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# The Yukon Legislative Assembly

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Debates & Proceedings

**Monday, December 8, 1975**

Speaker: The Honourable Donald Taylor



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### MR. SPEAKER READS DAILY PRAYER

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

**Madam Clerk:** There is, Mr. Speaker.

**Mr. Speaker:** I now call this House to order.

### ROUTINE PROCEEDINGS

**Mr. Speaker:** We will proceed with the Order Paper this morning. Are there any Documents or Correspondence for tabling? The Honourable Member from Whitehorse North Centre?

#### *Legislative Return Number 8*

**Hon. Mr. McKinnon:** Mr. Speaker, I have for tabling today, Legislative Return Number 8 and Sessional Paper Number 8.

**Mr. Speaker:** Are there any further documents or correspondence for tabling this morning? The Honourable Member from Kluane?

**Mrs. Watson:** That's fine, I stand corrected, thank you.

**Mr. Speaker:** Are there any Reports of Committees? Introduction of Bills? Are there any Notices of Motion or Resolution?

The Honourable Member from Whitehorse Riverdale?

**Mr. Lengerke:** Yes, Mr. Speaker. I give Notice of Motion with respect to the acceptance of Sessional Paper Number 4, dealing with the comprehensive alcoholic prevention program in the Yukon, and I have another Notice of Motion with respect to the Teslin T.V.

**Mr. Speaker:** The Honourable Member from Kluane?

**Mrs. Watson:** Yes, Mr. Speaker, I would like to give Notice of Motion that matters relevant to the Historic Sites and Monuments Board be discussed in Committee of the Whole, seconded by the Honourable Member from Watson Lake.

I would like to give another Notice of Motion, seconded by the Honourable Member from

Hootalinqua, that Whereas adoption of the metric system of measuring highway distances has resulted in the removal of Alaska Highway mileposts, and whereas the milepost is regarded by many residents as a link with a significant area in the development of the Territory, THEREFORE BE IT RESOLVED that the Yukon government replace key mileposts removed from the Alaska Highway through metrication, with an enlarged replica of the original milepost in order to retain the historical significance of the Yukon Highway milepost.

**Some Members:** Hear, hear.

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

Notices of Motion for the Production of Papers? We will then proceed from daily routine to Orders of the Day.

### ORDERS OF THE DAY

#### *Motion Number 8*

**Mr. Speaker:** Motion Number 8. It has been moved by the Honourable Member from Hootalinqua, seconded by the Honourable Member from Kluane, that Legislative Return Number 5 be moved into Committee for discussion. This is referred, of course, to the Committee of the Whole. Is there any discussion on the Motion?

**Mrs. Watson:** Question.

**Mr. Speaker:** Question has been called. Are you agreed?

**Some Members:** Agreed.

**Mr. Speaker:** I shall declare the Motion as carried.

#### *Motion Carried*

#### *Motion Number 9*

**Mr. Speaker:** Motion Number 9. It was moved by the Honourable Member from Klondike, seconded by the Honourable Member from Mayo, that it is the opinion of this House that the Canadian Broadcasting Corporation should extend its broadcasting range so it would cover the whole of the Yukon Territory.

The Honourable Member from Klondike?

**Mr. Berger:** Thank you, Mr. Speaker. There's really not much to say about this Motion. I think it says everything in it.

About 15 years ago I could understand it. I mean, the residents in the Territory had to listen to foreign radios in order to get the news coverages, but in 1975, there's still people in the same position. I find it very hard to understand, I mean, in this day and age when you can send messages back from Jupiter and Mars and everywhere else, surely we should be able to transmit radio coverage 200 miles down the highway. I mean, the CBC has a very good service, I'm not going to knock the CBC because I think it's one of the best radio stations, but if you haven't got no coverage, you are not doing any good to anybody, and they have messages, especially in the summertime to tourists, somebody is looking for them, say in the States somewhere, or anywhere an emergency is happening.

