a juvenile court and includes a police magistrate or any justice of the peace'; should it not read 'justice' means Territorial Court Judge and a Judge of a Juvenile Court' and why not put it in the interpretation.

Mr. Legal Adviser: There is no particular reason why you can't do it that way but you then have to keep on mentioning the fact that when a justice can do something a judge can't do it; when a judge can do it a justice can't do it. Seems like a ..... We are providing a whole scheme of appeals; everything a justice does is .....by the Court, or .....by the Judge, depending on the phrase you use. So we then have to tie ourselves a knot in the language throughout the Ordinance in making this distinction clear. Whenever we want to include the judge in a power we say so, specifically but it is more convenient to use the word justice as meaning the people you are talking about and not have to exclude the judge fifty times. It is easier to include him two or three times rather than exclude him forty-seven times. It is merely a matter of drafting convenience.

Mr. Chamberlist: But the point I am making Mr. Chairman, in the interpretation section 'justice' you have included the Judge of the Territorial Court; you would only need to use the word 'justice' in any event, because it would mean the same thing. I am suggesting that the interpretation section should include a Judge of the Territorial Court and then everything else remains the same because you just use the word 'justice' which includes a Judge of the Territorial Court.

Mr. Legal Adviser: When you come to the point then in this ....section when an application is made to the justice, an application made.....and so forth. You are using 'justice' in what we would take as the correct sense; that is you are using it, a person in the Magistrate's Court office, a person who has that appointment. He is a Justice. Now.....from his order. Everything he does is an appeal to a Judge. It would be improper to include judge at this point in 'justice' because you would throw your whole Ordinance out of gear. There is no objection at all to saying at some point, if it was necessary as we go through it, to say "a judge of the Territorial Court shall have all the original jurisdiction which vests in the Territorial ..... If you do that then you can .....

Mr. Chamberlist: No, take it to your own Judge.

Mr. Chairman: Next is sub-section (k) (Reads (k). Are you clear on that section?

All: Clear.

Mr. Chairman: Alright, the next is Part I, Director of Child Welfare. (Reads 3(1)).

Mr. Livesey: Question, 'during pleasure', aren't they permanent once appointed?

Mr. Legal Adviser: We haven't got any officer of the Civil Service as permanent in that sence. He holds the office; he may be entitled to certain payments and to pay and everything else but it is essential that if the Commissioner wishes to strike off an officer, he can strike him off then and there from his statutory functions. It is purely a pleasure appointment, it must be this way.

Mr. Livesey: Mr. Chairman, would this be subject to argument by the Public Service, the Employees' Association?

Mr. Legal Adviser: You see, the boss is entitled to his job, or whatever it has to be. This is an office in the same way, I think, the Territorial Secretary has somewhere between fifteen and sixteen titles, all of which are held during pleasure. I don't think that the Civil Service Association would have any particular violent objection if Mr. Taylor's appointment as Registrar of Corporate Societies, which is a new Office which is suggested in a Bill here that he should be given; if his appointment is terminated he still remains Mr. Taylor, Territorial Secretary and whatever it happens to be, he still has 24 appointments.

Mr. Chairman: At this time we will declare a short recess.

RECESS.

Mr. Chairman: At this time we will call Committee back to order. BILL #7

Mrs. Gordon:

Mr. Murphy: .....or officers to be called assistant directors of child welfare who shall hold office during pleasure.

Mrs. Gordon: I would ask Mr. Murphy, are there any such officers in existence now and how many?

Mr. Murphy: No there isn't. This is to provide...we do have an assistant position in our department, an assistant director and this is to make provision for the continuation of the director's powers and statutory responsibilities in the absence of the director. There are many times medical consent forms have to be signed for wards and the director may be absent from Whitehorse or legal documents that may have to be signed in respect of a particular ward in our care and this provision will enable the assistant director to sign all these documents as required.

Mrs. Gordon: In other words at this moment, Mr. Chairman, I would ask Mr. Murphy if he is the sole person who signs these various documents at this time.

Mr. Murphy: Yes that is correct.

Mr. Chairman: (Reads section 3 (3), 4, 5 (1), 5(2), 5(3).)  
Just one question to the Legal Adviser, when you say "the parents of the child or the person in whose charge he is", does this include her as well?

Mr. Legal Adviser: It is a phrase which occurs regularly throughout the ordinance, "the person whose charge he is", this is to cover the case of an uncle or aunt or a friend who may take over the looking after of a child and this expression continues to refer to a person in whose charge he is. He includes she.

Mr. Chairman: (reads 6. (a) to (q).)

Mr. Livesey: I have a question before you turn the page Mr. Chairman. Upon whom does the or is the power invested to declare whether the child is deprived of affection by the person in whose charge he is to a degree that is sufficient to hinder his emotional and mental development. It seems to me that all these various clauses down here are putting the children of normal parents almost in jeopardy. Is this going to empower any person of the Territorial Government to investigate to such an extent that is covered by all these various reasons into all children throughout the entire Territory and set themselves up as judges as to family welfare and conduct and emotional content. Just about how far can you go in the privacy of the home before someone jumps up and says "I don't think the Government should have this type of power"? I wonder if Mr. Legal Adviser could give me some information.

Mr. Legal Adviser: There is no power here whatsoever given to the officials of the Territory Government. The power is about to be given in a further section to the Court and the procedure is that an application is made to the Court for an Order and the first order that they'll get is an order that the child is a child in need of protection. Then evidence must be produced to the Court of the age of the child, his general circumstances, his parentage,

BILL #7 Mr. Legal Adviser cont.:

and his emotional or health state at that time. It's for the Court to find, as a matter of fact, one way or the other whether the child is in need of protection because of one of the paragraphs in this and this is to give guidance to the Court and this will be proved by evidence and the parents at the hearing, if the parent wishes to contest to the order and in such a case as the Honorable Member suggests, I would think it would ...expert evidence would be produced as to the emotional state of the child, how it occurred and how it could be cured.

Mr. Chairman: I just have one question in (q). We seem to have set out limited areas here. We say "his parents or only parent is undergoing imprisonment or is a patient in a hospital for the mentally ill, a tuberculosis sanatorium, or rehabilitation centre for physical restoration of the disabled." What about the other areas that people could be in? Why is this not covered?

Mr. Legal Adviser: I don't know why it's not covered. These are the ones which came to mind and presumably the benefit of other drafting. The attempt in (a) to (q) here is an attempt to be exhaustive in so far as possible and in the normal case it's paragraph (c) that would be used to bring the child to court, but the whole of (a) to (q) gives some guidance and philosophy to the Court as to what should guide a justice in finding a child is in need of protection, but most of those in practice are seldom used, but then the Court knows what the philosophy is and I consider if I might express an opinion that it is a good thing that the statute should show clearly to a justice along what line he should travel in either granting an order or refusing it.

Mr. Chairman: (reads 7.(1)(a) and 7.(1)(b).)

Mr. Chamberlist: Mr. Chairman, the words, "without warrant" are objectionable to me. I don't think anyone has a right to forcibly enter somebody else's home. If we give that right we are going on a long way towards giving police powers which becomes state powers. I think we should object to any type of thing like this, certainly with a warrant and is reasonably or probable grounds, this could be fine, but for police to go in and they can go in on the pretext that they feel there is a child there who needs to be seized and really go in there to look for some other thing. This used to happen here years ago when a policeman was a fire inspector up here. He used to go in to examine the chimney and look for a few bottles of whiskey that were lying about in the place just because there might be someone bootlegging on the side and making money, but the way they can get in was to examine the chimney stack to see if they were operating properly. I would therefore move that the words "without warrant" be omitted from this section.

Mr. Legal Adviser: Mr. Chairman, I appreciate that the Honorable Member has a good point. Would it meet the case if I redrafted section 7, to make it read something like this, that where a director, a peace officer or any person authorized in writing by the Director believes on reasonable grounds or has reason to believe and believes, that kind of thing, to really believe that something is happening rather than go in without a warrant. It may just very well be in a dangerous situation that it may be necessary to apprehend the child. We had a child about three months ago where I appeared for the Director, where before it came

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to the Yukon, its skull was broken, its thigh was broken and it had other .... a series of I think 23 different wounds and it was taken away from its parents, after I think a year, the child was given back to the parents who then came to the Yukon and it came to our notice, this child was in the hospital and the doctors there noticed it had been very badly abused. The mother's explanation was that the child was..... There were something like seven bruises on the child's back and a bad cut and bruise on its head and the medical evidence was that each of these bruises would have taken a strong person to deliver a forcible kick or else use a heavy instrument to cause these injuries. In such situations, you may have to act quickly and we moved immediately in Court under the power given to us but first of all we had to seize the person of the child in order not to allow it to be retaken back by the same parents. The child went in with some small injury, I think it was a cut to the head, Mr. Murphy will correct me if I'm wrong, I think it was a cut to the head and they held it there and then on examination after the parents had left, they found all these very bad bruises, then the history of the previous involvement came out and eventually after a Court hearing the parents didn't object to the child being handed over to the care of the superintendent. So I would request that the power be given to apprehend the child, but I can easily rewrite this into the normal form of search or power to apprehend that a Councillor would have which runs, where a person has reasonable grounds to believe and does believe that a child is in need of protection, then he may without warrant, because you will notice there is the other part of the section which says, "where a child is apprehended, he shall be brought before a justice", so once he is apprehended there is no going back. He must be brought before a justice and then he comes into contact with the Court, but there may be cases when the life of the child may depend on swift action by some person, a police officer somewhere where a child is in danger. A police officer would be very reluctant to intervene unless he has the power to do it and he may not be able to get a warrant.

Mr. Shaw: I had experience in such a matter as this. I certainly don't agree with this just barging in on any place without a warrant. However, I had a very good illustration of this myself while in Dawson last year. This person came to me and said, "Can the police just walk into my place without a warrant and take my daughter down to the lockup?" I said "well I don't think so but I will investigate it", to find out if this was something that was done contrary to the law, so I went down to the estabulary and I asked if I could have an explanation for this apparant barging into a house without a warrant. I was told that this was a result of a call from a certain party stating that this woman was drunk and she was beating up her child, so the police went up there and just walked into the house. It was a big drunken party going on, the woman was mistreating the child and they took here to court accordingly. Had the police had to go and locate the justice of the peace or a magistrate or a judge or gosh knows who and see half a dozen lawyers, that child could have been hurt very badly. I would appreciate, personally, if the Legal Adviser could put an amendment to this as he has mentioned and retain that because you don't have time to go running around after documents when a child is getting beaten up and in most cases by parents who are drunk, that don't know what they are doing and I certainly want to see that those children are protected by some form or other and at the same time let us not give an opensesame just to walk

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in whenever anybody wants to walk in.

Mr. Dumas: The subject under discussion has been referred to as battered child's syndroments of great concern currently to medical, law enforcement and social welfare institutions. It's becoming more and more of a problem every day as many things are in our society and I believe that first and fore most we must consider the children in this case. Normally, I would not go along with any Bill that suggested that action might be taken without warrant, but this particular case, I think that the suggestion made by the Legal Adviser to add a few words in there, putting the onness on the Director or peace officer to actually feel that some action is necessary immediately, is a good suggestion and I would like to see it carried out.

Mr. Chamberlist: Do I understand from Mr. Legal Adviser, that the .....those words he has referred to would be used in both sections 7. (1)(a) and also in 7. (1)(b). In both places?

Mr. Legal Adviser: Yes, Mr. Chairman. I would redraft the section in such a way that where the first was about to take immediate action, sets out to do it, but he must believe the action was necessary reasonably, that he must have reasonable grounds to believe and does believe that, then if he is challenged in Court he would be challenged on what were his grounds. He must himself believe it and that makes him subject to cross-examination.

Mr. Shaw: If I might just add this. This party that made the complaint, I told them why it had happened and they seemed to be quite satisfied with the reason that they broke in.

Mr. Chairman: Would the members be ...or entertaining the idea of withdrawing their motion at this time pending the redraft of this section? Does the Committee agree to withdrawal. We have it then that there will be a redraft of section 7.....

Mr. Chamberlist: With respect we haven't read section 7 (2).

Mr. Chairman: (reads section 7.(2). )

Mr. Chamberlist: It seems to me an almost irresponsible manner in which to bring legislation forward that even suggest to this Territorial Council that a child may be held in custody for ten days before the child is brought before a magistrate. We wouldn't think of holding, incarcerated in the police barracks an adult for ten days, why should we hold a child for ten days? Why shouldn't this child be brought forward punctually before a magistrate to be dealt with, before a justice to be dealt with? I wonder if Mr. Legal Adviser could explain why this extended time is necessary to bring a child before a justice?

Mr. Legal Adviser: I can explain why it is necessary, I was just checking back in the Ordinance, I can't find the time limit in the Ordinance at the moment, but I think it would be unfair to suggest that a child is being held in custody in the accepted sense of the term. Such a child that is brought in is put in a foster home, in the hospital or a nursing home depending on where you can get them. Sometimes they are not in a position to be brought to Court. The general idea is that the child must be brought before the justice, of course you can bring the justice to the child, that is essential that the child must be brought before the justice must

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be physically present in Court. It is an ordeal for a child. Some of these children are odd ages, 5, 6 or 7, when they are just barely able to apprehend what is happening, but not fully able to apprehend what's happening. You may need ten days to organize your medical evidence and get your case, make inquiries and from the point it goes to Court it should be handed with dispatch and not be a series of remands. Ten days is what we felt after a lot of consideration. We had thought of say four days, a week and we thought we would need ten days to be sure that the law was obeyed on every occasion and that we didn't have to have adjournments. This is why ten days. It is not that the child is being held in custody in prison.

Mr. Chamberlist: I notice at the end of that subsection 2, it says, "and make an application for an order under section 11.", well the beginning of section 11 reads, "If the justice determines that a child is in need of protection, he shall make an order," but supposing he determines after ten days that the child is not in need of an order for protection, that child has been kept in custody for ten days. This is what this reads and I can only go on the basis and only remark on the basis on what it reads and it is quite clear to me, that a person who apprehends a child pursuant to subsection (1), that's of section 7, shall bring the child before a justice within ten days and make application for an order under section 11 and section 11, if the justice determines the child is in need of protection, he shall make an order setting out his findings in a statement. He ...If he doesn't, if he finds that the child doesn't need protection, he doesn't have to write out an order because there are no facts to write out, so in the meantime the child has been held in custody for ten days, and this is why I say that ten days is too long. The child should be brought before a justice for the justice to determine within a couple of days whether there is need for a further inquiry into it. There might be extenuating circumstances surrounding a particular situation. This is why I think we have to take another look at that.

Mr. Legal Adviser: The existing section here, section 14 of the Protection of Children Ordinance, says, "the Superintendent, any person authorized in writing by him, any constable or officer of the R.C.M.P. or any probation officer may apprehend without warrant and within ten days bring before a justice any child who appears to need protection" so there is no change in the existing structure, but this particular section was discussed, rediscussed, and discussed in formulating the time of ten days. It was felt that we would have liked to shorten it because as the Honorable Councillors know personal liberty is something that is dear even to my heart if not to anybody else's and we would like to shorten it, but ten days is the time you would need for possible treatment for the child or something.

Mr. Chamberlist: I have put it Mr. Chairman, that if in the case where the justice finds that the child is not in need of protection that child has had his liberty taken away for ten days and you have done nothing to protect that child from having his liberty taken away. I'm not concerned by the fact that because one of the ordinances which is being repealed so that this can take its place is worded in similar ways. The fact that it is worded in similar ways is that fact that perhaps somebody hadn't noted this particular area before, but the reason why we are getting a new Ordinance up is to consolidate these three other ordinances and

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make a better ordinance and the only way we can make for a better ordinance is by bringing these things forward now. Now for Mr. Legal Adviser, Mr. Chairman, to come forward and say that it must be alright because it has been there before, do we have to accept everything that has been there before? To me there is an error here where we are saying to a child, "we have got to keep you in custody for ten days, even if we don't know if you need any protection, we're going to keep you in custody for ten days". Now we are talking about a child, of the apparent age of 18, with a possibility that in some cases is 21, so under this section, you can go to an adult of 21 practically and say, "we are going to hold you in custody" and then you go lock him up. You are taking a man or a woman of the age of 21 and say you are going to hold him in custody. We're not talking about a child of 4 or 5, because it doesn't specify that and I would be included that way, but we are talking about a child and we would have to go back to the interpretation of this Ordinance and see what a child means. It says quite clearly in the interpretation section, a child means an unmarried person, actually or apparently under the age of 18 or under the age of 21. This is the point that I'm making, that you might be taking a grown person and keep him in custody for ten days. That same person can go and get drunk under our present laws, he can be locked up over night and he is released because he is charged in the morning, but for something else, he can be kept in custody for ten days. You show me where the justice is in this, when you are dealing with a child of 21.

Mr. Legal Adviser: I can see the point. I think the point is well taken Mr. Chairman. I would propose to redraft the section to say, "a person who apprehends a child pursuant to subsection (1) shall as soon as may be," which means as soon as possible, "and in any event within ten days".

Mr. Commissioner: Mr. Chairman, can I offer a word here. Quite frankly Mr. Chairman, I agree with what Councillor Chamberlist has to say, but in the particular situation that we are talking about here, the apprehension under this ordinance as it is before you at the present time, takes place throughout the Territory. If this child is apprehended in one of the more settled areas of the Territory, it is not too difficult to get him before a justice of the peace. There are many parts of the Territory, where at the very best of conditions we have 4 or possibly 5 days delay before we can even get a child before a justice. Quite frankly if Council is prepared to accept the wording of the Legal Adviser I would suggest that this may well take care of this difficulty but irrespective of this, I think that we must accept the fact that there is a time element that is involved here that has to do with places other than the settled areas of the Territory and we must be cognizant of this when we are attempting to word this in a manner that is acceptable. Quite frankly I think that the Councillor has a very good point as far as the possibilities are concerned. I am with him 100 percent, but please recognize the other time factor that we are faced with.

Mrs. Gordon: There is another area in this relating to this particular section and particularly with the Battered Child Syndrome and that is this, where a child has been apprehended and the Court has not been able to fulfill its duty and take that child over and turn it over to the Department of Welfare, but it is known and recognized by those, but not provable within a Court that this child actually had been battered. It hadn't

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been proven. Is there any provision or any way in which the Department of Welfare or those people concerned will keep this particular child under supervision to prove his case because this is where real problems arise, because these children are continually being abused and yet not to the point where it is provable in a Court and a lot of it is simply because there is not supervision to pick this up immediately and bring it before the Courts.

Mr. Legal Adviser: I don't think there is any way you can deal with that particular situation except to use the ordinary caution that a peace officer would do and that is to attempt to watch in a normal way what is happening. The fact that you have information that a person is going to commit a burglary doesn't mean you can arrest him in advance. I think they have got to wait until the situation gets within the terms of the section and then the child appears to be in need of protection or is in need of protection and you bring it to Court. The Court must decide these things.

Mr. Livesey: Do I understand, Mr. Chairman, that to apprehend is to seize and to hold? If it is, I don't understand how any peace officer can apprehend anyone and hold them for more than 24 hours without a charge and if they can, then we are running ourselves into a real serious trouble and I don't really understand how anyone can be held for over 24 hours without laying a charge. The Legal Adviser is in a great conversation here and is probably not listening to what I'm saying. The average peace officer as far as I know, as a peace officer, cannot hold anyone over 24 hours without laying a charge. Is this correct Mr. Legal Adviser?

Mr. Legal Adviser: The purpose of this Ordinance is to give them this authority, but the subject of the conversation with the Commissioner was, he asked me to point out that apprehension of a child is not putting him in the lockup. It's taking him to a safe place under protection and in the bulk of normal cases they are taken into a private persons home and in particular, the R.C.M.P. have been particularly good in the matter, in looking after children who are in need of protection and getting on the telephone or somewhere to get a hold of somebody from Mr. Murphy's department. They don't put them in a lockup. They look after them in whatever facility is there. It may be a hospital, a nursing home, but nearly always in an outlying place, in a private persons home who is a good citizen of the area. Usually with a mother and father who have a couple of other children, this is what custody consists of. It is just moving him from the place of danger to another place, but not a locked up place.

Mr. Chamberlist: I wonder what the R.C.M.P. would do with a nice bright female child of 20?

Mr. Legal Adviser: Children of 20 don't come under this Ordinance in that sense, not in that way, by special order of the magistrate it can be extended above 18, but that person is not a child at that time, because there is no Court order in effect concerning. The people who are going from 18 to 21 under care, are the people who have been in care for a considerable time and who are showing promise or need for further education for certain purposes. It may be that the child has not yet finished school through reasons of his circumstances he happened to be 21, but he may be only in his tenth grade and may wish to finish. It is an

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enabling section to enable the social welfare department to give the added extra care to some of these children who may need it passed a normal age.

Mr. Chamberlist: I'll just amend my question. What would the R.C.M.P. do with a nice, bright female of 18?

Mr. Legal Adviser: She wouldn't be a child for those purposes.

Mr. Chamberlist: This is what the Ordinance reads.

Mr. Legal Adviser: She is not a child for those purposes. She wouldn't come under the Juvenile Delinquent Act, she would be treated as an adult in the normal course of events and if she is nice and bright and a person of 21 she would be an adult for all purposes and would be transferred to the Correctional Institute.

Mr. Livesey: In the event that the circumstances proved that the apprehension was false and the information was false, would the parents be entitled to compensation?

Mr. Legal Adviser: They would be entitled to take action for compensation within the ordinary law.

Mr. Chairman: Is it my understanding that there will be a redraft of subsection (2) as well? Agreed by Committee? We will proceed to section 8. (reads section 8)

Mr. Legal Adviser: I think the word "their" in paragraph (b) should be if "his" address is known.

Mr. Chairman: So note Mr. Clerk.

Mr. Chamberlist: Well if they are talking about his parents, isn't that plural?

Mr. Legal Adviser: We are talking about the person having actual care and custody of the child. That is if he is living apart from his parents and if his address is known.

Mr. Chairman: (reads section 9, 10.)

Mr. Chamberlist: It appears to me that the adjournment can be almost in perpetuity and there is no restriction in this section that says how long this child shall remain in custody. The Court could adjourn, and adjourn, come back again in two weeks time, adjourn again, another two weeks and adjourn again, this could go on while the child is receiving a custodial penalty actually a sentence until the magistrate has time or the justice has time to deal with the situation. I wonder if Mr. Legal Adviser would not be prepared to put in that particular section an area of time where the matter must be dealt with, because surely Mr. Legal Adviser can see that there can be some abuse taken here without necessarily the people concerned abusing the child.

Mr. Legal Adviser: The point is well taken and I agree with the Honorable Member, but what do you do from a practical position? You're putting a limit on the time that the Court can adjourn. They adjourn for many reasons. They adjourn because the parents may be somewhere far away and may need to come to Court. They may adjourn for special treatment for the child. They may adjourn

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because it is necessary to bring up a psychologist from somewhere else or medical specialist or something. It's just hard to say and very often an adjournment in a case of this nature is to enable the parents to make accommodation available for themselves and the child. It may very well be that they may adjourn the case until the father and mother come out of prison, or comes out of the sanitorium and he may be reluctant to make a final order disposing of the case and may make it a series of temporary orders handing the child over to the director. An adjournment is a very useful tool, but like all useful tools, it's very much capable of being abused. I hesitate to put a block on the power of the justice to adjourn although I do agree with the Honorable Member.

Mr. Chamberlist: It appears to me that unless you have a block there, here you have a child with parents, let's say in prison serving a two year sentence, does this mean to say that this child is going to remain in custody as well for two years less a day until the parents come out? I mean that becomes ludicrous. This is where we have to say the maximum amount of time is there so that a child can be at least given those privileges and rights that he might....after all the position... let me come back to this, the position is this that he ... after section 11 has been gone into and it is found that the justice determines that the child is in need of protection, suppose he finds that this child is not in need of protection and he hasn't ... all he's done ... he hasn't looked at the matter, he's kept adjourning it for three years and then he finds that the child wasn't in need of protection so the child has been kept in custody for three years. Isn't that deprivation of the liberty of the individual there? I think that you have to say that adjournments can only be to a certain date, because Mr. Legal Adviser knows full well, that if you go before any police court, no judicial officer would sit on the bench and continually adjourn and remain the person in custody over and over again, sooner or later he is going to say that's enough. Let's hear what the Crown has got against this man. He would see that this man would be properly protected and this is our function surely at law and we haven't got any protection at all for this child who is continually having his or her matter adjourned and adjourned.

Mr. Legal Adviser: My feeling is that the Honorable Member is in his zeal for protection for some person in custody, is over-colouring this affair. I would emphasize that this is not a question of the child being in the lockup. The child is entitled to Counsel and will normally be provided with, in a sense, by the Department of Social Welfare and probably my office will be representing the child in that sense, the protection ... one of the protections which the Ordinance is attempting to give, is the protection for the parent against the deprivation they would suffer by having the child taken away. We are really dealing in nonfactual situations in talking about the child being in custody for a year or two years. This is a case where if the child is left in a certain situation or allegedly so, it will suffer. It has been taken away because people, somebody believes it should be taken away from a particular environment. The Court is the referee which decides the issue and the Court may need an adjournment and if you put in an adjournment period of let's say three months or six months, it may be too far away. If you narrow it down to a month you may not be able to dispose of the case for one reason or another. It is hard to pick a point of time

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to abridge the power of the Court too. I agree with the Honorable Member, you should put a clause in it, but customarily one leaves it to the discretion of the magistrate or the judge to decide his own periods of adjournment and I hesitate to get involved with this.

Mr. Chamberlist: I ... it might appear that I'm being sticky about this point but there may be the time when a magistrate or justice through error in not dealing with a particular matter may be responsible for having a child in custody whether the child is four or five or sixteen without any proper grounds or reasons why that child was kept in custody. I feel that I have a responsibility to see that the liberty of the individual is not abused and much rather see that a child gets away from being held in custody than being held in custody when there wasn't a proper right to hold that child in custody. To me there must be some sort of block placed here so that it could be .... it could read that a justice may from time to time adjourn, but no longer than four months from this date of the child being taken into custody without the matter being dealt with. I realize what Mr. Legal Adviser has said and I agree to some extent that there is going to be certain instances where it is necessary for a magistrate to act in that manner to make sure that the child is given protection, but it must not work in the reverse and this is where we have to protect, where the one instance where it might work in reverse and I'm sure that giving a reasonable time and saying that it may from time to time be adjourned and not longer than a given time, I think that will satisfy me in that particular point.

Mr. McKinnon: I wonder if I could ask Mr. Murphy a question. Children who would fall in the category of being taken into custody for the protection under this ordinance in the 16 to 21 age bracket, where would they be held generally?

Mr. Murphy: We are talking about children under the age of 18 only in cases where they are already in care can the Court extend wardship, make a further order extending wardship to 21, so therefore we are dealing with the apprehension of children to protect their well-being. We are speaking of children up to their 18th birthday. Children between the ages of 16 and 18 if they were apprehended because they are in need of protection they would be placed most probably in a foster home or in one of our child care facilities, pending the disposition of the application of the Court.

Mr. McKinnon: There is no question at all of them being held in a Correctional Institute or anything like that.

Mr. Murphy: We are not talking here of arresting children, we are talking about receiving children into our care for their protection and well-being for the reasons which are set out at the beginning of the Ordinance, where a child is deemed to be in need of protection because of various circumstances.

Mr. Livesey: Isn't this depriving the child of his normal freedom just the same?

Mr. Shaw: I would like to ask the Legal Adviser to satisfy this BILL #7 matter. Would it not be reasonable or possible to put in as the Honorable Member has mentioned, four months, it would not exceed a four month period. It would appear to me that there is an awful lot of time wasted amongst some of these people in determining when and where they should hear a case, that four months surely in a matter such as that could be determined whether or not certain actions could be taken. I just can't see why an unlimited time should be given to these people.

Mr. Legal Adviser: I think four months is reasonable and subject to discussing it with more expert brains of my own I would be prepared to write in some form of amendment that would say this, that an application shall be disposed of within four months of the original application to the justice provided that, or words to that effect, an expiry to this reason shall not preclude a fresh application. I'm not guaranteeing success for the amendment, but we'll make the attempt.

Mr. Chairman: (reads section 11.(1). )

Mr. Chamberlist: This section, in religion of the parents or either of them and whether or not either of such parents is dead or has abandoned the child. What difference does that make if the parents are dead, what their religion was?

Mr. Legal Adviser: In purest logic, the Honorable Members background suggestion is quite correct. It so happens that in drafting the Bill, we did not think we should take too great a step forward. It has customarily been accepted that where a child is coming into care to be put up for adoption, an effort is being made to place the child with persons, foster parents, of the same religion as the deceased parents. If within reasonable time that can't be done, then the good of the child dictates that you put him out with parents, provided they are of good character and so on, but in an effort to do this, this is more or less the order that the justice makes which are finding the facts which may be in dispute or may not be in dispute and this table sets out what he is to find because if this isn't done in this way, there is a tendency just to make a formal finding and say the child is in need of protection, sign it and that is it, but this sets the record which may be a permanent record to look back upon 15 years afterwards for some purpose. This setting up of the file and the justice makes findings of these facts. There is one other item that should be in here, I've forgotten what it is at the moment, in this list of things, Mr. Murphy may recall it, an item which should be in this list of finding the facts.

Mr. Chamberlist: I wonder if Mr. Legal Adviser could make it quite clear that this reference in this section 11 to the religions of different parents does not prohibit a child being placed in the care of somebody whose religion is different. They are interested in the care of the child not the religious background of parents, where there has as no doubt Mr. Legal Adviser knows that over the years there have been many problems that have been raised in different areas because of different religious organizations insisting that the child born of one religion abstracted the adoption of parents of another religion and the like and I would like to be satisfied that there is no religious overtones in the placing of children with suitable people just because of their religious differences.

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Mr. Legal Adviser: We have faced up to this camel and we have swallowed it, but could I request to you Mr. Chairman to add in the words "after date of birth" put in "place of birth".

Mr. Chairman: I wonder Mr. Legal Adviser if you are drafting amendments if you would care to do that on your draft amendment? May I proceed? (reads section 11.(2).) I wonder Mr. Legal Adviser if you could tell me what sine die means?

Mr. Legal Adviser: It just means that there is no date set ahead of time to have it reheard.

Mr. Chamberlist: This is the point that I am making. The case can be adjourned, now if we are setting a date and we are going to we will have to alter this. We are setting a date for four months and we say the case can be adjourned sine die and the child be returned to his parents or any other person, it means that the case is adjourned indefinitely.

Mr. Legal Adviser: The reason for having it set out there, that the case be adjourned sine die and that person be returned to his parents, but the court still wants to retain some form of control, so it makes an order that he is returned to his parents subject to the inspection and supervision of the Director.

Mr. Chairman: I'll just complete the reading of that section. (reads section 11 (2)(a). )

Mr. Shaw: Yes, Mr. Chairman, why do we have to put in these phony language words in here. Can't we put that down in English so that somebody knows what we are talking about. Who knows what sine die is, I don't and I don't know any member of this Council who does unless it is the learned member on my left that might know what that phrase is. This is suppose to be an Ordinance that people can pick up and read and know what it is all about. Can we not put that ... I've seen this so many times that it gives me a pain in the neck every time I look at it, with these phrases to confuse people because somebody understands it. In other words, I think that we will find that the Government is trying to create legislation so that when people know what drugs are, they don't have fancy names for it. They even find it necessary to have legislation for that, but it seems that the legal profession continually get away with putting in a bunch of junk in my estimation that is not English and is not French. Why do we have to bring in another language that is a dead language. I've seen it for so many years that when I see it I just about blow a cork, a couple of gaskets. Cannot this be put down in plain English? So that it can possibly be translated in French.

Mr. Legal Adviser: Some of these phrases have existed in English since the 11th Century and they are now considered in general to be English words. They are survivals from the time before English was spoken, when Norman French was the normal language of the law and when all documents were prepared in Latin and I would hate to have to translate a word like habeas corpus, a lot of these Latin terms have carried on because they have a use and they describe something, but if it meets with the Honorable Members wishes I could translate sine die by putting in the case be adjourned generally and the child be returned to his parents.

Mr. Chairman: The next section is subsection (b). (reads section 11.(2)(b),(c). )

Mr. Livesey: Is there an error in the fourth line?

BILL #7

Mr. Chairman: Yes, that should be "be made" not "he made". Will you note Mr. Clerk? (reads section 11. (3), (4). )

Mr. Chamberlist: How does adoption come into this? We are talking about custody at the moment.

Mr. Legal Adviser: That is next weeks chapter in the serial.

Mr. Chairman: (reads section 11. (5), 12, 13.)

Mr. Chamberlist: I wonder if Mr. Legal Adviser could explain what type of order will be made when it applies to two individuals? For instance does it mean that one order of it can be made putting each of two or three children into different custodial places or does it mean that one order will be made to put all one, two or three children into one particular place, and .....circumstances might be different as to the reasons why these children are brought into custody.

Mr. Legal Adviser: The section does not say that the justice only shall make an order. This is merely a convenience of ... if there are two children and the order is identical in each case, it saves opening two files and two sets of documents and two sets of payments for everything, the children brother or sisters as the case might be or brother and sister can be dealt with until the point comes to do something else and then you make a photocopy of the order and break it up to two files, but what is visualized as I understand it is it will be say maybe two or even three children, will be neglected, the parent may be away, the parent may abandon them, something may happen and they are handed over to the Director. In that case, one compound order would be sufficient at least until there is a breakup and they would be separated. It is for filing convenience than anything else.

Mr. Chairman: (reads section 14.)

Mr. Chamberlist: I wonder if Mr. Legal Adviser can explain where he had some sort of a contradiction here. Where you say the Director is responsible for the care etcetera and then it goes on to say that there is no liability that shall be attached to him. How can a person be responsible and yet be void of liability?

Mr. Legal Adviser: The Director in this section is not trying to escape his normal liability. This section is a key section in the Bill. There are certain persons following certain ..... who object to their children getting any medical care. They believe that faith will do all. If it happens that a child is taken, as is sometimes, for the reason of medical care, then the medical care should be available for the child. Under normal circumstances acting as a beau-pere as I think the French expression is. You would normally call in the doctor or the dentist to pull a tooth or pull out a splinter. It's only from that particular ..... that he is protected. Merely giving him medical care does not create liability, but all the other liabilities still remain on the Director.

Mr. Chairman: I wonder if Mr. Murphy could be excused. I wonder if you could join us again tomorrow morning. Is it your wish that I report progress on Bills No. 4 and No. 7? What is your further pleasure? It has been moved by Councillor Shaw, seconded by Councillor Dumas that Mr. Speaker do now resume the Chair. Are you prepared for the question? Are you agreed? Motion carried.

MOTION CARRIED

MOTION CARRIED.

Mr. Speaker: I will now call Council to order. May we have a report from the Chairman of the Committee.

Mr. Taylor: Mr. Speaker, Committee convened at 10:30 a.m. to discuss public bills. It was moved by Councillor Dumas, seconded by Councillor McKinnon that Bill No. 3 be reported out of Committee without amendment. Committee recessed at 12:00 noon and reconvened at 2:00 p.m. It was moved by Councillor Shaw seconded by Councillor McKinnon, that Bill No. 5 be reported out of Committee without amendment and this motion carried. I can report progress also on Bills No. 4 and No. 7. It was moved by Councillor Shaw, seconded by Councillor Dumas, that Mr. Speaker do now resume the Chair and this motion also carried.

Mr. Speaker: Are we agreed? Are there any suggestions for the agenda tomorrow?

Mr. Taylor: Mr. Speaker, before Committee at this time, there are only Bills, so I suggest that we continue with Bills tomorrow.

Mr. Speaker: Are we agreed? May I have your further pleasure.

Mr. Shaw: Mr. Speaker I would move that we call it 5:00 o'clock.

Mr. Speaker: Are we agreed? The House now stands adjourned until 10:00 a.m. tomorrow morning.

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Tuesday, November 18, 1969.  
10:00 o'clock a.m.

Mr. Speaker read the daily prayer. All Councillors were present.

Mr. Speaker: Mr. Clerk, is there a quorum present?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: I will now call Council to order, and I have for your SESSIONAL attention this morning the tabling of Paper No. 20, addressed to PAPER #20 Mr. Speaker, Members of Council, Motion No. 30 of 1968 - Fourth Session, Investigation of Air Facilities in Yukon. Are there any Reports of Committee? Introduction of Bills? Is it your pleasure to introduce any Bills this morning? Notices of Motion or Resolution?

Mr. Shaw: Mr. Speaker, I would like to introduce a Notice of MOTION #1 Motion, seconded by Councillor Chamberlist, in relation to the Change of Name Ordinance.

Mr. Taylor: Mr. Speaker, I would like to give Notice of Motion MOTION #2 this morning respecting the Whitehorse General Hospital Advisory Board, and I would further like to give Notice of Motion respecting MOTION #3 Sessional Paper No. 20.

Mr. Speaker: Are there any further Notices of Motion or Resolution? Notices of Motion for the Production of Papers? We have nothing under Orders of the Day. May we proceed to the Question Period. Are there any questions?

Mr. Taylor: Yes, Mr. Speaker, I have a question I would like to QUESTION RE direct to the Chair. I'm wondering if we have yet received a reply ANSWER FROM to our communication of last weekend to the Right Honourable Prime OTTAWA TO Minister? PETITION

Mr. Speaker: Not as yet. The Office of the Speaker has no communication whatsoever so far from Ottawa. Are there any further questions?

Mr. Chamberlist: Mr. Speaker, I wish to direct a question to the QUESTION RE Commissioner. Mr. Commissioner, what explanation can you give to CHIP MILL Council's reference to the proposed chip mill plant in the Carcross PLANT AT area? Have any negotiations been completed for that land in that CARCROSS particular area?

Mr. Commissioner: Mr. Speaker, I cannot answer the question that has been asked by the Councillor directly. I think he's asked about the negotiations in connection with the chip mill. I can tell Council this, that the principals who are the owners of this proposed plant have made application to the Federal authorities for several ... a fairly sizeable piece of land on the shores of Tagish Lake, downstream of Carcross. The amount of land that they have asked for, it is my information, would appear to be considerably more than what their actual immediate requirements are, and it is my understanding that the Resources Section of the Federal Government is prepared to offer them on a lease basis, and, of course, the retention of it being based on certain performance that it will be put to the use for which it is being asked for, sufficient land to allow them to proceed with their project and are quite prepared to hold for a reasonable period of time the balance of the acreage that has been asked for which would surround this initial piece of property. There is really not very much more that I could report at this time on this situation, Mr. Speaker, but as more information does become available I am certainly very prepared to bring it forward to Council at that time.

QUESTION RE CHIP MILL PLANT Mr. Dumas: A supplementary question, Mr. Speaker. Is the Commissioner or his Administration being consulted by Ottawa at all in these negotiations, or is the Honourable Member for that area being kept informed of what's happening?

Mr. Commissioner: Mr. Speaker, I can answer in the affirmative on both questions. My Administration is being consulted by Ottawa on this, and in turn we are keeping the Member for that area informed fully as to what is proceeding in this matter.

QUESTION RE DATE OF NOTICE OF PROJECT Mr. Dumas: A supplementary question, Mr. Speaker, if I may. Could the Commissioner tell us when he first heard of this project?

Mr. Commissioner: Mr. Speaker, you've asked me a question here that I would find very hard to answer. Officially, I cannot name the time, but it was when the application for, or subsequent to the application being made for land to locate the chip mill on. Now, prior to that time, I had the ...

Mr. Dumas: Any date, approximately?

Mr. Commissioner: I'm sorry, but I could get that date. This is on the application form, Mr. Speaker, and there's no problem here. Prior to that time, I had about the same information as other people had, namely, the information that was made available I think by the principals of the company when they were in the area looking over the proposed site of the plant.

QUESTION RE SEWAGE IN YUKON RIVER Mr. Taylor: Mr. Speaker, I wonder if I might direct a question to the Administration? I'm wondering if Mr. Commissioner could advise me as to ... if he does know ... to whether it is still the policy of the Department of Health and Welfare to dump raw sewage from the hospital into the Yukon River or has this been since cleaned up?

Mr. Commissioner: Mr. Speaker, could I have the privilege of getting the proper answer to this question so I don't give any wrong information on this matter?

QUESTION #11 RE LAND POLICY PAPER Mr. Taylor: Mr. Speaker, I have a further question, and I have a written question as well, to which I would like a written reply. It reads as follows: "Would the Administration advise Council as to whether it will be the policy of both the Federal and Territorial Governments to undertake snow removal on all government maintained airstrips in the Yukon Territory during this current winter period?" I have a further question I would direct to Mr. Commissioner this morning, and I'm wondering if he could inform Council as to when they will be laying before Council a Paper on land and area development policies in the Yukon Territory?

Mr. Commissioner: Mr. Speaker, I believe the question refers to land disposal policies outside of the metropolitan area. Am I correct in this assumption, Mr. Speaker?

Mr. Taylor: Inside and outside, Mr. Speaker.

Mr. Commissioner: Well, Mr. Speaker, with regard to land disposal within the metropolitan area, Members of the Council who represent the Whitehorse Metropolitan Area along with members of my Administration presented their recommendations which have been promulgated into Regulations for that specific purpose. Subsequent to that, these Regulations were sent to outside Members, Members who represented areas outside the metropolitan area, and they were asked for their comments as to whether they felt similar Regulations would be applicable in their areas. The answers that were received indicated that these Regulations as they were were not suitable in these other areas and it is my understanding that it will be the intention to

bring the out-of-Whitehorse Members together with the applicable departments from the Administration and seek ways and means of sitting down to promulgate Regulations that will be acceptable to the people who represent these outside areas.

Mr. Taylor: Supplementary, Mr. Speaker, am I to understand from Mr. Commissioner's reply that a Paper will be forthcoming to Council in this regard at this Session?

Mr. Commissioner: Mr. Speaker, I cannot assure you that it will be a Paper. I think it will be in the form of a direct letter to each Member, asking them to meet with the applicable members of the Administration at a time suitable to all to see how best Regulations acceptable to the outside Members for land distribution in these areas can be arrived at.

Mr. Dumas: Mr. Speaker, could the Commissioner advise as to what steps his Administration have taken or are going to take to resolve the very annoying and on-going problem of horses at large in the residential area of Hillcrest? QUESTION RE HORSES AT LARGE IN HILLCREST

Mr. Commissioner: Mr. Speaker, I'm sorry that I was not aware of this. Last winter I believe it was a dog problem that we had in the Hillcrest area, so possibly we should best look into this situation and see what laws are applicable in the area and see whether or not they should be getting applied. Maybe this is what our problem is; maybe the non-application of the laws that we already have, Mr. Speaker. Could I have the opportunity of getting a little more detail, possibly in private, from the Honourable Member on this matter?

Mr. Shaw: Mr. Speaker, I have a question for the Commissioner. Last night there was a very good program on drug use. It was a film shown locally. I wondered if the Administration is contemplating carrying on an extended program, an educational program, a visual program in this line, and will it be available to the schools in the hinterland as well? QUESTION RE DRUG USE EDUCATION

Mr. Commissioner: Mr. Speaker, I think a lot will depend upon the initial acceptance or the manner of acceptance of this program here, and if it appears to be meeting with success, well, certainly it will be extended. If it would be possible that I could have a written question on this matter, I would like to bring forth a written answer on it, Mr. Speaker, because I am personally of the opinion that this is a matter of the utmost public importance. Anything at all that can be done to propagate education along these lines I think is in the best interest of everyone concerned. I would appreciate it if we could have the opportunity of bringing forth a written answer on this subject.

Mr. Chamberlist: Mr. Speaker, a question addressed to the Commissioner. I wonder if Mr. Commissioner would indicate that he would be in agreement in view of better efficiency in government that a three-man Executive from this Legislative Body sit with the three members of the Administrative Branch, with him as Chairman, to form an Executive Committee? Would Mr. Commissioner indicate whether he would be satisfied with this arrangement? QUESTION RE SEVEN-MAN EXECUTIVE COMMITTEE

Mr. Commissioner: Mr. Speaker, a long time before many of the Members sitting around this august table were even citizens of the Yukon, I was attempting to bring such a situation into effect and while it is not ... should I say, it does not come under my purview and my ability to bring such a thing about, I can assure you, Mr. Speaker, that I am not about to put any road blocks in its way.

QUESTION Mr. McKinnon: Mr. Speaker, I wonder if we can intimate from Mr. Commissioner's reply to this, if there is no answer forthcoming from the Prime Minister, that Mr. Commissioner is willing and able to stand or fall with the elected representatives of the people in their desire to bring more responsible forms of government to the Yukon Territory?

Mr. Commissioner: Mr. Speaker, sufficient unto the day is the evil thereof. I will handle that point at that point in time under other circumstances.

Mr. Shaw: Mr. Speaker, I would like to ask your advice. This written question, is it alright if I put it in tomorrow morning, the same question?

Mr. Speaker: Order, please. Are there any further questions?

QUESTION Mr. McKinnon: Mr. Speaker, I wonder if I could ask the Commissioner if it is the intention of his Administration to bring forward a collective bargaining enabling ordinance for the Public Service Association for the Territory to this House at this Session as requested by the Yukon Legislative Council?

RE COLLECTIVE BARGAINING FOR PUBLIC SERVICE

Mr. Commissioner: Mr. Speaker, we have every intention of doing this. There have been difficulties encountered with regard to it of which I do not have the full information before me at the present time, but we are keeping the executive members of the Government Staff Association advised of this, and they are fully aware of what the particular problem that we have run into is. I am certainly very hopeful that we will be able to overcome the difficulty and bring this legislation forward at this Session of Council.

Mr. Speaker: Are there any further questions? If not, would the Honourable Member for Watson Lake please take the Chair?

Mr. Taylor takes the Chair.

Mr. Speaker: Order, please. The Honourable Member for Carmacks-Kluane.

QUESTIONS #12 & #13

Mr. Livesey: Mr. Speaker, it gives me great pleasure this morning to bring before you a few more delightful questions, and I would remind the Chair that these are not starred questions. My first question is, Mr. Speaker, could the Administration advise why the dust control program for 1969 was improperly carried out to the extent that the second layer of oil was delayed beyond any reasonable time to be effective in the latter half of the summer tourist season and in some instances not carried out at all? Question two, could the Administration advise why the Territorial Department of Welfare had arranged to place a welfare home in the commercial zone of the Beaver Creek Subdivision without any consultation with the elected representative for the area and without the duly considered needs of the recipient of the exercise? Could I have order, Mr. Speaker?

Mr. Speaker: Order, please, gentlemen.

Mr. Livesey: ... without the duly considered needs of the recipient of the exercise? And the second part of this question is, why plans were made and dates set for erection which unduly added to the overall costs of estimated construction?

Mr. McKinnon: Mr. Speaker, with respect, I always understood that there were no speeches allowed during Question Period.

Mr. Speaker: Order, please, gentlemen. Would you continue please?

Mr. Livesey: My third question, despite the interruption, Mr. Speaker, could the Administration advise the House if any private or government establishments are connected to the Territorial Fire-hall water well at Haines Junction? And, could the Administration advise why a meeting to elect a School Advisory Committee for the Beaver Creek School was arranged for a period when it was known to the Administration the elected representative would be out of the Yukon? QUESTIONS #14 & #15

Mr. Speaker: Order. Order, please.

Mr. Livesey: And, my last question, could the Administration advise the Council of the party responsible for maintenance of the road to the waste and refuse area of Haines Junction? QUESTION #16

Mr. Livesey resumes the Chair.

Mr. Speaker: Are there any further questions? May we proceed to Public Bills and Orders?

Mr. Chamberlist: Mr. Speaker, I would move that Bill No. 11, An Ordinance to Provide for Government Control and Sale of Alcoholic Liquors, be given First Reading.

Mr. Shaw: I'll second the motion, Mr. Speaker.

Mr. Speaker: I beg your pardon, what number was that?

Mr. Chamberlist: Bill No. 11.

Mr. Speaker: Bill No. 11, the Liquor Ordinance? What reading do you wish to give it?

Mr. Chamberlist: First Reading.

Mr. Speaker: According to my understanding, the Bill has had First Reading.

Mr. Chamberlist: Mr. Speaker, I can only follow the Daily Routine, and it requests that Bill No. 11 be given First and Second Reading. If there's an error, you should bring it to the attention of the Clerk of the House.

Mr. Taylor: Mr. Speaker, I believe that this is an error on the Order Paper as this Bill has received First and Second Reading on November 17th.

Mr. Speaker: That is correct.

Mr. Shaw: Mr. Speaker, I would move that Bill No. 3, An Ordinance to Amend the Fuel Oil Tax Ordinance, be given Third Reading at this time.

Mr. Chamberlist: I'll second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, that ... could I have order, please ... that Third Reading be given to Bill No. 2 ... BILL #3 THIRD READING

Mr. Chamberlist: 3 ...

Mr. Speaker: ... that Third Reading be given to Bill No. 3, An Ordinance to Amend the Fuel Oil Tax Ordinance. Is the House prepared for the question on the motion? Are we agreed? I'll declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: Is the House prepared to adopt the title to Bill No. 3?

Mr. Shaw: Mr. Speaker, I would move that the title to Bill No. 3, namely, An Ordinance to Amend the Fuel Oil Tax Ordinance, be adopted as read.

Mr. Chamberlist: I'll second the motion.

TITLE  
ADOPTED  
BILL #3

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, that the title to Bill No. 3, An Ordinance to Amend the Fuel Oil Tax Ordinance, be adopted as written. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: I will declare that Bill No. 3 has passed this House.

Mr. Shaw: Mr. Speaker, I would move that Bill No. 5, An Ordinance to Amend An Ordinance Respecting the Protection of Forests, be given Third Reading at this time.

Mr. Taylor: I will second that motion, Mr. Speaker.

Mr. Chamberlist: A point of order, Mr. Speaker. It's not on the Order Paper for today.

Mr. Shaw: With respect, Mr. Speaker, the fact that something is on the Order Paper does not mean that it is necessarily correct. We have Bill No. 11 for First and Second Reading, and it wasn't there, so we are substituting with one that should have been there.

Mr. Speaker: I wonder, Mr. Clerk, if you would inquire of the Chairman of Committee as to whether this Bill has been passed out of Committee on motion?

Mr. Clerk: Mr. Speaker, this Bill was passed out of Committee on motion yesterday, November 17th.

Mr. Speaker: That is Bill No. 5?

Mr. Clerk: Yes.

Mr. Speaker: Would the Honourable Member for Dawson please proceed with his motion?

Mr. Shaw: Mr. Speaker, I would move that Bill No. 5, An Ordinance to Amend An Ordinance Respecting the Protection of Forests, be given Third Reading at this time.

Mr. Taylor: I will second the motion, Mr. Speaker.

BILL #5  
THIRD  
READING

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Watson Lake, that Third Reading be given to Bill No. 5, An Ordinance to Amend An Ordinance Respecting the Protection of Forests. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: Is the House prepared to adopt the title to Bill No. 5?

Mr. Shaw: Mr. Speaker, I would move that the title to Bill No. 5, namely, An Ordinance to Amend An Ordinance Respecting the Protection of Forests, be accepted as written.

Mr. Chamberlist: I will second the motion.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Watson Lake, that the title to Bill No. 5, An Ordinance to Amend An Ordinance Respecting the Protection of Forests, be adopted as written. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

TITLE  
ADOPTED  
BILL #5

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: I will declare that Bill No. 5 has passed this House.

Mr. Shaw: Mr. Speaker, I would move that the Speaker do now leave the Chair and that Council resolve itself in Committee of the Whole to discuss Bills.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mrs. Gordon: I would second that motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Mayo, that Mr. Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bills. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: The Honourable Member for Watson Lake will please take the Chair in Committee.

Mr. Taylor takes the Chair.

Mr. Chairman: This morning we will be discussing Bill No. 7, and at this time I will declare a short recess.

RECESS

RECESS

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Tuesday, November 18, 1969.  
11:00 o'clock a.m.

Mr. Chairman: I will now call Committee back to order. We are discussing this morning Bill No. 7 and we have with us Mr. Murphy, our Director of Welfare to assist us in these deliberations. We have cleared Section 14 and are to proceed with Section 15. (Reads Section 15).

Mr. Chamberlist: I wonder if Mr. Legal Adviser would indicate why there is a special section a special discretion given under (b) where a female child, marries with the consent of the Director before reaching that age. What happens if a male child has to marry before reaching that age for some purpose, why is this just separated?

Mr. Legal Adviser: This is normal Law that a girl comes under the custody of her husband still when she marries though the Director would in effect would act on his part to give consent be removed from his position of being guardian of the child.

Mr. Chamberlist: Well, that doesn't answer the question. Supposing for some reason Mr. Chairman it is necessary for the male who hasn't quite reached the age of eighteen to get married. Such has happened in the past in some occasions. Why isn't there any direction in this section dealing with the male? Why specifically separate the female or why have it in at all? Surely it must apply to both male and female.

Mr. Legal Adviser: I have no particular view on it but it would be a person marrying at seventeen and a person in care should not marry at seventeen. The Director should not give his consent to the marriage of seventeen and if he does, the person who marries would be regarded as immature and remain in care.

Mr. Chairman: (Reads Section 16). Clear.

Mr. Shaw: Beautiful sunshine they have applied to some of these words, that's not what I was riding on Mr. Chairman. If it is a fact would this increase the guardianship of the Director from eighteen to twenty-one years of age, would that be in the event that perhaps the child was going on to further education and this would be looked after by the Government in lieu of other possibilities.

Mr. Legal Adviser: The Director would be acting as a beau-pere famille in that case. This is using your second national language. A good father in the family. It is determined in Civil Law. It would also apply to a person who wasn't going towards further education but who might have finished school at this point. A person goes out of guardianship when they reach their eighteenth birthday and some children who have not left high school at that point as well as some children who are deprived in some fashion and might be older than that when they finish high school. This person would have been in care for quite a number of years as a rule and the Director needs the power as a good father of a family would need it to guard a child until he is twenty-one in a proper case, so the protection is that the Director must go back to the Court for this type of Order and satisfy the Justice that this is best interests of the child to do.

Mr. Shaw: Mr. Chairman, I would assume generally speaking that at eighteen years of age that is the end of this guardianship however under exceptional circumstances that it can be extended, where it warrants it, not as a habit.

BILL #7 Mr. Legal Adviser: Definitely Mr. Chairman, this is the position.

Mr. Shaw: The reason I state that Mr. Chairman is that, I would feel that when we look after a child who is eighteen years of age and who does not want to go into any further educational opportunities, then they may just as well get out and work.

Mr. Chairman: Are we clear? (Reads subsection (2) of Section 16 and Section 17).

Mrs. Gordon: Under sub (b) of sub 3 I take it is a typographical error, it is a capitalized "w" in where and it should be a small one.

Mr. Legal Adviser: That is correct Mr. Chairman.

Mr. Shaw: Mr. Chairman I just wondered is there no other phrase, I'll direct this to the Legal Adviser. I'd like to hear his comment on it. We're talking about a child who is taken from the parents because the parents are not looking after the child but the phraseology all through is that we apprehend this child, we commit this child, of course I suppose this is what we are doing but it would almost appear that this child had criminal instincts if we are in a sense of wresting it. I wonder if necessary if perhaps it could be put in a different type of phraseology. This person has done nothing wrong.

Mr. Legal Adviser: This has merit Mr. Chairman. It's just that people like that tend to be mentally lazy and they use a phrase which is, which everybody clearly understands but certainly we are open to suggestion for a more euphemous or euphonious words to use in these places. We could use take instead of apprehend

Mr. Chairman: There is one term used in Child Welfare practice is taken to protective care which may have a better ring to it, if you wish.

Mr. Chamberlist: This Mr. Chairman was the reason I raised the question dealing with the ten day hold, yesterday because where we are referring to taken into custody held in custody for ten days, what is the difference between the words taken into custody and what it employs as to protective cares Mr. Murphy has indicated an entirely different thing. I think Mr. Legal Adviser should to these various areas of the Ordinance and put in those particular words are not a bore to anybody that reads the Ordinance besides ourselves.

Mr. Legal Adviser: Mr. Chairman, I perfectly agree with Mr. Chamberlist to have the Ordinance re-read with a view to taking out words like custody and possibly apprehend and put in take and see if we can come up with something as we come to it.

Mr. Shaw: Mr. Chairman, it would appear to me that in the interpretation section of the Ordinance it could be well, it could be used in something like this. The protected child and the protected child would be defined in the interpretation Ordinance and it would also indicate to anybody that is reading it that this child was indeed being protected but apprehended just sounds terrible. With all the verbosity that Lawyers have, surely they could come up with a better word than that. They can come up with all these ancient language words, surely they ought to speak English in a nice manner.

Mr. Legal Adviser: You know some lawyers may be verbose but I'm sure that the Honorable Member doesn't suggest that the Legal Adviser is verbose. He is attempting to be precise and when he says apprehend, he means apprehend, when he means take he means take, but so Mr. Chamberlist the word protected does not necessarily mean exactly what the Honorable Member suggests but if we use the word protective care then we could define the protective care in the definition section and then use the word protective care wherever custody occurs.

Mr. Shaw: I am very, very happy to hear that Mr. Chairman, perhaps I was my reference to lawyers the present compliment was accepted.

Mr. Livesey: Mr. Chairman, to be overcome by the exuberance of one's own verbosity, is it not a disease.

Mr. Chairman: May I continue. Next section is Section 18. Is it clear? (Reads Section 19 and 20).

Mrs. Gordon: Mr. Chairman I would like Mr. Murphy to enlarge on this particular section under what kind of circumstances for this particular section does this apply.

Mr. Murphy: Mr. Chairman this is called non-ward care in the field of child welfare and where circumstances are such that the parent or a parent cannot provide adequate care for their child, they may request the Director of child welfare to provide such care for a temporary period of time. This is to obviate the necessity of taking the matter before the Court where there is no neglect of the child involved or no reason which makes it necessary to do so for the protection of the child. It may be a situation where the mother has deserted the family and the father who is employed out of town for instance is not able to find a homemaker or someone to look after the children and he is requesting that the department find foster home care for the children. This is done by agreement and with the parent assuming the responsibility, financial responsibility for the care of the child the department simply provides the facilities or the accommodation the care of the child needs. It may be if the mother is hospitalized, mother with dependent children is hospitalized and there is no one to care for the family and here again is where the department again makes its child welfare resources or child care resources available to people within the community to mothers in such circumstances.

Mrs. Gordon: Follow along on this assurance I wanted to receive that it wasn't the parents who were having problems with their children weren't just turning them over to the Department of Welfare willy-nilly and evading their responsibility to their children.

Mr. Murphy: Mr. Chairman, no this is not the case, there is a pretty careful assessment made by the professional staff of the department in respect to all requests of this nature and I can assure you with 350 children we now have in care we don't wish to have any more children to care for unless its absolutely for their own protection for their own welfare.

Mrs. Gordon: Thank you Mr. Chairman.

Mr. Chairman: Clear? (Reads subsection (2) of Section 20)

Mr. Shaw: I'm not objecting Mr. Chairman to whatever is put down but in paragraph you say, you can't do it for more than a year and the next one you say you can extend the time. It doesn't seem to

BILL #7 Mr. Shaw continues:

be very clear, you can't do it in this section and the next section you do entirely the opposite, now what's the idea? You need one or the other. Can the Legal Adviser advise why it is necessary to put it in, that you can and then you can't?

Mr. Legal Adviser: Well as I understand it, in the normal agreement it is for a short period of time. It may be necessary under examination to extend this period so the Director doesn't want to be in position as I would understand that a parent would come and say, I am going to get rid of this child because I cannot take care of it. It's just a temporary thing but the limit is put on him but in the first instance he can only do it for one year, but then it may happen where it be extended from time to time for purely temporary circumstances and then he needs the power to be to extend it so this is merely a matter of drafting to put the two sections one after the other to make it clear that the sections in just such a position means exactly what I said.

Mr. Chamberlist: I wonder if Mr. Legal Adviser would indicate whether this was drafted here or otherwise.

Mr. Legal Adviser: Completely here.

Mr. Shaw: Well, I still feel Mr. Chairman that what you are doing is you are telling the Director that he can only do it for a year, that's all he can do it for, that's the Law, just one year no more and then in the next section you say that if it deems advisable, he can do it for a longer period. Now that is somewhat depicting, at least it seems that way to me.

Mr. Legal Adviser: When this Ordinance is speaking it's not the Commissioner speaking, it's the Council and Commissioner together dictating the policy to which the Director is to follow. Basically the Ordinance is a direction of policy as to what the Director is to do and that's why this Council in a very fair fashion gives such a complete examination to the bills when they're passing through so this is telling the Director, your policy is to make agreements not exceeding a year so when pressure is brought to bear on you, you may not exceed it in the first instance but if the child after some time has been in your care the temporary circumstances continue then you may purely carry on and this is clearly set out although this may be the policy of the Administration the question of when to pass it. This bill when passed is not the policy of the Commission, it is the policy of the Council.

Mr. Chamberlist: I've got to take exception to that because Mr. Legal Adviser is now trying to suggest that in fact the Council has much to do with the legislative programming of legislation before this Council. This is what we are dealing with after the Commissioner and his Administration have dealt with it and not before because if we have been dealing with it some of these things would appear objectionable to members of Council wouldn't have gone this far and it would have saved alot of the time and trouble that we are going through now. I think that Mr. Legal Adviser, Mr. Chairman, has very cleverly attempted to put the Council in a position that we are in fact part of a joint operation with the Administration when this is not true. Now you cannot try to start to polish apples in that particular way because nobody is going to polish mine, I'll tell you that.

Mr. Shaw: Mr. Chairman, I could see for example, the Director may enter into an agreement with the applicant to accept the child for care for a period not exceeding one year, but under exceptional or unusual circumstances the Director may, I mean, that's it but you have it he, one year that's all he can do it then the next one you say he can do it for longer

Mr. Shaw continues:

extenuating circumstances the Director may, I mean..that's it but you have it, one year that's all he can do it , then the next one you say he can do it for longer.

Mr. Legal Adviser: Basically, the section is put there in this form for the protection of the Director so he can say to the applicant when he comes in to the office, we can only make an agreement for a year and then it's repealed.

Mr. Chamberlist: What I don't understand is that we are not to take any notice of what the wordings at the side of the particular sections you know but when it's only referred to a temporary agreement and then renewal of agreement, it's a renewal of a temporary agreement so then actually there's no fixed agreement at all. All we have here is a continuation of temporary agreements. Well, why then call it temporary then, why not say it is an agreement. I mean why go on and blind us, it's an attempt to blind the legislatures, that's all it is.

Mr. Legal Adviser: Mr. Chamberlist, there are none so blind as though they may not see. The mere fact that you have a series of agreements makes each agreement in turn temporary so the words temporary care, temporary agreement, renewal of agreement because this is the policy which we were asking you to make into Law is, that there will be no such thing as a ten year agreement that we would take your child off your hands and look after it forever. These are parents who should be contributing to the care of their own children, these are not people who are seized by the department. These are people who come into the office and say I am in a position of difficulty, my husband has deserted me but I hope to be able to take care of my children after awhile. So, instead of make a big distinction between a temporary agreement and a permanent five, ten, twenty year deal, it makes a rigid distinction for the protection of the Director to be able to say, I can only make a temporary agreement and we have got to review this file frequently.

Mr. Chamberlist: Well is the temporary agreement for a period of one year or less or is it a temporary agreement for one year. Now I say to you if it is a temporary agreement for one year, it becomes a permanent agreement for one year because Mr. Legal Adviser is well aware that you don't have a lease agreement as temporary, there is a renewal clause in it. Once there is a renewal clause in it, it's a lease agreement and it's to be renewed at the end of that agreement. This is exactly the same thing that I am suggesting. If you say that it is a temporary agreement for a period of time or less than one year, then it's temporary because it can be closed up by either two parties at any time but if the parent comes along and says I want you to take care of my children because I won't be able to take care of them myself, then she signs a temporary agreement according..into the effect she may two months afterwards say, I am now in a position to take care of my own children. You see, then I will agree it's a temporary arrangement, and if this is the case then this is fine. I see nothing wrong with it but if that is not the case, it is not a temporary agreement. Now I would like to be assured that this would be the case where a mother would be able to come along after two months and say, my position has changed, my financial position has changed, I have .. my husband and I have placed ourselves in a position where we now have mended our differences and we would like to have our children back. This might be at the end of a couple of months. Now this is fine, this is a temporary deal, this is what I am referring to.

BILL #7 Mr. Legal Adviser: I can give the Honorable Member this assurance Mr. Chairman. The note at the side read, "helping parents over a stile", it might have made it clearer.

Mr. Chamberlist: Right, well it isn't clear like that.

Mr. Legal Adviser: But we cannot write head notes in that semi-humorous fashion.

Mr. Chamberlist: Well is this a temporary agreement? I want to know. A parent can take the children back less than a year of the agreement.

Mr. Legal Adviser: Yes Mr. Chamberlist.

Mr. Chamberlist: Right, thank you. That is what I wanted.

Mr. Chairman: Next sub section (4) of Section 20. (Reads Section 21 of Bill No. 7)

Mr. Chamberlist: An ex parte application is one of the most dangerous types of applications, I think, that interfere with individuals positions. Now, before an application is made, an ex parte application is made, is it the intention of the Administration to advise the party that an application for closure will be made.

Mr. Legal Adviser: I would have to answer to that we don't know it, we each depend on the particular case that you are dealing with but with respect, I would think Mr. Chairman that Honorable Member misinterprets what an ex parte application is. An ex parte application is not necessarily an application made without the other person knowing application is being made, but in conformity with the normal rules of Court as the Honorable Member possibly knows better than I do, to make an application on notice you have to give certain regulated note to the regulated court of rules which could be a four day notice, a two day notice, a ten day notice. So it is necessary to want to go on a shorter time, to go ex parte. This then gives the Court power to act quickly. I could see that the Honorable Member would have an objection if it was that the Director could walk in the door and put a nail through the jam and close up the place, but this is going to Court. I think we should have confidence in the Court that the Court will not grant an ex parte temporary order except in a proper case.

Mr. Chamberlist: I expect to differ with Mr. Legal Adviser. When he says it may not necessarily mean that the other party are not informed, it may also mean that the other party does not have to be informed. This is the idea of ex parte applications which are made before a Court and Mr. Legal Adviser is well aware of instances where this is done. If, for instance, the Director wants to deal quickly, he would, without informing the operator of the particular boarding house or home, he would go before the Judge of the Court and apply for an ex parte order to close the place. Now, I think it would be fair to the people concerned if there was application made for an injunction to stop the person from operating. Now that could be done just as quickly and at least it protects the individual who is operating a place like this so that he knows that an application is being made and he has the right, the proper right, the right that should be given him, to go before the Court at the same time and say I am opposed to this because I consider I have been treated unfairly, then let the Court decide. Any time that I see that a person aggrieved and hasn't got the opportunity to put his grievance before the Court, you are taking away that little bit, the principle of a man being entitled to his ...in Court. But I think it can be moved around.

Mr. Chamberlist continues...

I agree that the Director should have quick and prompt powers to deal with a situation that might develop where you might have somebody put in a foster home and given guardianship of the child and they are not doing anything at all to help the child and the Director should be in a position to say, this place has got to close down. I think we should have that protection there but at the same time we have got to give protection to the other side to make sure that we don't abuse that particular privilege and right.

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Mr. Legal Adviser: Mr. Chairman, it may not have been drafted in as lengthy a fashion as it might be required to make it absolutely clear but the form of this sub-section, subsection (3) is intended and I think represents disposition. But the Director can move straight into Court, if he gets a bad report from an inspector or has some other reason to fear that the continuation of the operation is detrimental to one or more children. When he moves into Court he has to go to a Magistrate and a Magistrate has not got the power to injunction that the Territorial Court has. This is going to the Magistrate's Court. So you have got to give them legal power to grant t is injunction. So that the Magistrate would, on the application, and ex parte does not describe the order. It describes the position of the order and the latin phrase for 'in the absence of the other party being present in Court'. So notwithstanding that the owner of the home is not there, the Director, Mr. Murphy can move in and, in accordance with the Court rules, he would have to move on an affidavit and the evidence would be presented by affidavit asking for an ex parte order. It might or might not be granted. But if it was granted it would be an ex parte order, it would last for no more than sufficient time to bring the person before the Court and then the case would be heard by evidence on both sides. In the interests of specific accuracy, and shortness, this is what is represented in sub-section (3). An ex parte order is a temporary order, quick closure but the person may then come into court and the case heard in the normal way and of course the person can now appeal to the High Court, I beg your pardon, the Territorial Court immediately after that.

Mr. Chairman: I wonder if at this time we could possibly adjourn for lunch and resume this this afternoon. Is this alright. Therefore we will stand Committee in recess until two o'clock this afternoon.

RECESS

Tuesday, 18 November, 1969.  
2:00 P.M.

Mr. Chairman: At this time we will call Committee back to BILL NO.7 order. We are discussing Bill No. 7 and once again we have with us Mr. Murphy, Director of Welfare, to assist us in our discussions. The next section is Section 21. Is there anything further on this?

Mr. Shaw: Yes, Mr. Chairman. "Ex parte" now we have listened to quite some discourse prior to adjournment for lunch between the ex-officio Legal Adviser of the Territorial Government, or Territorial Council and the Legal Adviser of the Territorial Council, and they were having tremendous difficulty in really determining what "ex parte" meant. They disagreed in some respects as to what it meant. Now, when these two learned gentlemen, so well acquainted with the law, cannot really define what "ex parte" means I just wonder what a person on the street, when reading this, what interpretation he might have of "ex parte". I think I could change that to a different kind of sounding word that would probably about fit what it meant. This "ex parte", from what I can gather from the learned discussion, Mr. Chairman, did it mean in the absence of the other party not being in Court; in other words if a person is not available the proceedings can carry on without this person. Now, things usually are, a person always has a right of attending in Court to defend himself, apparently, and there are times that when certain things have to be done that you haven't got time for all, particularly if you have to wait for a month, so it is quite possibly necessary to have this "ex parte" business and what have you. But I would ask again and that is quoted twice in that sub-section, sub-section (3) of 21. Could not the learned Legal Adviser, with the ingenuity that he has shown on many occasions, apply some of this to putting this down into simple English that someone could understand.

Mr. Legal Adviser: The word "ex parte" can be translated as being in the absence of the other party. It is bound up with rules of Court which use the expression "ex parte", and has a specific, precise meaning the Judges know and are used to. To use any other form of words is not as efficient and the only reason that words from classical languages are used in law is because they are more efficient and therefore survive rather than have a translation. So, "ex parte" means, in the absence of the other party, but if you were to translate it directly and say, may be made in the absence of the other party, then you might be in trouble because you have to add a lot of explanation. This is a short way of saying it; anything else might be verbose and not as technically accurate as the word "ex parte". May I ask my Assistant to elucidate on the meaning of "ex parte"?

Mr. Chamberlist: Mr. Chairman, Black's Law Dictionary clearly defines the meaning of "ex parte". "On one side only; by or for one party; done for, in behalf of, or on the application of one party only." Now, "ex parte" is used as a judicial proceeding, an order for an injunction. Now, to break it down into a clear defined thing, "ex parte" in the history of a reported case, signifies that the name following is that of the party upon whose application the case is heard. And that is as simple as that. Two of our Members of Council obviously feel that they know all about this particular thing so they have left the chambers.

BILL Mr. Shaw: Mr. Chairman, that must be a case of mutatus  
NO. 7 misunderstandus, is it?

Mr. Chairman: May I proceed? (Reads Section 22(1),(2),(3),

Mr. Chamberlist: Mr. Chairman, I wonder if Mr. Legal Adviser will indicate that the words "committal order" will be replaced there by the words "protective care and .....?"

Mr. Legal Adviser: Yes, Mr. Chairman, we will do that.

Mr. Livesey: Mr. Chairman, may I enquire from the Legal Adviser from what provincial type legislation or federal type legislation these great pearls of wisdom have been copied?

Mr. Legal Adviser: This is an original draft, prepared by the Director of Social Welfare and me in the first instance, and then put through an ad hoc administrative body known as the Legislative Programming Committee, to which some of our friends here, Mr. Chairman, are strangers. It is our draft and we picked bits and pieces here and there and put it into a homogeneous piece of legislation which we think is a sound piece of legislation. I could not, off hand, tell you what the parentage, legitimate or otherwise, of Section 22 is but the purpose of it is there. It is to deal with the instance of a child coming from say, as in one particular instance recently, a child coming from the Atlantic provinces, came here, was under a Committal Order in the Atlantic provinces, one of the provinces there, and we need the power here to see that it gets medical attention. Now, we need to be able to have this interchange, without changing the legality of the Court Order in another province. We give it a different affect here, that the Director becomes, for certain purposes, able to do certain things and vice versa, we are giving that power to a Director in another province. A foster child or a potential adopted child, or a child in care for some other purposes transferred outside. It is a very, very handy section.

Mr. Chairman: Anything further?

Mr. Livesey: In other words, Mr. Chairman, these pearls of wisdom were plucked from a tree, like a plum, do I understand this, this is not a copy of any specific piece of legislation from Alberta, British Columbia or Saskatchewan or any other province but just merely picked like plums off a tree; no matter what the Administration thought was necessary, they put that in there. This is the problem that we have had for a long time, in my estimation. There is no influence in the creation of legislation that comes from the people; this is what we have been talking about. That is what is wrong with a good many pieces of our legislation is that it is picked by those who want to run a Department for the efficiency of running a Department and not from any allegiance and not from any position whereby they have been exposed to public opinion. This is the point that I am making here and I am not just picking on this piece of legislation. I think the whole of it comes under the same category. I would like to make that point.

Mr. Legal Adviser: I don't know about the Yukon but in Ireland we get pearls from oysters and we mine oysters from the sea. But what we have attempted to do in this, as in other legislation, is to try and build on the experience of people who actually have problems and when you go through legislation, to build up legislation, it is a continual growth

Mr. Legal Adviser continues... and you are reading text books, reading referral books, the Director goes out to Conferences and he discusses this and he has been discussing and organizing this legislation for three years which is a fair length of time to be considering something, and all this time he has been going to conferences, he has made it known to his friends in the trade, as you might say, that he is building up this legislation; he is getting recommendations. This is a good piece, it works well here and we put that in. A file was gradually built up with desirable pieces here and there and we got all this together and we compiled it into one piece of legislation which we think is an improvement over our existing legislation. But you cannot build in a vacuum, you cannot just pluck an idea or a policy or a piece of legislation out of thin air. You've got to have it down on paper and hopefully, you will be able to use the experience of others in your own legislation, or otherwise every single section, every single statute you produce is an experiment and may go very badly wrong.

Mr. Livesey: Mr. Chairman, every piece of legislation surely is not made fully on the basis, or should not be made fully on the basis of the efficiency of running a government department. Surely this legislation is supposedly being made for the public, for the people that live in the Yukon and there is no representation of these people presented to those who are drawing up the legislation. It is all very fine saying that we have this person and that person and some other person who is experienced in these lines, experienced in what? Experienced in management of the government Department, to create so-called efficiency according to the standards of that Department. This isn't the point though, that I am raising, I am raising the point that there is no public influence in the creation of legislation; none whatsoever. And if the public doesn't like this legislation are they going to be able to go to the Department Head or the Legal Adviser or anybody else and say "we don't like you, we don't like your ideas, out you go". No, they are not, they are going to pick on the closest thing handy and that is the public representative who got elected but he is a person who has no influence over the drafting of any legislation. I speak in broad terms on this particular point. I think this point has to be made and well made by us. Thank you Mr. Chairman.

Mr. Chairman: May I proceed. Next Section is 23(Reads #23, 24 (a),(b),(c),(d); 25 (1),(2). I have a question I would like to address from the Chair to Mr. Legal Adviser in relation to Section 25. Am I to understand that there is a penalty provided for persons having information of abandonment for one reason or another and not transmitting this to the Director?

Mr. Legal Adviser: The penalty, the penalty for not doing this; the main purpose of this is to impose a duty on doctors, nurses, hospital staff and people dealing with children generally to report it and then a privilege is given in respect to the information. One of the Honourable Members not present, spoke of the battered babies syndrome and this is, as the literature on the subject goes, it is not an increasing problem but it is just that the tip of the iceberg has been showing for sometime and now, as a result of more efficient methods of reporting and ascertaining what has happened, it is being discovered that a large number of parents are ill-treating their children to a very marked degree.

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Mr. Legal Adviser continues...

Without this type of section, and other sections to be linked into it, a doctor would feel that he had a duty to the person who engaged him to maintain confidentiality and not make a report of the condition of a baby. We have had reports from doctors of battered babies, but they have been given in a sense off the cuff. The doctor has done it out of a sense of public duty without knowing, or without caring, really, that he was liable to an action, possibly liable to an action for giving the information he gave. It is necessary to protect people who give the information, otherwise in a large number of cases they are not sufficiently public-spirited as some of the doctors here were at that time and gave the information. In the particular case under reference, not only did the doctors give the information, they took color pictures and slides of the child so as to make it easy for us to prove in Court should the necessity arise, that the child had been so appalledly mistreated.

Mr. Chairman: 26. (Reads 26 (a),(b),(c); 27(1),(2)).

Mr. Shaw: Mr. Chairman, were we not taking out this particular Section of the Children Ordinance, repealing that so therefore that would be somewhat redundant?

Mr. Legal Adviser: This type of sub-section occurs once or twice throughout the Ordinance to apply some of the new philosophy to orders which were made under the old Ordinance. As I think we said in relation to another Ordinance earlier the other day any order or any Regulation made under an old Ordinance continues to be in force notwithstanding the repeal of the substantive Ordinance itself until other provision is made so any order which is made in respect of a child under the existing Protection of Children Ordinance will still be a valid Ordinance notwithstanding the fact that the parent Ordinance is repealed but what we are doing by applying this section is, we are saying that now the Director will be able to make an application in respect of any of those subsisting orders to ask that the justice order the parent to make a contribution towards the cost of maintaining their child, this assuming that the parent is in a position to do so. At present our Ordinance is deficient in this particular.

Mr. Chairman: May I proceed? (Reads 28(1),(2); 29; 30; 31; 32(1),(2),(3). I have a question, Mr. Legal Adviser. Inasmuch as "Court" is not defined for the purposes of this Ordinance just what involves "Court"?

Mr. Legal Adviser: "Court" itself is defined as being the Territorial Court, in the Interpretation Ordinance, so that is why the capital "C" is used, when we are using the word "Court" in its everyday sense we don't use the capital "C". When we use the capital "C" it should be Court of the Interpretation Ordinance.

Mr. Shaw: Mr. Chairman, does that mean that this appeal would not be valid with the Police Magistrate's Court?

Mr. Legal Adviser: The Police Magistrate would be making the orders and an appeal from his Order, or refusal to grant an Order goes to the Territorial Court.

Mr. Shaw: Thank you Mr. Chairman.

Mr. Legal Adviser: The capital "C" is defined, Mr. Chairman, in Section 20, sub-section 1, paragraph (e), paragraph (f) of the Interpretation Ordinance, Court with capital "C" in inverted commas.

Mr. Legal Adviser continues....

Court means the Territorial Court of the Yukon Territory.

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Mr. Chairman: (Reads 33(1),(a),(b); (2)(a),(b); 34(1)(a), (b); (2); 35; 36; 37. Clear?

Mr. Shaw: Just exactly what does that mean, Mr. Chairman?

Mr. Chairman: Mr. Legal Adviser.

Mr. Legal Adviser: Certainly a difference of opinion about that particular section and I am not sure that the Administration has finally made up its mind one way or the other whether to leave the section in its exact form, if you want to be frank about this. The particular problem is that a family allowance is paid to the Director, direct from Federal funds for the benefit of an individual child. Normally when money is paid under those circumstances a Trustee Account is created in the Territorial Treasurer's office, under his authority, and the administration of it is done by the method of seeking cheques, requisitioning cheques, same as any other fund. This has the effect in certain segments of breaking through the barrier of confidentiality in respect of certain children in respect of whom money is paid. So, the question has come under examination as to whether or not we need this section in order to legally enable us to do something which otherwise might be technically legal under the Financial Administration Act or not. This is the reason for it existing; if it could be left in this form before the Bill finally gets through the House we might have more to add to it.

Mr. Chairman: 38 (Reads 38(1)(a),(b),(i),(ii),(c),(2).

Mr. Chamberlist: Mr. Chairman does there appear to be any necessity for this particular paragraph being there at all, and it is up to the Court to decide whether habeas corpus should be granted or not, notwithstanding what this says.

Mr. Legal Adviser: Mr. Chairman, I would hate to think that because a writ was a prerogative writ the Court had any discretion. Some of the prerogative writs gave the Court discretion and in some it had not. And without giving it this discretion I think if a parent has the legal rights to the production of the body of his child before the Court and to be handed over to him, he has the right to get it and I don't think in habeas corpus the Court would exercise discretion, it would have regard to the right because there are many people who obtain a writ of habeas corpus when they are either charged with crime or have been convicted by a Court of a crime and because the rules have not been followed in committing that person to prison, the Court will grant a writ of habeas corpus. It doesn't regard the writ as discretionary in that sense; if the rules are not followed the Court will see that they are followed.

Mr. Chamberlist: Mr. Chairman, surely Mr. Legal Adviser will agree that if a child has been taken into protective custody, protective care, for what might appear to be the child's own benefit, and if the parent goes before the Court to say this is wrong, this child has not been taken into custody for its own protection and benefit but as an attack upon me, the parent, because I have had some misunderstanding with the Government of the Yukon Territory. Why then should it be necessary for the Court not to grant, not to give discretionary right to the parent if he thinks the parent feels that he is aggrieved. Why should not the Judge be ordered to - why should not the Judge order that the Territorial Government release the child because in his

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Mr. Chamberlist continues....  
opinion it wasn't properly carried out, it was carried out because of the dislike of the Government official for the particular parent. This is the thing that concerns me and this might come up as a worrying situation. If you take away from a parent the right to go before the Court and say "you had no right to take this child away", and the Judge says "well, notwithstanding that, I am going to use my discretion because the government people think it was necessary to do so", and he leans over in favour of the government official. Certainly this would take away from the parent the rights he would have normally if this particular clause was not in there.

Mr. Legal Adviser: With respect, Mr. Chairman, what we are attempting to do here is to give the Court a series of directions as to whether it would be proper for the Court to refuse to issue a Writ of Habeas Corpus when an application was made to the Court for that Writ so that a parent or another person entitled to the custody of the child would normally obtain it. Now, the circumstances (a), (b) and (c). Now, a father normally has the right to the custody of the child as against the mother but the Court would normally give the custody of a child to the mother when the child was of tender years but might, under certain circumstances, in a divorce case, give it to the father. But there are times when other people acquire at least moral rights and we are making here, we are making it possible for the Court to convert those rights into legal rights. Such a case might occur where a father went away, leaving his child with the grandparents. This can occur, it can also occur where the parents will go away, the two parents will go away, just calmly leaving a child because they know that the next door neighbors are good living people and will bring up that child and then if they come back five, ten years later and demand this child there would be no legal right on behalf of the next door neighbor to hold onto that child although they might have brought up that child from the age of five to say fifteen or eighteen. So, this section, in my respectful opinion, is necessary to delineate out what the discretion of the High Court is in refusing to issue a habeas corpus writ which the parent is legally entitled to but which this section says he is not morally entitled to and we will give it the force of law. So, assuming that the Council would agree with the idea of giving certain rights to people in relation to children for the benefit of the children, not the benefit of the people, but for the benefit of the children, are these the appropriate discretions which should be given to the High Court.

Mr. Chamberlist: I'm satisfied, yes, Mr. Chairman.

Mr. Chairman: 39. (Reads 39; 40 (1), (2)(a), (b).)

Mr. Chamberlist: Mr. Chairman, perhaps Mr. Legal Adviser will expand why this particular section becomes a one-sided area where it says that these documents that are kept by the Director should not be given out to anybody except with the written consent of the Director or the Commissioner or solicitor acting on behalf of the Commissioner or Director. Now, what about the solicitor or agent acting on behalf of the other party? What about the parents of a child who wish, who have legal advice or an agent acting for them; what about that particular party. Hasn't that party any rights to obtain documents to their - available to the Director and the Commissioner and the Solicitor for the Commissioner. Why should only one legal side of the matter have the right

Mr. Chamberlist continues.....

to the documents? This is a one-sided proposition, taking away the right of the parent who perhaps wishes to contact a certain area of an order that has been given by a Justice or by somebody who has the powers of a Judge of the Territorial Court, and he says I want to contest this, I'm going to .....I want copies of this and this and this information so that I can conduct my case. So the solicitor says so I can conduct my case for my client. The Director says "no you can't have it. The Ordinance says I can only give it to the Commissioner's Solicitor but I can't give it to the Solicitor of the child's parents. That to me is a one-sided proposition and surely one can see that this is not proper.

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Mr. Legal Adviser: Mr. Chairman, there is no question that this is a one-sided proposition. This is admitted from the word "go". The question is, how far does the section go and whether the section can in fact be justified or not. Now, people in modern civilized communities have moved into the area of keeping certain information in relation to people, confidential. We have gone past the day when a Birth Certificate would carry on its face the record that the person who had it was illegitimate. Now, many of the children who pass through the hands of the Social Welfare Department are in fact illegitimate. In addition to that, the Welfare Department is handling, insofar as it can, as many children as comes through its hands in the adoption field and again modern philosophy has moved in the direction of concealing the origin of the child who is out for adoption. Now this is a very North American concept and it has gone from North America to Europe and hasn't reached the stage in Europe that it has in North America so that if I adopt a child I myself am not told the origin of that child by the Welfare Department and they block me off from finding out whence came the child. So that the records, for public purposes are not destroyed but they are kept from me. Now, this is a section which is merely carrying out the existing policy of the Vital Statistics Ordinance, all Welfare Agencies and all those Departments handling children, and documents. It has become universal Canadian practice and at present this is the practice in the Territory. Now, when it is necessary to explore past a certain point, you must get a Judge's Order if resistance is shown by the Director and in all normal cases the Director would refuse either himself, or through his staff, to permit exploration of the origin of a child although it might at first glance appear to be very important. There was a recent case in Alberta, well not recently, it happened about 18 months ago, where an adopted child, in relation to an adopted child, application was made to the Supreme Court of Alberta for an order tracing who the child was because the child was put out for adoption and it was thought from certain information in the possession of the administrator of an estate of a particular farmer, that a particular child, placed out to care and subsequently adopted, was the son of the particular man. The Court, I think, on appeal, held that the information should be disclosed for the purpose of ascertaining that. But it was laid down that this was an exception to the normal rule. When a child, this will subsequently be made clear in the adoption part of this Ordinance; when a child is adopted the modern philosophy is there is a complete break. The child is deemed, for all purposes, to be the child of a new family so that even though it subsequently turned out that the particular child's father, legitimate father and mother, became millionaires and died intestate, there would be no way of tracking down

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Mr. Legal Adviser continues.....  
that this particular child was entitled to inherit a million and vice versa, any of the evil traits which parents hand down cannot be traced back to that child. The modern philosophy is that in the interests, this may work in a sense a wrong, or deprive a child of money he might otherwise get, though it happens very seldom but it could happen, but in the interests of Canadian children as a whole, who come into this position, the philosophy is that you adopt this position of protecting the origin of the child. In doing this you also protect in many cases the new family of a mother who has given birth to an illegitimate child and to protect the mother of that child herself. Now, you can pierce the veil, as you might say, at a trial, a hearing or a proceeding under the Ordinance, and of course, in any event, for a proper case a Court can give an order. But I would, with respect, ask that this section be left as is because the Courts can always pierce it. Now when they say a trial, hearing or proceedings, this would include an examination for discovery or any of these proceedings that might be held, or informal hearings held here. It is not just limited to a formal hearing in a Court. A Court would ...the child, make an order to say "Mr. Taylor, disclose the background particulars of a particular Birth Certificate to find the origin of the child", in a proper case, but the Court would have to decide, not just a casual making of a ruling.

Mr. Chamberlist: Mr. Chairman, I agree in principle with what the Legal Adviser has said in regard to protecting a child's background. I have no argument with this. But there might be a necessity to protect the child's background by having the child's background be protected by its legal adviser because the time may come along, or for instance the person under "39" is charged with an offence under a certain power. Now, this particular person, he might have his jeopardy at stake you see. Now, he knows that evidence will show that what he has been charged with is incorrect. Now he is an accused person. This accused person has a lawyer acting for him and his lawyer goes to the Records and says, to the Director, "I want some information on Jimmy Green, because I know you have that information and I am acting for my client who has been charged with certain offences with which Jimmy Green is connected and I need this evidence for my client, to defend my client". The Director says "no, I'm sorry I don't have to give you any information. I will give it to the Commissioner, or his solicitor who is prosecuting him, but I am not going to give it - prosecuting your client but I am not going to give it to you to defend your client. This is the point that I am making, Mr. Chairman; if this information is available in an action to a lawyer on one side of the action, it should be available to the lawyer on the other side of the action. I am sure if Mr. Legal Adviser was in private practice here, and the case came up where he wanted certain information, he wouldn't sit back, he would go after getting that information which he would think he was entitled to have to defend his client from. Now, I think any lawyer, worth his salt, would take every step to see that he would be in a position of defending his client. Now, he would be deprived of a proper defence by having governmental interference in not allowing him to have evidence which should be placed before Court. Now this is the point that I am making, it is necessary not to have.... used at the discretion of the Director, I agree but no person should be able to come along and say I want some information on this Jimmy Green and expect to get it. But there must be some areas where a person is accused, has been charged with

Mr. Chamberlist continues... something as under Section 39, that the legal defendant of that person has a right to information which might prove his innocence. Thank you Mr. Chairman.

Mr. Legal Adviser: I can agree, Mr. Chairman, that there may be, I cannot just at the moment visualize any case which would arise under Section 39 where it would be necessary; when a child is adopted, under the provisions of the Vital Statistics Act what happens is this; that the old birth certificate is changed into a new one so that it doesn't carry on its face any information that shows the old one... you can track back, to the piece of state of hand performers, you might say but it does disclose the true birth of the child, the date of the birth. So I cannot see how it would appear under section 39. There are cases, and what we will be asking you to do, when we come later in the Ordinance, there is a particularly knotty problem which was a camel which we swallowed in drafting the Ordinance, and that is that in deeming the change to take place from one family to another for all purposes, the question immediately arises, what happens in the case of incest to incest and related offences dealing with relationship between people but we have just said "for all purposes" and then close it off at that point, whether or not we are entitled - you know, constitutions are made by.....or not. We have to use the expression "for all purposes", or is not used. So that even in dealing with an incest charge, the person might fail to get the information. They might be entitled to the production of a document by a Court Order but to explore for information is a different thing. But in the case of a document the ordinary law comes into play and you apply to the Court for an order for the production of a document but the information is a different thing.

Mr. Chamberlist: Mr. Chairman, under this Section would the Director have the discretion to give information to a lawyer acting for another party. This is what I want cleared. Would he have that discretion.

Mr. Legal Adviser: He would have the discretion to give the information to anybody. It shall not be disclosed without the written consent of the Director to anybody except these three people, that is the Commissioner, or solicitor, acting on behalf of the Commissioner or the Director. The Director becomes the boss. He has the discretion to disclose the information if he possesses it, or not disclose it. He has the discretion because the reason he has the discretion is because he is acting in l.....p..... and because he is the head of the Department, he is controlling his staff. It's not the Commissioner who has the discretion here, no file kept by the Director, dealing with personal history that has come into existence through any proceedings, shall, without the written consent of the Director, be disclosed to any other person than the Commissioner, the solicitor acting on behalf of the Commissioner or the Director.

Mr. Chamberlist: Supposing, Mr. Chairman, Mr. Legal Adviser, supposing the Commissioner, the Director had made up his mind to give certain information to somebody and the Commissioner said to him as head of this great Territorial Government, I don't want you to give it. Notwithstanding that it says here the Director is the man, you know, that decides, but supposing the Commissioner tells him "you don't give it to anybody". Now, can the Director still use his own discretion or does he have to take notice of his boss?

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Mr. Legal Adviser: That is a matter between the Commissioner, the Director and God.

Mr. Chamberlist: Well, because that is written.

Mr. Legal Adviser: But if the Director does not give his written consent and the only way to get that consent is to fire him and engage a more compliant and complacent Director who is easier to get along with.

Mr. Chamberlist: Well, what about firing the Commissioner and doing the same in.....

Mr. Chairman: Section 41 (Reads 41(a)).

Mr. Livesey: Why, why, Mr. Chairman, are we repeating on page twelve which we already have on page 1.

Mr. Chamberlist: Not quite, different part.

Mr. Livesey: But it is an addition to the same thing.

Mr. Shaw: Mr. Chairman, ..

Mr. Livesey: Could I have my question answered, Mr. Chairman?

Mr. Legal Adviser: The reason is because the definition is different.

Mr. Shaw: Well, would it not be a little more understandable if you said "a child unborn". A child unborn, would it not serve the same purpose without talking about all this kind of stuff, you've got half French and half something else in there.

Mr. Legal Adviser: "En ventre sa mere" is a term of art. It is not easy to think of a nicer, more judicious way of saying it without using a Latin term. You could say "and include a fetus" but then a Latin term.....into English, because you cannot say it includes a child unborn because an unborn child, a child that is unborn may be a child which has not yet been conceived. In law when you are dealing with documents you are looking into the future and when you leave property to a man and his children, which you can do, you are looking into the future and you, the children becomes a word of limitation into the future. It is a technical term, and it is not easy to get a translation.

Mr. Shaw: I agree, but I think you could put "about to be born".

Mr. Legal Adviser: You see, it doesn't become a child until it has been born. The fact that it is defined as a child "en ventre sa mere" does not make it a child, it is a fetus. A child does not become a child until it has been completely excluded from the body of its mother. It is necessary to have this type of thing because you are dealing with murder cases as to whether it is infanticide or abortion or murder. So you get right down to the meat of it, in a sense, when you are dealing with murder charges.

(Laughter)

Mr. Legal Adviser: I didn't mean it in that way, the nub of the problem when you are dealing in technical terms you would have to use the word "fetus", which I think is the only word you could translate and it is not a particularly nice word to have in the legislation.

Mr. Livesey: Well, Mr. Chairman, it's a pooch in a pouch BILL NO.7  
before ouch! That is what it is.

Mr. Shaw: It appears to me, Mr. Chairman, that the legal profession has got to the state where they are saying that the English language is not adequate to convey their thoughts. They have to get onto something that goes back to gosh knows where and has been discarded except by pharmacists and part of the legal profession. I still feel that if you have "fetus" there you know what the heck you are talking about but "en ventre sa mere", well that is French, I believe?

Mr. Legal Adviser: It is our second official language, Mr. Chairman.

Mr. Shaw: Well, I think that,....if that is French and you say that for that purpose, I would suggest that perhaps the whole thing should be French. We have the same proposition, why make fish of one and fowl of another word. There is a lady here otherwise I could expand on that, or ladies.

Mr. Chairman: May I proceed. (Reads 41(b),(c),(d); 42(1).  
Councillor Livesey.

Mr. Livesey: Correction. Does this include a married woman that has not been living with her husband three months prior to conception?

Mr. Legal Adviser: Yes, Mr. Chairman, it does.

Mr. Chairman: (Reads 42(2)).

Mr. Chamberlist: What does that mean "during the pregnancy of an unmarried woman unless the medical practitioner stating that the unmarried woman is pregnant". What hypocrisy!

Mr. Legal Adviser: It is not enough for a woman to say she is pregnant in order to start of proceedings - proceedings can be very damaging. These proceedings may be taken either when the woman is pregnant, before the child is born or after pregnancy, if she comes into the Justice's Chambers and makes an allegation against a respectable citizen that she is pregnant by him, the first thing she must prove is that she is pregnant so that we are making that she must produce a doctor's certificate that in fact she is pregnant and has not a cushion there.

Mr. Chairman: 43(1),(2)(a),(b),(c),(3). Clear?

Mr. McKinnon: No, Mr. Chairman, how can it appear to a Justice that a man is about to abscond?

Mr. Legal Adviser: Mr. Chairman, if the woman comes in and says under affidavit that the man has bought a ticket to the United States and he is about to go on Thursday's plane; he may have told her. He may have sold his car, have an advertisement in the paper for his house; so she comes dashing in and says he is running away. Some people give their hands, you know, give their intentions away before they actually carry them out.

Mr. Chairman: 44(1) (Reads 44(1)(a),(b), (2),(3); 45(a),(b);  
46(1)(a),(b), (2)(a),(b)).

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Mr. Chamberlist: Mr. Chairman, when he is taken to a prison and kept in prison, how can he do what is required of him until the hearing? That seems to be ridiculous, doesn't it? They commit a man to a prison..

Mr. Legal Adviser: The presumption is, Mr. Chairman, he did what was required of him but he is now required to do more and he doesn't do it; that is to make an appearance at Court. So you put him in prison and bring him down in a squad car.

Mr. Chairman: 47(1) (Reads 47(1)(a),(b),(c),(d),(e); 2). Clear?

All: Clear.

Mr. Chairman: I think at this time we will declare a short recess.

RECESS.

Tuesday, November 18, 1969  
3:30 o'clock p.m.

Mr. Chairman: I will now call Committee back to order and are we clear on section 47?  
(reads section 48(1). )

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Mr. Livesey: Mr. Chairman, I don't understand how several fathers can be the cause of a pregnancy. Only one father can be the cause of a pregnancy, so where there are several fathers indicated as fathers of the pregnancy, there is more injustice than justice. There is no question about that. I don't think the medical profession would agree that more than one father could cause a pregnancy.

Mr. Legal Adviser: This is not quite so. Annual experiments have shown that intercourse by two successive animals can give rise to twins or triplets and one of the children can be the child of one father and another can be the child of or the offspring of another. This is ... wouldn't be normal, but what we are doing here is attempting to apply what basically originally was modern Swedish legislation on this subject which is where more than one person has intercourse with a woman at the relevant time, it is a matter of great difficulty for the woman to get an order against any of them because each person says, "Yes, maybe I had intercourse, but the other person had it as well", and any question of doubt the justice can't make up his mind and considers himself in an awkward position. In this section it would be possible for more than one man to have a contribution order made against him and later subsection is provided that the whole of an order, say \$100.00 a month may be the amount of the order which is being paid to the woman of which each of the possible or probable fathers could be ordered to pay a contribution. The ward will be given the choice to execute the order against one of them, possibly the wealthiest, have him then get contributions back from the other possible fathers. This is go ahead and sound legislation.

Mr. Livesey: I certainly don't understand. I'm certainly no medical practitioner, but I certainly don't understand that more than one father can cause a pregnancy. One father may but not more than one and I also think it is a falacy to think that if there are more than one born that those were born from different fathers. I understand that this is not so and not only that, but the further question in relation to medical evidence and this is related to the blood count and the test of blood of the individual born as to the relationship to the father concerned. I don't think there is any question about it. There can't be more than one father at all. This is entirely wrong and I don't think that this section should be allowed to stand on that basis without further medical evidence.

Mr. Shaw: Mr. Chairman, I wonder if this was the case where someone backs up into a buzz saw and the judge has to decide on which did the cutting.

Mr. Chairman: Do you have anything further on this section?  
(reads section 48 (2), (3), (4), (5). )

Mrs. Gordon: Two points I would like to raise here. Perhaps our witness, Mr. Murphy may be able to clarify them. One is if this legislation is now in effect? Another is that I note there is no section in here making provisions for a review and in our rising state of economic welfare throughout Canada, I think that possibly

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if a set amount was given at the birth of the child, it certainly wouldn't be something that would necessarily meet the requirements of the child ten years from now.

Mr. Murphy: There are many situations where it is agreed upon between the father and the natural mother for the payment of a lump sum and the mother is willing to accept the lump sum settlement rather than in long drawn out agreements of monthly payments where the putative father could honour his commitment for a certain period of time and then leave the Territory or go to places unknown and not comply any further with the agreement or the terms of the Court Order and this is the reason for this provision in the Ordinance. If the mother desires to have a lump sum payment, this can be arranged, in other words she is quite prepared to take something now, rather than perhaps nothing in the future for the child.

Mr. Legal Adviser: The latter part of Mrs. Gordon's question, there is power under section 53 to vary an order if circumstances change.

Mr. Chairman: (reads section 49.)

Mr. Chamberlist: Is that proper Mr. Legal Adviser? Surely the court can't, the justice can't make a decision to reduce costs against some other person without the other person being there. The person would have to be there before costs can be ordered against him. He should be given the right to be heard.

Mr. Legal Adviser: If the normal case cost would be given, ... and order would be granted and cost would be given against the person who was ordered to pay the money. This is the man in question and he gets a summons to appear in court and if he doesn't appear in court a warrant is issued for his arrest. Where a mother makes an application, then of course, she would have to be heard and she will be before the Court. If the justice then held that the application was a frivolous application, he would give costs against her, but she would have to be before the Court because she is making the frivolous application.

Mr. Chamberlist: If she is before the Court on her own, and the father has not been made aware that there is a hearing of the matter, does this suggest that the justice can order costs of the hearing of that day against the man without him even being there or being given an opportunity to confess to the situation?

Mr. Legal Adviser: He could make no order whatsoever under those circumstances.

Mr. Shaw: Oh, forget about it.

Mr. Chairman: (reads section 50 (1).)

Mr. Livesey: This is ridiculous, Mr. Chairman. Talk about being frivolous. Nothing could be more frivolous or ridiculous than section 50, subsection (1). Whoever placed this before us for our consideration certainly had doubts about our mentality.

Mr. Chamberlist: This is where sometimes you get caught being placed in the position of being administrative officers instead of judicial officers. What is a judge or a justice going to say ... well ... to Mr. A this is half your fault and to Mr. B this is half your fault

Mr. Chamberlist cont:

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you know, because you both were with this woman on consecutive nights but we don't know, we can't prove which was the conception period, before midnight, or after midnight on a given night. This is getting really jocular when you have pieces of legislation that two men can be charged with the paternity of the same child. This just doesn't make sense. Perhaps Mr. Legal Adviser can advise us how it is possible for two men to father the same child and I would be pleased to listen to it.

Mr. Legal Adviser: As I said earlier, if it were twins or triplets it would be possible, medically possible. I'm not saying it is likely, but the difficulty is that where three or four men have intercourse with the same woman over a short period, the justice may not be able to decide which of them is the father of the child but may be able to decide that one of them is. Unlike what one of the Honorable Members said, a blood test does not prove that a person is the father of the child. It merely makes it possible for him to prove, if his blood group is of a different category, it makes it possible to prove that he was not the father of the child and this is a very narrow field. As I said earlier when some of the Honorable Members who object to this were absent, the original place where this kind of legislation was conceived was Sweden. It proved workable there and it advanced throughout all European law and it is now law within most provinces of Canada and most provinces of the United States and they have found it necessary in order to relieve the Court from making a definite finding where as the Honorable Member said there is intercourse on one night before midnight and after midnight with another person, then what is the Court to do? It is not Solomon we have sitting in the magistrate's court, it is just an ordinary person like you and I, so he can decide that one of them is the father, but he cannot decide which, so this is a method of allocating the blame. The same way when an accident happens between two cars and the Court will split the responsibility 50-50. It is share and share alike. They have both taken the risk and they deserve what they get.

Mr. Livesey: If the justice cannot decide of one or more fathers, who is the father, it's not the father that is to blame, it is the mother.

Mr. Legal Adviser: We are thinking of the good of the child in this instance and not the good of the father or the good of the mother, What we are concerned with is to obtain a contribution from the people who are certainly morally, although they may not legally be responsible. It is to enable the justice to do justice. It is the good of the child that should govern this legislation.

Mr. Chamberlist: These are wonderful sentiments and I agree with it, but the sentiments of having a man who is not responsible pay for a paternity case is not to my idea of thinking, any word of good sentiment. If, as the occasion has been said, that if two innocent proven, can be declared not guilty it is much better than having one of two declared guilty of the situation where it hasn't taken place. There is no possible way, I think that any layman, the average layman in the street, would consider that two people can be partly responsible for making a woman pregnant. I don't think that any of us would be able to say that it is possible that he could have made her pregnant and it's possible that Mr. B could have made the woman pregnant. And we are not going to go and say that because the possibility is there, we are going to punish them.

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Mr. Chamberlist cont:

The particular thing is that neither one of them did, because in the meantime this particular woman who within a short time has had intercourse with two, has maybe taken off and had intercourse with somebody else. There are many nymphomaniacs in this world. I don't see any reason why we should allow the Courts to place individuals in the position of being penalized because of an action that has taken place with the same woman. I would move that section 50(1) be removed from this Ordinance.

Mr. Legal Adviser: The expression is that it is a wise child that knows its own father and here, the woman proves that she is pregnant, she proves that she had intercourse with a certain person. That person, if the justice accepts her case, and there is collaboration of the fact of the possibility, then he can make an order. If there is a second person, that person has an opportunity to prove that he is not the father by a blood test or otherwise. If he fails to prove it, the justice should be in a position to do justice in the case and to make an order that the contribution be shared between the two. An equal contribution in two cases, a triple contribution in three cases and it makes it extremely difficult for the court to make any contribution order at all in favour of the child if there are other people involved who have done the exact same thing as each having done the same thing as the other and so because of this the child gets no support.

Mr. Murphy: I would like to say that the removal of this clause would make it very difficult to administer this part of the legislation in the best interest of the child and ... let me give you an example that can best explain it. We had a young 17 year old, unmarried mother who swears out an affidavit that a particular man is the father of the child and wishes and need support and maintenance for this child. She is going to keep the child, perhaps to be absorbed into the family, but maintenance is required to raise this child. The person that we interview, the person named in the affidavit as the father is interviewed and he says, "Yes, I am possibly the father of the child, but I also have two other friends who will swear or conspire with me to say they are the father, they could be the father of this particular child and I'm not going to make any agreement to maintain the child" and so on and so forth. This has been discussed in many of our annual conferences of the Directors of Child Welfare from every province and territory in Canada and what we are trying to achieve here is a standard of uniformity in child welfare practice. We must remember that the legislation is drafted to protect the child, to protect the unmarried woman and I think here we have to be sure that we can carry out our responsibilities. The communities responsibilities are also reflected in this legislation and I can see the removal of this clause bringing us many, many difficulties in acting in the best interest of the the unmarried mother and the child.

Mr. Chamberlist: Certainly we have a responsibility to look after children, but because we are dealing with an Ordinance which is for the protection of children, must we fail in our responsibility to the protection of others than children. We have to go beyond that, not just deal with this area. We have to go and protect those people who may innocently be involved and help. Innocently yes, because there can be a case where some female can accuse another man of participating and he could deny it but the Court will go on the basis of what the woman has said and this is quite often the case. The Court might ask for proof that this is so,

Mr. Chamberlist cont:

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and that the person might not be able to give that proof. The person might have said that at the time that he did, he used a contraceptive. So you have to protect also, those other people that we are here to protect. It is not only children and this is what we mustn't forget. This legislation certainly points to the protection of children, but do we stop here.? Is this where our function finishes?

Mr. Livesey: That is quite right Mr. Chairman. I don't think that you can condone an injustice by performing what one considers a justice. You can't. Justice surely is equal, it is universal. It doesn't mean pitting one against another or enjoining in one area and disenjoining in another. Justice, surely means across the board. Justice means to all people. We're not playing fair here whatsoever. We are accepting injustice in the name of justice. This doesn't make any sense.

Mr. Chairman: I have before me a motion, moved by Councillor Chamberlist, seconded by Councillor Livesey that subsection (1) of section 50 be deleted from the Ordinance. Have you anything further on this? Are you prepared for the question? Would all those in agreement kindly signify by raising their hand. Would those in disagreement kindly signify by raising their hand. I must declare the motion defeated. The next section is subsection (2) of section 50. (reads)

Mr. Chamberlist: For the same reasons as before, as we have heard no other arguments against, that the situation that was given from the members of Council that are in opposition, I would move that section 50 subsection (2) of this Ordinance be removed from the Ordinance.

Mr. Dumas: The arguments are really well put by the Honorable Legal Adviser and the Honorable Witness. For us amateurs would be superfluous.

Mr. Livesey: Perhaps the amateurs objecting could advise us by virtue of a contribution from the medical profession. This is not a laughing matter. Well on some days Mr. Chairman, even serious things are laughing matters. Some people would laugh at a burial.

Mr. Chairman: Any further discussion on the motion? It has been moved by Councillor Chamberlist, seconded by Councillor Livesey that section 50 subsection (2) be deleted from this Ordinance. Are you prepared for the question? Would those agreed kindly signify. Would those contrary kindly signify. I must declare the motion defeated. The next section is subsection (3). (reads)

Mr. Chamberlist: On the basis of the same reasons that we have already covered ... as the other reasons given in previous chapters, previous subsections rather in this Ordinance, and I would raise again a very, very strong point that those people that are opposed to this particular motion are in actual effect condemning what might be possibly 50 percent of the male population of the Yukon Territory. ....that either any of two men can make one woman pregnant. You go and face your constituents and you tell them that this is what you have come up with. You have decided that any two men in the Yukon Territory can make a woman pregnant, and when they hear ..... their great men, there are no other men in Canada that can do that. I would move that section 50, subsection (3) be deleted from this Ordinance.

BILL #7 Mr. Shaw: You do run on to a situation here, they might pick the wrong man and he gets all the blame. The man that is to blame is getting off scot free. If you make them both pay, well that works out pretty good too. That's fair. That's the Solomonistic type of judgment.

Mr. Livesey: Mr. Chairman, that isn't what Solomon did. He offered to cut the child in half and the proper mother screamed as she normally would. We're not talking about that. What we are talking about is a totally inane supposition. Totally inane and that is that more than one father can father a child. It doesn't make any sense. It makes no sense whatsoever.

Mr. Dumas: Would the Honorable Members, the Solomons, tell me who is going to support the child that we are trying to protect here if three men claim to have had intercourse with the woman the same night, the night that is assumed to be the night of conception. Which of the three men or will any of them raise that child or does it become automatically a ward of the government or does the mother and child just go their way and try to make their best way.

Mr. Livesey: It's very simple. We hear a lot about experts and certainly this is a place where we hear about experts more than anywhere else. There's certainly a lot of experts in this building. There is certainly a lot of experts in Whitehorse and I ..... this is certainly not in our field. It's not in our legislative field to decide that more than one father shall be claimed to be the father of any child. Totally beyond our field altogether. Although, I notice we have a few experts here who feel they are capable of making this decision. I for one certainly don't and I would think it is up to the medical profession and I repeat once again, let us get something from those who have studied the question first, before we make ridiculous individuals of ourselves by going along with this type of legislation.

Mr. Chamberlist: I have heard often that one man could possibly conceive two children in the womb of a woman, but never two men to conceive one child in the womb of a woman. It's got so darn ridiculous, the way it's got now, that to even suggest that we can go along on this just on the basis that Director of welfare says now, "You know you are going to mess up this whole section and we won't be able to get money from anybody if we don't commit two or three people". This is what we are actually saying. We actually say we have to have legislation that can attack more than one man for something that the other man or other men might not even be responsible for. It cannot be. I don't think for one moment that a judge of a court would, if he didn't have this legislation, he wouldn't choose to say that two people are responsible for it, because he has the legislation he may say "well you and you". This is where it is wrong because it shouldn't be placed in the hands of a judicial officer to perform an administrative function and this is what you are doing by allowing the piece of legislation like that in there.

Mr. Dumas: Mr. Chairman my question hasn't been answered but I have read of cases where the judges of the Court have said, one fellow was charged. He went and got several others to say that they also had had intercourse and the judge said fine, you can all pay and contribute to the support of the child and that is what they wound up doing.

Mr. Shaw: We have established the fact that certain acts took place, or the judge has and he has the choice of picking one, two or three. If you take for example the commission of a bank robbery. The fellow drove the car. One fellow goes in and cracks the safe, another fellow helps him break in to do it, this person that is driving the car did not commit the crime, but he helped the other fellow commit the crime or he was a party to it, or he had some connection to it. Well certainly there is connection in all cases in this particular instance, so that it is six of one and half a dozen of the other. If you are looking after the child, the child should be looked after and which one it was gosh knows. Certainly they all had good intentions and it is just a matter of the justice to decide who.

Mr. Chairman: Councillor Shaw will you take the Chair for a moment please. Mr. Chairman, in this regard I think that we must be guided somewhat by what other jurisdictions have done in respect of this. We have been informed both by Mr. Murphy and by Mr. Legal Adviser that other areas and other jurisdictions in Europe, in Canada and in the United States have adopted this same approach to what is and can be a very, very critical problem and as has been stated, certainly we're not experts. Possibly we don't have experts in the Territory in this field, but I think it behooves us to lean in this instance upon the good sage advice and experience of the other jurisdictions. Certainly there may be much that we are missing here, but obviously it satisfied those jurisdictions and in this instance, we must bow to them as far as I see and I don't think there should be any further question. I can't see where we are any smarter than they are and this is my own view towards it. We have just got to accept what has been done in other areas. That's my thoughts on it.

Mr. Chamberlist: Because in Sweden, a country that has been sending out literature of a nature that people here don't agree with ... this is the type of literature they have been sending out to various places and it has been received quite a lot here ... does this mean that we have to accept the same type of thing. Do we have to accept this. Does it mean to say that because in some other area they have forgotten the function of protecting the men from being prosecuted unnecessarily and persecuted unnecessarily because of the excitement that some women draw upon them. Do we have to follow the same reason. I don't think so. I think that we have a responsibility to make sure that our people are protected. It is quite possible that a man can be held responsible directly for paternity of a child. Councillor Dumas has put forward the question, who will pay for the support of this child if one, two or three men who may have been responsible for the pregnancy of that particular woman will not pay because or have not been ordered to pay because no one can **prove** that any one of them. I say that that is some of the risk that government has to take. The child is taken care of. The government takes care of it. All we are concerned about is who pays for it. That is what we are looking at and this is a case of the government saying, "let's put the responsibility onto somebody else". "It doesn't matter who we put the responsibility on. It doesn't matter if we have to take three men into it. Let's put the responsibility onto somebody else." This is where I am asking that members of Council reconsider their attitude in this particular thing and say to themselves, "are we offering any protection to the other people that we have to look after as well?" That is the men of the Territory. Our responsibility don't lie simply with children. It might under this particular ordinance, but we have other areas and we have areas of justice that we must consider and if we perform an injustice to one man just because we

BILL #7 Mr. Chamberlist cont:

want to give justice to the government, this is what we are trying to do. We say that the reason why we are doing this is so that it won't be a burden on the Welfare, on tax payers. This is what you are saying, and quite right. We should be sure that wherever possible, we shouldn't burden the taxpayer, but at the same time should not impose a penalty on a person who may not have had any responsibility in the manner. The responsibility of intercourse is not the responsibility of pregnancy. The person involved may well of been somebody who is unable and had an operation in Anchorage or Hawaii and was unable to carry out the birth of a child.

Mr. Taylor: I would just like to reply to this that I can't agree that there is sufficient argument raised by the Honorable member from Whitehorse East that just because they do it in Sweden is no reason why we should do it here. I thought I explained very carefully that so many other jurisdictions in dealing with this most difficult problem have obviously done a lot of research and done a lot of work individually or collectively to determine that this is the course by which they steer the boat. I think that it is quite clear that if two or three people had involved themselves as has been done in the Territory. We have this in the form of rape. We have this in the form of consent, but certainly in areas and I'm not going to bring these instances before the Committee this afternoon, but I do know that this has been done and where a child has resulted from this and where the parties have agreed that they have done this and this gives us a vehicle by which the child can be properly supported. You say who pays? The people who pay should be the people who created the circumstance, the incidence and I mean it is just logical. It just follows. There is no other way to look at it, and if these other jurisdictions have decided that this is the way to handle it, I say let's do it.

Mr. Dumas: If we were to delete these sections as the Honorable Members request every paternity suite in the Yukon would fail in Court because all a person would have to do is go and get a friend of his to say that he also copulated with the woman about that time. In every case, it would be a wipe-out. The government would be supporting every illegitim child.

Mr. Taylor: I will resume the chair Mr. Shaw.

Mr. Livesey: I wonder if Mr. Murphy could advise me ... the Committee as to how many actual cases he has had in the last year of the type and nature being described on page 15.

Mr. Murphy: If Councillor Livesey is asking how many cases of ... unmarried cases we had in the department last year, it is pretty well outlined in the annual report.

Mr. Livesey: No, no. The question was how many particular cases as described on page 15, in other words, cases where there is more than one father considered to have contributed to the pregnancy of a woman. How many such cases? In a year?

Mr. Murphy: To the best of my knowledge there were at least five such cases in the last year where we attempted to take action on behalf of the mother of the child and in two cases I interviewed the named putative father and he stated to me that he had one or two friends that would be prepared to stand up in Court and state that they also had sexual relations with the girl at approximately the same time and he had no intention to contributing toward the

Mr. Murphy cont.:

BILL #7

support of the child or even toward the expenses of the unmarried mother of giving birth to the child.

Mr. Livesey: Supposing any father accused of being a father of a child wishing to share the responsibility under this Ordinance, merely named two or three others in order to cut down the cost so he would only pay part of the bill, whether they were involved or not. Just exactly where would the department, or how would the department get over this dilemma?

Mr. Legal Adviser: I should point out to the Honorable Member that it is not quite correct that a woman will name out a certain man or that one man will name another friend to get legal liability against a man for contribution. There must be the evidence of the woman and independent evidence not coming from her corroborating the fact that she was telling the truth when she said she had sexual relations with the man.

Mr. Livesey: If the conception took place in seclusion and there were only two people involved, where would the witness come from?

Mr. Legal Adviser: It takes many forms. It would be too diverse to give them any forms, but examples would be if the two people registered as man and wife in a motel and they are not married and they spent the night there, the assumption is that they had sexual relation. If they go out for the evening in a car together and she gets say a keep sake from him, which is identifiable with him and he denies he ever gave her that present and it can be proved he did. You are asking me for examples of corroboration.

Mr. Chamberlist: That's corroboration between man and woman, what about... where do the other men come into the picture.

Mr. Legal Adviser: The other man normally comes into the picture because she will name one person who she thinks is the father and that person will say it wasn't me, and raises part of his defence other people did it and therefore you can't prove it was me. The only time that I have been involved in this type of a lark was defending people against whom an allegation was made that they were the father of a particular child and therefore should make a contribution., and the normal way you raise this defence is to bring in other instances. You cannot normally attack the character of the woman in cross examination, but you bring in instances by setting up as a defence in spite of the objection of the court, that other people did the same thing and therefore be quite unjust to hold that that particular person should be carrying all the blame on his own shoulders and the court will use this as his defence. If you destroy a woman's character this can't have a case, that's the end of it and she gets nothing. Once it is set up that other people did this.

Mr. Chairman: I have before me a motion moved by Councillor Chamberlist, seconded by Councillor Livesey that section 50, subsection (3) be deleted from this Ordinance. Are you prepared for the question? Would those agreed kindly signify. Would those contrary kindly signify? I must declare the motion defeated. The next section is subsection (4). (reads)

Mr. Chamberlist: I'm not going to go through the same routine, you know how we feel about this thing. Here is an area which leaves itself open for somebody to commit murder, because it's being asked

BILL #7

Mr. Chamberlist cont:

of two fellows to decide who is responsible and how much each one of them is going to pay and they are going to finish up by saying "It was not me, it was you and you know it", "I wasn't there, it was you and you know it", so they finish up with one of them killing the other because some Court has followed it ... followed behind ... you know having a child and being accused of somebody else's child and having to pay for it might be a serious situation and we are placing these people in jeopardy just so the government might not have to pay a few dollars for maintaining a child. This is what it boils down to. This is to protect the government from paying money, so the government is willing to say let's get both of them. This is all that this is saying and this is something ... I don't know how people can go along with it. I don't know how men, who have had some experience in life, I take it that these young men that we have with us who are unmarried have some experience in life, can maintain the stands that they have maintained in view of what they should know and if they don't know perhaps I can privately advise them, because it seems so ridiculous that they can continue to maintain that two fathers can be responsible for the birth of a child. This is just a hopeless situation. During the next few months, if I see these young gentlemen about the community, I will tell their girlfriends that they are very fortunate that these people .....

Mr. Shaw: In respect to this section, subsection (4), on share the wealth, this appears to me that if one doesn't pay, say there are three involved, I would like to direct this to the Legal Adviser, and they pay twenty dollars a month each and two of them decide to skip the country, then would that mean that one would have to pay sixty?

Mr. Legal Adviser: Sure.

Mr. Shaw: I can't quite see if this is the case, Mr. Chairman, I don't think that that is fair. I think that each should assume their portion of the responsibility regardless of what the others do, because this person hasn't entered into any agreement with the other two people, we will just use for example that there are three, they haven't entered into any agreement that they will be jointly and severally responsible. They all happened to come together on the common purpose and that is the only relationship that there would happen to be, so though I agree with what precedes this, I do not agree that if two should skip, the other should have to absorb the whole works, I feel that when the judgement says that this man pays twenty dollars a month, for instance, that he shall continue to pay twenty dollars a month and if the other two should skip, it is up to the state to go after these other two characters and make them pay. Not make this other person pay. I am afraid I can't see justice in this particular section, subsection (4) part of it.

Mr. Legal Adviser: This is a normal principle of law. It is no different here than it is in many such situations. When two people jointly sign a cheque, they become jointly and severally responsible. When two people crash a car in certain circumstances and a third party is injured, an order is made against them jointly and severally. The effect of a joint and several order is that each is ordered to pay the whole amount, but as between themselves, they can fund it and come up with twenty dollars in a sixty dollar order, twenty dollars each, but each is originally ordered because he committed the act or is deemed to have committed

Mr. Legal Adviser cont.:

BILL #7

the act. He is liable for the whole amount. It is in ease of him that you make the contribution order, otherwise an injustice would be done and each would be entitled to pay the whole amount and of course this would be unjust.

Mr. Shaw: When people have an agreement, the partnership, where they are jointly and severally responsible for something, I say Yes, that is quite right. That is an accepted fact of any kind of relationship because they are ... they agree to these particular things, but there is no connection whatsoever in this particular case and one person is held up for the misdemeanors, not only for what he has done, but what somebody else has done that he had no say in whatsoever and I do not agree that one person should be stuck for the three of them just because two happen to take off and go off someplace. I feel that they should all be equally responsible, that's where I differ from my learned colleague on my left. Not charge one for all of it. I think ... share and share alike. In the first instance they shared and shared alike in the paying of it I think it should be the same way but not hold them ... because it is very simple in the Yukon Territory for people to just take off and leave somebody holding the bag for the whole works. I just can't see that particular point at all.

Mr. Chamberlist: In view of the Honorable Member from Dawson's remarks, I would move that section 50, subsection (4) be deleted from this Ordinance.

Mr. Shaw: I think it should be rephrased. I wouldn't like to move it out completely. I'd say that each should pay accordingly. The part says that the contribution shall be made. I would leave out where one man is responsible for the others that may be involved. That's all. I feel that he should pay alright, but not for the other fellows misdemeanors.

Mr. Chairman: Any further discussion.

Mr. Legal Adviser: There is no reason why the Councillor can't. The Council is all powerful when it deals with legislation. In all forms of similar kind of activity that come within the scope of the law, it is a joint and several liability. Otherwise, it gets broken in small pieces and it never gets collected. It is the same way in accident cases, in all commercial cases, when a joint enterprise then one person can be made to pay all if the other person doesn't. He has the right of contribution, but what this does is, this section gives the right to any one against whom the order is made to collect his share off the others. The suggestion of taking out the section wholus-bolus would turn the boot on the other foot and put this unfortunate woman in the position of having to chase up after five or six people or three people or even two people for what are quite minor amounts. They are jointly liable and then the addition of the word severally means that the joint liability can be lifted of one and he has the right to collect of the others. It would make the administration of the thing, I think Mr. Murphy might be able to add a word to this, but it would make it extremely difficult to chase up three or four people. Each is responsible for what he has caused and that is the pregnancy. This is the finding of the Court.

Mr. Shaw: I would ask the Legal adviser, if three cars were approaching an intersection where there were three intersections and they all collided and the judgement was that there was say

BILL #7 Mr. Shaw cont.:

\$2,000.00 damage and that it was equally shared amongst the three of them, after the judgement, then one of them skipped out of the Yukon Territory, out of the jurisdiction of the Yukon Territory, is it right that one person should pay all that cost? That would be justice!

Mr. Legal Adviser: This is another form of an order that they be jointly and severally reliable. The Honorable Member on your left will confirm this, he is familiar with this type of order. It is in every day type of law. It has always been so. It is always so in this type of law, in this type of liability when two people are in an enterprise for which they are responsible. There is no good saying I am only half responsible. He is wholly responsible but the law will give him in ease of himself a right to claim a contribution from somebody else.

Mr. Shaw: I wasn't responsible for making that. That sounds haywire to me and I wouldn't go for that anymore than I would go for this. I think that each man undertakes his own responsibilities and certainly they are all responsible and that is if the judge ... they go through all the procedure and the judge says you, you and you will contribute twenty dollars a month each. I think that's quite fair and just. They should, because if they didn't happen to be the one, well their intentions were certainly in that direction, so that they are responsible, but when two take off, they might not even know each other. When two take off and one fellow is stuck for the whole works, that is a little bit unfair.

Mr. Chamberlist: Mr. Chairman, can you imagine little Mary talking to her little friend and saying "my mother is waiting for some money". "Well who are you getting the money from?" "It's coming from my three fathers." Isn't it something.

Mr. Chairman: Have you anything further on subsection (4) of section 50. It has been moved by Councillor Chamberlist, seconded by Councillor Livesey, that section 50 subsection (4) be deleted from this Ordinance. Are you prepared for the question? Would those in favour please signify. Would those contrary please signify. I must declare the motion defeated.

Mr. Shaw: I would move Mr. Chairman that the Legal Adviser prepare something, a new subsection (4) that will make them liable but they are not severally liable for the other fellows sins.

Mr. Chairman: I wonder gentlemen if speaking from the Chair if the matter could be resolved by agreement with the Legal Adviser without the ... necessarily stating the motion.

Mr. Legal Adviser: Can I have time to discuss the matter with Mr. Shaw? Perhaps when the House has risen.

Mr. Shaw: I would be very happy to discuss anything at any time at any place.

Mr. Chairman: I wonder if at this time Mr. Murphy could be excused. What is your further pleasure. It has been moved by Councillor Chamberlist, seconded by Councillor Livesey do now resume the Chair. Are you prepared for the question. Are we agreed? I will declare the motion carried.

MOTION  
CARRIED.

MOTION CARRIED.

Mr. Speaker: I will now call Council to order. May we have a report from the Chairman of Committee please.

Mr. Taylor: Mr. Speaker, Committee convened at 11:00 a.m. to discuss bills. Mr. Murphy attended committee to discuss Bill No. 7. Committee recessed at 12:00 noon and reconvened at 2:00 p.m. It was moved by Councillor Chamberlist, seconded by Councillor Livesey, that subsection (1) of section 50 be deleted from this Ordinance. This motion was defeated. It was moved by Councillor Chamberlist, seconded by Councillor Livesey that subsection (2) of section 50 be deleted from the Ordinance. This motion was defeated. It was moved by Councillor Chamberlist, seconded by Councillor Livesey that subsection (3) of section 50 be deleted from this Ordinance. This motion was defeated. It was moved by Councillor Chamberlist, seconded by Councillor Livesey, that section 50 subsection (4) be deleted from this Ordinance. This motion was defeated. I can report progress on Bill No. 7. It was moved by Councillor Chamberlist, seconded by Councillor Livesey that Mr. Speaker do now resume the Chair and this motion carried.

Mr. Speaker: Are we agreed with the report of the Chairman of Committee? May I have your further pleasure.

Mr. Taylor: In respect of the agenda, it would appear as we at this moment only have bills in Committee at this time so I suggest that we continue with bills tomorrow.

Mr. Chamberlist: Mr. Speaker I would move that we call it five o'clock.

Mr. Speaker: Are we agreed? The House now stands ajourned until 10:00 a.m. tomorrow morning.

Mr. Speaker read the daily prayer. All Councillors were present.

Mr. Speaker: Mr. Clerk, is there a quorum present?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: I will now call Council to order, and I have a message of some importance for you gentlemen this morning. It is addressed to Mr. J. O. Livesey, Speaker, Council of the Yukon Territory, Yukon Legislative Council, Federal Building, Whitehorse. The text reads: "I have received your telegram of the 13th. Thank you for having put forward the views of the Territorial Council on the matter of constitutional change. I am in consultation with my colleague, the Honourable Jean Chretien, and I shall be in touch with you very shortly." It is signed: "Sincerely, Pierre Elliott Trudeau, Prime Minister."

ANSWER  
FROM THE  
PRIME  
MINISTER  
RE THE  
PETITION

Some Members: Hear. Hear.

Mr. Speaker: Are there any Reports of Committee? Introduction of Bills?

Moved by Councillor Dumas, seconded by Councillor Shaw, that Bill No. 6, An Ordinance to Amend the Insurance Ordinance, be introduced at this time.

BILL #6  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Dumas, seconded by Councillor Gordon, that Bill No. 13, An Ordinance Respecting Co-operative Associations, be introduced at this time.

BILL #13  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: May I have your further pleasure under Introduction of Bills? May I remind the House that the last Bill to be introduced was Bill No. 14.

Moved by Councillor Gordon, seconded by Councillor Dumas, that Bill No. 15, An Ordinance to Amend the Judicature Ordinance, be introduced at this time.

BILL #15  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Chamberlist, seconded by Councillor Shaw, that Bill No. 16, An Ordinance to Amend the Workmen's Compensation Ordinance, be introduced at this time.

BILL #16  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Chamberlist, seconded by Councillor McKinnon, that Bill No. 17, An Ordinance to Amend the Securities Ordinance, be introduced at this time.

BILL #17  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

Moved by Councillor Shaw, seconded by Councillor Chamberlist, that Bill No. 19, An Ordinance Respecting Trailer Licencing, be introduced at this time.

BILL #19  
INTRODUCED

MOTION CARRIED

MOTION  
CARRIED

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

MOTION #4 Mr. Chamberlist: Mr. Speaker, I would like to give Notice of Motion, that Sessional Papers No. 1, 3 and 5 be passed into Committee of the Whole for discussion.

MOTION #5 Mr. Dumas: Mr. Speaker, I would like to give Notice of Motion, that Sessional Papers No. 16 and 17 be discussed in Committee of the Whole.

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

MOTION #6 Mr. Taylor: Yes, Mr. Speaker, I would like to give Notice of Motion this morning respecting land disposal policies.

MOTION #1 Mr. Speaker: Are we clear on Notices of Motion? Notices of Motion for the Production of Papers? Under Orders of the Day, may we pass to Motions. Motion No. 1, moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East: "It is respectfully requested that the Administration give serious consideration to an amendment to the Change of Name Ordinance to extend the jurisdiction of the Police Magistrate's Court to process all applications that might appear before such Court in the same manner as processed by the Territorial Court of the Yukon." Would the Honourable Member for Dawson be prepared at this time to proceed with Motion No. 1?

Mr. Shaw: Yes, Mr. Speaker. This is exactly as the motion states. It's to extend the jurisdiction of the Police Magistrate's Court to a very, very simple matter of change of name. At the present time, it is necessary to process this through the Territorial Court. The Territorial Court as a rule sits in the spring and sits in the fall. If there's any business in between, of course, it can't be done. So, a person has to wish to change his name, or persons, when the Court is sitting, or thereabouts, if they want to get any relief from this particular matter. This is not a very complicated procedure. In fact, it's a matter of a statutory affidavit and, as far as I can see, with all the particulars therein, that is about the context of what is required to do it. If we can also have the power of the Magistrate's Court to do it, which is restricted at the present time, the Change of Name Ordinance prohibits that to the Territorial Court, this matter or these matters can be attended to on almost what you might say is a twelve-month basis. Certainly it is something that ... why it is restricted to a Territorial Court, the higher Court of Justice, or the highest in the Territory I suppose, is a little beyond me. This might have been made before they had a Police Magistrate's Court, years and years ago; that's very possible, and it has never been changed. I would ask Council's concurrence in the Administration looking into the matter and, if possible, get the more simple matters to be dealt with by the lower Court which will leave a little more time for the more complicated matters to be attended by the Territorial Court, Mr. Speaker.

Mr. Chamberlist: Mr. Speaker, in seconding the motion, I agree with what Councillor Shaw has said. I think we should make it as easy as possible for people to change their name when it is permissible for them to do so. I don't know of any legal impediment why this slight amendment to the Change of Name Ordinance cannot be carried out. I might point out at this time that the Change of Name Ordinance is one of the very, very few Ordinances that has no Regulations pertaining to it under that particular Ordinance as many other Ordinances have. I feel that we have a responsibility wherever possible to serve the public interest, and I think it would be in the public interest to have this amendment brought forward by the Administration as is usually done for amendment. Thank you.

Mr. Speaker: Is there any further discussion on Motion No. 1? Question has been called. Are we agreed? I will declare the motion carried. MOTION #1

MOTION CARRIED MOTION CARRIED

Mr. Speaker: Motion No. 2 ... order, please ... moved by the Honourable Member for Watson Lake, seconded by the Honourable Member for Mayo. The text reads: "That Councillor Norman Chamberlist be appointed to serve as representative of Council on the Whitehorse General Hospital Advisory Board." Would the Honourable Member for Watson Lake be prepared to proceed with Motion No. 2 at this time? MOTION #2

Mr. Taylor: Yes, Mr. Speaker. Prior to the opening of Council, I think all Members received a request from the Department of National Health and Welfare, Dr. Lyle Black, respecting the appointment of another Member to the Board, and Councillor Chamberlist has been the Member representing Council in the past. I assumed that this had been a position which was held more or less during the complete life of the Council, but apparently it isn't. It's a year-by-year situation. So, in view of the good work that Councillor Chamberlist has done on this Board as representative of Council, I have suggested in the motion that he be appointed to continue this work with the Department of National Health and Welfare. That is the reason the motion is before us today.

Mr. Speaker: Is there further discussion? Question has been called. Are we agreed? I will declare the motion carried.

MOTION CARRIED MOTION CARRIED

Mr. Speaker: Motion No. 3, moved by the Honourable Member for Watson Lake, seconded by the Honourable Member for Whitehorse West: "That Sessional Paper No. 20 be discussed in Committee of the Whole." Would the Honourable Member be prepared to discuss this motion at this time? Question has been called. Are we agreed? I will declare the motion carried. MOTION #3

MOTION CARRIED MOTION CARRIED

Mr. Speaker: Mr. Clerk, if we could have Mr. Commissioner with us this morning for Question Period? I will declare a five minute recess.

RECESS RECESS

Mr. Speaker: I will now call Council to order. We have the Commissioner with us for the Question Period. You may proceed.

Mr. Taylor: Mr. Speaker, I have a question I would like to direct to Mr. Commissioner this morning. I'm wondering if Mr. Commissioner can inform Council as to whether or not there was any proposal by Canadian Utilities and Yukon Electric for a general rate reduction in the Territory this summer, and if so, what can he tell us about it? QUESTION RE POWER RATE REDUCTION

Mr. Commissioner: Mr. Speaker, do I get the question correctly, that there was a proposal from the Canadian Utilities and Yukon Electric about a general rate reduction? Mr. Speaker, the only proposal that I am aware of in this regard is a series of proposals that we are getting together that will be tabled for Council's advice to us just as quickly as we can get them all lined up that has to do with the distribution of the income tax monies that the Federal Government returned to us from the publicly-owned utilities companies. Now, I am not aware of anything beyond that. Perhaps, Mr. Speaker, I should be aware of something and if I should be I will be very pleased to get whatever information I can on it.

Mr. Taylor: I had another question about the \$167,000 rebate, but if this information is forthcoming I won't present the question.

Mr. Commissioner: Mr. Speaker, this is the only thing that I can speak knowledgeably on. Now, possibly the former question, perhaps, if there is something that should be made available to Council on it that I'm not aware of, if we have the question in writing we would endeavour to.

Mr. McKinnon: Mr. Speaker, I wonder if I could ask the Commissioner if these proposals will be available at this Session of Council for a decision?

Mr. Commissioner: Mr. Speaker, I am very anxious to get them here if we possibly can because we have to have Council's advice as to how they want this money dealt with. We have to vote the money in a budget. I'm certainly very anxious to get them here so we can have Council's advice so that it will take its proper form in the budget.

QUESTION #17 Mr. Taylor: Then I'll just place the question on the Order Paper. It's a written question as follows: "Would the Administration advise Council as to when and by what method the tax rebate in the amount \$167,000 will be distributed back to Yukon customers of Canadian Utilities." I'll leave that on the Order Paper for a written reply.

QUESTION RE Mr. Chamberlist: Mr. Speaker, I wonder if Mr. Commissioner could LIGHTING AT inform Council as to when Yukon Electric is proposing to put in a CARCROSS lighting installation in the Carcross area that has been promised for some three years?

Mr. Commissioner: Mr. Speaker, I was under the impression that this question that has been raised with me previously by the Councillor, had already been answered. Apparently it has not, and I will seek an answer and bring it forth as soon as I can, Mr. Speaker.

QUESTION RE Mr. Dumas: Mr. Speaker, I wonder if Mr. Commissioner could give us HORSES IN some information now on the horse problem in Hillcrest? HILLCREST

Mr. Commissioner: Mr. Speaker, I was taken rather unaware yesterday morning in this connection, I signed the document that was sent to me by the Department of Municipal Affairs sometime in the last fortnight that had the effect of applying the necessary Territorial legislation to the area that is presently suffering the horse infestation, and I trust that this is the necessary corrective action that is required.

Mr. Speaker: Order, please. Are there any further questions?

QUESTION #18 Mr. Shaw: Mr. Speaker, I have a written question. "Will the Administration be expanding the very necessary educational program on drug use throughout the Yukon school system, with emphasis on audio-visual demonstrations?"

QUESTION RE Mr. Chamberlist: Mr. Speaker, I would address a question to Mr. INDIAN Commissioner. Mr. Commissioner, in view of the judgement that has HUNTING been handed down with regard to Indian hunting rights, will the RIGHTS Commissioner be taking steps to see that there will be no further prosecutions of Indians when they hunt for animals for their own particular food?

Mr. Commissioner: Mr. Speaker, on this matter I would be guided by the advice that I get from our mutual Legal Adviser. I think that in all fairness and honesty, I would ask that he would answer that question. Would this be reasonable, Mr. Speaker?

Mr. Legal Adviser: Mr. Speaker, the question has been under consideration and there has been no decision made as to where the prosecution is at this time.

Mr. Chamberlist: Mr. Speaker, supplementary. If the question is .. if the matter is under appeal, could we have assurance that there won't be any prosecutions until the appeal has been dispensed with?

Mr. Legal Adviser: If it's a Criminal Code prosecution, it comes under the aegis of the Attorney-General of Canada, and the question should be directed to him.

Mr. Chamberlist: Well, I understood, Mr. Speaker, further to the question, that I was given the impression yesterday by Mr. Legal Adviser that in some aspects Mr. Commissioner is Attorney-General. Doesn't it occur in this particular thing?

Mr. Legal Adviser: Well, in this line, he would be guided by the advice of the Director of Game.

Mr. Speaker: Are there any further questions? Are there any further questions? I wonder if the Honourable Member for Watson Lake would please take the Chair?

Mr. Taylor takes the Chair.

Mr. Livesey: I wonder if Mr. Commissioner is aware of the horse problem in Destruction Bay, which I understand has been given importation from Watson Lake? May I have an answer?

QUESTION RE  
HORSE PROB-  
LEM IN  
DESTRUCTION  
BAY

Mr. Commissioner: Mr. Speaker, I must confess complete and utter ignorance of the difficulties being encountered in Destruction Bay in the matter of imported horses from Watson Lake. Is there any action that I should be instituting in this particular realm?

Mr. Livesey: Well, does the Commissioner, Mr. Speaker, understand that a horse problem is not allowed in Watson Lake, but there must be some reason to think that it could be imported into the Carmacks-Kluane Lake District at Destruction Bay.

Mr. Commissioner: Mr. Speaker, I may be wrong on this, and I am certainly looking here to the Legal Adviser to correct me, but I imagine that this is another situation where we have to invoke the authority of the Pounds Ordinance. Is that correct, Mr. Legal Adviser, in a situation of this nature?

Mr. Legal Adviser: This would be correct, Mr. Speaker, but I am not aware of exactly what the problem is at the moment.

Mr. Speaker: Are there any further questions?

Mr. Shaw: Mr. Speaker, a supplementary question. I wondered, in view of the questions recently arriving, whether the Commissioner is intending to keep a map and a log of all horse movements in the Territory?

QUESTION RE  
RECORD OF  
HORSE  
MOVEMENTS

Mr. Commissioner: Mr. Speaker, it would be a lot more interesting than some of the other things that the Commissioner is called upon to do now, believe me.

Mr. Livesey resumes the Chair.

Mr. Speaker: Are there any further questions? If not, may we pass to Public Bills and Orders? May I have your pleasure?

Mr. Shaw: Mr. Speaker, I would move that First Reading be given to Bill No. 10, An Ordinance to Amend the Taxation Ordinance.

Mr. Speaker: Is there a seconder for the Honourable Member's motion? There being no seconder, may we proceed further?

Mr. Shaw: Mr. Speaker, I would move that the Speaker do now leave the Chair and Council resolve itself in Committee of the Whole to discuss Bills and Sessional Papers.

Mr. Chamberlist: I'll second the motion.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehore East, that the Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bills and Sessional Papers. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: The Honourable Member for Watson Lake will please take the Chair in Committee.

Mr. Taylor takes the Chair.

Mr. Chairman: At this time, I will declare a brief recess while we wait for the arrival of Mr. Murphy.

RECESS

RECESS

Wednesday, November 19, 1969.

11:00 o'clock a.m.

Mr. Chairman: At this time we will call Committee to order. We are discussing Bill No. 7 and we have with us Mr. Harry Murphy, Director of Welfare to assist us in our discussion. When last we rose in Committee we were dealing with subsection 4, Section 50. Have you anything further on this matter? BILL #7

Mr. Legal Adviser: I have given a lot of consideration over this. Subsection (4) is actually giving rights to people rather than creating duties. It's giving the people who will be forced to make a contribution order the right to turn on to somebody else and say he did it too. This is basically what it's doing. It's also giving the woman in the case the right to collect in a lump sum if she so wishes, so in changing this section would destroy to the series before it and the principle to which we are operating. I would request the Honorable Member who is dealing with Section 4 to reconsider his suggestion of actually changing this.

Mr. Shaw: I'm prepared to reconsider that Mr. Chairman.

Mr. Chairman: May I proceed? (Reads Section 51 of Bill No. 7)

Mr. Shaw: Mr. Chairman, the various Ordinances that when people do things that are either wrong or they shouldn't have done and so forth we usually restrict the penalties, in other words, they get a maximum of five hundred dollars and so much time in jail or both. It seems to be put that way and this particular section, we are concerned with looking after a child more than anything else see that the child is brought up in a normal manner, we have an Order requiring a Justice to..that he can set any amount that he so feels like on the defendant, in other words he can make it up \$200, \$300, \$400 in the amount more or less based on the ability of the person to pay. There is no limitations on this. Now surely there must be limitations on a liability in respect to something like this \$50 a month, \$100, \$200 a month and I was wondering if the Legal Adviser would feel that in a case such as this where we are not creating a situation where people could possibly gouge somebody else or lead to intend to do such a thing that certain limitations be made. They could be of a flexible character, yes, but this leaves it wide open. Why I mentioned this Mr. Chairman is the fact that from time to time you read in the papers where settlement is made of \$2000 a month and all this kind of thing, so that it might lead to some unscrupulous women and you do get the odd one that decide they want to get as much as they can out of this person and start legal proceedings accordingly. Now if the amount was put that it would be a reasonable amount to maintain the child, I think that that could preclude some gold diggers deciding how are we going to make a soft touch for eighteen years or so. It would appear to me Mr. Chairman that it is certainly worth some consideration of this Committee.

Mr. Legal Adviser: Mr. Chairman, this has been considered. I would think that the jurisdiction of the Magistrate's Court would be an over riding jurisdiction of the amount that he would order to be paid. In Section 14 (a) subsection 3, paragraph (a) and (b) at the top of Page 15 are the two paragraphs limiting the justice as the bill goes, he should have fixed the payment in a lump sum to enable the child to maintain a reasonable standard of life and he must also take into consideration the ability of the contributor to pay..to provide such payment. Nobody has any objection in principle to a limiting place on this but it has happened in the past as the Honorable Members will know that the amounts which have been fixed by a statute have been most unreasonable. They have been fixed to something like \$15, \$16 per month in some instances. In

BILL #7 Mr. Legal Adviser continues:

some statutes in countries where it is difficult to change a statute outside of the preoccupation of parliamentary time, the amount has been fixed as low as \$6 per month, which is very, very low. So if the Honorable Member has a suggestion to make as to an amount, certainly I think we would give consideration to amend Section 48 to include another sub paragraph (c) saying in any event the sum ordered to be paid shall not exceed the amount of so much. It's difficult to arrive at a figure but certainly we are prepared to negotiate and consider putting in a figure the House may have in mind.

Mr. Shaw: Well you see Mr. Chairman, to carry it further if we look on Page 1 and we see Section 2, subsection (i), now it says "justice" means a judge of a juvenile court and includes a police magistrate; . Now these people are lawyers trained in the legal profession or any Justice of the peace and without due respects, Mr. Chairman, justices of the peace are doing a tremendous service for the Territory in the function of their duties, but their knowledge is extremely limited in relation to many of these matters and possibly this will not come before the justice of the peace, I don't know. At the same time, I would like to see if it is possible to do, something that will prevent gouging. Now if the Legal Adviser is satisfied that the section on Page 15 that this is satisfactory but take into consideration the ability of the contributor is somewhat loose. For example, if this is a person that is earning say \$20,000 a year, just use that as an illustration, well he is quite capable of paying \$250 a month towards this child it would appear to me. If the law says so, he's got the money that he can do it, let's put it that way which to me would be extremely unreasonable. I think we also have to take into consideration that this occurrence that happened was two consenting adults and there should be no loophole that gouging can develop from such a matter but justice of someone ..but there is too much leaving as results of these nocturnal activities. I don't want to see gouging in here, that's why I brought that up. Now if the Legal Adviser feels that is ... it doesn't appear to me too much but he is much more learned in this direction than I am, but consider the ability of the contributor.

Mr. Legal Adviser: Mr. Chairman, would it meet with the wishes of the Honorable Member if we would put in a section in Section 48 limiting the jurisdiction in that particular section to the police magistrate not to an ordinary justice, then it would come for a proper hearing by a judicial officer.

Mr. Shaw: I think it should be something like that or even the Court.

Mr. Legal Adviser: Well, a police magistrate then his order is appellable to the Court so I think it would be wrong to order the Court in the first instance because then it would force the appeal into Vancouver. Even if we advocate to the police magistrate's then we could appeal to the high Court.

Mr. Shaw: Well that would satisfy me Mr. Chairman because bringing this before a justice of the peace is getting too serious a matter.

Mr. Chairman: Next section is Section 52.

Mr. Chamberlist: Question. Mr. Chairman, it would appear then under Section 52 (b) that there is a four year gap when a claim can be made. Does Mr. Legal Adviser agree with this?

Mr. Legal Adviser: This could be a longer gap than that. You see this is a question of trying to organize a period of limitation, the normal limitation of a tort is two years. The normal period of limitation for contract is six years, so the period limitation was the tort period that is a civil wrong rather than a contract because of the quasi tort nature of the form of action. So this is very carefully set out on the following design, but basically it is a two year period. But if the man puts it out of your power to get at him because our writ does not run in Alberta or Saskatchewan. The two year commences to run from the time he comes back, so that if he stays out deliberately for three or four years he cannot thereby avoid responsibility for the payment.

Mr. Chamberlist: Well Mr. Chairman, it appears to me that under subsection (a), a person would be no longer than two years and if the man didn't while he was present in the Territory the day before two years expired and he was not apprehended or a charge made against him for this fund until two days after he got back, he'd be free you couldn't make a legal claim against him because he is threaded in the Territory at the expiration of two years. You didn't make a claim against him so no claim could be made just because there is a day missed you see, but under subsection (b) this is forever. He could be outside for ten years and he comes back just, say as a salesman just to do some selling for ten, eleven or twelve years later he can have a claim made against him for all the years back. There doesn't seem to be any justice in that. It's overhanging his head just for the sake that he didn't take the plane trip a day before the two years expired.

Mr. Legal Adviser: It's designed with this in mind, it's designed that a man who should have had an order against him and absconds, that when he comes back you catch him otherwise you've had it. He goes away and you give a one year period or even a day. Salesmen are a case in point, they come and go like butterflies.

Mr. Chamberlist: This is where it's got to apply under those areas of section (a) and (b). If a person can be ..can get out of a huge claim for sixteen years of maintenance of the child simply because he came into Territory before two days was up, he can get out of a complete claim and yet the person that came back from outside a day before the sixteen years was up, he'd be in trouble. There is no equity there, we're talking about equity where a man should have a claim against him. Surely we will have to amend (a) to conform with (b).

Mr. Legal Adviser: I'll discuss this with the Honorable Member in private. It may be that it is loosely drafted but we've attempted to make it as tight as possible with the object in mind of having a two year limitation and anyone who absconds or deliberately moves out to evade service then when he comes back we catch him. This is the intent, but as I say my assistant and I can always sort these things in private and come to a mutual form of drafting.

Mr. Chairman: I'll now proceed with the reading of this section. (Reads Section 52 (c) and on to (e).)

Mr. Dumas: If a man lives in a lower post, can papers be served on him? Can we serve a man that is just outside the Territory?

Mr. Legal Adviser: A section earlier on says you can serve people out of the jurisdiction without leave of the court, just serve.

BILL #7 Mr. Chamberlist: Mr. Chairman the difference between serving and this particular section where he must be in the Territory is an entirely different thing. If he accepts service in Lower Post, he doesn't have to cross into the Yukon Territory to receive a maintenance order for a child, he would be out of his mind. If he knows what it's about he's going to stay over there. I think it should be re-drafted perhaps I should discuss it with my junior.

Mr. Chairman: Right, next section is 53, subsection (1) then (2).

Mr. Shaw: Mr. Chairman I would like to direct a question to the Legal Adviser. From time to time we get Ordinances here that are expressly brought before us to change what we have or to add to the laws we have under the conformity of laws throughout the country. Has any consideration been ever given to the various governments of Canada..provincial government co-operating in some of these matters so they can give certain rights back and forth in cases such as desertion, for example all you have to do is to go across the border. You can come into the Territory and you can steal things and you could go into British Columbia and you are jailed. I wonder Mr. Chairman what happens when people get out of the Territory, can things be made as to the Attorneys-General ever getting together where they could have these maintenance orders for matters such as this a matter of interprovincial agreement because it would stop a lot of it.

Mr. Legal Adviser: Mr. Chairman, there are provisions made for reciprocal enforcement of maintenance orders. Exactly what classifications these particular orders would come under I honestly could not say at this time, but there are reciprocal enforcements of judgment. This is civil judgment but owing to reasons which I genuinely do not know, it's quite impossible as far as Territorial statute is concerned to obtain the return of the prisoner, but criminal code offenses of course, there is no difficulty whatsoever.

Mr. Chairman: (Reads Section 54)

Mr. Chamberlist: Mr. Chairman, I wonder if Mr. Legal Adviser could say in this particular section that when an appeal is pending, does this mean that the order that has been given by a law court for maintenance to be paid must continue to be paid. If this is the case and this appeal is successful, how does the appellant get his money back.

Mr. Legal Adviser: He just doesn't. As the law stands at present in any case when a court gives a decision, it is a decision. You would have to make special arrangement to suspend the operation of that decision pending appeal because appeals take alot of time and some appellants do not prosecute their appeals with vigor or after a few months if the case is delayed they will drop it. Then you're in a hassle. This provision is necessary because then a person could always have the payments suspended by making an application to the court. The court will then always grant the application on terms, that is, they will extract from an undertaking, but in the event of his appeal being unsuccessful he will make his payments. In a case like this, they may even make him pay the money to court week by week, not give it to the lady in question but give it to the court to hold it there. It's really for the judge to make up his mind to any case as to what will happen.

Mr. Chamberlist: Mr. Chairman, wouldn't it be a protection if in this section there would be included in there any payment ordered by a court, was in fact paid into court subject to a period under which they may be able to appeal. It would be quite easily

Mr. Chamberlist continues:

BILL#7

Mr. Chairman to recognize that once a woman has received a payment of \$150 a month and the payment is paid out and then as Mr. Legal Adviser said, he takes some time before an appeal matter gets before a court. It might take three months and the man has paid 150 times 3 is \$450 to the woman for the maintenance of her child, then the appeal is successful. Now, the court of appeal rules that the appeal is successful. The man says to the woman "give me my money back", she says "whistle, I've spent it". Now he's had a judgment against him in the law court, he's complied with it, it's being reversed and he can't get the money because there is no way of getting it back. So there should be some protection there where the money should be paid into court pending the hearing of the appeal. This is what I feel .

Mr. Legal Adviser: Mr. Chairman, I think the court can look after itself. If he wants to make an application and he has been in court proceedings at this stage, he's part of the game, he knows it's an appeal he will almost invariably have a lawyer knowing that he's paying \$150 a month. I can't visualize orders going past \$50 a month, the Honorable Member from Dawson's category is the \$20,000 a year man, he can well afford to pay for a lawyer that is, I don't think there is much need to look after these people in this way. This is a normal form with all action that you apply to a court for stay and if you don't want to apply that's just it, but it's up to themselves to look after this so that they make an application for stay and they get it.

Mr. Chairman: (Reads Section 55 and Section 56)

Mr. Chamberlist: Question. I wish to go back to the subsection (4) of Section 55, at times there is a question of law involved and all matters before court are subject to appeal where there is a question of law involved. Is this question of law which may be involved going to be removed from the common right of a person to appeal to a higher court again because if that is the case then we will have to take a close look at what's coming up in Section 57 which is a penalty clause. I mean that if you cannot appeal a person could be subject to penalties without going to a higher court.

Mr. Legal Adviser: This is in a sense a penalty and in a sense is not a penalty. It's an attempt to limit the number of appeals. There are some who would appeal and appeal forever. They would appeal to St. Peter's gate if they would have the chance. It's an attempt to try and limit the amount of money which would be expended on lawyers fees and keep the matter at a reasonable level. I will not press this point to far, I would be quite prepared if it's the wish of the house to add in the order decision of the court on such an appeal shall be subjected to further appeal except on a question of law. If this is the wish of the house, we will start to do this.

Mr. Chamberlist: Mr. Chairman I understand that Mr. Legal Adviser is prepared to put that particular addition in.

Mr. Legal Adviser: Yes, I am quite prepared to put it in.

Mr. Chairman: Everybody agree? (Reads subsection 4 of Section 56)

Mr. Dumas: Mr. Chairman, what's this otherwise disposed of?

Mr. Legal Adviser: I would imagine a small change. If the contributor has gone away, say take an accident case where a child dies, the mother dies and there is a small balance left and the

BILL #7 Mr. Legal Adviser continues:

contributor may be available or may not be available then we have no legal authority to do anything with it. The Commissioner would then decide to give it to somebody who might not necessarily be in the line of succession. If you're dealing with say \$100, the child may have an aunt who is looking after him so you give the \$100 to the Aunt.

Mr. Chairman: (Reads Section 57)

Mr. Chamberlist: Question. Mr. Chairman, this type of legislation sets back people in a democratic society a thousand years. To lock people up for debts is a bad enough thing, but to suggest because somebody is unable to serve a summons then you can go outside of the normal legal procedures and arrest the man and throw him into jail. To me that becomes really pre-German 1932 stuff. I don't think anybody here should even attempt more than one glance at this and say no we won't accept any type of legislation like that. I can't understand how Mr. Legal Adviser would think of incorporating that in this particular piece of legislation if truly the majority of people are involved. Now tell me how a child can be taken care of when the contributor is jailed for ninety days and can't earn a living to help pay for perhaps what he has to pay for. I wonder if Mr. Legal Adviser can say that.

Mr. Legal Adviser: I think if the Honorable Member were listening to the small print read by Mr. Chairman, he'd understand the intent of the section. I think his wishes for freedom of the individual do him credit but the man is not being put in jail because he has not paid. He is put into jail because under subsection (2) the magistrate is satisfied that he has the money to pay and has not paid. The first thing that happens is that the man is not paying and is brought before the court then an examination to see whether he has got the means to pay is held. If he fails to satisfy the justice that he has a reasonable excuse for not complying which means if he's got no money he doesn't go to jail but if he's got money and won't hand it over then that's exactly where he goes. I think reasonably enough that is where he should go.

Mr. Chamberlist: Mr. Chairman, I disagree with Mr. Legal Adviser. When I read the small print perhaps I read it much more closely than the person who wrote the small print. To me in subsection 2(a) there's nothing in there said about whether he's got the money to pay or not. Now a justice is going to decide and this is put in the hands of a justice of the peace who as one of my colleagues already has said is sometimes not sufficiently learned in matters of this nature. That a man could be placed in jeopardy at the whim of the justice of the peace, he can be locked up and he can be locked up for three months and no imprisonment under this section shall extinguish payments ordered to be made under this part, so that in any event even though he's locked up for three months he can't earn money to pay it, his deficit becomes another three months greater because he has three more payments to make so that if he was let out after the three months, he still hasn't got the money so he gets taken back again and he gets put in forever. This is like the old debtor's prison, where people were put in a prison, they started off with a two week sentence for an indebtedness and they finish off rotting there for thirty-five years. This is what this is doing. It is the same old archeological type of piece of legislation. I don't think we should even tolerate that piece of legislation. If I had to vote for this piece of legislation for any other purpose but this one, I would vote against it completely because that should not be in there.

Mr. Dumas: What do you do with the fellow who refuses to pay?

BILL #7

Mr. Chamberlist: It's not a case of a fellow refusing to pay. If this was set up where a man says "I refuse to pay", this is entirely a different picture. Then I would say certainly, alright, if this man refuses to pay and there has been an order for him to pay, this is a different thing, but this doesn't say that. When it appears to a Justice that he's avoiding arrest, you know where they haven't been able to serve a summons on it. Now, the stupidity of this is, if they can arrest him, why can't they serve a summons on it. If they arrest him, how can he be concealing himself from receiving a summons. Can the Legal Adviser follow that?

Mr. Livesey: I wonder, Mr. Chairman, if Mr. Legal Adviser could advise the Committee when it was in history that imprisonment for debts was abolished and if he knows of the date, why hasn't he included this type of legislation?

Mr. Legal Adviser: Well, there is conflicting dates and jurisdiction. It hasn't been abolished in Canada yet, but has been abolished in England years ago.

Mr. Shaw: Mr. Chairman, for not paying alimony, isn't a person subject to go to jail?

Mr. Legal Adviser: Yes, the judge would have to be satisfied. An application would have to be made to commit the person who didn't pay to jail, but the judge would not commit him to jail until after an examination of him and bringing him by an order of injunction to court and he was either, as we would say here, absconding or avoiding service and staying out of the jurisdiction, or if he came in and said "No, I've got no money", but somebody produces evidence of a bank account that has \$20,000 in it. The judge would not order him to go to jail unless he's refusing or has the money and is taking means to hand the money to somebody else secretly by some kind of legal fiddle or another. The essence of going to jail nowadays in this jurisdiction or any jurisdiction which follows this type of law is that the judge must be satisfied that the person is capable of paying but for some reason is not. He may have a hundred excuses and these kind of people have a hundred excuses. When it's a question of avoiding arrest, what happens in practice is that it's not easy to get the police here to enforce this type of legislation and there are no officials unless possibly the marshal or sheriff down in the Territorial Court. The police normally in Whitehorse don't take kindly to being asked to enforce this type of legislation and the woman who has an order against a man really gets a very tough time of trying to enforce it.

Mr. Chamberlist: Mr. Chairman, there's an old, old saying that if you can't get legislation enforced, don't have it. Now if it were made clear that the legislation is in there to enforce payment to people from who can pay, this is an entirely different thing and I support this, but the way it is written, it places in the power of the Justice of Peace the power to incarcerate a person in jail even though he is unable to pay and the suggestion that he can be put in jail because he can't be served with a summons is ludicrous because if he can be arrested, why can't the arresting officer say, here's your summons. There's a conflict there. I would suggest that Mr. Legal Adviser take another look at this page as well.

BILL  
#7

Mr. Legal Adviser: The two things he can go to jail for is, deliberately trying to avoid service and not coming to Court when he is told, now this is common form in every Court. When he is told to come and he won't come then he is going to be threatened and the Magistrate says, tell that man that if he does not come to Court we will put him in jail. That is the usual expression. Then if he comes and has a reasonable excuse for not paying the money and one reasonable excuse would be, I have not got it, or if it is a \$50.00 order, I can only give you \$25.00 because I only have that in my pocket to pay my mortgage, my house, my family and solicitors. Quite a few of these contributors from time will be married men with other responsibilities. I think it is not unreasonable if they are capable of obeying the order to come to Court and don't, the Magistrate has the same power here as he has in every other case and if they have money and won't hand it over, then I think the same thing is there.

Mr. Shaw: Mr. Chairman, can a person, can a Judge, sentence a man to jail in absentia if they haven't got ahold of him? Is that possible? According to (a) it would appear to me that if they think this fellow is avoiding arrest, I mean they say he is avoiding arrest, concealing himself and can't find him, obviously, they can't get ahold of him to put him in jail.

Mr. Legal Adviser: Contempt of Court proceedings, of which this is ..... are quite different from normal proceedings, there is usually no set sentence, it is usually a question of grabbing him and then when he is grabbed he comes docilely and says I am sorry, I won't ....and he is released. This is not really a question of sentence. I could not conceive a Magistrate giving a sentence of three months in the first instance or any sentence at all. It is merely the machinery is there to be used. It is like a sort of like a Damocles hanging over a man's head that if he doesn't come he doesn't come he can go to jail, while the warrant is outstanding and when it is executed he is brought in then he's got to explain what he was doing, how he was concealing himself or what had happend. But the warrant would issue he's written two or three times registered mail, they have called to the house and someone has answered the door and says he is not here, then you tell the magistrate he is to warrant for the arrest. The warrant is notified to the police and when they see him they usually pick him up for a parking offence very often or anything else and they just look at his record and they see that he is wanted for something and they just bring him in.

Mr. Chamberlist: This Mr. Chairman gets more ridiculous as we go along. I take another look at this you know and when you read that the magistrate can order a person to jail so he issues a warrant for the arrest. If they can't find him to serve a summons on him what is the use of issuing a ~~warrant~~ for his arrest because they can't find him, now if they can find him, they don't have to have a warrant for the arrest they give him a summons. You know it's a piece of legislation here that is just simply contradicting part of law, if we let this go through we're just condoning an injustice to people. The poor man is already in trouble, he's got to pay his wages to pay the woman that helped him get in trouble and on top of that he's penalized further.

Mr. Legal Adviser: I thought this to be an epic, it's a sonnet.

Mr. Livesey: Mr. Chairman, the Legal Adviser's reference to this being more like an epic poem sounds like a keet ker numberan.. then an epic poem of if he's talking about Tennyson's book which

Mr. Livesey continues:

BILL #7

is supposed to go on forever, this certainly appeals to me, there is no doubt about that. However, I would like to ask Mr. Legal Adviser Mr. Chairman, if the gentleman he is going to put in jail despite all other aspects of this particular section, is one of those cases which are biologically impossible where three or more fathers contribute to the one pregnancy. Is this one of these gentlemen he is going to put in jail for noncompliance with the contribution order. Thank you Mr. Chairman.

Mr. Chairman: I think that in view of the time we will declare Committee in recess until 2:00 o'clock this afternoon.

Mr. Chairman: At this time I will call Committee back to order and we will continue with Bill No. 7. Are you clear on 57? BILL  
NO. 7

Mr. Chamberlist: Well, it is not clear. I am wondering what Mr. Legal Adviser is going to do about it.

Mr. Legal Adviser: My researches and my research assistant who is not very far away from me, have come up with the information that this is a widespread law in many other jurisdictions. Now that doesn't necessarily make it good but in the most recent versions of the laws which have been amended and brought up to date in Ontario and other places, this is the form the section takes, not verbatim form, but it is the form it takes. That is, if a person disobeys a Court Order the justice trying the case has power to commit him in a ... Court. If he is able to pay and doesn't, he can also be put in prison until he changes his mind. This is not the old fashioned debtor's prison which, my recollection is, was not ..... In any event it is not imprisonment for debt, it is imprisonment of a sort, he is transferred to a place of detention until he sees the errors of his ways which is to pay up if he can; if he can't, of course, there is no question of .....

Mr. Chamberlist: Well, Mr. Chairman, I must give warning to Mr. Legal Adviser that I will vote against the whole Bill if this piece of legislation, that part of the legislation remains here.

Mr. Chairman: May I proceed? Section 58(1). (Reads 58(1), (2), (3), (4); Clear?

Mr. Shaw: Mr. Chairman, what I still haven't got clear is sub-section (a) of Section 57. I think the other is alright, "the contributor fails to attend" but how in the Sam Hill you can possibly put a man in jail when you can't find him, the word used is ludicrous. Surely you first have to get the man there before you can sentence him. Of course this has been done in treason and matters such as this, I suppose, but for something like this, how you can do something like this seems to me kind of foolish, somewhat redundant. The authorities must know where Joe Blow is and just give him the summons and the Court can take on from there. If the Court, if he is charged for contempt of court and gets three or six months well that is fine, that is up to the Court to decide. But where you put a man in court for, put him in jail for three months when you can't even find him; a very interesting point would be that if he showed up three months later he would have been in jail for that three months anyhow, would he not have been in jail. I mean, I must agree with the Honourable Member on my left, if this (a) was taken out of there the thing would make sense.

Mr. Legal Adviser: Mr. Chairman, the effect is that to follow lines of giving justice power of committing a person for contempt of court, which is what this is. But there is a limit placed on it. In the Territorial Court, if the same thing happened, the Territorial Judge can just commit him to prison and that is it. There isn't any limit. There is an attempt to put a limit on the power of the justice to keep a man in jail because he won't obey an order but where the three months is there, he can't do it for more than three months ---an order. To say effect would be achieved by saying that the Justice may issue a warrant for the man's arrest

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Mr. Legal Adviser continues...  
as this is what he is doing. They may not know where he is, he may be moving from place to place, he may be in and out of the Territory. Then an order is issued and when they do catch him and put him in prison; then he is brought before the Court. He is not kept in prison for three months after he is caught. As soon as he is caught, if he is on the move hiding himself or absconding, then the police have the authority to pick him up and they bring him before the justice and the justice deals with him accordingly.

Mr. Shaw: Mr. Chairman, here is a very good example; a person in the spring, goes out prospecting away out in the woods by himself; he is a loner and there are people like that. So three months go by and of course they are all trotting around looking for this character who is off, to serve a summons on him. So, he is not in the Territory and he is evading, apparently, to all intents and purposes, the summons. So, when he comes back in the Fall after this prospecting trip, they hike him over to the local hoosgow for three months and lock him up. That could happen.

Mr. Legal Adviser: This is the way it works. This happened this summer. On several occasions people against whom some particular officer, the Labour Standards Officer.....they would ask him to come to Court and one always used the velvet glove to start with by writing to him or issuing him with a summons to come to Court; he doesn't come so the case is adjourned and then a lawyer comes along and says that he is, that he has got instructions but no instructions so he adjourns it for plea. This dribbles along for one, two, three months. Eventually everyone is getting a little tired of the fact that he never even comes to see his own lawyer so the lawyer then says I will abandon it and a warrant is issued for his arrest. Well, knowing what the situation is, he stays out of the way and out of trouble and it might take three or four months before you actually catch him but on some particular occasion, there is one case I think it was in Watson Lake, this man came to town and said Good Morning to one of the Councils, when it suddenly rang a bell and he was whistled up to Whitehorse and landed in the Magistrate's Court. And this is what happened. As soon as he is arrested he is brought in, a warrant is out for his arrest; because he refused to obey the order by the Court to come on a certain day to make a plea of guilty or not.

Mr. Chamberlist: Did he receive a summons.

Mr. Legal Adviser: This is true, but at the same time everybody, including him, knew that he had in fact been as good as served because he had read it, he knew what it was and he was staying carefully out of the way because.... but he apologized and said he did not read the summons and the Magistrate then said, well that is alright and we will adjourn the case for a week and you see your lawyer and the case was disposed of fairly rapidly.

Mr. Chairman: Councillor Livesey.

Mr. Livesey: This brings up a very interesting point, Mr. Chairman. The very thing that is wrong is justice in the Yukon. That is, we bring people to justice instead of taking justice to the people. Why should it cost a person because they don't live in Whitehorse, ten times more to oblige the Government and the law in relation to an offence than it does for someone who happens to live here. Surely you are not going

Mr. Livesey continues...  
to turn around and tell me that this is justice. This is not justice at all. The law should be taken to the people, not the people - the justice should be taken to the people, not the people brought to justice. Now this is a point that I have stressed for many, many months and that is precisely what is wrong and there are right today, instances of cases where people who have nothing to do with an offence are paying, and has cost hundreds and hundreds of dollars because the law provides that the public shall be taken to justice, and justice means taken to Whitehorse. In some instances certain businesses have to be shut down and all the employees have to be paid for being idle because the law must be fulfilled where the people must be taken to justice in Whitehorse. And I take this opportunity, Mr. Chairman, of bringing this to the attention of this Committee.

Mr. Legal Adviser: This is quite true, Mr. Chairman, but in the.....case, the Magistrate, the Clerk, stenographers and two Labour Standards Officers all went to Watson Lake three times; this man having promised to come to Court, and he never turned up and they had their lunch and turned around in their cars and drove back, so there were five people in three cars going down to Watson Lake on three occasions to meet at his special convenience. So at that point of time he wore out the patience of the people who were going to Watson Lake and there wasn't that much consideration given to him and a warrant was issued for his arrest and he was brought in...

Mr. Chamberlist: Well Mr. Chairman, I know that particular case and the man was never served with a summons and he didn't know about it until he got out of the bush so I won't go for that story that he knew that he was being looked for. He just didn't know and it was the fault of the administration that did not let him know that there was a summons for him. But I am not concerned about that right now; I am concerned about what happens in a case of where under this other section, the one that Mr. Legal Adviser has dreamed up, this poor child has three fathers. Let's find out how the woman .....the three fathers, all at the same time. Tell us about that. That will be very interesting! I would like to hear from the Legal Adviser how the warrant is going to be issued against three fathers who have been ordered by a Magistrate or a Justice to pay the cost of maintenance for the conception and the results of one child conceived. Come up with that story, that should be a real good one.

Mr. Legal Adviser: Mr. Chairman, it is nothing more than a reproduction in print of the procedure which is common in every provincial jurisdiction; in every European country so far as I know, in every American State, and it is the law here at the moment. There is nothing new in this that is not in existence everywhere. It has been considered many times in many places and they have found it an acceptable procedure, but there are certain types of people, and as it happens, a high proportion of them live in the Yukon who think that they can be a law unto themselves and will not come to Court unless they are made. And one of the things we are asking Council to do; not this Session but next Session, is to amend the Labour Standards Ordinance to make it possible for us to bring people under the Labour Standards Ordinance to Court easier because now we are in the position of having to order a Company to come to Court and if nobody comes to Court we

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Mr. Legal Adviser continues...  
we seem to be pretty well powerless. If they won't come they must be made to come. This is the only way or otherwise the laws which are made by this Council are .....

Mr. Chamberlist: Well, Mr. Chairman, I am going to insist that we do not have anything like that because what Mr. Legal Adviser says is because there is bad law in existence that we have to condone it by making more bad laws. Mr. Legal Adviser, I am sure Mr. Chairman, is well aware that bad law doesn't cure bad law nor should we encourage it. This is bad law and Mr. Legal Adviser is well aware of it that in certain areas there is bad law which interferes with the liberty of the individual and this does, but I still want Mr. Legal Adviser to say, how you are going to get these three fathers. There is another section of the Ordinance..... how are you going to get them into jail - somebody says - if you can only get ahold of one of them and is sentenced to six months do you put him in for eighteen months to make up for the punishment of the other two. A ludicrous piece of legislation and you expect....sane grownup people to follow that type of thinking.

Mr. Legal Adviser: Mr. Chairman, I am not so sure who the sane, grown-up person is.

Mr. Chamberlist: I am!

Mr. Chairman: Order, please.

Mr. Legal Adviser: ....me to reiterate that this is the present law of the Yukon. It always was the law of the Yukon and it is the law in Alberta, Saskatchewan, B.C., I could name all the provinces and all the States. It is necessary with certain types of people, if they won't come when they are asked, if they won't come when they are written to, well then there is no other way.

Mr. Shaw: I wonder, Mr. Chairman, if Mr. Legal Adviser can answer, if a contributor refused the service of a summons, I can see that, it is the concealing part, he may be legitimately out someplace, he might be trapping. When you go trapping you leave here sometime in the late Fall and you don't come back for 4,5,6 months and that could be interpreted perhaps as concealing himself. He may be and he may not be, but when he refuses to accept the summons on the affidavit of someone who is duly authorized to give that summons, I would think that would suffice to serve the purpose which we are trying to do. When he gets a double-registered letter, that, he may go to the Post Office and he may not. But when he refuses, that means that a summons, in my estimation, has always been that an individual gives someone an order from the Court and then he takes an affidavit that he in fact knows this person and gave him this and I do think it is up to the Court and their officials; they have certain obligations to do. They are not a law unto themselves either and it should be their responsibility to ensure through their appropriate appointed officials, whoever it may be, that they have in fact, this person has refused to accept it, then I say you really have some very good grounds on which to prosecute the person and take him up before the .... and do whatever is to be done.

Mr. Legal Adviser: This would not be done on a person's sayso. This takes an actual proof before a Court; there must be a hearing and there must be evidence as to the fact since, if it is proved to the satisfaction of the justice, in other words

Mr. Legal Adviser continues...  
it must be proved the same way as anything else. This is in effect .....form of offence. You must prove to the satisfaction of justice that he is evading arrest or avoiding the summons and then the justice has power to deal with him, but it must be proved. There must be an actual Court hearing, and when he comes then he will have an opportunity to rebut this but it gives a weapon to whoever is dealing with him to get him to Court.

Mr. Chamberlist: Will Mr. Legal Adviser please answer me the question that I asked before - what happens in the case of where a justice has made three people the contributor, the father of one child. What happens then. Mr. Legal Adviser very carefully omitted to answer this question and I would like to get an answer to that question from him.

Mr. Legal Adviser: .... Mr. Chairman, that it is possible for three people to be the father of one child. Now this of course, Council know, is not only difficult, but very difficult.

Mr. Chamberlist: It is impossible yet we have to say that three people can get charged.

Mr. Legal Adviser: They would be judged as individuals. If an order is made for payment by Mr. A, the fact that there were other contributors does not affect his conduct; if he evades arrest or he won't come to Court when he is asked, then an order is made in relation to him. Each of the three of them do this thing, that is refuse to come to Court, well then three separate orders are issued under the hand of the justice and one assumes they would be executed by the police in the normal way and the person brought into court to answer for his conduct.

Mr. Chamberlist: Executed by gunshot fire.

Mr. Chairman: May we proceed?

Mr. McKinnon: Mr. Chairman, the only instance I have heard which would provide some difficulty is if a person did not receive the summons; he did not know that he had. Now, he would have the right in Court, when he is brought before it, to say I just did not receive the summons, and that was all there was to it. I was out prospecting, this was the turn of events that have transpired to me the last while and it is up to the justice to decide whether he was telling the truth or not in this manner; and this is the only objection. I trust the ability of a justice of the Court in the Yukon Territory to be able to distinguish whether this man was telling the truth or not.

Mr. Chamberlist: But in the meantime, Mr. Chairman, the Member from Whitehorse North must realize that it might take place on a Friday night and the man is incarcerated in jail until Monday before he gets before a Justice to explain himself. He is coming from the bush, he doesn't have the time to explain to anybody, the policeman comes along, he says I have a warrant for you, I want you, throws him in the bucket and then has to wait till Monday to come before a Magistrate. This is..... He comes before the Magistrates and says I did not get any s mmons, I was out in the bush. And the Magistrate says, very sorry indeed, this is an error, you are released. You come on such and such a date. But in the meantime he spent three days behind the bars. These are the

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Mr. Chamberlist continues...  
things we have to protect.

Mr. Legal Adviser: At that point there is already an order for contribution made against him. It has proved to the satisfaction of the Justice that he is a contributor; it has been alleged that he failed to pay so that there is proof of that fact. It is then alleged that he is avoiding service; that must be proved by evidence. So there is a lot more to go on when he is making this type of order to have him brought in an average case. In an average case it just means that there is an allegation made of a crime being committed without any evidence whatsoever except that information is issued and the person is arrested. It is quite a different thing. This is a Court issuing an Order after full study of the case; it is completely different from an ordinary arrest, pick-up by the police on the street.

Mr. McKinnon: That is exactly the point, this man has already been proven to be a contributor to the cause and he is not contributing to the support of that child. This is the whole idea behind this Ordinance. So, if he has been for months, without contributing and spent two days in the bucket, maybe he will pay up every month from then on.

Mr. Chamberlist: Oh, listen to these bachelors!

Mr. Chairman: May I proceed. Section 59 (Reads Section 59 60, 61(1), (2)(a), (b), (c)).

Mr. Livesey: Question. In the event that an unmarried woman has a child born out of wedlock and that unmarried woman wishes to bring up that child without interference from the government, does this Ordinance give the Director the power to interfere with her in any way, shape or form?

Mr. Legal Adviser: The Director has to form a judgment as to the capacity of the woman and so on, in the interests of the child. The child is the primary interest; the secondary interest is the married woman's interest, the unmarried woman's interest. If the married woman, the unmarried woman is unable for some reason, she may think she is able without being unable, there may be certain circumstances. She may not have enough money. She may not be able to find work or go back to work. In such a case the child will be treated as any other child, legitimate or otherwise would be treated and the Director would have a care for its welfare. But beyond that, assuming, the case which I hope would be suggested by the Honourable Member that the unmarried woman was capable of looking after a child, well then the Director would not interfere.

Mr. Chairman: Mr. Livesey.

Mr. Livesey: Mr. Legal Adviser appears to be saying that a child of an unmarried woman is a child in bondage to the state and the government of the country. I don't hold this to be true. The basis of any democratic union and any democratic government is a family and a family unit and not that the government shall interfere in any way, shape or form. I don't agree that the Director should have the power to decide what she shall do with her child, or shall not do with her child. First there must be cause and that cause must be proven and one of those things which must be proven must be neglect, I would say, to start with. This is why I asked the original question. Does this Ordinance give the

Mr. Livesey continues...

Director power to interfere with an unmarried woman who wishes to raise her child without interference from the government. I think if the government presumes that they have the power to interfere with her in any way, shape or form they are trespassing on her freedom.

Mr. Legal Adviser: The Honourable Member might have misunderstood the intent of what I wished to say. The Director has no more power to deal with illegitimate children in these circumstances than he has with the child of a married couple. This is giving him a duty in certain circumstances to check up to see that the whole circumstances are alright in the interests of the child. The Director doesn't have such an overbearing duty in the case of a child of a married couple because there is a presumption, moral presumption that the child will be cared for properly but experience shows that children of unmarried mothers are more susceptible of difficulties, dangers, maladjustments, not getting enough to eat, not getting enough clothing, to abandonment; this Section is imposing a special duty on the Director to care for these children, or to at least be alertful for their interests. It is imposing a duty, rather than giving him a right.

Mr. Livesey: Mr. Chairman, does this mean, without the request of the mother for help and assistance? If that is, it is an interference, and I would oppose it.

Mr. Legal Adviser: As I understand the routine, when it comes to the knowledge of the Social Welfare Department that an unmarried woman has gone to hospital, then one of the Social Welfare Workers, in a confidential capacity, will visit with her and discuss the whole affair. Now there may be a need for assistance, there may not. If there is a need for assistance then the wheels commence to turn and the assistance provided and she is given advice but she is never told to do something against her interests or even forced to do something against her interests or against the interests of the child. It is just that the Welfare Department need a direction from the state to look after these children who are the least cared for segment of the community.

Mrs. Gordon: This was an area in this Ordinance that I was concerned about that it might infringe on the rights of women as individuals, particularly in the case of a woman who, whether she was legally married or not, is considered an unmarried woman and has a child by choice and there are instances of this. They have a child by choice, they choose the father by their own choice and have every intention of raising this child on their own; sometimes with the help of that father, sometimes without, because they want to raise a child. But I can understand from what Mr. Legal Adviser says, it is a confidentiality of the Department of Welfare. These things are not inflicted on the mother or the child, and in the interests of the child, I do believe the state must take some cognizance of these points.

Mr. Chairman: Councillor Dumas.

Mr. Dumas: Mr. Chairman, I think that the procedure, as explained by the Legal Adviser, is what happens. I have knowledge of one such case. However, I think before the Department remove the child from its mother or home finally, it must go into Court to show why and at that time if the parent or the mother can show that in fact they had not been neglectful of the child, then the Court will rule in the

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Mr. Dumas continues...  
mother's favour. There is one particular case where the Department of Welfare helped the mother; I forget if she was unmarried or divorced, or what, was looking after one child, helped her for four years and continually the Social Worker had to go down and take the child just so it would be fed and clothed and housed over the course of four years, and then they would bring it back to the mother and say, now look, you have got to smarten up, you have got to look after your child. But, finally the Department said, that's enough; you are just too neglectful of the child, you are doing too much harm to the child, therefore we are going to take it away and put it in a foster home until we see some improvement in your character, or in your conduct. They had to go into Court, get a Court Order in order to do this; they did so, the child is now being well looked after in a foster home, the mother has made no attempt to get back the child and made no attempt to qualify herself for looking after this child. And it is the child that we have got to be primarily concerned with. There is no way the Department is going to suggest taking a child away from a mother or away from home just on a whim! They are concerned with these children and they are concerned with looking after them the best way possible and normally the best way is for the child to be with its mother or its parents and that is what they want more than anything else.

Mr. Chairman: Councillor McKinnon.

Mr. McKinnon: Mr. Chairman, I have been very silent on this so far and am reluctant to get into debate because I know once I do I am going to put my foot in my mouth right up to my kneecaps, but at any rate I know an example in Whitehorse of a girl who did exactly what the Councillor for Mayo said. She wanted a child, wanted one badly, picked out the father that she wanted to father the child, had the child, and is taking care of the child just as an ordinary mother would do with **absolutely** no help whatsoever from the Department of Welfare. The only thing that this has is that if the Director of Welfare sees that the child is not being cared for because it is a child of an unwed mother, they can then move in and help. And honestly, gentlemen, we are using the wrong Ordinance, the Ordinance, the Ordinance to provide for the Welfare of Children is not the one to fight the bureaucrats but I have seen the Department in operation; I have seen that they want, more than anything else, not to interfere with the normal relationship of the child and a mother if they can help and not interfere in this area. If they have to, they have to be given the enabling legislation to be able to do it for the welfare of the child. I am with you one hundred percent when I see the rights and privileges of people being abused and the ever-increasing bureaucrat machines moving in areas that I don't think they should, but this is not the battleground, I assure you.

Mr. Chamberlist: Mr. Chairman, I am easy on this particular point because I do feel that at least the Departmental head should have the discretion of saying whether or not a child should have protective care. The point raised by Councillor Dumas that you would have to go before a Court in any event before a child can be taken is not proper. We have already been through this area where this Ordinance—we are giving the right to the Director to go without warrant, but I agree that we should not restrict the Director of the Department from using the prerogative in the interests of the child and I can

Mr. Chamberlist continues...  
argue too much on that particular point.

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Mr. Shaw: Mr. Chairman, there is just one thing I would ask the Legal Adviser. In other words, the assurance is here that that could only be taken away from the mother by due process of the law with evidence to show neglect.

Mr. Legal Adviser: Yes, an illegitimate child, a child born out of wedlock under these circumstances mentioned in section 61 gets the full right, the full consideration of any other child. It would take a full Court Order to grant the custody to anyone else. In the first instance, if it was serious neglect, of course just like any child, the Director can move in but that is only a temporary thing and as you saw in the earlier sections, he must within ten days bring the matter before the justice. All children are treated alike except that an illegitimate child casts a duty on the state a little more than others to look after.

Mr. Shaw: One more supplementary question, Mr. Chairman. In other words, if a mother wanted to look after the child and was capable and in fact did look after the child, the Welfare Department would have no authority whatsoever or say over her provided this was being done?

Mr. Legal Adviser: No.

Mr. Shaw: No, power on earth could take the child from her.

Mr. Chairman: Councillor Livesey:

Mr. Livesey: I wonder if I could ask Mr. Murphy, Mr. Chairman, if he could advise this Committee, thinking about all aspects of children and the number of children born in the Yukon, in the last three years what percentage are illegitimate of the total birth?

Mr. Murphy: Mr. Chairman, I should say that the Yukon Territory had the highest rate of illegitimacy in Canada, I believe it was 16.9% of the live births. However, we must take into consideration here the number of Indian-custom marriages which are not legal in the eyes of the state but which are legal in the eyes of their people. All these births are to Indian people who have been living together as man and wife for years in their, in the eyes of their own Band or their own Tribe are registered as illegitimate, as children born out of wedlock. This Section, if I may say a few words on this particular section we are dealing with, simply provides the authority to the Department of Welfare to investigate, to investigate all illegitimate births that are reported to the Vital Statistics office and this is simply to ensure the welfare of the child, that the mother, the unmarried mother is capable emotionally as well as with regard to maturity of raising the child, that she has sufficient support and to advise her of her rights under this part of the Ordinance to maintenance-to maintenance from the putative father, to make her aware of the help that we can give her in determining paternity. The advice we can give her in taking the necessary steps to acquire or to obtain an order for maintenance for the child. There is no question here at all of interference, it is simply to ensure that the child brought into this world will be properly looked after and properly taken care of.

Mr. Chamberlist: Mr. Chairman, isn't that somewhat disgraceful that we should, in the Yukon, be listed as the area of the

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Mr. Chamberlist continues....

highest illegitimacy when we have a large population of Indian people whose terms of marriage have been going on for years and years and years, but simply because they don't go through the procedure of visiting the Justice of the Peace or going through a wedding in the church, they are termed as illegitimate, the children of these people, although they are really married. This is something that has been going on for the last hundreds of years from which the Indian population originally came, perhaps aboriginals in the Yukon Territory. All of a sudden we include them in the illegitimacy stage. This is an insult to the Indian people and it is about time that, if the Department of Welfare is responsible for it, for that type of statistics it should be withdrawn and withdrawn pretty early. It is most improper that because Indian people have a child, they are going to be researched to see whether or not they can maintain this child. Now, this is an error where again, the Indian people get hit pretty badly for it.

Mr. Chairman: Councillor Dumas.

Mr. Dumas: Mr. Chairman, I agree with the Honourable Member for Whitehorse East, but I think it is a matter for the Department of Indian Affairs to determine this; I could be wrong and maybe Mr. Murphy could tell us.

Mr. Murphy: Mr. Chairman, our Department has nothing at all to do with this; it is the Vital Statistics Ordinance and the Registrar of Births for the Indian Affairs Department. I might add that I agree wholeheartedly with Councillor Chamberlist that many of the children who are branded as illegitimate really should not be considered as children to be born out of wedlock in these particular cases we are speaking of and I can only suggest that perhaps the Council can propose or bring forth some type of legislation that will resolve this problem.

Mr. Chairman: Councillor Gordon.

Mrs. Gordon: Following along in this vein, fellow Councillors, I want to bring to your attention the fact that on the 6th of August, 1968, I presented a brief to the Royal Commission on the Status of Women in Canada. It was a five page brief, with eight points in it, and of the one that covered the majority of the brief was just this particular subject and a page and a half of that five page brief is just what we are talking about.

Mr. Chamberlist: Can I have a copy of it.

Mrs. Gordon: You certainly can.

Mr. Chairman: Councillor Livesey:

Mr. Livesey: Now, let us get back to the other ludicrous situation we just talked about, I have instances that I know of where there are unmarried women bringing up children, five or six at a time, each having a different father. Now if you are going to have three contributors for each one, you have eighteen fathers for that family. Now, this is the situation. Now, what kind of polygamous bilge is this is what I would like to know. It seems to be getting to a point where it is absolutely ridiculous. What we need is a redraft of this Ordinance, that is what we need, Mr. Chairman.

Mr. Chairman: Gentlemen, I wonder if at this time I may proceed? 62. (Reads 62(a),(b)).

Mr. Chamberlist: Question, under this particular section, if in a case where we come to the three fathers again, if in the case of the woman going back to live with one of the three fathers, is it abated against the other two or do they continue to support the child of the earlier birth?

Mr. Legal Adviser: Mr. Chairman, the expression is used in this section is husband.

Mr. Chamberlist: OK, Husband, it becomes a husband,.... becomes a ..... what happens to the other two?

Mr. Legal Adviser: All contributions are stayed against a husband and the other two but of course you must realize that the terms of becoming a contributor imply that she must be living apart from her husband for three months before the date of conception of a child; therefore it would be impossible to fulfill that condition in the case of a husband. So a husband could not be the father of the child.

Mr. Chairman: May I proceed. 63. (Reads Section 63 (a),(b), 64, 65(a),(b)).

Mrs. Gordon: Mr. Chairman, just one moment before we go into this adoption part of the Bill. I would like to ask Mr. Murphy through the Chair, if this deals just with children or is there in existence in our law something about people over twenty-one who may be adopted by older people in the Territory. Is there anything within our law that covers these sort of circumstances?

Mr. Murphy: Within our present Adoption Ordinance? If anyone over twenty-one may adopt, oh, could be adopted.

Mrs. Gordon: Could be adopted, this is the point I want to get across.

Mr. Murphy: I don't believe it is in our present Ordinance. I believe it is provided for in this Ordinance.

Mr. Legal Adviser: The present Ordinance reads, you are dealing with unmarried minors and it means a person who has never been married and is under the age of twenty-one.

Mr. Chairman: Section 66. (Reads Section 66, 67(1),(2)).

Mr. Dumas: Question. This is just as a matter of information. It has become a practice in some states and in some provinces too to allow some single people to adopt. Is that going to be the practice in the Territory, Mr. Murphy?

Mr. Murphy: It can be made under Section 67 (1)(a).

Mr. Dumas: Has it happened in the past up here?

Mr. Murphy: No, it has not, no.

Mr. Chairman: 68(1). (Reads Section 68(1),(2),(3),(4), 69(1)(a),(b),(2)).

Mr. Livesey: Question. Mr. Chairman, if I could direct a question to Mr. Murphy and ask him how many children there are at the present time available for adoption in care of the Director?

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Mr. Chairman: Mr. Murphy.

Mr. Murphy: Mr. Chairman, at the present time we have twelve children relinquished for adoption. I should say who have been relinquished and are available for adoption at the moment.

Mr. Chamberlist: Mr. Chairman, when the word "relinquished" is used in this tense does that mean they have been adopted before but are now relinquished and are going to be adopted by somebody else?

Mr. Murphy: Mr. Chairman, this term is used in a situation where the unmarried mother surrenders her child for adoption and gives her consent to an adoption.

Mr. Chairman: Section 70 (Reads Section 70(a),(b)).

Mr. Chamberlist: You think you can adopt a married woman? What is this in there for. Perhaps Mr. Legal Adviser can explain this. A married woman can be adopted?

Mr. Legal Adviser: A married man or a married woman can be adopted in certain circumstances we discover people with certain relationship which they had not had before, or a parent may be in circumstances able to come together with their child, or dozens of circumstances one could invent where it happens but all this we are doing here is saying that if the child happens to be over twelve, they must give the consent and if they happen to be married as well as over twelve then the spouse must give consent. It would be a bit awkward to adopt a married woman if the husband does not consent, or vice versa.

Mr. Chamberlist: How can a married woman be adopted when she is already in the care and custody of her husband, she is in the care and custody of her husband.

Mr. Chairman: Section 71 (Reads Section 71(1),(2)).

Mr. Livesey: Question. I believe throughout the Ordinance it appears to give all powers to the Director, subject to the powers of the Commissioner so therefore where it says the Director has full power, there appears to be a contradiction of the entire purpose of the Ordinance.

Mr. Legal Adviser: With respect, Mr. Chairman, the Director has statutory powers and the policy which the Director would follow is laid out in this Ordinance which is carried out subject to the Commissioner and the Council. He happens to be appointed to his position by the Commissioner, but in his statutory functions he acts independently. True, if he was inefficient or poor on the job he might be fired but there is no everyday supervision of the Director in his work by the Commissioner whatsoever. He runs his own office and he runs a Department. His overall policy is subject to the control of the Commissioner but not his day to day operations. This is an unrealistic view to take.

Mr. Chairman: 72 (Reads 72(1)). Now is that to be singular, that last consent?

Mr. Legal Adviser: Yes, consent, one by one, Mr. Chairman.

Mr. Chairman: (Reads 72(2). Councillor Shaw.

Mr. Shaw: Just one thing I note in this - this is ... of the Judge. It does not say justice. It is one of the times it says Judge.....

Mr. Legal Adviser: The whole of the Adoption Ordinance is handled by the Territorial Court.

Mr. Chairman: 73 (Reads Section 73, 74, 75 (1),(2),(3), (4); 76(1)(a),(b),(2). Councillor Gordon.

Mrs. Gordon: This would indicate in this section that some of the long-delayed final adoption papers in the past, who have been agreeable, agreeably arrived at to negotiation and consent and what not, would be relieved under circumstances in this Ordinance, it won't take so long to adopt where consent has been given right from the very beginning, am I right in this?

Mr. Murphy: Mr. Chairman, speaking of agency placements, placement of children by the Department of Social Welfare, the previous practice has been that a child would remain in the home for a probationary period of one year and usually in these instances the adoption perhaps would not be completed for eighteen months after the placement of the child. What we are trying to do here is to speed up the legal completion of the adoption where the Department is satisfied with the progress made after, six months after the placement.

Mr. Chairman: Section 77 (Reads Section 77, 78(a),(b); 79; 80(1),(2). Councillor Dumas.

Mr. Dumas: Mr. Chairman, it is not pertinent to that Section particularly but I wonder, in the case of a man marrying a divorced woman who has a child; if he wanted to legally adopt that child, does he have to have the consent of the father?

Mr. Legal Adviser: Yes, the child would always remain without an adoption order the legal and lawful child of the divorced male parent. We have had trouble with this, one of the adoption orders we have had trouble with here during the summer was a case of where in exactly such a case the father, the legitimate father refused to give his consent unless the mother waived her right to a sum of \$4,500.00 which he owed her. We then got an Order in Court dispensing with his consent because this is considered by the Department to be a most improper motion to refuse consent of the adoption of your child and what he really was doing was selling his child for \$4,500.00.

Mr. Chamberlist: The Department would go before Court if a man wanted to be relieved of money in support of that child, let us say..

Mr. Legal Adviser: Under a different Court proceeding altogether, in a different jurisdiction, there was an order against her for \$4,500.00 so when the Department forwarded a consent in the normal way to the parent and said will you consent to the adoption of this child by the new husband of your former wife, he said, sure, if she forgoes the \$4,500.00

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7 Mr. Chairman: 81 (Reads Section 81; 82(1)).

Mr. Chamberlist: Why is it that in earlier sections the Director does not have to give any documents except to the Commissioner or the Commissioner's solicitor and in this particular section it requires the Commissioner's permission. Why is there a difference? I wonder if Mr. Legal Adviser can explain that?