Those messages are only good in the area surrounding a community that has transmitter facilities. Anywhere else on the highway, those things aren't available.

The Yukon Indians have a special program going on CBC, for Indian people. You go down the road to Pelly Crossing or to Stewart or to Old Crow, they don't even know what you are talking about. They never heard of CBC Yukon, so I would urge all the members, I mean, to put pressure on CBC to see if we could extend the radio coverage.

**Mr. Speaker:** The Honourable Member from Ogilvie?

**Ms. Millard:** Mr. Speaker, I would just like to add my strong support of this Motion, considering the people from Old Crow. Today in the mail actually, I have a petition going to the Honourable Hugh Faulkner, Secretary of State, because we have tried every other method to get CBC to put radio coverage into Old Crow. I'm sure the member who represented Old Crow before me tried very hard also.

I'm just hoping that this petition has some more response than what we have had up to this point. I have been working on it myself for a year through CBC to try to get radio coverage in Old Crow. As everyone here knows, they have nothing, no T.V., no radio, they are very isolated. The only time they have any news is when the airplane lands, and this is getting sometimes more infrequent since they don't land in the really cold weather, which they are experiencing now and will all winter.

I would just like to add my very strong support of this Motion.

**Mr. Speaker:** The Honourable member from Hootalinqua?

**Mr. Fleming:** Yes, I would also like to add my strong support after hearing the Member from Ogilvie. I didn't realize myself that they didn't have radio at least up there, because I listen to T.V. and radio every day, and I hear nothing but how they are going to supply the north so well, so I would like to stand and just say that I do add my support too.

**Mr. Speaker:** Is there any further discussion? The Honourable Member from Kluane?

**Mrs. Watson:** Mr. Speaker, I would certainly support this Motion, particularly since I represented in the past, a constituency, the Pelly River area, that doesn't have the radio coverage, but I am wondering what good does this Motion do unless, even if it comes through this House unanimously, where will this Motion be directed, and will the follow-up be carried on that we want it to do?

Will it be sent to the CBC? Will it be sent to Hugh Faulkner? What will happen to this Motion? Will it just go through this House and then sort of die in our papers?

**Mr. Speaker:** Just from the Chair, it would appear that the Motion is directed at the Canadian Broadcasting Corporation, so I would assume, the Chair would assume, that this is where it would be directed.

The Honourable Member from Whitehorse North Centre?

**Hon. Mr. McKinnon:** Mr. Speaker, I know it won't satisfy Honourable Members, but all these Motions actually do go to the proper authorities. In this instance, it will be going to the Canadian Broadcasting Corporation, also the Minister of Communications who is responsible for the C.R.T.C., who is the Honourable Jean Sauve, that was just appointed the other day.

I can only say to Honourable Members that, you know, don't get your hopes too high, because I think if a question was asked during Question Period to the Commissioner, he told you about some of the Motions and the route that they have gone, and the success ratio of them, with most of the Crown corporations, is not a batting average that anybody would be proud of.

I would like to lay any odds, Mr. Speaker, that if our policy of capital assistance accepted by D.O.T. and C.R.T.C. where T.V. can go into the smaller communities, I'll lay any odds that any of these communities not having radio because of the Territorial Government policy, will have television service long before they have radio service, Mr. Speaker.

**Mr. Speaker:** Is there any further debate? Are you prepared for the question?

**Some Members:** Question.

**Mr. Speaker:** Are you agreed?

**Some Members:** Agreed.

**Mr. Speaker:** I shall declare that the Motion is carried.

**Motion Carried**

#### QUESTION PERIOD

**Mr. Speaker:** This brings us then to Question Period, and I see we have with us this morning Mr.

Administrator.

Would you proceed with your question? Mr. Administrator?

**Mr. Administrator:** I have sir, an answer to a question raised on November 27th by Councillor Millard. Ms. Millard wanted to know if the National Museum of Canada's northern exhibit would be touring the Yukon. The answer is that from the information we have received, the museum mobile caravan entitled "Canada's North", is not scheduled to come to the Yukon.