Mr. Legal Adviser: There is no secret or super extraordinary reason for this. It just is that we tend to follow the form and the normal form is to have a legal officer give the consent because an application is made to him from some legal office for some purpose connected with the estate or otherwise, and they make it, normally, to the Attorney General. Now, the particular officer here who has complete director of the Government is the Commissioner. This is a quasi legal matter, an official matter. It is not for purposes connected with the direction of the Department of Social Welfare, so it is either the Court or the Officer in charge of the administration of the government. Now, where, now, the second subsection is where adoption has been made or papers related to adoption held by the Director, they are retained by him in a sealed file and are not opened to inspection except with the consent of the Director or the Commissioner. So, in effect that means that application will be made in that instance for the papers in the Department of Social Welfare to be opened, the application will be made to the Director. The Commissioner then comes in in a slightly different capacity, as a chief officer administering the Government in ..... The Commissioner will then give it a reexamination as he always does.

Mr. Chamberlist: Well, Mr. Chairman, that was very nice, very nice, but it did not answer my question. I want to know why in one area it is the Director that gives the permission and he gives the permission to the Commissioner or his legal adviser.

Mr. Legal Adviser: This is all the other section said. The other section said that information shall not be given except to certain people, in connection with certain proceedings dealing with the protection of children and the people there said.....the Director, the Commissioner or the solicitor of the Commissioner. I am not sure whether they used the word solicitor, but they did

Mr. Chamberlist: No, they didn't say solicitor but here is an order of the Court, or the written direction of the Commissioner and before it was the written permission of the Director. Now this is what it said. I will just find this because these are the actual words that are used. Now, I want to know why you don't have the same ..... that you try to get with legislation in other provinces of Canada, why don't you have the same ..... in the legislation itself? But in 82 (2) it gives you.....person.

Mr. Legal Adviser: There are two kettles of fish here, Mr. Chairman, one is the papers which are in the court and they are under the custody of the Court Clerk who is the chief functionary down in that office downstairs. Now the only people who should be giving the Court Clerk any administrative instruction is either the Judge, after a formal application has been made to him, he tells the Clerk to open up that file

Mr. Legal Adviser continues...  
and give him a copy of the documents. The.....should be  
...to interfere with the Court Clerk in the exercise of  
his duties is the person to whom he is responsible, which  
is the Commissioner. Now, in subsection (2) it is the  
Director or the Commissioner.

Mr. Chamberlist: Under what Ordinance is the Clerk of the  
Court responsible to the Commissioner.

Mr. Legal Adviser: The Judicature Ordinance.

Mr. Chairman: At this time we will call a recess.

RECESS

Wednesday, November 19, 1969.  
3:30 o'clock p.m.

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Mr. Chairman: I will now call Committee back to order. We are dealing with section 82. I will read subsection (2) of this section. (reads 82(2) and 83.)

Mr. Livesey: I wonder if I can enquire from Mr. Murphy what is the ... what is the position of the Territorial Administration in the Welfare Department in relation of the adoption of a child say from Saskatchewan without any involvement with the Territorial Government?

Mr. Legal Adviser: It would be dealt with in the following subsection, the status of children from outside and inside is dealt with in detail in the Ordinance.

Mr. Chamberlist: I wonder if Mr. Legal Adviser would indicate whether he would be prepared to consider amendments to the Ordinance relating to Vital Statistics in the Territory so that the reference to Indian people who have been living with each other as husband and wife are not placed in the position of having their children referred to as illegitimate.

Mr. Legal Adviser: To say that this is under active consideration by the government, would be a wrong thing to say, but it certainly has been under active consideration by Mr. Murphy and me for at least a year and a half and we have cudgelled our brains and write up judgements and there are judgements dealing with this matter. Mr. Justice ..... gave two judgements before his death dealing with customary marriages of Indians in one case and Eskimos in another, whereby he held that whereby the customs in force among the people where the marriage took place a marriage was deemed to be a valid marriage. He as a Court deemed it to be a valid marriage and transferred a piece of property to a child of this particular union notwithstanding the fact that they hadn't actually registered the marriage in the normal way under the Vital Statistics Ordinance of the Northwest Territories. There are two judgements to this effect, but this does not dispose of the matter entirely because a main difficulty arises from the fact that when two people enter into what is commonly called a common law marriage or an Indian customary marriage or an Eskimo customary marriage they don't go to the trouble of coming into any office to register it. They don't go into a church as the Honorable member said, they don't go to Mr. Taylor's office, so when a child is produced as a result of this union, if somebody comes in to register the birth, the names of the two people clearly demonstrate as a rule that they are not married. If the mother says, "I have a customary marriage with John Jones," she could be inflicting a parenthood on John Jones without his knowledge. Where the people have not got a marriage which can be traced by the Vital Statistics, the Registrar will not register the named male person as the father without the consent of the father. It is not just enough for a woman or a doctor or a nurse, to come in and say Mary Jones had a baby and she is married to Robert Robinson by a customary marriage. They have got to have the husband do something to admit this. Any form of this that we can think of, we failed to come up with any cure for it. In effect what you are really trying to say is that people who contract an Indian customary marriage should make this fact known to an office. When you say which office, you say the obvious office is Mr. Taylor's office, but it is Mr. Taylor's office in the first place that could just give them a marriage certificate

BILL #7. Mr. Legal Adviser cont:

and they could be married in ten minutes. I don't think that we are against this. Mr. Murphy is very, very concerned personally and as Director ... because when he goes to a conference outside it's a little bit embarrassing when they run through statistics with every year at the conference at the top of the statistics for illegitimate children appears the Yukon Territory. To him personally it's embarrassing and it is also embarrassing to him as Director on behalf of the Territory knowing as he does that a lot of these children are deemed in the eyes of their companions and the people with whom they live to be legitimate and I'm sure that on their behalf the Councillors are embarrassed as well. This has a lot of side effects. It means that when children go to school they are registered as being illegitimate. At least they are registered as being the son of a particular mother, but not the son of a particular father. The name that is given to them is usually, as is the custom with illegitimate children, is the name of the mother and not the father. So as soon as they reach a certain age, they and their companions become aware of the fact that they are regarded by the law, by the school system and everything, as being illegitimate because that is their name. If Mary Jones is living with Johnny Robinson, the child is called Tom Jones, not Tom Robinson as everyone else is. Mr. Murphy has tried to come up with something and I have tried to come up with something and we can easily come up with a cure in the sense that you can deem them to be legitimate, but doing that is not enough. You have then got the rights of the father outside these customary unions. You have got common law marriages among white people where the woman is still legally married to another man and who in some cases will even refuse to be divorced because of religious grounds but will contract common law marriage with a particular man and have children by him. So you are right in a really mixed up deal. I certainly will examine any suggestion. Mr. Murphy, I know is only too agreeable to do it, but our ingenuity is spent. If the Honorable Member would come up with some ingenious suggestion, we will certainly give it every consideration.

Mr. Chamberlist: It would appear to me from what Mr. Legal Adviser said that if the Indian couple conforms to the white man's way of doing things, this is fine, even if the Indian couple comes along and says, "This child is our child, we have been living in what we consider to be a marriage state." The registrar would say "Well, you have to get married before I can recognize it. Notwithstanding that you two say you are in a marriage state, but I can't do anything about it because under section 30 of the Vital Statistics Act ... Ordinance, amongst other things, I must write down the names of the party to the marriage, the date of the marriage, the place where the marriage was solemnized, the date of registration," so that when we are talking about solemnization of marriage, it is only as the white man would have it by a justice of the peace or in a church. I think and I will take up what Mr. Legal Adviser challenged me to do, I think there is a way to amend section 30 of the Vital Statistics Ordinance to recognize marriages of especially our native people who have lived together, have raised a family, who in turn are raising other families and they may have ... gone through proper forms of marriages, but when it comes to when little Johnny says, "Where was your daddy married?" So somebody checks up where daddy was married and daddy was registered as an illegitimate child because his parents before him were also Indian and didn't go through the form of marriage that has been requested under the section 30 of the Vital Statistics Ordinance. It certainly should be embarrassing to the Director,

Mr. Chamberlist cont:

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when he goes on these conferences, embarrassing that we are not sufficiently advanced to recognize the situation. Embarrassing because the Director has to explain to the other people, "Well we don't recognize the marriages of the native people in their own way". This mightn't be improper in the eyes of the white man as the decent people recognize it in their way exactly the same as the Maori in Australia. They rub noses, and gypsies, they get their blood run into each others veins and they are married. They don't have to go through the solemnization by registration or go before a justice of the peace, so I would think that if perhaps Mr. Legal Adviser would, if he can't do it in this particular session, that we should, especially if he has been considering this for 18 months and the Director has been doing likewise, we should come up with something that would take away the stigma from the children, from our Indian children who are growing up and being educated to go out for further education outside, so they are not placed in a position that they in turn are registered and known as illegitimate children. I think we should do something about it and everybody should be giving a thought to repairing this inequitable position.

Mr. Legal Adviser: I am familiar with the solution that has been adopted in New Zealand. In most countries where some form of mixture of native people and Europeans, Americans or Canadian, the solution they adopted was they had a marriage ordinance or a marriage act, almost identical with ours. You could choose to get married under the marriage ordinance or not, as you pleased, but if you got married on a native custom well, then the whole of the ordinance did not apply to you and when you went to register a birth, you put down on a different birth certificate altogether under separate ordinance, how the marriage took place or who your father and mother were and it didn't appear to cause any trouble, but this is blowing a hole right through the thing and saying that people by choice can choose one way of life or another. You are making it possible. As well as that of course, it was convenient to use a second form of ordinance because in some of these places, people marry up to four wives legitimately, if they have enough money to afford it and you've got ... the only thing that you are really worried about then is not the marriages, but the divorces and there a man could divorce a wife at will, but a woman could not remarry unless she produces divorce certificates. Men didn't have to do this because they could contract multiple marriages. A woman could only marry one man and the whole thing was taken out, was largely justice by the religious courts of the particular religion to which the native people of the particular place adhered, if there was such or else they just forgot about marriage altogether, but I'm not sure whether this is the solution for a moder civilized place where you have only got 10 percent, or 15 or 20 percent of the people who are in this situation.

Mr. Dumas: I think we are making a real mountain out of a mole-hill here. In this day and age, bastardization is not looked upon nearly so much as a stigma as it was twenty or thirty years ago and I think in ten or twenty years time, it's not going to matter a dam. I believe we have in this legislation we're allowing unmarried adults to adopt children. There is automatically going to be, according to this way of thinking, some sort of stigma when you see a child and a mother that you know is unmarried or a child and a father that you know is unmarried, but more and more, month by month, year by year, there is no stigma and I really don't think that it is of that great importance. I know several bastards,

BILL #7 Mr. Dumas cont.:

and they are no less people, they are no less people because they are sons or daughters or unmarried parents, so I really think we are flogging a dead horse.

Mr. Livesey: I wonder if Mr. Legal Adviser has considered the question of combo? I understand now there are several areas right now where several women are living with several men and all the children are children of them all not of one. And as soon as one is born, then they all become the fathers of that child, every one of them, so that each husband has several wives and each wife has several husbands. This is certainly going on in New York at the moment and I wondered if Mr. Legal Adviser has any answers to this question and I also have another one, if he can pay attention to what I am saying. With reference to children of common law, are common law people married in relation to this Ordinance or are they not married and as I brought up yesterday, I understand the Scots custom where you stand up in a railroad train and declare that you are married, this is a legal marriage. Is it? This is the question I raised yesterday and didn't get an answer. I have three questions that I would like answered Mr. Chairman.

Mr. Legal Adviser: As far as the Scottish type of marriage is concerned, it's a question of what is the law in the place where the marriage was contracted and in Scotland the law was that provided two people announced the fact in public that they were married, then ... and cohabited together then that was deemed to be a valid marriage and this is the origin of the ceremony..... So far as combination marriage is concerned, I haven't personally considered it because I'm sure my wife would object, but there is no question that ... If the Honorable Member wishes to put forward a motion, certainly the administration would take the matter under advisement and see could we accommodate the wishes of any substantial number of people who wanted to have any law to make this legitimate. This is a matter for the Council rather than the administration.

Mr. Shaw: In respect of what the Director has just stated in fact that to the amount of legitimacy is not necessarily the case on account of certain customs are practiced in the Yukon, that do not comply with that of the normal marriage regulations, customs. I'm wondering if there is any real basis in fact to that particular statement that is in there. I am not aware, in any large scale anyhow, in fact I'm not aware of any customs. I've never heard of any customs that the Indians might have in relation to marriage. This might have been many years ago. They had to have something, whatever it may be, but the fact that is practiced in this day and age or has been for quite a number of years. I would like to ask the Director Mr. Chairman, if he knows for a fact that there are customs of Indian marriage that are not recognized by the laws of this country.

Mr. Murphy: I have no personal knowledge of this, but there are people who have lived with the Indian people and amongst the Indian people. I am not aware of the type of customs that they have but I am aware of the fact that there are those marriages which are called Indian custom marriages and have been for so long as I have been in the Yukon Territory. Perhaps they were marked married by an Indian custom, but they had been living together and in their own eyes they don't feel that they have to be married in a Church or before a justice of the peace. Perhaps this is more frequent in the more remote Indian villages.

Mr. Shaw: When I refer to that Mr. Chairman, there are many Aborigine tribes that take marriage quite seriously and when they ... they have a ceremony of a sort. It is very binding, in fact it is much more binding than the western civilization in many countries of the world, but just the fact that people decide to live together is not to me a marriage regardless of what the ... except the custom would be most permissive which of course the general population is trending towards that way now anyway, but I have never heard of a custom that you could say was a real marriage custom amongst the Indian people, that they themselves would accept as binding in the same manner as what we consider marriages should be in our civilization. That's what I am referring to. Could anyone answer me the question, Mr. Chairman, does anyone know of a marriage custom amongst the Indian people that could be considered a valid agreement between ... and binding agreement between two people. Two, just two people.

Mr. Dumas: Mr. Chairman I know of a custom amongst the Tsimshian Indians and the Haida on the coast, now whether that's ....

Mr. Shaw: In the Yukon Mr. Dumas.

Mr. Dumas: Well as a matter of fact the Haida Indians and the Klinkit Indians come from the same basic tribe and we have Klinkit Indians at Champagne, up around Dezadeash, and I believe down around Teslin and their custom is this, if a man and a woman join together for a night, they are married, simple and this follows the religious teaching that marriage occurs between two people not three. Not a minister or a judge or anything else. It is the two people concerned. As far as I'm concerned, any two people who join together for purposes of cohabitation and raising children are married and it doesn't take any superstitious gobbledygook by some third party or group of other people to tie the knot. It's those two people. It is simply between them and that is just as legitimate as anything that you can find in any book anywhere.

Mr. Shaw: In that case Mr. Chairman the marriages must switch around about every week or every three weeks.

Mr. Chairman: I wonder if we could proceed with the Ordinance at this time? (reads sections 84 to 89).

Mr. Shaw: Here we are. There are and this is a fact. I'm not talking about marriages at this time. I'm talking about children from villages in the Yukon who do themselves, one family will take a child of another family and raise that child. This is quite a common occurrence. These things are happening. I don't think they are particularly bad, I don't think they are wrong. I think they are very good, particularly when it will be a ... one that isn't married or one that the husband has died or may be a widow and she is still carrying on having children and she can't afford to keep them so a relative down the street just takes that child in his home. It is actually adopting the child. It is not done legally of course, but it is done and it is just as sincere and just as good as any other type of adoption. It happens in circumstances like that. That has been going on in the Territory and I imagine it will continue to go on. These people that do that are doing it out of the goodness of their hearts when they take these children in. They don't understand all these things and all of a sudden they get yarded up before the court and get find \$100.00 for doing something like that. Are there any

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Mr. Shaw cont:

extenuating circumstances in these cases. Could the Director give an opinion on that? What would happen?

Mr. Murphy: This section relates specifically to private placement where a child is obtained through other sources than through the Department of Social Welfare. It's to prevent what we used to refer to as black market placement with children. Children who can obtain ... couples who cannot obtain a child through a recognized child welfare agency because of various reasons, obtain a child from an unmarried mother herself directly, or through some other source. The section of course here refers to a child received into the home for the purpose of adoption not for the purpose of raising the child. We know of quite a number of cases where a child, particularly with the Indian people, where a child of their daughter is absorbed into the family and raised by the family. There are many cases such as this. This section, unless they are proposing to adopt the child then they would have to notify the department, because it is required before an adoption can be placed before a court that the report of the Department of Social Welfare into the circumstances of the placement and the home is placed before the judge before he can consider the petition.

Mr. Livesey: An adoption effected according to the law of any province or territory of Canada or any other country or part thereof before or after the commencement of this section has the same effect in this Territory as an adoption under this Ordinance. Does this mean then that if a family or a parent or guardian adopts a child from the province of Alberta or British Columbia or Saskatchewan, that they must comply with the present section that we are talking about right now? In other words if they adopt a child and come in from Alberta, surely they are taking the child into their home for the purpose of adoption but does it mean that they have to advise the Director?

Mr. Legal Adviser: They must obey the law in which they live; so it is no excuse under these sections to say "I got the child from Edmonton, we don't want the Director to be bothered with it at all". The Director must still be notified.

Mr. Livesey: A good many people, Mr. Chairman, are going to the provinces to adopt children because of the confusion in the Yukon. I have several in my own district that have told me and given me this evidence.

Mr. Murphy: No adoption placements are made by the outside jurisdictions unless the original application has come through the Yukon department and unless our department carries out a home study of the adopting couple. It is quite true that many of our Yukon couples go out to Vancouver or to Edmonton to obtain their children but it is through referral of our agency. It is not because of any confusion that exists. Our procedures are as simple as possible, we have no restrictive criteria in our adoption policy and it is not possible for anyone from the Yukon to obtain a child from an outside agency without first of all the approval of our agency here, without the application being processed by our department. Councillor Livesey asked previously about a couple coming from Alberta or Saskatchewan with a child. There are quite a number of these adoptions handled by the Yukon Department, by our Legal Adviser and our department of couples who have had a

Mr. Murphy cont:

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child placed with them in the province and who have moved to the Yukon and when this occurs the adoption case is transferred from that province by the Superintendent of Child Welfare in the other province, to our jurisdiction here and we then assume the responsibility for the supervision of the placement until the probation period has terminated and then our department then finalizes the adoption in the Territorial Court of the Yukon.

Mr. McKinnon: Would it be your responsibility Mr. Murphy to let these people know that under this legislation that they are liable to fill in ... or that they are liable to a fine if they don't fill out a form that your department requires them to do. It would just seem insane to me to think that a normal person is going to go through a complicated ordinance to find out that section 89.(1) ... and say "here, I'm from Alberta and I've adopted a child and I have to, after going through this all to section 89 I have got to go to the Director of Welfare and fill out a form. And if this guy doesn't do this and he is never going to know about it, let's be realistic, he gets hauled into court because he hasn't done it in a month and gets fined \$100.00, I mean this is insane. I asked a question. Was his department responsible? If he knows of the wheels in motion, he knows the jurisdiction has been transferred to the Territory, so it is your responsibility to make sure that this person coming to the Yukon complies with this section of the Ordinance. Is that correct?

Mr. Murphy: The type of case I was speaking of is an adoption referral by an outside jurisdiction. The child has already been placed by the agency, the children's aid society for the provincial department of welfare in that home with this couple before they moved to the Yukon and all we are doing is assuming the responsibility for the supervision for the balance of the probation period until the adoption can be completed. This section we are speaking of here refers mainly to private placement in homes in the Yukon Territory that we know nothing about. We are not aware of the placement of the child.

Mr. Chairman: Section 90, subsection (1) ...

Mr. Legal Adviser: These sections dealing with adoption for a child are worked on a reciprocal basis between all the various provinces and us and the provinces together and the laws are very very similar throughout Canada except as well as having the Social Welfare Department of the provinces in this organization of adoption there are children's aid societies under official offices who also partake in it. They all exchange information and when a person is given a child for adoption purposes and they are moved from one province to another, notification is given back and forward and as Mr. Murphy said, when they come from Alberta to here or B. C. to here, we just pick up at the point where it was left off and the thing is machined through our courts. When it is a question of black marketing or baby farming, it is a different thing altogether. The people that you are trying to get at are the people who would come to the department and would be refused or from who a child may have to be taken away for a hundred and one different reasons. If they then, outside the official aid society, knowing what the position is, go out and arrange privately with a girl who is pregnant and arrange to adopt that child, unknown to the department, we want it to be prevented. I'm not sure how you can bring any law to public attention short of advertising the offence in the newspaper, but the normal way of doing it would be when the social worker has misenquiries and they

BILL #7 Mr. Legal Adviser cont.:

might deny that they had taken this child for adoption purposes, the social welfare worker would say, "you know that you are taking this child for adoption purposes without notifying us" or whatever agency it happened to be if they moved. "It's an offence and you are liable for a fine." It is only to deal with a very, very small proportion or cases to keep control of adoptions in the place where they should be.

Mr. McKinnon: I just want to use a specific example and find out whether this person would be liable under this section. A couple in Alberta adopt a child. That couple moves from the jurisdiction of Alberta to the jurisdiction of the Yukon Territory. Is he then at that time fall under section 89.(1) and (2) of this Ordinance?

Mr. Legal Adviser: Depending on the switch, but under normal circumstances I wouldn't think so. Certain proceedings are to be taken because a notification comes up in the normal way.

Mr. Commissioner: Roughly speaking, Mr. Murphy, from the time that adoption proceeding start until the completion of the documentation of the papers, what kind of a period of time are we talking about.

Mr. Murphy: Now it would be six months. At the moment we are talking about a year.

Mr. Commissioner: I think Mr. Chairman, with respect, the answer to Councillor McKinnon's question really is a matter of time. If they had started the adoption proceedings in the province of Alberta, and they were not completed when they moved into the Yukon, this is when this act would apply. The couple move here but the adoption proceedings have been completed in the province of Alberta, we are not concerned at all with this ordinance. This is my interpretation of the situation.

Mr. Legal Adviser: I think the position would be the offence that is created here is the person that receives and there is a certain act of receiving. If they do the reception in Edmonton and moved here, they would have received the child for adoption purposes. When they move here with a child that is in the works so to speak, I wouldn't think there would be an offence under this. When you ask what the Court would decide, that is a horse of another colour. In the case you say, a person starts off by receiving a child for adoption in Edmonton, three months later, not having fully adopted the child, they move to the Yukon and they don't notify Mr. Murphy. I do not think they would commit an offence.

Mr. McKinnon: If they did, this section would come out of the Ordinance so fast.

Mr. Murphy: To give Mr. ... Councillor McKinnon a direct reply to his question I presume that he is speaking of a couple who adopted through a recognized agency in Alberta and then moved to the Yukon. No, they do not have to notify the Director. The agency that placed the child with them will notify us here in the Yukon and then will forward all documentation and request our service in continuing the supervision.

Mr. McKinnon: The situation that I just think would be so impossible ... or that I would hate to see arrive is that you receive a notification, you would sit there for a month waiting to see if this guy registers with you or not and he doesn't, bang we've got

Mr. McKinnon:cont.:

BILL #7

him for a hundred bucks, but with your answer that is perfectly clear. That is all I wanted.

Mr. Shaw: Well the thing was ... the only question I have ... it's not a question, it's a fact that when this is done the office is notified and asked to follow this case up to see that they are qualified to see that the probationary period is finished.

Mr. Chairman: (reads section 90 (1). )

Mr. Livesey: Would this money mentioned here include any money **offered** by the proposed parent, new parent to those who couldn't afford to keep the child on behalf of its welfare while it was being kept by the present parents.

Mr. Legal Adviser: It is hard to give a direct answer to this. The thing is if you say to a couple or a woman who has a baby, here is 500 dollars, give me your child for adoption. This is the offence that we are aiming at. If on the otherhand, a person was going to give the child for adoption and needs to keep it for a week, two months, three months and you pay the expenses, well those payments are not made in consideration of the adoption. They are made toward the welfare of the child and would not be punishable under this section.

Mr. Chairman: (reads section 90. (2) to 93.)

Mr. McKinnon: I wonder if I could ask a question of Mr. Murphy. Under section 90 subsection (3), are you now entered into any arrangements that you now pay for the care and maintenance of an adopted child?

Mr. Murphy: Yes, there is one such case where the child has a medical handicap and we are continuing some assistance for the child until the medical handicap has been corrected.

Mr. McKinnon: You wouldn't see this as having any direct increase in the cost of welfare ..... in the years ahead though?

Mr. Murphy: This child that I am referring to was already a ward of the Superintendent, was in a permanent foster home care. This is ... there are many children in our society in our care who are at a disadvantage when it comes to finding an adoption home and particularly with the handicapped children, the physically handicapped and mentally handicapped children and this is one way of making it possible for the hard to place children to be adopted by their foster parents particularly when the foster parents have insufficient financial resources or where the child for example has a heart condition which require extensive surgery over a long period of time and this in itself will deter the foster parents from absorbing this child as a child of their own family or adopting the child and various like cases we find it is necessary in order to secure for the child a permanent home, the security of a permanent home, to guarantee some payment of medical costs or special needs of the child. This of course will refer only to children who are already in long term foster care of the department.

Mr. Chairman: (reads 94. to 96.)

BILL #7

Mr. Chairman: I understand, having read the bill that we have several sections which are under the purview of the Legal Adviser at the moment.

Mr. Legal Adviser: There are a lot of sections, there may be 30 or 40 sections which have minor amendments to them. In particular we are substituting the word "protective care" for "custody control". I couldn't deal effectively with the word custody, because an order of committal ... we took custody out wherever possible, but in some cases that irrelevance to outside laws or old laws, custody must remain in. With regard to apprehension apprehension itself is a word which is a euphonism to describe arrest. I think it is euphonistic enough to say you apprehend somebody without having to think of a third method of saying it, a softer method still than apprehension, so with your leave I will leave apprehension in because it is a word in every day use. There are a few other changes we have made in conformity with the wishes of the members from time to time expressed and most of them already have been made. One of them I'm not sure if it will be made, but all the others will be made and they should be ready tomorrow or the day after.

Mr. Chairman: I have noted section 7, section 10, new subsection (c) for section 48, with a look see at section 52 and subsection 4 of section 55. I wonder then if we might turn back to Bill No. 1 which we deferred pending the availability of Mr. Murphy. Would this be agreeable at this time?

Mr. McKinnon: Just before we leave this particular order Mr. Chairman, just for my information of the 12 children that you now have available for adoption, Mr. Murphy, how many of these are of Indian status?

Mr. Murphy: To give an accurate answer I would have to check the records at the office, but when we are speaking of children available for adoption, I am not ... I am only referring to the children who have been surrendered for adoption. There are a number of children who are in long term foster care and these are what we consider hard to place children. Some of these are available for adoption, their parents have been deceased ...

Mr. McKinnon: These twelve that you would say are available, are those with no apparent physical or mental handicap. Is this correct? How many others under your care would be considered hard to adopt under your care at this time, that you would place them if you could.

Mr. Murphy: We have 284 children in care at the moment. Some of these are in various foster homes or treatment facilities. Of this number I would consider approximately 75 to 90 children would be available for adoption, but these would be older children. Most of these would be of native .... of the 12 children surrendered for adoption of the infant available for adoption there are I would say four of native ancestry, the balance are of white race.

Mr. McKinnon: That leaves approximately 200 children under your care which for various reasons, you would say were unadoptable at this time. What would those reasons be?

Mr. Murphy: Some of the reasons are emotionally disturbed, mentally handicapped, brain damaged children, children who have ... still have ties with their parents or their relatives, but their parents are unable to properly care for them for various reasons, children who are out of control with their parents, children who are adolescent

Mr. Murphy cont:

BILL #7

children who have behaviour problems, cannot adjust to foster home care and require the environment of a controlled setting in a group home.

Mr. McKinnon: What happens to the majority of these children when they become adults. Have you noticed any pattern?

Mr. Murphy: The department has assumed, only assumed full responsibility of a child welfare 1960 & there have been very few children who have been discharged from care because of the coming of age of 18 years. A number of these children have gone on to University or are employed in the Yukon and elsewhere. We haven't had that many children discharged from care by reason of coming of age.

Mr. Dumas: I wonder if the witness has any idea as to how long it would take under this new Ordinance that we have passed, how long it would take between the time a couple came into your office assuming that their background and financial ability met the requirement, how long would it take to place one of these 12 children that you have talked about?

Mr. Murphy: I would say six weeks by the time the social worker is able to carry out the home study and references and obtain the necessary documents that we require. The placement could take place between six weeks to two months.

Mr. Chairman: Have you anything further on the Bill No. 7 at this time? Is it your wish to proceed with Bill No. 1 at this time?

Mr. Chamberlist: I think that we should allow Mr. Murphy to leave.

Mr. Chairman: Is it your wish that we continue with Bill No. 1 tomorrow morning?

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

Mr. Chairman: It has been moved by Councillor McKinnon, seconded by Councillor Chamberlist, that Mr. Speaker do now resume the Chair. Are you prepared for the question? Are you agreed. I will declare the motion carried.

MOTION CARRIED.

MOTION  
CARRIED.

Mr. Speaker: I will now call Council to order. May we have a report from the Chairman of Committee.

Mr. Taylor: Mr. Speaker, committee convened at 10:45 a.m. to discuss Bills and sessional papers. Mr. Murphy, Director of Welfare, attended Committee to discuss Bill No.7. Committee recessed at 12:00 noon and reconvened at 2:00 p.m. I can report progress on Bill No. 7. It was moved by Councillor McKinnon, seconded by Councillor Chamberlist that Mr. Speaker do now resume the Chair and this motion carried.

Mr. Speaker: Are we agreed with the report of the Chairman of Committee? May I have your further pleasure and any indication of the agenda for tomorrow.

Mr. Taylor: In respect of the agenda, we now have in Committee one Sessional Paper and Bills so I suggest Bills and Sessional Papers.

BILL #7 Mr. Chamberlist: Mr. Speaker I would move that we now call it five o'clock.

Mr. Speaker: Are we agreed? The House now stands adjourned until ten a.m. tomorrow morning.

Page 154.  
Thursday, November 20th, 1969.  
10:00 o'clock a.m.

Mr. Speaker read the daily prayer. All Councillor were present.

Mr. Speaker: Mr. Clerk, is there a quorum present?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: I will now call Council to order. I have for your attention this morning the tabling of Sessional Papers No. 21 to 28. Are there any Reports of Committee? Introduction of Bills? Notices of Motion or Resolution? Would the House agree that the Honourable Member for Watson Lake make a motion for the Honourable Member for Carmacks-Kluane? Are we agreed?

Some Members: Agreed.

Mr. Taylor: On behalf of the Honourable Member from Carmacks-Kluane, I would like to give Notice of Motion this morning respecting Sessional Papers No. 14 and 22. MOTION #7

Mr. Speaker: Are there any further Notices of Motion or Resolution? Are there any further Notices of Motion or Resolution? Notices of Motion for the Production of Papers? Are there any Notices of Motion for the Production of Papers? If not, may we pass to Motions? Our first motion this morning is Motion No. 4, moved by the Honourable Member for Whitehorse East, seconded by the Honourable Member for Dawson, that Sessional Papers No. 1, 3 and 5 pass into Committee of the Whole for discussion. MOTION #4

Some Members: Question.

Mr. Speaker: Are we agreed? I will declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: Motion No. 5, moved by the Honourable Member for Whitehorse West, seconded by the Honourable Member for Mayo, that Sessional Papers No. 16 and 17 be discussed in Committee of the Whole. MOTION #5

Some Members: Question.

Mr. Speaker: Are we agreed? I will declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: Motion No. 6, moved by the Honourable Member for Watson Lake, seconded by the Honourable Member for Carmacks-Kluane Lake, that matters related to Land Disposal Policies in districts outside of the Whitehorse Metropolitan Area be discussed in Committee of the Whole. Would the Honourable Member for Watson Lake be prepared to proceed with the motion at this time. MOTION #6

Mr. Taylor: Yes, Mr. Speaker. Motion No. 6 arises out of correspondence during the summer season as to proposed Land Disposal Policies in the outlying districts, that is to say, in Dawson, Carmacks, Old Crow, Watson Lake, etc. It is a very contentious issue. It is one that is really up in the air at the present time, and I feel, and I'm sure other outside Members feel, that this is something that we must air in Council, sit down and thrash out a policy with the Administration that is meaningful and reasonable, and it is because of this that I ask in this motion that the matter be considered in Committee of the Whole.

Mr. Speaker: Is there any further discussion? Question has been called. Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: That concludes all motions on the Order Paper. I wonder, Mr. Clerk, if we could have the Commissioner here for the Question Period? I will call a five minute recess.

RECESS

RECESS

Mr. Speaker: I will now call Council to order. May we proceed with the Question Period.

QUESTION RE  
BILL GIVEN  
TO THE MUNI-  
CIPALITIES

Mr. Chamberlist: Mr. Speaker, a question addressed to the Commissioner. Mr. Commissioner, do you see any objection to the Bill dealing with municipal amendments which has been placed before Council, not being given ... copies not being given to the municipalities of the City of Whitehorse and the City of Dawson so that they could make any comments on it to the Administration before it reaches Council?

Mr. Commissioner: Mr. Speaker, I don't think it is a very proper thing for legislation to be, should I say, coming under the public scrutiny of other public bodies prior to this public body. Certainly after it is tabled here in this Council Chamber, as far as I am concerned, it is public information at that time and certainly we would be only too happy to give it whatever detailed distribution that Council felt in its wisdom that it should have. We would be only too happy to use the facilities available to bring comments from these interested people directly to this Council Chamber. I do think, in all honesty, Mr. Speaker, that to do this prior to its being tabled here in the Council, well, I question the propriety of this very much, Mr. Speaker.

Mr. Speaker: I'm sorry to interrupt the Honourable Member but any question raised with reference to any Bills before the House is out of order.

QUESTION RE  
REQUIREMENTS  
KNOWN PRIOR  
TO BILLS  
WRITTEN

Mr. Chamberlist: Yes, Mr. Speaker. I understand this. My question is pointing to Bills that may be at a later date placed before the House. Now, this is supplementary to my previous question which Your Honour ruled was not correct. The intent of my question, perhaps I could put it this way, has the municipality ... have the municipalities been asked as to what amendments they may require for the government of municipalities before any Bill is placed before the House?

Mr. Commissioner: Mr. Speaker, I cannot say that the Bills before the House now relating to municipalities are as a direct consequence of contact with the municipalities except in one instance, and the Legal Adviser could help me on this, but I do believe that one of the amendments here now has to do with the holding of elections as a consequence of people resigning. Is that correct, Mr. Legal Adviser?

Mr. Legal Adviser: Yes, that is correct.

Mr. Commissioner: This is definitely in there as a consequence of a request from one of the municipalities in the Territory, Mr. Speaker.

Mr. Speaker: Are there any further questions?

Mr. Taylor: Yes, Mr. Speaker, I'm wondering if Mr. Commissioner could inform me this morning as to whether over the course of the period between this Session and last Session he has anything to report on the development respecting the paving of the Alaska Highway? Is there anything new on that, and also, supplementary to that, I'd like to know if there is any further discussion going on as to the taking over of the Highway by the Territory?

QUESTION RE  
ALASKA  
HIGHWAY

Mr. Commissioner: Mr. Speaker, I have nothing new to report as far as paving programs of the Alaska Highway are concerned. To the best of my knowledge, the announcement made some time ago by the affected departments at the Federal level, this program is being carried out, the visible record of it being I don't know how much business to the local body shops and car repair centres occasioned by twenty-five miles of cut up Alaska Highway in close proximity to Whitehorse. I do believe that smaller but similar programs are to be carried out in other settled communities in the Territory by the Alaska Highway. The next question, concerning either further talks I believe going on in connection with the takeover of the Alaska Highway, the talks have never really ceased, Mr. Speaker. The pile of correspondence is getting higher and all I can tell you is that from our administrative level, we are pursuing the matter with our usual vigor because we feel it is in the best interest, as does Council as they have expressed on many occasions in the past, that the bringing of the Alaska Highway maintenance under the umbrella of our own maintenance facilities along with the rest of the highways in the Territory is in the best interest of all concerned. We continue to pursue it. If the question was to me, is there an active negotiating committee at work on it as of this day, the answer would have to be no; is there a continuing effort on negotiation going on, the answer is yes.

Mr. Chamberlist: Mr. Speaker, a question to Mr. Commissioner. Mr. Commissioner, a few days ago you were asked re the status of Mr. Legal Adviser and you intimated that if a request for a written answer was given, it would be forthcoming. I made that request, and when can I expect an answer?

Mr. Commissioner: Mr. Speaker, at eight o'clock this morning, there was a press release made by the Minister of Justice, and I think after that announcement has been made, we will be in a much better position to answer the particular question that was asked. While I'm on my feet, Mr. Speaker, may I ask has this press release been made known to the Members of Council?

Mr. Speaker: Not to the best of my knowledge, Mr. Commissioner.

Mr. Commissioner: I think it would be of value to Council, Mr. Speaker, I have been provided a copy of this ... is it a value if I read this, Mr. Speaker?

Some Members: Agreed.

Mr. Speaker: Please proceed.

Mr. Commissioner: "Proposed Transfer of Judicial Functions to Territorial Governments. Justice Minister John Turner announced today a proposal to transfer certain matters relating to the administration of justice from the government of Canada to the governments of the Yukon Territory and the Northwest Territories. Referring to various studies made in the past, notably the Report of the Advisory Commission on the Development of Government in the Northwest Territories, which recommended that territorial governments assume more control over local judicial affairs, Mr. Turner stated that his proposal would in large measure meet the earlier recommendation. 'In my view, this proposal is a step which will bring the administration of the law closer to the citizens in the Territories. Rather

PRESS RE-  
LEASE RE  
JUDICIAL  
FUNCTIONS

than having direction from afar, certain aspects of justice, I hope, will soon be administered by local officials. Our proposal is designed to give northern citizens, their elected representatives and appointed officials a much fuller and more complete responsibility in the administration of local legal affairs. I foresee this increased local responsibility and participation leading to a strengthening of those local territorial ordinances which touch the average person most frequently and personally. The federal proposal is a matter for negotiation between the territorial governments and Ottawa', Mr. Turner said, 'and includes the following matters which could become the proper responsibility of local territorial officials: (a) the appointment and payment of judicial officers except Judges of the Territorial Courts; (b) the constitution of courts having civil as well as criminal jurisdiction, subject to the condition that the existing federal statutory provisions establishing courts of original and appellate jurisdiction be part of the relevant ordinances; (c) the provision and maintenance of the necessary personnel and physical plant for the efficient administration of justice and the functioning of the judicial system; and (d) the provision of complete legal services to the Commissioner, the Council, and the several departments of local government.' The Justice Minister noted that studies and consultations are underway with a view to determining the effects of the federal proposal. 'I have every confidence that implementation of these measures will ultimately result in keeping the local law responsive to the legitimate concern of northern citizens', said Mr. Turner." This is the content of the press release that I referred to. Mr. Speaker, while I'm on my feet, may I answer one other question that is outstanding I believe from a couple of days ago?

Mr. Speaker: Please proceed.

Mr. Commissioner: I was asked by the Member concerned about the street lighting in Carcross, and I would report that we have written confirmation from Yukon Electrical Company that as of November 5th, 1969, twenty-three 250 watt mercury vapour street lights were energized in Carcross. I trust that this will answer the question satisfactorily. I have a further answer. I was asked yesterday about the disposal of sewage for the Whitehorse General Hospital, Mr. Speaker, and can I answer this? In checking with Dr. Black regarding the question on the raw sewage being dumped straight in the river from the hospital, he advises that this is definitely not so, but that on the river bank near the hospital there is an outlet for a storm sewer. Ordinary sewage is contributed to the Whitehorse sewage system.

QUESTION RE WHITEHORSE SEWAGE SYSTEM Mr. Taylor: Thank you, Mr. Speaker. I thank the Commissioner for his answer. I am wondering if Mr. Commissioner can inform me then if the Whitehorse sewage system is treated or is it dumped raw into the Yukon River?

Mr. Commissioner: Mr. Speaker, regretfully I have to confirm that Whitehorse sewage is dumped raw into the Yukon River.

QUESTION RE WHITEHORSE SEWAGE SYSTEM Mr. Chamberlist: Mr. Speaker, supplementary, would the Commissioner indicate whether there is any consideration being given to a sewage treatment plant being installed in the Whitehorse area?

Mr. Commissioner: Mr. Speaker, this is part of the discussion which I am very hopeful will emanate from the ordinance that you have in front of you with a suggestion concerning boundaries of the City of Whitehorse. There are certain basic problems that are inherent in the area at the present time which are total community problems. They are not confined to the organized area known as the municipality nor are they confined to those areas which we tend to term the unorganized perimeter but still within the metropolitan area. The

protection of the water supply and the water shed is one of these. The water shed of the City of Whitehorse is outside the municipality's boundaries and I believe that investigation has shown that there are either six or seven different government departments with potential jurisdiction in one form or another over this supply. The same situation applies concerning the disposal of sewage. It is not only the sewage from the municipality of Whitehorse that has to be dealt with, Mr. Speaker, it concerns the disposal of similar sewage from the perimeter areas as well which happen to be under this one system. I believe that the Councillor who asked this question is familiar with the fact that when the Whitehorse sewer and water system was installed, the plans at that time called for an installation called a sewage lagoon. I'm not too familiar with the technicalities of this but I believe that this is a form of sewage treatment, Mr. Speaker, that was part of that original proposal. For reasons which I am not aware, this was not proceeded with and the question, "Are we considering putting this in now?", there is really no means of intelligently considering this situation, Mr. Speaker, because all the people who were involved in the thing are so diversified that until we get it under one authority or bring it under one authority, it is practically impossible to deal with it. From where I sit on the matter, it is one of the most urgent situations that confronts the government here on the local theme. Any suggestions, or anything at all, that we help to bring forward discussions that will assist in bring this and matters of a related nature to a head, Mr. Speaker, we would be most happy to do so.

Mr. Speaker: Are there any further questions?

Mr. Taylor: I have a further question, Mr. Speaker, directed to Mr. Commissioner. During this past summer, as the Administration will recognize by letters received by them, we've had a great deal of trouble with the Unemployment Insurance Commission. This is in the form of writing to ... writing letters to people who live in the small outlying communities, telling them they are not eligible for unemployment insurance because the job opportunities in their classification are not available in the communities. I wonder if Mr. Commissioner could advise me today as to whether or not he has had any success in getting relief from this situation.

QUESTION RE  
UNEMPLOYMENT  
INSURANCE

Mr. Commissioner: Mr. Speaker, the Honourable Member indicates that he has had trouble with the Unemployment Insurance Commission. It trails off into insignificance compared to the trouble that my Administration has had with the Unemployment Insurance Commission. I have to say this right now, that we get the co-operation that they are able to afford us, and as far as the individuals are concerned that we do business within Prince George which is the office that has this area under its immediate jurisdiction, the men do the very best that they can for us, and as far as their regional office in Vancouver is concerned, I think they also do. But, until such time as we can convince the Unemployment Insurance Commission of the fact that they cannot service their clients entirely from afar without some presence of some kind, at least here in the capital we are going to continue with the kind of unsatisfactory situation that the Honourable Member is bringing to our attention with his question at the present time. We have attempted with every means at our disposal to get this done. We have taken it up with the Minister responsible for our department; in turn he has taken it up with the Minister responsible for the Unemployment Insurance Commission until now with very, very limited success. I can't promise or see any hope in the immediate future of any change. The very people, Mr. Speaker, that the unemployment insurance scheme is devised to help are the very people who cannot contend with the paper work that is presently required under the system that they have to get the benefits that they have already bought and paid for. I don't know what we can do to improve this situation but if Council has any ideas or suggestions, believe you me, we'll be only too happy to follow them up with the utmost vigor.

Mr. Speaker: Are there any further questions?

QUESTION RE Mr. Chamberlist: Mr. Speaker, a question to the Commissioner. Mr.  
SENIOR CITI- Commissioner, how close to opening is the Riverdale Senior Citizens'  
ZENS' HOME Home?

Mr. Commissioner: Mr. Speaker, subject to confirmation with the Department of Social Welfare, I believe it's open.

Mr. Chamberlist: Yes, Mr. Speaker, I asked this question specifically because ... a further question to Mr. Commissioner. Would Mr. Commissioner indicate why the elected representative for the area in which this building is, not informed of any opening date or any time that it was opening?

Mr. Commissioner: Mr. Speaker, I have no idea, but don't feel bad. I wasn't informed myself. Mr. Speaker, I can assure you of simply one thing, that when the day comes that it is ready for official opening, not only the Member for that area but all other Members of the Legislative Body will be fully informed of that situation. I wonder if I could have the benefit of bringing further details concerning this to Council at that time?

Mr. Chamberlist: Thank you, Mr. Speaker, but I would like to be sure that I get not only the date that I am told that it is opening but also of the official opening. Which is which? I'm told it is opened, and then it's not officially opened. What's going on?

Mr. Commissioner: Mr. Speaker, the official opening is when the people who have been responsible for providing the money and the wherewithall to make these things possible have the opportunity of officially placing their blessing upon it for its future success and seeing the situation as it actually is when it's been completed. At the present time, subject again to full confirmation on this matter from the Department of Social Welfare whose responsibility the operation of this home is, I believe that it is now undergoing a shape-down period at the present time with a limited number of individuals resident on the premises. I can assure you, Mr. Speaker, that there is absolutely no intention under any circumstances of attempting to be devious or obstruct the view that the elected people should have of what I consider to be a tremendous contribution to the welfare of the senior people who live here in the Yukon Territory.

Mr. Speaker: Are there any further questions? If not, would the Honourable Member for Watson Lake please take the Chair?

Mr. Taylor takes the Chair.

QUESTION #19 Mr. Livesey: Mr. Speaker, I have a question for the Administration this morning. Could the Administration advise the House of any knowledge reference the probable phasing out of the use of the U.S. R.R.A.L. eight inch pipeline through the Yukon?

Mr. Livesey resumes the Chair.

BILL #6  
FIRST  
READING

Mr. Speaker: Are there any further questions? If not, may we proceed to Public Bills and Orders?

Moved by Councillor Chamberlist, seconded by Councillor Shaw, that Bill No. 6, An Ordinance to Amend the Insurance Ordinance, be given First Reading at this time.

MOTION  
CARRIED

MOTION CARRIED

Moved by Councillor Chamberlist, seconded by Councillor Shaw, that Bill No. 6, An Ordinance to Amend the Insurance Ordinance, be given Second Reading at this time.	BILL #6 SECOND READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Chamberlist, seconded by Councillor Shaw, that Bill No. 13, An Ordinance Respecting Co-operative Associations, be given First Reading at this time.	BILL #13 FIRST READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Chamberlist, seconded by Councillor Shaw, that Bill No. 13, An Ordinance Respecting Co-operative Associations, be given Second Reading at this time.	BILL #13 SECOND READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Chamberlist, seconded by Councillor Shaw, that Bill No. 15, An Ordinance to Amend the Judicature Ordinance, be given First Reading at this time.	BILL #15 FIRST READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Chamberlist, seconded by Councillor Shaw, that Bill No. 15, An Ordinance to Amend the Judicature Ordinance, be given Second Reading at this time.	BILL #15 SECOND READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 16, An Ordinance to Amend the Workmen's Compensation Ordinance, be given First Reading at this time.	BILL #16 FIRST READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Shaw, seconded by Councillor Dumas, that Bill No. 16, An Ordinance to Amend the Workmen's Compensation Ordinance, be given Second Reading at this time.	BILL #16 SECOND READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Shaw, seconded by Councillor Chamberlist, that Bill No. 17, An Ordinance to Amend the Securities Ordinance, be given First Reading at this time.	BILL #17 FIRST READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Shaw, seconded by Councillor Chamberlist, that Bill No. 17, An Ordinance to Amend the Securities Ordinance, be given Second Reading at this time.	BILL #17 SECOND READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Shaw, seconded by Councillor Chamberlist, that Bill No. 19, An Ordinance Respecting Trailer Licencing, be given First Reading at this time.	BILL #19 FIRST READING
MOTION CARRIED	MOTION CARRIED
Moved by Councillor Shaw, seconded by Councillor Chamberlist, that Bill No. 19, An Ordinance Respecting Trailer Licencing, be given Second Reading at this time.	BILL #19 SECOND READING
MOTION CARRIED	MOTION CARRIED

Mr. Speaker: May I have your further pleasure?

Mr. Shaw: Mr. Speaker, I would move that Mr. Speaker do now leave the Chair and that Council resolve itself in Committee of the Whole to discuss Bills and Sessional Papers.

Mr. Speaker: Is there a seconder for the Honourable Member's motion?

Mr. Chamberlist: I will second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, that Mr. Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bills and Sessional Papers. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: Would the Honourable Member for Watson Lake please take the Chair in Committee?

Mr. Taylor takes the Chair.

Mr. Chairman: We'll take a short recess for coffee and to await the arrival of Mr. Murphy.

RECESS

RECESS

Thursday, November 20, 1969

11:00 o'clock a.m.

Mr. Chairman: I'll call Committee to order and we're discussing Bill No. 1. We have with us Mr. Murphy, Director of Welfare to assist us in our deliberations. I'll proceed with the reading of the Bill. (Reads Section 1) BILL #1

Mr. Dumas: Question. This fits right in with the sessional paper to this extent. Welfare services in respect to persons in need or persons who are likely to become persons in need. Following the suggestions that have been made last session, if we are going to charge a person in one of the homes \$400 a month in some cases, they are quite likely to become persons in need by the time we are through with them. Therefore, I think there is some sort of conflict here. I wonder maybe if the witness maybe could clarify it.

Mr. Murphy: The situation Councilor Dumas is speaking of concerning the accommodation of elderly people in our Senior Citizens Home, if an applicant has assets in excess of the exempted level then they would have to pay a rental for their accommodation, but the administration has set a maximum rental amount which cannot be exceeded. Therefore there would not be a situation where there would be a rental of \$300, \$400 a month, you know, based on the assets of the individual.

Mr. Dumas: Mr. Chairman, unfortunately I forgot my correspondence at home but I have a letter that states that somebody is paying \$15 a day plus the old age pension minus \$22 from the old age pension which brings it up to \$535 a month for the Senior Citizens Home in Dawson City.

Mr. Murphy: Mr. Chairman, I believe the councilor is referring to the nursing home in Dawson City. This is a different type of accommodation. This is nursing care and I believe this is what the sessional paper deals with. Here again the Federal Government will not share in the costs of maintaining persons in the nursing home if they have assets in excess of the level of exemption.

Mr. Shaw: Mr. Chairman I would like to more less come to the point on this particular thing. This is quite correct. There is a person in the nursing home in Dawson who is paying approximately over \$535 a month for that care and they do have a moderate amount of money. Now the costs of maintaining the nursing home are above the amount of \$15 a day so that I think they run closer to \$30 a day so that the amount charged is still about half of what is actually is charged to operate this home. On the other hand, this to my knowledge is the only person in that home that is paying any money at all. This person is a person of 85 years of age who has saved a few thousand dollars over you can imagine what it's been like over the years, that's what they face, which is one of the problems of Canada where people save and save, they have a difficult time doing it and the cost of inflation catches up with them and just wipes them out in a couple of years what they have been a whole life time trying to accumulate. Now if a millionaire went to a place such as that to get care the amount of \$15 a day would not amount to a great deal but when you take a person with a few thousand dollars not even ten, it would appear that we should have a little more humane system than charging them \$15 a day. Now I do know that in the past where people before they went into this home coming from various parts of the Territory, they had very minor assets but they did transfer them to somebody else to prior getting in the home, they didn't get it and it might have involved two or three thousand dollars and of course when they went in they didn't have to pay anything. Now this person

BILL #1 Mr. Shaw continues:

was very honest about it and gave a full account of exactly how much it was and as a result paid or is subject to paying \$15 a day. I think it will take about fifteen months, now I may be out a month or so, before we get this person cleaned out of his savings take about fifteen months and they will be in the same category as someone else. In a nursing home outside, I think the charge varies but it could go up to any amount, but there are many I think that pay about \$225 a month. Now up here of course it costs a great deal more and this particular party is having to pay this much. Now somehow along the line I think that perhaps what should be done is if appropriate people get together like the government, council and see if we could come up with something that is more reasonable. If you're going to clean them out don't just clean them out in just a year, have it in an amount that is you know possibly it's a loss to the tax payers in general but in manner of actual dollars and cents ..but to have a more humane attitude towards this.

Mr. McKinnon: Mr. Chairman, I've got two questions that I would like to have cleared in my mind. Now in any cost sharing arrangement with the Provinces, are those cost-sharing arrangements in this Bill the same as those in effect in the provinces, with \$1500 single and \$2500 married exemptions who share arrangements with the Department of National Health & Welfare?

Mr. Murphy: As far as the exemptions we have brought forward in our social assistance regulations of \$1,500 for a single person and \$2000 for a married couple are higher than any of the exemptions than any Province of Canada.

Mr. McKinnon: Now if these exemptions which are agreed to between your department and the Department of National Health and Welfare are not followed, does this mean that 1) the Yukon will not be available for assistance and 2) what will this amount to in dollars?

Mr. Murphy: I can't answer the second part of your question at the moment but no it will not affect the cost sharing agreement, but there is money involved in that element of subsidy which will have to be absorbed a hundred percent by the Government. They will not share in that element of subsidy, if a person is not a person in need then there will be no cost sharing by the Federal Government.

Mr. McKinnon: There's no way we can arrive at these figures, if it's going to be two or three thousand dollars, I say hell let's increase our exemptions and forget about going to the Federal Government. If it's \$100,000 I say there's no way, it's a form of black-mail that you have to accept, tuff luck that's all you can say, but how do we arrive at the amount of money that the Territory will be receiving from the Federal Government with these exemptions if they're agreed too? How can we arrive at that dollar sign?

Mr. Murphy: Well Mr. Chairman, this was set out I believe in the sessional paper that was submitted at the last session of council asking for council's approval of certain proposals in respect to this particular matter, and at that time I believe it was decided that we would approach the Federal Government to determine whether they would consent to an increase in the levels of exemption we had proposed \$1500 and \$2000 and we did at the time subsequent to this approach to the Federal Government and we have received their answer after council prorogued and we are now presenting their

Mr. Murphy continues:

BILL #1

reply in this sessional paper that you will be discussing a very short while.

Mr. Dumas: Mr. Chairman I think the witness is essentially correct in what says about what went on last spring but I do believe that at least in my case since then it's become obvious to me that this is nonequitable and unfair arrangement. Now we may be stuck with it as councilor McKinnon says, but it seems to me that somebody who has the foresight to say it's strictly six, seven to eight thousand dollars shouldn't have it taken away simply because they were more thrifty than somebody in the same room would who doesn't pay anything for many personal assets. The other point that I wanted to make was how much will we take away from a person who has alot of money, and we run into the problem here of family type of operation where the patriarch or matriarch of the family still controls the assets, and they have a stroke, they end up in a nursing home. We can charge them up to \$30 a day if that is what the costs are. The rest of the family who has participated in the family operation for twenty or thirty years can only sit there and see the assets dwindle, because the assets are there and still in the name of that person. Also, say the person has some money and has the ability to write cheques and is lucid and so forth, is there anything stopping them from giving their money away, gifting their money to sons and daughters, their assets. Do you know Mr. Murphy?

Mr. Murphy: Mr. Chairman, yes there is when a person applies for assistance for nursing home care there is this form to be completed and a declaration to be made and one of the questions that have to be answered has there been any transfers of funds or assets to members of the family within the previous five period. The policy at the moment is if a person has assets in excess of the exempted amounts they would assume total financial responsibility for their own care until their assets have been reduced to the \$1500 or \$2000 figure.

Mr. Shaw: Yes Mr. Chairman, I understand the matter of agreement with the government of Canada and I can see some very good points in that agreement so I wouldn't if possible personally be anxious to start monkeying around with that particular thing. What I'm wondering that we might have jurisdiction in would be the amount of money which the Territory will charge the individual that moves in there, the flexibility might be inherent in how much we should charge them. Now it does cost I think the estimated cost of around \$29, \$30 a day per inmate or patient. Somewhere along the line somebody made up their mind that \$15 will be charged now perhaps that is what the Federal Government says, it must be dumb, I don't know. I was wondering if Mr. Murphy Mr. Chairman, would be able to inform if there is any flexibility in the amount that has to be paid per day by the patient that, is there any statutory requirement as to whether it be \$15 a day.

Mr. Murphy: No, Mr. Chairman there are no statutory requirements that require them to pay the full fee in cost. It's simply a matter of applying the social assistance regulations to determine the need of the individual person in that, to be considered a person in need and therefore where the costs of the assistance of this person whether it be a material aid or nursing home care, in order for this to be shared by the Federal Government then this person must meet the conditions of the regulations, however, there is nothing that precludes the administration from setting a maximum amount for the per diem costs to be charged to persons with assets

BILL#1 Mr. Murphy continues:  
 in excess of the levels of exemption. However, the differential between the amount charged or the maximum amount charged or the maximum amount set by the administration and the actual per diem cost will be or will have to be absorbed out of our welfare vote. This of course, this expenditure will not be shareable by the Federal Government.

Mr. Shaw: Mr. Chairman, I wonder if Mr. Murphy is aware, are there any other patients that are also in the whole Yukon Territorial Senior Citizens Home system that are paying in a like amount at the moment in this particular one instance?

Mr. Murphy: Well, there are three other patients in the nursing home in Dawson City who have the responsibility to the Indian Affairs department and where the Indian Affairs reimburse actual cost of \$30 a day.

Mr. Shaw: But I mean any individual by their own private means.

Mr. Murphy: I believe there is one in the special care section of the Whitehorse General Hospital that we have no responsibility for paying their own costs.

Mr. Shaw: Is it \$10 a day.

Mr. Murphy: I believe it is \$12 a day now.

Mr. Dumas: I think Mr. Chairman if we are forced through circumstances to proceed with the matter that's been proposed, it's hard to say what the traffic will bear, the only thing we could suggest to all senior citizens before they apply for entry into a home is that they take a trip around the world for several months or years or whatever to ensure the money is gone, there are no assets. Probably it's the only thing they can do.

Mr. Chamberlist: I have made a note that just a few minutes ago that a suggestion would be made and publicity given to all people who are getting older to live it up while you can because you can't take it with you. I think it's a shame really that people who perhaps have been to frugal in their savings are going to see their savings taken away. The parents sometimes save for the benefits of their children and over the years when some children to this they find their children too impatient to look after them and have found it necessary to go to the government and say "we're prepared to pay the government for looking after our aged parents or grandparents". This is a different matter because there is an offer being made and therefore there's a payment going to be made, but where you take a person who perhaps hasn't any family left and when you enquire as what assets he's got left and then take what he's earned from him for many, many years, all you're doing is hastening his death. This is not the idea surely. I think we went over this thoroughly in the last sessional paper and it came up when we were discussing this and there's some merit in the fact that there are some people who have to pay for others, and certainly if there is a man that has sufficient funds to pay towards the upkeep of himself in a nursing type of home I see no reason why some payment shouldn't be made, but when it come to a figure of over \$500 a month we can't say we are taking care of our senior citizens, because really the senior citizen is taking care of himself because he is putting up his own money. If as Mr. Murphy has indicated, if there is not a fixed legislative amount for this particular thing, if the administration would set up in it's regulations the maximum that can be asked for from a patient or

Mr. Chamberlist continues:  
 older person who is in a nursing home and say, the maximum is \$10 per day, then the person knows that this is the maximum it's going to cost him. As it is now, it is less to the discretion of the department to say to how much it's going to cost them based on the regulations in the social welfare program now. I wonder perhaps if Mr. Murphy would correct me if my thoughts on this are wrong at all. I wonder if at this time Mr. Commissioner would say that in making any regulations pertaining to this if he would be prepared in consultation with the Director of Social Welfare to set a fixed maximum amount for any person who is in the care of a nursing home.

Mr. Commissioner: Mr. Chairman, quite frankly this problem literally speaking with the one that Mr. Murphy's department was faced with determining the particular case that happens to be the subject of discussion at the present time, and while I couldn't agree more with the suggestion that councilor Chamberlist has made and I am quite prepared to say we will accept a maximum. I think we have to be a little cautious in the manner in which we approach to what room for manoeuvre that we are going to have within what this maximum is going to be. Just to deviate a little bit here, there are various kinds of custodial type of care or care for our senior citizens that we are becoming very much involved in. Now until we have the senior citizen's home completed in Dawson, but until we really have it completed as an organization we have always been participating in the use of the hospital facilities as far as home nursing is concerned. Am I correct in saying that, Mr. Murphy?

Mr. Murphy: In the Whitehorse area, yes.

Mr. Commissioner: Yes and in Dawson where literally speaking we're kind of a partnership deal with the hospital situation there. Now we are breaking away from the hospitals to provide this nursing type home care and we are getting in a field here that where we are going to have to be hiring a different type of staff, we are going to be out hiring a professional staff. We may well find ourselves with a situation of possibly resident doctor situation in these type of care situations.. Could I ask council's indulgence in this matter that we would ask the Social Welfare Director to have his department to do a complete review of our known costs with regard to providing this type of care, come up with a suggested maximum, from at least our point of view, which will be realistic but we will report back to council before we write this up into the regulations.

Mr. Dumas: If ah, it would actually would be cheaper to hire a nurse in your home, a live-in nurse under the present system then to put the senior citizen in a nursing home to probably hire a full-time nurse and let her stay in and feed her for \$500, \$600 a month that if you were charged the maximum, it could be a \$1000 a month.

Mr. Commissioner: Mr. Chairman with respect might I suggest that we supply the councilor with more accurate figures than what he is suggesting. I am afraid that the figure quoted will tail off into a portion of the actual cost in providing this because remember and I say this with respect Mr. Chairman I'm not being critical at all to the comment that has been made. Remember that in these nursing home situations that we have to provide a level of care which is literally equivalent of hospital levels of care, twenty-four hour seven day of the week constant type of attendance, and I don't think that really the question as to whether or not the patient is going to be called upon to pay \$10, \$12 a day, I think really the question boils itself down to is our capability of really having

BILL #1 Mr. Commissioner continues:

the care available, now this is really the question gentlemen. This will probably be part of the answer no doubt that we will come back to council with because we are embarking into a field here and perhaps Mr. Murphy might have some very valuable comment for council at this time. We are embarking off into a field now which is literally speaking brand new as far as we as a government are concerned and it might well be full of hidden pitfalls and hidden costs which at the present time we just have no basic concept of what they are going to be, but believe you me it is something that is very necessary and we cannot renege our responsibility with regards to it.

Mr. Chamberlist: Mr. Chairman, I wonder that if in preparing this statistic there will not be a break down of the statistics as far as Dawson, Whitehorse is concerned or other parts of the Territory, but that an average cost for the upkeep of each individual person. I feel that it is the responsibility of all the Yukon Territory to look after our senior citizens wherever they are so that we can't say just like we are treating hospital matters and they cost us more to look after a patient in the hospital in Dawson then it does to look after a patient in Whitehorse. I think we must have one figure that the average cost per figure is "x" dollars and then we can go on with that particular basis.

Mr. Commissioner: Mr. Chairman the philosophies of the Honorable Member and myself are getting closer all the time. The equalization of the value of the dollar bill is something we have been trying for in our government since I've entered it and I can assure you that we would be very pleased and very happy if Council would accept a figure from us which would be representative of Yukon cost instead of being representative of area cost within the Territory.

Mr. Shaw: Mr. Chairman, as the Commissioner has stated, we are embarking on a new program, we are separating some of these things whereas they were involved with hospitalization and so forth that would create some difficulties in arriving to an actual figure, and this I am very pleased to hear. This survey would be conducted by the Director, however, when he makes this survey I would like to offer a suggestion for what it is worth. About two years ago Mr. Chairman I was in Fairbanks and they have constructed a new senior citizen's home in that area, it's a beautiful building, it costs three and half or four and a half million dollars as they have complete facilities including doctors ..it's an absolutely complete place for these people to live in. Now perhaps because they do have similar conditions, it might be most useful to write to these people and perhaps they could give you some figures or some data that may be most useful for the future. They have operated this place now for at least two years. It was completed and the people moved in just about the same time as the flood in Fairbanks. In the meantime I wonder Mr. Chairman if the Commissioner or the Director would be able to have the figures before Council for further discussion before the end of the session so that they can be dealt with.

Mr. Commissioner: Mr. Chairman, we'll do our best but I wouldn't absolutely guarantee this. We'll do our best to compile these but if you are going to get accurate information and bring it properly gentlemen, it takes a little time to compile it and all I can promise is that we will do our best in doing this properly as soon as we can, but as far as making a definite commitment before the end of this session, I would not care to make that commitment.

Mr. Shaw: Well the only thing I was thinking of was the amount BILL #1 that this person is paying because by the time we get around to it they might be cleaned out.

Mr. Commissioner: Well Mr. Chairman could we make this commitment to you that whatever Council and the Administration agree to as far as these maximum charges are concerned that anything that has transpired from the beginning of this fiscal year 1969 - 1970, April 1, if anything that has transpired during the current fiscal year would be in excess of what our final figure as agreed to this will be a reverse transaction as far as the offended party is concerned, would this be a reasonable situation in this matter?

Mr. Shaw: Very reasonable, very sensible.

Mrs. Gordon: One of the areas in this particular subject under discussion I find very disturbing, I think that in essence our Federal Government are being discriminatory toward a certain portion of our senior citizens. If we have a cost sharing basis for our senior citizens who are still mentally alert, physically capable of getting around and taking care of themselves and this is accepted, we have a cost sharing basis, but those who are unfortunate enough to need care or supervision, perhaps they are not as mentally alert as they could be, are being discriminated against in the fact that those comparative people in their same age group live in an area where they do have a cost sharing basis and the others are put into our nursing homes simply because they are unfortunate enough not to be in the same situation as their fellow senior citizens. This seems to be an area that we should be making representation to the Federal Government on if this is something that they do in the Provinces, I think that they should be made aware of it too. Let's face it, these people are not responsible for what has happened to them and they are not getting the same kind of treatment as those who are in slightly different category but nonetheless in exactly the same position, they're over the age of 70 years of age.

Mr. McKinnon: Is this a fact.

Mr. Murphy: Mr. Chairman there's a slight difference between the senior citizens who are able to look after themselves in senior citizens homes, they still require their funds or assets to take care of their needs, they are still able to travel around whereas the person in a nursing home is usually under terminal care. I think that the feeling of the Administration was very clearly set forth in our Sessional Paper No. 9. We agree with the sentiments being expressed in Council this morning with regard to our senior citizens, but we have to come up with a suitable arrangement that will be agreeable to the Federal Government under our cost sharing arrangement or may prejudice the agreement we have with Canada. I might just quote a letter received from Federal National Health and Welfare Department, the Canada Assistance Division, with regards to our submission that was made in compliance with the wishes of Council at the last Session and here it says as suggested on page 2 of our Sessional Paper, it is stated that, "when a person applying for care in a home for special care or nursing home is the owner of property, it has to be disposed of and the proceeds used by the individual to meet the needs of continuing care. It is suggested that this policy is open to criticism that a person that has been industrious and worked hard all his life and managed to save a few thousand dollars must pauperize himself before becoming eligible for care at public expense." Now this was a statement that we had put in our Sessional Paper. The counter argument put forward by the Federal Government is "if a person in

BILL #1 Mr. Murphy continues:

these circumstances is allowed to retain a significant amount of assets and property, he is thereby enabled to maintain an estate at public expense". Now this is their feeling on this situation where you will allow the elderly person who is admitted to a nursing home to retain a significant amount of his assets and it would go on this basis that they would not agree to sharing in the costs of caring for these particular people who have assets and who are being provided nursing home care at no expense or minimal expense.

Mr. Chamberlist: Mr. Chairman, that seems so wrong because if this person has gained his assets over the years and he's paid his federal taxes they're his, he paid for them. It would be a different thing if a person was in a nursing home and continues to run a business out of his bedroom, I could see this, but this man has already paid his taxes. That's a wrong view the Federal Government take on that, he's not being maintained by public expense so as to maintain an estate. He's paid on his estate, he's done that over the years that he was able to build his money on. I can't follow that particular argument. That is real bureaucratic thinking if there is ever a case of bureaucracy ruling. Man works for years, he pays his taxes, the money he's got after he's paid his taxes is probably due to him and that the suggestion the Federal Government make that he's maintaining an estate while at public cost, he paid his taxes towards that public cost. I don't follow that at all.

Mr. Shaw: Mr. Chairman, I can see a lot of points in the Federal view and our view and all I'm saying is that when a person has to pay for this care that if they had to pay \$200 a month for this care that is somewhat of a reasonable claim, but when it costs \$500 that just sounds completely out of proportion. A nursing home care in British Columbia runs around \$200 or \$225, Mr. Murphy would be better informed on that than myself, I'm not talking about Government I'm talking about these private nursing homes. In the Yukon it's not possible to do that so the Government run it and so of course, when the Government run something it always costs twice as much as anything else. That's a well known fact, so that a person of 85 has to cough up \$500 a month, you know that's enough to make him die right there, in fact I would, might as well quit. But a reasonable amount whatever that may be, that could be determined, that's all I'm asking, is make it a humane charge. Would Mr. Murphy have any idea what nursing home costs are in the province of British Columbia? Am I correct in saying about \$250 a month?

Mr. Murphy: Yes costs of nursing home care in British Columbia is from \$250 to \$500 a month depending on the type of facilities.

Mr. Chamberlist: Mr. Chairman we have now assurance from the administration that they are coming up with some figures so perhaps we can continue on with the next item.

Mr. Chairman: Am I clear then that matter of Sessional Paper No. 16 for the time being is clear. I'll proceed with the further reading of the Bill. (Reads Section 2) then Section 3 and 4.

Mr. Chamberlist: Question. Mr. Chairman, I wonder if Mr. Legal Adviser could clarify that when it says "under this Ordinance in such areas as he may designate" does it mean in such areas of the Ordinance or in such geographical areas?

Mr. Legal Adviser: Geographical areas, Mr. Chairman.

Mr. Chairman: (Reads Section 5 of Bill No. 1).

BILL #1

Mr. Chamberlist: I would like to comment on this that this is a well worthwhile section. Prior to this, a welfare recipient could be only represented by counsel. Now how could a welfare recipient afford a counsel; at least now with an agent or counsel, he can have somebody, anybody, speak on his behalf. Before that he was limited to obtaining a lawyer and the very fact that welfare recipients would come forward with a lawyer would immediately deprive him of the right to obtain welfare because if he's got enough money to pay counsel, it usually leads to that he can look after himself. That's something that should be considered in all pieces of legislation.

Mr. Chairman: (Reads section 6 of Bill No. 1). What is your pleasure in relation to this Bill?

Mr. Chamberlist: Mr. Chairman, I would move Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance, pass out of Committee without amendment.

Mr. Dumas: I second the motion.

Mr. Chairman: It has been moved by Councillor Chamberlist, and seconded by Councillor Dumas, that Bill No. 1 be reported out of Committee without amendment. Are you agreed? Are there any contrary? I will declare the motion carried.

MOTION CARRIED

Mr. Chairman: I would, on behalf of Committee, like to extend the thanks of the Committee to our Director of Welfare for the patience and advice he has given us over these many days of deliberations of matters affecting his department. Thank you for being with us, sir.

Mr. Murphy: Thank you, Mr. Chairman. I was quite pleased to be here.

Mr. Chairman: I'll stand Committee in recess until 2:00 o'clock this afternoon.

RECESS

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Thursday, November 20, 1969.  
2:00 P.M.

Mr. Chairman: At this time we will call Committee back to order, and with your concurrence I wonder if you could for a moment move to Sessional Paper No. 20 as there is a reference to advice here that should be dealt with immediately. Would that be agreeable to Committee?

SESSIONAL  
PAPER  
NO. 20

All: Agreed.

Mr. Chairman: Councillor Chamberlist, I wonder if you would take the Chair?

Mr. Chamberlist takes the Chair.

Mr. Taylor: Mr. Chairman, Sessional Paper No. 20 is the reply to a request, or a Motion, moved by Councillor McKinnon, seconded by Councillor Shaw, respecting the request of the Board of Transport Commissioners to come to the Yukon and discuss with us air facilities in the Yukon and in the Sessional Paper the Commissioner has indicated to us that a Mr. Courtney will be in Whitehorse on Monday, November the 24th and Mr. Courtney has indicated that he would be prepared to talk to the Council about the nature of the study even though at that it will just have begun. So, I would ask, Mr. Chairman, that with the concurrence of Committee in establishing the agenda, that we meet with Mr. Courtney on Monday, November 24th at 10:30 in the morning and that we have an opportunity to discuss the many problems that we have with airports and airlines and snow removal and so forth, with this gentleman and at the same time I would ask, Mr. Chairman, for the concurrence of Committee, that we invite to attend with us the Chairman of the Yukon Air Patrol, which is a newly formed group last Spring and it's a Civilian Search and Rescue Group, and a civilian agency which has taken over and done a great deal of study and has had considerable experience with all facets of aviation in the Territory. I would ask that we ask the Chairman of this group to attend with us at the discussion.

Mr. Chairman: Any further discussion? Are you agreed?

All: Agreed.

Mr. Taylor: Thank you, I'll resume the Chair.

Mr. Chairman: The next Bill will be Bill No. 6 which I believe is an Ordinance to Amend the Insurance Ordinance. (Reads Bill No. 6, An Ordinance to Amend the Insurance Ordinance).

BILL NO.  
6

Mr. Chamberlist: I have had it brought to my attention that insurance companies which are chartered companies and have just agents here are being hit for two licences and deals I think with life insurance specifically. It appears to me that if the chartered insurance company is permitted to carry on business in the Territory, it, the agent should not be placed in the position of having to licence both in a municipality and in the Territory. Nowhere else in any part of Canada where a provincial licence is issued to an agent

BILL NO.

6

Mr. Chamberlist continues....  
of a life insurance company is it necessary for that agent to obtain a municipal licence. I think this was brought to the attention of previous Councils, I don't know if it has been brought to the attention of this Council, and for some reason or other, there has been no amendment to the Insurance Ordinance making it unnecessary for an agent to have to obtain a Municipal licence as well. Now, I wonder if Mr. Commissioner could indicate if Council would agree with this point where there could be placed in the Insurance Ordinance a section making it unnecessary for an agent of a life insurance company from obtaining a municipal licence.

Mr. Legal Adviser: I don't want to speak and bind the Commissioner, but my recollection is that this has been brought up on several occasions and has been given great consideration by departments concerned, mainly the Department of the Territorial Secretary and by the Commissioner's office and the decision has been to leave the law as it stands; that is, not interfere with the right of the Municipal Council to collect their licence.

Mr. Chamberlist: Mr. Chairman, following this particular answer, I would bring back the oft made remark by Mr. Legal Adviser that when a Bill comes before us he says well we are just following what takes place in other provinces and therefore, this is why we have brought it forward. Now the answer is in reverse, notwithstanding what takes place in other provinces, we prefer to leave the law as it is. Now, it seems to me to be a conflict of thinking in the Administration and the Legal Adviser if this advice has been given to the Commissioner and the Territorial Secretary because how can he say to us, as the legislative body, we want this piece, this particular piece of legislation because we want to conform to other provinces. And now he comes along and says, we want to leave it as it is, notwithstanding that it does not comply with legislation in other provinces. Perhaps you have an explanation as to that particular point, Mr. Legal Adviser?

Mr. Legal Adviser: Mr. Chairman, I don't think it is quite as simple as that. This is speaking from memory because I did not expect this matter to arise in the discussion of this Bill. I think it is largely a question of whether or not, when a licence is paid for operating an insurance business in certain ways, whether or not that payment could excuse them from municipal taxation in the form of a licence. This is not to say that I accept the version of affairs given by the Honourable Member that in fact it is not done elsewhere in Canada, we accept this. I don't think this is correct.

Mr. Chairman: Councillor McKinnon.

Mr. McKinnon: Mr. Chairman, certainly it is not the Government of the Yukon Territory that is out of step in this respect, it is the municipalities within the jurisdiction of the Territory of the Yukon that is out of step with the rest of the country in this matter. I received representations from a local agent and I read his brief that he presented, I don't know whether it went to all Councillors. I think it went to all Whitehorse Members of the Territorial Council, and it was my contention then, and I have had no reason to change it, that it is the Municipalities within the 207,000 square miles of the Yukon Territory, that are different from any other municipality in the rest of the country because

Mr. McKinnon continues...  
 those municipalities anywhere else do not charge a licence fee for the agent if that agent has a provincial licence. So certainly there is nothing that this House can or should do to change the policy now in effect but certainly the representations from the agent should be made to the municipal areas. I am sure the Municipal Government would agree if the representations were made to the right people.

Mr. Chairman: Mr. Dumas.

Mr. Dumas: Mr. Chairman, just for the record, the reason that a municipality normally does not charge because the rates for any insurance company are set, for life insurance are set nationally and according to the life insurance laws there cannot be a variation between areas; in other words we couldn't be charged more for the same coverage that a fellow in exactly the same position in Newfoundland is charge. Therefore it is a national set fee and they feel if each Municipality charged, tacked on a hundred dollars or whatever it was, it would be unfair to the agents located in those areas and they would have to recover it one way or another.

Mr. Shaw: Mr. Chairman, talking about a subject like this. It takes me back to when the corporation of the City of Dawson was first, not when they were first, when the ex officio Mayor, the Commissioner of the Territory, turned it over to the elected persons which they were very pleased to do. We came across a similar type of problems; for example the liquor outlets were charged \$500.00 for a licence and of course when you charge someone \$500.00 for a licence it is pretty hard for a municipality way down on the bottom of the Totem Pole to get any revenue. So I remember requesting that the Government lower their amount of the licence fee and allow the municipality to get a little revenue from this source, which they did. Now, when we are talking about this particular subject, I agree with the Honourable Member from Whitehorse North that this is a municipal affair but on the other hand, the people, the insurance agents in this City had the facilities of this City which to me is of some value. They could move out to Porter Creek and they would not have to pay this Municipal Licence; they would just pay the Territorial Licence, but it certainly must profit and benefit them by having the facilities of the largest community in the Yukon to operate from because I am sure there are no insurance agents outside of the City of Whitehorse conducting a business. The insurance agents might have their sub-agents scattered around the country, don't work for a pittance but it is a fact that they are situated in the largest populated area that permits them to conduct their business, which I hope is in a profitable manner. So, therefore, the amount that they pay, the municipality should charge them for a licence, that is the business of the municipality. I would not like to interfere with the rights of the municipality on whether they can or cannot charge the different businesses operating in the area in their jurisdiction. Perhaps I will go a little further if you want to talk about inequities. A person works to make a livelihood. I happen to manufacture a certain commodity and I have to pay for the manufacturing of that four times as much as what an insurance agent would pay; and I pay all the other taxes and licence fees that I am called upon to pay. It appears to me somewhat inequitable but that is the way it goes. However, it is in conformity with the Federal Statutes

BILL NO. Mr. Shaw continues....

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so that is necessary. So, I do, in conclusion I would say that this is an affair of the Municipality and I would not like to infringe upon their rights which we have given them, to charge or not charge any specific type of business; I think it is their business and the affair of the insurance agents who have my deepest sympathy, should go to the municipality, not the Territory.

Mr. Dumas: Mr. Chairman, I must take exception. The Honourable Member might pay manufacturing tax and supply tax and everything else that he has to pay for but we can rest assured that he recovers it in the fantastic prices that he charges. Unlike the insurance man, who cannot set his price as it is set nationally.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: When we talk about fantastic prices that is ridiculous but I would say that in the Yukon there is a 25% Yukon surcharge now what that is for I don't know but that is very factual. If anyone has bought insurance, I think the insurance agents .... money when they sell insurance, I really do, but somebody sure must make a profit someplace along the line.

Mr. Chamberlist: Mr. Chairman, it was not my intention to have any discussion deviate from the point before us but there are areas where we exclude municipalities from charging certain licence fees and it can be done and I think it should be done because as I say, if we believe in using conformity of laws in other places, why not do the same. In the province of Alberta there is an exception to municipalities charging licences for life insurance agents. I know that one for sure because I have seen that and I think that it would do no harm at all for Administration to take a look at this and see if it isn't the right thing to do because it is done elsewhere although I have said myself that because it happens elsewhere it does not necessarily mean we have to do the same. I have said it and I have said it often that as Councillor Dumas has shown, there is a fixed rate charged for life insurance which cannot be recovered if insurance agents have to increase the operating costs of preparing policies and the like. This is the point that I make and I think and I think some consideration should be given to it.

Mr. Chairman: I just have one item I would like to direct to the attention of the Legal Adviser and I think there is one error in Section 132, or Section 2 in Section 132 inasmuch as \$50,000 is printed rather than written out. Councillor Livesey.

Mr. Livesey: Mr. Chairman, I am slightly amazed when I see this Ordinance, especially when I look at Section 132 in the Explanatory Notes where the total adds up to \$32,000. My understanding of the situation last Spring was that it was \$50,000 last spring. Now, if it was \$50,000 last spring, why do the Explanatory Notes show only \$32,000? Also, we heard at the last Spring Session it was only going to cost two or three dollars to get this extra \$50,000. Well I find out that there is no such thing because in some instances it costs around \$15.00 or more than \$15.00 and it does not matter whether you are a safe driver or unsafe driver or anything else, they don't care. They charge just the same and there is

Mr. Livesey continues...

no provision in the North for a person who is trying to be a safe driver, none whatsoever. And on top of this of course, as I said before and I say it again, I don't think the insurance situation under the compulsory method that we have in the North is right at all, in any way, shape or form. I think it is wrong from every angle and that is that under this compulsory insurance it is a one-sided affair where the law provides that before you can drive an automobile you must purchase insurance from a private company but nothing is to say as to what the costs are going to be. So we have the same problem in relation to this particular thing as we have in relation to inflation. We have control of what you must pay, we have control of the fact that you have to pay, but nothing to say how much you are going to have to pay. So that while on one hand the law provides that each and every driver has to pay a certain amount of money to a private company to obtain redress or to obtain coverage for any possibility of accident, but the private company can charge anything it likes and that is it. There is no other excuse - well this year the price has gone up. Well now, this is a most unfortunate situation for the public, I would say; if we are going to have compulsory law that says you have to have a certain commodity, there should be some regulation by the Government as to what it is going to cost. I don't think there is and while I am on my feet, Mr. Chairman, I would also like to point out that this compulsory insurance at the present moment, all it does is insure a Yukon driver against another Yukon driver, or against anybody that that Yukon driver may hit, but it does not insure that Yukon driver against who may hit him at all. And in the summer time we have a lot more people in the Yukon who do not come under this Legislation than we have that do come under this Legislation, and who is the sucker in this situation? You guessed it. It is a Yukon driver of an automobile. This is all totally one-sided, a one-sided proposition and further, I would also like to say that I agree with the Commission which sat in Victoria and provided a means of report covering their investigation of the situation; and as I have always said and will continue to say, that I don't think the insurance of the automobile is the correct method at all. What we should be doing is insuring the driver, not the automobile, because I doubt if any automobile could drive by itself or cause an accident unless it is let go on a hill or something, when the brake wasn't on. But as for driving down a street without a driver, we haven't got to that yet so it should be the driver who is insured, if anything and not the machine. Now, Mr. Chairman, in view of what I have said, I wonder if Mr. Legal Adviser can tell me why the law's so one-sided, why we have legislation that says you must have a commodity from a private enterprise, but the government doesn't say how much it is going to cost nor does it make any attempt to provide any coverage of costs. So, the individual, instead of being given the service, is in this respect, he is open to any possibility before he can drive at all - that someone entirely not in the boundaries of his control at all; not within the boundaries of the control of the government, comes along and says, well, this year it is going to cost you a hundred dollars, next year, if we feel like it one hundred and fifty, one hundred and seventy-five, it is a totally inequitable situation.

Mr. Chairman: Mr. Legal Adviser.

Mr. Legal Adviser: I bow to..

Mr. Livesey: I believe Mr. Chairman, I asked the Legal Adviser.

BILL NO. 6 Mr. Legal Adviser: I do not think the correct figure is \$15.00 increase in the amount of insurance. I am informed on very reliable information that the amount is \$3.00. If extra parts of a package are purchased this may affect it, or if the driver's record is different, this also may affect it, but the standard price is \$3.00, not \$15.00. But insofar as uniformity of legislation is concerned, there is nothing that the Administration would wish better than to have uniform legislation in this field and I am sure that the Honourable Member would not wish the ....legislation to be reduced.

Mr. Chairman: Mr. Dumas.

Mr. Dumas: Mr. Chairman, several points-I suggested last year that it would be \$3.00 as the increase for the extra \$18,00 coverage in most cases and one local insurance agency that I won't mention was \$3.00, in fact; with a lot of the minimum in that agency, incidentally, was \$35,000 as a company policy, so what is \$35,00 to \$50,000 and that was \$3.00, it cost \$3.00 or more for fine drivers. Now there are something like a thousand combinations of drivers and vehicles, therefore to try and say, you can only try so much for this extra coverage, you would have to come up with a thousand or so different rates. Because, if you have a 17 year old person driving a Jaguar car you have a fellow who is paying for full coverage, something like \$800.00 a year, whereas a 26 year old man who has not had any accidents, driving the same vehicle, is probably paying about \$250.00 a year, but that same man, if he were driving a Chev or a Plymouth or a Ford, an ordinary vehicle, might be paying only \$120.00 a year. So there are all kinds of variations. In fact the increase on the basic price in this particular agency was \$3.00 and taking it from \$32,000, which is the legislation, to \$50,000, it is \$3.75.

Mr. Livesey: Well, Mr. Chairman, that certainly wasn't my experience.

Mr. Chairman: Is there anything further on this Bill, or what is your pleasure, gentlemen?

Mr. Shaw: Mr. Chairman, just one thing. We passed this, I think, some time ago. Wasn't there a Bill created at that time that was passed in respect of this \$50,000.00?

Mr. Legal Adviser: Mr. Chairman, it was passed in the Motor Vehicles Ordinance; it's a parallel amendment.

Mr. Chamberlist: Sir, am I to understand then, from what Mr. Legal Adviser just said, that when it was passed last time it need not, nobody need not have paid this amount of money for the simple reason that it wasn't there, so the public got fooled. They didn't have to pay it because the insurance agent, the Insurance Ordinance did not insist that it should be paid.

Mr. Legal Adviser: No, there was a compulsion in the Motor Vehicles Ordinance; it was enforced immediately it was passed by this House. It was assented to and it went into force. This is the form of the policy. This does not say this is what the owner and driver shall do; this indicates the form of the policy should be provided.

Mr. Livesey: Mr. Chairman, surely when the public last spring were forced to take out, they could not get their plates unless they had \$50,000 worth of coverage, how can you

Mr. Livesey continues...  
turn around and tell me in the next breath that in the Ordinance that we are trying to implement that it was only thirty-two. Now there is something wrong somewhere, Mr. Chairman.

Mr. Legal Adviser: This is forcing the insurance company to provide a special type of policy in conformity with the one put into force. They don't need this type of compulsion because they will attempt to comply with the law without force but is a tidying-up effort merely to bring it into conformity.

Mr. Chamberlist: I think perhaps if I could explain plainer, the amendment to the Motor Vehicles Ordinance was a driver's requirement. This is the requirement of the Insurance Company to supply the policy under that particular section. This is a different thing; I was in error myself by thinking that it wasn't. It just dawned upon me.

Mr. Livesey: Mr. Chairman, if that is the case, then this is another - sort of typographical error on the part of the Legal Adviser and possibly, possibly last spring, you know, he was so intent on his work here in the Council Chamber, he just forgot that both of these things are supposed to be parallel. Perhaps this escaped the thinking of the Legal Adviser, Mr. Chairman. This is more than likely and if it was that type of typographical error, of course we can always forgive; we have forgiven sins before.

Mr. Chairman: Gentlemen, what is your pleasure.

Mr. McKinnon: Mr. Chairman, I had a question before... like speaking now...the Honourable Member for Whitehorse East admitting that he was in error just completely and thoroughly .....so I can barely think to ask a question, but it has been brought to my attention on fairly good authority that in most of the provinces there is a 1% surcharge on premiums that accrues to the provincial legislature and also a 5% surcharge, I think; or a rakeoff, I don't know just where it would be on fire insurance premiums in the Territory. I wonder if the Honourable Member for Whitehorse West could tell this House if he thinks this is an equitable form of taxation and should be followed in the Yukon?

Mr. Dumas: I may be wrong but I think that 1% is used for traffic victims' indemnities fund, and this would - Unsatisfied Judgment Fund in effect. This would obviate the problem that the Honourable Member for Carmacks Kluane brought up, and 1% of the premium goes into a fund where somebody who has a car, or steals a car and does not have insurance, and somebody else gets hurt, the victim is covered.

Mr. McKinnon: These are premiums, Mr. Chairman, are they, that come from the insurance agent and would the insurance agent be willing in the Yukon to contribute in a similar manner to an unsatisfied judgment fund?

Mr. Legal Adviser: No, with respect, Mr. Chairman, I don't think this is quite correct. There is a contribution made by the insurance companies themselves to the provincial insurance unsatisfied judgment fund, but it doesn't come from the, this is a one percent on life insurance policies and the same companies who operate in the accident field do not necessarily operate in the life field. Then there is a 2%

BILL NO

6

Mr. Legal Adviser continues...  
 tax, or surcharge on all fire insurance premiums. This is, or at least in its early days, was devoted to paying the cost of fire protection and they are quite useful pieces of revenue and as I said, it would be useful to know whether the Member wishes to have uniformity of legislation.. apply to the Yukon.

Mr. Dumas: Well, Mr. Chairman, for my part I think it is a wonderful idea. I think that the 2% fund-fire insurance fund....taxes normally take care of that but I do think, and as a matter of fact I know that the Administration at some level, is looking into the traffic victim indemnities fund right now, or unsatisfied judgment fund which should be, I believe, enforced in the Territory.

Mr. Chairman: Councillor Livesey.

Mr. Livesey: Mr. Chairman, I think before we start talking about passing this matter out of Committee, that in view of the fact we have seen where there has been some laxness in creating the uniformity within the legislation of the Yukon Territory, not to mention outside of the Territory, that perhaps we could be provided with a copy of the Motor Vehicles Ordinance and compare it with the Insurance Ordinance to make sure that the Legal Department has not been putting something over in the Insurance Ordinance they haven't provided in the Motor Vehicles Ordinance. Thank you Mr. Chairman.

Mr. Chairman: What is your further pleasure in relation to this Bill?

Mr. McKinnon: I wonder if I could ask one more question of Mr. Legal Adviser. What is the status of the Unsatisfied Judgment Fund now. The Council unanimously recommended that the paper to the Administration at the last session of Council and I personally thought that we could have some action at this Session on it.

Mr. Legal Adviser: I don't want to give a long statement as I understand Mr. Hodgkinson is preparing it - a Sessional Paper for Council, but we investigated various methods of trying to operate this, such as the government taking out a premium for all the unsatisfied judgment drivers....with Workmen's Compensation. Then they were dickering with the insurance company's central organization to see how it could be set up - be set up by legislation or by, or voluntary by the insurance companies themselves. Then during this pick-up period the method of dealing with drivers who failed to obtain policy was changed into a system called the Assigned Risk System; The Assigned Risk Facility, so its a ....subject that I'm really not very well up with. If you will await the Sessional Paper, Mr. Hodgkinson will have more information.

Mr. Livesey: Mr. Chairman, could we hold this in committee until we have a chance to review the Motor Vehicles Legislation?

Mr. Chamberlist: I don't think that is necessary; if the Honourable Member from Carmacks-Kluane would accept what I think....no difference, tie them both in together. I don't think there is any ulterior motive, really not.

Mr. Livesey: Mr. Chairman, I was not suggesting ulterior

Mr. Livesey continues...

motive but it seems to me that certainly errors have been made; otherwise we would not be talking about this Insurance Ordinance right now; we would have been talking about insurance legislation at the Spring Session when we altered the Motor Vehicles Ordinance.

Mr. Chamberlist: .....error..

Mr. Livesey: Certain there was an error, now there was an error then and there is going to be an error now. So why not just, for a few minutes, just hold this until tomorrow until we...

Mr. Chamberlist: .....that point, I agree, we should hold it.

Mr. Legal Adviser: The error was made a long time ago and the thinking of the Revised Statutes of the Territory when the word insurance was omitted from the title of a Federal Ordinance which applies here and this was brought to our attention by a letter from Mr. Nielsen, the lawyer, not writing as a Member of Parliament, and he was dealing with the subject some way and he drew it to our attention so then we put this into operation. As far as the form of the policy is concerned, it is not essential, in legislation, to change the form of the policy because the form of policy ....Commissioner by Regulation, or agreed to by the Commissioner or his Officers can be the standard form of policy but once we open up the Ordinance to amend the word changes, the old section, it was necessary to do it in section 132.

Mr. Chairman: I wonder, just from the Chair, if we might just establish once and for all, is the Legal Adviser satisfied that the amendment that we made to the Motor Vehicles Ordinance at the Spring Session is fully compatible with this Ordinance.

Mr. Legal Adviser: They are both properly linked together.

Mr. McKinnon: Mr. Chairman, if a Member wants to double check it during tea period and then we move the Bill out of the amendment following his inspection, certainly this Council is big enough to grant him that privilege.

Mr. Livesey: Ah, thank you, Mr. Chairman.

Mr. Chairman: Order please. Councillor Shaw.

Mr. Shaw: I have heard remarks today that this is an error; this is not an error, it is an omission! Could we not just to satisfy this particular point, could we not recess for two minutes. I am sure that the Honourable Member, the Clerk can get this thing up here lickety split and here we are, compare them and the Honourable Member - we can process the Bill and go on to something else.

Mr. Chairman: We will have a two minute recess.

#### RECESS

Mr. Chairman: I wonder if at this time we can call the Committee back to order, and Councillor Livesey.

BILL NO.

6

Mr. Livesey: Yes, in the short interim period allowed for the elected members to investigate this problem I have viewed, Mr. Chairman, the particular section brought to my attention by the Clerk of the House in reference to the Motor Vehicles Ordinance and apparently that which was decided at the fall session of 1968, which provided for the change in insurance costs in order to obtain a licence plate in the spring of 1969, is the same, in identity. What the problem was then of course was the Legal Department had altered and changed and **repealed** one Ordinance but had failed to repeal the other. This is the problem, and this was the problem that I had brought up this afternoon, Mr. Chairman, which goes to show that the question of having uniform conformity of legislation between the Territory and the provinces is normal but **between** the pieces of legislation within this building is abnormal. Thank you, Mr. Chairman.

Mr. Chairman: What is your further pleasure with the Bill?

Mr. Legal Adviser: Might I just say that, on behalf of the Legal Department we are very grateful for having the matter brought to our attention.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, I would move that Bill No. 6, An Ordinance to Amend the Insurance Ordinance, be reported out of Committee without amendment.

Mr. Chairman: Is there a seconder?

Mr. Chamberlist: I will **second** the Motion.

Mr. Chairman: It is noted that the \$50,000 will be expressed in writing rather than in figures.

Mr. Legal Adviser: Mr. Chairman, just one minor point; it is expressed in figures in the Motor Vehicles Ordinance.

Mr. Chairman: That is something else that will have to be corrected when we deal with the Motor Vehicles Ordinance, Mr. Legal Adviser.

Mr. Chairman: I have a motion that Bill No. 6 be reported out of Committee without amendment, and this was moved by Councillor Shaw and seconded by Councillor Chamberlist. Are you prepared for the question? Are you agreed? Contrary if any? Could I have an indication of hands of those in favour? (3 in favour). Would those contrary raise their hands. I must declare the Motion carried.

MOTION  
CARRIED

Mr. Dumas: Would you make a note of my abstention?

Mrs. Gordon: My abstention too, Mr. Chairman.

Mr. Chairman: One Councillor had indicated to the Chair that he would not be voting - two?

Mr. Chairman: Alright, gentlemen, let us proceed to a non-controversial Bill. Let us go to Bill No. 8. Is there anyone you require to be in attendance for this Bill or do you wish to proceed?

BILL NO.  
8.

Mr. Chamberlist: Mr. Chairman, I would like to comment before you start reading on this Bill. Mr. Chairman, there

Mr. Chamberlist continues...

is an Explanatory Note suggesting that there is a complete re-writing of the Municipal Ordinance in hand. Mr. Chairman, from the very first Session of this Council I asked then, which is two years ago, whether or not the Municipal Ordinance is to be written. The answer I received was a complete re-writing of the Municipal Ordinance is in hand. Exactly the same words are now being used in this Explanation given here. I would like to hear from Mr. Legal Adviser now exactly what is the status of the new Municipal Ordinance.

Mr. Legal Adviser: I cannot accurately answer this question; I understand that the new Head of the Municipal Affairs Department has the matter in hand; it has not come to my level yet to have a look at it but as often happens, of course, the urgent things are being dealt with and that's it.

Mr. McKinnon: Mr. Chairman, I wonder if I might make a suggestion here. I have been in contact with His Worship, The Mayor of the City of Whitehorse and also with several of the Aldermen and since the Bill has been tabled in the House, they haven't yet had an opportunity to get together and look over the various aspects of the Ordinance. I think this is one of the areas of communication where we can work together with no problems whatsoever and this was evidently done at their request. I think it probably meets their request that if they just had an opportunity to be able to say that this meet our request and there is no objections, that we could work hand in glove with the Municipality of the City of Whitehorse, and there could never be any controversy coming to the fore that, our representations not being heard by the senior government, that their representations not being heard by their senior government and this could just be **delayed in the processing** for a couple of days; this could just work wonderfully and any controversy that could have come about by passage of it before their examination of it could be avoided completely.

Mr. Legal Adviser: One point, I should clarify the issue. When it is said this is done at the request of the Municipal Council, it is the Municipal Council of Whitehorse that is in question. Now most all of this Bill is in response to specific requests made, not necessarily all at one time, by the Council for amendment to meet a particular situation but it would not be quite accurate to say that the section dealing with a minor amendment for trailer licensing by-law making power was made at their specific request, nor would it be correct to say that the schedule B **suggested section** which is section 12 of this Bill, was made at their specific request but the other ones were requests made and I am not sure whether they actually had seen the form but certainly correspondence was passed back and forth. I think they may have prepared preliminary drafting, corrected, and prepared by me, I suppose.

Mr. Chairman: Councillor Livesey.

Mr. Livesey: Well, Mr. Chairman, do I understand then that the Council of the Municipality of Whitehorse has requested precisely what is in this Bill, because if this is the case then surely there must be records with reference to their procedure in Council Chambers where they have specifically asked for these items. And when I looked through these items

BILL NO. Mr. Livesey continues...

8 that are in this Bill I can hardly vision any group of elected democratic people wanting a higher echelon of government to interfere in their internal operation to the extent that it is described in this Ordinance. I just can't visualize anyone wanting this.

Mr. Chamberlist: Mr. Chairman, Mr. Legal Adviser I think clarified that not all of it was requested by the City of Whitehorse and he specifically noted certain areas that were not requested. So, with respect to the Honourable Member from Carmacks-Kluane perhaps he wasn't listening at the time and he might have been taken up with matters of importance other than this.

Mr. Livesey: Yes, I was talking to the Chief Executive Officer, Mr. Chairman.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, I note in this Ordinance that we have where changes are going to be made to the indemnity of a Council. Now, I haven't gone through all of it, various other sundry changes that, but the point that I am getting at is that I also represent an area in which a Municipality is located and when I come up here from time to time I hear, well the Municipality of Whitehorse wants this and they want that and everybody and everything is fine and dandy. In the meantime these poor blokes up in the north end of the Territory don't know what's going on. Now, when I come down here - may I have order, please, Mr. Chairman?

Mr. Chairman: Order please.

Mr. Shaw: When I come down here in representing the area which I represent, as well as the Yukon, I must also take into consideration the desires and wishes of the representatives of the people of the City of Dawson. For me to agree to, or not agree to these things, unless I know that these people up there have had an opportunity to make any representations to me or to this Council, or to the Administration, is a particularly poor situation to be placed in and I think myself, Mr. Chairman, that I would like this thing let go for a week or so until these people up north can have a copy of this and if they have any complaints, or whatever they may have, they can then present their prayers, as I think it is called, to have or not have the changes made. These people do not know a thing about it. Now, if the people in Whitehorse, if the Municipality of Whitehorse is concerned, is acquainted with and wish to go ahead in discussing the boundaries and so on and so forth of that section that applies only to the City of Whitehorse, and they are in agreement; they are right here, they are conversant with what is in there, fine and dandy. But this other deal; one thing for sure, they are going to have their pay reduced right off the bat, that is the first one we have to consider. Maybe it is just; maybe it is not just, I don't know, but certainly they should know what the score is. Thank you, Mr. Chairman.

Mr. Chairman: Gentlemen, if I could have your direction, is it your wish to proceed at this time or to defer this item? I wonder if I could have some direction from Committee?

Mr. Shaw: Mr. Chairman, if I might suggest something. There is a bus leaving tomorrow. I say this for the benefit of the

Mr. Shaw continues...

for the edification of the Administration. There is a bus going north tomorrow and if you send any mail now it will not get there until next Tuesday and that is a fact. The last mail is on a Friday so that goes in first thing in the morning so if you don't catch that mail which leaves in the morning, it will not get there until next Tuesday. That is the next mail that is received. So, there is a bus going tomorrow morning at eleven o'clock if this could be sent up, a copy of this Bill, with a request for them to look it over and if they have any comments, that could be made at the first opportunity. I think that would work out.

Mr. Dumas: Mr. Chairman, there could be a problem if we send the Bill up there and the Council reviews it - by that time there may be a different Council and they would like to review it too. This could go on for years.

Mr. Shaw: Mr. Chairman, we don't believe in stagnation in that area. We like to leave things..... Perhaps they would like to send a representative down; I don't know, but I would like them to have an opportunity to review it and then take what appropriate action they think necessary.

Mr. Chamberlist: Mr. Chairman, it is very nice of the Honourable Member from Dawson to give us a transportation schedule, but I don't think we should get involved with sending copies out to other areas. We have a function to perform. Certainly the local municipality, if they wish to examine them now they have been tabled, they should be allowed to examine them but we could send them copies, they could ask for copies while we are going through this. It is going to take quite some discussion on No. 12, Section 12(b) in any event. I think they could come along and listen to these discussions that are going on and I often go and listen to the Aldermen of the Municipality to see how they conduct their business in Whitehorse but - please Mr. Chairman, let us continue with the Bill and not waste time of this Council.

Mr. Shaw: Mr. Chairman, if we start to study the Bill now I am sure that we will have it pretty well completed by next Wednesday. By next Wednesday it is not possible to get that communication there and back again. Let them know what the score is and let us have some comments from them.

Mr. Chairman: Well, gentlemen, I am going to at this time declare a recess but I wonder if you could make up your collective minds on this issue so you can give the Chair some guidance over tea and advise me as soon as the matter is determined. I will now declare a short recess.

RECESS

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Thursday, November 20, 1969.  
3:30 o'clock p.m.

Mr. Chairman: I will now call Committee to order, and I wonder if you've decided in which manner you wish to proceed with Bill No. 8?

Mr. Shaw: I would move that this Bill be deferred for the time being to give me an opportunity to get it up to Dawson city.....

Mr. Chairman: I don't believe a motion is necessary here if it is with your concurrence. I'll just note progress on the Bill and we'll defer it. Is that agreeable? I wonder gentlemen in view of the fact it has been brought to my attention that there has been an important matter of communication to the House, I wonder if Mr. Speaker would at this time resume the Chair?

Mr. Speaker: I will now call Council to order and I have a communication here from the Prime Minister in which I feel the entire House will be interested. It is addressed to Mr. J. O. Livesey, Speaker, Council of the Yukon Territory, Legislative Council Building, Whitehorse, Yukon. The text reads:

I am pleased to have your telegram conveying the feelings of the Council of the Yukon Territory towards the proposals for constitutional change announced by the Minister of Indian Affairs and Northern Development as the Minister pointed out, the immediate need is to bring the legislative and the executive sides of Territorial Government into a working partnership. Stop, I believe that an orderly approach to this important constitutional step is the realistic course at this time and that this process can be accelerated when the effectiveness of the proposed arrangement can be demonstrated. Stop. As I stated in the House of Commons, on November 13, the general principle laid down by the Minister was government policy. Stop. What is being proposed is only a first step in a process of introducing a more responsible form of government for the Yukon and I would hope that Council is prepared to accept the proposals in this spirit. Stop. However the Minister of Indian Affairs and Northern Development and myself, will be pleased to receive the Council or its representatives in Ottawa at a mutually convenient date in order to exchange views with you on these proposals. Stop. I sincerely ask for the cooperation of the Yukon Council and all residents of the Territory in working out the difficult but important developments which will be required to give the elected representatives in the Yukon a greater role in the conduct of their government.

It is signed Pierre Elliot Trudeau.

Mr. Taylor: Mr. Speaker, if it be with the concurrence of the Council, I would like to suggest that Mr. Speaker be asked to reply to the Prime Minister's telegram and establish indeed a date at which time the Council may meet with the Prime Minister and the Honorable Minister of Northern Affairs.

Mr. Speaker: Agreed? May I have your further pleasure.

Mr. Chamberlist: I would suggest that before this is done that Council will discuss amongst themselves whether or not it would be preferable that all members of Council visit or a deputation appointed by the Council.

Mr. Speaker: Is there any further discussion?

Mr. Shaw: I do have a discussion on another matter if this subject is finished at the present moment. If it be the pleasure of the House, I would suggest that Mr. Speaker be asked to forward a note of appreciation to the Honorable John Turner, Minister of Justice, with reference to his press release today as it affects the Yukon and its people.

Mr. Speaker: Are we agreed? May I have your further pleasure.

Mr. Shaw: Mr. Speaker, I would move that the Speaker do now leave the chair and the Council resolve itself in the Committee of the Whole to discuss Bills and Sessional Papers.

Mr. Speaker: Moved by the Honorable Member for Dawson, seconded by the Honorable Member for Whitehorse East, that Mr. Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bill and Sessional Papers. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried and the Honorable member for Watson Lake will please take the chair in Committee.

MOTION  
CARRIED.

MOTION CARRIED.

BILL #9

Mr. Chairman: The next Bill under consideration will be Bill No. 9, and Ordinance to Amend the Motor Vehicles Ordinance. I will declare a brief recess until you get your papers in order.

RECESS.

RECESS.

At this time I will call Committee back to order and we are discussing Bill No. 9 and I will proceed with the Bill. (reads section 1)

Mr. Livesey: I wonder Mr. Chairman, in this day and age why we are still using the word "livery"?

Mr. Legal Adviser: What it really means of course is dealing with horses and it has come to mean people who deal with motor cars for hire. There is no reason except that there is probably no acceptable substitute.

Mr. Livesey: Mr. Chairman, could I ask another question? Are there any livery stables in the Yukon?

Mr. Legal Adviser: The word livery itself comes from delivery and it meant a person who operated a stable for hire and delivered horse for hire. This is the dictionary definition of it, but if the Honorable Member wishes to come up with another substitute word, .....

Mr. Chairman: I wonder if from the Chair if I might first of all starting with subsection (1) of section 1, find the basis behind why the word chauffeur is being deleted when the word chauffeur appears in our ordinance.

Mr. Legal Adviser: The basic reason is, at present the provinces have a series of different types of motor vehicle licenses, In Alberta at the moment they have five types of licenses, but the annual conference which our Registrar of Motor Vehicles attends every year, whereby the rules of operation or the machinery of driver's licenses reporting suspensions and so on, they are machined in so far as is possible to get uniform procedures throughout Canada. This conference has for the last two or three years been considering a uniform type of driver's licence which will divide driver's licenses into seven classes. Starting at the learner's licence progressing through to licenses for operating

Mr. Legal Adviser cont;

BILL #9

motorcycles and so on up to the very heavy type of equipment which needs a great skill and training to operate and school busses and so forth. The effect of this will be that there will be one type of driver's licence divided into seven classes instead of two types of licenses that we have at present, a driver's and a chauffeurs, so it is necessary therefore to knock out the word chauffeur wherever it occurs and from a drafting point of view it is a cleaner method to change it section by section rather than just to have just one section saying that the word chauffeur wherever it appears shall be deleted and any reference thereto. This is an untidy, inappropriate type of drafting in this modern age so although it is tedious to go through it, it will result in a cleaner bill. The second thing of course is that at present under the Commissioner's direction, we are attempting to revise all the Ordinances which are in operation and this would in any event be part of a revision of the Motor Vehicles Ordinance so that hopefully, when all the work has been done on this, we will have one clean Ordinance and at that time, we will repeal the old Ordinance and put in the new one.

Mr. Chairman: Mr. Clerk informs me that he has copies relevant to this section, so he will now circulate them. I have another question if I might from the Chair, under subsection (3) of section 1, where we deal with livery or taxi cab, we define a taxi cab as being a unit which is used to haul passengers, but we have not provided it would appear for taxi cabs who provide ... convey baggage, express without passengers for hire, which is one of the functions of a taxi. How does that meet with subsection (3)?

Mr. Legal Adviser: I wasn't aware that that was a function of a taxi cab. I was under the impression, possibly Mr. Clerk would have more experience than I would, taxi cab means a type of public service vehicle which is carrying passengers.

Mr. Chairman: Councillor Chamberlist, would you take the Chair a moment. I only site this because a taxi cab, though he is basically in the business of conveying passengers to and from one place to another is also for hire for the same tariff to go down to pick up something at the grocery store or to go to the airport to pick up freight and express for people and a great deal of taxi cabs work is in this field and I am just trying to determine that there is no where in the Ordinance that this definition of livery of taxi cab by excluding this particular function will cause them any difficulty.

Mr. Legal Adviser: This is not a permitted use of a taxi cab within the provision of the Ordinance. It may be operative. The only use which I was personally aware of for taxi cabs to carry goods was when they were carrying bootleg liquor.

Mr. Taylor: This is not the case and I don't think there is too many people, even around this Council Chamber that at some point in time have not called a taxi to go and pick up even documents to pick up express. This is not really freight, or pick up luggage from the airport and this type of thing and I just site this, wondered if it was considered when the livery or taxi cab section was brought into being and I just want to ensure that no taxi operator would be penalized for doing this type of work if this remains.

Mr. Legal Adviser: I think he would be penalized if he was picked up by the inspector in charge. It would be in breach of his licence I would think.

BILL NO.9 Mr. Taylor: This to me Mr. Chairman, is not fair. Again, there is more to the Territory than just the city of Whitehorse and in the outlying districts, where people do run taxi cabs, there is much of this work done for hire by taxi cabs and if it is not legal to do so then I think it behooves us to make it legal for them to do so.

Mr. Legal Adviser: With respect, it is a thing that could be discussed with the particular department concerned, but it is not part of this Bill. It is not suggested at the moment that we would do this, because it would take quite a lot of examination. There are a lot of contrary interests that would be involved, which would have to be consulted and the whole thing would want to be examined. I would request that rather than delay the passage of this Bill, that the matter be examined with a view of changing the basic government policy that was desired.

Mr. Taylor: Well, I would like to hear the opinion of the Assistant Director of Motor Vehicles, because I feel that this is very important. Whatever we pass now, I want to be sure that it places no imposition on the taxi operators for what they daily do.

Mr. Clerk: Mr. Chairman; we are not doing anything to this section, but taking out the word chauffeur where it appears in the section. At the present time in order to haul baggage or to go and pick something up, a man requires a P.S.V. licence and comes under the pervue of the P.S.V. section of the Ordinance. The present Ordinance does not allow a livery or a taxi cab to do this kind of work.

Mr. Taylor: If this is the case, these taxis that daily pick up baggage at the airport for passengers incoming and outgoing and I think then that this is a must. I think we require an amendment to the Ordinance to legally permit this otherwise what your saying is that these people can only haul passengers. They cannot haul baggage and express and this is where a bulk of their work is, is to and from airports.

Mr. Legal Adviser: They are entitled to carry the baggage of the passenger. A passenger is transported with the goods which were attached to him as part of his baggage. This is a different thing from operating what is in effect a fleet service by ringing up a taxi and saying go to point A and bring me a certain package or a certain bag or a box and bring it to point B. The latter would be contrary to the Ordinance, but to transport a passenger implies transporting the passenger's baggage as well.

Mr. Taylor: But Mr. Chairman, as I've stated before, if you come downtown and your baggage is misplaced or you're with a friend and you're in a hurry to get to a business session and you send a taxi for your baggage, this is done every day and this should be no prohibition against it and this is why I raised the question. I feel that an amendment should be prepared for the Ordinance at this time, now we are dealing with this section and amend it accordingly so it is permissible for a taxi operator to convey baggage and express. I'm not saying that they are supposed to be permitted to run opposition with the P.S.V. operator in the trucking of mail and this type of thing, but I am talking about baggage and express and I think that is only fair.

Mrs. Gordon: Supplementary to this line of thought, this is also true in outlying areas where in the cold weather, people will phone the store and put in an order and ask a taxi to pick it up and deliver it to their homes. This isn't necessarily something

Mrs. Gordon cont.:

BILL #9

that just affects transit between airports and hotels and people with their baggage. It also concerns people in other areas and affecting other things that affect daily life.

Mr. Commissioner: Mr. Chairman; with respect I strongly recommend the Council that they let the sleeping dog lie on this question. Taxis are doing this type of work now, and although there may not be any permissiveness involved in the Ordinance, I don't think that there has been anyone prevented from doing this and I think that the matter should be left alone. If Council would see that at this time, we will certainly see that it is examined from an administrative point of view and be quite prepared to either by means of a paper or some other means, bring forward to you all the ramifications that are involved. I strongly recommend to you that the situation as it exists right now, which is more or less of a permissive situation, be left in this permissive, unwritten form for the time being. I'm afraid that if we start tampering with any moves at this time to should we say, give written, legalized authority to something that is an accepted fact of life, we may well run into a hornets nest of opposition from P.S.V. licence holders, goodness only knows where the thing will ever end, and I strongly recommend to you that unless there is something in these amendments that is particularly damaging or possibly damaging to a taxi operator in the regard that the member from Watson Lake has brought up, it would certainly be my suggestion that you allow us to examine the problem very carefully and closely and bring forward a paper to you that will permit you to examine it in a different light before any amendment is done.

Mr. Chairman: I will resume the Chair again.

Mr. Chamberlist: I think that the suggestion that the Commissioner has made in this regard maybe fine, but you then come across over zealous policemen who stay with the book and they could very easily get hold of a taxi cab operator who has been for years and years used to doing this very thing, going to a store to pick up goods for somebody and then the policeman would come along, he would lay a charge and what can a magistrate say except that he sympathizes with you, but this is the law. It's alright to say let sleeping dogs lie, but there are some police officers who don't want to let sleeping dogs lie. Some time ago, some years ago, one of my own men, employed by me who had a driver's licence was driving a truck to a job with his tools and materials on it, was prosecuted for not having a chauffeurs licence. He wasn't driving for reward, but because he was driving the vehicle that was a commercial vehicle, he was charged with not having a chauffeurs licence. The company was also charged with permitting somebody to drive a vehicle without a chauffeurs licence, but because of some other technicality that I had found in it, that case was dismissed but the driver, he was convicted of driving without a chauffeur's licence. Hundreds of people do this today, when they are not delivering, they might be plumbers or carpenters or tradesmen who are taking a vehicle from the shop to a house to carry out repairs. Leaving sleeping dogs lie, they shouldn't be prosecuted but technically, the way the law is, they must have a chauffeur's licence. The same thing will happen here. As much as you think it won't happen, it will happen and we must clear this thing up early. If this legislation is passed without the ... guards of both the young woman from Watson Lake and the Honorable Member from Mayo has brought forward, it would be a penalty which would be imposed on people who are going about their business, earning their living in the same manner that they have done for years and

BILL #9 Mr. Chamberlist cont.:

years for us to institute amendments which would hinder them in their everyday life would not be in the interest of the public and I wouldn't support that and while I'm on my feet, I would like to have it known where the requirements, it says medical as required, to what extent is the medical. Is it a medical examination for loss of feet, hands, toes, consumption, appendicitis, what is required in this medical before a licence can be issued. How expensive is the requirements. This should be explained and clearly defined so that an issuer of a licence can say, "Well, this person has been suffering from nose bleeds every three months and might hinder the man in driving, he might have ear aches and he can't hear properly so he can't hear somebodys horn." These are the things that must be clarified, to just say medical isn't good enough.

Mr. Legal Adviser: With regard to the observations concerning the medical examination. What we have done here, is in class I, II, III, IV, V and VI is just as required. For some of them it is required yearly, otherones are required every two years. The standard to which the medical examination will reach has not yet been agreed on by the department concerned. In particular the medical department has been asked to come up with precise standards of visual capacity, hearing and so on and then the person must meet the particular requirement. Of course, when it gets to the heavy operators class, the requirements for fitness and so forth will be heavier than for lighter vehicles.

Mr. Chamberlist: I haven't received from Mr. Legal Adviser, any comments on my first remarks supporting the contention of the other two members. Would Mr. Legal Adviser care to indicate whether he is prepared to put a protection in the clause for those individuals that have been referred to.

Mr. Legal Adviser: I would regard an attempt to put this in at this time in this section. To be quite frank, I would regard it as what has often been referred to here as a midnight amendment. The amendments here are all for specific purposes. There is no change in the taxi cab requirement whatsoever except that now a person does not require a chauffeur's licence to drive it, he requires a drivers licence. All the other requirements are the same. I personally know of no case and I see from the ssistant Registrar of Motor Vehicles who is present here, that he knows of no case where any proceedings were ever taken against a taxi cab operator for carrying freight or baggage in the manner indicated by the Honorable Member, so I would ask them to go that far with the Commissioner, to give us time to see what is involved and whether any amendment would even be acceptable to anybody and just as he said, leave sleeping dogs lie.

Mr. Commissioner: In difference to the questions that you yourself raised when you were on your feet to the further enumeration of the problem as indicated by Councillor Chamberlist, I think that if you were to ask the Legal Adviser specifically for a commitment as to when he could have this matter researched and bring forward information to Council, perhaps this might be the means of clarifying the situation for you, but I certainly would very much agree with the Legal Adviser when he says that we would certainly want the opportunity of properly researching the matter before we attempt to bring forward an amendment that would appear at the point in time to be required to clear up this situation.

Mr. Chamberlist: Would Mr. Legal Adviser be prepared to put in the Ordinance that in view of these changes for these licenses that no person will be prosecuted for carrying out the duties that he has carried out before, because I am suggesting to you and it may happen that you get an over zealous policeman who will look at these amendments, when he gets these amendments, at the detachment and he starts looking at the rest of it. You know, he's only just come out of Regina and he wants to make a hero of himself and get himself three stripes real quick, he's going to be looking out for these things in exactly the same way as if somebody went and picked up a person for buying a bottle of liquor and walking out the store and picked him up for having liquor in a public place before he got to his car, because there was something wrong with the Liquor Ordinance. He had the right to buy the liquor but the moment he stepped out of the liquor store, he had the liquor in a public place and he was taken to court for it and Magistrate Trainor said technically he had to find the man guilty.

Mr. Legal Adviser: It is asking just a fraction too much, to be frank to ask us to give .....that no prosecution will be brought. We just don't control the every day operation of the police forces in their every day work, but I can say that the Registrar of Motor Vehicles will not seek to have people prosecuted this I can say, because the Commissioner and the Registrar are in the same administration, but that is not to say that if a prosecution happens and it goes before the court, don't call me a liar.

Mr. Chairman: Just for clarification of the Chair, I understand the member is concerned about the time of transition between that time that this is implemented and licenses are issued in this new scheme and the time that this Ordinance comes into force. I believe that this is the issue.

Mr. Legal Adviser: We don't think there is any problem.

Mr. Shaw: I'm lost on this particular section. I note that the only difference is we haven't chauffeur in this present one, we have owner or driver and how that is going to make all these differences I don't understand. I cannot see it. A driver is a driver, I mean you call a man a driver or a chauffeur and it does make a difference of what kind of a licence you require, qualifications of licence. How is that going to hurt anybody? If you don't have the qualification, you can't drive this type of vehicle, well, I think that is pretty sensible. When a man is wheeling a big truck along, he has got to have more qualifications than the fellow that is learning to drive. I don't see what all this hullabaloo is about, that is what I'm trying to figure out. Nobody has proven anything yet by the discussion.

Mr. Livesey: I would like to pass a few remarks about the stand just taken by the Legal Adviser where he says that the administration is not going to make any prosecutions, but he can't guarantee what the enforcement officers are going to do. I don't know, I have no doubt that he didn't intend this as gobbledegook, but it certainly sounds like it and it means nothing to us whatsoever. I don't understand how anything the administration is trying to do or says they are not going to try to do is going to mean anything as far as the Court is concerned. I wonder if he could explain.

BILL NO. 9 Mr. Legal Adviser: I'm not quite sure what the question is.

Mr. Livesey: Well, Mr. Chairman, the Legal Adviser said that the administration wasn't going to process the **prosecution** within the meaning of the discussion at that time, but he couldn't guarantee what the enforcement officers would do. What kind of a position is that. It didn't really tell us anything.

Mr. Legal Adviser: What I attempted to say was that the administration of this Ordinance and the enforcement of the Ordinance rests in the hands of the officer who administers it, who is the Registrar of Motor Vehicles, so I can say on his behalf that he will not seek to institute prosecution in relation to a breach in the manner mentioned by the Honorable Member, that is carrying baggage or carrying express packages from the airport downtown and vice-versa, but when I say that I limit it to the enforcement officers over whom we have direct control. If it so happens that a police officer picks up somebody in breach of the Ordinance and brings it to Court without our knowledge, well then there is nothing we can do about it at that point.

Mr. Chairman: Councillor Chamberlist, would you take the Chair. One thing Mr. Chairman, I do want to get straight is in the Yukon Territory now we have driver's licenses. We are not going to have that anymore, we are going into a new system, but we have chauffeurs licenses. Now our existing Ordinance and under the authority of this Ordinance we issue chauffeur's licenses, now what we are doing with this Bill, is removing from this Ordinance any reference to a chauffeur's licence. Now we have got this far. Then it stands to reason, that when this Bill is approved in its own form or an amended form, then there will no longer be any authority for all these little cards that everybody has to say that they have a chauffeur's licence, because there is no where in law that they do, unless in this bill somewhere else, you have provided that notwithstanding this amendment, that chauffeur's licenses are good for the date of expiration on March 31, 1970 at which time a new licence in this form will be granted. That is my question. When we take chauffeur's out of this thing, what happens to the chauffeur's licenses. Does everybody rush in a get a new one. I'm told that we have no prescribed forms or nothing of this nature yet. We have got a lot of research to do. This is my question.

Mr. Legal Adviser: The normal operation of law is that anything that is issued under an order which is repealed and substantially re-enacted, re-enacted as this is, continues in force, unless there is a specific provision saying that chauffeur's licenses issued under the old Ordinance are cancelled. This has not been said. This is speaking into the future, it's not rendering invalid any chauffeur's licence which has been validly issued under the present Ordinance. What it is saying is that no more licences shall be issued so there is a tight distinction.

Mr. Taylor: Let me carry on with this point then. If you are not going to issue any chauffeurs licenses anymore, and you haven't got anything prepared to accommodate new licensing, what are you going to issue and number two is, what is not expressed is not implied and is it then going to be the policy of the administration to send a directive to every constable and every justice of the peace in the Yukon Territory to advise them of this situation or just where do we stand? This is something that I think is very important because under ... people are being prosecuted daily under the Motor Vehicles Ordinance.

Mr. Legal Adviser: To put it another way, any person who until the 31st of March has in his possession a valid operator's or a valid chauffeur's licence, will be legally entitled to drive a car until the expiration of the licence which he presently at that time holds, but once this Ordinance comes into force, by the Commissioner's signature as assenting to it, then no more will be issued. The ... We will commence to issue licenses in accordance with the regulations that are to be made. Those regulations are prepared and ready at the moment and the printing I presume is being done. BILL #9

Mr. Taylor: Where is this stated. I see nothing in here that states this Ordinance will come into force on a day to be prescribed by the Commissioner. I see nothing of the coming into force. I assume, as do all members of Committee, that having ... if Council give their approval of this Bill in any form, amended or unamended, the Commissioner will give assent to the Bill and in the normal routine way of doing things and that's it. Is it then, am I to understand, that the Commissioner is not going to give assent to this Bill, but is going to withhold assent until a further day? What is the situation here?

Mr. Legal Adviser: The technically legal situation is as I earlier stated, now, when the Commissioner assents to this Bill, assuming he does, which later this discussion may be a rash assumption, but if and when the Commissioner does assent, the Bill will go into law at that time, on his assent, but merely because certain sections of an old Ordinance are repealed, does not completely destroy their force in validity. Anything which is done on the old Ordinance or on the regulations made under a section that has been repealed continues to be a valid thing, unless it is revoked, so all the operator's licenses and all the things they can do or not do, continue in full force in effect, but in the normal event by the operation of the old Ordinance, all driver's licenses expire on the 31st of March next. At that point of time then, will be the effective cut off time, so that the Honorable Members own licence is continued in force until March 31st.

Mr. Taylor: That is not stated. Where in here is that stated? You know it Mr. Chairman, Mr. Legal Adviser knows it, we all know it, but what about all the constables, what about all the J.P.s throughout the Territory. They certainly don't know it, so how are they going to learn this? Are ... Is there going to be a directive to each one and what about the people themselves? They don't know it.

Mr. Legal Adviser: We don't send directives to each enforcement officer, what we would do is remind the Commanding Officer of the R.C.M.P. what the position was, the old licence continues in force having a correct face validity and if a person was by an error, charged with not having an up-to-date licence, in accordance with the new regulations, he would have a valid offence in the Court. We can do no more than tell the enforcement officers of the law what the law is through their own channels.

Mr. Taylor: Just before resuming the Chair, I'd suggest that it might be in the best interests of the Council and administration both if we could have those proposed regulations tabled sometime during the discussion of the Bill so we can look them over. Thank you Mr. Chairman, and I'll resume the Chair.

Mr. Shaw: The problem is gradually sinking in. In a matter such as this, that say for example this is accepted, why could it not

BILL #9 Mr. Shaw cont:

come into force on such and such a date. For example, on the first of March or the 31st of March if this will be in effect, in other words, the only problem that we do have there is that some people get their licenses a month ahead of time, so I would mention a month .... have it come into effect say on the 1st of March, so that people that want to get their licenses before their last day that they can so do. That would seem to me to resolve the situation rather than arguing about when it is going to be. I can see how it is going to be or if in the Ordinance, put on then, "but until the 31st of March the present licenses are valid".

Mr. Legal Adviser: There is merit in his suggestion Mr. Chairman, and we certainly would be prepared to go through the sections, but some sections will lead you into operation earlier than others and we thought that the normal operation of law would just work because it works.

Mr. Shaw: Would it be a huge task of drafting to merely put a section in here someplace that the existing licenses are valid to the expiry date as noted.

Mr. Legal Adviser: No, except that it is already in ... the purpose of the Interpretation Ordinance is to save having to put these things into bills and it is already law. There is no harm in the sense of repealing it. It could be done.

Mr. Chamberlist: I see no particular problem of a licence that expires on a certain date, it is already there, but what I do see is this. A man that has a chauffeur's licence today can drive any vehicle. A man that has an operator's licence, can drive any vehicle, especially if he happens to own his own trucks, he can drive his car or any size truck. Under this new scheme, a man can't even drive his own truck because he can drive a car. If anybody thinks that I am going to accept the fact that after all my years of driving, that this legislation is going to stop me from driving my own vehicles they have made a mistake, because this is the most ridiculous piece of legislation if you try to put that in. You take away from the right of a man of maybe forty years of driving experience, who hasn't even got a parking ticket conviction against him, to stop him from driving his own vehicle. This point hasn't been brought out yet. I wonder what classification apart from the guy that has a chauffeur's licence today or an operator's licence today, is going to get. Is he going to be put into the classification of any motor vehicle not exceeding 18,000 pounds, or Class I, a learner's licence? What are you going to do with those people who want to drive their own vehicles? Do you mean to tell me that every time I want to drive my truck I have to hire somebody to drive my own truck? Is this what you are telling me. Is this what you are going to try to tell the people of this Territory? Come up with an answer to this one Mr. Legal Adviser?

Mr. Legal Adviser: Just because a person happens to own a jet plane is no qualification why he should fly it. I can't say that I am very impressed by the fact that just because the Honorable Member owns a truck, he should be entitled to drive it. Does this mean that if a man with no legs and no arms happens to buy a motor car, he is entitled to drive the car although he can't pass the medical? These don't seem to me to be very valid arguments. If the Honorable Member or any other person, capable in the opinion of the driving examiner, then he will be given a licence to drive it, and if he not able to drive it then he won't

Mr. Legal Adviser cont.:

be given a licence one hopes and shouldn't be given a licence.

Mr. Chamberlist: I have asked, which category and there are many, many people in this Territory who use cars and trucks, many people. They have cars and trucks. What category are you going to put those people in?

Mr. Legal Adviser: It depends on how ....It depends on the truck they own.

Mr. Chamberlist: This is becoming ludicrous now and the suggestion now that is being made of a man that has been permitted to drive his own vehicle, whether it is a truck or a car or he happens to have both, now has to be placed in an entirely different category simply because there is a new classification of vehicle driving licenses. I don't think this can be supported.

Mr. McKinnon: Just what is a trade in value on a chauffeur's licence? Can anybody tell me. I have had a chauffeur's licence for ten years. I have driven everything from a tractor-trailer combination to a line truck. Now I come up at the end of March next and I say here is my chauffeur's licence, I don't need it for anything except small trucks and for cars now. What is my trade-in value on it. What will I get. Surely someone can tell me what the hell I'm entitled to if I bring in my drivers licence to have it renewed.

Mr. Chairman: Kindly keep our language parliamentary please. Mr. Clerk could you advise us?

Mr. Legal Adviser: I don't know what the position is because I don't know what the capacity of the Honorable Member is to drive. If he is able to drive a car, if he is physically fit at the time that he comes for his test, if he has to have a test. If you apply for a licence and you already have a chauffeur's licence and you have experience in driving heavy trucks, I would anticipate that a reasonable driving examiner or a reasonable Registrar of Motor Vehicles would give you a licence without worrying about it in view of your age and obvious physical capacity, but other people might not get the same consideration, because they may not appear physically fit. Their experience may be outdated, various things, but the cut-off point of the trucks is 18,000 pounds G.V.W. that's gross vehicle weight so this is quite adequate for all normal pickups up to about 2 or 3 tons, in carrying capacity. A two ton truck would probably come under 80,000 pounds. I can't anticipate the ordinary person privately running his own business will need more than this. If he wants to drive a heavy truck then he has the duty to the public to be able to do it properly, and the longer he drives the less capable he is of driving it.

Mr. McKinnon: This is the point. There is going to be, I would anticipate at least several thousand in exactly this criteria. What do they do when they go in. Do they have to go through a whole process of examination, of medical and all the other all to be able to get a Class V operator's permit. I don't think that they should be required to if they are holding a qualified, Yukon chauffeur's permit, but somebody has got to state that. Somebody has got to be able to say that this is what they are eligible for. No where in the Ordinance where I see it is this said anywhere. It's mute on it and any kind of a bureaucratic jumbo could transpire because of this very fact. Let's state it for

BILL #9 Mr. McKinnon cont:

crying out loud.

Mrs. Gordon: We have covered the larger, heavier vehicles, but the one that concerns me most is Class II, where the vehicle is stated as being a motor cycle only and in this day and age in the winter months, we are practically infected with motor vehicles on tracks. I would like to ask if there is a definition put in, if these are considered. I would also ask if there is any legislation considered in the off roads category of these kinds of vehicles and at the same time, if there is any legislation considered in the operation of boats which are also another vehicle of a sort, because I have personally seen children under the age of ten years operating motor boats on lakes.

Mr. Legal Adviser: The question of operating boats is under the control of Department of Transport and I can't speak exactly what requirements they might ever have in regards. So far as motor cycles are concerned, there is a definition of motor cycle which was inserted into the Ordinance at an earlier point of time when the Honorable Member from Dawson was dealing with the vital section of having crash helmets when people were using motor cycles. So far as operating ski-doo's is concerned, the operator of a ski-doo needs a licence only when he is operating on a highway or a trail, but the definition of a highway on ... in our Motor Vehicles Ordinance is very very wide and includes all forms of trails to which the public has access. Under all normal circumstances, I would expect that the operator of a ski-doo must have a licence. I cannot visualize a person ever going more than a short distance on a ski-doo without contravening the Ordinance in that way.

Mrs. Gordon: This is one of the areas over a number of years where we have had a complete hassle every winter on whether the operator of a motor vehicle in the winter time, which is a ski-doo or a snowmobile is necessary for him to have a licence or not and I don't think that this will resolve it anymore than it has in the past.

Mr. Shaw: I would first state that the question that Councillor Gordon has just raised is a very valid one. There should be some provision for ... and what age that ski-doo operator's can ski-doo. In the past I don't know what it is just right currently the last couple of years but I know that previously that this is between and operator's licence and a chauffeur's licence is \$3.00. You didn't have to have any more qualifications to get a chauffeur's licence than an operator's licence. All you did was pay the extra three dollars and you got the chauffeur's licence, so I think it is a very good move to start categorizing the different qualifications for driving different vehicles on the road for the protection of the public themselves. I do not feel that just because a person has the money to buy a tractor-trailer that he is qualified to drive it. He may be and may not be and though the exact classification here what is required I'm not ... I haven't gone into that too much and I don't know about where this is taken from, but I do certainly think it is a step in the right direction to have categories of licences in this day and age. When we get a person going along with one of these tractor-trailers with a gross weight ... gross vehicle weight of almost 50 tons, that is really ... could be death on wheels if the person who was driving it was not qualified to drive it. I know I have passed lots of them and they scare the heck out of me, and so I

Mr. Shaw cont.:

BILL #9

think this is a good move, now whether there should be some changes made in this particular classification, I'm not going to argue about that, it might be, but the principle of this type of licence I think is sound.

Mr. Chamberlist: Councillor McKinnon has already pointed out the situation that might occur with those who have chauffeur's licence. There is no provision though where there are owner operators of vehicles. Class V of this area would restrict a person who has an operators licence, the only reason that he takes an operators licence is because he doesn't need a chauffeur's licence. I don't need a chauffeur's licence to drive any of the vehicles that we operate, it means now that I cannot drive a vehicle of ... vehicles that I am used to driving, whether it be a 5 ton, if I were driving a 5 ton, because of this new regulation, so I have to start having a test all over again. I don't think privileges that people have already had for many years, should be taken away from them, If you say that those that already have licences at a given date will not come under this preview and that their licenses that they have will entitle them to go into the maximum classification and that all future licenses beyond that would come under this new area, then I would agree and I would follow this so that gradually you have a complete change over until the transitional period would be when this whole classification section would come into effect, but right now it would take away from people the right to do what they have been doing for many, many years. I'm not the only person I'm concerned about.

Mr. Legal Adviser: I'm sorry about that Mr. Chairman, but this is the whole point of the exercise. It is intended to categorize the skills and the physical fitness of the individuals in these categories and permit certain people to drive as a learner, other people to drive cars and light trucks, other people to drive school busses and other people to drive heavy trucks and again the big tractor-trailers. It is no argument whatsoever that just because a person happens to own a tractor-trailer, this is the argument, that own a tractor-trailer and is presently operating it that he should be allowed to continue to do so. There will be limitations on the person by reason of their skill of course his experience and skill are combined and physical fitness, and this is the whole exercise and to do otherwise it would be asking us to give a guarantee in advance to allow a person to bring death to the highway.

Mr. Chamberlist: I have a further point. Mr. Legal Adviser is trying to impress that because this is conforming legislation which perhaps is being put into other areas, that is why we shall have it. Yet on another occasion, earlier this afternoon, when I argued for a conforming legislation, I was told it was not necessary. Is Mr. Legal Adviser's coming forward just simply to conform and for no other reason. This is what it appears to be to me. I won't support it. I won't support it on the principle of what it is trying to do to the people of the Territory

Mr. Legal Adviser: We are not suggesting it merely because it's in other jurisdictions. In actual fact, I think we may probably be the first jurisdiction to introduce this particular set of classifications. Other jurisdictions have six classifications, some of them have got two classifications, some have three classifications, but a series of meetings over a period of 3 and 4 years throughout Canada to bring forward recommendations as to what is the best method of classifications. The recommendations

BILL #9 Mr. Legal Adviser cont.:

have been made and they have been studied by the administration and the administration have accepted those recommendations and suggest that this is a good set of recommendations to bring into force. We know that the other provinces will be following us, but the timing of their particular legislative sessions doesn't suit, so we may be the first to have this exact thing. We are not conforming with other people. In this instance other people will be conforming with us.

Mr. Chairman: I wonder from the Chair if it would be possible when we next discuss this tomorrow morning to have information laid before Committee as to the proposed cost of these various licenses and the medical requirements for each of those licenses.

Mr. Clerk: Mr. Chairman, the cost of the licenses is part of this Bill. It's section 24 of this Bill.

Mr. Chairman: And the medical requirements.

Mr. Legal Adviser: We can't give you the exact medical requirements but I can say that where as required exists there in Class I, II, III and IV. What as required means is to pass a medical fitness when required to do so. In other words, when by reason of the operation of a vehicle, somebody has a crash, somebody is injured and comes under a doctors care and the doctor sees that they are blind in one eye and half blind in the other, then they may be reported and asked to undergo a physical fitness examination of a normal type. When they are doing an examination for a heavy vehicle or a school bus, then they will be asked to do the same examination, but to do it every year

Mr. Chamberlist: I'm not arguing against this. I agree with it. I think that everybody that operates a public service vehicle and is being used to carry passengers, should be thoroughly examined to make sure that they are physically fit to carry out the job in the interest of the passengers that they are carrying. I'm not arguing with that at all. I am simply arguing on the basis that where people have already licenses and have shown that because of lack of convictions and because they have not for any reason been before the court, I mean after all this is what we have the court for, all of a sudden we are going to adjudicate and this is what we are going to do now, we are going to adjudicate whether a person can or cannot have a licence when the licence is already been given to him over a number of years and he has continued to use it satisfactorily. I can't quite frankly see how we can support this type of thing without a protection clause in there for those people who already have valid licenses.

Mr. Chairman: I just have one further question from the Chair. I note under your proposed Class VII that you excluded a tractor-trailer driver from Class V and Class V is a straight truck exceeding 18,000 pounds, so what you've said that a guy can drive a tractor-trailer but he can't drive a 5 ton flat deck. What is the reason behind this? Mr. Clerk advised me as to why that is.

Mr. Shaw: In reviewing this I see that there is actually two charges for licenses. Two dollars for I, II, III and five dollars for IV, V, VI, and VII, in other words they don't call it a chauffeur's licence but actually a five dollar licence is a chauffeur's licence and the only thing is that you have to have a

Mr. Shaw cont.:

BILL #9

medical for that. That's the only difference and of course the qualifications to drive which we assume anyone has but all they do to be capable of operating that vehicle whether they own it or somebody else owns it. It doesn't give a blanket policy to the fact that the fellow that's rich and owns a truck can drive it without having to get a licence and the fellow that is poor he can't do it because he doesn't own it. They are in the same category. They all must be qualified to drive the vehicle and it only costs them five dollars, it doesn't cost them any more than it does right at the moment. The only stipulation is that they've got the qualifications to do it. That is the only difference. I think it is pretty good.

Mr. Dumas: I think under Class III, Class II must be endorsed and I believe a ski-doo is classed as a motor cycle and therefore I and anybody else with a driver's licence would have to get an endorsement to drive a ski-doo. Is that correct?

Mr. Clerk: No, Mr. Chairman, a ski-doo is classed as a motor vehicle. A motor cycle is a separate category in the ordinance. A ski-doo is a motor vehicle and consequently requires an operator's licence to drive.

Mr. Chairman: Under the existing ordinance, can a 16 year old or anybody under 16 years old legally drive a ski-doo? Under existing legislation?

Mr. Clerk: No, Mr. Chairman, on roads.

Mr. Chamberlist: I would ask under what section does a person with an operator who has been driving large vehicles, his own vehicles, under what category would he come in. In March 31st or before, he goes and says he wants his licence renewed. What licence is he given, an operator.

Mr. Legal Adviser: A person who wishes to drive a heavy truck, has to apply for a classified licence. That means, all you have to do is satisfy somebody that he is able to drive it and that he is fit, that is all. I .....

Mr. Chamberlist: How does he satisfy, ... there is too many remarks made about people who own vehicles, I own my vehicles because I worked for them Mr. Legal Adviser, I'm only concerned that the fact that people that do own vehicles and there are thousands of people like me that own vehicles and have operator's licenses. I'm concerned that if they went to the Motor Vehicles Branch when the licenses are being renewed that somebody doesn't say, "well, you have an operator's licence, you can't have Class V unless you take a test!" That's what I'm concerned about. Is this the case that happens?

Mr. Legal Adviser: I think that this will happen. There is a special officer engaged in the Territorial Administration who makes the decision, the driver examiner and it is his function and task as an expert to decide the qualifications and capacity of each person he make a recommendation to and in such a case if a person comes in with an operator's licence, who has not held a chauffeur's licence, I would think you would probably have to pass a test to drive a heavy truck.

Mr. Chamberlist: This is where I am dead set against it, no way would I support any part of this for that, because I am one but I am going to protect those other people who have an operator's licence and have had for years and years up here that now will go to the Motor Vehicles and somebody that has been here a couple of months as an expert is going to say, and he probably doesn't know how to drive the vehicles himself, is going to say to him although you've been driving all these years, I'm going to give you a test. No, No way. If you want me to support this you have got to recognize the fact that people that have been driving for years have got a right to have their licence renewed for the same vehicles that they have been driving for.

Mr. Chairman: May I draw your attention to the time. It has been moved by Councillor Dumas, seconded by Councillor Shaw that Mr. Speaker do now resume the Chair. Are you prepared for the question? Are you agreed? I declare the motion carried.

MOTION  
CARRIED.

MOTION CARRIED.

Mr. Speaker: I will now call Council to order. May we have a report from the Chairman of Committees.

Mr. Taylor: Mr. Speaker, Committee convened at 10:45 a.m. to discuss Bills and Sessional Papers. Mr. Murphy attended Committee to discuss Bill No. 7. I can report progress on Bill No. 7. It was moved by Councillor Chamberlist, seconded by Councillor Dumas that Bill No. 1 be reported out of Committee without amendment and this motion carried. Committee recessed at 12:00 noon and reconvened at 2:00 p.m. It was moved by Councillor Shaw, seconded by Councillor Chamberlist that Bill No. 6 be reported out of Committee without amendment. This motion was carried with Councillors Dumas and Gordon abstaining. I can report progress on Bill No. 8 and Bill No. 9. It was moved by Councillor Dumas seconded by Councillor Shaw that Mr. Speaker do now resume the Chair and this motion carried.

Mr. Speaker: Are we agreed with the report of the Chairman of Committee? May I have your further pleasure and an indication of the agenda for tomorrow.

Mr. Taylor: Mr. Speaker, in Committee tomorrow I believe we have Bills and Sessional Papers.

Mr. Shaw: I would move, Mr. Speaker that we do now call it 5 o'clock.

Mr. Speaker: Are we agreed? The House now stands adjourned until 10:00 a.m. tomorrow morning.

ADJOURNED

ADJOURNED

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Friday, November 21, 1969.  
10:00 o'clock a.m.

Mr. Speaker read the daily prayer. All Councillors were present.

Mr. Speaker: Is there a quorum present, Mr. Clerk?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: I will now call Council to order. I would like to draw your attention to the tabling of Sessional Papers No. 29 and No. 30. I would also like to draw your attention to two telex messages which will be sent from the Office of the Speaker on your behalf to Ottawa today. The first one is addressed to the Right Honourable Pierre Elliott Trudeau, Prime Minister, Ottawa, Canada. "The Members of the Yukon Legislative Council, through my Office, wish to express their sincere appreciation for your reply of November 20th, and have taken note of its content. All Members of Council will be pleased to meet you in Ottawa at a convenient time during the week of November 25th through the 30th, and wish to thank you most sincerely for your very kind invitation." This telegram is signed by J. O. Livesey, Speaker. The next telex message is sent to the Honourable John Turner, Q.C., M.P., Minister of Justice, Parliament Buildings, Ottawa, Ontario. "Your press release of eleven a.m., November 20th, Ottawa time, reference proposed transfer of judicial functions to Territorial Government, has been brought to the attention of the Yukon Legislative Council, and it gives me much pleasure to be able to send to you the sincere appreciation of all Members for your very kind efforts and new proposals which would bring the control of justice in the Yukon closer to the daily needs and desires of the residents of the Yukon. Kindest regards, John O. Livesey, Speaker." Are there any Reports of Committee? Introduction of Bills? Are there any Introduction of Bills this morning? Notices of Motion or Resolution?

Mr. Dumas: Mr. Speaker, I'd like to give Notice of Motion regarding MOTION #8 Sessional Paper No. 29.

Mr. Speaker: Are there any further Notices of Motion? Are there any further Notices of Motion? If not, would the Honourable Member for Watson Lake please take the Chair.

Mr. Taylor takes the Chair.

Mr. Livesey: Mr. Speaker, I'd like to give Notice of Motion this morning, seconded by the Honourable Member for Watson Lake, "Closing down of the Experimental Farm at Haines Junction. That the proposed closing down of the Experimental Farm at Haines Junction be discussed in Committee of the Whole." And, Notice of Motion MOTION #9  
number two, seconded by the Honourable Member for Dawson, "Dust MOTION #10  
Control Program. That the dust control program be thoroughly aired in Committee of the Whole with a view to providing a better management system with additional functional and economic benefits." And, MOTION #11  
Motion number three, seconded by the Honourable Member for Dawson, "Control of Firearms. That control of firearms be discussed in Committee of the Whole." Thank you, Mr. Speaker.

Mr. Livesey resumes the Chair.

Mr. Speaker: Our next item is Motions, and the Motion is moved by the Honourable Member for Carmacks-Kluane Lake, seconded by the Honourable Member for Watson Lake, "That Sessional Papers No. 14 and 22 be moved into Committee of the Whole for discussion." MOTION #7

Mr. Taylor: Question.

Mr. Speaker: Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: The next item, gentlemen, is Questions. Are there any questions?

QUESTION RE  
INDIANS  
CHARGED  
UNDER  
INDIAN ACT

Mr. Chamberlist: Mr. Speaker, a question to Mr. Commissioner. Mr. Commissioner, in view of the judgement of the Supreme Court of Canada relative to Section 94 of the Indian Act, can the Commissioner give assurance that there will be no further prosecutions in the Yukon against Indians who have been charged with drinking under that particular Act?

Mr. Commissioner: Mr. Speaker, with respect, could we have the benefit of the Legal Adviser, our mutual Legal Adviser's advice on this this morning?

Mr. Legal Adviser: Mr. Speaker, when the Honourable Mr. Turner was down in Whitehorse on the occasion of his visit with the Members of Council, this question was raised with him by the Honourable Member who asked the question, and at that time he said that he was awaiting the decision of the Drybones case from the Supreme Court in order to adapt his Departmental policy to the decision.

Mr. Chamberlist: A supplementary question, Mr. Speaker, I want to know whether there are to be any prosecutions now in the Territory, whether the police have been advised not to lay charges under that Act?

Mr. Commissioner: Mr. Speaker, this is something the Attorney-General of Yukon, namely, the Attorney-General of Canada ... it falls within his purview to so instruct the police in this matter.

Mr. Speaker: Are there any further questions?

QUESTION RE  
FINANCIAL  
ADVISORY  
COMMITTEE  
REPORT

Mr. Taylor: I have a question, Mr. Speaker, I would direct to the Honourable Member for Whitehorse North. I'm wondering if he could inform us when we will be having a report of the Financial Advisory Committee?

Mr. McKinnon: As the Chairman of the Advisory Committee on Finance, at the earliest possible opportunity, Mr. Speaker.

Mr. Chamberlist: Supplementary, Mr. Speaker, when will that earliest opportunity be?

Mr. McKinnon: Hopefully, Mr. Speaker, next week.

Mr. Speaker: Are there any further questions? Are there any further questions?

QUESTION RE  
LITTERING OF  
ALASKA  
HIGHWAY

Mr. McKinnon: Mr. Speaker, I would like to ask Mr. Legal Adviser whether the terms of the Motor Vehicles Ordinance concerning the littering of highways are applicable on the Alaska Highway?

Mr. Legal Adviser: Yes, Mr. Speaker, any Regulation or law which is made under our Motor Vehicles Act ... Ordinance, would apply to the Alaska Highway.

Mr. McKinnon: I wonder, Mr. Speaker, if I could ask the last time a prosecution was taken under this Ordinance for littering the highway?

Mr. Legal Adviser: Mr. Speaker, the law concerning littering the highway as it is at present written only prohibits the throwing of dangerous litter. Ordinary litter is not yet an offence, but hopefully it will become an offence if this Bill that is presently before the House becomes law.

Mr. Livesey: Are there any further questions? If not, would the Honourable Member for Watson Lake please take the Chair?

Mr. Taylor takes the Chair.

Mr. Livesey: Mr. Speaker, I have two questions this morning. The first one is addressed to the Administration. "In view of correspondence from the Member for Carmacks-Kluane Lake to the Administration, could the Government provide information covering any action by the aforementioned which would indicate that a plan is in progress to provide the Indian people in Carmacks with employment or any training which would qualify available personnel for employment?" My next question, Mr. Speaker, is with reference to Sessional Paper No. 24 which was in answer to my question of November 17th, which read, "When will the ditch in front of the Firehall at Destruction Bay be removed in order that the unit may be made available in the event of a fire emergency?" The answer was, "The ditch in front of the Firehall at Destruction Bay was a local matter which was handled by the Fire Chief, Mr. Bryan Bjork. He has informed us that this ditch was filled about three months ago and that the cost has been recovered from the contractor who was responsible for correcting the situation." However, at my meeting at Destruction Bay on October 28th, where my secretary, a quite responsible person in Destruction Bay ...

QUESTION #20

QUESTION RE  
SESSIONAL  
PAPER #24

Mr. Speaker: I wonder if you could get to your question, Councillor, please?

Mr. Livesey: Well, the question is in relation to the minutes of the meeting. "Mr. Bjork brought up the fact that the approach to the Firehall was through a ditch and Mr. Livesey said he would bring the matter up in Council at the next Session of the Government meeting." This was October 28th. I wondered, my question to the Administration is, Mr. Speaker, where is the problem in relation to these contradictory matters?

Mr. Commissioner: Mr. Speaker, we have brought forward the information we have on this matter, and the information that the Councillor has is apparently in contradiction to the information that we have. The only thing I would like to suggest is that possibly the Councillor might be good enough to bring his information and what we have supplied; possibly between the two of us, we can find out wherein lies the truth. It might be halfway in between.

Mr. Chamberlist: A point of order, Mr. Speaker. Mr. Speaker, might I suggest that the Honourable Member from Carmacks-Kluane have Sessional Paper No. 24 passed into Committee for discussion and not use it as a basis of discussion in Council at Question Period.

Mr. Dumas: Mr. Speaker, I have a written question to the Administration. "Will the charge for rental accommodation supplied for Territorial Government employees be increased as of January 1st, 1970, and if so by how much?"

QUESTION #21

Mr. Livesey resumes the Chair.

Mr. Speaker: Are there any further questions?

QUESTION RE  
CONSULTATION  
RE POLLUTION  
STUDY

Mr. McKinnon: Mr. Speaker, on November 22nd, 1968, the following unanimous motion was passed by Council: "It is the opinion of this Council that immediate consultations begin with the City of Whitehorse with a view to implementing the recommendations of the Pollution Study - Whitehorse Area, conducted by Dr. Lyle Black, Medical Health Officer for the Yukon Territory." Mr. Speaker, I would like to ask Mr. Commissioner if any consultations have taken place to this date?

Mr. Commissioner: Mr. Speaker, could I have the benefit of bringing forward an answer to that. I think we'll have to do some research on this matter. I'm not aware off hand what, if any, conversations have taken place on the subject and I would want to have the opportunity of bringing forward a proper answer so that I give accurate information on this subject.

QUESTION RE  
SENIOR  
CITIZENS'  
HOME

Mr. Chamberlist: Mr. Speaker, a question addressed to Mr. Commissioner. Mr. Commissioner, would you indicate how many people are to be employed in the Senior Citizens' Home at Riverdale, how many are presently employed there, and when will inmates start entering that particular building?

Mr. Commissioner: Mr. Speaker, I will gladly bring forth answers to the questions that the Councillor has asked. I would trust, though, that we could substitute some other suitable word for the word "inmate". These people are our guests at this establishment.

Mr. Chamberlist: I withdraw my word. It was an improper word to use in the instance.

Mr. Speaker: Are there any further questions? Before we pass from questions, I would like to make a correction to the statement made by the Honourable Member for Whitehorse East. The Honourable Member for Carmacks-Kluane Lake has Sessional Papers No. 14 and 22 on motion, but not Sessional Paper No. 24. That statement was incorrect.

Mr. Chamberlist: With respect, a point of order, I did not make that statement. I suggested, Mr. Speaker, that if you were discussing as Member for Carmacks-Kluane Sessional Paper No. 24, you ask that you introduce it into Committee for discussion instead of making a speech about it during Question Period. Thank you, Mr. Speaker.

Mr. Speaker: Are there any further questions? If not, may we pass to Public Bills and Orders.

Mr. Shaw: Mr. Speaker, I would move that Third Reading be given to Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance.

Mr. Dumas: Mr. Speaker, I will second the motion.

Mr. Speaker: May I have that motion again, please?

Mr. Shaw: Mr. Speaker, I will move that Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance, be given Third Reading.

Mr. Dumas: And I seconded the motion, Mr. Speaker.

BILL #1  
THIRD  
READING

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse West, that Third Reading be given to Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: Is the House prepared to adopt the title to Bill No. 1?

Mr. Shaw: Mr. Speaker, I would move that the title to Bill No. 1, namely, An Ordinance to Amend the Socialist Assistance Ordinance, be adopted as written.

Mr. Chamberlist: Correction, Mr. Speaker. The Honourable Member, in error, referred to it as the Socialist Assistance. I know it means that, but this isn't the name of the Ordinance.

Mr. Speaker: The correction will be properly made from the Chair. Is there a seconder for the Honourable Member's motion?

Mr. Dumas: Yes, I second it.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse West, that the title to Bill No. 1, An Ordinance to Amend the Social Assistance Ordinance, be adopted as written. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

BILL #1  
TITLE  
ADOPTED

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: I will declare that Bill No. 1 has passed this House. May I have your further pleasure?

Mr. Shaw: Mr. Speaker, I would move that Bill No. 6, An Ordinance to Amend the Insurance Ordinance, be given Third Reading at this time.

Mr. Chamberlist: I'll second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, that Third Reading be given to Bill No. 6, An Ordinance to Amend the Insurance Ordinance. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

BILL #6  
THIRD  
READING

MOTION CARRIED

MOTION  
CARRIED

Mr. Dumas: Mr. Speaker, I would ask that the Chair note my abstention on that motion?

Mr. Speaker: It has been so noted. Is the House prepared to ...

Mrs. Gordon: Mr. Speaker, a point of order, I would also ask that my abstention on that motion be noted.

Mr. Speaker: It has been noted.

Mr. Shaw: Mr. Speaker, I would move that the title to Bill No. 6, namely, An Ordinance to Amend the Insurance Ordinance, be adopted as written.

Mr. Chamberlist: I will second that motion.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, that the title to Bill No. 6, An Ordinance to Amend the Insurance Ordinance, be adopted as written. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

BILL #6  
TITLE  
ADOPTED

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: I will declare that Bill No. 6 has passed this House.

Mr. Shaw: Mr. Speaker, I would move that the Speaker do now leave the Chair and that Council resolve itself in Committee of the Whole to discuss Bills and Sessional Papers.

Mr. Chamberlist: I'll second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, that Mr. Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bills and Sessional Papers. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: The Honourable Member for Watson Lake will please take the Chair in Committee.

Mr. Taylor takes the Chair.

Mr. Chairman: We will be proceeding with Bill No. 9, the Motor Vehicles Ordinance. At this time I will declare a short recess.

RECESS

RECESS

Page 206.

Friday, November 21, 1969.

11:00 o'clock a.m.

Mr. Chairman: At this time I will call Committee back to order and we are discussing Bill No. 9 namely "An Ordinance to amend the Motor Vehicles Ordinance" and we were dealing with Section 1 when last we sat. Would you proceed.

BILL #9

Mr. Legal Adviser: Mr. Chairman, may I say something before the House gets into this discussion. The Administration has prepared a set of draft regulations dealing with the changes which are being implemented into the Bill. Now these are drafts and would of course await a decision of the House on passing the Bill, but I would like to tell the House that there was a conference held yesterday evening between the former Registrar of Motor Vehicles and the Driver Examiner and the method whereby the new licenses will be issued has been provisionally agreed between these two officials. Now what they intend to do is where any person applies in March for a new license, if he has an existing operator's license, then he will be given as common form he would be given without a test a Class III license which enables him to drive any motor vehicle up to 18,000 lbs. which is roughly speaking eight tons. A special form will be prepared on the application and where an operator shows on the form that he is the owner of the vehicle exceeding 18,000 lbs. which would be a big truck, then if he shows on the form that he has some years of experience in driving this and that he owns this, he will be given on that occasion a Class V license which is equivalent to the old chauffeur's license but of course, would be subject to a medical as all drivers' who will be operating heavy vehicles or operating passenger vehicles. In addition to that any applicant for a Class III motor vehicle license that's an ordinary driver's license who satisfies the examiner that he has in fact been operating a Class II vehicle which is a motor cycle will be given an endorsement on his license to that effect, so that it's not anticipated that there will be any backlog of people requiring examination since their experience will be taken into account in accordance with the form by the driver examiner when he is giving the licenses, that is at least on the occasion of the first issue of the licenses at the end of March. Now so far as the schedule is concerned where it appears that a medical is required, it is intended that the area superintendent of Northern Health Services, Dr. Black who advises the Commissioner on matters of health, will ascertain the cross Canada medical standards required for the various types of licenses and so advise the Commissioner. In other words, a standard will be set for vision of a certain capacity or hearing of a certain capacity, or physical fitness of a certain capacity and then when a person goes for his medical examination, he will be able to go to a doctor of his choice and the doctor will then certify whether or not he meets the standards which have been set. These standards are necessary to establish a cross Canada standard so that our drivers' and operating licenses will be recognized in all the other Canadian Provinces and throughout the United States of America. If we lower the medical standards in use then there is a danger that our operator's license would not be recognized and of course, we would also be in severe trouble with the insurance companies if we qualified drivers' with a lower standard than other provinces or states. The amount of insurance charged to our drivers' would quite possibly, I'm not saying for certain but could possibly increase substantially. Now we cannot say more than this except to say that the whole operation is designed to be a smooth running operation from one set of operator's license to the classification type.

Mr. Chairman: There's one question I would like to ask here. On your Class V straight truck exceeding 18,000 lbs. G.V.W. , now

BILL #9 Mr. Chairman continues:  
from the advice from Mr. Legal Adviser, I find that a medical will be required mandatorily or upon request?

Mr. Legal Adviser: Not mandatorily in the first occasion but a standard will be set when they will have to have a medical ever so often or whatever it happens to be.

Mr. Chairman: Then we are faced with the fact that we are selling motor vehicle licenses all through the Territory, in Dawson, Mayo, Haines Junction, Watson Lake as well as Whitehorse. Now I believe we have one or two examiners and if someone comes into Watson Lake at the south end of the Territory and purchases a license wishes a license VII there is no facility where a test can be given to this man. He I believe, could get a medical there. At Haines Junction where can a man get a medical to buy a license. In other words I don't think this is going to be as smooth running a situation as is spoken of here. How do you cope with this, how do you examine these people, how do you make it possible for them to get medicals?

Mr. Legal Adviser: I don't know of any individual places, we would not expect any immediate rush in application for tractor trailer combination drivers'. There are very few of these rigs on the road and any of these rigs which are on the road tend to come to Whitehorse.

Mr. Dumas: Mr. Chairman, I think we may be making a mountain of a mole hill. The medical standards that are required to operate a vehicle normally are very minimal. A person can get a student flying license with as the instructor says one eye, one arm and one leg ..he probably still qualifies and that's just about the case here. I do think we need a medical standard where a chauffeur is driving a school bus for instance and you wouldn't want somebody who has epileptic seizures driving a school bus, naturally. Generally speaking just anybody is going to qualify medically and it is just a routine medical and the problem of medicals in areas outside of Whitehorse has been overcome by the life insurance companies that operate within the Territory and I think that wouldn't create a big problem in this area either.

Mr. McKinnon: Mr. Chairman, I am certainly happy to see that the.. through the representation of the Member for Whitehorse East they took care of his problems in the draft regulation, but they still haven't answered my question what's my trade in value on my chauffeur's license?

Mr. Legal Adviser: If he still has an operating chauffeur's license and he satisfies informally I would take it the Driver Examiner is capable of doing this, I would think if it's a current valid chauffeur's license, it would be converted into Class V.

Mr. McKinnon: Well shouldn't this not be in the schedule also, Mr. Chairman.

Mr. Legal Adviser: This is a question of satisfying the driver examiner. He may require a test or he may not. There's nothing in the regulations that says so.

Mr. Chairman: Mr. Chairman, I wonder if it would be possible to have copies of these regulations so that the members might view them and study them.

Mr. McKinnon: I wonder if I could ask the Assistant Registrar BILL #9 of Motor Vehicles whether this will in fact be the case where a person with an operating chauffeur's license will be given a classified operator's license as of March 1, 1970?

Mr. Clerk: Yes Mr. Chairman, it is our intention that if an applicant has a valid chauffeur's license and on the form that we are going to provide for the first issuing, undertakes in writing that he is capable at that time of driving for instance a tractor trailer combination which requires a Class VII license, we will issue a Class VII license without a test, however he will be required to provide his medical. If he says that he is a school bus driver and he requires a Class VI license, we will issue a Class VI license however he will be required to provide a medical without a test.

Mr. McKinnon: Then it would be a chauffeur who wanted to classify his license there's no problem whatsoever.

Mr. Dumas: Mr. Chairman, we have anachronism immediately pops up here when we see the regulations, it says that Class I operators' must be accompanied by an instructor for the purposes of learning who is of the full age of eighteen years and is the holder of at least a Class III operator's license. That means that a normal father who has only an operator's license won't be able to teach his son how to drive a car.

Mr. Legal Adviser: Mr. Chairman, the Class III is the ordinary driver's license which is presently in operation.

Mr. Shaw: Mr. Chairman, there is only one thing that I am a little concerned about and I subscribe to having these classifications. That is, putting them into operation is another matter in the north end of the Territory. There are a number of tractor trailers operating and a person that has two or three of these combinations has to get a person to operate one and of course they get qualified people to do so. However if all of a sudden he needs this particular man that quite likely drive for him for years to drive this tractor trailer and he doesn't have one of these Class VII licenses or endorsements, then this person has to go to the Territorial Agent and get one. Well then this Territorial Agent says, before I can issue this particular license I have to have a medical, also you would require to have an examination. Now where does a person go from there. Are provisions going to be made so that this person can take this examination. Now you do say the R.C.M.P., well I would have very strong doubts Mr. Chairman if five per cent or two per cent or any per cent of the R.C.M.P. know how to handle a tractor trailer, you see that's where we are .. it's fine to give a person a test but the person that gives the test has to be qualified to know what he is testing. Is the Administration going to accept what the R.C.M.P. say is a qualified tractor trailer driver and if so do they know what they are talking about.

Mr. Legal Adviser: Mr. Chairman, this is a question of dollar bills. I don't think there's enough applications for licenses in these classes outside the city of Whitehorse to justify having a special driver examiner situated anywhere but Whitehorse so we are forced to rely on the R.C.M.P. so it's just as simple as that. So in an effort to facilitate applicants for drivers' licenses, tests are given by the R.C.M.P. and it is very kind of the R.C.M.P. to provide the personnel to do this. This is in the interest of the people who live in these places.

BILL #9 Mr. Chamberlist: Mr. Chairman, I am grateful for the Administration's efforts to answer my objections yesterday and they have succeeded in covering that area that I thought was an inequity. It brings to mind a philosophical approach to success that you use in a philosophical prayer, "grant me the serenity to accept the things I cannot change, courage to think the things I can and the wisdom to know the difference", I know the difference.

Mr. Shaw: Well Mr. Chairman, I have the matter of these persons being able to get a license that's all I'm concerned about and I would be quite amenable to the fact that the person that owns the vehicle and the person that drives the vehicle that to prevent any delay in carrying on the operation that the owner of the vehicle could also agree with the Territorial agent or sign the paper to the effect that this person is qualified until the driver examiner could okay it or not in case there was a dispute, that's what I am thinking about.

Mr. Legal Adviser: Mr. Chairman, in case there was a dispute a person could always submit himself to a second test, there's only one driver examiner, so it would be very difficult to submit to a different driver examiner but certainly in the case of Dawson, I think although there is no form of appeal against refusal to grant driver examination of competency. I think nevertheless if an applicant was failed by the officer of the R.C.M.P. and he gets his head in the sand for a few weeks and again applied with some practice with a qualified instructor, I think he would be satisfied with the results.

Mr. McKinnon: Mr. Chairman, I have a bit of a problem I would like to hear the comments of the House as to the minimum age in Class II for the operation of a motorcycle only. The minimum age set down in the schedule is sixteen years of age and if one faces the facts of life as they are at the present time, I don't think there is a child of fourteen years of age or over that isn't capable of operating a motorcycle. Now should this person be able to operate this motorcycle legitimately on the streets and highways of the Territories or highways of the Territories or not? I think it is an issue that has to be decided by the House as to whether the age in the motorcycle category should be lowered or not..

Mr. Dumas: Mr. Chairman, like ski-doo motorcycles are operated by people under the age of sixteen off the highways, in the bushes, beaches and so forth. I'm not certain, maybe the age should be lowered in that category however I don't think so in so far as, if we are going to allow motorcycles on the streets in the hands of a fourteen year old, why not a car because certainly a motorcycle can create the type of accident that can cause damage or even death. I think the restrictions or discretion used in law enforcement agencies in so far as young people driving ski-doo and motorcycles off the highways, has been very good. We've had no charges laid and where there is no involvement except the individual driving the vehicle, motorcycle, or ski-doo, I imagine that's good that's the way it should be, but when you put them on the highway either we've got to lower the age to fourteen across the board or leave it at sixteen across the board.

Mr. McKinnon: I think the House should reflect what realistically is happening in the Territory and in Class I we are allowing a teenager at fifteen to drive a car providing that he is with a person who has a valid operating permit at fifteen years of age. I don't think that it is unrealistic to say that eighteen should also be the age that he is allowed to carry control of a motorcycle or a ski-doo on the roads or highways of the Yukon Territory and I

Mr. McKinnon continues:

BILL#9

would suggest that the age to be allowed this privilege should be the same as that being allowed to being in care of a motor vehicle as a car with a qualified operator. I don't think that the rules and the difficulties involved in propelling either a motorcycle or ski-doo are quite as difficult to follow as in the operation of a normal vehicle, a car, and I think that if the House reduced the age of being allowed to operate a licensed ski-doo or motorcycle on the highways and streets to fifteen it would be realistically reflecting what is actually happening in the Yukon Territory.

Mr. Dumas: Mr. Chairman, I think the Honorable Member might have a good point, really age is arbitrary anyway, you have a fifteen year old child and a fifteen year old adult, just as you have thirty year old children and thirty year old adults, however there is a point here that when you allow a learner's license to a person fifteen years old, there is an adult accompanying the person, this wouldn't be the case if you allowed a fifteen year old to drive a motorcycle and I don't say it wouldn't be a good idea and personally I would go along with the idea of lowering the minimum age to Class II to fifteen. I'll like to hear more discussion on it.

Mr. Chamberlist: Mr. Chairman, we have various categories for vehicles, cars, tractors. Now we can very easily say and I want to assure the members of this Committee that I wouldn't agree that a 500 CC motorbike which is a pretty powerful piece of equipment should be driven by a boy of fourteen because it's pretty tuff to handle for a grown up, but I see no reason a 120 CC unit couldn't be driven by a boy of fourteen. I would suggest that we have a category set up so that a lad of fourteen can drive a small motorbike which is almost a motor scooter and I see nothing wrong with that at all. Perhaps Mr. Legal Adviser could comment on whether this particular clause is possible so that a vehicle, and I would ask you to keep in mind the small motor scooter that put, put, puts along on a single stroke engine can do any harm to anyone or anything, why can't we make a category for motorcycles?

Mr. Legal Adviser: Mr. Chairman, the suggestion of the Honorable Member has much merit and I can say that we will examine this. This particular schedule is not before the House at the moment, it's to be done by regulations by the Commissioner. I will undertake that on behalf of the Commissioner to have it examined and if we come across with a realistic division of category as the Honorable Member suggest up to about 120 CC to have it at fifteen years old, sixteen years old or possibly harsher seventeen or eighteen years old over a certain thing. If it's possible to do this and get it nicely tidied up, then it will be done.

Mr. Chairman: What are we talking about in terms of administering this new system. Are we talking about the new staff or about a big increase in staff?

Mr. Legal Adviser: There doesn't seem to be any increase in staff visualized for operating the particular changes that are before the Council now.

Mr. Chamberlist: But what might occur from this Mr. Chairman?

Mr. Legal Adviser: There's no doubt being realistic a number of persons are necessary to operate the increased involvement of the government in the lives of the people, it does tend naturally to increase every year.

BILL #9 Mr. Chairman: I wonder if I could have an answer from the Director of Motor Vehicles to that question?

Mr. Clerk: Mr. Chairman, it's envisaged that we can put this into operation with our present staff however Councilor Shaw's point about driver examinations, the only way we can meet this objection is to have another driver examiner or a bunch of driver examiners and place them in each one of these communities. Then like the Legal Adviser said, it's just a case of dollar bills.

Mr. Chamberlist: With respect, the Registrar didn't answer Mr. Chairman's question and I'll repeat it, "how much is involved" and the answer was well we can manage at the present with our present staff but what about a little later on, how much extra space you need, how many more Lynn buildings do you need just to operate this. Now what's it going to cost the Territory in dollars and cents, let's just start figuring out whether to put this particular effort into effect whether we just have to go looking for money to build a larger public service, to buy more furniture, and to rent more buildings. Let's find out the dollars and cents situation now.

Mr. Shaw: I was wondering the necessity for all the categories we have, fifteen of them, seven of them, could this not be cut into three or four categories and serve the same purpose. It might save alot of book work.

Mr. Legal Adviser: Mr. Chairman, the reason for the seven categories as I think I explained yesterday that there is a cross Canada agreement to have a uniform treatment of drivers', medical standards and so forth and we are attempting to be uniform with the other Provinces in these categories. The individual details of our laws of course are purely a matter for ourselves and vary from province to province, but in the categorizing of drivers' licenses we want to make a driver's license reasonably interchangeable like a passport when he goes from province to province.

Mr. Livesey: Mr. Chairman, that is all very, very fine but I have been here for many, many years and I have listened to all the theories that emanate from this building about what we should be doing from a classical point of view or what we should be doing on the basis of theory or what someone else thinks of the right thing, but I don't think the Provinces are footing entirely the bills of the operation of the Government in the Yukon and until such time that as we get some arrangement when we can't afford something and they want it, they are going to make a contribution towards the costs, I can see these things but personally all these great glorious attempts to provide everything the province has that is without being a province is stepping just a little to far and in the wrong direction. I would like to point out Mr. Chairman there are things at the moment that we can't afford irrespective of all the glories, we just haven't got it and will have to face up to it. I have watched the size of this government in the Yukon mushroomed from the day I came here and it is costing a tremendous amount of money, no question about that. I think that the Administration, before the switch is made so that the people who foot the tax bills take over the Government, I think they are going to have to cut off the size of their class to the size of their pants they can afford to wear and I don't think that you can keep gouging people and pushing costs without showing the profits to pay the costs. It seems to me that everytime a piece of legislation comes up here that once again the people outside the environment outside this great city here are going to have to pay out of their own pocket, something which the government can't afford to foot the bill for themselves. Here we have the nub and the hub of the wheel once again. The wheel of

Mr. Livesey continues:

government is right here and if you happen to go out in the boon-docks to make your living well of course everything that they, the Government decides is a good policy here, your going to have to pay double what anybody else has to pay. I would like to know why anyone, if anyone in Whitehorse would like to say well the cost of your license is two dollars, but if you're living three hundred miles away it's going to cost you one hundred bucks to come to Whitehorse plus your \$2. to get your license. So if the Government cannot consider that which affects all the people in the same category should be all treated alike and they should cut down on their appetite.

Mr. Legal Adviser: Mr. Chairman, may I just make one remark. This particular factor has been considered by the Government and it is our intention to introduce if possible, licenses of this type which will last longer than one year. This will enable the people instead of having to renew their licenses every year that they would deal with it on a five-year basis.

Mr. McKinnon: Mr. Chairman, surely the Honorable Member from Carmacks-Kluane is not suggesting that this government can either afford or find a man to keep busy to have drivers' examiners stationed throughout the Yukon Territory. This problem was faced exactly in Northern B.C. when I was working for Canadian National Telecommunications and was driving on B.C. roads and needed a chauffeur's permit for the operation of that vehicle on the Alaska Highway, and it was a simple matter of addressing a letter and sending \$5 to Fort Nelson which was the nearest place where there was a driver examiner and that person taking into consideration that we were in northern B.C., just shipped the license out. Now certainly this is going to be, this government policy to do exactly the same thing and if it isn't, then I'm with them one hundred per cent in disallowing the legislation if it means the person has to come from Beaver Creek to Whitehorse to be given the right to work to get this permit. I would just like the assurance of the government, is this in fact a policy that will be followed?

Mr. Commissioner: Mr. Chairman, I am happy to give this assurance. We have all the difficulties and troubles that we need as it is right now without creating eighteen thousand more problems and having everyone coming into Whitehorse trying to get a driver's license. Now, please just give us a little accredit for something, and I can assure that anything that we can do to ease the difficulties in dealing with government that anyone has in dealing with government, anyway we're only too happy to do so. I am only too happy to give my assurances there is no intentions of creating intolerable or impossible situations as far as individuals are concerned in obtaining those things which they have a right to by putting that type of suggested obstacle in there.

Mr. Chamberlist: I am pleased with the statement the Commissioner has made but it seems to be that now that somebody from Whitehorse said now because I live in Whitehorse I have to take an examine, that guy in Beaver Creek doesn't have to, he gets it in the mail.

Mr. Dumas: Mr. Chairman, surely the driver examiner will be touring the Territory and at such time that they do go up there the examine will be given. I would think this is the procedure.

Mr. Commissioner: Mr. Chairman, we have a Council request which has been made over here over the years. We are attempting to bring in a reasonable manner the introduction of forms, licenses and so on in connection with motor vehicles that are recognized in other

BILL #9Mr. Commissioner continues:

parts of Canada. Now in order to do this, there are certain basic standards that must be introduced. We cannot do it overnight, it may well take the best part of the next ten years to get the uniformity wrapped into the thing and I'm sure that by the time we get to this reciprocity situation by the time it becomes a complete across the country I am sure that you as Councillors will feel very badly if anything had transpired as a consequence of us not proceeding in this manner that we were not able to offer our citizens the same kind licensing facilities as they can get elsewhere in Canada. Certainly the indication that ultimately the driver examiner will be touring the Territory and will be conducting on a an as and when basis driver testing in localities other than Whitehorse is quite correct.

Mr. Shaw: Mr. Chairman, I feel that this is a good policy. I appreciate through this discussion that the Administration has assured this Council of this Committee that considerations will be given to the people that are not so fortunate as to have the availability of the driver examiner right at their back door. That is satisfactory to me however of course, it has taken this discussion to assure that the Administration recognized the situation because these things are not contained in the regulations or in the bill, this confession of the view of the problems that are inherent being away from this huge metropolis that we have here in the north. So if anything, this discussion has cleared the atmosphere and I think satisfied the members from the hinterland that they will not that this will not be too harsh, that common sense is going to be utilized to permit the orderly business transactions of the outside areas continue. I'm quite satisfied Mr. Chairman.

Mr. Livesey: Well Mr. Chairman, I think you can look anywhere in the Yukon Territory, it's all very fine talking about keeping up with the Jones and looking after everything the provinces have got, but I don't think we have First Narrows Bridge problems here. You just get down to that First Narrows Bridge at five o'clock in the afternoon in the city of Vancouver where they obviously need the Bute Street checking station .. it's not a joke .... What we should be needing in any motor vehicle type of regulation Mr. Chairman, is something that fits the north.

Mrs. Gordon: I think that following along with what the member from Dawson said in essence what we need in this Council Chambers this morning is assurance from Administration that provisionary licenses of all classes are available to those within a limited time until the examination of the driver instructor is made.

Mr. Commissioner: We are quite prepared to give that.

Mr. McKinnon: Mr. Chairman, the members from the Whitehorse area will band over backwards to give the members from outside Whitehorse rights and privileges that they do not find .....

Mr. Chairman: At this time we will stand Committee in recess until 2:00 o'clock this afternoon.

Friday, November 21, 1969.  
2:00 P.M.

Mr. Chairman: At this time I will call Committee back to order. We are discussing Bill No. 9. Have you anything further on Section 1?

BILL  
NO. 9

Mr. Chamberlist: Yes, Mr. Chairman, since we adjourned at twelve o'clock some other questions have come to my mind relative to this matter. I would like to know from the Legal Adviser what is the procedure now when a person makes application for a Chauffeur's Licence under our present Regulations and under the present areas of the Motor Vehicles Ordinance?

Mr. Legal Adviser: Personally, I don't know, never having applied for them, but I presume you fill out a form and you are tested.

Mr. Chamberlist: Supplementary. Does Mr. Legal Adviser know whether perhaps the question could be directed to the Registrar of Motor Vehicles. Is the chauffeur, applying for a Chauffeur's Licence under our present regulations and the present Ordinance permitted to be examined on any vehicle, or is it the intention of the Registrar now to insist on a vehicle of their choice before a Chauffeur's Licence is issued, for testing in examination.

Mr. Legal Adviser: Could the question be slightly clarified, the type of vehicle or ownership of vehicle.

Mr. Chamberlist: Type of vehicle. As I see it now, anybody that applies for a Chauffeur's Licence may take his vehicle, whether it be a car or a pick-up or a five-ton truck, and be examined for Chauffeur's Licence. Would this same thing be in force until the new Regulations, or is it the intention that the new draft regulations which are not in force yet, or these new amendments to the Ordinance which are not in force yet, being used?

Mr. Legal Adviser: As I understand the position, the person comes along for a licence, usually nominates the vehicle; usually his own. He takes a test and he gets a licence. I don't think that we have any intention of implementing regulations until they are actually enforced and they can't be enforced until the Ordinance is passed by the Council, and the longer the discussion goes on the longer the time away before the regulations can be put in force.

Mr. Chamberlist: Without any hilarity in this, perhaps now I can educate Mr. Legal Adviser. This morning a person went to obtain a Chauffeur's Licence and he took with him a half-ton pick-up. He was asked what vehicle he was going to drive and because he said he had a half ton pick-up, he was only going to be given a test which would apply to a half ton pick-up only, outside of the regulations and the interpretation that Mr. Legal Adviser has just given. I agree with Mr. Legal Adviser that as long as he takes a vehicle under the present Ordinance and the present Regulations, he should be permitted to obtain his Chauffeur's Licence and I am pleased that Mr. Legal Adviser has seen this point. Then perhaps Mr. Registrar will now say why this has changed and who gave the authority for this to be changed?

BILL  
NO. 9

Mr. Clerk: Mr. Chairman, the authority lies in Section 27 of the Motor Vehicles Ordinance and the system that we have been using since the first of April for driver licence testing is that if a man applies for a Chauffeur's Licence and he takes his test in a vehicle with a gross vehicle weight of 8,000 pounds or over, this is equal to a one ton truck with dual wheels, he is entitled to a Chauffeur's Licence which entitles him to drive any vehicle. If he takes his Chauffeur's test in an automobile, his Chauffeur's licence is restricted to an automobile.

Mr. Chamberlist: It is most peculiar, Mr. Chairman, that there is a contradiction between Mr. Legal Adviser and the Registrar of Motor Vehicles. I have Section 27 in front of me and I would ask at this time that Mr. Registrar point out specifically which part of Section 27 he is referring to and we will go on from there?

Mr. Clerk: Section 1, Mr. Chairman.

Mr. Chamberlist: Now, I would like to read this section: "The Registrar may refuse to issue a Chauffeur's Licence or an Operations Licence until he is satisfied that the applicant thereof is capable of operating a motor vehicle without endangering the safety of the general public and may require the applicant to submit himself for examination by an officer or may determine the circumstances in which an examination may dispensed with". Now, Mr. Chairman,...

Mr. Legal Adviser has put the correct interpretation on this, yet the Registrar has gone against the Legal Adviser's interpretation and is allowing the Driver Examiner from distorting what this piece of legislation is just to satisfy their needs so that they can start bullying people in a manner that I do not like Departmental people to bully. Now there is no doubt in my mind that this is where over zealous people in a Department abuse the rights of the individual. I prefer to accept Mr. Legal Adviser's argument in this matter because it's clear and I would suggest, Mr. Chairman, and I would ask Mr. Legal Adviser, to advise the Registrar that under the present Regulations and the present Ordinance, applicants for a Chauffeur's Licence must be treated in the manner hitherto and that none of the Regulations that are in draft form or these amendments that are before us now, which have not been passed, should be considered until such time as they have been passed before this Council.

Mr. Chairman: Councillor Dumas.

Mr. Dumas: Mr. Chairman, the last time I got a Chauffeur's Licence was about four or five years ago and I was required to come with a vehicle over one ton and then that qualified me to drive any vehicle which a Chauffeur can drive. Now if they changed that I think that is a mistake and if they haven't they shouldn't at least until it goes into law.

Mr. Chamberlist: Mr. Chairman, further to that, the Honourable Member points out that five years ago when he took a Chauffeur's Licence, he was told to bring one over one ton, you had no need to because there was no necessity in the Regulations or the Ordinance so to do but you did it. Even now they have gone beyond that and if you wanted to drive a three ton truck you couldn't just get a Chauffeur's licence and take a motor vehicle with you. They alter the regulations and they are doing it now; this has got to stop. They have got to wait until this legislative body pass legislation before they try to

Mr. Chamberlist continues...  
put it into effect.

BILL NO.  
9

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, as I haven't had any complaints as to what is happening at the current time, I think my comments of yesterday were entirely correct when I stated that the only difference, the only requirement between having an Operator's Licence and a Chauffeur's Licence was a matter of \$3.00 more for the Chauffeur's Licence and I think I was laughed at at the time by the odd Honourable Member, or Members, but that was my impression and by craxy, it appears that that was correct.

Mr. Legal Adviser: Mr. Chairman, this is a case of a storm in an egg cup, never mind a coffee cup or a tea cup. Just as a Chauffeur's Licence or an Operator's Licence was primarily intended back in the horse and buggy days to distinguish people who drove for a living from those who drove as gentlemen for their own pleasure and it was intended that there be a higher standard of skill for a Chauffeur than there would be for the casual owner because normally he would be taking passengers for hire.... Now, our Motor Vehicles Ordinance, if you happen to wander into my office and look at the old Motor Vehicles Ordinances that are there back since 1902, they are really horse and buggy days, but possibly with excessive zeal for the public safety, they have attempted to be using the distinctive...for an operator to deal with heavy trucks with the chauffeurs and the operators are dealing with the cars; whereas actually the dealing should have been used to deal with the people who are driving or not. Now, it may be objectionable from a legal and technical point of view, but is hard to fault the people who are carrying out the law if they have this concern for public safety, but no doubt, if it is the will of the Honourable Members, this can be very easily cured by passing the sections presently under discussion rather than horse whipping the unfortunate civil servants who are doing their level best to carry out completely outdated laws. The cure is in yourselves, gentlemen.

Mr. Chamberlist: Mr. Chairman, I take strong objection to this because Mr. Legal Adviser should be advising. Now, Mr. Commissioner has stood up time and time again and has referred to you as our mutual Legal Adviser. Then if you are our mutual Legal Adviser you...

Mr. Chairman: Kindly address the Chair, please, Councillor Chamberlist.

Mr. Chamberlist: Well, that is right, if Mr. Legal Adviser is our mutual Legal Adviser, then I would suggest, Mr. Chairman, that he tell the Administration that they must abide by the law as it is now and wait until this legislation is passed through the procedure of Committee and then through the Legislative body. Then they would have every right to do it but it is my submission that they have no right to do it now, and Mr. Legal Adviser, I want him to say now, Mr. Chairman, openly in this Committee that in fact the Administration is in error and that they have no right to do this and if Mr. Legal Adviser would suggest Mr. Chairman, to the Registrar to cease doing what they are doing now. This is what I want them to do.

Mr. Legal Adviser: I am quite prepared to discuss the matter with the Registrar but as for me telling the Registrar what to do, or the Driver Examiner what to do, this is quite a horse of another colour. At least what we are attempting to

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Mr. Legal Adviser continues...  
do is to update the method of dealing with the problem and the real answer is to pass the Sections and then we do not have to worry too much more about it.

Mr. Chamberlist: Well, Mr. Chairman, I have got to go on with this. If Mr. Legal Adviser, Mr. Chairman, is suggesting that he knows that this is an error, the Administrative Officers are trying to do what they think is right; it is not for them to decide, Mr. Chairman, what they think is right. It is for them to follow what is the basic .... of this Ordinance. Now, this is all I ask Mr. Chairman, is that the Registrar take a note of what is being said here by myself and Mr. Chairman, pass on to them that until such time that this legislation is passed; and after all it might be that because of this Members of Council might harden, Mr. Chairman, to the fact that Administration is trying to legislate without us. Now, I want that particular point kept in mind. Now, I would ask Mr. Chairman, that Mr. Registrar, in view of these remarks, and of course he has heard quite clearly, Mr. Chairman, that the legislation should not be altered by an Administrative Officer when it is passed by this body; that they do not go through the new method, use the new method, until these amendments have gone through. And I would ask you if it is the intention, Mr. Chairman, of the Registrar, to inform the people on his staff accordingly.

Mr. Legal Adviser: Mr. Chairman, I don't think it is proper. Everyone appreciates the fact that the Honourable Member has upturned one more stone and allowed one more worm to crawl out. Once a matter has been brought to our attention-I wasn't aware what the practice was and nobody had adverted the fact that in doing practical common sense, they might have been committing a technical illegality. Now that the matter has been brought to our attention I am sure that we can arrive at a common, good sense of the Registrar to take the appropriate action. There won't be much delay in suspending the operation of the practice because I am sure that the Bill will be passed once the Honourable Members are satisfied that we are not deliberately flouting the law made by the Honourable Council.

Mr. Chamberlist: Well, Mr. Chairman, in finality, can I get that agreement from Mr. Registrar while he is here, in Committee.

Mr. Legal Adviser: I don't think it proper to try and strain this thing beyond this point. I don't think the Registrar is in a position to give an undertaking at this time, exactly what the practice is. You can depend on his good will. I think the Commissioner would have to say whether he is going to direct the Registrar to do something or not. And in any event the holder of that office is down the corridor and I think that common sense dictates that we leave well enough alone...

Mr. Chamberlist: Well, Mr. Chairman, my common sense advises me to ask that the Commissioner come into Committee so that I can put the question to him. I would ask that the Commissioner attend Committee.

Mr. Chairman: Well, the Commissioner will be no doubt in here later this afternoon if you could hold your question until he comes so that we might proceed with the Ordinance.

Mr. Chairman: Councillor Livesey.

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Mr. Livesey: Well, I was going to say, Mr. Chairman, it is just force of habit promoting pompous premeditation. How do you read me, over?

Mr. Chairman: Is there anything further on Section 1? May I proceed? The next Section is Section 2 (Reads Section 2). Clear?

Mr. Livesey: Not clear, Mr. Chairman. At this particular point I would certainly like to bring up something, Mr. Chairman that is closely related to this Check Point at Watson Lake. During the summer it was decided there were a number of trucks hauling goods to Alaska and switching at Beaver Creek, where there is no Check Point, and when I raised an enquiry as to what was going to happen there at Beaver Creek it was suggested to me that a temporary Check Point should be set up and the operators then said, well of course if you switch at this point we will just move to the Border and we will do all our switching on the Border, you know one leg in Canada and the other leg in the United States. So, I understood that the Administration was going to bring something to the attention of this Committee, by way of legislation, in order to solve the problem which exists at that particular Border where there are dozens and dozens of trucks operating on this basis and have been all year.

Mr. Dumas: Mr. Chairman, I don't want to open up Pandora's Box here, but at the last Session of Council I asked a question of the Commissioner about how a truck hauling from Alaska into the Yukon, and as yet I have not received an answer but I had several complaints from local haulers once again that where they have an office in Alaska, their trucks can haul from Alaska into here but our trucks cannot haul from here to Alaska. The question that I asked was, is there any reciprocal arrangement being made with Alaska for the Yukon truckers to be able to drop shipments in that State; shipments that emanate from within Canada and the Commissioner felt at the time that if we were allowing them to do it, they should allow us to do it. Now, nothing has been done on this; our shippers are left with the problem of in some cases picking up a shipment down south, going up to Mile 1202 and there changing trucks and an Alaska hauler picks up the load and carries it on and of course this just increases the cost to a great extent Mr. Chairman. Now, I am wondering if **this** is being looked into by the Administration or if it will be looked into, or has it been looked into as a result of the question asked in the last Session of Council?

Mr. Legal Adviser: Mr. Chairman, I think that the Registrar may be able to give you this better, but I know of no dealings on a reciprocal basis to deal with this but we allow under certain conditions, truckers from outside the Territory, that is Alaska truckers or Alberta or B.C. truckers, to come in but they must pay for the privilege of using the roads so they must obtain a licence in the normal way and these licences are quite expensive. Now the terms of controlling them on the journey say from Fairbanks to the Border is Alaska law. When they get to the Border nothing that the Alaska State Government ...permission, the Alaska State Government gives them is valid once they cross the Border. So, on any journey from the Border to Whitehorse they are under our law and they are subject to our taxation rates in respect to the journey.

Mr. Dumas: Mr. Chairman, with respect, that is not the problem. The problem is that our truckers are penalized and their

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Mr. Dumas continues... truckers are allowed to haul wherever they like; in other words a trucking outfit from Alaska can come and unload in Whitehorse but a Trucker from Whitehorse can't go and unload in Alaska.

Mr. Legal Adviser: This is not so. A trucker from Alaska, say coming up from Anchorage and delivering goods in Whitehorse, must obtain a single trip permit for the purpose and I think he must pay \$100.00, and he must be checked in and out on his mileage and must pay his taxation duty and all his fees. Now, this applies to everybody regardless of what the Alaska law says, it does not matter at all.

Mr. Dumas: But the point is, Mr. Chairman, Yukon truckers can't obtain a single trip permit to go into Alaska, then we should have an arrangement with Alaska where our truckers can do the same in the State of Alaska as we allow them to do here. It is only fair to our hauling companies.

Mr. Chamberlist: Mr. Chairman, I agree with

Mr. Livesey: The point at Beaver Creek is that Beaver Creek is making revenue out of this switching process, but, this is correct, they are making revenue for the Yukon Territory because they are switching all these loads from Canadian trucks to American trucks. Now, there is no point in giving this revenue away. ....just for those few miles, till you cross the Border you are going to charge them the same as if they ran all the way through the Territory, the truckers you do that with....off the Border. ... We will take the goods right off the Canadian trucks and put them on American trucks and we won't get anything out of it. Now, I brought this to the attention of the Administration and I understood that they were going to look at the Ordinance to see if they could make it possible under the present situation whereby this has to be done so that the switching could be done at Beaver Creek and something would be collected, some revenue out of it rather than having no revenue at all. So, anybody knows this that an American trucker is just going to cross a few miles into Canada, they are not going to pay \$100.00 for the privilege, certainly not. . However, if they did what they threatened to do, then no one in the Yukon will be making a cent out of it because all they have to do is just run one alongside the other, do their switching and nobody gets anything out of it. The way we are doing it right now, they are doing it actually in the community of Beaver Creek which is 20 miles from the Border. I understood the Administration was going to try to make an amendment here and make this possible so that instead of saying 1221 is the switcharound point, 1220 shall be the switcharound point for this particular type of operation, not for somebody coming through the Territory, not for somebody coming to Haines Junction or Whitehorse or anywhere else, but actually a switch at the Border. And I don't see anything along those lines in this amendment. That is the point I raise.

Mr. Chairman: Councillor Chamberlist.

Mr. Chamberlist: Mr. Chairman, what Councillor Livesey has said is really a different phase of the situation but I agree with Councillor Dumas. There is a problem that if a Yukon trucker has got a load to take into Alaska, he cannot buy a permit from Alaska for that one trip but if he has to go through various channels and get a license for the whole year to operate a trucking operation but an Alaskan trucking outfit can make one trip and apply to us here and get a one trip permit, so I would suggest that we get in touch with Alaska

Mr. Chamberlist continues...

and say, look if we have granted you this privilege, there should be a reciprocal arrangement so that you treat our truckers in like manner. And with this I agree wholeheartedly with Councillor Dumas.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, we have two separate subjects going right now, first I would like to discuss the one raised by Councillor Livesey, which would appear to me to be a very, very simple matter to have a section in the Ordinance which states that for the purpose of this particular section so and so in this Ordinance, that the transfer points shall be at 1202 or whatever it is. Now, that would simplify that and I think it would be a sensible thing to do. As far as trucks from Alaska being allowed to come into the Yukon Territory for a \$100.00 fee, I would feel, Mr. Chairman, that the State of Alaska should give the same courtesy to trucks doing the same thing in Alaska, or we should terminate the \$100.00 permit, as simple as that. That is my point, and I would like to ask the Registrar, Mr. Chairman, if to his knowledge, has there been any communication to effect this matter of reciprocity?

Mr. Chairman: Mr. Clerk?

Mr. Clerk: No, there hasn't, Mr. Chairman, we are expecting a brief from the truckers respecting this matter.

Mr. Shaw: Mr. Chairman, I wonder if the Administration could consider this discussion as a prayer, or a brief from the Territorial Council.

Mr. Chairman: I believe I have it that there is a further amendment forthcoming for Section 2 to provide for the Beaver Creek situation, is this correct?

Mr. Legal Adviser: I don't know enough about it in order to say, but I presume it will be done.

Mr. Chamberlist: Mr. Chairman, I wonder if Mr. Legal Adviser can perhaps come forth at the same time with an additional amendment on the lines outlined by Councillor Dumas, Councillor Shaw and myself relating to a reciprocal arrangement.

Mr. Legal Adviser: Mr. Chairman, I think it just as well that we not turn over this stone, the Commissioner maintains very good relations with the Governor's office in Alaska, as the Council knows, and there are ways, once you are dealing with another State, another jurisdiction across a border, you are in to a realm of, strictly speaking, of Federal jurisdiction. Now, we may have to walk a little bit cautiously in this, a little tactfully and cautiously to try and achieve our end and it is not considered necessarily always diplomatic to use the big stick first; that may have to come later.

Mr. Dumas: Mr. Chairman, I wonder if they would use a little stick, they have had a year's notice, since the first time I brought up this matter?

Mr. Chairman: Well, have you anything further on Section 2?

Mr. Chamberlist: Well, accepting, Mr. Chairman, what Mr. Legal Adviser made reference to, this big stick and what not,

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Mr. Chamberlist continues...

you know, are we going to have an amendment put in there?

Mr. Legal Adviser: Mr. Chairman, I don't think we are sensible if we attempt to execute diplomatic moves by putting it in legislation. I think that the first necessity is to put out feelers and see how the feeling goes and then from there develop it, and then, of course at that point in time we may be putting in reciprocal legislation provisions for reciprocal legislation. But I certainly think the Commissioner here now would agree with me that when you are dealing with a State across the Border you don't put in a section saying you will not do this unless you do something else. What you do is... it is a different kettle of fish when we as the Territory are dealing with the State of Alaska.

Mr. Dumas: Mr. Chairman, we have been allowing the State to drop loads in the Territory for years, from Alaska and why can't we, why haven't they come to us and say since you are letting our truckers come down to your territory you can bring your trucks into our territory on these through trips, for one trip ticket, or whatever they are called.

Mr. Livesey: Mr. Chairman, what loads from Alaska? Just what are we importing from Alaska into the Yukon. I would like to know, but if they are importing there is certainly no station up there checking them coming in here, that is for sure. I think that the whole load business is going in the opposite direction altogether. It's coming out of Canada and it is coming out of the United States and it is going north. Anything that is coming south, as far as I know, is going from the State of Alaska into the United States of America, not into Canada, certainly not into the Yukon.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, when I was discussing these matters brought up by the Honourable Members, I had my opinion on how I felt things should be and I did not intimate that we should use a big stick. I said, let us effect this type of arrangement. If it requires a drop of honey to do the job then we will use the honey, it is as simple as that. I don't think there was any intimation by this Council that there should be any big stick used.

Mr. Chamberlist: Mr. Chairman, can I put a question to the Commissioner. Mr. Commissioner, I wonder if through your good offices you could get in touch with the State of Alaska and advise them of the situation whereby a trucker from Alaska can get a single trip permit to haul goods into the Yukon..

Mr. Chairman: Would you kindly address the Chair, Councillor Chamberlist?

Mr. Chamberlist: It is a suggestion that I started off with. I will commence the message again. Mr. Chairman, the suggestion is that the Commissioner, through his good offices, ask the State of Alaska to make a reciprocal arrangement whereby a trucker from Alaska, who is permitted to leave goods in the Yukon on a one trip permit, that Alaska will grant the same consideration to truckers from the Yukon to take one load of goods into the State of Alaska on a one trip permit.

Mr. Commissioner: Mr. Chairman, this is a request I will be very happy to pass on to the State of Alaska authorities. Something I would mention to you and that is that it is becoming practically a habit with the Public Utilities Commission Boards in the provinces of Canada to attempt to extend their jurisdiction beyond their border by putting riders on the issuing of P.S.V. licences. One such rider would be that a trucker applying for hauling licence from a point in Alberta to points in the Yukon, he has his licence in the Yukon and he goes to the province of Alberta and appears before the Public Utilities Commission there and they will say to him, yes, we will give you a restricted licence to haul merchandize from a point in Alberta to a particular point in the Yukon Territory, on a one pick up one consignee basis, or it may be a one pick-up and the consignment has to be a resource oriented area. Now, these are things, Mr. Chairman, that no legislature in the world can ever legislate against. It is a matter of representation being made in no uncertain terms by our own government and other governments to the Public Boards and bodies that are concerned and advise them that the extension of their jurisdiction by this type of means will be dealt with in a similar manner in our area. I am sure that the Acting Registrar of Motor Vehicles who is involved very deeply in this can elucidate this much better than I can but the type of thing that we are running into is not what is said in the legislation in neighboring jurisdictions, but the interpretation that these public bodies are putting upon their powers when they issue licences. Now, in Canada as you know, we have a transportation body which endeavours or attempts to endeavour to control inter-provincial type trucking. As a consequence of this, I think that even more authority is going to be vested in these public hearing type boards, because they are going to use the machinery that appears to be available under the Federal Act to say what an inter-provincial carrier can do when he is travelling through the area in which they have jurisdiction. Now as far as the State of Alaska is concerned, I don't know what kind of an answer we will get, but I will certainly be very pleased to ask them for an answer and if past performance is any indication, I think we will get a lot of co-operation from the State of Alaska. But, this that we are requesting now would be something that falls within the purview of the State authorities, this is not something that would have to go before a P.S.V. Board or a Public Utilities Board. The reason I say this is because these are two very clearly defined areas and the minute that one gets into that area where they have to appear before a Public Utilities Commission or a P.S.V. Board the decision and the renderings of this decision have the effect of law wherever these people feel they can apply it, and they are tending to feel that they can apply these laws beyond the borders of the provinces in which they operate.

Mr. Chamberlist: Mr. Chairman, while the Commissioner is here may I put my earlier question to him, with your permission?

Mr. Chairman: I was afraid you were going to ask that; would you proceed?

Mr. Chamberlist: Mr. Commissioner, I.

Mr. Legal Adviser: Mr. Chairman, I don't want to interrupt the Honourable Member but

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Mr. Chamberlist: Mr. Chairman, I

Mr. Chairman: Order, order, gentlemen, please.

Mr. Chamberlist: Mr. Chairman, I think that it is most improper for Mr. Legal Adviser, when a Legislative Member is up, an interruption of that nature, but I will accept his apology.

Mr. Chairman: Will you proceed with your question, Councillor Chamberlist?

Mr. Chamberlist: Mr. Chairman, the question I raised earlier, Mr. Commissioner, was when people are applying for Chauffeur's licences now, they apply under the existing regulation and the existing Motor Vehicles Ordinance. It has come to my attention that the Motor Vehicles Department are processing Chauffeur's applications under the new regulations and the new amendments; there is some shaking of the heads but a few moments ago it was agreed that this was being done. Mr. Legal Adviser, Mr. Chairman, has indicated that because I have found where there is an error I have let a worm out from under a stone or words to that effect. Well, what I am concerned with is, if the law is written as it is now, that an application for a **Chauffeur's** Licence can take a vehicle, I would ask if Mr. Commissioner would advise Mr. Registrar that the law as it exists now is the method that you continue to use for the application of Chauffeur's licences and not under the terms of the draft regulations or these amendments which have not been passed by this Council.

Mr. Commissioner: Mr. Chairman, I am certainly not aware of any liberties that are being taken by any of my officers to apply any laws that are not presently in existence and I am quite confident that it doesn't call for any special or specific instructions from me to instruct any of my officers in this regard because if ever I was to question any of my officers concerning their conduct in a particular matter, they would defend their conduct by **pointing** to the law under which they have the authority to operate. Now, if there is a specific case in point that a Member of Members are aware of, or have had brought to their attention, in which the law as it stands today is being interpreted in a manner different than what has been the custom or the policy in the past, if they would bring that to my attention I would be very pleased to look into it to see if indeed this is the case, but certainly I can assure you that time and again, when I questioned my officers about matters of a similar nature, the defence is, this is the law under which I am operating and here are the details of it.

Mr. Chamberlist: Mr. Chairman, it is a pity that I have to continue on this because I have to repeat what has already been said and what has already been brought forward in the Votes and Proceedings will show the answers of both the Registrar and Mr. Legal Adviser. Mr. Registrar said that he was doing this under Section 27; I pointed this out to Mr. Legal Adviser, Mr. Legal Adviser, Mr. Chairman, has already admitted that there is an error, that it shouldn't be done, and I have been told that the question should be put to you as Commissioner because I asked for assurance that the Registrar would instruct his staff that they are not to carry on with this and that is why I am putting the question to you.

Mr. Chamberlist continues...

The position is quite clear and I will repeat it because I would ask Mr. Commissioner to take a close look at it and no doubt he will, in discussing with Mr. Legal Adviser and Mr. Legal Adviser, Mr. Chairman, will assure that I am correct in the legal interpretation of what this Section is; that the Registrar's staff is now saying to an applicant for a Chauffeur's licence, what vehicle are you driving? And if he says, I am driving a pick-up truck, he will tell him that he can't have a Chauffeur's Licence just for the pick-up truck because of the new regulations that will be coming into force and dealing with him in that manner. The question that was asked before, and the answer that was given was Section 27 of the Motor Vehicles Ordinance, which I will read again for Mr. Commissioner's benefit, Mr. Chairman "The Registrar may refuse to issue a Chauffeur's Licence or an Operator's Licence until he is satisfied that the applicant therefor is capable of operating a motor vehicle, that is any motor vehicle," and I am told that when a person goes, and it happened this morning, when a person takes a vehicle, let's say an ordinary vehicle, and asks for a Chauffeur's Licences, he is told he can't take his test with an ordinary car, yet there is specific detail in the Ordinance that he can and I want to make sure that the regulations that have been drafted and the Ordinance that we are working on are not in effect now and that the Chauffeur's Licences will be issued on the basis of the Motor Vehicles Ordinance as it is. This is what I am asking for. And Mr. Legal Adviser should, at this time, and I have already pointed out, Mr. Chairman, that Mr. Commissioner has stated this is our mutual Legal Adviser, yet I can't get a mutual answer from him - yes, Mr. Chairman, I am speaking to the Chair all the time.

Mr. Chairman: I wonder if you could refrain from berating the administration or servant to the House.

Mr. Chamberlist: Oh, no, I'm not berating the Administration, Mr. Chairman, there is a necessity to berate the Administration. I mean this is the only way we can keep them on their toes Mr. Chairman, with respect, there is a necessity there. But if he is, Mr. Chairman, our mutual Legal Adviser, I think it is his responsibility to say that the Administration is in error and we are going to stop doing it, as simple as that.

Mr. Commissioner: Mr. Chairman, could we allow the matter to rest in my hands at the moment and allow us to report back to Council on this. All stories have two sides to them and I generally find the truth lies about half way in between, so if I could have that opportunity I would appreciate it.

Mr. Chairman: Does Committee agree?

All: Agreed!

Mr. Chairman: May we now proceed with the Bill? I have noted that there is a amendment forthcoming for Section 2. Next is Section 3. (Reads Section 3).

Mr. Dumas: Mr. Chairman, why is this changed?

Mr. Legal Adviser: We were afraid .....The licences were expiring at the end of the year for which they were issued and then it turns out that you needed to put in the word "fiscal year" to make it clear, otherwise it might be expiring the 31st of December.

Mr. Dumas: Mr. Chairman, the section that is being replaced says the 31st day of March.....

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Mr. Legal Adviser: You see, we were issuing them in March for the next year, so, almost everybody's driving licence is now no longer in force who bought it in February.

Mr. Chamberlist: Everybody is driving without a Driver's Licence.

Mrs. Gordon: Mr. Chairman, I draw your attention to the fact that Yukon Operator's Licence distinctly says on it it expires March 31st, 1970.

Mr. Legal Adviser: This is fine what it says on....but the Ordinance says "it expires on the 31st of March following date of issue". So, if you buy your licence in February, or March, your licence automatically expires whatever the face of it says.

Mr. Chamberlist: I agree with the Legal Adviser.

Mr. Commissioner: Mr. Chairman, would you kindly note this great meeting of the minds....

Mr. Livesey: Mr. Chairman, it says on your licence when you buy it that it expires on March 31st, 1970; is the Legal Adviser now trying to say that that which is written is not implied? Oh, rubbish.

Mr. Chamberlist: I have to come to the defence of the Legal Adviser in this instance. The Legal Adviser is perfectly correct. There is a difference between what is on the printed form and what is in the legislation. The legislation says that it expires on the 31st of March following the date of issue. If it was issued on February 2nd, 1968, according to the legislation it would expire on the 31st of March. I agree with him, he has made this point very clear and I think we should all understand it.

Mr. Livesey: Well, let the diseased hang by his own words.

Mr. Chairman: May I proceed? Section 4 (Reads Section 4).

Mr. Shaw: Question? That is a very good thing, it does make a person within the law when they enter a vehicle in a parade. There would be a question - would there be any charge made for this?

Mr. Legal Adviser: I am not exactly sure what the policy is, but I imagine there would be no charge, it would be just an ornamental plate of some sort, and possibly a charge might be made for an ornamental plate to be added to the vehicle which might be a reproduction of an earlier year's plate for certain purposes.

Mr. Chairman: Councillor McKinnon.

Mr. McKinnon: Mr. Chairman, there was an example of this in operation today where an old model T Ford from Whitehorse Motors was used to transport the President of Whitehorse Motors, possibly the Editor of the Whitehorse Star, I believe, plus the Mayor of the City of Whitehorse, down to the new premises on Fourth Avenue. Does that mean that this type of ceremony - they would have to apply to the Registrar for a permit to transfer a model T car about four blocks and also be bound by any conditions that the Registrar saw fit to place on them for transporting this vehicle a few blocks in a matter of this instance?

Mr. Legal Adviser: Mr. Chairman there is no question this BILL NO. is so and it is perfectly common sense that it should be so. 9 The particular case that gave rise to this Section was an application by some younger gentleman for permission to use a certain type of pepped-up, or souped-up hot rods in town during a procession. Now, these cars are not equipped with normal safety equipment and they were given permission,... again in breach of the Ordinance, provided they were towed to the point of starting and controlled during the parade and then were towed away and weren't used in the ordinary way on the road. Now, it is for this purpose, and historical purposes as well.

Mr. McKinnon: And you controlled them without anything in the Ordinance?

Mr. Legal Adviser: By doing something which was, I am not sure how close to the law the Registrar was sailing in permitting the thing to happen, but this is a normal provision elsewhere.

Mr. Livesey: Mr. Chairman, would this include a hay wagon? I notice it says vehicle; it does not say motor vehicle. Does that mean that a hay wagon would have to have a licence?

Mr. Legal Adviser: No, Mr. Chairman, the definition of "vehicle" is, "a motor vehicle is any device which is used, I think for movement on the highway which is propelled by other than muscle power" so a bicycle and a hay wagon I presume are not in the Ordinance.

Mr. Chairman: Mr. Chairman, this specific point in here is not only for the positive situation that is referred to by the Legal Adviser but is also to take care of the present situation whereby the vehicle would normally be subject to the regular licencing requirement and this is to avoid the necessity of the owner of this vehicle meeting with the other licensing requirements that he would normally have to avail himself of in order to have the vehicle on the road at all.

Mr. McKinnon: Which they don't and nobody cares.

Mr. Commissioner: Well, this is all very well, Mr. Chairman, perhaps in this instance this is quite right, the **instance** that is referred to, but might I ask you this; what if this vehicle becomes involved in an accident, somebody is going to care at that point.

Mr. Chamberlist: This is where I think, Mr. Chairman, they could use a Dealer's Licence plate, there is a plate that you can use - the dealers have a licence plate and it can be used for that purpose.

Mr. McKinnon: This is where I begin to agree with the Honourable Member from Carmacks-Kluane who says we get this argument time and time and time again that it is used in other jurisdictions so it has got to be right for the Yukon. I fail to see it. I fail to see why they have a couple of old cars in the Sourdough Rendezvous Parade that now they have to apply to the Registrar to get a special permit to be able to use it; we have to get a special licence plate from the Registrar to be able to use it. It seems that we are just being suffocated by a mass of bureaucracy for no apparent reason whatsoever and for no common good whatsoever either. Ah, it is just too much!

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Mr. Chairman: From the Chair I would like to direct a question to Mr. Commissioner. If a vehicle of this nature was in a parade and indeed the throttle stuck on him and the thing charged into a mass of people and killed three, who picks up the bill?

Mr. Commissioner: The licensing of the vehicle automatically implies that it is insured with public liability insurance.

Mr. Chairman: No, but I say with no licence.

Mr. Commissioner: We have no control over this.

Mr. Chamberlist: Yes, Mr. Chairman, this is the reason why I say, for instance in this particular case, the motor company can use one of their dealer's licences which covers insurance, why can't they use their dealer's plates? Well they are not all motor people, that is right, but.... instances they have dealers plates, they can use them.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, I do not see anything particularly wrong with this section. Two years ago, for example, I had an old old 1934 pick-up and I built an outhouse on the back of it and that was in the parade. Now, while that was in the parade I was operating a vehicle in the Yukon Territory contrary to law. The point is, Mr. Chairman, it appears to me that we are here to make laws for the Territory, we are also supposed to confine ourselves within these laws. Now where do you start and where do you stop, Mr. Chairman, in saying that I think that law is good, or I don't think that I should have to comply with that law. Where do we start and where do we stop? I would be very pleased to have been able to take a walk two blocks, gone to the Territorial Agent and said, will you give me a permit to enter this vehicle into a parade. Then I would have known that I was complying with the law. I don't think, I would object to a charge being made for this particular thing because most of these parades are not for commercial profit; they are for pleasure and it just a temporary situation but if all is necessary is to go and ask for a permit, now as far as the plates are concerned I think that perhaps they could be considered, Mr. Chairman, that someone is going overboard when they talk about plates. But a permit only takes a few minutes of one's time to go and get for a particular purpose, the same as a wide load permit or anything else; a free permit and then I think the thing is straightened out.

Mr. Livesey: Mr. Chairman, do I understand that every...

Mr. Chairman: Councillor Dumas, Councillor Livesey.

Mr. Dumas: If it is as simple as that it is something I would probably go along with it. There has been an indication that to get a permit you have to have insurance and I don't think you would be able to get insurance...want, would be an exorbitant, fantastic amount.

Mr. Chairman: Councillor Livesey.

Mr. Livesey: I was going to say the same thing, Mr. Chairman, especially in the north, surely we are talking about our past, we bring this to the attention of all the tourist trade.

Mr. Livesey continues..

On every old vehicle in the north that somebody spent a lot of money and time on to try to keep it in shape to bring it out and put it into a parade, if they are going to have to insure it for that, that would throw the whole insurance operation completely into the wide open spaces. This doesn't make a grain of sense. In my estimation this is super bureaucracy at its best!

Mr. McKinnon: Just take an example of the, the example I put forth today, of what happened. Now, to follow the laws that is now going to be. This person would have to go originally to the Registrar of Motor Vehicles and say, now would you give me a permit for this thing that I want to do. Now I am really confused, O.K., he would not have to do.

Mr. Legal Adviser: Mr. Chairman, I would like to make it clear that this particular section is not put forward in any intention to make minor laws and make minor restrictions. It is put because we were forced to refuse permission to the people to take cars that did not fulfill the regulations, forced to refuse them permission to be on the road. They were told by the police that they could not have these vehicles in the parade. They went to the police and discussed the matter with the police. The police said, no, you have got to buy a licence before you put a car on the road and when you have a licence you have got to be insured and everything else. So they came to the Registrar's office, a crowd of these kids, and they wanted to put their car on the road just for the purpose of a procession. So, on looking through the Ordinance they said, yes, provided you have got your brakes, lights in order and provided everything else is right and you have got to put in a new wind screen, you have to put on safe tires and all the rest of it, every single thing had to be done and it would have cost each of these cars maybe a thousand dollars to put it on the road. Now, we are merely introducing a section here in aid of these people who have old, ancient cars that do not comply with the normal restrictions. So what we are saying is that the Registrar may waive all the restrictions for a historical or a parade or a ceremony car and I think it is odd to be berated as if we are imposing new regulations when we tend to lift them.

Mr. Chamberlist: Mr. Chairman, how can the Registrar grant a licence until the vehicle is insured and the vehicle, the insurance company won't give the insurance so how then does the Registrar give a licence; in other words they just can't be licenced. There is no way.

Mr. Dumas: Exempting them.

Mr. Chamberlist: But the insurance company will not exempt them.

Mr. Legal Adviser: The terms of the condition would be, I presume, different in each case. I think it must be left to the common sense of the Registrar to work out what the terms are, depending on the event that is happening, but at least this will allow the Registrar to use his discretion legally in this matter. Now the certificate of exemption may in fact, in the case of an old car, take the place, as I said, of a historic type of plaque which may be one of the earlier number plates from 1905 or something like that. I don't know, it may

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Mr. Legal Adviser continues...

be a minor revenue earner, I don't know, but at least it is allowing him to lift restrictions.

Mr. Commissioner: Mr. Chairman, could I ask this question. I think the Registrar of Motor Vehicles can answer this. Would it be my understanding that this licence or plate or whatever it is, would be issued once and this would be the finish of it? I mean this isn't something that you have to rush down for every time there is a parade or every other year or something like this; what is the life of this plate. Is this a ceremonial plate that **they** issue for a certain vehicle and when it gets to the garbage dump ten years later it is still wearing the same plate or do you have to go for a new plate every year?

Mr. Chairman: Mr. Clerk.

Mr. Clerk: Mr. Commissioner, we just haven't gotten to this stage of dealing with this thing. I would suggest though that probably there be a suggestion that it be a life-time plate on that particular vehicle.

Mr. Legal Adviser: Mr. Chairman, I have three classes of plate here; the historical plate, the ceremonial plate and there is the parade plate. If I was drawing up regulations I would have no objection to drawing regulations for a life-time plate for an old Model T Ford, it is a horse of another thing to draw up a life-time plate to a hot-rod because then he would be entitled to go on the road with that hot-rod around the town without any restriction whatsoever. I think the regulations would have to be different in each case but the final policy has not been settled yet. We are asking for Council to permit us to do this thing.

Mrs. Gordon: One of the things that I am disturbed about, and God forbid that it ever happen, is if one of these vehicles which was issued a special permit should, in the event of an accident, injure someone. Who picks up the liability?

Mr. Commissioner: Mr. Chairman, if we ever **get** an Unsatisfied Judgment Fund that is where it will come from.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, I just cannot see the necessity of having to have **a plate** on these things; if you want to buy a plate I think that is fine but in these instances I think that all that is necessary a provision in the law that a person can go and get a permit for this ceremonial purpose for transportation for this old vehicle. I think if there is a plate that is available, the person might wish to purchase that plate, but really, what is the necessity of having to force someone to purchase a plate for one of these old vehicles. I can see that we do need a section in here covering the fact that a permit should be issued. I agree with that, but why do you have to buy a plate; why it is mandatory I can't see. I think it would be a good thing to have a ceremonial plate for something like this and a person could buy it. Certainly, the permit issued, but I mean the plate, if someone wants to buy a ceremonial plate that is fine and dandy but there is no sense in the people going to the expense of buying plates to hand out willy nilly, it is not right I think, to make mandatory that a person must purchase one when actually people go into a parade with these old vehicles, they usually go to a great deal of trouble to fix up these cars so

Mr. Shaw continues...

they can take them into the parade to add to the general enjoyment so I don't think they should be put to further expense. But I do think that to comply with the law there should be some provision so they can go up to the local Territorial Agent whoever it may be and say, can I have a permit for this for a special purpose and have it on the windshield or some part of the vehicle and that should satisfy everybody and serve a just purpose.

Mr. Chairman: At this time I will declare a recess.

RECESS.

Friday, November 21, 1969.

3:30 o'clock p.m.

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Mr. Chairman: At this time I will call committee back to order. BILL #9.  
Are you clear on section 4? (reads section 5, 6.)

Mr. Chamberlist: Sub (2), where this 90 consecutive days in each year. I am thinking in terms of somebody from Atlin. Supposing he is here for 89 days, goes back to Atlin, he's there for 2 days and comes back here again for another 88 days and then he leaves the area so consequently he is not interferred with in any way. Is there any way that this particular thing can be overcome? The same thing of Lower Post to Watson Lake.

Mr. Legal Adviser: I imagine it could be overcome by adding appropriate words which would say something like, for more than ninety consecutive days in each year or for more than 180 days in any one year, something like that so it would limit them to six months. We want to pick the number of days.

Mr. Chamberlist: I think perhaps we should look at that.

Mr. Chairman: (reads section 7.) This should read "operator's licence to a person".

Mr. Chamberlist: What is this period? Isn't this period a year?

Mr. Legal Adviser: It is our intention, other things being equal, to start on three year, five year licenses.

Mr. Chairman: In this section, Mr. Legal Adviser, you've repealed the whole section, is that correct? There was (2) and (3) to that section. One involving an operator's licence for a person ... not to be issued to a person under the age of sixteen years and the other not to be issued under 18 years. Is this covered elsewhere in the ordinance?

Mr. Legal Adviser: That would be covered in the regulations, because the regulations will then provide for seven classes and internally provide for the age group of the people who receive the licences.

Mr. Chairman: (reads section 8).

Mr. Chamberlist: This is the same area of question that I have as I related to earlier with section 27. I think it should say operating a motor vehicle of such and such a class, because otherwise you would have to turn back to the interpretation section of what is a motor vehicle and that would allow anything.

Mr. Legal Adviser: This comment is perfectly valid. It is precisely the same comment as took up the time of the House in an inappropriate time not so long ago. By just leaving the word "Motor vehicle" there, leave the choice of the applicant to just produce a motor vehicle and do a test and drive a truck-tractor, so I think the amendment suggested by the Honorable Member is appropriate and it would read something like this then, "until he is satisfied that the applicant is therefore is capable of operating a motor vehicle appropriate to the class for which the application is made without endangering the safety of the general public, or such lesser class. I think also in subsection (2) ~~at~~ the end of subsection (1), I think we would also require another few words in this. I think we have to require there, may require the applicant to submit himself for a medical examination or for an examination by an officer.

BILL #9 Mr. Chamberlist: I wonder if there is an interpretation area of what is an officer.

Mr. Legal Adviser: An officer is a person appointed to be such by the Commissioner.

Mr. Chamberlist: Is that in the interpretation section?

Mr. Legal Adviser: It is somewhere in the Ordinance. I'm not sure if it is in the interpretation section, but it is mentioned in the Ordinance around about three-quarters of the way through.

Mr. Chamberlist: But it means a policeman in that area?

Mr. Legal Adviser: It includes a police officer. I think we amended it recently, but it is such person as appointed by the Commissioner.

Mr. Chairman: Am I to understand that there will be forthcoming an amendment to this section.

Mr. Legal Adviser: There will be an amendment coming forward to section 27 and sub (1) and also to subsection (2) of section 25.

Mr. Livesey: Question on subsection(2), "one-half of the required fee shall be remitted by the Territorial Treasurer to the Royal Canadian Mounted Police". Just what is meant by this Mr. Chairman? Is this to the force itself for any particular purpose or is it to the Federal Government through the department for services rendered to allocated to the General Fund of Canada or just what is it supposed to be for?

Mr. Legal Adviser: Perhaps it might be as well to leave the section as it is. My understanding is that the fee is paid to the R.C.M.P. but it is allocated to one of the benevolent funds so if it is just left like this then we can continue this admirable practice.

Mr. Chairman: (reads section 9.)

Mr. Chamberlist: It would appear to me that the medical profession should be consulted on this particular section if they have not been consulted. They have a responsibility to keep under oath their dealings with a patient, in exactly the same way as a member of a legal profession has a responsibility to keep under his hat the affairs of his client. I think there should be a clause put in whereby the medical practitioner can only disclose this information with the agreement of the person concerned, with the agreement of the patient. Failing that that before we dispense with this Bill, we should receive from the medical practitioners here an agreement that it doesn't conflict with the oath they have taken to keep the affairs of their patients to themselves.

Mr. Legal Adviser: As the House knows, the Hippocratic oath does bind doctors and medical practitioners in general to keep confidential the affairs medical and otherwise of their clients, their patients and of the families of those patients. For that oath is subject to the law made by this House. In accordance with his usual practice, when compiling a section like this, the Commissioner did consult the members of the medical profession and obtained from them an understanding that they would not report to the Registrar unless they were bound, but they had no objections to reporting, whatsoever, provided a mandatory requirement is put in the Ordinance that they do so.

Mr. Chamberlist: This may be Mr. Chairman, but wondering whether BILL #9. Mr. Legal Adviser could indicate, that under subsection (2), "no action shall be brought against a medical practitioner or optometrist for complying with this section." This may not exclude an action taken by a person who has gone to his doctor and given away information that should rightly be kept in strict confidence. I'm concerned that to take away, even leaving in sub (1), that to take away the right of an action from somebody under subsection (2), this is going a little bit too far. I am quite in agreement for leaving (1) in if the doctors want it, but the doctors should understand that if they give away information which is of a confidential nature, information that is given by a patient to a doctor they should not be protected by civil action if it interfered in any way with the person or his family.

Mr. Legal Adviser: If subsection (1) goes in, subsection (2) must go in also because the information that the doctors require is in fact confidential. It is only forced to be disclosed by the overriding necessity of the public interest. Where a person is suffering from a defective eyesight or some such thing that would render him incapable of driving a car, it's in the public interest that this should be known to the Registrar. He has no other way of finding it out in very many cases, also if a person is subject to epileptic fits, is subject to certain other illnesses of a spasmodic or sudden nature, it's necessary that the Registrar knows this so that the conditions may be imposed on the driver, but unless the two sections go in as a pair, it must be compulsory for the doctors to report it, otherwise they are not willing to comply and second they must be protected because they are doing it in the public interest, not in the interests of the patients. It may be against the interest of the patient to report the fact that a person has become subject to sudden fits. It is necessary that the Registrar know, so I regret that fact that it has to be in this form, but unless you say that no action will be brought against a medical practitioner for complying with this section, you give the man no protection. If he does it maliciously or something like that or reports false information, then of course an action will lie against him, because he will not be complying with the section.

Mr. Chamberlist: This is the area that I am thinking of. These words "suffering from a condition that may make it dangerous for such person to operate a motor vehicle" I agree because I think there is a necessity to make sure a person is safe as a driver, but if in doing this, a doctor has also included something else, for instance he may say, a persons eyes are bad and the reason why his eyes are bad is because he had syphilis. Now this might be true, that this is the reason why his eyes are bad, but if he says this that this man has had syphilis, there is an action lying against him because he is being ... information of a very, very, confidential nature is being passed on to outside of the medical profession.

Mr. Legal Adviser: Yes but only to the Registrar. The third section provides that to report at any .....for any purpose except the Registrar's sole purpose of suspending his licence or putting conditions on it.

Mr. Chamberlist: But the Registrar's files are open to many people who work in the Registrar's office. This is not a matter of it going straight to the Registrar, he looks at it and locks the file away. There are members of the staff, there might be 20 or 30 girls of the staff whose husband knows the wife of these particular people that might be in that particular predicament. I'm thinking of that area that can be expanded. If because of information like that, a break-up of a home where perhaps confidential treatment and

BILL #9 Mr. Chamberlist cont:

confidential relationship is taking place between husband and wife where they are trying to straighten this out and take the cure and get all these things done and all of a sudden this comes up, this can become damaging indeed and through the carelessness which might take place of the medical practitioner giving this type of information. If this subsection (2) is left in there a person cannot make ... take a legal suit against the medical practitioner for his neglect in giving out this type of information and certainly the medical practitioner should be protected, but certainly this should also be recourse for somebody who has confidential information of a nature which should not be disclosed, being disclosed.

Mr. Legal Adviser: I think the point is well taken. Perhaps the Honorable Member could consult with me when this is over and we could compare the .....of this subsection with the particular sections restricting information on files similar in content in drafting to the section which we discussed yesterday concerning the Child Welfare Ordinance and then we could put in a section or see that this section is not tight enough, we could tighten it up to make it reproduce the intent that not only is the file confidential from the public, it's is also confidential to the Registrar and must be kept in a safe place and so on. If this would meet with the House, I think we could pass on.

Mr. Livesey: Well, Mr. Chairman, it seems to me that very soon, very little will be sacred, from anybody. We fought a war a little while ago, a few years back to stop this kind of thing where ones brother tattled on his other brother, in fact members of a family were invited to give private knowledge to the state and were getting paid for it and it seems to me that just about every time we turn around, somebody is going to poke their nose into somebody elses private business and now we can't even drive an automobile or anything else without wondering if we go to a practitioner what he is going to tell the somebody else to stop us doing something but if we hadn't gone to him, he wouldn't have known anything about it. This is a fine state of affairs, I must say and it is getting absolutely ridiculous. I think this is a terrible thing. I think that if there is suspicion that someone cannot drive, all they have to do is make it so that he has to go and get a medical examination. You don't want all this conspiracy with the medical profession. We've got enough problems with them at the moment as far as I can see, without adding fuel to the fire. I just can't go for this section at all the way it is written, Mr. Chairman. This is getting just simply beyond belief.

Mr. Chamberlist: Perhaps the Councillor from Carmacks-Kluane would allow the suggestion that has been made by Mr. Legal Adviser. I'll talk to him and I'm sure that if he will leave it with me it will be cut down quite a bit to see that it wouldn't have the effect that it has now.

Mr. Chairman: May I proceed then? (reads sections 10, to 14.)

Mr. Legal Adviser: Before we pass on, there are some other sections of the criminal code which have come into force since this was in draft. It was some time since it was first drafted and I'd have to check up to make sure the sections are correct in view of the ... some sections have come into force and some sections are coming into force so we may need changes in this and I'll bring forward an amendment at the next reading or the next time it comes before the House.

Mr. Chamberlist: I would like to recommend a further amendment to this. Where we say "Every holder of an operator's licence who is convicted of" and it shows these subsections (a) to (e) and then it goes on to "shall forthwith deliver his licence to the judge or magistrate making the conviction" after that "if requested" should be put in there because I have watched in Court where sometimes a magistrate doesn't want to and so doesn't ask for it. The policeman comes along and says "your licence please". So you have to give him your licence and he walks it up to the bench and the magistrate thinks that he has the licence now so he goes ahead and endorses it. If the magistrate or the judge doesn't ask for it, I say the policeman has no right to go and ask you to give the licence to him. I would suggest that after that we put "if requested".

Mr. Legal Adviser: I don't think the administration has any objection to that, Mr. Chairman.

Mr. Chamberlist: That will be done I take it.

Mr. Chairman: I have one matter I would like to bring to the attention and consideration of the Legal Adviser. In this section, subsection (1), we speak of a magistrate or a judge making the conviction, what happens in the case of a justice of the peace like in the outlying districts. He is not a magistrate.

Mr. Legal Adviser: I can't give you an answer to that without having a moment to look it up. I'm not sure if it's magistrate or judge, but I presume it is magistrate that includes justice of the peace in some statute but which one I couldn't say.

Mr. Chairman: I think this should be clarified because it has a great affect in the outlying districts.

Mr. Legal Adviser: I think it might be better to put in the word justice or judge. It might make it clearer to the justices of the outlying areas, but I wouldn't give you a quick answer on that.

Mr. Chamberlist: Mind you it would be better if it said judge or magistrate and then the justice can't do it at all.

Mr. Chairman: I think this point should be made clear, because it is certainly not clear to us and it obviously then cannot be clear to the people.

Mr. Commissioner: Further to the question that was raised by Councillor Chamberlist here, shouldn't this thing either be mandatory or be eliminated. The way you have it there now as I understand it ...what Councillor Chamberlist has suggested, it is, if requested. This is a pretty ..... situation.

Mr. Legal Adviser: I take it that he means shall on request by the Court, in other words the power has been given to the judge to demand it.

Mr. Commissioner: With respect, what is the point. In other words then the magistrate, it is Monday morning and he is full of beans so every licence that comes in he requests that he sign it and the next day he is getting fed up with all this malarkey so he doesn't ask for any at all. The thing should either be mandatory or should be eliminated.

BILL #9 Mr. Chamberlist: There is some merit to that, this is why I ask for all my cases to be heard on Friday morning.

Mr. Commissioner: This is the best advice I've had in some time.

Mr. McKinnon: Wasn't the reason for this originally, that we thought that in the judge's discretion that he probably wouldn't endorse licences for simple speeding offences but where there was something like a hit and run, or driving without due care and attention, the magistrate or the judge in his wisdom would say that this would be a matter for licence endorsement, but as it has happened in fact it's up to the magistrate's whim or feeling, whether he feels the licence should or should not be endorsed for a simple speeding offence or not so depending on which magistrate you get on which day, your licence is either marked or not marked for an offence such as speeding under the Motor Vehicles Ordinance.

Mr. Dumas: I solved the problem when I was in Court by not bringing my licence with me, they never did mark it.

Mr. Chamberlist: The point that I hope is not being overlooked is that it is invariably the policeman who walks over to a person and says "your licence please". It's not the magistrate of the Court.

Mr. Commissioner: With respect Mr. Chairman, I mean this is the place where this should be decided. I don't think it is up to anybody's discretion whether these things are marked or not. I think it should either be mandatory that offences be noted or it should not be mandatory. One of the two, it shouldn't be up to anybody's discretion.

Mr. Chamberlist: I think only criminal code offences should be mandatory.

Mr. Commissioner: Could I suggest that we ask the Legal Advisor to report back to the House with this along with the other matters that they are doing here, because the way the situation is now is not satisfactory by any stretch of the imagination. I don't see why when the thing is up for review, that we should perpetuate something that we all agree is for the birds.

Mr. McKinnon: I'm only scared of one thing, if this continues the Honorable member from Whitehorse-East may winningly become the elected appointed executive assistant to the Commissioner.

Mr. Chamberlist: I can assure my friends that it will not happen on my own.

Mr. Chairman: Is it your wish that this go under review and we will come back to it.

Mr. Legal Advisor: With this proviso that the criminal ... whatever we do with the section, we must comply with the criminal code, so those cannot be changed by us, otherwise we would be acting ultra-vires. The other sections we can change ... the other endorsable offences which are discretionary we can remove those if we wish.

Mr. Livesey: How long is the new licence going to be, a foot long, two feet long?

Mr. Chairman: It is intended then that we will refer back to this section. (reads section 15)

Mr. Shaw: One question Mr. Chairman. Would these licences, when BILL #9 we are talking about three and five year licenses, wouldn't it be before they start issuing them now or crank them out or when this Ordinance is finished that these extended licenses be in a type of a plastic form.

Mr. McKinnon: Then they can't mark them.

Mr. Shaw: I don't know how you get around that, but I know that the present licenses do not fit in the average billfold, they are just a little bit too big. You've got to square off the edges so you can get them in some of these compartments that they make. I don't know whether they are making the compartments wrong or we are making the licenses wrong ... the wrong size, but you certainly can't get them in. They can't fit because they are just too big, so if they are going to start making a new set of licenses which they will need to I suppose, I think quite a lot of consideration should be given to the size of these things.

Mr. Chamberlist: Where we make reference to paying the annual fees as set out in schedule A, I take it that we are talking about the existing schedule. Now the existing schedule refers to operator's licenses and chauffeur's licenses. It has no reference at all to Class I licence, Class II license or Class III. This is unless it can be pointed out to me, I can't see anywhere in here where there is a schedule set up for these new licenses.

Mr. Legal Adviser: There are none so blind Mr. Chairman as those who will not see.

Mr. Chairman: Section 24.

Mr. Shaw: Mr. Chairman, here is a licence. I'm talking about something practical, why could not this section be under here so at least you could get this blinkety blank thing in a typewriter. There is a practical way of making a licence. Take that thing and instead of having it on the side like that, have it following here. I mean all you've got to do is fold it that way instead of folding it that way, but I see fellows, they get it in the typewriter and they are having an awful time and this other way, you could have your duplicate behind it, have this section just added on to this and then it just folds over.

Mr. McKinnon: May I suggest that the Honorable Member from Dawson visit the Registrar of Motor Vehicles and bring these practical solutions to his attention. I'm sure that they will be given all the consideration that they should be.

Mr. Shaw: Mr. Chairman, this request certainly has as much to do as many of the arguments that the Honorable Member on my left brings up. I'm just trying to get something that is practical not hypothetical and this is such a simple way of doing it I think it is a good point to bring it to the Honorable Acting Registrar of Motor Vehicles and .....

Mr. Chairman: May I now proceed. (reads section 16 )

Mr. Chamberlist: This says that unless otherwise permitted in this Ordinance no person shall allow his motor vehicle to be driven by any person who has not been issued an operator's licence under this Ordinance, well what about an operator from another province? He hasn't been issued a licence under this Ordinance so he can't drive. A little bit of an error, how about correcting it.

BILL # 9 Mr. Legal Adviser: The operator from the other province wouldn't be committing an offence because he is entitled as you will recall provided he doesn't drive for more than ninety days, ninety consecutive days in a calendar year.

Mr. Chamberlist: But notwithstanding that, this section says and it is quite clear, "Unless otherwise permitted no person shall allow his motor vehicle to be driven". It is not permitted. It says that he can drive, but it says that nobody shall permit another person to drive. This is where the assents come in. You have an automatic offence.

Mr. Legal Adviser: Section 35 permits a person who does not reside or carry on business to drive for not more than ninety consecutive days. This applies to any motor car, so when you read this particular section, unless otherwise permitted in the Ordinance, so and so happens, you mean unless it is permitted and it is permitted under section 35.

Mr. Chamberlist: Let's get down to the nitty-gritty here. No person shall allow his motor vehicle to be driven by anyone who has not been issued, that's where you start. No person shall allow his motor vehicle to be driven unless he has not been issued and this is the thing, whether or not he has been issued. The word issued is the important word here. This doesn't come after. It doesn't say that and unless otherwise permitted in this Ordinance but it is not permitted in this Ordinance. It is the permission to allow a person to drive a vehicle, to drive that has been for ninety days ... look at it closely Mr. Legal Adviser and I'm sure that you will see it. This person can drive a vehicle if he is from out of the province for ninety days. He could drive his vehicle but this is it, no person shall allow his motor vehicle... I can't allow my motor vehicle to be driven by somebody else, although this other person can drive his own vehicle. This is the reason.

Mr. Legal Adviser: I'm quite prepared to introduce an amendment which will say, no person shall allow his motor vehicle to be driven by any person who has not been issued an operator's licence under this Ordinance unless otherwise permitted in this Ordinance.

Mr. Chamberlist: Right and ..... Very important now, the fact that Mr. Legal Adviser allowed this in there, he knows I'm right otherwise he would have stayed put.

Mr. McKinnon: May I ask a question of the Legal Adviser.. If this Ordinance were in effect .. a friend of mine with a valid Manitoba operator's permit came to visit me in the Yukon for a period of a month, while he was here I allowed him to drive my car, would I be committing an offence under this Ordinance.

Mr. Legal Adviser: I wouldn't think so. As far as I see it he is legally driving because under section 25, it says no person shall drive a motor vehicle unless he holds an operator's licence. Subsection (2) then goes on to say, that subsection (1) does not apply to a person who does not reside or carry on business in the Territory for more than ninety consecutive days in each year. So making the assumption that he is here on a temporary visit, then he would be entitled to drive Mr. McKinnon's car, but if he came up here to get a job, he has got to get a licence the day he arrives.

Mr. McKinnon: You mean he can't use my car if he is looking for work.

Mr. Legal Adviser: No.

BILL #9

Mr. McKinnon: That's unfair.

Mr. Chamberlist: This is what I'm talking about. You see if you are referring to driving somebody else's vehicle.

Mr. Commissioner: Let me ask a question. Councillor McKinnon asked, he wouldn't be able to drive this car if he were looking for work. How stupid can we get Mr. Chairman. If he can't borrow Mr. McKinnon's car .... it is one thing if he is out using Mr. McKinnon's car, operating it as a commercial vehicle or if he is driving the car for gain, but certainly there is no difference between his driving this car looking for work or looking for the next bar to go into. I mean there is no difference.

Mr. Chamberlist: I'm glad that everybody is seeing the point that I am making.

Mr. Legal Adviser: In some places there is a carry over so that when a person arrives from another province they have a time lag, they have a month from the time they become a resident to pick up a licence from the local place. We don't have provision for this time lag, it is like a drink up time under the Liquor Ordinance, It doesn't exist. From the time you enter the Territory, if you become a resident that night, you've got to have a licence. A visitor who is not intending to reside here and so on, a tourist, does not have to have a licence, but if he stays after ninety days then of course he does.

Mr. McKinnon: I had this exact thing happen. A friend of mine from University was here. Before he got a job, he lived at my place for about two weeks and he used my vehicle to go out and I was a Member of the Legislative Council of the Yukon. If he had been stopped and prosecuted under the terms of this Ordinance, I would have felt like an ass and rightly so. There has to be some provision here. This is not sensible.

Mr. Shaw: It appears to me, the Ordinance has been in the past, I've always accepted it as such, that you were a visitor whether you were looking for work or whether you were a qualified visitor, You did not have to get this licence, if you had a valid licence from another province, until the day you started to work. That was the time you had to get the licence, both for a vehicle and an operator's licence. That is the way I thought it was.

Mr. Legal Adviser: I'm not attempting to say that this shouldn't be so and it is quite easy to and it is quite easy to alterate a section, but the fact that things are ridiculous, the fact that things are bureaucratic is really the fault of the Honorable Members who have not been perspicacious enough to forget these mistakes since 1902.

Mr. Chamberlist: I wasn't here then.

Mr. McKinnon: Mr. Chairman, our Legal Adviser is dead wrong. If any elected Member was involved in the day to day administration of this government in the preparation involved with this Ordinance there would be none of this ridiculous debate go on in perpetuity around this Chamber and every time we get in these stupid nit picking arguments, it's for the exact reason that this is the case and this is the government that we have to live under at this time.

BILL #9

Mr. Commissioner: Mr. Chairman, I want to make note of these remarks, I'm going to frame this section of the Votes and Proceedings so that in the very near future we will be able to stand and turn the table because I can assure you that perfection **is** not going to arrive just because we move certain people ..... but it is a good point, Mr. Chairman. I'm prepared to test it out and see how we make out.

Mr. Livesey: If we need a different cake, we will provide the ingredients.

Mr. Chairman: Am I to understand that there will be a change to section 35?

Mr. Legal Adviser: It is not necessary in that section. It might need an amendment in a different section, but I would anticipate having to change section 25, but section 25 as is of course is merely reproducing the present law, it's producing no principle. If we want this new principle in, certainly we will make arrangements for it.

Mr. Chairman: Are we clear then for the moment on 16?

Mr. McKinnon: Mr. Chairman, I move that Mr. Speaker resume the Chair.

Mr. Chairman: It has been moved by Councillor McKinnon, seconded by Councillor Dumas that Mr. Speaker do now resume the Chair. Are you prepared for the question? Are you agreed? I will declare the motion carried.

MOTION  
CARRIED.

MOTION CARRIED.

Mr. Speaker: I will now call Council to order. May we have a report from the Chairman of Committees.

Mr. Taylor: Mr. Speaker, Committee convened at 11:00 a.m. to discuss Bills and Sessional Papers. Committee recessed at 12:00 noon and reconvened at 2:10 p.m. I can report progress on Bill No. 9 and it was moved by Councillor McKinnon, seconded by Councillor Dumas that Mr. Speaker do now resume the Chair and this motion carried.

Mr. Speaker: Do we agree with the report of the Chairman of Committee? May I have your further consideration for the agenda for Monday?

Mr. Taylor: On the agenda for Monday will be Bills and Sessional Papers and also on Monday morning, we have a gentleman coming to speak on the air services of the Yukon for 10:30 in the morning... or two gentlemen.

Mr. Speaker: Is there any further business?

Mr. Shaw: Mr. Speaker, I would move that we call it 5:00.

Mr. Speaker: Are we agreed? The House now stands adjourned until 10:00 a.m. Monday morning.

ADJOURNED

ADJOURNED.

Page 241.  
Monday, November 24, 1969.  
10:00 o'clock a.m.

Mr. Speaker read the daily prayer. All Councillors were present.

Mr. Speaker: Mr. Clerk, is there a quorum present?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: I will now call Council to order. I have for your attention this morning the tabling of Sessional Papers No. 31 and 32. Are there any Reports of Committee? Introduction of Bills? Notices of Motion or Resolution?

Mr. Taylor: Mr. Speaker, I would like to give Notice of Motion respecting Sessional Paper No. 31. MOTION #12

Mr. Speaker: Are there any further Notices of Motion? Notices of Motion for the Production of Papers? Now, we'll move to Orders of the Day. Under Motions, Motion No. 8, moved by the Honourable Member for Whitehorse West, seconded by the Honourable Member for Mayo, "That Sessional Paper No. 29 be discussed in Committee of the Whole." Are we agreed? I will declare the motion carried. MOTION #8

MOTION CARRIED MOTION CARRIED

Mr. Speaker: Motion No. 9, moved by the Honourable Member for Carmacks-Kluane Lake, seconded by the Honourable Member for Watson Lake, reference "Closing Down of the Experimental Farm at Haines Junction. That the proposed closing down of the Experimental Farm at Haines Junction be discussed in Committee of the Whole." Are we agreed? I will declare the motion carried. MOTION #9

MOTION CARRIED MOTION CARRIED

Mr. Speaker: Motion No. 10, moved by the Honourable Member for Carmacks-Kluane Lake, seconded by the Honourable Member for Dawson, "Dust Control Program. That the present dust control program be thoroughly aired in Committee of the Whole with a view to providing a better management system with additional functional and economic benefits." Are we agreed? I will declare the motion carried. MOTION #10

MOTION CARRIED MOTION CARRIED

Mr. Speaker: Motion No. 11, moved by the Honourable Member for Carmacks-Kluane Lake, seconded by the Honourable Member for Dawson, "Control of Firearms. That the control of firearms be discussed in Committee of the Whole." Are we agreed? I will declare the motion carried. MOTION #11

MOTION CARRIED MOTION CARRIED

Mr. Speaker: Mr. Clerk, I wonder if you could have Mr. Commissioner here for the Question Period? I will call a five-minute recess.

RECESS RECESS

Mr. Speaker: I will now call Council to order. May we proceed with the Question Period.

Mr. McKinnon: Mr. Speaker, I would like to address a question to the Commissioner. Will Mr. Courtney, from the Department of Transport, who is supposedly doing a study on air transport facilities in the Yukon, be available to Council this morning? QUESTION RE MR. COURTNEY MEETING WITH COUNCIL

Mr. Commissioner: Mr. Speaker, Mr. Courtney dropped in on Friday afternoon and dropped out at the same time. We are endeavouring to find out something ourselves so we can intelligently answer the question to Council, Mr. Speaker, I am very disappointed that this situation has occurred in this manner.

QUESTION RE  
AIR TRANS-  
PORTATION  
PROBLEMS

Mr. Taylor: Supplementary to that question, Mr. Speaker, I'm wondering if it is the intention of the Administration to attempt to find someone else of some authority that might be able to sit down and discuss with us at these Sessions the problems of air services and facilities in the Yukon?

Mr. Commissioner: Mr. Speaker, we have done our utmost and we thought that we had the question answered. All I can say is that we will continue to press so that we can have someone here, but I certainly don't want to give any assurances that we are going to be successful.

QUESTION RE  
INVITATION  
TO MAYOR OF  
EDMONTON

Mr. McKinnon: Mr. Speaker, could I address a further question to the Commissioner. Has the Commissioner issued an official invitation to the Mayor of the City of Edmonton to visit the Yukon?

Mr. Commissioner: Mr. Speaker, I don't think there was any official invitation, but if memory serves me correctly, there was a letter that came to my office in which the Mayor of Edmonton, it would be one of his staff, wishes to come and speak with me personally on matters concerning Edmonton's role in the development of the north. My reply to him was that I couldn't think of anything more inappropriate but I was quite certain that the appropriate thing for the Mayor to do would be to offer to pay a similar visit to the Members of Council. To my knowledge, no reply has been received.

QUESTION RE  
CORRECTION  
OF EDMONTON  
JOURNAL

Mr. McKinnon: Mr. Speaker, I wonder if the Commissioner would correct the report in the Edmonton Journal that states that the Mayor has received invitations from the Commissioners of both the Yukon and Northwest Territories to visit, address meetings and discuss problems of mutual interest?

Mr. Commissioner: Mr. Speaker, I would like to review our own correspondence on this, but I am quite confident that what I have told Council from my memory is correct and I will be very happy to see that this particular situation is put into its proper context, because certainly the manner in which Mr. McKinnon has just put it is not the manner in which I recollect it having been said.

Mr. Speaker: Order. The Member for Watson Lake.

QUESTION RE  
KLONDIKE  
COPYRIGHT

Mr. Taylor: Mr. Speaker, I have a question along this line. I'm wondering if Mr. Commissioner could tell me this morning as to what progress is being made relative to the copyrighting of the term Klondike and the City of Edmonton?

Mr. Commissioner: Mr. Speaker, the Legal Adviser can bring you up to date on the technicalities of this, but the full protection of the copyright laws has been obtained on behalf of the Yukon Territory with regard to the use of the word Klondike.

QUESTION RE  
EDMONTON  
MAYOR'S  
VISIT

Mr. Chamberlist: Mr. Speaker, I wonder if Mr. Commissioner could indicate whether, if and when the Mayor of Edmonton came to the Yukon, would he be coming on a municipal level or on a legislative level?

Mr. Commissioner: Mr. Speaker, I have already intimated that my reply to the officer on the Mayor's staff who we heard from was that the Mayor should offer to come visit with the Territorial Council. Now, there may well be other things that are transpiring that I am totally unaware of. Perhaps he has communicated with the City of Whitehorse. I don't know, Mr. Speaker, but certainly the only level that we could gauge our reply or relate our reply to was the basic government level, namely, the Legislature and the Administration, and the Administration has declined.

Mr. Taylor: Maybe I could put my question a little more straight forward relative to what I asked earlier, Mr. Speaker. I'm wondering if Mr. Legal Adviser can tell me if any law action is forthcoming between the Territory and the City of Edmonton? QUESTION RE  
KLONDIKE  
COPYRIGHT  
LAW ACTION

Mr. Legal Adviser: Mr. Speaker, not so far as I am aware, but I would like to mention that we have not copyrighted the word Klondike. What we have done is, we have exercised our right as a government on the Trademarks Act, which is to protect it as a mark for services and for merchandising goods which is what we're limited to. Copyright is a different thing and applies to authors' works and designs and so forth.

Mr. Speaker: Are there any further questions?

Mr. Dumas: Mr. Speaker, the people or firms using the name before the protection came into effect are allowed to carry on using the name. Is that correct? QUESTION RE  
USE OF WORD  
KLONDIKE

Mr. Legal Adviser: Yes, Mr. Speaker, this would be correct, provided we adverse the fact that the original registration by the government was in relation to merchandising. The second registration was in relation to services. Now, the reason why it was done in two halves was at the time when the first reservation was made by this government of the word Klondike, it was thought that they would be limited either to wares or to services, so a deliberate decision was taken at that time to limit to wares. Different legal counsel prevailed later on and we then registered it also for services.

Mr. Chamberlist: Mr. Speaker, a question to Mr. Commissioner. Mr. Commissioner, could you give any information to Council at this time with reference to a proposed lighting installation between the traffic circle and the Hillcrest Subdivision? QUESTION RE  
PROPOSED  
LIGHTING  
INSTALLATION

Mr. Commissioner: Mr. Speaker, I am not aware that there has been a change of heart on the part of the Federal Department of Public Works to make such an installation. The Honourable Member brought up this question I believe at the last Session of Council and it was followed up in meetings which were held at which the Whitehorse Members of Council were present with the officials of the Department of Public Works; also the subject of a sidewalk. It was my understanding or indication that neither of these was meeting with, should I say, the approval or the admonition of the Federal Department responsible and it is certainly news to me if there is going to be such a program.

Mr. Chamberlist: Supplementary, Mr. Speaker. Mr. Commissioner, in view of the danger that is now involved in people walking along the highway, endangering not only themselves and drivers where children especially are walking backwards trying to get lifts. Would the Commissioner examine the situation and see what can be done to have lighting put along that area? QUESTION RE  
LIGHTING  
INSTALLATION  
ALONG THE  
HIGHWAY

Mr. Commissioner: Mr. Speaker, I would take it then that it is not really a question, it is a request that we reactivate this particular question, and, Mr. Speaker, I would be most happy to do it because I was a strong supporter of this in the first instance and I continue to support it. I feel that the density of traffic on all the roads in the general proximity of Whitehorse and the speed at which the traffic travels makes adequate street lighting an absolute necessity. It is no longer a luxury or something that we should or should not have.

QUESTION RE Mr. Dumas: Supplementary, Mr. Speaker, would the Commissioner try  
INSTALLATION to ascertain as to whether or not a decision in fact was handed  
OF STREET down at a meeting in July in the D.P.W. Headquarters which said  
LIGHTING that they would be going ahead with putting street lighting in at  
every two hundred feet?

Mr. Commissioner: Mr. Speaker, the memories of Councillors on this particular detail are far better than my own. I would be very pleased to refer to the minutes of the meeting and, no matter which is correct, I am quite prepared to follow the matter up.

Mr. Speaker: Are there any further questions?

QUESTION RE Mr. McKinnon: Mr. Speaker, I wonder if I could ask the Commissioner,  
SMALL BUSI- according to Sessional Paper No. 37 of the 1969 - Second Session,  
NESS LOANS there was to be a meeting in Ottawa the week of March 13th, 1969, to  
REGULATIONS draft regulations for the new small business loans to the Yukon and  
Northwest Territories. Are such regulations available for this  
Session?

Mr. Commissioner: Mr. Speaker, they are still in the process of being drawn up and, quite frankly, I think the first requirement of this project is money. When money is appropriated, I don't think it will take too long to finalize the regulations, Mr. Speaker. I am sorry that I cannot give Council at this time any definitive answer as to just exactly when money will be available but I will certainly try to find out.

QUESTION RE Mr. McKinnon: A further question to the Commissioner, Mr. Speaker.  
JUVENILE What is the status of the Juvenile Training Home at this time?  
TRAINING  
HOME

Mr. Commissioner: Mr. Speaker, the Juvenile Training Home Project that was part of the estimates for this year is not being proceeded with. We're talking about the capital construction, Mr. Speaker, at this point, and, on an experimental basis for one year, we have declared the Mobile Institution at Wolf Creek to be a Juvenile Reform School. The idea here, Mr. Speaker, is to maximize the use of a portion of our Rehabilitation Institution that was not being maximized and at the same time to allow us to develop programs which will then give us a better idea as to what kind of a building or institution we should be building. There is not very much point to incarcerating people whether they be juveniles or adults unless there is going to be some kind of a rehabilitation program involved, and there is a Paper coming forward to Council indicating what we have done in this regard. I am quite confident that the end result will put us in a very much better position to assess a) what we should be doing, and b) how we should be going about doing it.

Mr. McKinnon: Mr. Speaker, I'm sure all Members of Council will be happy to know that the Wolf Creek Camp is outside the metropolitan limits of Whitehorse.

Mrs. Gordon: How far?

Mr. McKinnon: Two miles.

Mr. Speaker: Order, please.

Mr. Taylor: Mr. Speaker, I'm wondering if Mr. Commissioner might agree with me this morning that certainly the place for this facility would be the Experimental Farm, more particularly in light of the fact that they are going to close this facility?

QUESTION RE  
LOCATION OF  
JUVENILE  
TRAINING  
HOME

Mr. Commissioner: Mr. Speaker, as far as I am concerned, talking strictly from the point of view of the end results, I don't think it matters where you have this institution located. It is the program that you have involved that is going on within the confines of the institution. Furthermore, Mr. Speaker, I don't think it matters whether you have a great group of fancy buildings or whether you have nothing but a bunch of dilapidated buildings. It depends entirely upon the program itself and the dedication of the people who are conducting that program as to whether or not the young adults, the young offenders, who are in these places, when they come out of them are going to be guided along lines that will permit them and encourage them to lead useful and productive lives in the community in which they find themselves living.

Mr. Chamberlist: Mr. Speaker, Mr. Commissioner, I wonder if you have been given notice of any new proposed shopping centre in the Riverdale area?

QUESTION RE  
RIVERDALE  
SHOPPING  
CENTRE

Mr. Commissioner: No, Mr. Speaker, I am not aware of anything. As you know, the Territorial Government has for sale the piece of property in the Riverdale area which has been zoned for shopping centre purposes, has been supplied with sewer and water, been surveyed, title created and upset price created, and to my knowledge there has not been any customer appear on the horizon with the necessary seventy-odd thousand dollars to purchase it, although this may have happened and I'm not aware of it.

Mr. Chamberlist: Mr. Speaker, to Mr. Commissioner. Mr. Commissioner, has the Administration come to any decision as to the future of the Carcross Indian Residential School?

QUESTION RE  
CARCROSS  
RESIDENTIAL  
SCHOOL

Mr. Commissioner: Mr. Speaker, we have not come to any decision with regard to the future of the Indian Residential School in Carcross for the reason that the whole economic future of Carcross which has been lying dormant, you may say, for the last seventy years, could well be about to take off and become very much different than the normally sleepy village that Carcross has been for a long time. The Honourable Member is aware of the fact that the representative for the area along with the people of my Administration will be sitting on a committee which is going to be seeking suggestions and ideas as to what government requirements are going to be in the Carcross area in the course of the next few years, and I'm quite confident that one of the recommendations that I will be getting from them will include recommendations concerning the use if any to which the Carcross Residential School may be put.

Mr. Chamberlist: Mr. Speaker, I wonder if Mr. Commissioner could indicate at this time any information for Council relating to the chip mill plant for the Carcross area?

QUESTION RE  
CHIP MILL  
PLANT

Mr. Commissioner: Mr. Speaker, I really don't have any more details myself on this. The principal of the company, I do believe they go under Bermuda Resources now, or Bermuda Industries I believe it is, and I believe that one of the principals of the company was or is in the area at the present time, but the only information that I have is what is general knowledge that these people hopefully are going to cut the raw material in British Columbia, bring it to a site just south of Carcross where it will be processed, and ship it to the export market via rail to Skagway and the use of the boat

loading facilities in the Town of Skagway. There have been various intimations as to what kind of money that they will spend and there have been varying intimations about the amount of employment that they will create in the area, all of which are public knowledge and which I do not have any further detail on. I do believe that as far as the Province of British Columbia is concerned, who really are the key people in this because they are the people to whom the application is being made for the cutting rights, they are quite prepared to accept what they consider to be a workable proposal from the entrepreneur and if the entrepreneur is able to carry out the commitment that he makes, the Province of British Columbia issues these Forest Management Licences I believe they are called, on a strictly performance basis. I'm sorry, I have nothing further at this time of a definitive nature, Mr. Speaker.

Mr. Speaker: Are there any further questions? If not, would the Honourable Member for Watson Lake please take the Chair?

Mr. Taylor takes the Chair.

QUESTIONS  
#22, #23,  
#24 & #25

Mr. Livesey: My first question this morning, addressed to the Administration, Mr. Speaker, is "What plans are presently in progress to provide the school children at Destruction Bay, Beaver Creek, Carmacks and Pelly River with gymnasium facilities in order to promote more interest in good health, physical exercise and co-ordination?" Number two, reference "Sewage Removal Costs in Rural Areas. Part 1. Upon what formula does the Administration calculate the costs for sewage removal by Territorial trucks in rural areas? Part 2. Is there any difference in the costs charged against government departments and institutions as compared with those charged against private individuals, organizations or business establishments? If so, why?" Number three, addressed to the Administration, "What department of government is responsible for decisions related to the establishment of low power television stations in the Yukon?" And, Part 2, "Does the Territorial Government participate actively in the choice of location in the Yukon?" And, three, "What is the formula used by the responsible authority which provides a list of priorities if any, reference location?" And, Part 4, "Are there any plans presently in progress to provide a television outlet in the electoral district of Carmacks-Kluane Lake, and if not, why not?" And, question number four, "To what point have plans been laid to provide additional school grades of instruction at the high school level for pupils resident along the north Alaska Highway to the Alaska boundary?" Thank you, Mr. Speaker.

Mr. Livesey resumes the Chair.

Mr. Speaker: May we proceed to Public Bills and Orders? What is your pleasure?

Mr. Shaw: Mr. Speaker, I would move that Mr. Speaker do now leave the Chair and Council resolve itself in Committee of the Whole to discuss Bills, Sessional Papers and Motions.

Mr. Chamberlist: I'll second the motion, Mr. Speaker.

Mr. Speaker: Order, please. Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, that Mr. Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bills, Sessional Papers and Motions. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION  
CARRIED

MOTION CARRIED

Mr. Speaker: The Honourable Member for Watson Lake will please take the Chair in Committee.

Mr. Taylor takes the Chair.

Mr. Chairman: In light of the fact that Mr. Courtney is not available to talk with us about air facilities as indicated this morning, we will continue with Bill No. 9, the Motor Vehicles Ordinance, at this time. Have you anything further on section 16? I believe this related to a new section 35 and there is to be a change here. Is this correct? BILL #9

Mr. Legal Adviser: I don't think so, Mr. Chairman, but I would like to say that to correct something, and a wrong impression I may have given that last time this Bill was being discussed, on making detailed inquiries about the operation of section 25 of the Ordinance, which is on page 3 of the Bill, I find that there is a distinction made between the enforcement of the law relating to operators' licences as opposed to registration of vehicles. The interpretation which is given to the present section 25 as is, is that where a person comes into the Territory, he does not have to take out an operator's licence here until he has been here for three months. In other words, a person who moves up here to take up residence and obtain employment does not have to take out an operator's licence, and that sometime in the past, instructions to the R.C.M.P. have been given to this affect. Now, it is different with regard to the plates for the car itself. Once you come up here and commence to reside here as opposed to being a tourist, then you must immediately take out this licence, but if you come up as a tourist, then under this particular section you are a temporary person in the sense of being a tourist. You don't have to comply until that provision ceases. With an operator's licence, we don't apply that distinction. We just say, when he's up here three months, he must take out a licence.

Mr. Chamberlist: Mr. Chairman, am I to understand from Mr. Legal Adviser, Mr. Chairman, that he proposes to leave section 16 of this Bill as is without alteration?

Mr. Legal Adviser: As I understood it, Mr. Chairman, any proposed alteration will be to take care of the temporary nature of a person coming up.

Mr. Chamberlist: No, sir. I'll go over this briefly again. The way this reads, unless otherwise permitted in this Ordinance, no person shall allow his motor vehicle to be driven by any person who has not been issued ... and these are the key words in there ... who has not been issued an operator's licence under this Ordinance. They are the key words, that where a licence has not been issued, then a person cannot allow his vehicle to be driven. Now, if this read ... who has not a valid operator's licence under this Ordinance, I think it would be satisfactory, but when we use the words, has not been issued, this means it has to be issued.

Mr. Legal Adviser: Yes, Mr. Chairman, if that's the point that is taken, I'm quite willing to change it.

Mr. Shaw: If the Province of British Columbia gives a person a permit, is that not issued? Just as a matter of a question ...

Mr. Chamberlist: Not as used under this Ordinance. See what I'm getting at?

Mr. Chairman: Is the Chair to understand that there will be some change made in this section?

BILL #9 Mr. Legal Adviser: Yes, we'll make the change, Mr. Chairman.

Mr. Chairman: Alright. The next section is section 17. (Reads subsection (1) of section 17 of Bill No. 9)

Mr. Chamberlist: Well, a question, you see here again, has been issued. When it said, issued to another person, it should be issued in the name of another person. For instance, if I take ... if I send somebody to go and pick up my licence, the licence is issued to that person. Now, I'm not just picking holes in this, but this is the difference.

Mr. Chairman: I'll just declare a short recess at this point in time.

RECESS

RECESS

Mr. Chamberlist: I think that now is the time to get this real clear. If it says, issued in the name of another person ...

Mr. Legal Adviser: I couldn't accept that exact change, Mr. Chairman, I think it would have to read in respect of another person.

Mr. Chairman: Clear? Order, please.

Mr. Livesey: Mr. Chairman, what precisely is the difference between the name of another person and in respect of another person? Surely the name of another person is the item which is the most important thing in the issuing of a licence.

Mr. Chamberlist: Mr. Chairman, I think what was wanted there was Mr. Legal Adviser, he wanted to correct it, not this Member of Council.

Mr. Legal Adviser: An operator's licence is not issued in the name of a person at all in that sense. It was the wrong expression to use. You don't issue a thing in the name of a person. It's issued, if anybody, it's in the name of the person, it's the Registrar himself. It's a question of subject as opposed to object.

Mr. Chamberlist: Oh yes, I'll grant that. That's right.

Mr. Chairman: (Reads subsection (2) of section 17 of Bill No. 9)

Mr. Livesey: There you go again, Mr. Chairman. Whose licence is it. Here he says right here under section 17, his operator's licence. Now, this surely isn't the Commissioner's operator's licence. This is the licence of the person who purchased it, and if you go to purchase something and if you don't purchase it in your name, whose name should you purchase it in?

Mr. Legal Adviser: It's one thing to purchase it in your own name, and it's another thing to be issued in your name. There's a difference.

Mr. Chamberlist: I agreed, but these words here, licence to be used or possessed by another person; when you say possessed, in somebody's possession? If I gave somebody my licence to hold, they've got it in their possession, he's liable for prosecution because it's possessed?

Mr. Legal Adviser: This is a very, very difficult subject. There has been a decision, several decisions, reached in the House of Lords on this particular point. The question would be whether you

possess the licence animus furandi so to speak. The particular decision that I am referring to was where a person in England was found in possession of dangerous drugs in a car. The case they made was that they had had a passenger who put a parcel in the glove compartment. So, from a technical point of view, and using English, the owner of the car had possession of the package of drugs, but he said that this person left a package in the glove compartment, he didn't tell me what it was, so, in a technical sense, although I possessed it, I'm not guilty of the crime of possessing dangerous drugs because I must have knowledge to do it. This argument was accepted in the House of Lords, and the majority sitting in the House of Lords, because it was a split decision, was that in order to possess something, a person must know in fact that he possesses it. So, a plant by a policeman for instance, of slipping something into your pocket in the police station, might in one sense be said to be possession and therefore make you subject to the dangers of the penalties. But, it would not be true possession in his heart. Animus furandi is the desire in your soul to commit a criminal offence.

Mr. Chamberlist: Mr. Chairman, this may well be. I haven't got to that stage or that particular interpretation in the law dictionary. I'll look it up. But, I'm concerned with, if I gave my pocketbook to my wife, and I said to my wife, "My driving licence, or operator's licence and chauffeur's licence is in that pocketbook". Now, she knows that she is in possession of my driving licence because I told her this. Now, this section says, no person shall allow his operator's licence to be used or possessed by another person". So, I've allowed my operator's licence to be possessed by my wife so technically there is an offence being committed here. Well, that's ridiculous. Let's pull it out. I mean, what's the point of having laws that, you know ...

Mr. Legal Adviser: Mr. Chairman, it's not ridiculous at all. Operators' licences are commonly used and possessed by people for wrongful purposes. It's a method of getting credit. It's a method of identification. We don't want the drivers' licences, which has become a form of internal passport in Canada to be misused.

Mr. Chamberlist: Mr. Chairman, why can't we say no person shall allow his operator's licence to be used or to have been obtained unlawfully. I mean, you know, then you have a law which is clear. Here you say, possess, there's a penalty for possessing it by another person. As Mr. Legal Adviser, Mr. Chairman, has already explained that if they know they've got it in their possession, it's an offence. I have told my wife that she can have ... that she can hold onto my pocketbook and my driving licence is in there, so, because she knows that she's got it in possession, as Mr. Legal Adviser said, then she's guilty of an offence. Why have laws like that? You know, it becomes ludicrous to the extreme. Why not say clearly what we intend, and we intend that if the licence ... if somebody else's licence is used or if I gave my licence to somebody else so that they can use my car or drive another car, or the person obtained a licence by thief or by finding, you know, and didn't turn it over, then, of course, it would be unlawful. So, why not say so. It's been obtained by an unlawful method, but why leave it in a limbo as those particular few words are.

Mr. Legal Adviser: Mr. Chairman, it's put there for a purpose, and it's not the purpose of the Council Chamber to explore the intimacies of the Honourable Member's marriage. But, if one person, husband or not, gives another person his driver's licence and says, "there is my pocketbook with my driver's licence in it", this is the offence we're trying to stop.

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Mr. Chamberlist: I've done that a hundred times because I trust my wife. I say, "here, take care of my pocketbook". That's ridiculous.

Mr. Chairman: Order, please. One at a time here. Councillor Gordon.

Mrs. Gordon: This creates a real problem though. This is the one where you go back to the man who works at mining and he's on steady day shift. The only way he can get his licence is to give it to his friend to go thirty miles away and apply for the new one. He's got the new driver's licence, and he's also got the old one. He's guilty of an offence.

Mr. Legal Adviser: If you can come up with some other solution to this, fine, but you see, what we're trying to stop is, we're trying to stop the very thing that the Councillor mentioned that a person gives somebody a pocketbook with his driver's licence in it and allows that person to possess it. Then, the other person can use it. When they're stopped in traffic ... this is an everyday happening, I'm not saying in Whitehorse, but all over Canada, that a person whose licence is suspended borrows his friend's licence and then when he's stopped there's no endorsement on it, he's got a clean licence, and he actually has a licence. This is what we're trying to stop. Now, we're trying to go back further than this. We're trying to get the person who has the clean driver's licence and make it an offence for him to allow the other person to use it. This is what we're trying to stop. These words may be a trifle broad, but I would suggest that there must be some formula of words in subsection (2) of section 38 to make it a criminal offence to give another person their driver's licence or to permit them to use it say for wrongful purposes or for something like that. As I say, provided that the section will be fairly wide, I'm quite prepared to attempt a formula in drafting which would limit it so that a wife would not be committing an offence if she happens to have her husband's driving licence in her pocket.

Mr. McKinnon: Mr. Chairman, the two biggest abuses that I know of in the field of driver's licence are one, the matter of a suspended driver getting his friend's driver's licence to be able to drive and secondly, the use of a driver's licence as identification to get into places that serve liquor by underaged persons. Now, in both instances, I agree, that the person who has the identification and the person who gave it to them should be prosecuted because they are attempting to help somebody commit an unlawful act, but the other instance, where you give somebody your licence to go down to the Registrar's Office to be able to renew it, and that person, by having possession of your licence, is liable to prosecution, just becomes a ridiculous situation. I'm positive that it can be drafted to resolve this difficulty.

Mr. Legal Adviser: I think we should be able to. The wit of man should enable us to draft something.

Mr. Chairman: Anything further on this section? (Reads section 18 of Bill No. 9)

Mr. Chamberlist: Mr. Chairman, could we ... is disqualified or prohibited from driving a motor vehicle for any reason ... you see, the way this is written, Mr. Chairman, Mr. Legal Adviser will probably notice, from driving a motor vehicle by reason of a suspension or cancellation of his licence, but for no other reason. Now, you know you have, in various areas, a medical examination requirement, and you haven't covered this particular requirement in there. I think it should read, from driving a motor vehicle for any reason.

This gives you the expanded area, because otherwise you're just limited to the two areas, suspension or cancellation, and for no other purpose.

Mr. Legal Adviser: The point is well taken, Mr. Chairman, there are quite a few reasons if you examine as to why a person may be disqualified or prohibited from driving a motor vehicle. His insurance might have been cancelled, his car may not have been licenced for the particular period, or if he has a car which comes up longer than a certain period in the Territory, he might be disqualified from driving a motor vehicle, at least that particular motor vehicle. So, I'll re-examine this and see if I can come up with something.

Mr. Dumas: Mr. Chairman, maybe I could just point out that because his insurance is cancelled doesn't mean that he can't drive a car, it just means that he can't drive a specific car, but if it's somebody else's, it's okay.

Mr. Chairman: (Reads section 19 of Bill No. 9)

Mr. Livesey: Can anyone explain to me what the bottom of an automobile is?

Mr. Legal Adviser: We haven't made much of a change here in defining bottom. We have merely used the word bottom in counter distinction to the word top. So, I just think to answer the question truthfully, bottom is the opposite to top.

Mr. Chamberlist: Now, I'm telling you, I'm clear. I know what you're getting at.

Mr. Legal Adviser: We're in some difficulties because we could have used what is a common word, we could have used rear in the place in question, but rear means back and not bottom.

Mr. Chamberlist: Mr. Chairman, I think I've just seen what the Honourable Member for Carmacks-Kluane has raised. The wheels are part of the vehicle. Does it mean on the wheels, or do we mean, or it should say the bottom of the body of the vehicle. You're not clarifying its form. Oh, as near as practicable ... well, this would suffice really.

Mr. Livesey: Mr. Chairman, it doesn't mean anything of the kind. When you're talking about a vehicle, you're not talking about bottoms, tops, fronts or anything else. It's a simple thing to place signal lamps on the lower rear frame of the automobile. I see no reason for talking about putting it on the bottom. Now, if that's on the bottom, it could be underneath. The trouble is, we're dealing with people here, Mr. Chairman, who draft Ordinances that are not in everyday raw contact with the mechanics of the world but are in everyday contact with words. Now, it doesn't necessarily mean to say that the words co-ordinate with the raw contact with life and this is what comes up in a situation like this. Bottoms of automobiles are something that I've never heard of before but I've heard of other things with bottoms but not automobiles, and it seems to me that if you start talking about the mechanics of the vehicle, you'll get something which is more explicit than trying to waft the thing with words such as bottom.

Mr. Shaw: Mr. Chairman, if you put the bottom of the bed of the vehicle, I think everybody will understand that. That is the practical way of putting it down. That's the top of the frame, and that is where it is desired to be, I think, the bottom of the bed of the frame.

Mr. Chairman: At this time, I think I'll declare Committee in recess for coffee.

RECESS

RECESS

Monday, November 24, 1969  
11:00 A.M.

Mr. Chairman: At this time we will call Committee back to order. Have you anything further on Section 19?  
Councillor Livesey.

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Mr. Livesey: In addition to what I said a few minutes before we called recess, Mr. Chairman, the way I read Section 19, the two rear signal lamps can be placed anywhere by the owner of the truck or automobile or whatever kind of vehicle it may be, one on top of another or diagonally or any other way. I would think, for the sake of safety, it would be far better to say that the rear signal lamp should be one on either side, or at least separated by the width of the vehicle so that the actual need for clearance is shown to a driver driving behind. That is the point that I would like to bring to the attention of the Committee, Mr. Chairman.

Mr. Legal Adviser: I think the point is well taken. It might be better to read "a pair of signal lamps shall be placed one on either side of the rear as near the top as practicable, and one pair of signal lamps on either side of the rear as near the bottom as practicable."

All: Agreed.

Mr. Chairman: The next Section is Section 20 (Reads Section 20 of Bill No. 19). I believe the \$500.00 will have to be spelt out here rather than written. Councillor Dumas.

Mr. Dumas: Mr. Chairman, it is now common business practice not to print or type out the figure when you are referring to figures in business communications, letters and so forth. It used to be that you had to type it out but I cannot understand why this becomes necessary, or is it necessary.

Mr. Legal Adviser: The question, Mr. Chairman, is of style. The style of this Ordinance has been to, and most of our other Ordinances, has been to fill out the figures in full in words, and we anticipate it.

Mr. Chairman: Councillor McKinnon:

Mr. McKinnon: Mr. Chairman, this section is inoperable and senseless unless one receptacle could be provided along all of the Yukon Highways at intervals of not more than fifty or one hundred miles and secondly; that the Highways are all signed and signed properly and signed with big, huge glaring signs that this is in effect and people will be prosecuted to the full extent of the law, litterbugs, and unless the Administration is willing to do these two things, then they are just playing games, passing this type of legislation.

Some Members: I agree!

Mr. McKinnon: Mr. Chairman, I think that we should have the concurrence and a promise from the Commissioner that such is going to be done before we pass this legislation as it is just all icing around the cake and no substance at all.

Mr. Chamberlist: Further, Mr. Chairman, this is a penalty placed in where an operator of a vehicle would be throwing rubbish, etc. out of the vehicle because.....it goes on to say and in

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Mr. Chamberlist continues...  
addition his Operator's Licence may be suspended. Now, it might be somebody sitting in the back seat who opens the window and throws out a bottle. Well, how can you suspend that driver's licence; it might be a child of five?

Mr. Dumas: Mr. Chairman, I think and I may be wrong, but it would be covered in the first part of that where it says, or causes to be deposited. I think the driver of a vehicle is responsible for the people in his vehicle.

Mr. Legal Adviser: Mr. Chairman, I don't think it's of earth-shaking importance. The normal person who is doing this in fact is a driver. I don't anticipate the passengers will have their operator's licences taken away but it certainly adds teeth to the section if he can have his licence suspended for throwing beer bottles out on the Highway. But the passenger, especially if he has not got a driver's licence, well then the Section is inoperative as far as the five-year old child is concerned because he hasn't got an operator's licence. But I cannot give an undertaking on behalf of the Commissioner but I do know that it certainly is the intention to post signs along the Highway. The reason of the Section is that it was intended in fact, this summer immediately gone, to post signs along the Highway but when we investigated the Section under which the signs will be posted, we found that the only prohibition was against dangerous litter so it will be misleading to say that litter depositors will be fined.

Mr. Chamberlist: Mr. Chairman, I tend to agree with Councillor McKinnon. How can you enforce something like this when there are no receptacles there? People who are travelling through and might be having their lunches; what are they going to do, keep their vehicles loaded up with chicken and meat bones and soup that they want to throw out, until they go to the next place?

Mr. Chairman: Councillor Chamberlist, would you take the Chair a moment, please?

Mr. Taylor: Mr. Chairman, I think if you have driven the Highway lately you will find that there are litter barrels along the Highway at much shorter intervals than one hundred miles. I think they are maintained by the Yukon Forest Services, and they are signed and say "Litter Barrels Half a Mile", I believe it is, and you drive the half mile and there is the barrel and I believe when they do their campground maintenance they also empty the barrel. Yes, on the Alaska Highway, right. I don't know if there are any on the Territorial roads, I have not seen any on the Territorial roads but there are barrels on the Alaska Highway. I agree that there should be some control about litter because it is getting pretty rough. It is bad for two reasons, one is that these bottles that are thrown into the bush are causing forest fires, they are just like a little magnifying glass, and I think the coke bottle is the worst offender; and the other is it absolutely destroys the looks of the Highway and the right-of-ways. I tend to agree with Councillor McKinnon as well that, what is the point of putting teeth into this Ordinance if we are not in a position (a) to enforce it and (b) to get out and make sure that these litter barrels and these signs are posted. I don't think that this Section should come into force until such time as these facilities are provided, because it is just unworkable.

Mr. Chairman: Councillor Gordon.

Mrs. Gordon: Mr. Chairman, in conjunction with what the Member from Watson Lake has said, there is also an area that is not covered by the service provided by the Yukon Forestry; they do not operate these campgrounds in the wintertime and consequently I am quite sure the litter barrels that are in use in the summer months are not in use during the winter and let's face it; we need this service not, twelve months a year because litter on the Highway after snowfall, in effect, is as dangerous as it is any other time during the year.

Mr. Taylor: I will resume the Chair, Mr. Chamberlist, thank you.

Mr. Chairman: Councillor Chamberlist.

Mr. Chamberlist: There is another point that I see in this section only deals with littering upon, along or adjacent to a Highway, so if somebody is on the beach, say at Marsh Lake, which is perhaps a half a mile in, you can't say it is upon, along or adjacent to the Highway. So we have't protected this area of littering. We have only dealt with, in this particular section, this areas which are upon, along or adjacent to a Highway. Now, I don't know whether we need to expand this particular section, in any event, or we need some further legislation to take in those areas outside. Perhaps we should have an Anti-Litter Ordinance, specifically to deal with littering in all areas of the Territory, and take it out of here completely.

Mr. Chairman: Councillor Livesey.

Mr. Livesey: There is another point, too, and if we want to talk about people littering the Highways, I would like to raise a question and ask, where is the Government of the Yukon Territory dumping all this litter, all the litter barrels. This is what I would like to ask because if I want to start putting marks on maps in the Yukon, I'm afraid that the Government is just as guilty of littering the Yukon as anybody else. That's a sore spot, there is no question about that. There is no point in pointing to the public and doing the same job ourselves. We most certainly do need a Litter Ordinance. If that's what we need, let's have it and let's keep it out of here.

Mr. Dumas: I agree but I must say that in some areas the Government has in fact dug holes in the ground well off the Highways, specifically for the purposes of dumping this litter. Marsh Lake is one that I can think of. There is a garbage dump well back into the woods. There is a large hole that will be filled after the garbage has filled up the hole. It will be covered up again. Alternately, up on the Haines Highway there is nothing of that sort and the result is that the Lodges that are operating there have to just go back into the bush and dump on top of the ground, and it creates one heck of a mess.

Mr. Legal Adviser: Mr. Chairman, I should say that this Section here does not just casually appear. The best brains of the Administration has spent hours and hours and hours trying to devise some method of dealing with this particular problem and the debates have been fast and furious as to how this should be dealt with because you are in an area over which

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Mr. Legal Adviser continues...  
the Territorial Government as such has only a limited form of control. They have no control over navigable waters, they have no control over installations which are being used by the Federal Government Departments, they have no control over the operation, for instance, of Resources. There are problems, for instance, of people causing dump and destroying streams and rivers on prospecting trips. There are the difficulties of prospectors or oil prospectors, people who come in on helicopters and airplane trips landing on lakes who do tremendous damage to the lakes by leaking oil drums lying around the place and destroying some of the best fishing lakes in the Yukon. We are at a loss as to how to control this without spending vast amounts of money doing this and we have at the moment instituted proceedings under the Public Health Regulations against one or two firms which were guilty of littering in this manner, but it is a very expensive business because it means a helicopter trip, it means bring people in to give evidence and what have you, and each individual prosecution is quite a job and it may fail from lack of evidence. Now, this particular Section comes in because this is a small first step, in a sense, and we are placing it here and limiting it to Highways because proper drafting limits the subject over which you are exercising control to what people expect to find in that particular Ordinance. There is no question that this might be a good thing to deal with a beach at Marsh Lake or other beaches, but this is not the Ordinance under which to do it. It happens that this Ordinance opened up, this is one of the purposes of opening up the Ordinance, and being placed in here. Maybe it is a good thing to have other Ordinances but certainly I have exercised a lot of time trying to work out how you should do this. You cannot just say, and we would be attacked violently if we did, pass an Anti-Litter Ordinance to say "no person shall throw any litter in the Yukon Territory". This would be a completely unenforceable Ordinance. The Public Health Regulations set out to control a special form of litter which is dangerous to health as a rule, around camps, Trailer Camps and such like places. But basically, the method of enforcing the Public Health Ordinance is by a system of inspections and they inspect private property and they control the person who owns the property, they forbid him from doing certain things; he can't fill up the yard at the back of his house or lodge with rubbish, they prevent him doing this. Now, the Federal Government, or the Crown, controls a vast amount of land in the Yukon, and it should be possible to control this by making regulations applicable to public lands which is basically within the power of the Federal Government. Each time you deal with one of these subjects, it is a thorny subject in itself.

Mr. Chairman: Councillor McKinnon:

Mr. McKinnon: Mr. Chairman, I would like to ask the Legal Adviser a question. On any other area except lands and subdivisions within the metropolitan area of Whitehorse that have been turned over to the administration of the Territorial Government, has the Yukon Territorial Government any control whatsoever in the field of anti-litter over any other lands in the Yukon Territory except those that have been turned over...

Mr. Legal Adviser: I think it would be safe to say that the Territorial Government, that is by Government I mean Commissioner in Council, the legislation making power, I think

Mr. Legal Adviser continues...

we have got control over the depositing of litter anywhere in the Territory, but when it comes to a particular aspect over which the Federal Government, as such, has a reserve power, one of these being resources, it is an area into which you proceed with caution; for instance, I think it would be fair to say that when a mine sets up in business and proceeds to manufacture its raw materials and thereby creates a pollution problem, I think we could make legislation saying exactly how the slug, or slurry and so on is to be treated, but in practise, because the Federal Government is dealing with these people either by way of grants or loans, they make it a condition of the deal, as they did, I think, in the case of the Anvil Mining Corporation that the effluent coming from the process will be controlled and treated in a certain way, and if they don't do that, then the grant stops or the mining concession stops. This is a much better form of control than doing it by raw legislation, but once it reaches navigable waters, then we have lost jurisdiction. For instance, I think it was the Mayor of Whitehorse who pointed out at a meeting, I was reading in a public press, in the City of Whitehorse there are a tremendous number of legislative authorities between the municipal government our Government and the Federal Government. The control of the Yukon River as such, where it is navigable, comes under the control of the Federal Government. The Department of Transport have got certain authorities to create airdromes and they have in fact created airdromes by definition, in the Schwatka Lake. So, his suggestion was that we need an overall legislative body of some sort, of controlling body which would be set up by necessary legislative powers by the Federal Government, this Government, the Municipal Government and be given whatever possible legislative powers can be given to it, whether or not a similar type of body would exist in the provinces. Now this is only part of the power in dealing with the Whitehorse area itself, in an area say ten miles around but the practical nature of the thing means that going out into the bush, when a helicopter pilot or an airplane pilot touches down at a mining operation in progress, they can do serious damage especially as you go north by leaving some oil behind in certain places, and this really comes under the control of the Federal Government because they are the licencing authority and they have very strict regulations controlling the operation of these drillers, miners and prospectors; enforcement is a different thing. How that can be done I don't know but whether they are actually doing it themselves or not. But recently a set of Oil and Gas Regulations were published, which were made under the applicable Federal Law and I saw them and one of the Honourable Members pointed out to me that they have an officer there called a Conservation Officer and it's his duty to see that these regulations are carried out. The Clerk has just pointed out that the Fishery people are under the control of the Federal Government, and still are. They attempt to stop pollution in their way and they did call the attention of the Government to prospective pollution that is being caused by the oil from the American pipeline passing through Haines Junction. This is a real problem and as I say, that the best heads of administration have been puzzling their heads over, what I mean is that we have had several internal meetings to try and get ideas and to see, and we have had experts coming down from Ottawa to advise us on this to see how we can do something. Now, the Federal Water Act, or the Northern Water Act has not yet been published, it may contain something, I don't know. But whatever thing is lacking, I have no doubt whatsoever that this Administration is willing to do everything but in the last resort it means we would have to spend money

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Mr. Legal Adviser continues....  
doing it.

Mr. McKinnon: Mr. Chairman, if I could follow this up. The Legal Adviser says that this is an area where we should move with caution. I couldn't disagree with you more on this. The twelve years I have been in the Yukon I have seen this place turning into a pig-pen, particularly around the Whitehorse area. There isn't a lake within driving distance of Whitehorse that isn't an abomination and it's surroundings right now, it's a pig-pen. The litter around there is frightening and I say that if we have control of this in the Yukon, then we have to act and we have to act now, and I am going to bring by Motion tomorrow, a Motion saying that an Anti-Litter Ordinance covering all the lands in the Yukon Territory should be brought, at the earliest, before this Council. I didn't even believe up to this time that we had power to control litter over all the Crown lands and if we have, then we are shirking a very grave responsibility in not enforcing the most stringent encompass of regulations to stop turning the Yukon Territory into one vast pig-pen, and we are going to get at it right away!

Some Members: Agreed!

Mr. Chairman: Councillor Dumas.

Mr. Dumas: Mr. Chairman, I agree wholeheartedly with those sentiments. I wonder if we shouldn't leave this in for now until we get an Anti-Litter Ordinance and possibly just add in the words, in line four where it says "along or adjacent to a highway" if we couldn't put in "or other public lands".

Mr. Legal Adviser: With respect Mr. Chairman, I would urge caution because I know, I don't want to use ....but if those words were in I would have to advise the Commissioner not to assent to the Bill. I know it sounds simple, because the basic principle of drafting is that the public is entitled to know where the law they are dealing with is to be found. So, if you attempt, in a Motor Vehicles Ordinance, which is dealing with Motor Vehicles, and dealing with Highways, to draft that section, it becomes a catch-all trap section and I would be quite prepared to bring in a special Bill and say "no person shall litter anywhere", in that sense, rather than put it in in this, it would be a trap section and I would have to advise the Commissioner. Don't take this as being a threat to the House but we just attempt to limit our subject to what we are dealing with.

Mr. Dumas: Well, then, I am sure all Members of Council would go along with the Legal Adviser bringing in such a Bill as he mentioned, possibly before the end of this Session.

Mr. Chairman: Councillor Livesey.

Mr. Livesey: Mr. Chairman, that's just the point. It is two different subjects; two different subjects between a Motor Vehicles Ordinance and a Litter Ordinance. This is a different subject and I think we are cluttering the Motor Vehicles Ordinance with putting this kind of thing in there. I think it should be taken out and what perhaps Mr. Legal Adviser could do would be to set up a Litter Ordinance and put it in that which he feels we can operate at the present moment and cover in the Litter Ordinance; if we can't operate something there is no point in putting it in there, but at

Mr. Livesey continues...  
least we would be setting up a separate department and we should take it right out of the Motor Vehicles Ordinance.

Mr. Chairman: Councillor Chamberlist, would you take the Chair a moment please?

Mr. Taylor: Well, Mr. Chairman, I have to take a different line from the Legal Adviser too; I can't agree with him. We are given, under the Yukon Act, the rights to legislate in certain fields. Now, if we have property and civil rights in the Territory, I don't know if you can construe a civil right to mean, or one of those civil rights to mean the right of people in the Territory to live in a pollution-free society. If that be a right, then certainly we are granted that privilege under the Act. But however, we do have the right under the terms of the Motor Vehicles Ordinance to effect pollution control along our Highways and I think you will also agree that we have the right under the Game Ordinance to produce pollution control as it would affect game in many areas. Now, we can't do this in respect of Fisheries, but we can in Game, and if game drinks the water that the fish swim in, and it is polluted, you could be picky about it—you could extend it to any area in the Territory. So, under the Game Act we can do it, under the Motor Vehicles Act we can do it and indeed I think that we generally have the right anyway because it states that all matters, generally all matters of local or private nature in the Territory; well, pollution is a matter of local concern, for sure, in the Territory and I really do think we have the right to affect, I would not call it a Litter Ordinance, I would call it a Pollution Control Ordinance, of which litter would form a part. Now, another point is that if we can put this in the Game Ordinance, we can put it in the Motor Vehicles Ordinance, as you know here, when we dealt with welfare we started bringing these Ordinances altogether. Well why not start fresh with a brand new Ordinance, a brand new Bill; why scatter this thing all through the Ordinances. Another point is that eventually some day, if we fight long and hard enough, as we have in the past, we will have Conservation Officers in the Yukon Territory. These Conservation Officers will no doubt be the people who will effect control and work on this Ordinance so I just rise to point this out; that in my opinion and certainly in the opinion of other Members, Mr. Chairman, we have every legislative right, by virtue of the Yukon Act, to effect pollution control.

Mr. Chairman: Councillor Dumas.

Mr. Dumas: Mr. Chairman, I think we are all in agreement about this problem of litter but I think we would be making a bad mistake if we took out this Section now. It is the one thing we have; like the Honourable Member from Dawson mentioned; a bird in the hand is worth two in the bush. Let us leave it there until we get the Anti-Litter Ordinance.

Some Members: Agreed.

Mr. Taylor: Councillor Chamberlist, I will resume the Chair. Councillor Shaw, or Councillor Chamberlist, pardon me.

Mr. Chamberlist: Mr. Chairman, I think I brought up this point earlier because this Section just restricts to upon and adjacent to the Highway but what we must also say here and it isn't clear, we know what "upon the Highway" is, we

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Mr. Chamberlist continues...

know know "along the Highway", what is adjacent to the Highway, how far away from the Highway? This can be interpreted, well, I haven't dropped my garbage on the Highway, along the Highway or adjacent to the Highway; I have walked 200 yards into the bush and I left my garbage there, you see, and I am not breaching the Ordinance because I haven't put the garbage in any of those three places. Now what we are really doing here is saying to people, don't leave it upon the Highway, don't leave your garbage out on the Highway, don't leave it adjacent to the Highway, but take it in the bush, or take it near a lake or somewhere like that. We are condoning the very thing that we don't want to condone simply by leaving it as is. Now, I have expressed my views on that but I have just noted that there was no reference to amending 123 (3) of the existing Ordinance. I would have thought that while sections, subsections (1) and (2) were being considered, subsection (3) should have been considered. No. 3 at present reads "a person who removes a wrecked or damaged vehicle from a highway shall remove glass or other injurious substance or thing dropped upon the Highway from the vehicle". Now, this only deals with a person who removes the wrecked or damaged vehicle; but there is nothing to stop a person from taking a wrecked or damaged vehicle and dumping it on the Highway. This appears to me quite strange. We talk about no person shall litter the Highway and then we don't say anything about a vehicle that has been abandoned on the Highway. The new subsections (1) and (2) just refer to glass, nails, tacks, wire or scraps of metal or any rubbish, refuse, waste or other. And the very thing that is happening on many parts of the Alaska Highway and the Territorial Highways as well, is that all dump bodies, all bodies, old vehicles in fact where maybe the transmission is gone and maybe worth about \$50.00 before the transmission went, people just getting out of the car and leaving it there and taking off! I have seen this just outside the town, here on the Two Mile Hill, half a dozen times; people just leave it and there is no legislation to prevent them from doing it, but if somebody goes to try and move it, dump it, and the glass falls out, then they commit an offence but it is alright for someone to leave it there, it is ludicrous. We have to take another look at that right now and correct that. I wonder if Mr. Legal Adviser, Mr. Chairman, could comment on that particular point.

Mr. Legal Adviser: Oh, the Section would be an admirable section. I have nothing against it at all but the House must remember, Mr. Chairman, when we are dealing with an Ordinance as long and comprehensive as the Motor Vehicles Ordinance is, it runs into 166 sections and this is a suggestion that you amend a section, you amend a section. It does not necessarily that you do a consolidation of the whole Ordinance every time, so all we were attempting to do was to bring this into a section to deal with Litter, the question of a horse of another color altogether. It is a question of people who abandon wrecks on highways. It was not discussed, it was not in our minds at the time this was being drafted. Now the Honourable Member is suggesting this and if all the Honourable Members are to produce ideas once a Bill is opened up, then we go on and on with midnight amendments of various sorts which may not be possible to do with full examination in the time allotted. Now, I have nothing against ideas coming forward; we welcome them and in relation to this particular Ordinance, a lot of useful ideas have been produced, but when they are a new piece of

Mr. Legal Adviser continues... legislation, a new facet off which we have got to go, it means that we have then got to bring in a new section dealing with a new thought and there is no time allowed for consultation with a particular authority that may be involved one way or another. Now, to go back to what one of the Honourable Members said about the power of the Council to make the legislation; I agree with the Honourable Member. If we pass a comprehensive Pollution Control Ordinance in the Territory, it would be in our legislative power, but at the Council is also aware, one of the Ministers, Federal Ministers announced that he is bringing in a comprehensive Bill on this subject to the House and we haven't seen the terms of it yet so, as an administration, we hesitate to get involved in this particular session of the Council, with a widespread Bill controlling pollution and controlling litter because this is a form of pollution. Just at the present we are awaiting the Federal Legislation to see what is in it and to see whether it will meet the case of the evils mentioned in debate; if it doesn't then we can produce our own Bill, but that is not to say, and I would like to point out that the Administration has not been sitting idly by, doing nothing, allowing this to happen. They have not been enforcing the laws they have but, I can speak for the last three or four months; we have this position under very active examination but we are awaiting what is going to happen in Ottawa. Now, so far as...the Bill was only announced this Session as going to the House; we haven't seen the terms of it. Until we see the terms of it I hesitate to get involved in producing another draft of an anti-pollution bill.

Mr. Chairman: Councillor Shaw.

Mr. Shaw: Mr. Chairman, we are on the Motor Vehicles Ordinance, and it seems like we have got into an anti-litter and anti-pollution discussion. The Honourable Member from Whitehorse North is, I believe, on the eve of producing a resolution to Council that we do have an Anti-Litter Ordinance created. I think we should go a little further, I think it should be anti-litter and anti-pollution although it would appear to me that pollution might come under the Federal Government's control more than it would the Territorial Government and if so, I think we should be the people who get moving on that particular thing. Litter definitely is a local, of a local nature and I think there is no reason why we cannot immediately, at this session, produce an Anti-Litter Ordinance or an Anti-Litter and Pollution Ordinance and just work on the litter part of it because this part is the one which is obviously right at the moment and we can control. Now, I am not going to get into any of the articles on that, these are just my comments Mr. Chairman. We start up with an anti-litter deal which is very simple to construct. I am sure that the learned Legal Adviser will agree that anti-litter is not too difficult to construct or to draft. When we get into anti-pollution where we get into various Federal government deals, that may be a little difficult but I think that at the same time this Ordinance should be anti-litter and anti-pollution so that later on amendments can be added to it to fit in with the Federal scheme because if you wait for them you might have to wait for a long time. So, that could be fitted in at a later date.

Mr. Chamberlist: Mr. Chairman, there is one very important

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Mr. Chamberlist continues...  
point I would like to make here and that is, when Mr. Legal Adviser says, Mr. Chairman, that the brains of the Administration have been working so diligently to try and bring this up, I think they would have done far better, Mr. Chairman, if they had come along and used some of the brains of the Territorial Council who offered, kindly, to help them, because we understand the lack of capabilities they have.. to recognize changes in legislation that only Elected Members of Council can..... Now, Mr. Chairman, Mr. Legal Adviser, the last time he spoke, very cleverly, I would suggest, attempted to remove the points that I had made with reference to damaged vehicles being left on the Highway and then going back again on the litter. Now, Mr. Chairman, nobody could suggest to me that these brainy people from the Administration, without having to turn a page in the Motor Vehicles Ordinance, could see that subsection (3) required changes. We have lots of brains in the administration but somehow or other they don't seem to get together to recognize what is really needed. Their eyes appear to stop at a certain level; they don't see beyond what they have seen themselves; they don't see beyond the areas that are necessary, and having a look at just subsection (1) and subsection (2) of 123, and not going to subsection (3) which, at the moment I opened the book and looked at it, I should have seen it earlier on other occasions but I have not specifically looked at that particular section, and when you see the legislation only penalizes the person that removes a wrecked or damaged vehicle, but says nothing about the pprson that abandons the wrecked or damaged vehicle, well obviously there is need for a change there. Mr. Chairman, I would strongly suggest that the - especially now that Mr. Commissioner is in the House, that he take note of this type of thing and he should help his own Administration by pleading for the help of the Territorial Council and their brains to put these administrative and legislative matters straight for them.

Mr. Chairman: Mr. Livesey.

Mr. Livesey: While we are still talking about this litter section, Mr. Chairman, at one point in relation to our own rules, I would like to bring to the attention of the Committee, and that is, if we leave this litter section in the Motor Vehicles Ordinance and pass the Bill with it in there, we certainly won't be able to amend it at this Session, and we might give the Administration an out for not bringing in a Litter Ordinance which is what we appear to need. I would like to bring that to the attention of the members of the Committee so that we don't make the mistake of blocking our own operations through the use of our own rules and we certainly, once we agree to it at this Session, we certainly won't be able to amend it at this Session. That cuts it right out so I hope that Committee bears this in mind before they totally absorb the idea that it should be left in the Motor Vehicles Ordinance.

Mr. Chairman: I think, in view of the time, we will declare the Committee in recess until two o'clock this afternoon.

RECESS

Mr. Chairman: At this time we will call Committee back to order and we are still discussing Bill No. 9. We are at section 20.

Mr. Chamberlist: Do I understand Mr. Chairman, that we are going to check on the abandoned cars.

Mr. Legal Adviser: Yes, we may add a subsection to it.

Mr. Chairman: Is it also being considered from the discussion this morning that possibly this might form a part of another Ordinance?

Mr. Legal Adviser: Not this particular section, Mr. Chairman, but I understand that Mr. Hunt is coming to the Territory and I think that he is going to talk to the Members not as a Council, but to the Members about possible legislation not a thousand miles removed from the subject at hand.

Mr. Livesey: Do I understand it then that we are not going to get litter legislation or pollution legislation at all at this session? Just as soon as we bring this in and agree to it it is out.

Mr. Shaw: We received this morning a revised page two, before we leave this, are we going to go through this page two?

Mr. Chairman: You put in a motion tomorrow then. Section 21.  
(reads section 21)

Mr. Livesey: I know that reasonable is not a very easy word to define, but for instance if a man has left home and he is a hundred miles away from home, what, perhaps the Legal Adviser could explain to Council just how this man is going to reasonably get his licence or his insurance card within the meaning of section 158.

Mr. Legal Adviser: I think that could safely be left to the Court to interpret. In some jurisdictions there is a matter where this type of section is very tightly drawn. I can remember being involved in a case and one of the charges was failing to produce a driver's licence and the particular person was camped beside a lake and he drove in his car a distance of about 200 yards from his hut to the beach with his family and on the way he was asked for his driver's licence. He was dressed in a pair of bathing trunks and had nothing on him except his trunks and a towel over his shoulder and he was fined 25 dollars for failing to produce his driver's licence. This is just an example as to how tightly this type of section can be drawn. In Great Britain, the method is where any person is driving a car is asked for his driver's licence or his insurance certificate, he must produce it to a police station office of his choice within a period of so many days, I have forgotten the number of days, I think it is seven days or ten days. It is a question of choice. There is a method which is chosen in the Yukon as to the more permissive method whereby, when you are asked for your driver's licence, you don't actually have to produce it there and then to the officer because you may have inadvertently left your wallet at home, but you must do it within a reasonable time. Reasonable is what the Court would find it. Where I presume a person on a journey of 100 miles would say I will produce it when I get home. They come into Whitehorse, do their bit of business and then go home and produce it.

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Mr. Chamberlist: Firstly I think we should get an explanation at this time from Mr. Legal Adviser, what is meant by physical control? When we say "Every person who while in actual physical control of a motor vehicle fails to produce his operator's licence or his motor vehicle liability insurance card", now that means one or the other, Should it not be necessary if it is a driver owner for him to produce both of them. Should it not read "and his motor vehicle insurance" because right now the way it reads all he has to do is to produce his operator's licence or his motor vehicle licence. He doesn't have to produce both of them. There is no requirement upon him to produce both of them. The policeman says, "have you got your motor vehicle licence or your insurance", so he says "yes, here is my insurance card", but according to this he is not being asked or compelled to produce both of them and I think the word should perhaps be corrected from "or" to "and".

Mr. Legal Adviser: With respect, Mr. Chairman, no. The Honorable Member has a point but if the charge is being laid, the charge would be that he failed to produce his operator's licence. There would be a second charge that he failed to produce his motor vehicle insurance card. This is a disjunctive conjunction, which is separating a complete phrase one from the other, so that it could read, every person who while in actual physical control of a motor vehicle fails to produce his operator's licence within a reasonable time after being asked to do so by an officer and so on and it saves writing out the two sections in full. If it was to read "and" that would be a conjunctive word and then he would have to produce both within reasonable time, so for the purpose of bringing proceedings against a person, it is preferable and more accurate to use a disjunctive conjunction than a conjunctive conjunction in this particular place.

Mr. Chamberlist: I would like to follow this point. If a policeman came to me and said to me, "Have you your operator's licence?" I would say "yes, here is my operator's licence" and when afterwards he said to me "have you your motor vehicle certificate", I would say, "I'm sorry, I'm claiming under section 158 that I only have to produce one of them and this is what I am producing". I'm sure it would be held by a court that I have complied with section 158 of the Ordinance, that when I am requested by a police officer to produce one or the other and this is what I had done. Now, if he says to me produce either one of them, I would produce either one of them. If he said to me to produce both of them I would have said "you can't ask me to produce both of them because the Ordinance doesn't compel me to produce both of them, it only compels me to produce one or the other".

Mr. Legal Adviser: Not when it is preceded by the word "fails" which is a negative type word.

Mr. Chamberlist: Well, that is a negative type thinking completely. With respect Mr. Chairman, the language is clear.

Mr. Legal Adviser: It doesn't appear to be very clear.

Mr. Chamberlist: Well, perhaps not to Mr. Legal Adviser. He had something to do with putting it together, but to me it is clear. You have an alternative. The person is given the alternative of producing (a) or (b). I wonder if any Member of Committee here reading that can read anything else into it than what is actually there, because every person who while in actual physical control of a motor vehicle fails to produce his operator's licence or his motor vehicle liability insurance card within a reasonable time after being asked to do so. Now the only thing that the officer

Mr. Chamberlist cont:

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can ask him to do, is to produce one or the other. The officer can't go beyond that. He would be going out of his jurisdiction to go beyond that. This is what my submission is and I'm sure that the Court can be sold on that very easily, very easily indeed. I think it is a simple matter to say and/or, you know and oblique or, would give the questioning officer the right to ask for both of them or one of them, but as it is now he can only ask for one of them and he would only get one from me, I tell you that Mr. Chairman. That is all he would get, just what the Ordinance says. We must be thinking of terms in making this clear to people to understand and it is not clear to the man in the street when there is a definite alternative offered to him. The alternative is right there and I wonder why sometimes, Mr. Legal Adviser can't see his own errors and put them right, without going into a long question about it.

Mr. Legal Adviser: What I'm finally thinking of is the end result in a Court when you are bringing a charge. If it is drafted in this manner then you can bring a charge and make it stick, either in the case of a man who fails to produce his operator's licence or a man who fails to produce his motor vehicle liability insurance card. So far as the words "while in actual control of a vehicle" those particular words are necessary because a person is in control of a motor car although they are not sitting in the car. It would leave the ordinary citizen open to be asked at any time by a police officer, "give me your driver's licence", because if your car is in the street, you are in control of it. This is to make the point clear that the person must be acutally physically in the car and in control of it in a physical way in order to have the liability created of producing his car on demand of a police officer. This is why.

Mr. Chamberlist: I'll come back to that other point of "or" later, but right now let's talk about this physical control. Somebody is sitting in the back seat, somebody, I'm not saying the driver, anybody is sitting in the back seat, is it suggested that because he is in the back seat, he is in physical control of that vehicle? He may not even be the driver or the owner or never driven a vehicle in his life, but he is just in there. Is he in physical control, this is what I want an explanation of, what is meant by being in physical control? Is he the driver, is he the person that has been driving, is he the owner, is he the person who has the ignition keys in his possession? And as I heard from one of my colleagues, supposing there is a guy in the back seat holding a gun at the head of the driver, who is in physical control, the driver or the guy who is holding the gun in the back seat.

Mr. Legal Adviser: These questions are extremely difficult and all a draftman can do is attempt to do the best he can. There was a case at the end of the summer which went to the House of Lords, and in that case, a driver was stopped by the police because his rear light was not functioning correctly, so a conversation insued between the police officer and the driver in the course of which the police officer smelt alcohol on the man's breath and asked him to take a breathalizer test. He took it and failed and was arrested and charged with the usual offense. When it got to the House of Lords, the House of Lords held that at the time when he took the test, he was not the driver of the car, he had been the driver, but when the car came to a halt, he was then a man who happened to be sitting in the front seat, so this meant that it was necessary to make an amendment to the British law or otherwise

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they would have been forced to move along with a helicopter immediately above a car and to lean down with a tube and give a test to the person while he was driving the car. This case was actually decided and I had the report for awhile in my office, but I lent it to so many people to read that I never got it back. It is not easy to draw up a section in short form, certainly not one that will be understood by the common man. We made an attempt earlier by referring to the bottom of the rear of the vehicle and obviously our attempts were found upon by the House for using common language. This is the best we can do. I think that if the section ...

Mr. Chamberlist: What does it mean?

Mr. Legal Adviser: It means that a person who is in actual physical control, a person who is normally sitting in the driver's seat who has access to the ignition key and to turn it on or turn it off. The person is alone in the car and has recently driven the car and climbed into the back seat, I think that the Court would probably find that he is in physical control of the car notwithstanding the fact that he happened to be in the back seat. If he threw the key away, as has happened on occasions, he might not then in some ways be in physical control of the car, but at least he could prevent the ingress and egress of other people, so he would be in some measure in physical control of the car. It is very hard for me to anticipate the vagaries of the judicial mind and the arguments that might be put up by the defense counsel to a particular charge. All we can do is to try to put it into as simple language as we can to cover the normal case and when any successful defense is made by a person who fails to produce his liability card and his operator's licence and there is a finding of the Court on it then we can come back and ask, but this section is clearly stood the test of time in its first draft, all we are adding is that he must produce his operator's licence or his motor vehicle liability insurance card within reasonable time. I have no particular objection to putting in the word and except that it just doesn't seem to me to be right.

Mr. Livesey: Mr. Chairman, isn't this a question of credibility? For instance, if an inebriate isn't in control of himself, how can it be then said that he is in control of an automobile?

Mr. Chamberlist: I need to continue stressing the points that I have made because with respect to Mr. Legal Adviser, Mr. Chairman, there was quite a long speech in his part in attempting to explain but he didn't still give an explanation of being in physical control, because on the basis of what he has said if my vehicle has been stationary for three-quarters of an hour, my wife comes out from shopping, she sees my vehicle, she goes into the vehicle and she sits in there waiting for me, who is in physical control of that vehicle? The wheels happen to ... it might happen to be on an incline, who is in control of the vehicle.

Mr. Legal Adviser: I would think that your wife would, that the Honorable Members wife would be. I don't think that a person can get out of their liability to produce their papers merely by moving from the driver's seat to the rear seat. This is ... if this was allowed to happen, then it would be impossible to ask a person ... as soon as they saw the flashing red light ahead of them, they would just move out of the driver's seat and just sit there and park the car and when the officer walked down the road, he would say, "I'm not in physical control of the car. I think it is a question of proving to the Court who was in physical control of the car and it is a matter for Court with their immanent sense to find ... the

Mr. Legal Adviser cont:

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Honorable Member appears to think that the **Courts are** not common sensible. This is what Courts aim to be and what they normally succeed in being. It's a question of belief. I defended a case in Alberta where a driver got out of a car and went for help and a drunken passenger, because the car was parked on a bank, slid into the driver's seat, because as the Honorable Member suggested a drunken man is not in control of himself and he was found guilty of being in physical control of the car while under the influence of alcohol.

Mr. Chamberlist: I gave an example and Mr. Legal Adviser has said, Mr. Chairman, that my wife would be in control of the vehicle and she would then be asked to produce a licence, but my wife doesn't drive. She has never driven so she wouldn't be in physical control, she's asked to produce a licence or a motor vehicle insurance thing and she doesn't know anything about cars. All she has done is gone and sat in the car to wait for her husband, so she is in physical control of it. What stupidity are we getting into here? We must be able to say in legislation what is termed by physical control. Is it the operator of the vehicle that we are talking about? It should be, I would suggest, that every person who operates a vehicle or every person who has an operator's licence while in physical control of the vehicle, but this gives you such an area that anybody could be in physical control under those particular terms of reference that Mr. Legal Adviser has made reference to. Surely in the process of bringing forward legislation we have a responsibility to see that legislation is brought for the protection of innocent people who Mr. Legal Adviser now wants us to bring in to a position so that they too can become quasi criminals by not being able to drive a car having ..... They just go into a car and then to go and he doesn't feel well so he leans on the car. A policeman could come along and say "Where is your driver's licence?" He's touching the car, he's in control of it. "Where's your driving licence". We cannot, I don't feel, go ahead and grant to the administration the power to place people in the Territory, whether they own the car, drive the car, have an operator's licence, just simply for the fact that they are touching the car or they are sitting in the back seat, or seating in the front seat next to the driver's seat, or in fact sitting there behind the driver's seat. One of our children ... we might be taking him for a ride when we are going out shopping and you take the keys with you but the kid, he moves along side and releases the brake, which is easily done, children do that, and the policeman says "you're in control of the car". This is becoming ludicrous. Protect ... the control of the car must be by a person who has an operator's licence while in physical control of the vehicle. You cannot bring everybody into control of the vehicle. Also, Mr. Chairman, and I think Members of Council should look very closely at this catch-all phrase "or". Now I say it is clear that there is an alternative offered to any person who is questioned by a policeman, and the alternative is for him to produce (A) an operator's licence, (B) a motor vehicle licence. He may have an operator's licence and he may not have a motor vehicle licence because he doesn't own one, so he wouldn't have a motor vehicle licence. He might be driving a company vehicle and most companies keep their registration certificates with them. There might be a driver from a company in Beaver Creek. The driver happens to be down at Watson Lake. What is a reasonable time? 48 hours? Tomorrow morning? A week? Who is to decide which is reasonable, the policeman? He should speak it out, say it out. The Court can't decide whether it is reasonable or not. What are we going to do, charge the person for it? And then put him through the trouble of going before the Court? And the Court can say then

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"Well you didn't give this man reasonable time", but in the meantime the man had to come all the way from Beaver Creek to Whitehorse to face a charge here and nobody is going to pay his cost for coming down here and his time is going to be taken up by two or three days and he is going to plead not guilty, so you know what is going to happen. They are going to set another trial date, a month hence, so it is going to cost the fella about \$500.00 just to say that he didn't have a reasonable time because he just happened to be at the top of the highway here and he is on his way down to Edmonton and he is going to be there for about three or four days because he is taking a load through and three or four days coming back. This ... the legislation must speak. For far too long we are having regulations doing the talking instead of the legislation and we must say quite clearly what we intend it to mean. I would be quite satisfied if you say you will leave that or in there, but I want to make it clear that this gives the driver an alternative and with reference and I say again to the physical control that is not clear and we should clearly state what we mean or who it is meant to control and that is, I would say the operator, and I would suggest, Mr. Chairman, that Mr. Legal Adviser, take a look at this section in the same manner that he has to take a look at some of the others and come up with the right answer again.

Mr. Legal Adviser: I would find it really difficult to do very much with this section because it is an attempt to give the police the authority to say to somebody who appears to be in charge of the car "where is your driver's licence" and the people you are aiming at are the people who have not got a driver's licence or who have not got a motor vehicle liability insurance card. The reason they ask for these insurance cards is because they think, they have reason to think that the person does not possess one. You ask him for it and he says he doesn't have it with him, so he says, "Where will you produce it or when", the person nominates a time and a place into the future and a note is made on the record that he has got to produce it or explain why and be on a charge. It is not easy to prove the negative that a person has not got an operator's licence. If the person may have an operator's licence from another state or another province, so when you stop a person and say "Where is your driver's licence" and he hasn't got it with him, you may be put in the awkward position of having to check up on every province in Canada before you get an answer. Now so far as actual physical control of that motor vehicle is concerned, I would have a certain amount of sympathy with a non-driver, such as a child or a wife who doesn't drive who is physical control who is asked for their driver's licence and cannot produce it, but the evil is ... that we are going against is the person who has not got the licence and who may slip into a different seat or the back seat trying to evade the questions that the police officer has made to him. It is not an unreasonable request. We cannot say any person who being an operator because the car has come to a standstill. We would need a shaft of other sections into this simple section to try to make it much wider. We would have to define the time when he ceased driving and where he was in control and so forth. The reason actual physical control is here is in protection of people. It is not intended to be a catch-all section. It is for the protection of people who are not with their cars and who might otherwise be asked for their driver's licence. People produce all kinds of defences under these circumstances, there was a case in England there last year, where a man was charged with being drunk in charge of a car and he claimed that he was not driving the car, his dog was and he went to Court in defense of the grounds that he had taught his dog how to drive. This happened in County Louds in 1968 and he went to Court and he showed the magistrate

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how he taught the dog how to drive. There was a case in Australia where a man taught a monkey how to drive a tractor and the same thing arose. He was charged with something or other that happened to the tractor and he proved that he had taught this monkey how to drive a tractor. The tractor did thousands of acres of plowing for him. The position to my innocent mind, is that the section appears to be reasonable as it is. It is necessary to have the "or" and not the "and" because you want to have a disjunctive so you can have either of two charges or both charges to lay against a person at the same time. If you put in the word "and", then the offence is failing to produce his operator's licence and his motor vehicle liability card, he has got to produce them both. If he produces one, then you can't charge him with the joint offence.

Mr. Chamberlist: I didn't say that. Mr. Chairman with respect, I didn't say that, I said and/or.

Mr. Legal Adviser: Well, I misunderstood the Honorable Member. It's completely against the Canada good draftsmanship to use and/or. This is a thing for legal documents....

Mr. McKinnon: It's so easy to understand.

Mr. Legal Adviser: No it's not. It means too many different things. It is too vague, and/or. I have never seen it used in this place or heard it being used in this place.

Mr. Shaw: I've listened to disjunctive, disjointed, conjunctive until I don't know just about where I'm situated, but I have two questions Mr. Chairman. I would like to ask one at a time. The first question would be directed to the learned Legal Adviser, that what objections would he have, it does appear to me that the "or" sitting by itself does indicate perhaps and it could be argued both ways I suppose, that you only have to produce one, however, what objects would he have to putting in between "or" and "his" the "fails to produce", would that jigger up his draftsmanship? Would it mean another meaning? Would he not feel that that would serve the purpose and satisfy all concerned and be most explicit as far as the people would be concerned.

Mr. Legal Adviser: That would be perfectly acceptable Mr. Chairman. That wouldn't change the meaning of anything.

Mr. Shaw: Now my second question, Mr. Chairman, is on this area of time in relation to what is called a reasonable time to produce a ... either one of these tickets. Now, it seems obvious that it seems necessary that a person does produce the documents. I mean the police must have the power to get these particular documents to find out whether a man is qualified to be on the highway. Now in this particular section, it states that in a reasonable time. Now, myself, I would feel that we must accept what the judge or the magistrate would consider a reasonable time under the circumstances which were prevailing him at the particular time. If that is not accepted, we must accept the judge is a moron or he shouldn't be sitting where he is sitting if he can't define what is a reasonable time within the confines of that particular case. If I may proceed. I would like to direct this question to the quasi Legal Adviser on my left, the Honorable Member from Whitehorse East, on what alternative he would propose that would be reasonable to supplant reasonable when you are asking for something to be done.

Mr. Chamberlist: I am suggesting that a licence in a municipal area where there are police detachments available or where the persons home is could be given 72 hours, a fixed time. Where it is

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understood that a person is leaving the Territory for any reason, that it be one week, that there should be a fixed time stated as to what is meant by a reasonable time.

Mr. Shaw: I think that in a person appearing before a judge, that when you fix the time for Joe Blow and you fix the time for John Brown, you fix the time for Harry Murphy or whatever it may be, that what might be reasonable in the circumstances for one person, may not be reasonable in the other on account that he may have a multitude of things that would prevent him, therefore, reasonable what the judge will consider at the time with all the circumstances on hand, there is nothing that could be more reasonable for the defendant in my estimation. If we state certain hours from certain places, there may be a lot of other circumstances which a person could well plead for not being able to comply with this certain thing and if it is reasonable and the judge is reasonable, we assume they are reasonable at times I have great doubts, but we have to accept it this way, then he does have the chance to put forth his case, but if you state 3 days, he may not be able to get away for 3 days or 72 hours or whatever it may be.

Mr. Chamberlist: Mr. Chairman, with respect can I follow this particular thing up. The earlier suggestion that the Honorable Member from Dawson made was a very worth while suggestion and I congratulate him. It shows that every now and again he does something to the good. This particular point that he has made now is not dealing with the times that person comes before the Court and the judge says, what a reasonable time is, it is when the policeman says to him, when the policeman asks for his licence and asks him to produce it in a reasonable time, the time must be allocated to the policeman as to what the reasonable time is because supposing the policeman orders him or summonses him before the Court once he gets to the Court, then the magistrate he can say "Well this man wasn't given a reasonable time" dismisses the thing, in the mean time the person has been put to the trouble of perhaps coming from the Honorable Members riding in Dawson, had to come back here where he was picked up and charged with it. This is the thing that I am concerned about, is the person himself, not the magistrate after the person is there. Consideration must be given to them. They should say what it is.

Mr. Shaw: Mr. Chairman, if I should be picked up in Whitehorse as I was heading for Dawson, it states that I must produce my liability car, so the policeman picks me up, stops me and says "where is your licence" and I say "I'm sorry, I haven't got it with me" for various reasons, so when I get to Dawson city, if it were me, I would immediately get my driver's licence, I would go to the post office and register it and send it down here and say "here is my driver's licence, now would you please return it as soon as possible because I might have to produce it in the interim". That is reasonable. That is complying with the law and that doesn't entail any trip for me here. I would ask the Legal Adviser if I am correct in my assumption?

Mr. Legal Adviser: I don't know exactly how it is carried out. I was asked on one occasion to produce my registration or something and I made the unfortunate mistake of sending my wife into the detachment with the registration and I was charged because I personally failed to produce it. It struck me as being odd. This was in Whitehorse. We can't control the actions of individual officers, but I would far prefer to see the word reasonable in there because this gives some flexibility. If we are asked to fix a

Mr. Legal Adviser cont.:

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definite time we might pick three days. If we were to ask the Officer in Command in any police detachment in Canada what time to put in there, he would say an hour, or a day, 24 hours, other people would say three days, but then when you get to the position where a person might be leaving out through the Watson Lake check point going through to British Columbia and not have the thing with him so you might say 14 days or 10 days. I have no hard and fast objection of taking the word reasonable time out and substituting a measured time instead, but I would ask that the Members fix it and fix themselves if they wish to what they think is a reasonable time, if they want it measured.

Mr. Livesey: Mr. Chairman, after listening to this long dissertation on motor vehicle hypothesis, I'd like to ask a more down to earth question in relation to section 21, where it says "Every person who while in actual physical control of a motor vehicle fails to produce his operator's licence or his motor vehicle liability insurance card" now supposing .....

Mr. Chamberlist: That is what we have been talking about.

Mr. Livesey: Let me get to the question Mr. Chairman. In relation to this section, surely we have heard a lot about equality of legislation and we hear a lot about honest assumption and we hear a lot about equality between individuals, how about an American driver coming up here in the summer time who isn't required to have a liability insurance card at all, so the officer asks him on the highway for his liability insurance card and not only that he is driving a vehicle that doesn't have a licence, he is driving it on a permit with no plates and don't tell me this doesn't happen. I see lots of them going up the highway in the summer time. This is the situation. Now if this law means anything, surely it means the same to all people, not just to a select few who happen to live in the Yukon. If this is going to amount to anything, surely ... every driver of every automobile in the Yukon should be obliged to be placed in the same position as anyone else and I would like to know just precisely how any officer is going to enforce this section when you are talking to a man who not only hasn't got any plates, he is driving on a permit and as far as his state is concerned, he doesn't have to have a liability insurance card. What is the answer to that one, Mr. Chairman?

Mr. Legal Adviser: There is no exception so far as I know in the Motor Vehicle Ordinance, contrary to what I know is the general view, there is no exception so far as I know of the obligation of every person to be insured when they are driving on the roads in the Territory. There is an exception for registration, a reciprocal section which says that where a person is driving a vehicle and is a tourist, who is driving a car which is registered in another province or in a state in the United States of America. He is excepted from the necessity to register his car, but there is no exception so far as I know to the liability to carry insurance.

Mr. Chamberlist: I'm not going to accept this as it is written because all we have had is an argument from Mr. Legal Adviser, Mr. Chairman, without any recommendations from him as to what he will do to satisfy the objection that has been raised. He hasn't clarified that there is an alternate in there for a person to produce only a motor vehicle registration certificate of insurance or an operator's licence. I would want to know from him, whether he agrees or not, that a person can in fact refuse to supply a

BILL #9 Mr. Chamberlist cont:

member of the R.C.M.P. with both the operator's licence and the insurance certificate, if he refuses to do so and what would the policeman do? Would the policeman arrest him for refusing to produce two when there is a clearly laid out section of the Ordinance that says that you must produce one or the other. This is the point that I am making. I want to make sure that nobody gets placed in jeopardy for accepting what he believes is the Ordinance as it is writ. Mr. Legal Adviser hasn't come up with anything solid on that point. Where the language is clear and the language is clear, effect must be given to the Ordinance and the effect is quite simple, that the person only needs to supply one or the other to a questioning officer, notwithstanding what ... that Mr. Legal Adviser may think well, that the policeman asked for it so you had better give him both otherwise he is going to be charged, but I say, he might be charged, but it comes before the Court and the Court says "No, that is perfectly right", but in the meantime the man has been hauled into Court, he has had two days set for a trial because he pleaded not guilty, he has had another day set for it, he might have three or four adjournments, he would have to keep on coming back into town all because the administration is being stubborn and not recognizing the fact that all he has to do is follow the request that has been suggested by the Honorable Member from Dawson, which I agree with and I am sure the other Members would agree with. In the physical control side of it, I would suggest that anybody that is in a vehicle is in physical control notwithstanding that he or she has nothing to do with the actual operating of the vehicle has become ludicrous.

Mr. Legal Adviser: I thought I had made it clear that I am quite agreeable to amend the section to read, "Every person who while in actual physical control of a motor vehicle fails to produce his operator's licence or fails to produce his motor vehicle liability insurance card within a reasonable time" and so on. In other words I thought I had adopted the suggestion of the Honorable Member for Dawson and made this clear.

Mr. Chamberlist: Yes but we said "or" again. Does this mean that production of both of them is required. Now if you answer yes to that, this is what I'm concerned about, but it should be clear to everybody that this is what you request, that the administration will request that an officer will be able to say, "I want to see both your operator's licence and your motor vehicle's insurance" If the intent is to show that then I'm content, if it does not show that and gives an alternative, it must be corrected.

Mr. Legal Adviser: As the section reads, a person will commit an offence who does either of two things. If he fails to produce his operator's licence, he's committed an offence. If he fails to produce his motor vehicle liability insurance card, he has committed an offence, as it is written now and one can charge it. If we insert the word and in the place suggested by the Honorable Member then, if he produces one or the other he has not committed an offence, in other words, the meaning which is attempting to be attached to it by the Honorable Member is completely the opposite, completely the opposite of what the section actually means and its intent and effect in Court.

Mr. Chamberlist: When Mr. Legal Adviser tells me that by using the word and that they both have to be produced at the same time.

Mr. Legal Adviser: I didn't say that.

Mr. Chamberlist: Well if you say and ... if Mr. Legal Adviser says it should be and Mr. Chairman, it means that you have to do two things. You have to produce the operator's licence and the motor vehicle insurance. If he puts it that way, but Mr. Legal Adviser is opposed to using and/or, he says it is bad legislation. He doesn't know anywhere else that it is drafted like that, okay, so why don't we do it. Just because it hasn't been done anywhere else. We know what we are talking about if it is put in that way. BILL #9

Mr. Legal Adviser: The sentence says it is an offence to fail to do something. Both are an offence. Any person who fails to produce an operator's licence is guilty of an offence or if he fails to produce his motor vehicles licence ....

Mr. Chamberlist: I did not say that.

Mr. Legal Adviser: Well, as I read it it does. I'm sorry but this argument could go on and on. The sentence correctly read would be Every person commits an offence who and who is a relative clause, governed in that sense by the subject every person. Then the who which in effect is a pronoun, an interrogative pronoun, has an adverbial clause attached to it, while in actual physical control of a motor vehicle. Then this person, if he fails to produce his operator's licence, he is guilty of an offence. He is also guilty of another offence, a separate offence and there is where it is conjunctive, if he fails to produce his liability insurance card. This is the way the whole of the criminal code of Canada is drafted, section after section and it has been drafted that way since 1902, that is long before my time. This is the method which is dictated as drafting by Mr. Dregger, the leading draftsman in Canada in this generation. It is drafted this way in every province of Canada, every state of the American Union, every .....

Mr. Chamberlist: I would ask each member to read this exactly as it is now, without the abbreviations and stops and pauses that Mr. Legal Adviser has placed on it. Without adding any punctuation to it, that Mr. Legal Adviser tries to put in this. Every person who while in actual physical control of a motor vehicle fails to produce his operator's licence or his motor vehicle liability insurance card within a reasonable time etcetera, or fails one or the other. It doesn't say fails to do .. to produce them both.

Mrs. Gordon: We just amended it to read that way.

Mr. Chamberlist: He hasn't amended it yet. I followed word for word what Mr. Legal Adviser said, Mr. Chairman.

Mrs. Gordon: Yes it has been amended.

Mr. Livesey: I don't think the Legal Adviser has certainly not satisfied me with regard to the question of motor vehicle liability insurance. How many provinces have we got in Canada that have compulsory motor vehicle licence insurance. Two is it or are we three now. Quebec, Yukon and British Columbia and Saskatchewan. How about those who don't have it. How is he going to be forced... how can he commit an offence when he comes from a province in Canada where they don't have to have this motor vehicle insurance compulsory, who doesn't have it and he doesn't have it when he left home, he doesn't have to have it, is he committing an offence when he gets to the Yukon and he still doesn't have it because he is driving through the Yukon. This is a serious question.

Mr. Legal Adviser: Yes, Mr. Chairman, he is committing an offence.

BILL #9 Mrs. Gordon: In the insurance business, Mr. Chairman, I might enlighten the Member from Carmacks-Kluane, where a man who at the time before our insurance was increased to 50,000 in the public liability, if he went to another province where their minimum was 50,000 and he was only carrying 32,000, his vehicle could be impounded until such time as he obtained that 50,000 liability.

Mr. Shaw: Without going on this thing and on and on for another few hours I wonder if the Legal Adviser would accept another addition to this, to read as follows: Every person who while in actual physical control of a motor vehicle fails to produce his operator's licence or fails to produce his motor vehicle liability insurance card or both, this or both put in there, within a reasonable time etcetera, I'm sure that might obviate possibly the objections of the Honorable Member on my left, and serve the purpose and not do any harm.

Mr. Legal Adviser: Put it this way, I appreciate the suggestion of the Honorable Member and in terms I would be willing to accept the word both, but I'm just a little bit nervous that both tying them in together might tie them both into the reasonable time and you might be able to produce one before the other. If the Honorable Member... to run the drafting correctly we would have to say, fails to produce both his operator's licence and his motor vehicles licence within a reasonable time, but we then have to tie it differently. I .. As it is written, it is written linked in ... I mean I don't mind breaking it into two separate sections. One of them reading fails to produce his operator's licence, he commits an offence, the second subsection, fails to produce his motor vehicle liability insurance, create a separate offence. I don't mind doing it that way, but we cannot use the word and where it was suggested by the Honorable Member for Whitehorse East, so I would certainly put in fails to produce a second time, but this drafting is a technical exercise, and I merely do the style and reproducing the English of very many people before me. If we start putting ands and if's and so on in at the wrong place, then we would make a mess of our legislation and we would have to come back, we would lose a case and we would have to come back in the next session and get it again.

Mr. Chamberlist: I don't think we can make a mess of our legislation it's in a mess already. Some of these things have become ludicrous for the simple reason that the administration just doesn't want to recognize where there is a straight forward amendment necessary. This is referred to as, is committing an offence yet there are two things that are required, motor vehicle insurance and an operator's licence. Two things, yet if after being asked to do so by an officer is guilty of an offence. Now is it an offence not to do two things? Mr. Chairman, Mr. Legal Adviser knows full well that you cannot have in a charge, two offences in one charge and this would be the result because you would have two offences I submit in the one charge and I say I can't follow that and agree with that unless it would be clearly defined that it is one or the other or both.

Mr. Legal Adviser: It is the same kind of language as the section in the Criminal Code dealing with any person who drives a motor car while being incapable of driving by reason of impairment from drink or drug. You don't charge a person with being impaired by reason of drink or drugs, you pick because you must go disjunctively and pick them one at a time so if the person fails to produce his operator's licence and he also fails to produce his motor vehicle liability insurance card there would be two separate counts on the

Mr. Legal Adviser cont:

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information. Count one, failing to produce your driver's licence and count two, failing to produce your motor vehicle liability insurance card, but if you put and and in at this point as suggested by the Honorable Member, then the offence is this, that failing to produce your licence and your card. So you have not committed the offence ... to commit the offence you would have to fail to produce both. To produce one would not be enough as an offence, to produce the other would not be enough. The officer may only want one of them but you may produce the other, that's where the and comes in. The and will knock you out for the whole meaning and make it very difficult to draft the charge when you come to Court. As it is written, it is quite easy to draft the charge and there... all our Labour Standards use or in these places. Sometimes it is paragraphed differently. It could have been written out, Every person who while in actual physical control of a motor vehicle fails and then drop down a piece and put in (a) fails to produce his operator's licence or (b) fails to produce his motor vehicle liability insurance card, and then you go to the left hand side of the paragraph here and say, is guilty of an offence and so and so. This is one way of writing it by putting in the (a) and the (b), but the (a) and the (b) don't change the meaning of the words. We sometimes give lists of ten or fifteen or twenty things and then put at the end of it, is guilty of an offence, but once you go past two you paragraph it out to make it easy for people to understand, but some people can understand without the (a) and the (b) and some people need the (a) and the (b) to understand it. I can understand it this way.

Mr. Chamberlist: Mr. Chairman, Mr. Legal Adviser just fell into his own trap, because the explanation that he just gave me is the very thing that I agree should be there, because it is when (a) produce an operator's licence or (b) is guilty of an offence, so he is guilty of an offence if he fails to produce either one of them, right I agree. When he is asked, you see now if the policeman said, "have you got your motor vehicle insurance with you" and he says "yes" and he hands him his motor vehicle insurance certificate and then if the policeman says, "have you got your operator's licence" fine, but if the policeman doesn't ask, no go. This is the point that I am making, the very point that you have explained. That if it is (a) or (b) it is an offence, but it doesn't become an offence if the policeman doesn't ask for the two things. You see this is producing .....

Mr. Legal Adviser: I can rewrite this putting in an (a) and (b) if it helps the Honorable Member.

Mr. McKinnon: I agree with this. Let's get it to a head right now if the Honorable Member wishes to draft an amendment and a motion, let's vote on it and find out. I have no trouble at all accepting Mr. Legal Adviser's explanation of the Ordinance. I have no trouble with the section at all and if some Honorable Members disagree with the meaning of it, I think a motion should be brought before Committee and introduced and let's vote on it. It's as simple as that. We are just going around, we have wasted three-quarters of an hour going around on this one "or" or "and" and it is just a waste of time. If we don't agree with it, let's get a motion before the Committee and vote on it and go on to something else.

Mr. Chairman: I think this is a good idea. Maybe you gentlemen over coffee can resolve your problem. I'll declare Committee a brief recess.

RECESS

RECESS

Monday, November 24, 1969.

3:30 O'clock p.m.

Mr. Chairman: At this time I will call Committee to order.

BILL #9

Mr. McKinnon: Mr. Chairman, I am clear on everything in Section No. 21 except this physical control of a motor vehicle and this gives me some problems. I think the Honorable Member from Whitehorse East mentioned a very good case implied where his wife who is incapable or doesn't know how to drive, was sitting with her parcels in the car and the car went out of control and banged into something and the police officer came up and said "you are the physical control of the car, show me your driver's permit" and she doesn't have one yet so she would be charged for failing to produce one. I can think of an instance of the same type of circumstances where a fifteen year old boy who would be sitting in the passenger seat of the car and the car at an incline got away and this is a common occurrence, and the police would say "show me your operator's certificate you are in physical control of that car" and he says "I haven't got one because I can't get one until I'm sixteen years of age" and he would be charged with failing to produce a valid operator's permit. Now is it possible to get around this because it could lead to type of situations which I think make the law look rather asinine.

Mr. Legal Adviser: I agree Mr. Chairman. This is a difficulty and you could go right back to base and say if a two year old child happened to be in a bassinet in the rear seat and a person who walked into a shop to buy something, it might be said that a two-year child in some degree is in physical control of the car and would have to have a driver's licence which of course makes nonsense of it. I'm quite willing if any member could come up with some limitation on this business of actual physical control, but then there's got to be reason for limitation, something like that any person who in the opinion of an officer had recently been driving or something like this, I don't know. I have difficulty in accepting this section as it is myself. This wasn't in our mind when we were drafting this section cause we only changed the section or to add in the liability insurance card production. This section has been in the Ordinance for quite a number of years as far as I know. If any member can come up with a suggestion we'll certainly limit it.

Mr. Chamberlist: Mr. Chairman, can't we use every person who while operating a motor vehicle?

Mr. Legal Adviser: While operating doesn't get over the difficulty of not the stationary car so much as the fact when a car has come to rest in an accident, everybody gets in the back seat or takes off or something like that, you want to be able to ask them for their driver's licence, it's a form of finding out for sure what the identity of the people you are dealing with is, that is while in charge might do.

Mr. McKinnon: Mr. Chairman, I wonder if we can leave this for a day or two and have the Members and Legal Adviser think on it and see if we can't come up with a more reasonable clause in this 153?

Mr. Legal Adviser: Well, time doesn't permit you to do so much research but we could have a look through the similar types of sections in the Provinces and see doesn't any Province have the statutes of a better method of expressing what the idea is. I do ask the sympathy of the House to draft from scratch as it were here what is quite a difficult concept to produce in simple language.

BILL 7/9 Mr. Livesey: For guidance Mr. Chairman, I wonder if I can ask the Legal Adviser a question. In very case, isn't the owner of an automobile responsible for that which occurs to it or is created by it as a vehicle or piece of property which is owned by him or her?

Mr. Legal Adviser: Well not entirely Mr. Chairman. This is again a difficult question to answer in a short sentence. There's a presumption in law that any person who is driving a car is driving with the consent of the owner, and therefore they are driving with the consent of the owner they are the agent of the owner, and any civil liability that attaches to negligence or breach of duty by the person operating the car is then assumed to be the liability of the owner. There is a specific exception to this in the case where a car is stolen or taken without the owner's consent, although there's a presumption again that even though a car is taken without the consent of the owner, that the member of the family has an implied consent. There are very difficult conceptions of law in this when accidents occur and the father might deny that he had given any permission to his son or to his wife and there are a lot of cases where when a member of the family takes a car, gets involved in a very bad crash and one such instance I know of, where there was about eight or ten people killed in a bus car accident and the son who was driving the car had obtained the car on the approved and accepted limitation that he and he alone was to drive that car, but the body of the son was found in the back seat with a girl, both of them dead. Now when that went on appeal, the Court of Appeal held that notwithstanding the expressed prohibition that the father had given to stop anyone else to drive the car that it was still capable of the implication that if the person had become ill or become intoxicated, that in such a case it would always be a permission to somebody else to bring into the hospital or to take care of a car and that may have happened in this case and therefore the owner of the car which the father was found liable for the total amount of the accident, which was fourteen deaths and damages to something like two million dollars.

Mr. Chairman: In reference to my last question on Section 62 I find that that interpretation only fits that part, part 4 and I guess we are up in part 8 with Section 158 so that answers my question. Is there anything further at this time on this section? Section 21? (Reads Section 22 of Bill No.9). Clear?

Mr. Legal Adviser: Mr. Chairman, we will require to take out the inverted comments which are placed at the end of the first paragraph.

Mr. Chairman: I've one question on the interpretation of highways on which we have been going throughout, does it cover roads, lanes etc?

Mr. Legal Adviser: It's a very, very broad definition, Mr. Chairman. Highways include any thoroughfare, street, road, trail, parkway and driveway whether privately or publicly owned any part of which the public is ordinarily entitled or permitted to use for passage of vehicles.

Mr. Chamberlist: Why privately owned?

Mr. Legal Adviser: I think this is to follow the famous Safeway case where a person had a crash in a parking lot outside a Safeway store in Winnipeg and it was held that it wasn't a highway.

Mr. Chairman: (Reads Section 23 of Bill No. 9)

BILL #9

Mr. Dumas: Mr. Chairman, the thing I find objectionable here is that there is going to be a record kept of this person being in an accident although they might have not been in any violation of law and this goes on the record and then the insurance agency will phone us and get the record and the insurance rates go up. Now this seems to me entirely unfair to the innocent person involved in an accident.

Mr. Legal Adviser: The use which the insurance companies put the information is an unfair use, but the common form where you register drivers' licences that you keep a record of the driver and the accidents he's involved in because of that, the point of time when the information comes into hand there is no decision as to whether he's at fault or not. There's a two, three car crash on Main Street, eventually it may or my not come to Court but seldom the information coming in as to which driver is deed to be at fault.

Mr. Chamberlist: Well Mr. Chairman, the subsection that is being repealed and the new section taking its place in itself is not subjectionable but the subsection (a) of section 165 which really is the objectionable section. It reads "a record of all motor vehicle accidents in the Territory reported to him or concerned might he procure information that the Registrar shall keep these records", now this is where the objection is. It's alright for the Registrar to keep the records but for him to disclose those records where a person is an innocent person or perhaps no driving conviction at all that the very fact that the accident occurred at \$200 worth of damage, Joe Blow has to have it reported, the Registrar keeps the record there and the insurance company is asked what is the record of this person, it's not really the record of the person, it's the damage of the specific vehicle. I think we should separate the difference between the responsibility of keeping drivers who had convictions listed and keeping accidents of vehicles of owner drivers who have not had the driver conviction. There should be a separation and the only information given to insurance companies is information relative to convictions only, and I would suggest that Mr. Legal Adviser take note of this particular thing. Now is the time to correct this while we're going through this particular Ordinance and have it corrected and amended in such a manner that all Members of Council who are fair-minded people, drivers, know there are many difficulties that can occur when people have premiums pushed up for no logical reason.

Mr. Legal Adviser: Again I have sympathy with the suggestion except it would be a major policy decision of the Government to make, and when it comes to this I think it has to be done after alot of thinking and consideration. Now the insurance companies who formulate their rates not only on the fact that some drivers' convictions are against them but that some are accident prone. They leave their cars in awkward places. There is a variety of reasons why the rates go up. I'm not attempting to defend the policy of insurance companies in raising the rates of drivers' who are involved in accidents which occur not through the fault of the driver concerned. This section is only opened to take out the word "chauffeur and". I agree this makes the section wide open but up to now we have kept a record of every driver's conviction and every accident which a driver has been involved as a public record. If the insurance rate goes up because the driver is innocently involved in an accident and the insurance company attempt to increase the rates, the driver should remonstrate with the insurance company and point out that he had nothing to do with the accident, he was the innocent party, but as of now, we are

BILL #9 Mr. Legal Adviser continues:

committed to a policy to keep to a policy to keep certain types of records so that insurance companies can formulate their rates and to depart from this is something which, as of this moment would be unacceptable to the Administration without consultation with all the parties involved. This policy is formulated with the advice of the Registrar of Motor Vehicles, some of it is by request of members, but the section is open because we are taking out the word "chauffeur and". Now this is asking that a different type of record be kept, that the Registrar of Motor Vehicles should make himself a judgement in his own mind and say "driver A is responsible for the accident, driver B was involved but is not responsible" so without any court decision, without any convictions, without any going to the court at all he's going to strike off one name and leave in the other. Now I couldn't agree that it only be placed only on the Registrar. I would ask you not to change the section as is but to ask that the matter be put back so the question may be discussed with the people more concerned who are drivers', operators', vendors, insurance companies and in particular with insurance companies who find this available from as far as I know every province in Canada. If they cannot get this information, please be warned that the effects might be more worse than giving it because then they must make assumptions in respect of drivers' when they can't get information that people are in fact accident free. It's one thing to say that when a driver's name is down there as to having an accident, his rates go up but other peoples rates go down because they can show they are not involved in an accident. Now this has alot of implications.

Mr. McKinnon: Well Mr. Speaker like it or not, Mr. Legal Adviser is going to listen to the ideas of the elected representatives at this moment. I'm certainly happy to see Mr. Commissioner here because now he will be able to see an example of the executive and the legislative branches of the government working in harmony to change a policy which is wrong and I'll also tell you why it is wrong because I was involved personally and exactly this type of maneuver. It was the first snowfall of the season of last year and the whole north end of the WHTV system went off the air and I was phoned at home and told to come down to the station and get to work to put the thing back on again. I got in the car, came down fourth avenue turning with my signal lights going, my lights all in working condition to turn at 4th and Wood Street and was just waiting for a car to pass the intersection so that I could turn when out of nowhere came a vehicle, struck my car and caused considerable damage to my vehicle. I got out and said look, give me your name, address and I haven't got time to report the accident, I'm in one heck of a hurry, I have to be at work immediately, we'll get together and report to the police as soon as I can get away to do it. We went and worked that morning til it was well after midnight, one in the morning, got the system back on the air, I went down the next morning contacted the person who was in the accident with me, went to the R.C.M.P., reported the accident and was charged for failing to report an accident forthwith. As soon as we got into Court, the accident was to be reported on the prescribed form, there was no prescribed form, the case was thrown out of Court and I thought that that was the end of it. The next thing I knew was that my insurance rates had gone up so I went to my insurance agent and asked why they went up, they showed me the operators record, mine, that they had obtained from the Registrar of Motor Vehicles showing that I had a charge laid against me with failing to report an accident forthwith. It didn't say anything about the results of what had happened in that Court case, that the case had been thrown out of Court, that I wasn't convicted, nothing but the charge, and Mr. Chairman if Mr. Legal Adviser thinks it proper that the Registrar of Motor Vehicles should be giving this information of a charge

Mr. McKinnon continues:

BILL #49

that was laid and later thrown out of Court to the insurance agents in this Yukon, then he certainly doesn't have the wishes of what I would think are the majority of the Members of this Council. I's wrong and it's not the duty of the Registrar's office to provide this type of information if the conviction is there, I say yes, this should to the agent, but when there is a conviction a person that proves absolutely innocent, there's no reason whatsoever that this information would or should be given out from the government offices should be used to increase the insurance rates and any member who would agree to this type of legislation, then he certainly isn't of a like mind as me.

Mr. Dumas: Mr. Chairman, I think that the suggestion that the insurance companies need the names for actuary purposes is wrong. I do believe they need amounts and they can get amounts on how much it's going to cost to pay for all the accidents that happened in the Yukon Territory in 1963 or something on that, they'll probably recalculate their rates from time to time, giving the names out is not necessary for this table that they compile.

Mr. Chamberlist: What amazes me more than anything else is notwithstanding that the Ordinance makes provision for certain records to be kept, that the Registrar without legislative authority can give this information out. Now where does the power come to give this information out. This is the same thing I was referring the other day on another Ordinance when I was told, well it's "confidential", it's for the Registrar, it's as I say twenty other people had information on these things as well. When people are convicted I think it would only be fair to insurance companies to know what conviction a person has so that they can assess whether or not the operator is an extra risk and if the driver is an extra risk well foul ball they've got the right to increase the premiums to make up for the risk and I have no argument with that, but when there is a record check of accidents that people are involved in and there is no conviction, why should the information be given to the insurance companies so that they can squeeze premiums out of other people as well. All we are doing is encouraging inflation in insurance premiums by committing this. Now the Territorial Government are not in partnership with the insurance company, they are to be in partnership with the people of the Territory. I don't care what Mr. Legal Adviser says Mr. Chairman, if you think I am going to let this 165 go through without an amendment, I'm going to be talking for a long time because there's no way, this is a time for this piece of legislation to be hit on the head right now, and it's up to Members of this Committee to show the Administration that we need it, that is a piece of legislation damaging to the people of the Territory, it interferes with them, it let's the insurance companies know that they can squeeze a few extra dollars out of the people. I'm not supporting it, so Mr. Legal Adviser can start real early looking at Section 165 and amend it.

Mr. McKinnon: Mr. Chairman, I agree with the Legal Adviser on the point that we shouldn't act in haste on this and I would be more than willing to allow him some time to give ~~this section~~ serious consideration and see if it can be amended and what I am sure is the wishes of all Members of Council.

Members agree.

Mr. Livesey: Mr. Chairman, since when was a person guilty unless charged and proven. I don't understand how anyone possibly can conceive of charging anything against a person's name for which never was convicted. This is absolute injustice and if we tolerate this type of thing in legislation that's going to be passed by this Committee on this Council, then we ask for all the trouble we can

BILL #9 Mr. Livesey continues:

get. This Mr. Chairman is what I feel we should drive right out of the Motor Vehicle Ordinance.

Mr. Legal Adviser: I think it a shade improper for any Honorable Member to suggest that without proper examination of the facts to suggest the Registrar of Motor Vehicles is acting in an illegal fashion. He must show a record of all accidents where the records indicate an operator has been involved, purely in the case of question, the operator was involved in an accident.

Mr. Chamberlist: But he has no power to disclose it, this is the point.

Mr. Legal Adviser: It's a public record and these records are open to any person wishing to examine them and properly speaking should be sold. All these records which are kept by virtue of Section 165 and they are listed out in subsections a,b,c,d, and e and are public records.

Mr. Dumas: Mr. Chairman, surely making available records that are going to be harmful to a citizen who has done no wrong is a wrong practice in itself and should be changed.

Mr. Commissioner: If memory serves me correctly, this record-keeping aspect was something that was originally written into this Motor Vehicles Ordinance at the direct behest of the insurance companies. Now in the process of taking a further look into this just so that we are not jumping out of the frying pan into the fire can I strongly suggest that the insurance companies or their representatives that if this is either deleted or re-worded to simply apply to convictions as I understand is what the motivation of Council Members is here at the present time that as a consequence of this that we are not going to be doing something into our information being supplied to our insurance companies, that will work to the total detriment of all people insured in the Territory. I simply raise this question.

Mr. Dumas: Mr. Chairman, I don't pretend to be an expert on insurance but I understand that within the next two or three weeks that some insurance representatives from the companies that handle the Yukon Territorial Government insurance will be in town and it might be a good idea to leave this until we have a chat with these people. I don't see how they can change Committee's thinking on this, I think the principle is wrong of giving this information. I would think myself that the insurance companies are only concerned with the dollar value of the losses that are incurred in any one year up here and the type of information whereby they seek peoples' names who were in accidents are either used to simply increase the rates or some other improper use, I can see no logical reason for it.

Mr. McKinnon: Mr. Chairman, the insurance companies have become so powerful in this country that they can find you guilty by increasing your premiums when a Court of Law can find you not guilty and throw the charge out of Court then it's time they start looking at insurance companies not at the Territorial legislation, and Mr. Chairman I can only say that there is no question on my part of any impropriety being performed on the part of the Registrar of Motor Vehicles. The principle contained in Section 165 is wrong and we're going to change it.

Mr. Chamberlist: Mr. Chairman, I would again like to ask perhaps Mr. Legal Adviser can disclose now to this Committee under what section or regulation is this information given to an insurance

Mr. Chamberlist continues:  
company that asks for it.

BILL 79

Mr. Legal Adviser: It's because it's a public record, and we open the public records to all persons.

Mr. Chairman: Is there anything further on this Section. (Reads Section 24 of Bill No. 9). Now in view of the many amendments which will be forthcoming to this Ordinance..... I have before me Section 2 in it's completed form. (Proceeds with reading of Section 2).

Mr. Chamberlist: Mr. Chairman, it seems satisfactorily to me but I just had a trucking company just at lunch time place considerable objection to this particular thing that a piece of equipment from Alaska coming across the border to Beaver Creek and pick up equipment and go out again without paying any permit. It was raised in a sense that this is doing, they will allow them to come in and pick up inside of Canada, inside the Yukon Territory without any permit and there is no reciprocal arrangement with Alaska on this thing and there is considerable objection from the Yukon trucking companies because we're not giving the same treatment we are giving the people of Alaska.

Mr. Livesey: Well Mr. Chairman, there is only one alternative and that is you charge them one hundred dollars for driving twenty miles so they go to the border and they make their exchange there and the Yukon doesn't pick up a cent out of this. So you make your own choice, if you want to make something out of it fine, if you don't well that's the situation, and so by that definition all you're doing is cheating yourself. That's exactly what the driver said, when an attempt was made to charge them for just switching at the border, not going through the Yukon. If you want to charge \$100 for driving to Beaver Creek, well we'll switch at mile 12-21 right on the border between Alaska and Canada and nobody get anything out of it. They can do it, no problem. All you are doing is just transferring the place where they will do it normally, if you charge them this \$100, they certainly are not going to pay \$100 to go 20 miles. Instead of switching at Beaver Creek where local citizens can make something out of this switching process they merely back up 20 miles and do their switching there where nobody makes anything out of it, that's the only alternative and these trucks aren't coming through the Yukon at all. They're not coming through the Yukon at all, they are switching at the border irrespective of what the cost is, that's the subject. This is a factual situation, and it was tried this summer and fifty, sixty, seventy loads, this is creating work at Beaver Creek and added employment.

Mr. Legal Adviser: Mr. Chairman, when I drafted this change I was under the impression that it was the intention of the House to accept the Section as drafted and permit between now and the Spring Session the Commissioner through his own good offices to deal with the question of reciprocity. This section itself does not deal with reciprocity, all it does is gives to the Beaver Creek border 20 mile trip the same privilege as has been given in paragraph (a) to trucks coming up to Watson Lake and return, so this is not to say that trucks coming from Alberta, B.C. or Alaska in this case may not come in. They may at different provisions of this Ordinance on payment of \$100 but what this particular section does is, it says that instead of having to stop at the border without paying \$100, you can come in as far as Beaver Creek to transfer your load. It is merely enabling a truck which has not paid it's \$100 and does not intend to come into the Territories to come as far as Beaver Creek to switch over his load to a Canadian truck.

BILL #9: Mr. Chamberlist: There's another point that was brought to me.. was that a transport truck from Alberta for instance pays a \$50 through permit to go to Alaska, where if they were dropping in the Yukon they would pay \$100. Now this is how the Alberta outfit are actually getting away with it in the Territory. What they do is they say they are going through to Alaska and when they get to Beaver Creek, the Alaska truck picks up their load and goes through. They don't pay the \$100 and they are evading paying that \$100.

Mr. Commissioner: Mr. Chairman, with respect on this matter we are certainly aware of this however I would like to bring to the attention of the Honorable Member in connection with this \$100 fee as opposed to the \$50 fee. The \$50 fee is applied to freight that is through freight where there would be no harm done to a holder of a PSV licence in the Territory. The \$100 fee is applied to permitters that are bringing one-trip shipments into the Territory and the idea being that the increase or doubling of the fee is opposed to through freight is to attempt to bring some form of some protection to our own PSV holders, so while one interpretation than the interpretation that is being explained to us by the Honorable Member Mr. Chairman is certainly one way of looking at it, the basis of the thing and this was accepted by this Council was that the \$100 fee was to protect our own PSV licence holders so there are two ways of looking at the particular problem that has been raised.

Mr. Chairman: There is another big rub when it comes to the Yukon trucker and nobody has even made mention of it yet, but that's the Americans coming in to haul out Clinton fibre back to Valdez or wherever it goes, and there is no control whatsoever on that road. In and out of Alaska they can drift into Clinton Creek and Alaska anytime they want, there's no permits required and I am told by local truckers that this is a real rub with them.

Mr. Commissioner: Mr. Chairman, with respect could we have the information supplied to us to the best of the Councillor's knowledge so that we can follow this up because I can assure you that at the Administrative level, we are not aware of American trucks coming into the Clinton area to pick up fibre. Now we are well aware of trucks owned by the Cassiar Asbestos Corporation moving fibre into Alaska and if we could be advised of this, I can assure you we would be most happy to investigate and follow this information immediately.

Mr. Chairman: Yes, well this I received as late as this weekend information on this and I'll attempt to get that.

Mr. Shaw: Well Mr. Chairman, it would appear to me that this kind of thing going on on both ends of the Territory is apparently one company, surely they must be aware of the laws governing such things. They own the largest fleet of trucks in the area so certainly they must be conversant with the laws as they relate to trucks. Wouldn't a telephone ascertain if in fact these things were going on.

Mr. Commissioner: Mr. Chairman, I would like to assure you that the operators at Clinton Creek the operators of their transport division are most co-operative as far as the application of our laws as they apply to the trucking industry so I would hope that my answer did not infer that we were having any difficulties in our relations with these people because such is not the case, Mr. Chairman.

Mr. Chairman: Yes well speaking from the chair, I might say that BILL #9 I will endeavor to get that information in the next day or so. Is there anything further on this Section? Section 2?

Mr. Legal Adviser: Mr. Chairman, while you're still on that page, there's a small change in subsection (3) of Section 23 on Page 4, I inserted the word "may" instead of "shall" because the implication that everytime a single permit was asked for that they were to have special licence plates was a bit much, and I thought that a written permission or a disc for a wind stream in an appropriate case might be an intelligent thing to do.

Mr. Chairman: Do you wish I report progress on this bill? The BILL #11 next bill is Bill No. 11. This is an Ordinance to Provide for Government Control and Sale of Alcoholic Liquors. (Reads Section 1 and 2)

Mr. Chamberlist: I wonder if we could have the meaning of (h) in Section 2 Mr. Legal Adviser?

Mr. Legal Adviser: As my recollection serves, the intention is to include in the "licensed premises" not only the buildings but any curtilage jarred garden, a beer garden.

Mr. Chairman: (Continues to read Section 2 of Bill No. 11)

Mr. Chamberlist: I wonder if Mr. Legal Adviser would say in what interpretation would it be a man's office. I notice that in going through here there doesn't seem to be any place where a businessman can have liquor in his own office because he can have it in a residence and residence is defined, but would it be an offence if he gave business people ....

Mr. Legal Adviser: It's not an offence to keep a bottle of liquor in your bookcase behind black slottishness...

Mr. Livesey: I wonder Mr. Chairman if the Legal Adviser could inform me if what is meant by "any conveyance in public place" means a public place under sub (i).

Mr. Legal Adviser: This is to me a couple of cases. There was a case in England where a woman was charged with soliciting as a prostitute in a public place and her method was to go along in a cab and move towards the sidewalk and partially undress so as to let passersby standing at a bus stop realize what her trade was, so she was charged soliciting in a public place. A case that was held in Canada that people were not committing an offence of drinking in a public place when they were in taxi-cabs or cars in certain circumstances or boxes and a case involved in a Safeway parking lot involving drinking in a public place cause it was held in a parking lot which is not a public place, it would be private property of the owner of the car park, so it's for this reason that the definitions become to get tightened up.

Mrs. Gordon: Under (m) Section or subsection (iii), a camper unit, trailer or tent there's one mobile unit that is not taken into consideration here and these are these travel units that are actually mobile not in the same sense as a camper unit, trailer or tent.

Mr. Chairman: (Continues to read Section 2).

Mr. Shaw: Mr. Chairman, I'm just asking that if anything that alcohol of 2%, you can drink it any place like pop?

BILL #11 Mr. Legal Adviser: I don't know if the results would be the same but the effects is the same legally.

Mr. Shaw: Mr. Chairman, I was only asking if for example a person was drinking something that had only 2% liquor content or could be sold any place that there be no licence required, or you wouldn't be selling under the Liquor Control Board in fact just free, you can sell it like pop.

Mr. Legal Adviser: Anything which is containing liquor of 2% alcohol is deemed for our purposes not to be intoxicating and therefore is not controlled by this particular statute.

Mr. Shaw: I was merely indicating where you took a gallon of 4% stuff and made two gallons of two per cent stuff, you can sell that on the open market, that was my question, just pure and simple and I don't have to have any Einstein on my left pointing the calculus on a gallon, two gallons of liquid.

Mr. Chairman: What are your wishes at this time? It has been moved by Councillor Dumas and seconded by Councillor Chamberlist that Mr. Speaker now resume the Chair. Are you prepared for the question?

Members agree. I will declare the motion carried.

Mr. Speaker: I will now call Council to order. May we have a report from the Chairman of Committee.

Mr. Chairman: Mr. Speaker, Committee convened 10:35 a.m. to discuss Bills and Sessional Papers. Committee recessed at 12 noon and reconvened at 2:00 o'clock p.m. I can report progress on Bills No. 9 and 11 and it was moved by Councillor Dumas and seconded by Councillor Chamberlist that Mr. Speaker now resume the Chair and this motion is now carried.

Mr. Speaker: You have heard the report of the Chairman of Committee. Are we agreed?

Members agree. May I have further indication of your pleasure and especially with the agenda tomorrow?

Mr. Chairman: Mr. Speaker, we have now in Committee Bills, Sessional Papers and motions and believe it is the intention of Committee to proceed with Bill No. 11 tomorrow.

Mr. Speaker: Do you agree?

Agreed.

I have a special message that I would like to draw to your attention at this time and it's addressed to Mr. J. Livesey, Speaker Councillor of the Yukon Territory. "Dear Mr. Livesey, I have been asked by Mr. Gordon Gibson in the Prime Minister's office in Ottawa to advise you in answer to your recent wire to the Prime Minister will be forthcoming promptly. He did also say it would not be possible for your requested meeting with the Prime Minister to take place this week but would quite likely the week following" and it is signed, Yours sincerely, J. Smith, Commissioner. Is there any further business?

Mr. Shaw: Yes Mr. Speaker, I would move that we call it five o'clock at this time.

Mr. Speaker: Are we agreed? .. Agreed. The House now stands adjourned until 10:00 o'clock a.m. tomorrow morning.

Mr. Speaker read the daily prayer. All Councillors were present.

Mr. Speaker: Mr. Clerk, is there a quorum present?

Mr. Clerk: There is, Mr. Speaker:

Mr. Speaker: I will now call Council to order. I would like to remind you of the request of the Y.W.C.A., Whitehorse, for our possible attendance at the Ground Breaking Ceremony at 3:00 o'clock on November 26th in the afternoon, and also of the letter from the Commissioner, dated November 18th, covering the visit of Mr. J. K. Naysmith to discuss lands, and the suggested date by the Commissioner of the morning of the 27th for such a meeting. We have for tabling this morning Sessional Papers No. 33 to 36 inclusive. Are there any Reports of Committee?

Mrs. Gordon: Mr. Speaker, before Reports of Committee, may I ask the indulgence of the House to be absent for a short period this afternoon?

Mr. Speaker: Are we agreed?

Some Members: Agreed.

Mr. Speaker: Order, please. Introduction of Bills? Notices of Motion or Resolution?

Mr. McKinnon: Mr. Speaker, I would like to give Notice of Motion, seconded by Councillor Chamberlist, that it is the opinion of this Council "that a Pollution Control Ordinance respecting all public lands in the Yukon Territory containing stringent regulations and severe penalties for contravention be introduced in this House at the earliest opportunity". MOTION #13

Mr. Speaker: Are there any further Notices of Motion? Notices of Motion for the Production of Papers? Are there any Notices of Motion for the Production of Papers? Following Orders of the Day, Motion No. 12, and Motion No. 12 was moved by the Honourable Member for Watson Lake, seconded by the Honourable Member for Mayo, and the text reads, "That Sessional Paper No. 31 be discussed in Committee of the Whole". Are we agreed? I will declare the motion carried. MOTION #12

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: I wonder, Mr. Clerk, if you could inquire of the Commissioner if he could be present for the Question Period? I will call a five-minute recess.

RECESS

RECESS

Mr. Speaker: I will now call Council back to order, and we will go on to Question Period. Are there any questions?

Mr. McKinnon: Mr. Speaker, I wonder if Mr. Commissioner has any answer where the tourist industry seems to be increasing by leaps and bounds all across the North American Continent, the number of people visiting the Yukon dropped last year from 108,466 to 97,267? QUESTION RE  
TOURIST  
INDUSTRY

Mr. Commissioner: Mr. Speaker, I think I would want a little time to analyze the figures. While I'm on my feet, Mr. Speaker, the method of computing, should I say, the tourist numbers into the Territory is at the very best an educated guess, and the basis on which statistical information is obtained is only valid if the same basis is used year after year and on a continuing basis so that we are comparing apples and apples, not apples and oranges. I would like to give Council one example of what I am referring to. For example, in the souther part of the Territory, the White Pass and Yukon Route for many years operated a train that was termed the Carcross Turner. This was a train that operated on boat days from Skagway, Alaska, to the Town of Carcross where it turned around, allowed the passengers some little time there, and went back where they stopped for lunch at Bennett and made their way back to Skagway. This year, due to pressures, I suppose, of other business, the railway company found that this train could not be brought as far as Carcross. It terminated its run and turned around at Bennett. Bennett happens to be in the Province of British Columbia, therefore, that several thousand people who were counted in previous years as part of our tourist population, they came within a few miles of our borders this year but didn't cross over so therefore they're no longer in the count. If I could have the opportunity of getting this matter analyzed, I would appreciate it. Mr. Speaker, while I'm on my feet, I would also like to advise Council in connection with the tourist industry that Mr. Harvey Dryden, the newly appointed Director of the Department, arrived to take up his duties yesterday, and I will be arranging for him to meet with Members of Council as soon as possible. I'm sorry that this wasn't done this morning but other matters intervened.

Mr. Speaker: Are there any further questions?

QUESTION RE  
ANTI-LITTER  
LEGISLATION  
ENFORCEMENT

Mr. McKinnon: Mr. Speaker, a further question to Mr. Commissioner. Section 20 of the Motor Vehicles Ordinance is the anti-litter part of the Ordinance, and it is Council's feeling that unless there can be a guarantee from the Administration that litter barrels are provided on Yukon highways, that the penalties are posted and that the Regulations are enforced, that this will just be another piece of legislation with no teeth in it whatsoever. I wonder if Mr. Commissioner can guarantee that this will in fact be the case if this part of the Ordinance is passed by this Council?

Mr. Commissioner: Mr. Speaker, I tend to agree very much with the statement made by the Honourable Member that unless effective enforcement is given to not only this but any legislation, it is simply another piece of paper. Now, I suppose that there are various ways of conducting anti-litter campaigns in the Territory with or without benefit of legislation, however, it would appear to me that the only thing that we can do is take direction from Council as to how they would like to see this enforced, and at the same time, I think that Council should also indicate how much of the public funds of the Territory that they would be prepared to see committed to the enforcement. Now, we can't be operating in a vacuum, Mr. Speaker, I think that from any citizen's point of view that anti-litter enforcement, never mind whether it be by legislative means or anything else, is one of the crying needs of the Territory, and certainly I can assure you that such direction as Council would like to give the Administration in this matter will be given every reasonable effort to give effect to it.

QUESTION #26

Mr. Dumas: Mr. Speaker, I have a written question. "Would the Commissioner attempt to ascertain from the Post Office Department as to why a system of door to door mail delivery has not yet been inaugurated in the City of Whitehorse since, I understand, the city qualifies for this service according to the rules laid down by the said Post Office Department?"

Mr. Speaker: Are there any further questions? The Honourable Member for Watson Lake.

Mr. Taylor: Mr. Speaker, I have a question that just occurred to me this morning that I would direct to Mr. Commissioner. In view of the fact that for many, many years now we have been trying to get mortuary facilities attached to Nursing Stations in outlying districts, and also in view of the fact that this request has come from Council on many, many occasions, I'm wondering if Mr. Commissioner could advise me why these facilities are not being provided?

QUESTION RE  
MORTUARY  
FACILITIES

Mr. Commissioner: Mr. Speaker, I have to use memory here, but it seems to me that we had a Paper tabled in Council not too many Sessions ago in which the cost indications of providing such a service were made available. I think that before I attempt to answer that question any further, Mr. Speaker, we had better resuscitate the content of that Paper and then we can have a proper discussion on the subject, Mr. Speaker. Is that a satisfactory answer at this time?

Mr. Taylor: I would be most pleased if we could have an answer on this because it's a very important problem.

Mr. Chamberlist: Mr. Speaker, a question addressed to Mr. Commissioner. Mr. Commissioner, my understanding is that various properties, land that has been leased over the past few years to different people in the industrial area, the Service Road industrial area, have now been withdrawn from those people. I wonder if Mr. Commissioner can explain why this has taken place?

QUESTION RE  
LEASED LAND  
WITHDRAWN

Mr. Commissioner: Yes, Mr. Speaker, and the explanation, while it is a clear cut one, is involved in the original manner in which this property was disposed of. I think that you're aware that our normal manner of disposing of this type of property is to have it subdivided, titles created to it and put up for public tender. The pressures were upon us before we had these titles available to make this land available and certain lease agreements were entered into, and as a consequence this set the pattern for the balance of this subdivision. I would like to bring the details of what transpired after that point forward in writing, Mr. Speaker, for the benefit of Council and to properly answer the question that has been raised.

Mr. Speaker: Are there any further questions? May we proceed to Public Bills and Orders?

Mr. Shaw: Mr. Speaker, I would move that the Speaker do now leave the Chair and Council resolve itself in Committee of the Whole to discuss Bills, Sessional Papers and Motions.

Mr. Chamberlist: I'll second the motion, Mr. Speaker.

Mr. Speaker: Moved by the Honourable Member for Dawson, seconded by the Honourable Member for Whitehorse East, that Mr. Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bills, Sessional Papers and Motions. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: The Honourable Member for Watson Lake will please take the Chair in Committee.

Mr. Taylor takes the Chair.

Mr. Chairman: This morning we will be proceeding with Bill No. 11, but I wonder if I could have the direction or concurrence of Committee in relation to the forthcoming visit of a Mr. Naysmith, who is with the Northern Economic Development Branch, I believe, of the Federal Department of Indian Affairs and Northern Development. He has indicated that he would be available to meet with Committee on Thursday morning next, and I'm wondering if Committee would concur with a time certain of possibly ten-thirty?

Mr. Chamberlist: With respect, Mr. Chairman, there's every possibility that we may not be here.

Mr. Chairman: This coming Thursday, next Thursday ...

Mr. Chamberlist: Oh, the day after tomorrow ... I beg your pardon.

Mr. Chairman: Would this be an acceptable date? Would Committee concur? Do I take it then that Committee is agreed? Alright, I will so note in my Committee Report of this evening. We will now proceed to Bill No. 11.

Mr. Livesey: Mr. Chairman, before you move on to any other item, I wonder if I could have the indulgence of Committee with regard to the question which is before Committee now on the question of the removal of the Farm at Haines Junction, in order that I may be able to ask Mr. Rod Tate from 1019 to come to the Committee with Committee's indulgence to discuss this important question in relation to the closing down of the Experimental Farm. I wonder, Mr. Chairman, if I could suggest the date of Friday of this week?

Mr. Chairman: Does Committee concur?

Mr. Livesey: Mr. Rod Tate is the manager of the Experimental Farm at 1019.

Mr. McKinnon: No objection at all barring any unforeseen circumstances. We may not be here.

Mr. Chairman: Is Committee agreed?

Some Members: Agreed.

Mr. Livesey: Thank you, Mr. Chairman.

BILL #11

Mr. Chairman: Will this be for ten-thirty in the morning? We'll proceed now to Bill No. 11. (Reads section 3 of Bill No. 11) Clear?

Mr. Dumas: No, Mr. Chairman, I'm afraid we can't read it. If we say it's clear, it seems that we're accepting it.

Mr. Chamberlist: The language is clear, but the suggestion is wrong.

Mr. Dumas: Mr. Chairman, what do you suggest? Should we proceed with the reading of this section before we tear into it?

Mr. Chairman: I would suggest that possibly we could overcome this little difficulty we all seem to be having now if Mr. Legal Adviser could give us a very brief run-down on just what the essential changes are between this Ordinance and the one we dealt with last fall...or last spring.

Mr. Legal Adviser: On the surface, it doesn't appear that there's much change in the constitution of the Liquor Board. In practice, the whole Ordinance will show that while it is the intention that the Commissioner will appoint the members of the Liquor Board, the Board will not be a permanent sitting Board in the sense of the Alberta Board presided by an Executive Chairman or the B.C. Board, presided over by an Executive Chairman. The intention is that this will be a Board called together from time to time to make decisions. The decisions which will be placed before the Board will be decisions on the granting of new licences, decisions on the disciplining where this occurs of people who hold licences, but not, of course, the disciplining of individuals who are charged with offences under the Ordinance. Now, it is not intended that they will be given an annual salary, but the whole conduct of the Board will be similar to the admittedly successful Public Service Board which is called together by the Registrar of Motor Vehicles, subject, of course, to the Commissioner, to tender advice to the Commissioner as to whether or not a particular applicant for a Public Service Licence should either get that licence, should get it subject to conditions, or should be given a restricted licence, or should be refused a licence, or, indeed, should have special conditions attached to it. So, there are not many applications for new licences in the Territory. There are a few from time to time. I think there were one or two this year, so, for new licences, the number of times that they will be sitting to consider applications will be few and far between. In addition, it is possible, under the terms of the present Bill, to object to the renewal of a licence for cause. One would not anticipate that this would often occur, but the section is inserted in order to give members of the public and possibly the Administration itself an opportunity annually, at the renewal of a licence, to come forward and say that by reason of the conduct of this privileged licenced premises, who have the privilege, what is a virtual monopoly in some areas, by reason of the particular conduct of the applicant in operating his licence in the past year, he does not deserve to have his licence renewed. Now, this is common form with other forms of licence, and it's inserted here, and the protection is given to the licensee that notices must be served in the normal way, cause must be shown, any person who objects either in the instance of a new licence or in the instance of renewal must be prepared to come in and make a case and if necessary call evidence. We don't want any hole in the corner method of operating this. Exactly as was in the original Bill which came before the Council, is the very urgent wish of the Commissioner personally and of the Administration as a whole, to be relieved from the constant pressures of having to take these discretionary decisions which many people feel are taken personally by the Commissioner which, of course, as those who are associated with the government as the Honourable Members are, know they are not personal decisions of the Commissioner, but he's often accused of taking these personal decisions. We want to make it clear to the public and to the House that these discretionary decisions, and in particular this very difficult one of dealing with new licences, of hearing complaints about licensees, should be removed from the Administration and handed over to some independent group. I don't know who the three members will be. We have no objection to saying there shall be five members or seven members and have a quorum of three, four or five. We've no ... I mean the Administration now ... we've no views on this and we're not trying to push anything across on the House. All we're saying is, we're putting up this as a reasonable method of deciding in the public eye, with independent persons not associated with either the Administration or the Council, whether or not a person should be given the privilege of having a licence. Now, that's as far as the Liquor Board goes.

BILL #11 Mr. McKinnon: Mr. Chairman, Members have their original Bill here that was presented to Council at the last Session, and I think all Members will agree that there was very strong objection at that time to the installation of a Liquor Board under the proposed Ordinance. It was at that time proposed to pay the Chairman of the Liquor Board \$25,000 per year on a permanent basis, and three other members to act also with him. This Board was to have full control of all aspects of liquor in the Territory down to the granting of licences, the power of fixing the hours, and terms and conditions of the sale of liquor, and, in general, to take over every aspect of liquor control in the Yukon Territory. It was the unanimous consent of this Council that this was not what they wanted to see at this time. I think that the Administration has come up with a rather sensible compromise that the Board be called in from time to time to serve more as a licencing Board than any other type of Board, and I agree with the Administration's wish that this should not be in the hands of one man, an appointed official, to be able to have discretionary powers to either grant or not grant a licence. The Board has to conduct itself along the stringent regulations laid down in the Ordinance that people who apply for licences have to fulfill certain terms and conditions that are specific and are well laid out, and if they fail to meet these terms and conditions, they cannot be granted a licence. I think that it is a sensible compromise. I think that the powers of controlling liquor in the Yukon Territory should remain at this time in the hands of the elected representatives, that this control should not be given up to an independent committee, and I also agree with the fact that it should not be in the hands of an appointed official to be able, on a discretionary basis, to grant licences in one area or another at his wish. I think, and I congratulate the Administration, from what I've read through this, for coming up with what looks to me to be quite a sensible area that we can move in in the powers of the Board that now stands in this present Ordinance.

Mr. Dumas: Mr. Chairman, I tend to agree with what the Honourable Member has said. There are a few questions I'd like answered. One, is this Board permanent?

Mr. Commissioner: Mr. Chairman, we have endeavoured to elucidate as far as is reasonable the terms and conditions under which the Board would act and operate.

Mr. Chairman: Just in speaking from the Chair, would it be agreed by Committee that no one is bound to accept, say, section 3, or the Yukon Liquor Board until such time as we've had an opportunity to review the rest of the Ordinance?

Mr. Legal Adviser: Mr. Chairman, this covers sections 3 to 6 inclusive.

Mr. Chamberlist: Mr. Chairman, I don't know what the Honourable Member for Whitehorse North has had to do with this Liquor Ordinance. He seems to be very familiar with what has taken place.

Mr. McKinnon: I do my homework.

Mr. Chamberlist: I don't know whether there has been previous discussions before this particular piece of legislation was put before Council. There are areas dealing with the Liquor Board that are dangerous. One that specifically Mr. Legal Adviser ... the explanation he gave was that the Liquor Board could be placed in the position of at the time of renewal refusing to renew on the basis that if you didn't carry out the operation of your licence prior to that time.

Mr. McKinnon: For cause subject to appeal ...

Mr. Chamberlist: Now, if the operator of a liquor outlet mis-conducted himself with his licence, they should have been thinking that this licence should be removed from him at the time of the offence, or the alleged offence has taken place, not wait until he goes for renewal and then say, six months ago you did something that was wrong so we're going to take your licence away now. Now, that type of explanation, I was prepared to go along with that but then I heard Mr. Legal Adviser's explanation that the Liquor Board would be able to do that. You know, I don't approve if that's the reason why they're there. If they're there to act retroactively, then that's not the purpose, I think, of what a Liquor Board should be for.

Mr. Legal Adviser: Mr. Chairman, I may not have made myself clear. As far as the Administration is concerned, when something occurs which is serious, an Inspector has the power to close the operation down, or he has the power to complain to the Board, make a complaint, and then the Board can act. These normal disciplinary powers do in fact appear. The right to object on an annual renewal is primarily a right given to the public who are not supposed to be policemen, but should know what is happening when licences are renewed. Now, I also should make it clear that it is written clearly into the Ordinance that every decision of the Board is subject to the appeal to the Territorial Court. I don't think we can be fairer in writing an Ordinance than to be willing when we're setting up a Board, even a discretionary Board, to have every decision go to the Court where it can be thrashed out in public and the normal safeguard that every Canadian is entitled to in his business and personal dealings is given in this. Now, I think I'd be safe in saying that this is the only Liquor Bill in Canada which gives this right of appeal. Every Liquor Bill, or Ordinance, or Act, that I have studied has always had this omnibus protective section, no decision of the Liquor Board is appealable to any court, nor may it be removed by mandamus certiorari or other form of prerogative writ, and if I had had the temerity to put a section like that in this Ordinance, I think that my ears would be burning from the remarks of one of the Honourable Members.

Mr. Shaw: Mr. Chairman, I think that this is a vast ... the learned Legal Adviser says, well, there are some small changes, I think they are tremendously large changes. That was the understatement of this morning. We get lots of overstatements but very seldom understatements. That goes for everybody, possibly including myself. I agree with the Honourable Member for Whitehorse West that it would be a very poor point where you accumulated these demerit marks against some operator and then at the end of the year said, well, there's no licence for you, buster. I think that when problems come, that that is the time to assess the problem. I do agree with having this Board as it's stated, I think that one man to have to decide whether someone has a licence or not is just putting a little too much on one person whether he be elected, appointed or just blew in. It's something that does require a group of people to accept the responsibility of something like that, and I certainly go for it and very much agree with it. This point that Councillor Chamberlist has brought up whereby when the infractions are made against the Liquor Ordinance by the licensee, then I do think that as soon as possible the Board should sit and pass judgement on it at that time, not wait until the licence year, or the end of the licence year.

Mr. Livesey: I have a few slightly different comments, Mr. Chairman, than some other Members. It seems to me that the powers of the Board have diminished from being a Board at all, and all they're going to do is sort out the most inconvenient propositions such as the disquietudes that may take place between members applying for

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licences. This is about their total function. They're just going to sort out the number of licences, so we don't really have a Board at all in that respect. But, the power vested in the Office of the Commissioner, with all due respect, Mr. Chairman, is now something like the kin to brewers' omnipotence. It is a power incarnate, there's no question about that. The word Commissioner appears fifty-three times in the Ordinance, and I don't think that one can do anything ... could I have order, please, Mr. Chairman? I don't think that anyone can do anything in relation to liquor that doesn't come within the powers of the Office of the Commissioner. In fact, we'll practically have to say Allah if we go through with this. There's no question about that, I mean, anyone who wants to read it, even read just the English sections rather than the other words that may be involved in this legislation, it's quite obvious that there is only one power. Now, if we could control the Commissioner, then we're safe, but if we can't, Mr. Chairman, we're stuck. There's no question about that. The entire power over liquor is in the hands of the Commissioner, so, what's all this talk this morning, Mr. Chairman, about not allowing this power, not to give this power to the Commissioner, because one man cannot make these decisions. Well, it's very obvious once you read it, it is going to be a one-man Board. This is what it is. As I say, if the Council has power over the Commissioner, well, alright, but if we don't, we're stuck, and you may as well accept it. That's it.

Mr. McKinnon: Mr. Chairman, I'm really hurt this morning because there's one thing that I have always in this House given the Honourable Member for Whitehorse East credit for and that's for having his homework done before he begins talking in Committee. Mr. Chairman, the Board on the renewal of the licences, if a member of the public goes into an establishment that has a licence and sees that it is nothing but a fire trap and can give specific areas where it is a fire hazard in that premises, he can then in a form put down his complaint as long as it is at least thirty days before the hearing of the renewal of the licence, then the Board has to sit and listen to that specific complaint of the public and either have it corrected or not before the time of the renewal of the licence. Then, even if the licence is rejected because of the specific cause that a member of the public or anybody brings before the Board, the operator then has the right of appeal to the Territorial Court, and if anything is more democratic than that, or more just, I fail to see how we could make it more just.

Mr. Chamberlist: Mr. Chairman, that wasn't the point I was making. I was only making the point with reference to the remarks of Mr. Legal Adviser when he said that if on renewal for some offence a Board could decide whether to reissue the licence, and if they turn it down, then the Board's decision can be appealed. I say, you can't wait six months later. If there's some infraction, it should be dealt with. This was the point I was making there. However, I'm very concerned, and I must agree with the remarks of the Honourable Member for Carmacks-Kluane when he says that the power solely of this Board is the power of the Commissioner. Now, we know we can't do anything about it, and I don't think we'll be able to do anything about it for a little while to come. All we have to hope is that the Commissioner doesn't use his power to the detriment of the legislation because it's in only this piece of legislation where there is no stopgap at all. He has supreme power over this legislation via this Liquor Board. It's entirely different in other Ordinances where there are certain hold-backs by the Commissioner in Council being used in the legislation. In this one, the three members are appointed by the Commissioner to hold office during pleasure. Whose pleasure? His pleasure. Not anybody else's pleasure, not the Council's pleasure, but the Commissioner's pleasure. If the Board members don't please the Commissioner, they're out. Now, this is

the difference. You know, this reminds me of the words used by the lawyer that is now a Judge of the Northwest Territorial Court in a liquor case that I was involved in, when his arguments in front of the courts were, you cannot search the Commissioner's mind if you ask him a question. Now, as I have already said, in some cases there's nothing in the Commissioner's mind, you couldn't find anything so you have nothing to benefit from it. I asked a question under the Liquor Ordinance. You say to him, you ask the Commissioner, why did you do such and such a thing. Uh, uh, you can't search a Commissioner's mind. You can't ask him questions. You're stopped. Now, we have no protection for the public in this manner, because not only have we no protection for the public who use liquor outlets, there is no protection for the operators of the liquor outlets either, because one man, the Commissioner, he can say, Joe Blow, Joe Green and Joe Brown, you three people are the Board that I am appointing. We have nothing to do with this at all. We're going to pass legislation to give this absolute power to the Commissioner, and we have been asked to do this time and time again. Every Member of this Committee has objected to giving extraordinary powers to the Commissioner and here we go again, starting all over again. Instead of taking the power from the Commissioner, joining it with the elected body, we're again separating it at this stage of our negotiations to get more responsible government. It becomes hypocritical to ourselves. We're not being consistent. For instance, what if one of the members of the Board takes sick or something, can the Board go and pick up another member? No, the Commissioner, he picks up another member. Does anybody do with the elected Assembly help in this? No. Now, the Honourable Member from Whitehorse North, earlier he said that one of the objectionable things when the old Bill was put before us was the fact that the Chairman of the Liquor Board was going to get a remuneration of \$25,000 a year, and he objected to it. Well, I put it to you this way, what difference does this make now when it says the Commissioner shall fix the remuneration to be paid to members of the Board. Who fixed it the last time? It was the Commissioner and his Administration that fixed the \$25,000 and it was brought forward, so, actually what we're doing is we're letting him do exactly the same but this time we're saying, don't say it in the Ordinance, fix it yourself. Now it can go up to \$50,000. You know, we're giving him more privileges now, and now he'll increase it to whatever he wants.

Mr. McKinnon: May I ask the Honourable Member a question, Mr. Chairman?

Mr. Chamberlist: No, I'm still on the floor. When I'm finished you can ask me the question, any questions you wish. Section 5 of this area ... even the Chairman of the Board can't be chosen from amongst the Board members. The Commissioner shall designate one member of the Board to be the Chairman. Not only does he control who the Board is going to be, he even controls who is going to be the Chairman of the Board. I'm surprised at the Honourable Member for Whitehorse North. Councillor McKinnon stands up and says they ought to be congratulated, we're doing something special now. All he's doing is emptying his pockets from all the things he's been holding back, you know, to blast Ottawa or the Administration and everything connected with undemocratic forms of government and saying, go ahead, this time it's booze. You control it. Now, I don't know, my feelings are here that I recognize the factual situation that we have to have administrative control over the distribution of liquor, but I think that administrative control should be jointly held with elected representatives and I can't see, quite frankly, how you can maintain a stand of responsible government when you're taking completely from an area like this where sometimes eighteen to twenty-five percent of the revenues of the Yukon Territory comes in, and

BILL #11 you're taking that revenue and saying to the Commissioner, you do everything you want. Leave us alone. We'll just give you the power to do it. Well, I don't see it, and I think Members of Committee should consider the very things that we've been talking about for so long. Thank you, Mr. Chairman.

Mr. Chairman: Councillor Chamberlist, will you take the Chair?

Mr. Chamberlist: Yes.

Mr. Chamberlist takes the Chair.

Mr. Taylor: Well, Mr. Chairman, I haven't had anything to say in this debate so far and I'm going to have very little to say on this point at this time. I did suggest while in the Chair that we continue with the Ordinance, reserving this section, three, I believe, to six, for further consideration once we've seen further on down the line what the duties and powers of the Board are, what the duties and powers of the Commissioner are, and it seems to me, just from a fast perusal of the Ordinance that the Commissioner exercises no more power under this Ordinance than he does under the existing Ordinance. I could be wrong because I haven't given it that close enough scrutiny. But, it seems to me that our question could well be resolved, of the appointment of the Board members and so forth by the appointment of an Executive Committee. This is the matter, of course, we will be discussing when we go to Ottawa, and this doesn't say we're going to win any ball games, but we hopefully may win a ball game whereby the elected representatives of the people can be a part of government or in partnership with the Administration of the Government of the Yukon. This might solve it, but last year when we dealt with this Bill, it gave the ... created a Board the same way, but the duties and the powers of the Board and the duties and the powers of the Commissioner took away from the elected representatives of the people the right to write their own liquor laws. Now, under this new Bill, I see where we are once again writing the liquor laws that apply to the people of the Territory, and I would say that this is not so much of a compromise, I think we've won our point with the Administration. I would suggest that we continue through the Bill. We'll read these sections respecting the Board, three through six, and continue on with the Bill and deal with the rest later.

Mr. McKinnon: Mr. Chairman, unfortunately I do not have a direct pipeline to Ottawa as the Honourable Member from Whitehorse East seems to have, and I've always thought that it would be folly at this time for this Council to be restricting the powers of the Commissioner when the day was tomorrow that these powers were going to be taken on by the elected Members of this body. Now the Honourable Member for Whitehorse East stands up and says nothing is going to change, I know, even if we go to Ottawa, nothing is going to change. I agree with him now. We'll have to rethink this Ordinance completely, if he already knows in his mind that it's predetermined that there is no way when we come back from Ottawa that the elected representatives are going to share in the executive and administrative branch of government, I agree with you. The whole Ordinance has to be rethought and everything is going to have to be changed in it. I agree with him on one more point, that I believe along with him that the Chairman of this Board should be chosen from amongst the members of the Board. This is just going a little too far that the Commissioner not only chooses the Board members, but also chooses the Chairman of the Board. But, Mr. Chairman, I'll say one thing, that things always could be worse than having all these powers in the hands of the Commissioner. The Commissioner could always quit and a tea-totaller be appointed as Commissioner.

Mr. Legal Adviser: I have no objection to putting in an amendment to let the members choose their own Chairman, but I do this to show that we're not trying to push this Bill down your throats. This is a Bill for discussion and if the Members don't like it, well, they can throw it out and we can keep the existing Bill. We're not trying to give the Commissioner extra powers. I was exercising my mind to try to take the powers away from the Commissioner. It appears that I haven't succeeded well enough. I'd urge the Honourable Members to look on the Commissioner not so much as an ogre or a dictator, but a kindly uncle who is trying to help the Council. BILL #11

Mr. Taylor: I'll resume the Chair at this time. Councillor Shaw.

Mr. Shaw: Let us take the facts into consideration first. A Board has to be chosen. The Commissioner has reserved the right to appoint the Board. Now, rather than taking a negative attitude of this, why could not Members of Council themselves extend recommendations to the Commissioner asking that Joe Blow or John Blow or whoever it may be be appointed to this Board. I'm not saying that it would be accepted, but I would say that it would be a constructive way of approaching the situation. As far as I'm concerned personally, Mr. Chairman, I have no idea whom I would wish to choose as a member of this Board, so my attitude toward this would be that as I don't know, I would not wish to make a recommendation but there may be Members of Council, and it's quite possible, who feel that this person or that person or the other person would be well qualified for this position. It would appear to me that a constructive attitude of sitting down and writing a letter to the Commissioner and say that you would recommend that such and such be appointed to the Board would be a constructive manner to carry this forward and having known the Commissioner for these many years, I feel certain that consideration would certainly be given to something like this.

Mr. Chamberlist: Mr. Chairman, I am sorry if I gave Councillor McKinnon the impression that everything is going to stay as it is.

Mr. McKinnon: Apology accepted, Mr. Chairman.

Mr. Chamberlist: What I want here to make clear is that Uncle Jim may not be prepared to co-operate in the manner that we would like him to co-operate, and I do agree that there have been many improvements made in this Ordinance over what was submitted to us the last time, and it's only been made through the efforts of this Council here in throwing it back at the Administration last time to let them know that they were not going to push areas of legislation to us that was unacceptable to us. They corrected these things. What does worry me, and it worries me strongly, is that no Member of the elected body is in any way connected with the choosing of the Yukon Board by the Commissioner. Now, I can't see why the Yukon Board cannot be chosen ... the Liquor Board cannot be chosen by the Commissioner in Council, just jointly. Recommendations made, as Councillor Shaw has already suggested, to the Administration and then from that, from those different names, the members of the Board chosen, and as has already been recognized that one of my points was supported strongly even by Mr. Legal Adviser who should have been able to see that in No. 5 before it was pointed out to him by me, that it's unsatisfactory for the Commissioner to appoint the Chairman after he's appointed the three members. This has been agreed with. Now, if the Commissioner would indicate now at this time, Mr. Chairman, if he would be prepared to consult with Members of Council for appointments to the Liquor Board, I would be pleased to withdraw my objections to this. I wonder if Mr. Commissioner can indicate whether he's interested in this particular point?

BILL #11 Mr. Commissioner: Mr. Chairman, there is practically no field of endeavour that has to do with such things that either myself or my officers do not seek the help and the assistance of Members of Council. Now, certainly, as far as the appointment of members to this Board is concerned, I think that the machinery for doing this, I am quite prepared, in fact, I don't see any way that I would ever be able to get a panel of people to choose members of this Board from without the assistance of Members of Council. As far as wording this as Commissioner in Council in the Ordinance is concerned, we've been through this routine so many times, there's no use in doing it anymore as it can't be worded this way, but I certainly would be most happy to give any kind of a commitment that you want that I would be most pleased to have and would seek the advice of Members of Council to get a list of names before me that I might be able to choose the Board from. I think, with respect, Mr. Chairman, that if we could get the benefit of your thinking as to the powers and the duties of this Board, and get this sorted out of the way, plus about the other nine hundred and sixty-five items that are in this Ordinance here, the mechanics of appointing this Board, or the mechanics that are going to be gone through concerning the getting of a suitable slate of people from which members of the Board would be chosen pales off into insignificance, and I am quite prepared to commit myself to a course of action which would effectively be what Councillor Shaw has asked for and what was supported by Councillor Chamberlist.

Mr. McKinnon: Mr. Chairman, I'd like to implore Mr. Commissioner not to ask my suggestions as to who I would want appointed to the Board. The last thing I would want is to attain a political patronage over my head. I was in the booze business once, and I may be in again. I think that some Members here make their living out of selling booze, and what could be worse than these Members suggesting appointments to a Board that is going to control their licences. I want no part of it. Thank you, Mr. Chairman.

Mr. Chamberlist: Mr. Chairman, not necessarily. I am not saying because I'm connected to the hotel business that I should be asked. I am just saying that Members of Council should be asked. Well, Mr. Chairman, if Councillor McKinnon wishes to get away from what might be a civic responsibility at times, let him go ahead and do so, but I'm not concerned about myself. I say that the suggestions should come from Council, even if they're completely disassociated with the hotel business, but somebody from Council should have something to do with it, and I'm content, and I accept Mr. Commissioner's thoughts on this.

Mr. Chairman: Well, gentlemen, at this time I will stand Committee in recess.

RECESS

RECESS

Tuesday, 25 November, 1969  
11:00 A.M.

Mr. Chairman: I will now call Committee back to order, and BILL is it your wish that we proceed with the reading of this NO. 11 Bill? (Reads Section 4 of Bill #11, Liquor Ordinance).  
(Reads Section 5).

Mr. Legal Adviser: Mr. Chairman, I have been using "member" which in terms will say, the Board shall choose a person to be the Chairman from amongst their Members.

Mr. Chairman: Do you concur that we wait for an amendment to 5? (Reads Section 6(1)(a),(b),(2). Councillor Chamberlist.

Mr. Chamberlist: Mr. Chairman, I wonder if Mr. Legal Adviser will indicate what are the penalties under Section 6; what would be the penalties if a member participated in things he is not supposed to do.

Mr. Legal Adviser: Mr. Chairman, it is not visualized there will be a direct penalty. I had some difficulty in drafting this Section. The parent section from which I took the section was in the last Bill, but it is greatly modified since then. The difficulty I had was that the Section read "No member shall be directly or indirectly interested or engaged in any business, undertaking or dealing in liquor" and I felt that this was too wide since we would have a part-time Chairman. This would prohibit a Member of the Board from possessing shares in Carlings Brewery or Labatts or in Seagrams and what have you, and would be a very wide section indeed. So I narrowed it down by saying "undertaking dealing in liquor in the Territory" in the hope that this would allow people to possess shares in a major public company but would prohibit them from owning a hotel or being directly interested in the trade in the Yukon itself. Now, the penalty, the general penalty in the Ordinance, whatever it happens to be, when you come to this section you will find the penalties a little bit stiff. The maximum fine for a first offence is something like a thousand dollars. I think it would be a matter of honour on the Member's part not to be engaged in the trade and when we will be seeking names for a panel from which to choose, one of the questions that would be asked, as a matter of form, if the knowledge was not already there, would be, is the member interested in any way as a partner, for instance, in one of the local hotels or something like that.

Mr. Chamberlist: After all that, am I to understand that if you have a section without a penalty clause, in other words we have provisions for not merely offences if you do certain things but no penalties for the .....of those offences. Is this what I understand?

Mr. Legal Adviser: Not quite, Mr. Chairman, if the Honourable Member would refer to Section 89 (1) where a person is guilty of an offence under the Ordinance or Regulations with no special penalties are provided, he is liable to summary conviction for a first offence of a fine of not more than a thousand dollars, or imprisonment of not more than six months, or both such fine and imprisonment. It is just a general penalty, it would apply but it is not the method of preventing the particular abuse which the Member has pointed out.

Mr. Shaw: Mr. Chairman, I would direct this question to the Legal Adviser. I note that on this sub-section 2,

BILL  
NO. 11

Mr. Shaw continues.....  
except that remuneration is prohibited. I note that, from my interpretation, this is receiving any gift or remuneration from a person selling or offering liquor for sale to the Director; in other words this would be the wholesale section of it. Now, is there anything to prohibit a person from accepting five hundred dollars or whatever it may be, from some person who wanted to get a liquor outlet. He wouldn't be interested or engaged in that business but he could accept a certain amount of money for accepting a licence from a certain person. I wonder if that has been considered or the reason that it hasn't?

Mr. Legal Adviser: Well it hasn't been seriously considered because of a certain difficulty in drafting such a section. But I am certainly quite prepared to put in general words to cover the point. Supposing we redraft it slightly and said that no member of the Board and no person appointed shall solicit or receive directly a gift and so on, and then say, from any person or corporation having sold, selling or offering liquor for sale to the Director pursuant to this Ordinance, or for any other improper purpose. And then leave it to the common sense of the Courts to decide whether the person was a potential applicant for a licence in the situation.

Mr. Shaw: Mr. Chairman, would not, when gifts from any kind of person or corporation having sold, selling or offering liquor for sale. When we leave out "to the Director" you also include the Director and you include anyone else.

Mr. Legal Adviser: The section wasn't quite drafted for the purpose the Member had in mind. The particular evil we are trying to cover is, I think, familiar to members from the Vancouver Sun and places like that. It has happened in Edmonton and Calgary, and Vancouver, to my knowledge but firms offer gifts to liquor vendors or senior employees of the Board in the hope that their particular brand will be placed in a favourable position, or if we happen to be dealing in say Scotch whiskey, if the distillers of a particular brand said, well buy our Scotch and limit then the purchases from say the ten or fifteen brands which are available by choice, limit it down to say five brands, in which case the person offering the gift would substantially increase the amount of business he would do with the Department and ....with the public. But to deal with the question of applicants is not quite so easy but I will certainly attempt to do it.

Some Members: Agreed.

Mr. Shaw: A question, Mr. Chairman. In relation to this, why it seems more important is that the Liquor Control- this Board, will not be concerned about what kind of liquor is being sold. The Director would be concerned, but not these Board Members. These Board Members, generally speaking, are concerned on purely local issues, or issues within the Territory. So, they are receiving gifts from local people which is far more important than receiving from the Liquor Control Board, from the manufacturers, which is really redundant in this case. It would not make any difference.

Mr. Legal Adviser: I agree, you are drafting this kind of section, you are slightly at cross purposes. You are trying to make it as tight as you can but at the same time in common justice you have got to realize that occasionally Cal Miller

Mr. Legal Adviser continues...

will buy somebody a drink and you don't want a situation that no Member of Council, no Member of the Board, can accept a beer from Mr. Miller when he happens to meet him in the Capital Bar. I am not so sure that it is easy to get a beer up at the Air Port.

Mr. Chairman: May I proceed then on the understanding that there is some redraft coming through for this Section? Section 7 (Reads Section 7(a),(b),(c),(d),(e); 8(1),(a),(b),(c),(d),(2), Mr. Chamberlist, will you take the Chair a moment?

Mr. Taylor: Well, Mr. Chairman, under very seemingly innocent looking little section, we have one little problem here. May I ask Mr. Legal Adviser firstly, if it is the intention now of Administration to include the Liquor Department in our Budget and under control of Council?

Mr. Legal Adviser: Yes, all the persons selling liquor, the Director, the Vendor and the people at the liquor stores will be public servants and their salaries will be fixed out of the Public Service Ordinance and will be subject to a vote by the Financial Advisory Committee, and then the Council itself. There is no change from policy in running this Department than it is at present.

Mr. Taylor: Well, Mr. Chairman, that doesn't entirely answer my question. At the present time the Liquor business is run separately from the Council and its budget. Now, do I understand, with this newly shaped Ordinance, or has this even been considered by Administration that we will now have the Department of Liquor Control as another Department of Government under the purview of the Council?

Mr. Legal Adviser: It's news to me that it was run any differently from any other Department.

Mr. Taylor: Financial Administration Ordinance.

Mr. Legal Adviser: I know that under the Financial Administration Ordinance and the operation of it that they debit the cost of the Department against the profit which is obtained from the sale of liquor, but this does not remove them from the purview of the Council in any way. It does not mean that the people who work there are not Civil Servants in the fullest sense of the word.

Mr. Taylor: Well, Mr. Chairman, right now they are run as a Crown Corporation, of the Territorial Administration, and what I would like to know if it is intended now that they come under a Vote in our Budget?

Mr. Legal Adviser: I could not give you a quick answer to that. I drafted the Section to preserve the status quo and I was under what is apparently an allusion that they were the same as every other Department and I am a bit taken aback to discover that they are not.

Mr. Shaw: Mr. Chairman, the learned Legal Adviser has put his foot in it this time but was able to get it out quite well.

Mr. Taylor: Thank you Councillor Chamberlist, I will resume the Chair. Councillor Livesey.

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Mr. Livesey: Perhaps it is news to the Legal Adviser but the very fact that the Government is in business selling liquor puts them completely out of order as far as the law is concerned. The government has no business being in business; none whatsoever! And the provinces are not in business and that is why the Liquor Control Board in the provinces take over the control of liquor, so that the Government is not in business, and they act separately under a separate form of jurisdiction. Now, if the government here, as the Legal Adviser is saying, Mr. Chairman, is a Department of the Government, then the Government is certainly in business and they have no business in being in that type of trade.

Mr. Chairman: Councillor Chamberlist.

Mr. Chamberlist: Mr. Chairman, the point that I was going to make but the Honourable Member from Watson Lake jumped it real quick is fairly obvious. I was going to make that point. (1)(d), such other persons as he deems necessary for the administration of this Ordinance. Now, apart from the different officers who are already listed, who else, I wonder if Mr. Legal Adviser can say, will be required for the administration of this Ordinance?

Mr. Legal Adviser: This is merely to cover the ordinary employees down in the liquor store who move the liquor around, who sell it, who stand behind the counters and ring up the fiddly little bits and so on; it is just to cover the ordinary Civil Servants.

Mr. Chamberlist: Well, Mr. Chairman, if as Mr. Legal Adviser has already said that people who are employed in this Department would be just the same as other public servants, why would he have to have a separate item to cover the public servants already covered elsewhere. Why have it in there. It opens up the question? What is the catch. Is there something in there.

Mr. Legal Adviser: The catch is that we want the Commissioner apart from appointing him under the Public Service Ordinance, to appoint them under Section 8 so they would be covered by all the restrictions which, against accepting bribes or suggestions and what have you so that then throughout the thing we can say appointed under Section 8.

Mr. Chairman: May I proceed (Reads Section 9(1),(2)(a),(b),(c),(d)(e),(f),(g),(h). Mr. Chamberlist?

Mr. Chamberlist: Mr. Chairman, I wonder if Mr. Legal Adviser could explain why in (2)(f) just reads fix the days and hours at which any liquor store shall be kept open for the sale of liquor. Surely the Director, who is responsible for the administering of this Ordinance, is also responsible for the fixing of hours of other liquor outlets.

Mr. Legal Adviser: There is a deliberate element of policy in this. The feeling is, subject to what the House would say, the feeling is that the Liquor Store in Whitehorse should be keeping normal business hours, but may, in certain periods in the summer, have to keep open later. In the present Ordinance we have one section which says, the Council shall fix the hours which liquor stores shall keep open. In another contradictory section which was apparently allowed to remain, the Commissioner shall fix the hours which the liquor stores shall keep; so we had a choice of taking one or the

Mr. Legal Adviser continues....  
other and we chose neither of them when we were drafting it. We came up against the difficulty that in Dawson they have a celebration called Discovery Day. All the stores in Whitehorse came to an agreement that they would close up on a certain day to allow their staff to go to Dawson for a holiday, but lo and behold, when we came to the Liquor Store, there was no proper way of doing this because the Commissioner was not sure whether he had the power; what the power was given to the Council so the feeling is, subject to what the Council says, there may be a big shinnanigans on in Dawson, the Liquor Director should be able to say; look, on the day before that you can stay open for an extra couple of hours, or there is some do down in Watson Lake and maybe they want to close for that day and open late the previous evening like any normal business so it is placed into the Director's powers but of course all his powers are subject to the Commissioner. Now, the particular list of powers here are relatively minor powers in that list from (a) to (h) and they cause a lot of trouble in practice in the Administration. If they are Commissioner's powers the Director has to send them to somebody and that has to pass to some other hand and then it goes up and then advice sought and it is back and forward and I don't want to go into these various points of contact where a minute gets, but it does take time when usually it is an ordinary business decision.

Mr. Chairman: Clear? (Reads Section 10(1),(2); 11; 12(1), (a),(b),(c),(d),(e),(f);(2)(a),(b); 13). I have a question I would like to direct to Mr. Legal Adviser at this point respecting the Inspector. Is it anticipated that there would be no problem with the Public Service Regulations to allow an Inspector to function at times other than the normal business day without considering an over-time position?

Mr. Legal Adviser: As I gather it, this was one in conversations with the Territorial Treasurer, that this inspection would be under his direction and it used to be, the old section was, "shall be inspected monthly" as my recollection goes and he has to have it "may" because he cannot guarantee that he will have an inspector there regularly each month. It is intended to have a monthly check but his officer may be out to Mayo or Dawson for a six weeks interval and so forth. It is not a detailed audit, this monthly check. It is to look around for anything that would raise a suspicion that everything was not going alright. This is basically what the officer does in Treasury. The annual audits are different; they are more detailed.

Mr. Chairman: Councillor McKinnon.

Mr. McKinnon: Mr. Chairman, can I ask whether we just use the offices of the Auditor General for our protection as under the Yukon Act it seems we are given complete control of liquor within the Territory and our own auditing system should be able to be expanded over an area where we have complete control. Are we required by statutes from Ottawa or by Regulations from Ottawa to use the Auditor General of Canada do our books or just merely as a protection to the people of the Yukon Territory?

Mr. Legal Adviser: I couldn't give you a quick answer to that but so far as the Liquor Control of Council is concerned it is a tremendous protection to our staff and the Treasurer that the Auditor General does in fact do this work.

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Mr. Legal Adviser: Mr. Clerk, make a note of that will you?

Mr. Chairman: May I proceed?

Mr. Commissioner: Mr. Chairman.

Mr. Chairman: Mr. Commissioner.

Mr. Commissioner: The answer is in the Yukon Act, Mr. Chairman. If you have the office consolidation in front of you it starts on page ten and is under the heading Territorial Accounts here and it indicates the manner in which the accounts will be submitted to the Territorial Council. It says here, among with other things, a statement certified by the Auditor General of the expenditures and revenues of the Territory for the fiscal year (c) a statement certified by the Auditor General of assets and liabilities as at the termination of the fiscal year and such other information or statements are required in support of the statements referred to in paragraph (b) and (c) or as are required by Ordinance or by the Minister.

Mr. McKinnon: This is in reference to the Consolidated Revenue Fund.

Mr. Commissioner: A report for each fiscal year of the Territory called the Territorial Accounts, shall be laid before the Council by the Commissioner on or before the 30th day of June next following the termination of the fiscal year. If the Council is not then in session, on the opening day of the next ensuing session and the Council shall consider the same, and this is the one that was most recently tabled to take care of this statutory requirement and a report of the transactions of the Liquor Control Department are part of that report.

Mr. Livesey: Mr. Chairman, I would like to say, in that section of the Yukon Act which says, the Council shall consider the same, was an intrusion into the prerogatives of this House.

Mr. Chairman: May I proceed? (Reads Section 14(1),(2),(3); 15(1)(a),(b),(c),(d),(e),(f). Councillor Livesey.

Mr. Livesey: Does not this section indicate, Mr. Chairman, just exactly what I was talking about a little while ago whereby these additions can be looked upon as tax and the mark-up on the list is profit. Now, the tax in my estimation, of course, is a carry-over of that fund which originally created the community development fund. This is where this tax came from. Now, here we have it incorporated in the Ordinance and this is a Government tax on liquor; the other isn't, it is profit and the profit motive of course is, as I said before, is entirely wrong for the government to be in business.

Mr. Chairman: Councillor Gordon.

Mrs. Gordon: In this particular section I notice, Mr. Chairman, in referring to the Interpretation Section, there is no interpretation of bottle. We have bottles of 26 ounce, bottles of 40, bottles of 64 ounce. Is it intended that the same surcharge will be placed on the three areas of bottles?

Mrs. Gordon continues....  
Excluding a flask which is essentially half a bottle?

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Mr. Chairman: Mr. Legal Adviser?

Mr. Legal Adviser: I don't know. The customary interpretation as I understand it is that a bottle is a fifth or something, 26 but some of them of course come in slightly smaller sizes; that is a 24 ounce bottle. Now, there are larger ones but the larger ones I think are reckoned on a multiple of 26 ounces, so that these very handy sizes where you have a gallon of spirits, they are charged something like five times the bottle or seven times the bottle or ten times a bottle, I think.

Mr. Chamberlist: Mr. Chairman, perhaps the Honourable Member from Mayo will look at the Interpretation (k) of package, and package means any container, bottle, vessel or other receptacle used for holding liquor.

Mrs. Gordon: This is very true, I accept it, but when there isn't a , when it comes to levying a surcharge, it is on a definite amount, this is fine. But if you encompass a package, all your various package or take the opposite of what Mr. Legal Adviser said and you do the multiple, you are going to end up - and somebody is going to question it. If you say it is on a fifth of a gallon, fine, then it is a multiple; it is on a bottle, O.K., if it is a gallon you say the same as you do for a fifth.

Mr. Chamberlist: That is quite right now, supposing, for example, somebody goes in and wants to buy a great big bottle of rye, all you could say is, well I am only entitled to pay 10¢ on this bottle, and that is all. Why am I being charged so much for it.

Mr. Legal Adviser: I have no view on it. I am sure that the Liquor Controller could give a better explanation but as I understand it he charges what the public know to be a bottle and I haven't known of anybody who questioned it yet.

Mr. Livesey: Mr. Chairman, before we proceed from this Section I wonder if Mr. Legal Adviser could provide me with information with respect to statements I made a few minutes ago that the mark-up on liquor is profit and surcharge is tax. Is this correct?

Mr. Legal Adviser: As I think I may have said before, Dr. Johnson in the first English Dictionary defined excise as a hateful tax levied by the same wretches to whom it is paid. I don't think it matters whether you call it profit or revenue to the government by any name. Tax is only a method of the government getting a profit from the sale of an article. Profit is what the businessman would prefer to call his method of obtaining money because he feels he has no right to tax the public.

Mr. Livesey: Mr. Chairman, this is not a satisfactory answer as far as I am concerned. On the report that the Territorial Government put out on their operations, which we as Members, received, these two profits are separated. These two forms of profit. If they are separated they have got to have a different category and if they have a different category I would like to know what those categories are and of course we always know that the Whitehorse Self-Serve is always losing money. Everybody else makes more profit on every report except the Whitehorse Self-Serve. The Self-Serve

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Mr. Livesey continues...  
loses but nevertheless these are two separate items, Mr. Chairman, and I don't see any reason why this question should be dodged.

Mr. Commissioner: Mr. Chairman, there is no attempt to dodge the question. This surcharge that is placed here is extracted from the present Ordinance; it is what is going on at the present time. There is no deviation from this in any way, shape or form.

Mr. Livesey: Mr. Chairman, as far as I am concerned the only thing any government can do with, they can tax, they can't make a profit, but they can certainly tax and tax is what they are doing under the surcharge. What are they doing on the rest of it.

Mr. Chairman: (Reads 15(2); 16(1),(2),(3)).

Mr. Legal Adviser: Would you ask the House to read the next Section before this, tear this one apart.

Mr. Chairman: I think, in view of the time, we will leave this non-controversial section until this afternoon so I will stand Committee in recess until two o'clock.

RECESS.

Tuesday, November 25, 1969.

2:00 o'clock p.m.

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Mr. Chairman: At this time I will call Committee to order. We are dealing with Bill No. 11 and may I proceed with section 17 at this time? Apparently 16 and 17 run together. (reads section 17)

Mr. Chamberlist: Do you when I first started studying this a week or so ago and I came to this section and I thought to myself, the very first thing was how easy it would be for a Commissioner to suspend and then ...although there are time factors for appeal to the Board etcetera, more than three months can elapse, while the suspension is in effect and then afterwards it was found that the suspension was not granted and the business has been out of operation for three months and no recourse to the licence. It starts off firstly that ... my first objection is this, that you make a Board and then the suspension is by the Commissioner. The expiration earlier on was to deal with ... that the Board would deal with licences, but here and if you will recall, I said that it gave the power to the Commissioner. Now here, the Commissioner, he takes over completely from the Board and decides whether or not he will suspend the licence or not, then go say to the Board, "... you commence on it now that I have suspended the licence". When we are dealing with 16 (1), the Commissioner may by order for any cause that he deems sufficient and with or without a hearing, suspend any licence under this Ordinance, with or without a hearing. What power is given to this man. At the time of suspension. Certainly later on there is ways that the suspension can be argued against, but he has been given the power to say "Your licence is suspended". You go to him and you say you want a hearing before he suspends your licence. You want to know why, but he doesn't have to say why. We can't search a Commissioner's mind. Keep that in front of you all the time. He doesn't have to say why. He just says, "You are suspended", that's it. The suspension for a period of time not exceeding twelve months, the only reason why that is there is because when a licence is issued, it's issued for twelve months. This is a real trick, to make extra words in there, because it is automatic that you can't suspend a licence that is longer than twelve months because nobody has one issued for more than twelve months. Real tricky. I wonder if Mr. Chairman, Mr. Legal Adviser sure didn't have too much trouble in finding the draftsman for this type of legislation. You know we are always told that the draftsman has to work in such and such a manner. Well there is no difficulty involved in there and I have to use sarcasm on this particular point because of the way that this particular section reads. Where it is mentioned that he is ordered pursuant to subsection (1), the suspension may be terminated before the expiration of the twelve-month period. Now if the licence is issued for supposition, on the tenth month of the current year, in which the licence was issued, so there is only two months to go in that licence in any event so how can it be suspended for twelve months? It is a twelve-month licence, how can you suspend a twelve-month licence which has only got two months to run? This is another point that must be considered. When we come down to 17, we are just dealing with the appeal to the Board, 17 (3), (reads), now if his licence is suspended just about three weeks before the end of the licence year, he has to give thirty days. It's superfluous. It says within thirty days, well he can do it in one day, this is fine, but he still has thirty days of the Notice of Suspension. On receipt of the Notice of the Bill the Commissioner shall refer to the matter for the Board for a recommendation. Why doesn't he go to the Board for the recommendation before he suspends? Why should it be placed in his hands to make the suspension? That is extending the punishment for something that might not have occurred. (5), On receipt of a request by the Board from the Commissioner for a recommendation in accordance with this section, the Board shall with all due speed enquire into

BILL #11 Mr. Chamberlist cont:

the matter and may, and may after hearing the licensee and the Director. They don't have to hear the licensee either, this is the Board that is set up. They are not compelled to say, "Well let's hear what the licensee has to say about it". It is at their prerogative. They can say whether or not the licensee can be heard and they have been appointed by the Commissioner after hearing the licensee and the Director and any evidence which may be adduced before them, make a recommendation to the Commissioner, so without hearing the licensee, they can adduce all the evidence and say, "That's fine, we'll accept what you say, Mr. Commissioner because after all you've appointed us. We don't have to go to the others. There's nothing upon us which says we must hear the licensee". The powers of the Board, subsection (6), (reads). What powers you give to people, all under the guidance of the fact that it is the Commissioner that is saying everything in this, not this Board. This Board is another way under this 16 and 17 sections where you are creating a picture of legality which is a fraud. There is no legality there, you are taking away the principles of justice from any person who has a right to be heard. And then we go on to section (7) (reads). The only reasons they need give to the Commissioner is because the Commissioner asked them for a recommendation and this is what their recommendation is. They don't have to go to the licensee and subsection (8) and this particular item, I always feel that the words should be represented by agents or counsel, not by just counsel. Subsection (9) (reads.) This is the only nice thing in both these sections which are clear upright standing justice towards anybody's concern, that they may appeal to a Court, and then, how are they going to appeal to a Court without doing considerable damage to them. By the time all this process takes place, some poor fellow that has got himself a licence, probably struggling with his licence, hasn't any reason given to him because he hasn't had the opportunity to speak before the Board or the Commissioner, because he hasn't had a hearing, is forced into the position of them going to the Court and appealing. I think that if he went to the Court and appealed, it would be reversed immediately for the simple reason that you are depriving him of natural justice in not giving him the right to a hearing. Mr. Chairman, Mr. Legal Adviser knows that on that particular point, no Court would uphold a suspension. I would bypass the Board if I were suspended by the Commissioner without a hearing. I would immediately get a prerogative writ and Mr. Legal Adviser knows that I am well aware and well able to proceed on this particular means and be successful in it too. The point that I make, where there is suspension of a licence **if you have a Board, use the Board.** If a person is to be suspended, he is entitled to be heard before a suspension is made. When you can get that idea into your legislation, you are being fair and if you don't have it in, you're not being fair.

Mr. Dumas: The Honorable Member sounds rather reasonable on this proposal. I wonder if the Legal Adviser could tell me that representation by counsel as printed here, actually means a lawyer. Surely it would mean anyone .....

Mr. Legal Adviser: It doesn't have to be a lawyer, but I have no objection to saying agent or counsel.

Mr. McKinnon: My understanding of section 16 and 17 is correct, I can imagine the procedure going something along this manner. The Commissioner is given the power to appoint the Liquor Control Board, then the Commissioner for any cause whatsoever decides that a licence should be suspended, then the Board may or may not hold

Mr. McKinnon cont:

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a hearing. They must hold a hearing? They may after hearing, right ... the licensee who feels that he has been aggrieved, goes to the Board and the Board holds the hearing. After hearing the licensee they may or they may not recommend to the Commissioner who appointed them, anything or nothing. This is their prerogative to either bring in recommendations or not bring in any recommendations to a body that appointed them, then if they do make a recommendation, the Commissioner, who appointed the Board in the first place, doesn't have to listen to them anyway. Where does the Commissioner who appointed them have to be bound by the appeal or by the recommendation of the Board. None whatsoever. So I agree whole heartily with the Honorable Member from Whitehorse East. Forget about putting any type of appeal to the Board, because our powers are absolutely nothing. There's a complete nullity in the manner of hearing a licence suspension and there's only one of two things. Forget about the Board acting in the suspension of licences and bring the appeal directly to the Court immediately so the poor sucker who has had his licence lifted for three months can at least get direct access to some sort of justice or secondly, give the Board the power and not the Commissioner the power to be able to suspend the licence for reasons.

Mr. Shaw: I would like to ask the Legal Adviser a question. In the first instance we have created a Board who has the power to revoke, suspend and so forth in respect to licences. We have accepted that as being sensible, you are going to get three or four men who can decide on the issue. The next thing, we have the Commissioner that has ..... Thank you Mr. Chairman. Then you give someone else the same powers. It appears to me that you must have one or the other very clearly defined. Either the Commissioner does the job or the Board does the job. It's no sense in having the Commissioner do the job of the Board or the Board do the job of the Commissioner. You are getting two people to do the same job and with the same kind of powers. That's what I am somewhat perplexed at, that it isn't defined very clearly. In other words, it would appear to me and if I were the Commissioner I would be very happy that a Board could take over on these particular things. I wouldn't want to monkey with them and I'd say, "Okay boys, this is your job, whatever recommendations I will be forced to accept because that is what you are there for". Now after having determined that, and then when something happens, they have got to come to me and I've got to make decisions, well, the Board is redundant, so that there seems to be .... I must attempt that to me it is quite confusing, that you give the same powers to the same people to do the same job with a different answer. They think differently, well what happens, Are the recommendations of the Board thrown out or are the recommendations of the Commissioner thrown out. It should be I think very clearly stated one way or the other. If we put whatever the Board does, the Commissioner could over-rule. That's very clear. We know what it is if that is the intention, but you're having the Commissioner do a job that appears to me should be the duties of the Board and I think it is a step forward to have a Board. If I were a Commissioner I would be very happy to have a Board.

Mr. Legal Adviser: It appears to be such a unanimous discontent with section 16 and 17 that I almost blush, but the sections are not really quite as iniquitous as the Honorable Members might suppose. They have some saving ..... I think Mr. Chairman that the Honorable Member from Dawson has quite a lot of merit in his suggestion and although I apologize to him for whispering

BILL # 11 Mr. Legal Adviser cont:

to the Commissioner while he was speaking. It was only to confirm that the Commissioner would be agreeable to inserting after subsection (4) a comma and the following words: and be bound by their recommendations. I know it would be impossible if one had the inclination in the time available to the Committee to ever satisfy the Honorable Member for Whitehorse East, but I can try to go some way in explanation. Section 16 is intended to be in a sense a two-way section. I feel that there are situations which can come about in licenced premises which after all, under this Ordinance are serving liquor and also food to the public. They can become a fire trap, situations can occur, unlawful situations can be allowed to continue notwithstanding remonstrations by the Director of Liquor Control or the administration, so there are situations which may come about which might make it essential for the quick shut down of a licence premises. Now section 16 meets this particular situation. I am prepared to go this way, subject to the Commissioner's consent, subject to the Commissioner's consent and the wish of the House, if the House will go with me to leave in a section allowing us a quick shut down in a situation where somebody, either the Commissioner or the Director of Liquor Control or an inspector believes there is a situation which necessitates a quick shut down. To let this happen and then let the appeal come on. In a situation which we deem a situation for cause, for reasonable and probable cause or some such form as we can produce, but where it is a situation that is not urgent, but is a situation which has possibly lingered on, that they have refused to carry out the law in some particulars, they have refused to listen to reason and believe me that nobody in the administration is attempting to put too much pressure on licensees and it is a liberal administration as the Honorable Members well know, but I'd be willing to bring forward a section that would say, in addition to section 16, that the Commissioner would have the additional power to go to the Liquor Control Board and ask for an order for cause shown and then let the Liquor Control Board in the nonurgent case decide whether the place should be shut or punished in some way with a suspension or something like that. This might go a certain way to meet the case, because I think definitely we need the urgent shut down in certain cases, but I definitely ... in the normal case it would not be. The example would be that say if a hostelry here in town or Watson Lake or Dawson was ordered by the sanitary people to cease a particular practice in the preparation of food. To remedy a defect in the toilet and bathroom arrangements. If for instance, they were using a type of glass which was contrary to our regulations. These are not causes for immediate ..... A case in which I acted was where the licensee accumulated a variety of rubbish for second hand sale in the basement of his premises and was warned that this was a fire trap over a period of time and refused to take it away. He kept on promising and the promise was like the promise into the future which was never kept. There is dozens of why a licensee must be ..... in some way which are nonurgent which can come to the Board. There are also dozens of reasons which I can think of which are urgent reasons for shutting a place down. An order of the fire marshal that a particular situation was of an urgent nature and need to be fixed before the public could be admitted. A finding of an inspector on an inspection that a fraud on the public was being perpetrated by a series of false measures. It's almost a capital crime in the country where I come from to sell watered whiskey. It may be done, but I would regard this as a cause for some sharp quick discipline if the House will bear with me I will reconstruct section 16 in such a way that the Commissioner will where he is advised that the matter is in some way urgent, to be able to shut the thing down. If you can wrap it up, I'm sure the Honorable Assistant Legal Adviser can come forward with a safe guarding formula

Mr. Legal Adviser cont:

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which would say for urgent cause or something like this, but the quick shut down will come. For the nonurgent cause then we can make an application to the Board and the Board can hold a hearing before the disciplinary action is actually effected and then to meet the other Members, we would add in the words after subsection (4), that the recommendation of the Board to the Commissioner will be a binding recommendation. I would like to escape from the box of having the Commissioner be the person who is deciding these things wherever possible. I'd prefer that the inspector would actually make the decision, but an inspector is subject to normal disciplines so it should really be the Commissioner because the Commissioner must accept the political responsibility of his own actions. He always accepts the political responsibilities, here in this House. The Minister accepts the political responsibility. He represents the whole of the Yukon, so now section 17 is a long section. It consists of nine subsections and it's drafted in this detail fashion so that the licensee will know precisely when he buys the statute what his rights are. Normally speaking if I had my own personal wish, I would put in a short section saying that the procedure of the Board may be governed by regulations and this would be a fairly normal thing to do, but in difference to the close scrutiny which I knew was going to be given to this Bill, I felt it was better to put our cards on the table. To be quite frank with you, I'm not pushing either section 16 or section 17. I don't think I need to push it because we have given every possible safe guard to the liberty and everything that the licensee is entitled to under law. We have given direct appeal and if you want more appeals, we are certainly willing to give more appeals too.

Mr. Livesey: Now, Mr. Chairman, I would like to assist the Legal Adviser in his thinking with regard to those two sections, and I would like to suggest a new subsection for section 16 whereby the precise condition that may arise according to the Legal Adviser could be spelled out so that anybody could know precisely what a very serious condition was and then what is now subsection (1) of section 16, could read, The Commissioner may by order for any cause that he deems sufficient and after a hearing suspend any licence issued under this Ordinance and in subsection (5) of section 17, could read, On receipt of a request by the Board from the Commissioner for a recommendation in accordance with this section, the Board shall with all due speed enquire into the matter and shall, after hearing the licensee and the Director and any evidence which may be adduced before them, make a recommendation to the Commissioner. In other words, in this particular subsection, you change the word may, to shall, and in sub (1) of section 16, you take out the words with or without and add after a hearing.

Mr. Chairman: I wonder if I might ask a question of the Legal Adviser from the Chair. Does in this Ordinance further on, does the inspector have the right immediately to close a premises and to keep it closed?

Mr. Legal Adviser: This is speaking from recollection, sometimes they ..... the Ordinance section by section. My recollection is that we set out to do this, I've forgotten exactly what section it would be, but the inspector shall be able to walk in and do it. Shut it down right now. With regard to what the Honorable Member from Carmacks-Kluane said, I would be quite willing to put in the word shall, instead of may in subsection (5), but out of this warning. What we are trying to do is see that the Board has a prompt hearing when the Notice of Appeal comes in. In other words,

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the Notice of Appeal comes in and I use the words here, with all due speed. Now sometimes you can't get the Board for a day or two days, but I can promise you that all due speed, means exactly that. A licensee commonly will not want the hearing to be too quick. He will want to marshal his forces. He may want to get a lawyer up from Vancouver. He may want to consider lots of things because this is a serious business, closing down a licenced premises. He may want time, so we don't want heard in the nature of a kangaroo court and in a years time ... and we don't want the complaint to be coming in in a years time that we shut down a premises on day one, held the hearing on day two, because it said in the Ordinance, with all due speed, and then knocked them out of business for three months and all he could do then is appeal to the Court and the Court might not hear the appeal for a month. We'd rather have a little bit of flexibility with the time of appeal, but if the House wishes it, we are quite willing to put in some safe guarding words, any safe guarding words, we can put in as soon as possible, we could try to put in, but it is a dangerous thing to say, shall within seven days, because then what happens if they don't hear it within seven days. We're not trying to close off the licensee from his remedies. We're trying to be on his side as much as possible on the drafting of these two sections and I think it is clear from this that we are attempting to give him fast quick rights of appeal and as many appeals as he feels like having, but the word "may" in the position where it is referred to by the Honorable Member of Carmack-Kluane, I know I have said this often and it is seldom understood, it really means "shall", but in this type of case, it's very common in Liquor Board cases that when the thing comes to a hearing a settlement is made in the sense that the licensee gives a promise and says "Yes, I'll close off the fire hazard" or "Yes, I will put in a new set of toilets", but until the steps of the Court House, with the tears in the eye, he has stead fastly refused to carry out the order, so if the House wishes "shall" instead of "may" at that point, we are certainly willing to do it, provided that they understand that it is tougher on the licensee to have "shall" than it is to have "may" and not casier.

Mr. Shaw: In this particular Bill, I think this is a very useful exercise, going through the various categories there to assure that no person is being treated unjustly. I agree very much with the Board operating where it is possible, but I also can see very clearly that there are times when it is not possible to wait to gather up the Board. You may have a situation where a fire danger exists, you may have a situation where an extremely unhealthy situation exists. This person might have been told on numerous occasions to rectify these matters and he completely ignored the instructions, now if something should happen in the interim, to create some type of a disease spreading, a fire should occur and people could be burned up in the fire, you'd hear a great scream from many people. I think that we have a dual purpose in constructing these ordinances. One is to see that no person is persecuted in something like this, but at the same time, we also have to consider that we have to protect the public. That is something that I don't hear very much in something like this. The public also has to be protected against the various things that can happen. I can't enumerate them all but I do know in the time that I have been in this Territory, where a person that has licenced premises have been told time and time again to rectify fire hazard situation and they have stalled and stalled and stalled until they got to a situation where they where absolutely forced to do it before their licence was revoked. Now, sometimes this is carried on

Mr. Shaw cont:

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for a year or two years. There must be a limit to these things, after all, we must also protect the public in these things. Once we have undertaken that project, by having a person who should be qualified for the job, to give the protection to the public, I think that is the main thing that is concerned about. The next one is to see that the fellow who is supposedly wrong, is getting fair treatment. I think that is what we must ensure, that he gets fair treatment and by having the Board sit on it with all the facts and their decision and impress and appeal to some other body at Court then I think that person is getting a pretty fair shake on the matter, but we must remember that this is made I think to protect the public, not just to give someone something to do by closing down places. I wonder if the Legal Adviser can tell me in the last two years or in a period of time that anyone has been suspended and has the power been with the Commissioner in this period of time that they could have suspended places.

Mr. Legal Adviser: The power is there in the present Ordinance, Mr. Chairman, but so far as I know no one has been suspended.

Mr. Commissioner: Mr. Chairman, might I say that the order in which this is present here at the present time which ultimately allows the thing to go to Court is basically designed to avoid something that is a very flagrant possibility under the present Ordinance, namely the implication or the instituting of extra judicial penalties. This maybe doesn't mean very much to anyone who has not been involved in the Liquor Ordinance, but the way the Liquor Ordinance presently reads is that if I was an owner or an operator of a licensed premises here in the Territory, I can be taken to Court, have my day in Court, be found guilty and pay my penalty according to the Court, and then I can go home and think that everything is all fine and I can get a letter from the Commissioner about two or three months later or two or three weeks later as it so suits him to do so, imposing another penalty on me for the same offence. This is the thing that we are basically trying to avoid by this order that is presented to you now. I'm not saying that what we have before you is perfect, but the situation that presently is possible under the present ordinance is absolutely anathema as far as I am concerned and this will eliminate that possibility as far as I am aware and perhaps the Legal Adviser could be asked to comment on this, but if we are going to pass laws which have the implied or have the implication in them of the possibility of extra judicial penalties, I strongly recommend to this Council that they don't pass those laws, because that is exactly the situation that you have in your law books here at the present time in the Yukon Territory with regard to the Liquor Ordinance and it is just not right period as far as I'm concerned.

Mr. Livsey: Mr. Chairman, is the Commissioner saying that anyone can be tried for the same offence twice.

Mr. Commissioner: Not only am I saying that but I can give you proof of it, that it has actually happened.

Mr. Chamberlist: It makes no difference. It seems that exactly the same situation applies here because you can suspend the licence. Mr. Commissioner, Mr. Chairman, can suspend the licence and then he goes to the Board and the Board says right. The recommendation is not that you suspend the licence, you go further than that, you don't give this person a licence at any time, but I'm not so much concerned about these little intricacies, I think that people are losing track of this 16 (1) and this "where he deems sufficient".

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There's about three textbooks in law now on what is referred to, the deemed to be situation. There's been so many supreme court definitions now on what is deemed to be. The cases in the hands of the Commissioner such wide, wide powers, that he can with or without a hearing suspend. This is the thing that is obnoxious to me. I see that the suggestion, maybe not in the right manner, but the suggestion that the Honorable Member from Carmacks-Kluane has made bears quite a lot of merit. If the licence is suspended by the Commissioner, if he is given this power, the power that he has already given to a Board to use, but still holding on to it himself, that we could add to it but, a hearing must be given to the licensee within a certain time so at least a hearing be given him. This is just like the *ex parte* type of applications made before the Court, where it becomes one sided proposition. Somebody goes before a Court and says I want a judgement for such and such a person, against such and such a person *ex parte*, the other person, he's not there. This is where we must protect, I take those of the Honorable Member of Dawson's remarks that the public must be protected, but we mustn't forget that those people who hold licences are also members of the public. We mustn't forget about that, we're not a separate entity. They are entitled to be heard in exactly the same way that anyone who is complaining against the licensee is entitled to be heard. Would the Commissioner say if somebody wanted to get in touch with him to make a complaint about a licensee, "Well I might give you a hearing, I might listen to you and I might not listen to you". He's not going to say that, he's going to listen and on the basis of the hearsay that has been told to him, he could go and shut down. I think that this section 16 (1) should be corrected to take out this power of with or without a hearing. I think it would cure the objections that are made further down ... that I have made further down, because it would then give a process of hearing which would be right and proper, but again the Commissioner, another point that has just come forward to me is this, if the Commissioner suspends a licence and the person that is suspended hasn't made a appeal to the Board, the Commissioner whatever he has done, must be assumed as correct. I think it requires that the Commissioner, if it is to remain like this, which I don't think is right, but if it is to remain like this and other Members of this Committee agree that it should remain like this, the Commissioner should be bound to report to the Board that he has appointed, why he has suspended this licence, immediately. All he has to do here is notify the licensee that he has been suspended, but he is pushing the Board that he has appointed himself, aside, and saying "okay fellows, I appointed you, but I don't need you, I'm going to do it myself", and this is actually what is being done here. We have to first deal with things one step at a time. The first thing, Mr. Chairman, that I think we must deal with immediately is to withdraw from legislation and attack upon the principles of the right for a man to have his day in Court. Nobody should have his licence removed without a hearing and if you overcome that then I think the rest of it will follow sensibly, but when you start right at the beginning and you say that you can have your licence removed without a hearing, I can't see how anybody can support that particular section itself. We must stop right there until that section is cleared out of this piece of legislation.

Mr. Legal Adviser: I am quite agreeable to take out the words with or without. We're not trying to be outrageous, but we do want that every person who is a licensee whose position is worsened by a decision of an executive officer will have the right to go before a Board, composed of Members or something. It matters little, whether the words, with or without, are in and as I say I am quite willing to

Mr. Legal Adviser cont:

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take them out. This section will then read, The Commissioner may by order for any cause that he deems sufficient suspend a licence. This makes it clear then that the only real hearing, the only hearing will be to the Board. Fine. Then, I'm certainly agreeable that the Commissioner should be enjoined in another subsection or part of a subsection by saying, When such a suspension has been made the matter shall forthwith be reported to the Board. This is a very common sensible suggestion, but it so happens, I don't want to by always but, but this Board is not in permanent session. It consists of members that are called in for the purpose, but if it is agreeable to send a letter to each Board Member, reporting the fact of what happened and the reasons therefore, this is perfectly agreeable. We could put this in that the fact that the suspension shall be forthwith reported by the Commissioner, to the Board. Now, so far as the Board initiating action is concerned, it's not easy for a part time Board to initiate action. I think if a licensee does not see fit to put in an immediate appeal against the suspension, I think it must be assumed that the Commissioner is acting rightfully, the licence he does not wish to appeal. Surely, the common sense of a business man, if he complains about a suspension, let him put in an appeal. There will be no formality about it. So far as the ... when you say the Commissioner may by order for any order he deems sufficient, we are not trying to conceal something. I'm quite agreeable to add into that, that the reason for the suspension shall be forthwith notified to the licensee and the Board. I didn't think it was necessary to say this because the Commissioner's order would always contain the reason for the suspension, so in other words, this section 16 would be amended to read something like this, that The Commissioner may by order for any cause that he deems sufficient suspend any licence issued under this Ordinance. Subsection (2), Written reason for the decision to suspend shall be forthwith given to the Board and the licensee. (3) A suspension of a licence ordered pursuant to subsection (1), shall be for a period of time not exceeding twelve months. I know this section has been attacked but we have got to put some limit on the period of suspension. It's up to the licensee to limit it shorter than that if he wants to appeal and where a suspension is ordered pursuant to subsection (1), the suspension may be terminated before the expiration of any twelve-month period by a further order of the Commissioner. This section is necessary because very often it is only necessary to produce the site of a suspension or to actually serve the order and the licensee will forthwith dash around and rouse up a few workmen and make sure that the particular thing that he has been suspended for has been fixed right away. There are many licensees who keep on moving back, promising to do things but until you show some bit of toughness, you'll never get the walls built or the fire rigs actually put in, or you'll never get them to take out the nails out of the windows to allow them to rise to create a second exit, so I think it is necessary to allow the Commissioner when he is given an order to raise it again, because it may not be necessary to have an appeal, but there are far more of these cases settled than ever come to a hearing. In section 17, where a licence is suspended pursuant to section 16, the Commissioner shall forthwith notify the licensee. Again this would be repetition of what is in section 16, we could add in the word there and give him the reasons for the suspension. We are not trying to hide things. Subsection (2) would read, Notice of suspension of a licence shall be given in writing and signed and so on will stay the same. Subsection (3) will stay the same.

Mr. McKinnon: Plural or singular recommendation? It says a recommendation. Does this mean they only give one?

BILL #11 Mr. Legal Adviser: The singular always includes the plural by virtue of the interpretation act. So far as subsection (3) is concerned. This is a period of limitation and we picked thirty days because thirty days is the same time that they have in the Court. I'm not sure if the Honorable Member wished to narrow this, we can certainly narrow it to seven days, but that is hurting the licensee because he may not be able to get his lawyer and get his things drafted within seven days and he has to give some form of a notice of appeal, but we were giving him thirty days because we thought we were giving him a favour but if the House wishes to narrow it down to seven days, we've no objection to narrowing it except that most licensees would violently object if you cut down their time for appeal because the normal thing is to run in straight away and ask for an extension of time. So far as section (4) is concerned, we've already offered to accept the suggestion of the Honorable Member for Dawson and add in the words, and the Commissioner shall be bound by the recommendation.

Mr. McKinnon: Can I have a question here? What happens if the Commissioner who is now bound by the Boards recommendations or what happens ... no the Commissioner is now bound by the Boards recommendations and the Boards recommendations says that the Commissioner was wrong in acting in the way that he did, where does the licensee get restitution for the period that he was closed for the wrong action of the Commissioner?

Mr. Legal Adviser: It might happen. I presume we have an action for damages against the Commissioner. If the action was taken maliciously. It would fall to be set by the normal law. If there was malice and I can see the Honorable Member looking at me. If there was malice, then I think the Commissioner would pay damages and would deserve to pay damages.

Mr. Chamberlist: You can't examine the Commissioner's mind.

Mr. Legal Adviser: But you can examine his actions and his action are .....state of mind. This Legal Adviser says you can examine his actions. Any Court can examine the actions of the Commissioner and they often have. Now, subsection (5) reads, on receipt of a request by the Board from the Commissioner for a recommendation, the Board shall with all due speed enquire, when it says with all due speed enquire, this means that they have got to enquire and it involves hearing the parties, enquiring into the evidence, listening to what they have to say, except in the summations and speeches of the agents or counsel or the applicant and then come into a decision. If the House wishes us to add in shall within fourteen days, I'm quite willing to add in there fourteen days but we then will need a possibility of an extension of time, and we then have to add in a section saying nothing the Board does shall be illegal notwithstanding the fact that they haven't done within fourteen days.

Mr. Chamberlist: Why?

Mr. Legal Adviser: Because the Board may wish to lift the suspension.

Mr. Chamberlist: Who are you trying to protect the licensee or the Board?

Mr. Legal Adviser: You can't just take out, with all due speed. It's a father phrase, and it has a trail of children and grandchildren after it, so you need another two sections, so as I say, we would give consideration to taking out that word with all due speed, but if we do then we have got to add in a series of

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protective clauses in case the thing is not done in the time fixed. In subsection (6) the Boards powers are set out and I have no comment there except to say that it is the intention to have the judicial penalty in(6) and nowhere else. It might be advisable to add in a Boards power for instance to fine or if the House wishes, other types of penalty added, these will be given consideration. We pick these as the normal penalties which are adequate for the purpose. In section (7), it says the Board shall give written reasons for their recommendation, now this is important. By a decision of the Court, the Higher Court will not examine the reasons for a lower Courts or a Boards decision unless they are given and as a result of a decision of the House of Lords, lower Courts in many instances have got very, very cautious and they just give a finding of guilty or not guilty, without giving any reasons whatsoever, so it is specifically provided here that they must give their reasons then that subjects those reasons to examination by the Courts, so this is why that section is in.

Mr. Chamberlist: Can I interrupt to ask a question of the Legal Adviser Mr. Chairman. I wonder if Mr. Legal Adviser could say if the Commissioner's **judicians** are an administrative judician or judicial judician and whether the Board performs a quasi judicial function or an administrative function?

Mr. Legal Adviser: I would say the **Board** would perform in this hearing a quasi judicial function and that the Commissioner has converted by the addition of the phrase here, has converted his actions from being also in a slight sense, in a quasi judicial decision to being purely administrative. The Commissioner then becomes at the point of the time the recommendation is issued, he becomes the servant of the Board for the purpose of carrying out the recommendations. The last subsection .... the second last subsection merely entitles the Commissioner of the licensee to be represented by agents or counsel which I think is a reasonable subsection and the last subsection (9), Any party aggrieved by the recommendation of the Board may appeal to the Court. Now I deliberately chose those words, any party aggrieved, in order to make it quite clear, that it was not only limited to the licensee to make an appeal, but in the event that something happened to the licensee, if he was succeeded in business or something like that, it makes it broad, in other words, we made it as broad as possible the right to appeal to the Court and I would submit to the House that with the changes as suggested to this, plus the original broad drafting of this section which was originally drafted to meet the wishes of the House during the debate the last time this Bill came, that section 16 and 17 should meet with the wishes of the House.

Mr. Chamberlist: One point Mr. Chairman, that I would like to point out and make clear, that I objected to those words, with or without a hearing, the last **time** we went through this and I haven't changed my mind now and I am pleased to hear that Mr. Legal Adviser has now seen fit to have it there.

Mr. Legal Adviser: If the Honorable Member did, it is my fault for not remembering, but I can't remember everything.

Mr. Shaw: I would like to direct a question to the Honorable Member from Whitehorse West, is he now agreed with the changes that there is a necessity for ... Whitehorse, East ... would he find a necessity for issuing a suspension forthwith without having to go through a function of the Board and so forth, with the protections included.

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Mr. Chamberlist: I will grant that the administration should have the powers and under certain circumstances to be able to close a place down at a moments notice. There are certain areas where somebody has to make a decision and make it quick. Now there is no doubt about that at all and I support that and I hope that the Honorable Member for Dawson will recognize that I am not opposed to giving the powers to close when there is a reason for it. My argument is based, notwithstanding that the power to close is given, the power to appeal, the power to be heard should be given and this is being taken care of now and I am satisfied.

Mr. McKinnon: I am still having a bit of problem with 16 (1). I can't find in any of the explanations of any of the Honorable Members or the Legal Adviser has given, what would be caused on a moments notice to shut down a licensed premises? The only one that bore some merit was the concept of watering the whiskey, I can assure all Members that as soon as any drinking establishment waters their whiskey, at least in Whitehorse, the moccasin telegraph is right on to them in a moments notice and they suffer the penalty by not having a customer in the joint two hours later. The other reasons that were given where the matter of public sanitation and of fire regulations. None of these things deteriorate on an overnight basis. It is a matter of deterioration over time. The sanitation facilities are not up to snuff any longer, the fire regulations are no longer followed. Now in any of these instances, if there is an exception under the Liquor Ordinance that is sharp, there is no reason why these people should not be given some type of notice that after first, second or third notice that they will be shut down for such and such a reason. That is the moment that the Commissioner should be able to act on a moments notice and say that you are shut down for such and such a reason, but if such notice is not written down and not contained in the Ordinance it still means that except if somebody can show me that a cause comes right at the moment, it is the same as minors starting to drink in the licensed establishments. This doesn't happen overnight that all of a sudden the bar is influxed with minors who find a place to be able to drink. It means that one tries it and over a period of time, they find that the management is lax and you find a place who caters to minors who are not legally able to drink are in a place. If inspection was made on any type of a basis and it was known that this was happening and the management was told that if such continued, their licence would be suspended, then a suspension order from the Commissioner would be completely in order, but I still haven't found a cause that on a moments notice that the Commissioner should be able to react and be able to shut the licence without any prior notice to the owner or manager of the licenced premises.

Mr. Chamberlist: A simple way. If a place got so roudy that fights commenced inside a liquor establishment a police officer who is, I don't know whether they would be made inspectors under the terms of the Ordinance, he could for that reason, because there is a danger involved in the lives of people and for that reason he could say to the bar keeper, "close this down, do not serve any more liquor" and this is a moments notice.

Mr. McKinnon: I've been in the bar business. I've worked in the bars in the twelve years that I have been in the Yukon and I have probably been involved in more fights in the bars than any other Honorable Member here and I have never seen a time when for the peace order and good government of the Yukon Territory, someone had to at that moment shut down the bar because the public of the Yukon

Mr. McKinnon cont:

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Territory were in danger of losing their life and this is still not a cause or reason for a person to be able to walk into the bar and say that at this moment the peace order and good government of the Yukon is now at stake and this bar will be closed forthwith immediately. I think you would be involved in a fight at a moments notice.

Mr. Dumas: Having bailed the Honorable Member out of many of these fights in these bars I concur with him whole heartily.

Mr. Chairman: Councillor Chamberlist, would you take the Chair. Mr. Chairman, I have not yet had an opportunity to speak in this debate, but I cannot concur with the Honorable Member of Whitehorse North. I think you will find anywhere in Canada under any other jurisdiction, that where liquor is involved, the inspector possess powers of closure in every province of Canada and the inspector uses those powers. If the inspector didn't use those powers, why licensees would be getting away with absolute murder. I know of one instance down here to the south of us, in the province of British Columbia in Fort Nelson where an inspector walked in, took a look at the place and shut the hotel down, not just the licenced premises, but the whole hotel and that place is shut down today and has been shut down for the last six months and it will stay shut down for the next year or two years or ten years. You've got to allow and indeed do this type of thing. If you look at section 66 of your Ordinance you will find that that is one instance whereby you have got to shut premises down. As a matter of fact, in most places throughout this Ordinance where we have written legislation and where any section is contravened, certainly the inspector should have the power of closure and then go to the Board and say, "alright, we have closed the place, under my authority we have closed it and until you reopen it, it stays closed", and that is the way it should be, because you are all forgetting one thing, this is a service to the general public and we owe it in making legislation to insure that the interests of the general public are well served and certainly if you have someone who is underage and he goes into a bar, that is not in the interests of the general public and so that the person who is underage goes along with the person who serves him to Court, to have his day in Court, but when the general public go into a bar, they don't want watered whiskey, they don't want to sit down and have sixteen people battling and throwing glasses and tipping over chairs and cursing and swearing. This is contrary to the Ordinance and they are entitled to a little protection from that sort of thing and this type of thing so as far as I'm concerned you have got to put peace in the Ordinance and enforce it and enforce it strong and firmly if not, why bother passing this Ordinance, why not just say, well you can go buy liquor from the central warehouse in Whitehorse, who are wholesaling the stuff, set up retail outlets all over the Territory and get with it fellows, just don't kill yourselves off, that isn't the way the ball game is played at all, so I think that the administration have bent pretty good on this and I don't think that we should be so picky as to deny the inspector or anyone else the right of immediate closure and this is something that we should have and it should be exercised more often in the Territory than it has been too.

Mr. Shaw: I'm always glad to help the Honorable Member from Whitehorse North with his bit of problems. As to knowing what would be a reason, now here is a very good reason, there are probably dozens but here is one that I can think of. The inspector or it is ascertained by someone, that one of the bartenders in a certain bar has typhoid.

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Now I would say that it would be the duties of the authorities to immediately close that bar until they get it fumigated and inspected and so forth or whatever is necessary to ensure that typhoid isn't carried around. That is one illustration. It could be some other disease that is carried, so you do have circumstances that are not always of a malicious point of view. It is necessary for the safety of the public that certainly if one of the Members, and it could possibly be, did have ... the members of the staff did have typhoid in a certain bar, same as a hotel, well you would immediately if you were doing your duty, you would have to close it down right now, you wouldn't wait for any Board to sit, it is just closed up. It might only be for a few days, but it is necessary to have that.

Mr. McKinnon: This is exactly the reason for the delineation and this is where I thought the Legal Adviser was going at the beginning of the debate, that he was going to give areas where cause would be substantial for the Commissioner to be able to revoke or suspend the licence immediately and I don't disagree with it. The point is as the section now stands, over a period of some years, the licensee could be neglecting fire or health regulations, he could not or doesn't even have to according to this ordinance receive any notice whatsoever from any government authority that he has been contravening fire or health regulations, but all of a sudden, an inspector decides that at the moment is the time to act and goes to the Commissioner and says this is an unhealthy situation here, let's suspend his licence immediately and the licence is suspended at that moment without any prior knowledge or notification whatsoever and this is why it must be delineated what is the cause for immediate suspension or what is not.

Mr. Taylor: I'll resume the Chair.

Mr. Chamberlist: The Honorable Member from Whitehorse North, I think has a point. I've always been concerned about over exuberance in policemen, over exuberance in inspectors and I tell you, we have inspectors today galore in the department. We are simply over governed with them, they are running away with the place and there is a necessity to control the inspection department. We need them but we have to control them. The only way we can control them is by legislation. I think that Councillor McKinnon has made a sound point, in effect he is saying nobody should be closed down because their place is unsanitary unless they were first written to and told that their place is unsanitary and they have to get it put right. I trust that this is the idea that Councillor McKinnon is putting forward and it would appear that under this section as it is now, that without notice and for any reason, because of those words, the Commissioner may by order for any cause, go and close a place down notwithstanding that the licensee has not been notified that there are certain requirements needed by the Territorial authorities to bring their particular establishment up to standards failing which then, there would be a suspension of licence. I think there is merit in it and perhaps Mr. Legal Adviser can while he will be making lots and lots of amendments and we have only come to page 8 and we have got another 30 or so to go, he may as well be prepared to include an amendment to cover that particular point. I think it is a worth while and meritorious point.

Mr. Chairman: At this time I will stand Committee in recess for 15 minutes.

RECESS

RECESS

Mr. Chairman: At this time we will call Committee back to order and we're dealing with Sections 16 and 17. Is it your wish to further debate these sections now or await a re-draft from the Administration. BILL #11

Mr. Legal Adviser: This is acceptable. I agree.

Mr. Chairman: (Reads Section 18, 19, 20 and 21)

Mr. Chamberlist: Mr. Chairman, dealing with Section 21 (1), it goes a long way when "forwith deliver to the Director all liquor then in his possession or under his control", surely it means if that liquor that he is using to do with the business of which his licence is suspended, he might have a nice liquor cabinet at home which is under his control. Does he have to give that up as well?

Mr. Legal Adviser: I wouldn't think so Mr. Chairman. It's intended to do with the liquor which he has in business but the reason we say that all liquor is that he may have bootleg liquor or smuggle liquor in his possession, and then we deal with liquor which is suitable for resale and the balance is to be then destroyed.

Mr. Chamberlist: Well, supposing as in a bar you have twenty bottles that are opened because the bartender is using them all the time, is it suggested that the Administration wishes to order these open bottles to be forfeited and destroyed. Isn't that an additional penalty?

Mr. Legal Adviser: It's a minor penalty of course.

Mr. Chamberlist: Well 40 x \$6 is \$240.

Mr. Legal Adviser: There's no bar I know of that has forty bottles open but I am not familiar with the operation of the bars. It's impossible to sell to the Director opened half bottles of whiskey, rye or gin, it's impossible to allow the licensee to sell them because this would be contrary to the Ordinance in general.

Mr. Chairman: (Reads Section 22)

Mr. McKinnon: Mr. Chairman, is it now unlawful for airlines to sell liquor under these present Yukon Ordinances?

Mr. Legal Adviser: Without giving any definitive opinion, I think it is unlawful because none of the aircraft are licenced but this doesn't really answer the question. I don't think under the present laws there is provision for giving a licence to an aircraft. Our rules are designed for a premises having a fixed position and so on, it's just not designed for this.

Mr. McKinnon: Has Mr. Commissioner been ever approached by any of the airline companies coming in or out of the Yukon Territory for a licence to sell liquor aboard their aircraft?

Mr. Legal Adviser: I could not say definitively of him not being approached but so far as I know he hasn't been approached.

Mr. Commissioner: These things never arrive at my desk, they are dealt with the liquor people and I cannot say definitively that we have not been approached but I recollect as something transpired here possibly a year or eighteen months ago in this connection, and I think the general attitude expressed by ourselves was that while there was nothing that gave us a specific authority or

BILL #11 Mr. Commissioner continues:

permission to grant such a licence, there wasn't nothing that said we couldn't either, and we left it to the party we were speaking to conduct themselves in a manner they felt was acceptable under the circumstances, whether they did or didn't, I have no idea.

Mr. Chairman: Clear. (Continues to read Section 22)

Mr. Chamberlist: Mr. Chairman, I wonder if Mr. Legal Adviser can explain the difference between a dining-room licence and a restaurant licence?

Mr. Legal Adviser: Mr. Chairman, possibly it might be more advantageous for Members of Committee if I briefly review to the circumstances of all the thirteen licences which appear on this list if this would be acceptable to the House. Tavern license is unchanged. Cocktail Lounge licence is virtually unchanged, there's one small change. Cabaret licence is unchanged, a dining-room licence and a restaurant license are a new combination of licenses existing licensed dining room restaurant licence. The House will recall that on a trip the House made before I became their Legal Adviser, they stopped for lunch at some restaurant and it appeared the restaurant was not licenced to serve beer in the particular part of the restaurant or particular premises where the Honorable Members were then having their lunch, so then the Commissioner and Council held a meeting and the law was duly amended to make this possible. It was what the present Commissioner called a "midnight amendment" although it occurred during daylight hours. Now the sect of that midnight amendment was that instead of limiting the selling of alcohol with certain types of meals is generally known throughout the province as dining-room, it was extended to a much wider class, and this type of licence has become very common throughout the Territory. Now the policy with which is suggested for acceptance of the House is that we should go back to the point of time before the midnight amendment and divide the licences where a licensee can sell liquor to a diner or to a person who is having a meal into two classes. A simple form of licence which is called a restaurant licence with less limitation and a less austentatious premises, and a dining-room licence when a high quality of standard is expected from the person who holds this licence. Now the difference between those two will be that, the dining-room licence will be able to sell spirits at present in this form of licence as I understand it complaints have not been made to me personally but I understand that complaints have been made to very many people by visitors to the Territory, but it seems quite inconsistent that going in for an expensive steak which may run these days to \$6, \$7 and being able to have a cocktail to commence and brandy to finish followed by liqueurs, when a simple person asks for rye and water or gin and tonic, they can't have that, they can have brandy, liqueurs or beers but they cannot have spirits. It is suggested to meet this criticism and in the ease of people who travelling to the Territory who expect this form of service in this type of operation, the spirits should be added to that licence in return for that concession, a much higher standard of service and all it's accruments should be expected from the recipient of the licence and his licence fee should be increased. In a restaurant licence, enquiries made by the Department of Liquor Control show that there are virtually no sale of wine in the type of restaurant which commonly sells beer. This information may be wrong, the Honorable Members may know this better than I do and it's alleged shall we say in one or two of the premises where wine is sold, it's sold as an excuse of giving cheap alcohol to people and breaking through the normal barriers of drinking in taverns

Mr. Legal Adviser continues:

BILL, 11

and cocktail lounges, so the suggestion that dining-room licence gets something added to it at cost in exchange for something and restaurant be put slightly back. Canteen license is the same.

Mr. Dumas: Is it correct that the intent is to withdraw the wine from a restaurant licence?

Mr. Legal Adviser: This is the suggestion.

Mr. Dumas: Well Mr. Chairman, how about the place that is out on the highway or that is in a small town or that, certainly shouldn't they be able to serve wine because there will be certain customers that will want wine served.

Mr. Legal Adviser: We don't push this very strongly, we're in the hands of the House. Don't take it that every single piece of policy which is appearing here is cut and dried. This is far from the case, this is the present policy of the Administration but the Administration always listens with tremendous attention to anything the Honorable Members have to offer.

Mr. Dumas: Mr. Chairman, then I would suggest that restaurants licences mean a beer and wine licence.

Mr. Legal Adviser: Now a canteen licence is the same as before, a train, ship or aircraft licence hopefully will enable say Whitepass to have a cocktail bar on the passenger train going to Skagway for the benefit of the passengers. It would enable again hopefully the Department of Liquor Control to get some share of the revenue to be obtained from the sale of alcohol on aircraft flying in and out of the Territory. This is subject to how neighboring jurisdictions handle this sort of thing, but as I understand the train situation in the Provinces, there's some form of agreement or deal done between the various Prairie Provinces and the revenue from the sale of alcohol, the tax element in the sale of alcohol is shared among the jurisdiction through which the train passes, this I understand to be the position. Something may develop but this is only a thought in the future to make it possible. The special licence or the off licence has nothing to do with chemical product which is advertised under that name on television. This is to sell liquor from a cocktail bar or a tavern, I think, for consumption off the premises, it also includes a licence to sell spirits which is granted to certain outlets again under certain circumstances. The club beer licence and the special licence is something which appeared in Bill No. 28 and was left in because there may be certain circumstances which we cannot yet foresee where a special licence may have to be thought up for a special occasion. One such possibility might we say a special district licence or a special group licence of some sort for say the Arctic Games or something. We may have to think up or dream up some special kind of arrangement that may not fit here and we can't foresee all the possibilities ahead of us but it is just left there so that it may not need more than an informal consent of the Council to be able to grant this type of licence, with it's own special rules and regulations if some special occasion did occur. Now the club beer and club general licences are the same as before. The brewer's licence and brewer's retail licence will really have very little to do with us, they're controlled by the Federal Government, but if they see fit to give brewer's a licence then we should have power in our own Ordinance to grant these licences. There are slight changes in the hours of tavern and cocktail lounge licences in that they are extended by half an hour, otherwise there is no suggestion that they be changed.

BILL, 11 - Mr. Chamberlist: Mr. Chairman, I wonder if Mr. Legal Adviser could advise what licence is required for room service in hotels?

Mr. Legal Adviser: Well room service Mr. Chairman is dealt with in it's own special section and it's really a permission which is granted to a person who also holds a hotel licence, at the moment room service is illegal because liquor is only permitted to be served in that portion of the building which is set aside for the sale of liquor and normally speaking people may sleep in these portions but usually not by design. The intention is that this permission will be granted. Now, I'd ask the House to bear with this in the section when we come to this room service, because at this stage of the game, room service is a new thing, we don't know how it will develop. Some licensees might abuse the service. We would like to see it for the benefits of genuine tourists and travellers but we do not design it so that it would be misused by people living in the place where the hotel is for wrongful purposes and we can't predict how the ingenuity of people will enable them to misuse a privilege because experience tends to show that whenever any group of people priviligès, there will always be some bad person in the group who will misuse it, so we put in this section and we put it in with nothing attached to it at all except that this permission may be granted and regulations made about it.

Mr. Shaw: Yes Mr. Chairman, I think that this is very good to have these categorized as they are particularly our reference to dining-room licences and restaurant licences. However, I do see quite a problem involved in that because you have one large area in the Yukon, that is one large urban area I should say, where they can have top facilities. Everything must be based on whether a person can make a livelyhood from the particular enterprise and it's possible to have a place for example, the Edgewater and a room that size to provide that kind of service but I am sure that any other place in the Yukon had they a facility such as that, they would no doubt lose their shirt on it, they couldn't possibly operate it because it would not pay. So in establishing a standard in delineating just exactly what should be to require this dining-room licence, I think and this is very difficult, and it will be necessary to have very high standards in a place such as this but they would have to be modified for the smaller areas that could not possibly, economically conduct a business in the premises of what the standards will be required in larger urban centres and I wondered if the Legal Adviser has taken into account the problems delineating just what should be and what should not be in all fairness to all concerned in regards to people obtaining a restaurant licence where they can sell wine, whiskey and so forth.

Mr. Legal Adviser: Mr. Chairman, this has been given very serious consideration, the fact that the difference between Whitehorse and the non-Whitehorse area, but the policy decision that has been come up with is that to give this type of licence, a high standard would be required, regardless whether it is outside of Whitehorse or inside Whitehorse, because out of Whitehorse they have other facilities. What you're thinking in terms of a dining-room licence is a person would be able to advertise this facility and a person coming from outside will expect this high standard of service and would be entitled to get it. Now if the person outside of Whitehorse is coming out with a facility, the size alone is not here, we haven't anything about size. There are other alternative forms of licences he can apply for. This is sort of an icing on the cake in a sense, mainly for tourists or benefit of that nature rather than to give extra revenue to the hands of the licensee.

Mr. Shaw: I recollect when we first started the beer and wine in cafes, and where on a Sunday the cafes are utilized more or less as a quasi beer parlor. Now this wasn't the intention when we classed this, I recollect it was we are going to give service to the travelling public but it didn't work out that way. It worked out as a form of a Sunday beer parlor. Now, if you're going to have something like that, I have gone to restaurants in this town and there has been a drunken party there and there and now is that the intention of the Ordinance because if it was, I would say that they should not have the licence there or you should open the beer parlor so that these people who want to make a racket and drink beer they can go to a beer parlor, not inside a cafe. You see, that is the point I'm getting at and I do agree you should have standards on this, but they should be very carefully laid out so that it will be in fact exactly what it was intended for not as another phase of having an outlet for whiskey on a Sunday because if we're going to have that, we might as well as I say open up the pubs and say well it's Sunday, better the deed so let's go along with it. Well, I was just in the old country just a few years ago Mr. Chairman and I can assure you that the pubs, the hours of the pubs are restricted far more than they are here. They close at 11:00 o'clock. Now just imagine closing the pub here at 11:00 o'clock, the howl that would go up. There is a difference compared to here.

Mr. McKinnon: Mr. Chairman, I agree somewhat with the Honorable Member from Dawson City and I think that certainly this is an area where the Administration and the granting of licences and where the Board in the granting of licences have to be flexible in this area. I have had just as good a meal in restaurants in Watson Lake and Dawson City as what we call the high classed eating establishments in Whitehorse, and they have been every bit as well prepared and done in an atmosphere of cleanliness and conviviality and I think that these areas even though they are not quite as elaborate as in the areas in Whitehorse should be given consideration, and certainly a Board should and if they don't then we'll change granting them licences because they deserve to be given this consideration if they produce a high quality class meal in pleasant surroundings, then I have no objection to this whatsoever. You will notice that under the dining-room licences where the rules aren't that stringent that people are going to qualify from that harsh a measure to be able to apply for this. The one thing I would like the Legal Adviser to give consideration to is, I don't know why it hasn't been included in this Ordinance because I've heard Council speak of it on many occasions, "are grocery stores licensed for the sale of beer? I don't think that any of the Councillors have any objection at all if beer is bought at the price going price of the Liquor Store if a supermarket or any grocery store thinks they can make a profit on it by keeping cold beer in a fridge that you can pick up and take in your car or pay for at the check-out market that anybody has any objection to this whatsoever, and permissive legislation should be granted to these people if they can make a buck at it, well if they can't go ahead and do it, then we'll leave it in the hands of the Liquor Store to be able to do it. I think that Mr. Legal Adviser should think about starting to draft what terms that this type of licence can be applied for and enter this as one of the areas that will be allowed to licenced.

Mr. Legal Adviser: Mr. Chairman, the fact that it doesn't appear in the Ordinance is no accident. The enquiry that we have made and I made some enquiries myself, show me that from a commercial point of view, when you start to sell something to a grocery store or any other store for that matter, the next request you get and you must face this as a practical matter is you get a request for

BILL #11 Mr. Legal Adviser continues:

a trade discount because you are selling it for the same price as the Liquor Store therefore in a years time or two years time this is unfair competition. The second thing is that so far as our searches go, no grocery store of substance of group of grocery store people have solved this concession and until they do I think ... there are many details to this. There are many regulations to be made and it's no bonanza and a grocery store that stocks liquor in Western Canada usually regrets that he got into it, he did it because some rival down the road did it, so until we get representations from the trade itself to have this privileged, I think that you will get no thanks whatsoever from existing people who have licences in the City of Whitehorse for introducing such a measure.

Mr. Dumas: Mr. Chairman, I don't think the Honorable Legal Adviser has put forward a very good argument in not allowing this permissive legislation. If any outlet feel they can make a buck at it without a discount they simply don't go into selling it, but the fact that they haven't been knocking at the door to sell beer is no reason why we shouldn't put the permissive legislation in here because I think there are going to be those stores that are going to be interested in serving their customers and the people this way, and that's why we're here for, not serving the stores or worrying about the few difficulties that may arise for the Liquor Department. It's permissive legislation, I think it's a good idea.

Mr. Shaw: Well Mr. Chairman, I look at it this way taking the Yukon fact into consideration. You allow grocery stores to sell liquor, okay, but in the meantime you have beer outlets. You charge them \$150 a year or \$250 a year for a licence and you have them under certain controls, the next thing is that you then dilute what there business is and put them into grocery stores. It costs them nothing to sell it, in other words you should charge them \$150 licence and you should do that and they are going to sell it then which they will have to at a mark up of "x" number of dollars per case of what have you and the person instead of going to the supermarket they are going to the Liquor Store, it's going to be \$2 less. If you start to get every outlet in the country to selling beer and wine well the outlets that you do have that are trying to bring up their standards to make it a very decent place, what have they got? I personally don't see what harm it would do to go up and buy a case of beer.. what difference does it make where you get it? What difference does it make except you have alot of other problems with the sale of the liquor, in the first place they have to make a profit on it. Secondly, anybody and everybody in the country whether 10 or 12 year olds can go in there and get this stuff.

Mr. McKinnon: Well Mr. Chairman, the Administration is so against the sale of beer in grocery stores perhaps the Administration is willing to put some coolers in the Liquor Stores throughout the Territory so a person can buy a dozen of cold beer somewhere around the place.

Mr. Commissioner: I think all the licenced premises are providing this now.

Mr. McKinnon: This is the whole point, if beer is allowed to be sold in grocery stores you're not in competition with anybody except the liquor store, which we have the cartel on in the government has in the Yukon Territory, and if a person under our free enterprise .....system can buy a case of beer from the Liquor Store for \$4.50 can cool it in a fridge at his place of

Mr. McKinnon continues:  
business and sell it to a person who wants a cold dozen of beer to take it out the the lake for \$5.00, then that person should be given the opportunity to do it but I'm not saying there is any demand for it. If the public sees a need for this service insists that it be provided in the store and the store provides, who's served, the public is served and that is well and good. That's the way the system works and if competition comes about the other stores have to buy and why do we have to nuckle under to the retail outlets now if they say we want a trade discount. We said this is the proposition we put before you, either you accept or reject it and you can either go and sell beer at a profit that you can make the public will accept or not carry it as a customer service. One or the other and all these little mole-hills that the Administration is throwing in our way to provide this type of licence tell that we take the regulation and everything that has to be considered in these other thirteen types of licences. Now we're just being thrown a big red herring at this table and let's face it, I see no reason whatsoever why with the Legal Adviser's genius for amendment that he cannot come up with something to allow for this provision which I say there is a demand for the people of the Yukon to be brought about.

Mr. Chamberlist: Well there's another point where I see no reason why the retail outlets want to worry about not making a profit of it. It was an off licence premises licence where you could go and pick up a case of beer in a cocktail lounge and be charged an extra dollar or so on the case, why can't the grocery store charge an extra dollar. What we are doing is giving him a cold beer for the extra dollar because the cases are kept in the cooler and when somebody wants a case, they have a case of cold beer. It's not competition, we're here to perform a public service. Well you know people go out to Marsch Lake Lodge and there happens to be a grocery store and they are going to have a picnic and they're going to have a picnic and we're going to permit people to have a picnic on a Sunday afternoon and they can't go and pick up their beer in a local corner store.

Mr. Commissioner: Isn't this off premises sale?

Mr. Legal Adviser: The premises which would have an off licence would be closed on Sunday.

Mr. Livesey: But Mr. Chairman, another angle too, it would save the Territorial Government alot of money, they wouldn't have to put a liquor store in these outlying areas where somebody else did the work and there is no overhead, as far as the government is concerned if they want to sell it at the same price as they are selling the individual, I don't think they have a kick at all.

Mr. Chamberlist: Mr. Chairman, say a general store let's say a supermarket that say gets 300 customers over a weekend or Saturday in their taking a case of beer out and they make a buck, that's \$300 they're not going to turn their nose up at that.

Mr. Chairman: Gentlemen, do you wish to proceed?

Mr. McKinnon: Well, Mr. Chairman, let's get down to the practical aspect of this and I get this complaint time and time again. Most people keep working in Whitehorse until Saturday morning at noon hour and then they decide that they are going out to the lake camping for the weekend, it's a hot day and you want a case of beer to go out. You go to the bar and ask for a case of beer, it costs you \$6 for twelve beers, fifty cents a bottle. You go to the Liquor Store, it's \$4.50 and its as warm as you know what. So I'm saying let's have something intermediary where you can go to a supermarket where your're buying your steaks for barbecuing your charcoal and where you can pick up a case of cold beer at fifty cents or a buck more. I've asked in this House why doesn't the Administration provide coolers in the Liquor Stores, they say

BILL #11 Mr. McKinnon continues:

there's no way we can do it, it's too expensive we won't be able to make a profit on beer. Is it possible to do it with the Liquor Stores in the Yukon Territory? I accepted their argument. If they're not going to do that, let's provide a facility through the free enterprise system because government is refusing to move in this regard where a person can get a cold case of beer when he wants it. I can't see the objections. You see it in other Provinces.

Mr. Legal Adviser: I can only repeat that so far as the philosophy of obtaining a cold drink is concerned, we have nothing against it, but we do hesitate to interfere with the existing situation where you have a situation where people now buy in the Liquor Store and the liquor store will be open late on Saturdays once this is through, they can get it in the existing premises. Now just calmly decide to change the retail stream of beer from people who built the facility and installed coolers and are attempting to give service to the public to switch it around and give it to people who have not solved this facility is something I am a little nervous about and I would ask the Members to consider this overnight and see the people involved and, see how this suggestion would rest with them or any of the people who would be asked to provide this facility and then think about having to regulate this and work out who can be in a grocery store from now on.

Mr. Dumas: I was going to suggest Mr. Chairman that if any of the Members of Committee if there are any in the liquor business they might repute the Honorable Member from Dawson City charge that they may be put out of business if the corner grocery store is allowed to sell beer.

Mr. Shaw: Now when I talked about service to the public, I would like to state this Mr. Chairman. In certain communities that when everybody goes into a certain line of goods, all the stores sell this particular line of goods. It ends up with the fact that nobody carries a decent stock of any particular one to provide service to the public. It's not a case of giving them more service it's when this is diluted over a certain area, the first thing you know they can't .. there's no one to provide this service because everyone is chiselling into their business and that's why they close down, particularly in small communities.

Mr. McKinnon: Mr. Chairman, I'm flabbergasted. The ingenuity of the Administration to come up with a liquor Ordinance that on the surface appears to be a social document of the most liberal that I have ever seen in my existence in legislation, and we come down to the simple matter of allowing people to go into a grocery store and pick up a dozen of cold beer, we've just sunk down into a mass a bunch of red herring bureaucratic gobblegook the like I've never met before under this present Administration and that is the honest a goodness truth. Now Mr. Chairman, the concept that we are going to be in competition with anybody that businesses are going to go out of business because we allow this service to the public just doesn't hold true. The only time that the cocktail lounges and the taverns and the cabarets do any off premise sale at all is when at the closing time of the night when a party has been organized throughout the night and people meeting people in these establishments, the only place they are able to get a bottle is at that establishment. No competition whatsoever with the grocery store licence because people are still going to be in the afternoon of a normal course of day go to the Liquor Store where they can get the product for \$4.50 instead of paying \$6 or \$7.20 for it as the case may be. Now the concept that the stores and the Liquor Store open at the same hours just does not hold true.

Mr. McKinnon continues:  
in Whitehorse, both the supermarkets are opened until 8:00 at night everyday of the week except Saturday in the summertime. All other grocery stores in the Yukon remain open I think later than that and every other store except the two major supermarkets in Whitehorse remain open on Sunday.

BILL #11

Mr. Commissioner: Mr. Chairman, let's forget about the historicals and get down to the facts of life here. First and foremost what hours would these sales be permitted? I'm assuming that there would be some hours involved here? The types of outlets you are talking about I am assuming that as we operate, there are not too many speciality stores as such in the Territory except right here in Whitehorse that this would have to go across a spectrum here starting with grocery stores, going on with general stores and we have many gas stations in the Territory who are performing a function. I suppose their primary function is a gas station but they have a store in conjunction with it and at this point would it be Council's wish that restaurants as well be included in this, in other words a grocery store can sell in off premises that the restaurants can sell in off premises too? I am assuming now that you want to say to these people that you can sell for off premises purposes only?

Mr. McKinnon: Mr. Chairman, the Ordinance was passed with respect that it doesn't matter if the person wants to buy the beer in the grocery store and walk around with the shopping cart drinking the beer while he's shopping.

Mr. Commissioner: My question is. Is it Council's wish that something of this nature would be in the first instance confined to off premises sale?

Mr. Chairman: Right.

Mr. Commissioner: We're talking here now about the time when the liquor store is not open because we're being told that this is not going to present any competition to anybody, that this is going to be sales basically speaking are going to be at times when the Liquor Store is not open.

Mr. McKinnon: Mr. Chairman, the places that are going to ask for this kind of licence are going to have to put a surcharge to provide this type of service because they're going to get the product from the only place that can supply booze in the Territory, the Government Liquor Vendor and they're going to buy it at the same price that the other establishments buy it for. Now there's no competition that if with the surcharge that they're going to have to charge on it that's if they know anything about business, that they are going to be in competition with the place that sells it for \$4.50 a dozen, so where does the competition come in and the hours ....doesn't hold water because if they are going to be charging more for it they are not going to be in competition with the Liquor Store. They can sell it during any hours that they are open as far as I'm concerned.

Mr. Chairman: What I want to say that in best interests of the argument or discussion, it would be wise for both parties to consider this over our next adjournment and possibly tomorrow morning we can come in fresh new ideas and maybe the Administration might have something but I don't think that the way this discussion has gone on that we are going to achieve anything by getting too much deeper into it at this point in time.

BILL<sup>11</sup> Mr. Legal Adviser: The Administration or any member of the Administration does not want to be moralizing it. We're not taking a stand that Sunday drinking is good or bad, we have no views about it, but we hesitate in advancing an Ordinance to go to far ahead of public opinion at least in the presentation of a Bill, without being sure of the public acceptance of what our policy is. When we produce this, it's Administration policy, we offer this policy for the acceptance of the House. When the House passes this Bill, it becomes House policy. This is what I would like to suggest to the Members that they accept the suggestion of the Honorable Chairman, and if a motion giving us precise instructions, fairly precise, add to amendments along the line recently suggested discussion. They produce the instructions on the Motion of the House so that it's clear that this change in policy is not Administration policy, it's not the policy which I have suggested on behalf of the Administration, it's the policy of Council, then with a hear in the hand I'll certainly draft it. It's what we think in the Administration is good policy. If we depart on a major topic from it then it's got to be a compromise policy or it's got to be the policy of the House.

Mr. Dumas: Mr. Chairman, before I move that Mr. Speaker take the Chair, the Legal Adviser has just pointed out the gap between the Administration and the House if I may point that out. I'd like to move that Mr. Speaker to resume the Chair.

Mr. Chairman: Is there a seconder?

Mr. Shaw: Mr. Chairman, Councillor McKinnon from Whitehorse North has come up with a very good suggestion and that is that the Legal Adviser find out from the Provinces that do have off sale liquor consumption and find out how they work theirs so that, if it is going to be introduced that at least we'll embark on it with a little prior knowledge to what we are now getting into.

Mr. Chairman: It was moved by Councillor Dumas and seconded by Councillor Chamberlist that Mr. Speaker resume the Chair. Are you prepared for the question? Do you agree?

MOTION CARRIED

Mr. Speaker: I will now call Council to order. May we have a report from the Chairman of the Committee.

Mr. Chairman: Yes Mr. Speaker. Committee convened at 10:25 a.m. to discuss Bills, Sessional Papers and Motions. It was agreed that Committee would meet with a Mr. J.K. Smith of the Northern Economic Development Branch of Indian Affairs and Northern Development on Thursday, November 27th at 10:30 a.m., and Mr. Tate of the 10-19 Experimental Farm to discuss Motion No. 9 on Friday, November 28th at 10:30 a.m. Committee recessed at twelve noon and reconvened at 2:00 o'clock p.m. I can report progress on Bill No. 11. It was moved by Councillor Dumas and seconded by Councillor Chamberlist that Mr. Speaker now resume the Chair and this motion carries.

Mr. Speaker: We have heard the report from the Chairman of Committee. Are we agreed?

COMMITTEE AGREES

Mr. Speaker: May I have your further pleasure of with respect to the agenda for tomorrow.

Mr. Chairman: Mr. Speaker in respect of the agenda, I believe we have before us several Bills, Sessional Papers and Motions for discussion and I believe tomorrow we will be working on the Liquor Ordinance Bill No. 11.

Mr. Speaker: Is there any further business?

Mr. Chamberlist: Mr. Speaker, I move that it is now 5 o'clock.

Mr. Speaker: Are we agreed? The House now stands adjourned until 10:00 a.m. tomorrow morning.

ADJOURNED

Mr. Speaker read the daily prayer. All Councillors except Councillors Shaw and McKinnon were present.

Mr. Speaker: Mr. Clerk, is there a quorum present?

Mr. Clerk: There is, Mr. Speaker.

Mr. Speaker: I will now call Council to order. I have received a note of apology from the Honourable Member for Whitehorse North. He will be absent for a short time today. And, also from the Honourable Member for Dawson, who is sick. You will remember my reminder to the House yesterday of a delegate to the Sod-Turning Ceremony of the Y.W.C.A., and I wonder if the House could inform me this morning if it is the intention of the entire House to attend this ceremony or whether you intend to send a delegate?

Mr. Taylor: Mr. Speaker, I believe the Honourable Member from Mayo, Councillor Gordon, will be attending the ceremony and I would be most pleased if she would consent to represent Council in this regard.

Mr. Chamberlist: I would second that suggestion, Mr. Speaker.

Mr. Speaker: Are we agreed?

Some Members: Agreed.

Mr. Speaker: I would also like to advise the House that the manager of the Experimental Farm at Haines Junction has been contacted and he will be here at ten-thirty a.m. on Friday morning. In addition, I have a message from Gordon Gibson, the Executive Assistant. It's addressed to John O. Livesey, Speaker, Yukon Territorial Council, Whitehorse, Yukon. "On behalf of the Prime Minister, I acknowledge your telegram of November 21st, and suggest a meeting time four-thirty p.m. afternoon of December 2nd. Regards." And, it's signed Gordon F. Gibson, Executive Assistant to the Prime Minister. Are there any Reports of Committee?

Mr. Dumas: Mr. Speaker, may I rise on a question of privilege? I would ask the indulgence of the House to be absent this afternoon at two o'clock to appear on a panel at the F. H. Collins High School?

Mr. Speaker: Does the House agree?

Some Members: Agreed.

Mr. Speaker: Are there any Reports of Committee? Introduction of Bills? Notices of Motion or Resolution? Notices of Motion for the Production of Papers?

Mr. Dumas: Mr. Speaker, under Notices of Motion, I would like to give Notice, "That the question of the proposed chip mill for Carcross be discussed in Committee of the Whole." MOTION #14

Mr. Speaker: Are there any further Notices of Motion? Notices of Motion for the Production of Papers? As the Honourable Member for Whitehorse North is absent, I will not call Motion No. 13 at this time. I wonder, Mr. Clerk, if we could have Mr. Commissioner with us this morning for the Question Period? I will call a five-minute recess.

Mr. Speaker: I will now call Council to order. Order, please. Are there any questions?

QUESTION RE  
ILLUMINATION  
AND SIGNING  
OF FORMER  
TRAFFIC  
CIRCLE

Mr. Taylor: Yes, Mr. Speaker, I have a question I would direct to Mr. Commissioner this morning having reference to the former traffic circle approaching the City of Whitehorse, I'm wondering if Mr. Commissioner could advise me if it is the intention of the people concerned up there to light properly, to illuminate and properly sign the area where the old traffic circle was, approaching the highway on top of the Two-Mile Hill. It is quite dangerous.

Mr. Commissioner: Mr. Speaker, part of the question relates to the subject that we have already been questioned on and which we are in the process of bringing Council up to date on, namely, the illumination of the general roadway from the top of the hill to the Hillcrest area and also to the Takhini area. As far as the other question relating to signing is concerned, I'm afraid that I don't have knowledge right off hand in connection with that, but we're certainly quite prepared to inquire of the responsible Federal Agency, the Department of Public Works, and I am quite confident that they would be prepared to confirm that adequate and proper signing will be provided. The lighting is part of another question, Mr. Chairman.

QUESTION RE  
VOCATIONAL  
SCHOOL  
ADVISORY  
BOARD

Mr. Chamberlist: Mr. Speaker, a question addressed to Mr. Commissioner. Mr. Commissioner, could you advise whether the Vocational School Advisory Board is still in existence and, if it is in existence, when does it have its meetings and, if it has had its meetings, why hasn't this Member, who is supposed to be a representative of that Advisory Board, been advised.

Mr. Commissioner: Mr. Speaker, this is a very all-encompassing question with a considerable amount of detail in it. I think we had best bring forward a written answer. One thing I would confirm, that if there has been any meetings of this Board, I am quite certain that all members of the Board would be advised of it, and I think that it would be a reasonable assumption that the Honourable Member, who is a sitting member of this Board, if he has not had any calls to meetings, that there hasn't been any. I would like to bring forward a written answer on this because I think it's a matter of interest as far as Members of Council are concerned.

Mr. Speaker: Are there any further questions?

Mr. Commissioner: Mr. Speaker, I have an answer to a question that I was asked yesterday but it has particularly to do with one of the Councillor Members who is not present this morning, and I think it would be appropriate if I were to hold it until he is back in his seat, the Councillor from Dawson.

QUESTION RE  
C.P.A.  
SERVICES

Mr. Taylor: Mr. Speaker, I have another question I would address to Mr. Commissioner this morning respecting the services of the Canadian Pacific Airlines. I'm wondering if there is continuing negotiations going on with Canadian Pacific to increase and improve the air services to the points of Watson Lake and Whitehorse at this time?

Mr. Commissioner: Mr. Speaker, we have no continuing negotiations with Canadian Pacific Airlines. The only way we can deal with Canadian Pacific Airlines is just the same as any other citizen can deal with them, either by a letter to their office or by a telephone call. We have no, what should I say, authority as a means of dealing with these people, and the only thing that I can advise Council is that there appears to be current information available among the general public that the service of C.P.A. in this general area will increase as of the change-over of the schedule in the spring of the

year. Now, whether this increase is going to affect all points on the line or whether it is simply going to affect Whitehorse, relative to Vancouver and Edmonton, this is a question I don't know, but this is a matter of seeing that the schedules are available that will come into effect, I believe, it is a date in the spring of the year when Daylight Saving Time comes into effect in certain parts of Canada. Now, beyond that, Mr. Speaker, I simply don't have any information at all that I could give to Council on this subject.

Mr. Speaker: Are there any further questions? If not, may we pass to Public Bills and Orders? May I have your pleasure?

Mr. Chamberlist: Mr. Speaker, I would move that the Speaker do now leave the Chair and that Council resolve itself in Committee of the Whole to discuss Bills, Sessional Papers and Motions?

Mr. Dumas: I'll second that, Mr. Speaker. He did a good job.

Mr. Speaker: Moved by the Honourable Member for Whitehorse East, seconded by the Honourable Member for Whitehorse West, that Mr. Speaker do now leave the Chair for the purpose of convening in Committee of the Whole to discuss Bills, Sessional Papers and Motions. Is the House prepared for the question on the motion? Are we agreed? I will declare the motion carried.

MOTION CARRIED

MOTION  
CARRIED

Mr. Speaker: The Honourable Member for Watson Lake will please take the Chair in Committee.

Mr. Taylor takes the Chair.

Mr. Chairman: This morning we will be dealing with Bill No. 11, and we were, when last we sat, at the point of section 22. I believe we were discussing the question of beer in grocery stores. Have you anything further on this section at this time? BILL #11

Mr. Dumas: Mr. Chairman, I suggest that we leave it now and do some more thinking on it. There are some problems that have been brought up since our discussion yesterday. If they can be resolved, well, we'll probably ... it's my suggestion that we go ahead as Council has indicated its wish to do so. But, if we leave that, I think we'll be coming back to individual sections regarding different types of licences, and everything that will come up will come up again then.

Mr. Chairman: Does Committee agree?

Some Members: Agreed.

Mr. Chairman: (Reads section 23 of Bill No. 11)

Some Members: Clear.

Mr. Chairman: (Reads section 24 of Bill No. 11)

Mr. Chamberlist: Question. I note, Mr. Chairman, that the application is to the Commissioner. Now, if the application is to the Commissioner, how can the Board cause an inspection because the Board will not know that an application has been made. It is only the Commissioner who knows that the application has been made in this particular section the way it is here. The Commissioner gets the application. What does he do with it? Does he turn it over to the Board? Does he turn it over to the Board for them to decide

BILL #11

whether to issue a licence or not? Well then, surely the application must be made to the Board, not the Commissioner.

Mr. Legal Adviser: Mr. Chairman . . .

Mr. Chamberlist: Can I just please go on. In 24(d), "the reports of the Fire Marshal, Health Inspector, Building Inspector, and an inspector", now, what does that mean, after we've declare the other inspectors, "and an inspector", in what category is that inspector?

Mr. Legal Adviser: Mr. Chairman, section 26 recites, "Upon application for a new licence the Commissioner shall refer the application to the Board for a recommendation...". So, the Commissioner in effect in this instance is actually the post office. He refers it to the Board, but, in order to take a view of the licence and what recommendations will be made to the Board from his side as opposed to the licensee's side, he must be able to make an investigation, and the Board, of course, upon receipt of the application are then in the position if they want to make an investigation for some purpose or other, you've got to give them the power to do this. This is set out in section 26. Now, an inspector, an inspector appointed under section 8, there are no inspectors at the present time and, when money is made available by the House . . . when and if money is made available by the House, an inspector, of course, will be appointed.

Mr. Chamberlist: Shouldn't it say, Mr. Chairman, shouldn't it say "and a Liquor Inspector"? Should it not point it out? Shouldn't it not say "and a Liquor...", or, "the reports of the Fire Marshal, Health Inspector, Building Inspector and Liquor Inspector;". Shouldn't it say that?

Mr. Commissioner: Mr. Chairman, section 2, subsection (f) in the interpretation, "inspector means a person appointed as an inspector under this Ordinance".

Mr. Chamberlist: This is quite clear to me, but we are dealing with people that have to read these Ordinances. Now, why should a person in a bar, the bartender, the barmaids, who should make themselves familiar at all times with the Ordinance because they're in the liquor business, they should be able to make themselves so familiar that the language is very, very clear to them. Now, what can anybody object to to have it clear and say "and a Liquor Inspector". Why not use the word, what it is meant to mean? What's the objection?

Mr. Legal Adviser: It's a question of style, and the style of ordinance to which the Councillors have been accustomed to is to shorten words or typing in the interpretation section, and give the full meaning in the interpretation section and shorten them down, and then use the short form throughout the Ordinance. You do this with Health Inspectors, you do this with everything. In the Ordinance it tells you "inspector", but you define him in the beginning of the thing by saying that a Health Inspector means an inspector appointed by this Ordinance, and so on, you see? Hopefully, people who are going to make a deep, tremendous study of the Ordinance will read the whole of the Ordinance and not confine themselves just to one subsection.

Mr. Chairman: May I proceed? (Reads section 25 of Bill No. 11) Clear?

Some Members: Clear.

Mr. Chairman: (Reads sections 26, 27, 28 and 29) Councillor Livesey.

Mr. Livesey: In consideration of the fact, Mr. Chairman, that very few licences require any publication or objection from other people, why is it that the Liquor Licence needs to be taken to the public to find out whether this individual sets up in business or not. After all, if he can't make it pay, it will be up to him to close it down. Why is there all this talk about whether he can have one or he can't have one?

Mr. Legal Adviser: The public is entitled to know who is getting what. It can amount to monopoly privileges in the particular area in which they reside, and there are groups, religious and otherwise, who object to any extension of drinking privileges, they object to licences being granted in respect of a particular premises, or in any premises in a particular area. The licence is for the benefit in general for the public and only to a certain extent for the benefit of the licensee, and the public is entitled to know. There's no way of informing them effectively other than by advertising in the newspaper.

Mr. Livesey: Mr. Chairman, I would like to follow that up because I don't think that if the Government wants to set up a Liquor Store in a community that it has to apply to the public to decide whether they want one or they don't want one, and certainly no one objects to a person drinking in his own home, and now that there is no objection to a person drinking outside of his own home, this is now a moral offence, not a question of legal offence, I don't understand why the licensee has to go to the people to find out whether he can set up in business or not. Look at the other number of businesses we don't control. We don't control, for instance, the number of gas stations in a community. They can have twenty-five even if there's only room for one. What is all the fuss in relation to this particular subject?

Mr. Legal Adviser: The basic reasoning behind it is the reasoning I said. A further reason is the monopoly effect of a licence. The Board would have the discretion whether or not to issue a licence up to a point. They may eventually say, there's too many licences in a certain area. Rivals in business are entitled to know. Once the government as such is giving a particular privilege to a person, then they must act openly and the public must know who is applying for what. Now, in the case of gas stations or any other business, there is no monopoly effect in granting a licence. Anybody's entitled to set up a gas station provided they come within certain rules. This is the same with all such business, but where there is a monopoly effect, then, say, Public Service Vehicle Licence, and all these various other things, the rules are always that the public should be notified that the application has been made in order that anyone can object if they wish. It's done everywhere else. It has always been done here, and I'm slightly taken back that the matter should be raised at this time.

Mr. Chamberlist: I regret that Mr. Legal Adviser is slightly taken back, Mr. Chairman, at anything that goes on in these Chambers, because we have every right to bring these things forward. I think that the Honourable Member from Carmacks-Kluane has a point inasmuch if the Territorial Government sells liquor, wishes to open a store in a specific area, it would not have to go to the Liquor Board to say to them, "can we open a Liquor Store here?", yet a private entrepreneur wishes to open a liquor outlet, the Liquor Board can decide whether or not, so that the Administration has the right to do what it wants to do, the public has only the right to be told what it can do. Now, this is one area that I think is questionable. The other point that has just come to my mind is this, if no objections are placed in the Commissioner's hands or the Liquor Board's hands, to an applicant who has made an application for a licence, why should the Liquor Board control by conditions what his licence

BILL #11 should be. If anybody objected to his application, this would be a simple matter, and is reason enough to do that, but without objections, where does the conditions for the Liquor Board come into being here? I wonder, Mr. Chairman, if Mr. Legal Adviser can answer me on both those points?

Mr. Legal Adviser: Subject to what the Commissioner would say, I think we would be prepared to submit applications for Liquor Stores to the Board just the same as members of the public would. We're quite prepared to if this is the wish of the House. We're not trying to get any special privileges that the public does not want. Liquor Stores are only placed because we feel, the government feels, sorry, that this is public demand. If they don't want it, and the Liquor Board says no, we're quite prepared to shut down the Whitehorse Liquor Store in the morning. So far as the other thing is concerned, when you put in conditions, it's not always against the licensee that the conditions are put in. It works both ways. Sometimes a person has almost fulfilled certain conditions, and he comes, because he wants to open on the first of May or the first of July, and he says, "I can't get my contractor to finish off the bathroom section, but I promise I'll do it before the end of August". Now, the Board might attach a condition that the licence is granted subject to the completion of a certain piece of work, or a certain pathway, the removal of a dangerous obstruction. In the bulk of cases, the conditions would be helpful to the licensee rather than the reverse, and it gives a certain amount of flexibility to the Board in dealing with licencing. Sometimes it may be that there is a particular objection made, shall we say, by the Fire Marshal or by the Health Inspector, and it might be against the licensee's wishes. They might say, "We will grant you the licence subject to taking away that door". Now, I can't at this point visualize the conditions. I wouldn't imagine they would be conditions in any way outside the terms of the Ordinance, because it's clear from the Ordinance exactly what rules this person must obey. But, you will find quite often that a licensee will apply for a licence and inform the Board or whoever is granting the licence that a certain set of facts is so, that the demand is for a certain type of business or something. It might be that they grant him a licence and say, "We'll grant it because you inform us and you satisfy us at the moment that it is so, but, if it changes we would like you to come back to the Board and see what the position is in six months' time", or something. You know, it's hard to invent conditions. It's not primarily inserted to be against the licensee. It's really to enable a Board to make recommendations which, without that, they might not be able to make in ease of the licensee.

Mr. Chamberlist: Well, I accept that second portion of the explanation. I think that it's fair enough, although, if the Board came along and said that the conditions that the licence will be granted you is that you have four barmaids, two bartenders ... see, this is a condition. Now, they might go into that area. They might go into the area of telling the operator how to run his business. They might tell him what kind of cash register to use. You see, this is a condition. It's so wide there, you're leaving the store wide open for a Board to just give conditions that are outside the area of the Liquor Ordinance itself, and yet the fact that they have the right to make conditions is the thing that disturbs me. Now, perhaps Mr. Legal Adviser will take a further look at that and perhaps reword it. Now, certainly I would approve, and I wonder if Members of Committee could indicate whether they approve, Mr. Chairman, of the government themselves having to apply to the Liquor Board before they open a Liquor Store in any particular district. Now, I think that Members of Committee should indicate this, and if they indicate that this should be done, then Mr. Legal Adviser should draft in that particular area that this would have to be done by the government before a Liquor Store was opened.

Mr. Dumas: Mr. Chairman, I agree with the suggestion of the Hon- BILL #111  
ourable Member for Whitehorse East. I think that if the individual applicant has to give public notice, then the government should also. However, as far as giving public notice is concerned, I think it's a courtesy and a service to the public that an applicant give public notice and, as such, we're here to serve the public and I think it's a good idea, because those who do object for whatever reason have a chance to voice their opinion. Unlike most other businesses, most people are concerned to some degree at any rate with the consumption of alcohol.

Mr. Livesey: Why, Mr. Chairman, whether a person consumes liquor or not is his own choice.

Mr. Chairman: Councillor Chamberlist, would you take the Chair a moment?

Mr. Chamberlist takes the Chair.

Mr. Taylor: Mr. Chairman, I agree that if we're going to start developing a Board that the suggestion made by the Honourable Member for Whitehorse East is a sound one, that indeed the government in opening new Liquor Stores should consult with the Board and make the application in a normal manner. But, there's one thing bothering me and I would like to ask a question. Do I still understand that as a condition of licence, or appended to a licence, that the possibility of the number of existing liquor outlets in a community could be considered as a condition of refusal? May I have this clarified?

Mr. Legal Adviser: Now, that form of condition is not the conditions visualized. The condition as visualized here in this is only a condition attached to a licence when it is granted, not a condition for refusing a licence. Now, so far as somebody saying you must employ three or four barmaids or something, I can visualize a dining room licence applying for a licence, and explaining to the Board that they were going to run a high quality establishment, and they spoke to the gentleman who was going to organize the business, they found that he had never cooked a boiled egg in his life, they might say, the licence is granted subject to employing a qualified cook to cook the people's food. Do you follow? Or, subject to employing somebody with experience in the business. I can visualize all minor conditions which wouldn't affect it, but, normally, in ease of the applicant to enable him to get the licence.

Mr. Taylor: Mr. Chairman, that still doesn't answer my question. I realize these other conditions. I'm asking specifically about, I have the inference from the discussion that has gone on this morning, that the Board or the Commissioner may in some instances, if they deem that there are sufficient liquor outlets in the community, may refuse a licence on that basis. This is what I'm trying to get at. Is this envisioned or is this possible under this Ordinance as proposed?

Mr. Legal Adviser: So far as I'm aware, not at this present time, but the Board presumably will grow in setting its policy. The Board is the Board that grants it, it hears the objections. If a substantial number of people in a particular area said, "There are ten hotels in this particular place and one more might be too many", this is a matter for the Board to make up its own mind. We've got to give the Board power. We've taken the discretion away completely from the Commissioner. We're giving it to the Board. The Board represents the public. I can't at this point visualize what the Board will say in ten or fifteen years. It may be that they ... they must have some room for maneuver in either granting a licence or refusing a licence, otherwise there's no point in having these

BILL #11... things discretionary, we might as well have anybody get a licence who happens to have a grocery store, as we had a discussion on.

Mr. Taylor: This is fine. It is possible then that this could happen. I just wanted for the record to state, Mr. Chairman, that when we first brought into force sections 24 and 25 of the existing Ordinance, we've stated "In the municipality of Whitehorse, no Liquor Licence shall be granted except to a hotel..." that has so many rooms, etc., and then we went and said in section 25, "Any municipality or settlement outside the municipality of Whitehorse, no Liquor Licence shall be granted except to a hotel". In other words, we've said a hotel that conforms shall have a licence. That was placed in the Ordinance for this reason, that there was a very distinct lack of good accommodation available to the traveling public throughout the Yukon at that time, and in an effort to get more accommodation and better accommodation facilities, and in order to encourage this type of development, we said, "Alright, if anybody will commit themselves to putting in this many rooms, depending on whether you're dealing with twenty-four or twenty-five, you do that, and you live up to all the building standards, and you shall have a licence. You've got it, there's no question about how many other licenced outlets there are in a community. You've got it." And, I thought it would be well to mention that in Committee today that that is the specific and only reason why we've tacked this business about rooms on there. It was in an effort to upgrade and get more accommodation, so if there should be any intention by the Board or by the Administration to start limiting these licenced outlets in any community, I think that this should be taken into account because this was what it was set up to do and what it should be doing today, and if anybody wants to come and build a brand new hotel anywhere in the Yukon, he should be welcomed, he should be kissed on both cheeks and given a Liquor Licence if he can live up to all the other standards.

Mr. Dumas: I think, Mr. Chairman, that this is basically correct. If anybody comes in and puts up a twenty-room or thirty-room hotel, they probably deserve a Liquor Licence, and it's a free enterprise system that we're living under hopefully. But, I think that this problem regarding the Board and the suggestion that the Board might set conditions as to how many barmaids and so forth, this type of thing has got to be left to the discretion of the Board, because when we enter into any kind of a legal document or any kind of legislation, or if we allowed the Board to put on any conditions, if they were a real nasty Board and wanted to make it tough, they could really make anything tough, but we have to have some point, there's got to be trust as there has to be in any legal contract. At some point in the carrying out, you have to just trust that these people will have the proper discretion and act in the best interest of the public, including the people who are applying for a licence. I find that I'm not really concerned with this problem at this point. I think we have to trust that the Board will act in the best interest of all concerned and that they wouldn't restrict or refuse a licence without really just cause. I don't consider just cause to be that there are already three liquor outlets in Watson Lake or wherever it may be, and I would hope that the Board would think the same way.

Mr. Taylor: I will resume the Chair at this time.

Mr. Taylor resumes the Chair.

Mr. Chamberlist: The Honourable Member from Watson Lake, Mr. Chairman, suggested that there was a different reason for changing the Ordinance the last time to twenty rooms and thirty rooms; thirty rooms in Whitehorse, and twenty rooms outside of Whitehorse, but I

remember the circumstances very, very clearly and it was put in there for one purpose only, where people acting in a powerful position as Legal Adviser and Commissioner of the Yukon Territory made sure that the applicant who was making an application for a licence for twenty rooms didn't want them to have a licence, didn't want the person to have a licence. Now, I recall that, and this is the type of thing we must prevent a Liquor Board from doing, and therefore I would say that the restrictions placed on anybody that puts his money into a hotel accommodation to increase the potential for the public, for the tourist, for the traveller, should be given a licence if he has complied with those areas of health, building, Fire Marshal, inspectors that have made those requirements that they need for the safe and proper conduct of an establishment. To me, I see no difference between an establishment that requires a licence that has twenty hotel rooms or thirty hotel rooms because a man could only afford to put up \$300,000 establishment, why should he be penalized because some corporation is able to put up a \$1,000,000. The man can't raise more than \$300,000 so he can only put up twenty rooms and a cocktail lounge. But, because four or five people have got together, they've pooled their resources, this makes them in the eyes of government more suitable to get a licence. Now, this is improper, but this is what has happened ... Mr. Commissioner is shaking his head, this is not so ... but this is what has happened. The small man gets penalized. Somebody on the highway can only afford a ten-cabin unit. He can only afford a ten-cabin unit. He's got himself a little service station. He's got himself a little store. He's got himself a little area that he would like to put a cabin or cocktail lounge in for the travelling public and for those people who are staying with him and for his local community where there might be some road camps or people working on the road or other construction, and he wants a place for them to come. The way this is set up now, unless he has twenty rooms, he cannot get a licence, and this is improper. You penalize the man that has been struggling on the highway from the time that he put in an outside biffy and started building up a one-room shack; he's built his establishment up over ten or fifteen years to where he's got ten units there ... he's got twelve ... he's got fourteen ... but he's restricted on a cocktail licence because somebody had a bug in his bonnet a couple years ago that here's one applicant who we want to make sure doesn't get a licence. You see, so they alter the whole situation to affect the whole of the Territory, and now they're placed in the position of people who want to build on various territorial highways and on the Alaska Highway, small lodges, small establishments, they are compelled to have twenty units before they can have a cocktail lounge. Are we serving the public then? I don't think we're serving the public. Now, we have got the responsibility to the public, we've got to make an even decision as to the issue of licences. If we say that a hotel must have at least a certain number of rooms, fine, but it has to apply right the way through the Territory, not especially Whitehorse. Like they had just recently, I'm please to see it's taken out although liquor control is the exclusive responsibility of the Territorial Government, they even went further in that last section to include that a licence wouldn't be issued unless the municipality approved of it as well. That's how wrong this was. Now, Mr. Chairman, this is beginning to be a sensible piece of legislation. It looks good. I looked at it again last night. With a few areas, it looks good. Let's keep it that way and let's correct the inequities that have been existing for so long in this Territory as it applies to liquor. Let's make sure that the small man who has been pioneering this country to build up small places of business can get equal treatment, and I think that it should be done because any business man would recognize that people that were gradually starting in business and building up business, they might not be able to put in twenty rooms or thirty rooms or fifty rooms. Let's not deal and think in terms of large corporations that can raise the money to put

BILL #11 : in large establishments for the purpose of giving them liquor licences and let's not restrict liquor licences to the number that can be used. Some fellow in Watson Lake or Haines Junction might be placed in the position of well, what's the use of me putting up a hotel with ten or twelve rooms in because, you know, I won't be able to get a liquor licence, yet there is accommodation needed. You tell me anybody that can make a living out of just ten or twelve rooms only. Thank you, Mr. Speaker.

Mr. Chairman: At this time I will stand Committee in recess.

RECESS

RECESS

Wednesday, 26 November, 1969.  
11:00 A.M.

Mr. Chairman: Well, at this time I will call Committee back to order, and we are discussing Bill No. 11. Have you anything further on Section 29? May I proceed?  
Councillor Gordon. BILL NO. 11

Mrs. Gordon: I am pleased to see that the Member from Whitehorse East is so concerned about our outlying areas but I think there is one thing he missed, and that is that the man on the Highway who has worked hard to create his establishment is admirable, but you could possibly also have people who had the wherewithall to build good facilities, but they know a good thing when they see it and they know where a dollar lies and if it was not necessary for them to conform to certain standards, they could go in there and reap a whirlwind with very little investment and I think this is one area in which we must be considered, take into consideration.

Mr. Chairman: May I proceed? (Reads Section 30). Mr. Chamberlist.

Mr. Chamberlist: Question, didn't I see where it is necessary - if we refer to Section 28, (reads Section 28). He has to file his objection not less than five days, and then after the last publication, and then in "30" it says "The Board shall fix a day at least seven days after the last day of publication" so there are only two days before it gets between the Commissioner and the Board. Now, perhaps I am reading it out of context but, or there should perhaps be a comma here "his objection together with the reasons therefor in writing with the Commissioner not less than five days after the latest publication" so that, in other words, he cannot file an objection until five days after the last publication. In writing with the Commissioner not less than five days, that means he can't file before five days. Is this the way it reads?

Mr. Legal Adviser: No, this to me, of course my English may be deficient owing to my origin, but as I see it, he has five days to do it.

Mr. Chamberlist: Not less than five days.

Mr. Legal Adviser: If you want to make it clear we can say, within five days, within and not less appear to be the same but I am certain....change to within.

Mr. Chamberlist: Within five days, now supposing on the fifth day, I would say that includes the first and the fifth day, and if on the fifth day reasons were given, an objection was made within the fifth day, now when we go to Section 29, I beg your pardon, Section 30, it says "the Board shall fix a date at least seven days after the last day of publication". They can wait two days before they fix the publication, it does not say how long after. When it says "at least seven days" it may be 30 days afterwards. I wonder, Mr. Chairman, if Mr. Legal Adviser gets the point I am making.

Mr. Legal Adviser: As I have attempted to draft it, what I am trying to do is to limit the objection to a point of time not exceeding, in a sense, the five day period at the end of the three weeks advertisement. Now, so far as the Board is

BILL  
NO. 11

Mr. Legal Adviser continues...  
concerned, they must allow seven days to elapse from the end of the advertising period, and then they can sit. So, you have got three weekly advertisements, and then a further week. The Board can't hear it for four weeks, in other words, but the objector must be in two days before the minimum time for the hearing. We are trying to get speed but not too much speed. This is what we are trying to do. I don't think the word "within" would actually suit as a change there. We can use a longer phrase but this is what we are trying to achieve; three weeks advertisements and at the end of the three weeks advertisements the objector gets a further five days to get in his objection. To look at it from the Board's point of view, they have seven days' grace from the last advertisement and at that point of time, then, any time after that they could set the hearing. But, I think in aid of the Board we must make the assumption that the Board is going to try to get the thing over as soon as possible. It will certainly be under pressure to get it over with as quickly as possible, but not too quickly as the objector must have time to organize his forces.

Mr. Commissioner: Mr. Chairman, with respect, we haven't got time to redraft everything in front of us here but I think this Section 28 here, should be written so that very, very clearly five days after the latest publication of the advertisement is the last day for filing any objections. I think this is the point we want to get. Now, the next point we want to get across here is that under no circumstances can a Board start to hear any of this thing until the seventh day has elapsed after the date of publication. Now, if we get that message across I think this is it. Maybe Mr. Legal Adviser might like to take another look at this; this is the point.

Mr. Chairman: (Reads Section 31).

Mr. Commissioner: Mr. Chairman, just hang on a minute, will you? This situation here I think is something that I would like to hear some discussion on around this table. At the present time we attempt to have Board hearings, such Boards as we have in existence, we attempt to have these hearings generally speaking, located in Whitehorse. Now this has some very good merit, particularly with regard to Public Service Vehicle Hearings because many of the applicants come from outside of the Yukon Territory, but I think that I would like to hear some comments from Councillors here regarding the place where these hearings are going to be heard in relation to Liquor Licence applications. Now, speaking from my own personal point of view, if I was an applicant for a liquor licence in Ross River, the only way that I think it is right and fair that the people in Ross River are going to have a proper opportunity to place any objections and make any representations to this Board, if this Board is in Ross River. Now, there may be times when this is not practical and where it is not possible, but certainly I think that if we are going to hold this Board with not only the Legislative authority that we are giving it here, but are going to clothe it with public acceptability which I think is an awful lot more important than all the legislative authority it is going to have, it would appear to me that there should be some conditions, and I don't believe they should be stringent conditions, but I certainly do think that there should be some conditions indicated as to where they should attempt at least, to hold these hearings in connection with these applications.

Mr. Chairman: Councillor Chamberlist, will you take the Chair a moment, please?

Mr. Taylor: Mr. Chairman, in light of the Commissioner's recent remarks, I believe when we first dealt with the major change of the Ordinance at the last Session, I believe this was provided, if I am not mistaken, that the Board, when sitting outside of Whitehorse, would take on an additional Member; if the Board was three, I believe two Members would go from the Whitehorse Board, one member would be selected from the Community. I seem to have that in my mind somewhere, but in any event I do agree with Mr. Commissioner that if we have an application in Dawson and an application in Teslin or Ross River, or anywhere else, that the Board should move to that community for the hearing and that funds should be set up to pay the Board, that the hearing should be held in a public place where all the interested parties and the public should be able to attend and I really support that position and I assume that it had been considered in the Ordinance; if not it should be spelt out and I certainly buy it.

Mr. Commissioner: Mr. Chairman, I wonder if Council would consider that we ask the Legal Adviser to get something into this section here which would indicate roughly that where practical and possible, the Hearings would be held in as close proximity as possible to where the actual applicant is located. Now, as I said in my initial remarks, there has to be some reasonable flexibility here; it may well be that there is an application coming in from a locale where it is not practical and possible to hold hearings, but on the other hand, I think if we could allow the use of the words practical and possible, it places a very great onus on the Board that if they did not hold their hearings in the general locale of where the application was from, they would have to have some pretty valid reasons for not doing so.

Mr. Chairman: Mr. Taylor.

Mr. Taylor: Mr. Chairman, it could also be considered that if there is an application, for instance, from a very small community, say Swift River on the Alaska Highway for instance, or any of the lodges on the Highway; they could be held at the closest point, closer to Teslin, fine, hold the meeting in Teslin even though you are not right there at their location. I don't see any problem here. In other words if there is an application at the Liard for instance, you could hold it in Watson Lake; somewhere close to the person involved.

Mr. Commissioner: Mr. Chairman, this would be my question; would Council be prepared to accept something that would permit the use of practical and possible as the criteria which would be the guide for this?

All: Agreed, agreed.

Mr. Taylor: Councillor Chamberlist, I will now resume the Chair. (Reads 32(1),(2),(3)Councillor Chamberlist.

Mr. Chamberlist: Mr. Chairman, I would ask Mr. Legal Adviser to indicate why the Board would not be obliged to announce its decision in the presence of the applicant or any other person. In the ordinary course of any judgment being handed down, an accused person, or a litigant in a civil action has the right to be told by the Board the decision and the reasons

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Mr. Chamberlist continues...  
for judgment. Now, why can't we be told in these cases.

Mr. Legal Adviser: Mr. Chairman, modern Canadian legal practice has developed, and especially the Western Provinces, that no longer is the litigant told the decision in a normal case in open court by the Judge unless the decision is made immediately at the end of the case. The modern practice is that the Judge retires and then writes the judgment which usually takes some time and this happens under our present Court Rules in Whitehorse and B.C. and Alberta and Saskatchewan, to my knowledge. I make the assumption that perhaps it happens in the East as well, and the decision is written and then it is communicated to the people concerned. Now, the main reason for this is the expense involved and the delay involved in resummoning the Board when the decision has been arrived at because if we don't put this Section in then it means the whole Board would have to go to Swift River or to somewhere else like that to communicate the decision. This is a very practical and sensible section.

Mr.

Mr. Chamberlist: I beg to differ with the Legal Adviser's suggestion that the law has changed on that. When judgments are handed down the Supreme Court or the Appeal Court of B.C. even though the Judges may take considerable time to come to their decision, they go into Court and they inform the representative or the council, and then they read the judgment out and that is how it is done, or it goes into.... and it is done there, but somebody has to be there at the time. It is just not given to them like that. This is what I cannot understand; certainly there is a section here that says the Board shall give written reasons to the Commissioner. Why the objection, this is what I am trying to get at? Supposing the Board came to its decision at a particular Hearing; supposing they were hearing something today and it was so obvious why they had to say yes or no. Why couldn't they say "yes" so that the people could go ahead and do what they want to, or say "no" so that, why?

Mr. Legal Adviser: I don't like to be contradicted flat when I say what the present practice is, and the present practice is that unless the decision is given immediately at the end of a case, the normal thing is to give it usually at the commencement of the next term. The written decisions are given to the Clerk of the Court for circulation to the lawyers or the parties and this has happened in Regina vs Tom Smith, the decision was handed down by Judge Morrow the other day. A written decision was communicated to our Court here of the judgment appeal. It is quite impracticable, if a hearing is held in Watson Lake and they've got to retire to write their decision; if they have got to do it in the presence of the applicant, the whole Board must be present and all go to Watson Lake and they must bring all the parties with them and if lawyers are involved the lawyers are then paid for attending in Court to receive a judgment. In Alberta when I was in practice there, the normal fees for lawyers were ten in court and the judgment was something like twenty-five dollars or fifty dollars and he did nothing except listen.

Mr. Chamberlist: This is why I ask questions, to find out!

Mr. Chairman: (Reads 33(1),(2),(3),(4). Clear? Councillor Dumas.

Mr. Dumas: On behalf of the absent Honourable Member from Dawson City, could we get an explanation of what mutatis mutandis means?

Mr. Legal Adviser: Mr. Chairman, it is a Latin form of speech known as the ablative absolute and it's a combination of the gerund with a gerundive, both in the ablative case and treated as nouns, and therefore it means changing according to the necessary circumstances.

Mr. Chairman: (Reads Section 34(1),(2),(3),(4),(5),(6); 35; 36. Councillor McKinnon.

Mr. McKinnon: Section 34(2) (Reads Section 34(2). Do all licences renew at the same time, April 1st?

Mr. Commissioner: Yes, this is correct, Mr. Chairman.

Mr. Chairman: (Reads Section 37(1),(2),(3),(4),(5). Councillor Livesey.

Mr. Livesey: If you would allow juke boxes, T.V. and then we have a form of canned entertainment, why wouldn't you allow a person to play a guitar, especially if he wasn't being paid or doing it for the entertainment of the guests. I object to it.

Mr. Legal Adviser: I don't think there are any hard and fast rules about this, Mr. Chairman. The conditions governing tavern licences, cocktail lounge licences and cabaret licences are taken from the existing Ordinance. There are classifications which exist, depending on the fee which is paid for the licence, and to control them, because in the operation which uses live music, they obtain a Cabaret Licence, they pay slightly extra for the privilege and in return they are permitted to open later at night. It is just a form of classification.

Mr. Livesey: Mr. Chairman, the Legal Adviser many a time brings up questions in relation to the Old Country and especially in England and advises as to what is done over there and if he would recall some of his trips over there you would find out that; well I know one place just outside of Bristol where there are thirteen public houses and there is no other form of business in that block. There you have a mass of entertainment right there. Now if you go into one of these places you will find; if you go into one place you can stand up near a bar and put your foot on the bar and you can order beer. You go into the next room and you can sit on a chesterfield, in front of an open fire, and all the other various accouterments you find at home and you go into the next room and you can play the piano and anybody can bring their musical instruments; they have all these things separated. It is not just a question of sitting down at a table and getting completely full right up to your neck before you leave; this isn't the idea at all. The entertainment is a part of the association of healthy, normal absorption of liquor as far as the public is concerned. Here we seem to stress nothing but you just go into a place and you have to keep drinking all the time, there is just nothing else to do and I just don't understand the position that is taken here by the Administration.

Mr. Chairman: Councillor Dumas, pardon me, Mr. Legal Adviser.

Mr. Legal Adviser: Mr. Chairman, might I suggest that the House go through Section 37, 38 and 39. Now, in those three sections, broken into subsections, are the various conditions for tavern licences, cocktail lounge licences and cabaret licences; then having read these sections with their conditions, there would be no objection to discussions as to what should be the conditions for tavern licences or cocktail lounge licences and for cabaret licences. And then

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Mr. Legal Adviser continues....  
when you had the feeling of the House, we could probably come up with something. It is quite clear, there is no objection to anyone playing a guitar in a tavern and I agree that Western Canada may have a tradition of hard drinking and no entertainment in bars, no women allowed, nothing. We are moving from this position but I think it should be done in a cohesive whole so that we know what we are facing and if I get the instructions of the House I don't think the Commissioner will have any objections to redesigning the conditions for the three things, keeping in mind the cost of the operation to the licence, the type of customer he expects to be in there and the various factors involved.

Mr. Dumas: Mr. Chairman, one other thing which we might keep in mind then and that is the hours of opening, to restriction between nine o'clock and twelve o'clock midnight. I see no particular reason for setting these hours. Council will have comments, I am sure.

Mr. Chairman: (Reads Section 38 (1),(2)).

Mr. McKinnon: Question, what is the definition of a room set aside.

Mr. Legal Adviser: This is the old definition. It means that when you apply, the hotel is applying, so they have a room set aside for the bar.

Mr. Chairman: (Reads Section 38(3)). Do I take it from this, Mr. Legal Adviser, that it is foreseen that a Cocktail Lounge then could be open until two o'clock in the morning on Saturday night?

Mr. Legal Adviser: Sunday morning, I take it, you mean, Mr. Chairman. No, there is no change in the drafting of this. I agree it is a little bit shakey but for the sake of clarity we stuck in the exact, precise definition that was in there earlier.

Mr. Dumas: Mr. Chairman, the Legal Adviser suggested that we leave this until we come to the end of the next Section. Would that be your suggestion?

Mr. Chairman: (Reads Section 39(1) to (9) inclusive).  
Councillor Dumas.

Mr. Dumas: Mr. Chairman, first of all I disagree on the hours sections. I think we should be more flexible and we should allow the cabarets and the cocktail lounges and the taverns to stay open longer hours if they so desire. We are now talking about permissive legislation, we are not saying that they have to do so. I think, personally, that they should be able to open on Sunday, but if not that then at least they should be able to stay open until two o'clock Sunday morning. This again is permissive legislation;-if the taverns only want to open fourteen hours, or the cabarets, that is up to them. If we want to put in this legislation, in the cocktail lounge section, a period ending in subsection 4, Section 38, a period ending not later than four o'clock in the forenoon of the following day and may not be re-opened during the six or eight hour period, I suggest, might be better. Here again, I am talking about hours of opening, I am looking at the more liberal legislation and in the State of Alaska I think that this type of thing, I think that this type of thing, this whole field of liquor is something where we must be careful and try not to legislate against as the old

Mr. Dumas continues...

cliche goes, legislate morality. I think that the individual should have the right to conduct himself in a manner he deems fit. It should be his choice, Mr. Chairman, as to whether he wants to stay in a cocktail lounge until four o'clock in the morning, or in a tavern until two o'clock in the morning, or what have you. I can see causing these places to close down for four, six or even eight hours in some cases so that they can clear their customers out and clean the place up and meet the health standards that are required in the Territory, and rightly so. But here again, I must insist that I cannot agree with the idea of dictating to people when they can and when they cannot drink and what hours they can do so. It just isn't in keeping with my way of thinking in a democracy. The other thing is the entertainment; I believe that in taverns entertainment should be allowed as it is allowed in cocktail lounges, in cabarets. Now, we may be talking about a difference in licence fees but I am sure we are not talking about more than say \$200.00 a year in the cost of a licence between a cabaret and a tavern. Here again, while going to Quebec, or going across the line to Blaine, Washington, they have large taverns with live entertainment and everybody sort of enjoys themselves. They dance and what have you. It's a very successful means of people enjoying themselves. The same thing, of course, holds true in England and some of the other countries of Europe. I suggest that this should be so here. The cocktail lounge licence, well, entertainment or, I don't think really matters because with the cabaret entertainer, the tavern entertainment, the cocktail lounge could be a place for people who didn't want the entertainment. So, it is a moot point as far as I am concerned; having entertainment in the tavern, having entertainment in the cabaret I think would satisfy just about everybody. Subsection (3) of Section 39, a cabaret located outside the Whitehorse metropolitan area may be open during the same hours as a cocktail lounge may be open. I don't quite understand why that is there and maybe the Legal Adviser, when I am through, can tell us. Under the cabaret licence also, subsection (2), of course what I have said about hours of opening apply there. In subsection (5) of that Section, it says the cabaret licence may have attached to it conditions governing the hours during which—the hours during which entertainment may be offered, and (b) the number of performers. I don't understand why conditions on this type of thing would be restricted—if they wanted to have a band in there all day and all night too, surely that should be up to the owner of the cabaret. The number of performers, well here again if you have a topnotch single performer like Gordie Lightfoot, certainly he would qualify as an entertainer. And also, under sub (e) of subsection (5) the type of entertainment to be offered is another condition that may be set. Again, as long as it is legal, it should be allowable.

Mr. Chairman: Mr. Legal Adviser.

Mr. Legal Adviser: The points made are very sound ones. To deal with the minor points first; the reason that the cabaret licence has attached to it conditions governing these things is partly to ensure that entertainment is in fact provided. There is a certain tendency for people to, at present, to take advantage of the cabaret form of licence which permits them to be open until two in the morning, and then not provide entertainment for the customers who go out there. You see, they are getting a privilege. They are

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Mr. Legal Adviser continues....  
getting a privilege of staying open after the others are closed so they get large numbers of people and then they may not live up to their bargain. Now, the other things tend to be public health matters, limiting the number of persons in the audience and the type of entertainment to be offered occasionally sails very close to the wind. It is a very difficult decision to make sometimes as to whether or not a particular type of entertainment should in fact be permitted. I think it was last year some entertainment was offered in a local establishment which involved a young lady removing a succession of veils and other undergarments one after the other and complaints were made that at the psychological moment the lights in the establishment were shut off and on a Friday and Saturday night the place was very, very packed with people and there was a certain suggestion that fights might ensue or people in a state of inebriation might take advantage of the fact that the lights were out in order to say, remove a handbag or something like that. Well, happily, when the awkwardness of the situation was brought to the attention of the licensee, the licensee made arrangements to see that this very dangerous form of entertainment was not allowed to continue. But there was no censorship imposed on it, it was just merely pointed out to the licensee. I think, I could hardly take directions or give a decision on this without feeling out thoroughly the feeling of the Members and then discussing it thoroughly with the members of Administration concerned and trying to come up with a series of guidelines based on the wishes of the Members of Council. It is a question of not giving too much say to a tavern licence, not giving too much to somebody else and cutting out the conditions, because the traditional conditions are there. It is not an easy task to overnight, or even in a day or two to design a set of conditions which will reflect a new trend of thought of liberal drinking. Now, I don't think there will be any serious objection, certainly from the Administration, to increasing the drinking hours, but one must advert to the fact that the licensees themselves have wishes in this matter. The section to which the Honourable Member referred is dealing with a cabaret located outside Whitehorse, was, as I understand it, at the wish of persons who were operating this type of entertainment, who did not wish to stay open after this particular time and therefore, being the only person affected, this section was introduced by an earlier Council at their particular wish.

Mr. Dumas: Mr. Speaker, Mr. Chairman, I just point out that this is permissive legislation and there are some cocktail lounges now in Whitehorse that don't stay open as long as they could, if they wish to and by the same token any of those who would object to us lengthening the hours of opening are allowed to close earlier if they wish, as it should be.

Mr. Chairman: In view of the time I will declare Committee in recess until two o'clock this afternoon.

RECESS

Wednesday, November 26, 1969.  
2:00 o'clock p.m.

Mr. Chairman: At this time I will call Committee back to order and we are discussing Bill No. 11 and I believe we are discussing jointly, sections 37, 38, and 39.

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Mr. Chamberlist: Section 38, specifically excepts draft beer on the licence premises where it deals with a cocktail lounge. Why exclude it from the legislation, why not have it in there? It is up to the operator to decide whether he wants draft beer or not.

Mr. Legal Adviser: It is perfectly reasonable and we have no objections whatsoever to amendment, but in the process over the years of giving a piece of candy to the tavern keeper here, the cocktail owner there, and the cabaret owner there, the restrictions were on taverns not to sell hard liquor and the bulk of their trade tends to be in many places, draft beer. On the other hand when you are giving the cocktail bar owner some privileges you allow him to sell hard liquor and you take out draft beer because that is to a certain extent the prerogative of the tavern keeper. The administration has no particular view one way or another except this seemed possibly back in 1956 or 1946, a form of equity which has been preserved until now and it is now up for grabs.

Mr. Chamberlist: The cocktail lounge sells beer in any event and what we are saying to them, you can sell the beer in a container which can be opened to pour into a glass, but you can't pour it into a glass yourselves. It seems a little bit stupid that you can't do that and I would suggest we put it in and allow it to the discretion of the cocktail lounge operator. If he doesn't want to sell draft beer, he doesn't have to sell draft beer. If he wants to sell draft beer, then he sells draft beer.

Mr. Legal Adviser: We would be subject to a certain amount of pressure from the tavern keepers who would say, "You've given our staple commodity to the cocktail bars, in return we want to be able to sell hard liquor".

Mr. Chamberlist: I can't see that at all because taverns have always sold beer, cocktail lounges have always sold beer, it is only in recent years that beer has been sold as draft beer, that means as ... beer is being sold, instead of being sold in packages of one pint bottles or one pint cans, it now comes in gallon kegs. Its no difference it is still beer and if as I say, most cocktail lounges wouldn't think of putting it in. They wouldn't think of doing this, but there may be, for instance there may be somebody, some cocktail lounge who may have a brilliant idea where he wants to put a big barrel on his counter so that people can help themselves to a glass of beer. I see nothing wrong with that myself and I suggest that we put that in. The point has already been made with reference to live music in a cocktail lounge. It seems to be a ridiculous situation when you could hear Gordon Lightfoot playing a guitar over a piece of electronic equipment, yet when the guy comes in there himself to play it, you have to buy a licence for him to play it. You are still getting the same music, what difference does it make? We are going to have permissive legislation which the Honorable Member from Whitehorse West who is not here at the moment, seems to be concerned about and we should have that type of thing, it doesn't hurt anybody. I think that the cocktail lounge or any licensed area should be able to open on Saturday continuing into 2:00 on Sunday morning so that every day is a day except that we should not and I would not support the wide open sale of liquor on Sunday subject to those areas which we have already spoken, dealing with the selling of off licensed permits for cases

BILL #11 Mr. Chamberlist cont:

of beer and whatnot for an existing permit holder. The other point that I'd ... the idea of a cabaret lounge licence is really just another way that the Territorial Government could raise an extra few dollars. It doesn't do anything else, beyond give the right to have live music at the same time and except through also where anybody with a cabaret licence must have proper food facilities. Right now this would be a movement in the right direction because there are those in cabaret business that do not supply the public with food requirements as the existing Ordinance requires and correction should be made to see that the Ordinance is enforced and this new area might help to enforce that. The question of ... that is under section 39 (3), the question of a cabaret located outside the Whitehorse metropolitan area may be open during the same hours as a cocktail lounge may open, I'm easy on that. It doesn't mean a thing. The section 39.(4), (reads), in the opinion of the Commissioner, this is something that is not very good at all because the Commissioner expresses an opinion. Is he the expert or is it the Board, the Liquor Board who will decide what the regulations shall be pertaining to that? It should be the Liquor Board because here again we are placing it in the hands of the Commissioner to decide what those requirements should be. We have already given a semi-..... recognition to a Liquor Board. Why not place that area in the hands of the Liquor Board so that they can make as their conditions for the issuing of a cabaret licence, such and such a type of food is to be served. Such and such an area is to be made available for serving and the likes of that. It should not be placed in the hands of the Commissioner as one person. There is reference made to dressing room facilities available for performers. This I think can be expanded to be ridiculous. If the Commissioner or the Board, whatever the case may be, asks for provisions to be made for dressing room facilities which are large expensive and rarely used. Many entertainers, especially the band, would this mean that the dance band would have to have its own dressing rooms? Usually what the band does, they go up and play a few tunes, go up to the bar and have a few drinks. I mean this is their dressing room. This is what they do. The only time that they want to use a washroom, they go into the washroom that is made available for the cocktail lounge patrons. I think you'd be putting an onus on the bar operator to create facilities that would perhaps never be used. The last point and this is a point that is very important, I think, is subsection (7) of section 39. (reads) What are those conditions? This is where we come back again, what are those conditions? for which an inspector can suspend a licence? I think it places, again, if in his opinion... What are the breaches? I think they should be clearly spelled out so that the inspector can suspend the licence on (a), (b), (c), (d), (e), (f), say so, so that the operator knows that if in any of these areas of the legislation, his operation is not carrying out the functions that it should carry out, then his licence would be suspended by the inspector who would have every right to suspend. Then it is a matter of making the language clear, Mr. Chairman, and I would like to have Mr. Legal Adviser's comments on whether or not he can put into effect with the ... if it is Committee's wish to do this.

Mr. Legal Adviser: With regard to subsection (4), I am perfectly willing to substitute the word "Board" for "Commissioner". We have no difficulty about that, in fact it is probably my own fault for overlooking, the Board should be there, but I should say that with regard to the preparing and serving of food in cabarets, we're experiencing a certain amount of difficulty about enforcing this. Up to comparatively recently, restaurants were in the habit of buying food, cooking it and serving it. Now you have the odd place in town who all they provide is a heating facility and they buy a half dozen

Mr. Legal Adviser cont:

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T.V. dinners, maybe pizza and they shove them on a hot plate and then they tell you that they have adequate facilities for serving food, when in fact the original intention of the House some long time ago when it invented cabaret licences, invented them as far as the Yukon is concerned, they had these rather stringent conditions attached to them and it would have been sort of like a bigger and better dining .... licensed dining room in a sense with entertainment thrown in. A lot of these are under our present circumstances quite difficult to work. So far as the condition in subsection (5) is concerned, it would be a normal facility to provide a dressing room when there are performers, live performers, dancers singers and what have you, because after all, all the performers in a cabaret do not take off their clothes and put them on in public. There are some performers who prefer to do this in a dressing room and I don't think that the conditions are going to be unreasonable. A dressing room is a dressing room, which consists of a dressing table and a chair, and a wash stand and what have you, so I don't think there is any necessity to change these. In reviewing the whole of the three sections, I would like the House to give real consideration to tying up the three types of legislation together, because each Member has different ideas about each of the different classifications. I should say that we have no objection whatsoever to extending the opening hours on a Saturday night into a Sunday morning, making Saturday night the same as Friday night, for instance and we're not pushing in any way to have the bars or anything else open on a Sunday, but once you start opening your door here, you allow a licensee or a potential licensee to have an argument round the corner, it's difficult to justify. There is no question, but any person of average intelligence, such as the Honorable Member is looking through the three sections, 37, 38 and 39 will see that they are inconsistent, difficult to work and very, very hard for me as a person of almost average intelligence to justify. They are the result of growth over the years and we've no objection whatsoever to realigning provided that the Members realize that when you give a concession to Mr. A, Mr. B. wants at least the same type of concession, so if we knock out subsection (3) of 37, subsection (3) of 38, then we have removed any difference between a cabaret and a cocktail lounge and a tavern, but still we will have left in these onerous restrictions of providing dressing rooms, serving food and so on on a cabaret, so any person after ... if they were amended in the way that is suggested by the Honorable Members, any applicant for a cabaret licence is going to find that he's the same hours as the cocktail lounge or a tavern, he has got onerous conditions attached to him of serving food and having it available and providing dressing room facilities. He can only offer entertainment in limited hours, whereas the other people can offer it twenty-four hours a day. He's limited on the number of performers he can have, but down the road at the tavern, has an unlimited number of performers, he's got to provide dressing room facilities, the others do not and he is the only one who has a limit on the number of persons in the audience and he is the only person who has a type of censorship, if you like on the type of entertainment that he can offer. So there's no question, but such a person would have a hole in his head if he applied so there is no real point ... also he is the only one who is subject to the onerous condition of subsection (7), that an inspector may suspend his licence for breach of condition, so ... the condition is set out in subsection (5), so there is no point in having such a type of licence in existence anymore as a cabaret licence. We fall right back to taverns and cocktail bars. If we allow cocktail bars to sell every type of liquor, if we have the same hours for taverns and cocktail bars and allow cocktail bars to sell all types

BILL #11 Mr. Legal Adviser cont:

of liquor, then the only difference remaining between taverns and cocktail lounges is that a tavern may not sell hard liquor and a cocktail lounge may sell all kinds of liquor and in neither of the three places would we have any mention of the fact that food should be provided as well, so we are right down to setting out a form of licence and the licensee within certain frameworks can keep open for a week day at least, if we knock out the hours, he can keep open for any number of hours as he wishes and he can do anything he likes, provide any type of facility and we've just made what is really, possibly a major reform in liquor laws in Canada.

Mr. Chairman: Councillor Chamberlist would you take the Chair for a moment? Just before we rose at noon I wanted to have something to say on this subject. I think that first of all we have bit off a pretty big chunk in these three sections. I think we should take them individually, now with the understanding that we have and we might get somewhere, because we are jumping back and forth and we are hitting so many areas, but I do have comments on the three and my comments relate to outside the municipality of Whitehorse, rather than within it at this point in time. And that is that I notice that the entertainment licence has completely disappeared from the Ordinance under this new draft and in the district outside of Whitehorse, or unless it is somewhere later on, the problem .....

Mr. Legal Adviser: Mr. Chairman, the word entertainment licence was used in the old Ordinance as when you got an entertainment licence and added it to a cocktail bar you became a cabaret.

Mr. Taylor: This is my very point. We provided that in the outlying districts, in smaller communities we could not afford to go cabaret and under the hours and under the stringent regulations which govern cabaret lounges, so we provided that an entertainment licence would be issued as stated in the Ordinance, "this classification shall not be applied to cocktail lounges, outside such an area and such cocktail lounges will operate during the hours permitted for cocktail lounges notwithstanding entertainment which is offered. This was to provide that a cocktail lounge could provide entertainment within their own lounge hours and have a little dancing on a Friday and Saturday night if the local group could come in and play and it worked very well in the outlying areas. This has disappeared. Now we are told in this Ordinance, you must go cabaret, you must pay an additional licence of \$50.00 or \$25.00 whatever is involved in this thing, you must come under all these rules, which certainly these cocktail lounges cannot do and it would be unthinkable to take away from these people the privileges that they have had and enjoyed in the smaller outlying communities, outside of the 25 mile limit around the municipality of Whitehorse and I would ask that the administration give much consideration to this point because this has become a way of life in the outlying districts. Also further in respect of tavern licences I agree that draft beer should be served in a tavern and only a tavern. I don't think it should be extended to a cocktail lounge otherwise as has been pointed out by the Legal Adviser, there would be no difference. They would all be getting into a one class deal. I think as we get later on into the Ordinance, at least outside the municipality of Whitehorse that 10 rooms should be the minimum requirement for the having a tavern licence...for the issue of a tavern licence, but in the case of a cocktail lounge, the 20 rooms remain. Moving on to the cocktail lounge licence, I feel as other Members have expressed that we should look at this 2:00 Sunday morning business. This is... it is strange that it has never been done before because this is the weekend for many working class people, this is the

Mr. Taylor cont:

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opportunity when they can get out and relax and enjoy themselves and dance and do whatever and there is no reason at all why this should not be done, however, I note again under cocktail lounge licence that the entertainment licence should reappear and be available as it has been in the past in the outlying districts. As for the cabaret lounges, I still think that you have got to distinguish at least in the municipality of Whitehorse, you've got to make that difference, there's nothing .... I don't see anything wrong with section (5) of section 39. I think it was put well in the past, I can't see that it has presented any great problems. I believe that this is an extract is it not, and unless somebody can show where it has created ... if it hasn't worked or this type of thing, or a hardship, well then certainly I would be agreeable to considering the point. In general, these are my feelings as they apply to the outlying districts, but I am just wondering, I would like some opinions from Mr. Legal Adviser on this entertainment licenses and if he feels that the administration would consider putting back the entertainment licence as it has been in the past.

Mr. Legal Adviser: There was never any intention to take it out. All we did was to change the name, this is what we thought we did and to colour the particular case which the Honorable Member had in mind, we put in subsection (3) (reads). The other condition may apply to it but I didn't think that there would be any conditions which would be objected to. As I understood the position on discussion with the people in liquor control, it was requested that the people who were operating what was basically a cabaret facility outside Whitehorse, wanted not the stringent conditions, they wanted .....well to be a cocktail bar and not a cabaret and advertised as such and run as such. If there is any section that the Honorable Member feels should go in to sort of create this position, we are certainly willing to put it in there because we never had any intention of taking it out.

Mr. Taylor: I don't feel that without ... a cocktail lounge should have to be classed even outside of the city of Whitehorse, be classed as a cabaret lounge because then you have to come into the smaller areas and you have to provide dressing rooms and you have to supply all the other stringent requirements. So in other words, it seems to me that the entertainment licence was the answer to preclude this unless it can be spelled out in the Ordinance, because it would work a hardship in the outlying districts. And value of licensing too.

Mr. Legal Adviser: I agree, there is a possibility that this may work a hardship. The cost difference is pretty well negative, I think it is a \$100 a year, \$50.00 a year for entertainment licence, I'm not sure exactly what it is, but if entertainment is permitted in cocktail lounges there is no necessity for that to differentiate them any more, because all they would do is take out a cocktail lounge and then they are on a free and easy ride.

Mr. Shaw: Fortunately I wasn't here this morning and so I might have missed some of these, but I must agree very clearly with the Honorable Member from Watson Lake. Don't let us make it more difficult for these smaller communities to operate. A lot of these are accented toward this large urban area... this urban sprawl. It's not easy to compete with some of these things. I have heard the recommendation from Members of this Council in relation to draft beer. I recollect when that first came before Council and it was agreed by all in sundry including the operators of these various enterprises, liquor outlets and beer outlets, this should be a thing that should be kept for the tavern. Arrangements that

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were made seem to be working very well, there seem to have been no complaints in respect of that. The Members of Council at the time I recollect, were up talking about a working man's drink should be available in the taverns, at a reasonable price, in other words it appears to me that draft beer is cheaper than buying it by the bottle and they wanted to have a drink of beer, they didn't want to have to pay for a very fancy cocktail lounge and all the things that went with it and by having this in their beer parlor which was adequate for them, they could get a drink at a lesser price that more befit the pocket book of the working man. That is the argument that was put before Council and that is what Council agreed to at that particular time. This arrangement has worked as far as I can see, exceedingly well, at least I as a Member of Council, have had no complaints from anybody, either from the working man or from the owners of the cocktail lounges or the taverns, so to make a midnight move on this particular section and say, well that should be sold in all areas, seems to me to be just going a little too fast. Personally, they can sell it outside in the wheel barrow if they want to as far as it concerns me, but at the same time, this is something that is perhaps something that the operators themselves should be able to say whether they feel that all this thing should be spread out amongst all these particular areas. There is a .... when something is working well and there is no complaints from anyone, at least I have not heard any, to change something that took hours and hours of discussions in this Council on, I know that this was a really heated proposition, this discussion on such a subject, and then all of a sudden we say that we are going to change it. I think that possibly, though personally I have no ... as I say you could sell it outside in one of these wheel barrows if you want to, but I think it takes a little more research than just saying, let's change it and under those circumstances I certainly wouldn't agree to changing that particular thing from tavern licenses to cocktail licenses unless we said Mr. Chairman, well let's not have a tavern, let's call them all cocktail lounges, let them all sell whatever they want to sell. If you are going to infringe on one section, put it in the other, then it is only fair that you should go from the other and put it back in the one that you are taking it away from. That is my opinion.

Mr. McKinnon: Having heard from four of the Honorable Councillors up to this time, I can see without any doubt whatsoever in sections 37, 38, and 39 that we are never going to resolve this Ordinance as it now stands in Committee as we are now. I can see a general philosophy in an outline of what these three sections are going to look like by the time that we have decided what we feel the Yukon is prepared to accept in the field of more liberal liquor legislation at this time and I think it is pretty well impossible to hammer out these details in Committee, It is going to mean a matter of all seven Councillors sitting down together some evening and deciding what we are going to come up to the Legal Adviser and ask him to draft with the type of legislation that we want to see enforced in the Yukon at this time. This is the third major revision of the Liquor Ordinance that I have examined in this House and I think every amendment to the Ordinance that has been made at this time has been extremely well accepted and reflected very well the thinking of the people of the Yukon Territory at the time. After the Ordinance has been made, after all the sound and fury of the interested parties on both sides had been made the Ordinance has been accepted extremely well by the public and have worked very well by the public and it has been a credit to this Council that they have been able to feel the needs and the wishes and the feeling of the people at this time. I think everybody now

Mr. McKinnon cont:

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is giving their own philosophy on what they feel the concept of liquor should be in the Yukon at the time and I am prepared to give my own interpretation. I don't feel that the Yukon is not willing to accept at this time, I personally am not willing to accept at this time, the concept of an out and out liberal proposition as the Honorable Member from Whitehorse West made this morning that we just open the doors of the Liquor Ordinance, wide open, and let anything go. I don't think that we want wide open Sunday drinking in this town or in the Yukon at this time. I don't think people want the concept of a strip like they have on 4th Avenue in Anchorage, where every second door is a cheap bar type of establishment and I think that we are entrusted in this Ordinance to issue a system of checks and balances that provides for the different licenses that makes it workable and makes it acceptable to the public as it now stands. I have difficulty with section 37 with the tavern licence, because I too believe that there is no reason why there shouldn't be entertainment allowed in a tavern licence. The real pertinent example that I remember so clearly in this is at the time of Sourdough Rendezvous, when the Indian people come in from every section of the Yukon Territory. They prefer to drink and meet their people in the tavern in Whitehorse. Now in the cabaret and in the different dance halls throughout the area the music is going and the dancing is going on and the entertainment is going on. The Indian people from all the sections of the Yukon are in a tavern with their drums that they brought in to perform at the Sourdough Rendezvous and I have seen them thrown out of the tavern in full ..... with their drums under their arms because they dared to start beating those drums and chanting in the tavern. Whereas in every one of the cabarets, and in every one of the dance halls, we were all whooping it up to the very same degree that they wished to perform in the taverns and I see no objections to this. How you put that type of entertainment in where you allow someone to strum a guitar or sing and play a piano and yet, not infringe on the owner of the cabaret owners who have quite stringent conditions laid upon them. I don't know how you resolve this. This is a difficult one because I don't have objections to the philosophy of being entertained by live entertainment in a beer parlor but I still believe as the licence stands that we are placing stringent orders on the cabaret owners and this would be unwise and it would be unfair really. I also agree that there was a very good reason up to this time that Sunday drinking was not allowed into the 2:00 a.m. on Sunday morning. An example of this is the Yukon Summer Games contingent raised some \$5,000 which probably would have come from government sources if the Ordinance had been that cocktail lounges and bars could ... cabarets could open until 2:00. The procedure in this organization which I was involved, was to get a special occasion permit to begin at 11:00 on Saturday night and go until 4:00 the next morning. The cabaret owners and the cocktail owners cooperated with us fully, by letting their patrons know that after midnight on Saturday there was a dance at the Elks Hall and they could drink until 4:00 in the morning to and we raised some \$5,000 in funds that would have had to come from other sources by having this advantage. I agree at this time that I don't think this is any longer workable. The town is becoming too sophisticated not to allow the cocktail lounges and the cabaret lounges to be open Sunday morning until 2:00 in the morning. I think the Legal Adviser can see the feeling of Council on this that I think they are willing to accept this type of amendment to the Ordinance at this time. I am wondering Mr. Legal Adviser whether or not in cocktail lounges, I say particularly for areas outside of Whitehorse whether games of skill, like suffleboard, billiard table and any type of entertainment or games of this type are allowed in cocktail

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lounges. Would this be permissible under this Ordinance or is this permissible.

Mr. Legal Adviser: To put it in reverse, I think that if subsection (4) of section 37, came out, knocking out darts, shuffleboard and other games of skill, and they were not by this Commission permitted, I think the common law would provide that they are permitted, because what we are attempting to stop, is not the games of skill, we are attempting to stop the one-arm bandits, the gambling game, so I don't think there are any objections to having these games in a cocktail bar at all except that just custom apparently dictates that in a tavern type set up you have this certain roudiness and movement to and from with the shuffleboard and the darts and what have you, whereas in a cocktail lounge tradition appears that it is a more carpeted area, there is a certain amount of quite executive class, gentlemen and their wives, knocking it back in a quiet, calm atmosphere as opposed the roudiness of the tavern. I'm not saying that this actually happens in practice, but this is the vision, so the proprietors try to avoid putting in darts and shuffleboards. Outside Whitehorse there are plenty of places where there are many tiered structure, where there is on one side of a corridor there's a great big tavern, on the other side there is maybe two or three cocktail lounges plus a dining room and each has its own special atmosphere like a perfume.

Mr. McKinnon: I'm glad this question is clarified because I don't think I ever travel on the highways in the Yukon where the proprietors have, especially in an area where there only is a cocktail lounge licence don't ask this question whether shuffleboard and juke boxes and this type of thing are permitted in the cocktail lounge itself and I have always said that I don't know anything in law that prohibits this and I would imagine that you could go right ahead and do it and they have always seemed a little leery of doing this. Subsection (4) of section 39, I agree with Mr. Legal Adviser that the original philosophy of Council is that the cabaret was going to provide a superior type of dining and dancing atmosphere, through tradition and usage, this didn't work but a very good type of cabaret operation evolved from this that really Council sees no objection to and I think the wording of adequate facilities should be left this way because if adequate means an infra-red oven and pizzas being able to be served for food and the clientele this is all that they want, if they consider it adequate food service for the type of establishment that they are patronizing, I see no objection to this from Members of Council. I don't think there would be too many objections from Council on this. That pretty well sums up my thinking on 37, 38 and 39 on this Ordinance. I think there are minor variances with other Members of Council, but I don't think there is anything that can't be resolved if we got together in one good night of head-knocking and came up with a consensus of what we would like to see Mr. Legal Adviser draft in these three sections and present in a finished form to this Committee.

Mr. Livesey: I have two points that I would like to raise at this time in reference to hours and I wonder if Mr. Legal Adviser could advise me on one, if this Ordinance as drafted permits any tavern owner or cocktail bar owner or cabaret owner to close his place for cause. In other words, never mind how long he is supposed to be open according to the Ordinance, does it allow him to, if he thinks that there is something wrong with his operation which may get him involved in any problem with the administration of the Ordinance, that he may close it down in order to avoid this type of problem. That is part one of my question and part two, still in relation to

Mr. Livescy cont:

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the hours of operating, does the Ordinance as presently drafted, take care of a problem which arises in a good many instances in the outlying areas where there may not be a single customer in the cocktail bar or in the tavern for hours at a stretch because of certain conditions in that particular area at that particular time. Does it allow the owner to close it down in order not to have to pay for costs of operating when there is nothing coming in by way of a return.

Mr. Legal Adviser: As I understand it Mr. Chairman, they do close up. I think there is an argual injustice in a place like say Dozadeash I think pays the same amount of licence fee as say the Capital or say the Whitehorse Inn in a year although they are only going to stay open for possibly two or three months or four or five months a year, I don't know, but we are not attempting to fit the cost of the licence to the period open because the licence fee ... it is a very small licence fee and the operations here in town in addition to paying the Territorial licence fee, they also pay \$500.00 a year or something like that per licence to the city as a business licence which is quite heavy.

Mr. Livescy: I don't believe the Legal Adviser understood either one of my questions. Question one was does the Ordinance as presently drafted, allow an owner in a rural area to close down his premises for cause irrespective of the determination which is created by the Ordinance that he must stay open for so many hours, does it allow him to close it down for cause. Say for instance, he can ... four or five people come in there with more or less a belligerent attitude and could cause a problem for him in relation to the administration to the Ordinance which he is going to avoid. Does it allow him to shut his place down immediately because he thinks there is trouble brewing and my second question was, does the Ordinance allow a person in a rural area an owner of a tavern, cocktail bar or cabaret, if such be the case, to close his place because there is no business?

Mr. Legal Adviser: I don't think there is anything in the Ordinance which forces any tavern keeper or cocktail bar owner to keep open it may be opened, we're limiting the time that he can be opened but we're not limiting the time that he can be shut, but having said that, if a person who obtains the privilege of a licence for service of the public in a particular way is going to consistently not provide that service, I'd say that the Directors of the Liquor Control, or the public or somebody might be chasing him up and if he was in the situation where at common law he was an inn, then he might have the obligation to provide food and drink to the traveller who is passing by, but to shut down because of a potential fire or because of a potential row or everything else. I think if anyone is right and he would be stupid if he didn't .....

Mr. Chamberlist: Mr. Chairman, I have already made my remarks about the three sections except I would like to reiterate one point that when I suggested that there shouldn't be any collusion of draft beer for cocktail lounge, I'm just saying that in this section, why make a specific point of excluding draft beer. I'm not saying that I agree it should be sold by them. One point that just came to mind, which I think Mr. Legal Adviser should take into consideration. He made a reference to a traveller who would be going to an inn in asking for food or drinks to be supplied. It's a very old law that where there is an inn, and I think it is still followed here, it goes all the way back for many many years, pretty difficult for a hotel to supply food and drink when one

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government department, one government, licenses an inn for accommodation and then refuses to licence it to sell drink. I wonder how Mr. Legal Adviser would overcome that?

Mr. Legal Adviser: Well, if I was faced with the problem, I would build an extra three bedrooms or nine bedrooms and I would get my licence at the right time like everyone else, but a traveller only has rights if there is food available within reason, accommodation available within reason and drink available within reason, but the only reason I make the remark is if the privilege of selling alcoholic liquor is given to operations along the highway, the reason it is given to them and not given to somebody else, is so they will service genuine travellers going up and down the highway and this has been policy in very many countries and it certainly has been the policy all over Canada and particularly in Western Canada for at least a generation now or a generation and a half and this is something which is behind the whole suggestion of privileges and selling alcohol that in return for the privilege, you must get something with it. If you want the gravy you must get some of the grease.

Mr. Chairman: Are we agreed by Committee that section 37, 38 and 39 be left in abeyance at this time as per the recommendation of the Honorable Member from Whitehorse North. Would this be for further consideration?

Mr. Legal Adviser: If I try and prepare a small little gallop pole questionnaire and put a list of alternatives and then the Members can go in to caucus at some point of time and then we can ascertain on the various little individual points what the wish of the majority of the Members were or at least give them some basis for discussion because it is very hard for me by a process of osmosis to find out which of the Members is in favour of draft beer and which is not, which of the Members is in favour of opening on a Saturday night until 2:00 a.m. Sunday morning and which is not, which of the Members is in favour of giving the privilege of live entertainment to cocktail bars and which of the Members and so on and each of them will be able to form a view and then it might form a basis for a caucus group and then outside the official House, I could receive my written orders and carry on accordingly.

Mr. Chairman: Are we agreed? I'll proceed then with the next section which is section 40. (reads section 40 (1) to (3).)

Mr. Shaw: Mr. Chairman, I can see the object of subsection (3) subparagraph (i), adequate experience, how is one going to determine if one has adequate experience or otherwise. That is going to be very difficult I think.

Mr. Legal Adviser: Adequate is not a term of art. It is an expression of the view of somebody, each person has a different idea of what adequate means. In this case, it would go to the Board. The Board would be basically government people and they will make up their minds, what in their view is adequate experience. In other words what they are looking for is a good cook.

Mr. Shaw: What if he quits next week?

Mr. Chamberlist: Honestly, I think it is an affrontary for us to legislate who should spend his money in business. This is what we are doing. If I want to go and put a \$100,00.00 into a project and then lose my shirt because I don't have the right people there, that's my business. I lose out, but to try to put into legislation protection

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for me for being stupid because I want to lose my business, that's ridiculous and to suggest that before I can go into the hotel business, I have to have adequate experience in the hotel business, or I have to have other business experience and I have to employ management. This is my money that I can do with whatever I like. You're telling me that I can't do it. Where does this piece of legislation come from?

Mr. Legal Adviser: I think it would be an impertinence for me to suggest that in legislation or otherwise we could protect some people from stupidity. This legislation is similar in form to regulations which are in existence in Ontario also in existence in a slightly altered form in B.C. I would far prefer and I think the Honorable Members know to have all this data in regulations and not in the main Ordinance, but in reference to the express wish of the House, we have put stuff that should be in regulations back into the Ordinance. What we are attempting to do here is go back to the point of time before the inflated ..... that Council had with Commissioner Cameron coming back from a journey at one time when they broke a hole through the existing dining room licence area and extended the dining room facility to every restaurant in the Territory. We are trying to get into two different classes what is presently in one class to create a higher class, more expensive dining room facility where you can get a higher expensive class meal which would be suitable for tourists and people who are prepared to pay a lot of money for their entertainment and their food and on the other hand to make available for people who don't want to avail of this particular type of facility a restaurant licence. We are trying to upgrade the facilities for the tourist. If people don't want to get into the business, no one asked them to, but if they want to get this type of licence they will obtain the privilege of selling liquor which they have not got at the moment and they will also get the privilege of selling it on Sunday which they haven't got at the moment, so in return for this privilege which we are granting them it is not unreasonable to expect them to come up with something. We are not asking the people to go into business, but if they go into business we are laying the ground rule under which they come.

Mr. Shaw: There is just one point I would like to clarify. The changes in the Ordinance that took place a couple of years or so ago were not the result of a trip Mr. Legal Adviser, that the Council made around the Territory by any means. They were the results of a Committee that was formed that went around the Territory holding hearings and came back with recommendations. That was how come we have dining room or cafe licences or whatever you might call them. That is how we got that, and of course the object was that we would have better class places. I mean the places were run as they should be run and they would be real nice places to go in and have that. That was the object of that but not a midnight move by any means.

Mr. Chamberlist: I don't care about not the reasons behind why we have areas of the requirements of the dining room, such as subsection (4) and on, what I'm concerned about right now is this subsection (3), which is going to restrict a person from going into business. This is his right to decide whether he wants to go into business or not. Why should he be legislated against and this is what is being done. Now quite often I didn't know anything about the hotel business, I'm an electrical engineer, I said past tense. I said I'm an electrical engineer, I'm in the electrical contracting business, but because I wanted to go into the hotel business, the

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suggestion is that I have to have adequate experience. I have to employ other people. I learned by trial and error and let me tell you I learned by trial and error and I lost a lot of money at the beginning but I learned from it. It is my privilege to spend my money and my misfortune if I lose my money, but to legislate against me or to legislate against any person anywhere in the Territory simply because they want to go into the hotel business, cannot be supported. It is most improper.

Mr. Livesey: This is a barrier examination that is coming from the Legal Adviser and I would suggest that if the Legal Adviser wants this kind of thing in the legislation that maybe the government will supply those cooks and bottle washers and so on that they have decided are adequate to fill this section of the Ordinance. What they are trying to do is nationalize the kitchen of the hotel business. This is what they are trying to do, there is no question about that. In my area, there is a business out there that imported two french cooks direct from France, but neither one of them are at the moment French cooks. There is the whole story. So what do we do? Go back to France and get two more because the Legal Adviser says they are not adequate or they haven't...haven't parted their hair in the right place or something. You can bring up almost anything. I think before we go ahead with this type of legislation I think we should give it severe examination.

Mr. McKinnon: It's not often that I rise in defense of the Honorable Members in my great emotional outbursts, but on this one I have to say that I agree with him whole heartily. Certainly the criteria whether an establishment gets a dining room licence or not is a discretionary power of the Board when they see that there is adequate facilities and they have received a meal or know that there is a very good chance that a good meal can be prepared and the facilities that are present and are applying for a dining room licence. To make it incumbent upon the person who wants to invest his money in a risk business and put this onus upon him is something that I would never be able to put forward in this legislation and certainly this has to be removed from this Ordinance.

Mr. Legal Adviser: It is very difficult. Either we regulate dining rooms or we don't. Now if we take out this subsection, if you take out this subsection all we are left with is that in every dining room the tables shall be covered with table cloths or other equivalent suitable covering, they have flatware and meals with adequate menus shall be served at regular times. It doesn't do anything about the quality of the meal, the size of the room, the quality of the service, nothing. We are even removing the fact that they must be cooked by a cook, so we are right back to the same problem as we are in cabarets where you have an infra-red oven serving a pancake or ..... Either you put the regulations into section 40 or you put them in regulations, so if you take out subsection (3), I'd far prefer to see subsection (3) taken out and subsection (4) and a section inserted enabling the Board to set the regulations for what the criteria of a dining room shall be and then leave it absolutely in the descretion of the Board and they can go down there and each inspect it and let them decide.

Mr. Livesey: What do we have now Mr. Chairman. We have the administration finds out that the elected members don't want it in the legislation so they are going to make it provide an opportunity so they can do it when we are not here, by making regulations to which they do not apply to us for information whatsoever. This is another form of legislation with a different name

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over which they have the entire control. This to me isn't adequate either Mr. Chairman. Whatever the administration cannot do before our face surely they shouldn't try to do behind our back.

Mr. Shaw: I agree very much that when we have a dining room that certainly there must be control on this. There must be standards that must be complied with and I'll agree with that. Absolutely one hundred percent, you just can't let everybody start up another cocktail lounge under the guise of selling a few sandwiches so therefore this must be a bona fide dining room, absolutely in every sense of the word. It is necessary to have regulations in something like that, that one can live with and I say that that is necessary, but the point of where we get the adequate experience is something that must be the hardest thing to define in the world, for any person to say that you are capable or you are not capable of operating this type of business. There are many people that started in small and built up quite a business and did it very successfully so that to determine on a person's personal test whether he is capable of doing something especially when these Board Members meet with somebody that is absolutely strange to them, I think is just a little bit off centre in fact it is quite a considerable amount off centre because it won't prove a thing. I think the Board's duty is not whether a man can afford it or whether he is going to be able to run it, it is the Board's function I think is to see that when he starts up that he complies with all that has to be complied with and that he continues to comply with it or he loses his licence. I would suggest that section (3) be taken out and see what can be done to substitute it to provide a good dining room, but not on whether a person has got the ability, that's what we are saying, whether he has the ability to run this right or not. I have seen many people start up a restaurant and by gosh they were really going to make it pay, they were really going to make a good place out of it and they did for about two weeks and after that well it went to pot. I have seen them start small and build up a very nice facility so really I ... just a personal interview which is what it would amount to with a perfect stranger to find out whether he is qualified to run this as a business or not, I think is beyond the competence of the Board.

Mr. Legal Adviser: We are not trying to find out whether he is running it properly or not, the initial person must have some knowledge of the trade. Normally speaking it would be a company which will operate this. I don't know why it would normally be a company, but this is a matter for the individual Legal Adviser for the person concerned to say. Normally speaking it is a company and they will employ a manager. In Alberta, B.C., Saskatchewan, the Liquor Boards there insist that the manager must be either adequately trained or have experience and show that he is of good character and adequate training. We haven't asked for this anywhere in this legislation except in relation to a dining room because a dining room is a new privilege and we felt it was safe to say that the person who is running it must either know something about business or hotel business, one or the other, it doesn't matter which. We're not saying he must be a good cook, but he must .... or even presently a good cook or a good manager or anything else, but that he should not be granted a licence on the first occasion that a business is being run. I say Travelodge, the White Pass Hotel or anywhere else to set up a major facility of a dining room or a high class dining room knowing nothing about the business at hand. This is what we are after.

BILL # 11 Mr. Dumas: First of all I would like to assure the Legal Adviser that if the janitor does the cooking, the place will be out of business very quickly so you can be sure anybody going into the business is going to have an adequate cook. I know from my own experience of a bankrupt cafe and dining room here in town that was taken over by a family that had no business experience and no restaurant or hotel experience of any type that turned into a well operated money maker and is now successfully operating. These people under this legislation would have been precluded from going into business. This is a free enterprise system, I keep saying this every time I get up and we want to keep it that way and I think we have got to get rid of subsection (3). I concur with the gentleman who spoke before me, if the hope of this Council to get rid of it now if the administration differ then we are at logger heads again.

Mr. Legal Adviser: It was put in because I was certain that this would be the attitude of the Board that they will want to know something about the people who apply for the licence. If (3) goes out there is no point in trying to make detailed particulars of what should be in a dining room unless they are prepared to make them in fair detail because the dining room is one of the few facilities you really want to control. So it should be done by some form of regulations and I welcome ideas as to how you are to define what is a dining room.

Mr. Chairman: At this point in time I will declare a recess.

RECESS

RECESS.

Mr. Chairman: I will now call Committee to order and we're BILL#11 discussing Section 40. Is it your wish that I continue reading this section?

Mr. Chamberlist: Well, Mr. Chairman I think that at this time I would move that subsection (3) of Section 40 be deleted from the Ordinance

Mr. Legal Adviser: Mr. Chairman, I don't think the matter be pressed for motion and when we're re-doing the section we'll retype it up.

Mr. Chairman: Well is it the wish of the mover to withdraw the motion?

Mr. Chamberlist: Yes, I withdraw the motion.

Mr. Chairman: Is it the wish of the seconder to withdraw the motion?

Mr. Dumas: Yes, I withdraw the motion.

Mr. Chairman: Is it the wish of Committee that this motion do be withdrawn? The motion is withdrawn. Now does the Chair understand that Mr. Legal Adviser will be deleting this section? (Continues the reading of subsection (4) of Section 40).

Mr. Chamberlist: Question. The size of the floor, I don't think should be regulated. In some places there's just enough area for four or five couples to dance on it and it's satisfactory. Another point is paid entertainment, it's saying "when in use paid entertainment shall be provided", why paid entertainment? Perhaps you can get voluntary entertainment so why does it have to be paid entertainment?

Mr. Legal Adviser: We are attempting Mr. Chairman in this whole section to try and set up what is a dining-room, and then when a dining-room provides, I presume it advertises dancing, how that shall be organized. I repeat that all the subsections here are taken from regulations and would not find their way into an Ordinance except for the expression of the House the last occasion that when Bill 28 was being discussed that nothing should go into regulations which could be put into the Ordinance, and this type of thing normally is in every other Province put in regulations, but the reason it is put in this form is if you're advertising dances then you should provide dances. If you're advertising an orchestra then it should be a proper orchestra. We assume that people would not pay money for poor orchestras, but to protect the public and see that passing member of the public when he goes in and gets what he expects.

Mr. Chamberlist: Mr. Chairman, the concept of supplying in a dining-room adequate facilities to the public is being misinterpreted by the Administration when you root forward in legislation such as this. I would respectfully suggest Mr. Chairman, that it is not necessary for the Administration to say that in preparing this type of legislation whether the entertainment shall be paid entertainment or otherwise. I may have friends who are professional entertainers, I have a business you see, so they say we are coming to visit you and we're going to put a show on for you. Now this is doing it for nothing, so the legislation says I can't do it, I can't let them do it, it's got to be paid entertainment. So surely Mr. Chairman Mr. Legal Adviser must see that all you

BILL #11 Mr. Chamberlist continues:

are doing in this piece of legislation is hampering the growth of good public development for the use of the public, and we should not be asked to participate in forming that type of legislation. Certainly we want to up-grade the area by saying that if entertainment is going to be there, there should be a certain size dance floor, a certain type where an orchestra can be supplied, but not to specifically say to us, you can't get entertainment if you're not paying entertainment. You might have visiting entertainers who come up here as tourists, so the maitre-d' says, Frank Sinatra would you please do me a favor and sing a song for our patrons but you're not going to pay him, so he can't do it. This is the type of thing we have to start thinking clearly to show that we're really liberalizing the idea of dining-room and bring them up to a standard but to deprive the operators of providing entertainment, just that entertainment that is paid for seems to me quite ridiculous.

Mr. Legal Adviser: Mr. Chairman, there's nothing that says that amateur musicians like Frank Sinatra from time to time render itself. It just says that when it's in use means when there's dancing being provided they've got to pay entertainers to provide it, I see no objection to it at all.

Mr. Shaw: Mr. Chairman, I would say that this is designed again for an urban area that you have here, for example I would ask the Legal Adviser to consider perhaps in a place such as Haines Junction, a person decided to have a very nice dining-room, well first thing that we would require is that he couldn't have a recording with Beethoven's music on, but he could have two or three people strumming on guitars that you couldn't hear yourself even eat much less think. Now, so if you look at this from it's practical point of view by these restrictions, it means that except possibly this large area, that this is the only place you could have a dining-room with these facilities. It would appear to me that I cannot see myself Mr. Chairman, what difference it makes whether you dance to a recording or a live band but of course a live band is preferable admittedly, but the economics of it would preclude a small although very nice place from having the business to hire a live orchestra. I'm pointing out Mr. Chairman that we also have to consider the balance of the Territory and conditions which they have to operate under.

Mr. Dumas: Now I was going to suggest much the same thing that there is alot of free entertainment in the bars, I've done some myself. I don't think that putting this restriction in there is a good idea because we know that some hot-shot young enforcer of the law just might come across this and say ah-ha! I've got you, and this type of thing has happened as the Honorable Legal Adviser knows.

Mr. Legal Adviser: Mr. Chairman, this type of thing has happened time and again and it will always happen, but the Honorable Members are so engrossed in the fight for individual liberty they suspect a tiger hiding behind every bush. All that this subsection says is "where facilities are provided", now you don't have to provide it, nobody is asking you to, there can be a dining-room without these facilities but if you do it, you do it properly. All it's saying is, we say here that the dance floor space if you're having dancing in a dining-room but you don't have it, if you have it you must have at least one-fifth of the floor space for dancing. This is to give people a chance to have a comfortable

Mr. Legal Adviser continues:

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dance when they're paying for it to give them their money's worth. It then says that the number of feet would be calculated with the respects of the portion of the dance floor of the dining-room not occupied by the dance floor and when in use if you're having a dance, then you pay an orchestra, you don't just have a dance and produce records.

Mr. McKinnon: Mr. Chairman, not being learned in the law on how interpretation would be placed on it as a layman reading the section could this example come to pass where a couple were celebrating their 50th anniversary in a dining-room where there were dancing facilities and a paid entertainment was providing the music for them to dance, and they went up and had a few dances and the paid entertainment gets a break and the records come on and the couple continues dancing, and there happens to be a police officer there on the spot. This couple can then be arrested for contributing this section of the Ordinance and this is the way I read it.

Mr. Legal Adviser: The question is the paid orchestra provided an orchestra entitled a break. This is an attempt far better in regulations which can be delineated, but if the House is not willing to accept this section as written, then the best thing is to take it out.

Mr. Dumas: I think Mr. Chairman that we would like it taken out. I am sure the Legal Adviser will realize that the Honorable Members will have more experience in the dining-rooms and cabarets of the Yukon than he has and I think here again it's a matter of free enterprise. If the proper entertainment isn't provided people will not patronize the joint.

Mr. Legal Adviser: Then I'll take it up Mr. Chairman.

Mr. Chairman: Is it agreed that this section be deleted?

COMMITTEE AGREED

Mr. Chairman: (Continues subsection (7) in Section 40)

Mr. Dumas: Mr. Chairman, why the limitation to 1:00 o'clock?

Mr. Legal Adviser: We have no particular wish to limit it, but we thought that if it is a genuine dining-room people should be finished a dinner anyway by about 12:00 o'clock, 12:30 or 1:00 and we are giving them the privilege to sell liquor for every day of the week. It's different to the other facilities and we just picked it out of a hat I guess.

Mr. Chamberlist: Mr. Chairman, what happens to places where they have an all night dining-room for people who are traveling on the highway and there is a need to stop and eat, the dining-room is open later?

Mr. Dumas: Mr. Chairman, any dining-rooms can now stay open until 3:00 in the morning and sell liquor.

Mr. Shaw: Well Mr. Chairman, I think that 1:00 o'clock quite late enough for that particular section as far as the liquor is concerned there's nothing to prohibit them to keep the dining-room open 24 hours a day. If you restrict other outlets this must conform with the general context of the closing hours otherwise you are possibly creating another cocktail bar or something similar to that.

BILL #11 Mr. Dumas: Mr. Chairman, I think this is a retrogressive step. Dining-rooms are now staying open and selling liquor til 3:00 o'clock in the morning selling wine and beer and because it is so I would like to see this changed to 3:00 o'clock in the forenoon of the following day.

Mr. Legal Adviser: The reason to be frank, I've just now recollected why we picked 1:00 o'clock. It is because the taverns were closing at 12:00 o'clock and if somebody wants to leave the tavern to have a steak, they can go to a licenced dining-room and have a steak before it shuts.

Mr. Chamberlist: Well what if somebody leaves a cocktail lounge at 12:00 o'clock or cabaret lounge at 2:00 o'clock, supposing he wants to go elsewhere for a steak then, what's the reason for that one?

Mr. Legal Adviser: Because the cabarets are obligated to provide meals available.

Mr. Dumas: Mr. Chairman, I insist that we would be doing a dis-service to the dining-rooms that are in operation now. If we told them all of a sudden they can no longer pick up that trade which they pick up between 2:00 o'clock, 3:00 o'clock in the morning, now they've been doing it and are making alot of money between two and three in the morning and we are going to cut this source of funds off.

Mr. Commissioner: Pardon my ignorance on this but I would like to ask in this matter, the dining-rooms referred to are dining-rooms that at the present time have a beer and wine licence. Now we're really not talking about the people here but this is another segment, another classification that we are speaking of Mr. Chairman. The intention is that it is the hope of the Administration that dining-room licences would be limited to a high class of operation, not the type of operation which is picking up casual drunks passing by at 3:00 o'clock in the morning, and I would hope that the Liquor Board would on some part suspend and cancel the licence entirely if this sort of thing happened because they are selling hard liquor. Now the restaurants are a different kettle of fish, they are present to only sell beer and wine. The Administration would deprecate if we pushed the sale past 1:00 o'clock in the morning when the taverns were closing at 12:00 and the cocktail bars closing at 2:00 o'clock.

Mr. Chamberlist: Well Mr. Chairman, I think it is an affrontry to any citizen to have it suggested that because at 3:00 o'clock in the morning he wants to go to get something to eat and he goes into a dining-room and has a drink of beer with it, that he is a passing drunk. I don't see this at all. The situation as it is now is bad occasionally because it is not properly placed but the idea of having available dining-room licences where people can go and have a drink if they want to should not now be taken away. This is what will happen, it limits the dining-room licence and the restaurant licence to opening in the forenoon of 10:30 of any day until 1:00 o'clock in the forenoon of the following day and that's it. What you're actually doing is shortening the hours of the existing licence holders.

Mr. Legal Adviser: This may have an effect in Section 41, but so far as I know the dining-room until 1:00 o'clock at present, they close earlier. People with restaurant licences do stay open till what time I don't know, I'm tempted to search the Ordinance exactly to see what the hours are. We

Mr. Legal Adviser continues:  
are creating a new privilege class here, a dining-room with a hard liquor licence similar to provincial dining-room licence. We're pulling back the restaurants. So the correct time to deal with the passing non-drunk person who is passing by at 3:00 o'clock in the morning who needs beer because he is not drunk the time to deal with that is in Section 41.

Mr. Dumas: Well Mr. Chairman, with respect that's not going to help. Section 41 restricts us to beer and 1:00 o'clock in the morning so we're not improving things, but I asked the Legal Adviser to please take my word for it, I'm closely associated with people who have a dining-room that stays open til four in the morning and sells beer and wine til 3:00 o'clock in the morning on a dining-room licence.

Mr. Shaw: Well Mr. Chairman, if you go around this City here you will find on a Sunday that some of the restaurants are closed and furthermore they close up and they sell beer and wine and they close up at 10:00 o'clock in the night. How come there is a great demand for opening these places til 2:00 o'clock in the morning, I don't understand that part of it. I feel that after 1:00 o'clock you don't need anything, you need to go to bed.

Mr. Chairman: Are we clear on Section 40?

Mr. Dumas: No Mr. Chairman, I just say we cannot approve any legislation that is going to be a retrogressive step on as far as the operators are concerned that are presently in operation. Now if we can pick it up in a restaurant licence, which would mean we would have to introduce wine in a restaurant licence and extend subsection (4), okay, if we can't then we've got to do it here.

Mr. Chairman: Well Mr. Chairman, there's only two reasons why or there is only one reason why as you kind of have to take these two together, a restaurant licence and a dining-room licence for which two different standards have been set up. Now people who leave the cocktail lounges, cabaret lounges quite often want to go and have a bite to eat on the way home. This is now covered by the cafe who remain open, some of which have a little dining-room but not necessarily the type we are talking about in the first section. So it seems to me we've got to keep the restaurant licence open til 3:00 o'clock in the morning, we've tentatively agreed on that, but in the case of the dining-room is that the only situation that I can envision is whereby the 3:00 o'clock closure would work at all, is that in these dining-rooms often and mostly at Christmas time the different firms, associations, ball teams even hockey teams hire these premises totally for an evening of entertainment. They go down and eat, they can sit and have a few drinks in other words it's like a nightclub sort of a deal except that the total unit is taken up by one group. It may be that this group may want to stay and enjoy entertainment, meals, so forth until 3:00 o'clock in the morning. I can't see the 1:00 closure putting a hardship on anybody.

Mr. Legal Adviser: Mr. Chairman, if the cocktail lounges in a local are going to stay open until 2:00 o'clock, I think there is reason to say that the dining-rooms in the same local stay open until 2:00 o'clock too, because otherwise you will have traffic going from the dining-room to the cocktail lounge or something. This will be subject to the House on what hours of operation for taverns, cocktail lounges and cabarets, you see.

BILL #11 Mr. Chairman: Well do you wish to proceed from Section 40?

Mr. Chamberlist: Well Mr. Chairman, I would like to make a suggestion that in following the suggestion made by Councilor McKinnon earlier, that this area 40 and 41 are another section that we should discuss and thrash it out for advice to Mr. Legal Adviser that is, the Council's advice to the Legal Adviser.

Mr. Chairman: Does Committee agree to this suggestion?

COMMITTEE AGREED

Mr. Chairman: (Reads Section 41 of Bill No. 11)

Mr. Dumas: We were Mr. Chairman I think suggesting that under (4) of Section 41 an off licence be allowed just yesterday or the day before.

Mr. Legal Adviser: The question of the off licence will be tied up with the question of beer for general sale in grocery stores which as yet has got to be resolved.

Mr. Shaw: Mr. Chairman, in this respect I'm afraid I can't quite agree with this restaurant licence business in so far as it is constructed where we have an area where they do not have a dining-room licence, they do not qualify or wish to qualify. There's no one that wants to do that in a small area then you are taking away from that area the people that do like to have wine and any groups who I have gone with to the restaurant there were very few who ordered beer, it's always been wine. It is not their objective to get drunk merely to have a glass of wine. Now when you get the areas that are not large to afford the .. to have the high qualifications of a dining-room licence, then there should be provisions that will allow them to sell wine, beer and liqueur as it has been in the past and has worked out relatively well. This is just an illustration again Mr. Chairman whereby consideration be given only to this particular area not what may apply. I can see where you have **both** facilities, that is very good, no objections, but where you only have one facility you are going to make it very difficult for anyone to operate and I'm looking at this in a practical sense.

Mr. Legal Adviser: Mr. Chairman, what the Honorable Member says has merit and it may be partly due to my own fault, when we were constructing the section dealing with the restaurant licence as to what they may be able to sell, it was more in the forefront of our minds that some of the people that hold this licence purchase and sell large quantities of fortified wine and clearly are bootlegging the wine contrary to the spirit of the Ordinance, and on enquiry from the Liquor Department it would appear that the number of restaurants who bought any degree of table wine was very, very limited. It may well of been that in smaller areas where there is no licenced dining-room facilities people might go out in the evening and it would be a good thing to have available table wine:with their meals. So, if the Honorable Member would bear with me, this question can be reviewed as to the question of hours.

Mr. Chairman: Just let there be no doubt Mr. Chairman in the eyes of the Administration anyway that we must also go back to where we now are in the area of the restaurant licence to beer, wine and liquers. Now I'll tell you why. It's extremely important because take Watson Lake for instance,

Mr. Chairman continues:

BILL #11

where I live, we have two dining-rooms as such who very likely would not apply for a dining-room licence which could be available to them here because of the dance floor, and cabaret attached to the same physical plan in any event but they are for all intense purposes a dining-room. In those dining-rooms it's possible for people in the community to meet families and have a birthday supper and a bottle or two with their meal and wrap it all up with a nice liquor and then off to a cocktail lounge or home. This is something in the outlying districts as the Commissioner pointed out earlier, this is where it may not work in Whitehorse but it certainly got to be retained in the outlying districts. Now the other question I do want to ask at this point that is, has provision been made in the Ordinance for (a) minors, where we stated in the old Ordinance "nothing in this Ordinance shall prohibit the presence of persons under the age of twenty-one year of age as long as they're not consuming and (b) that in employment on premises where food is served that kitchen help who have attained their eighteenth birthday would be permitted to serve in these places". Now has that been provided?

Mr. Legal Adviser: Yes Mr. Chairman, both those points are taken care of in the Ordinance.

Mr. Shaw: Mr. Chairman, I would ask if the Legal Adviser would take into consideration and see if we can get something that will be workable.

Mr. Legal Adviser: Well we'll make an attempt but it will have to be understood that it would be some non-recorded public meeting would have to be held by the Members and me present so we can get instructions as to what the Members wish on their individual points and then if the Administration doesn't agree with it, at least we can try to compromise in some fashion. We definitely need to get the wishes of the Members in this field.

Mr. Chairman: Clear. (Reads Section 42).

Mr. Chamberlist: Mr. Chairman, I have a question that is perhaps not to clear. In case of a construction company that have a hundred men crew say working at a specific camp, it would appear to me, perhaps Mr. Legal Adviser can correct on this, that a canteen licence can be applied for but the licence will only be to serve them beer. Well, I wonder if Mr. Legal Adviser can explain why a hundred men in a camp haven't got the privilege to drink hard liquor if this is their normal drink.

Mr. Legal Adviser: These licences are normally asked for by operators of the facility itself and time and time again they specify please give us a beer licence and the people making the application that it was not possible for them to sell hard liquor.

Mr. Livesey: It's not clear, Mr. Chairman. It says you are going to grant a licence to the Department of the Government of Canada or the Government of the Yukon Territory. Does that mean to say that the Department of Game can have a licence to sell beer and Department of Vital Statistics..?

Mr. Legal Adviser: There are certain operations, maybe a construction of a dam where a large team of workmen were in a given place and it might be operated by direct labour but it

BILL#11 Mr. Legal Adviser continues;  
might be operated by D.P.W. or by contractors but it might be convenient for the licence to be applied for in the name of one of our departments, federal departments or construction camp. It's not intended to be a permanent .... that the social-welfare department would have a bar in the back of the Lynn building.

Mr. Commissioner: Mr. Chairman, this is the whole idea, this is the very thing that you are asking about here. Earlier today you wanted to make sure there was to be no restriction on the number of outlets. We've explained clearly that this is the function of the Board to make these decisions.

Mr. Chairman: May I proceed? (Reads Section 43). Clear?

Mr. Dumas: Just one question Mr. Chairman. How about a chartered riverboat service? Mr. Legal Adviser can probably tell us if this is okay.

Mr. Legal Adviser: Mr. Chairman, this is a very simple section and we've had enough experience in this and we don't want to fill up the Ordinance with bits of regulations here and there. The intention is they apply for a licence and under normal circumstances they get it provided they have adequate facilities. A boat cannot park itself at say the  
END OF Schwatka Lake and open a bar and once it's started it's journey it can open the bar during the course of the trip to the point and open the bar on the way back. We will have to make arrangements in our regulations to see whoever applies for these licenses that they will come to an arrangement so that the adequate share of the duty will be payable for the consumption within our portion of the run as say opposed to Alaska ...train or in the case of an aircraft between here and Vancouver that the Territory would have to get it's fair share of the revenue available.

Mr. Dumas: Mr. Chairman, I'm just wondering how about the Motor Vehicles ...car which has a chartered tour .. in the summertime. It doesn't deliver passengers from one point to another particularly.

Mr. Livesey: Mr. Chairman, in relation to the holder of a train, ship or aircraft licence, would this mean a Yukon licence?

Mr. Dumas: Mr. Chairman, I would like my question answered before that is put.

Mr. Legal Adviser: I suppose if you get right down to fine print, what is happening here is a circular tour from one point to the same point. On a circular tour they would have a licence provided they did not sell it just where they were stationary.

Mr. Livesey: : My question was Mr. Chairman, under Section 43 it says "the holder of a train, ship or aircraft licence", does this mean a Yukon licence?

Mr. Legal Adviser: No Mr. Chairman, it means a licence under this Ordinance to sell alcohol.

Mr. Chairman: Clear? (Reads Section 44).

Mr. Legal Adviser: Mr. Chairman, the view I took when I was BILL#11 drafting this section was that there is no particular necessity for this to go to a Board in each case, it would be minor licences but, the person who is selling liquor for off licence purposes is in effect acting as extension of the business vending on behalf of the government or the Commissioner and it's up to the Commissioner who is the primary person involved or the government the primary person involved to be able to set a price in this instance. There is a price at the moment unofficially set maybe officially set whereby the owner of a cocktail bar which has this facility may not charge more as dollars and cents above the normal wholesale or Liquor Store price to a member of the public. This has worked very well in the past and this is not intended to cover another question of off-licencing of grocery stores to sell beer. It's intended to provide a facility whereby a person can any day of the week would be the traveller to walk into the Travelodge and buy a bottle of liquor. It's worked well and would request that it not be interfered with unnecessarily but merely for the sake of somebody on a white charger charging down for public ...

Mr. Chamberlist: Mr. Chairman, oh come on now, absolute discretion. You know if we go for this we are cancelling out everything we have said in the past with reference to taking powers and removing powers from the Commissioner. We're going beyond what it originally was before it was ..... the Commissioner may in his discretion not... it's so ridiculous.

Mr. Shaw: When someone does something in their own discretion is there any difference between doing something in one's discretion or one's absolute positive and irretrievable concession or should I say discretion?

Mr. Legal Adviser: The only reason I put in this foremost is it sounded right. It tripped off my tongue as ...because I was visualizing the Commissioner as an extension of the ordinary Liquor Store giving this facility to certain designated premises and being able to resist an application from some other premises and say no we have enough of this here, you might put it into an area where there was no liquor store. You are limited to a cocktail ..it's in any licensed premises so it must be in all ready licenced premises. Now, I certainly in my absolute discretion am willing to make an amendment and take out the word "absolute" because it clearly offends one of the Members.

Mr. Chairman: I understand the word "absolute" is to be withdrawn. Is this correct?

Mr. Legal Adviser: Yes, Mr. Chairman.

Mr. Chairman: (Reads Sections 45,46,47,48,49 and 50)

Mr. Chamberlist: Mr. Chairman, is there any reason why the holder of a reception permit cannot purchase their liquor by the bottle in any other place? A cocktail lounge has an out licence, why somebody go to the out licence and say I want three bottles. They've got a permit for holding a reception, why can't they have three bottles .. why do they have to go to a ..

Mr. Legal Adviser: No reason at all Mr. Chairman. It's just been the practice of the past that they go to the Liquor Store and purchase their liquor and then the unused liquor can then be sold without difficulty to the liquor vendor. I'm not sure it would be quite as easy to make arrangements to return the liquor to a licenced outlet. I certainly have no objections

BILL#11 Mr. Legal Adviser continues:

to taking out that section. The section dealing with permits has been re-designed ..reclassified might be a better word to use ..instead of the present classifications with which the Members are familiar with, we're classifying them into the type of permit where liquor is given free at weddings, birthdays<sup>m</sup> and the other classification is where liquor is going to be sold and the permits will be handled slightly differently on this classification.

Mr. Chairman: (Continues Section 50)

Mr. Chamberlist: If it takes time for a Board to get called together, I want a permit, I go in today to get a permit giving 48 hours notice as is required for Friday night. They refuse me so I have to appeal to the Board to get my permit for Friday night. How do I do it?

Mr. Legal Adviser: Mr. Chairman, the Honorable Member is asking a difficult question. What we're trying to do is to prevent in time bogus applications for permits but at the same time, we're trying as best we can to give that person who has been refused a right of appeal. So, the only way of really giving plenty of time would be that the people must apply seven days ahead, but this would be unreasonable. We would prefer a person to walk in, the normal person, and apply ahead of time but I think that if he is refused, put in his appeal then certainly every effort would be made to assemble a Board to hear this appeal but of course out of Whitehorse this might be a difficult thing. The intelligent thing for him to do is to apply a fortnight the next time, knowing he would be refused and then appeal.

Mr. Chamberlist: Mr. Chairman, but the man in the street doesn't know why he has been refused the permit so you give him the right to appeal. Now if you are giving him the right to appeal, he has to make application for a permit 48 hours before, so he makes the application today or Wednesday for Friday night. I want to know how that if he's refused that permit how is he going to get his appeal heard in accordance with what you put down in the Ordinance.

Mr. Legal Adviser: Mr. Chairman, we<sup>m</sup>ve given this poor little guy who can't get his permit an immediate complaint to the Director, then he's got an immediate appeal as fast as it can be laid out. This is all extra, this is icing on the cake over what he had before, but in the present Ordinance is that he can be refused full stop and he ain't got any right of appeal. So all we have done is given him a right of appeal.

Mr. Shaw: Mr. Chairman, I can really see a problem where the vendor has the right to say stop somebody having a permit for this particular occasion. I can also see where it is necessary sometimes where these permits can be abused and there must be some control. As had been pointed out he could as the Honorable Member from Whitehorse East stated that in a small Community, the vendor might not like the looks of this particular person and he can just say no. Perhaps it can be put in a certain way or certain manner that would be fair to most people that if the vendor in first instance before the vendor refuses this particular permit, I would say in most cases he would have to have just reasons for it on account of the permit that had been issued last week or the week before. I would suggest Mr. Chairman that something that would be eminently fair that if the vendor knew of the abuse of this

Mr. Shaw continues:

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privilege or right, that it would only happen after the fact or after the permit had been given and this occasion had blown up that he immediately notify this person in the future, before he could give him a permit he would have to apply to the Board. That way it would serve the same purpose and it would be fair to the person.

Mr. Legal Adviser: Mr. Chairman, I know it's technically that he is to go 48 hours before a ceremony but in practice a very high portion of people when there's a function on a Friday run by a local committee, they come in at 5:00 o'clock on Friday to get the permit to be selling liquor for 9:00 o'clock that night. They're not refused merely for that but there must be some form of control over permits. I don't think that the House wishes that every person no matter who he is and no matter how often he turns up and no matter what organization he reports to represent bogus, false or genuine that he just walk into a Liquor Store at any point and just say give me a permit and he must get it. If it's in the public interest in the opinion of the vendor, then he can do it. The control over him is that he must report to the Director every refusal, he doesn't have to report the granting, but he does have to report refusals, so he's on carpet if he's to start to get complaints against any refusals in the first place. In the second place, a person who had agreed to a refusal can appeal to the Board and whether or not the day has passed even if he applies on a Thursday for a dance which is coming up on Saturday and he's refused, he's got a right of appeal and that appeal will be heard. So we will have to agree to either of two things: we've got to take all control over permits completely or else we've got to inconvenience all the applicants by making them apply for a permit a fortnight in advance so that if by chance they are refused we've a fortnight to assemble the Board. I don't see any other way.

Mr. Commissioner: Mr. Chairman, in the time that I have been involved in this particular matter I have no recollection of any refusal as a vast majority of these things particularly in the spring of the year during bonspiel time of the Territory are handled by telephone messages after the party is underway. Quite frankly, I think we are failing something that is quite hardly the effort.

Mr. Livesey: Mr. Chairman, I'm only going by subsection (5) I've never seen a phone call yet that you can sign.

Mr. Commissioner: Mr. Chairman, please don't embarrass me by having to enumerate the number of signature phone calls that has been permitted in the course of the last year.

Mr. Shaw: Well I can just assure you Mr. Chairman that at Dawson you could never get a permit over a phone call.

Mr. Commissioner: Mr. Chairman, I would like to verify the fact that we have not only verified banquet permits and other things over the phone between here and Dawson, in fact we have even validated a marriage licence over the telephone.

Mr. Chairman: Do you wish to continue this evening with this?

Mr. Dumas: Mr. Chairman, I move that Mr. Speaker do now take the Chair.

Mr. Chairman: Do we have a seconder?

BILL#11 Mr. McKinnon: Mr. Chairman, I'll second that motion.

Mr. Chairman: It has been moved by Councillor Dumas and seconded by Councillor McKinnon that Mr. Speaker do now resume the Chair. Are you prepared for the question? Are you agreed? I now declare the motion carried.

Mr. Speaker: I will now call Council to order. May we have a report from the Chairman of Committees?

Mr. Chairman: Mr. Speaker, Committee convened at 10:25 a.m. to discuss Bills, Sessional Papers and Motions. Committee recessed at 12 noon and reconvened at 2:00 p.m. I can report progress on Bill No. 11. It was moved by Councillor Dumas and seconded by Councillor McKinnon that Mr. Speaker now do resume the Chair and this motion carried.

Mr. Speaker: Are we agreed with the Chairman of Committees? Agreed. May I have your further pleasure?

Mr. Chairman: Mr. Speaker, I believe tomorrow morning on the agenda we are expecting some gentlemen from the Department of Indian Affairs and Northern Development to discuss matters of land with us and otherwise, I would suggest we will be dealing with Bills, Sessional Papers and Motions.

Mr. Speaker: Is there any further business? Are we agreed?

COMMITTEE AGREED

The House now stands adjourned until 10:00 o'clock a.m. tomorrow morning.

ADJOURNED