A preliminary trip was made to the north just over a year ago, to determine the feasibility of taking the three semi-trailer units north of 60. It was felt that the distances involved as a result of that study, possible damages -- pardon me, let me phrase that again. Because of that study, it was felt that the distances involved, the possible damages to displays because of road conditions and special maintenance requirements would not make a northern tour feasible. The program started last summer and the 42 foot units are spending a week in each community in southern Canada.

They went on the road last August, and it will take two years to complete the current exhibit schedule.

**Mr. Speaker,** I have another answer to a question raised by Ms. Millard on December 4th. Ms. Millard wished to know if we would be tabling the Yukon Exit Survey in Council. The answer is that this report is currently being compiled and printed. It should be ready in about three months, and at that time, we will certainly ensure that all Councillors receive copies.

And finally, in answer to a question raised by Councillor Berger on December 4th, Councillor Berger requested that we table the Environment Impact Study on the Dempster Highway carried out in 1972. We have ordered a copy of the study for the Council, however in the meantime we have been able to borrow a copy of the report, and it may be seen in the Clerk's office.

Thank you Mr. Speaker.

**Mr. Speaker:** Have you any questions? The Honourable Member from Ogilvie.

**Question Re: Training to Operate Airstrips**

**Ms. Millard:** A further question for the Administrator. This is a news release, I think from about two months ago from Yellowknife, and it states that a policy is now in the planning stages, whereby local residents in the Northwest Territories will be trained to operate airstrips within their own communities. Apparently this is done through the M.O.T. Arctic Transportation Agency, and the training program involves all the facets required in running the total system, for example, airstrips, air services, radio and telecommunications, et cetera.

Apparently they will be training outside for about six months, and then they come back and are able to run their own airstrips in their own communities. Is this being sought to bring into the Yukon?

**Mr. Speaker:** Mr. Administrator?

**Mr. Administrator:** Mr. Speaker, I would like, if I

may, to take that question under advisement and return with an answer.

**Mr. Speaker:** Are there any further questions this morning? The Honourable Member from Whitehorse Riverdale?

**Question Re: Land Policy**

**Mr. Lengerke:** Yes, Mr. Speaker, I have a written question this morning for the Honourable Minister of Local Government.

Last week I raised the question in this House with respect to the Territorial Government's land policy, or proposed land policy, and I was advised that Mr. Lyn Chambers was engaged to work on this matter and that it would be approximately a year before a policy would be finalized and available for processing through this House.

I would like to know at this time if the Yukon Territorial Government has recently been consulted by the federal Minister, or his representatives, responsible for Crown lands policy in the north, and if in fact there has been discussion and direction given, to put in effect a policy that would only allow 30 year leases of land outside the bounds of the municipality or organized subdivision.

Also in formulating land policy for the Yukon, has consideration been given to an amended survey system, and land use classification on presently recognized and future land tracts? ?

**Mr. Speaker:** Is that a written question?

**Mr. Lengerke:** Yes it is.

**Mr. Speaker:** Are there any further questions? We will then proceed to public Bills.

**PUBLIC BILLS**

**Bill Number 5 Third Reading**

**Mr. Speaker:** The Honourable Member from Whitehorse Porter Creek?

**Hon. Mr. Lang:** Mr. Speaker I move seconded by the Honourable Member from Pelly River that Bill Number 5, An Ordinance to Amend the Game Ordinance be read a third time.

**Mr. Speaker:** It has been by the Honourable Member from Whitehorse Porter Creek, seconded by the Honourable Member from Pelly River that Bill Number 5 be now read for a third time.

Are you prepared for the question?

**Some Members:** Question.

**Mr. Speaker:** Are you agreed?

**Some Members:** I shall declare the motion as carried.

**Motion Carried**

Mr. Speaker: Are you prepared to adopt the title to the Bill?

Hon. Mr. Lang: Yes, Mr. Speaker, I move seconded by the Honourable Member from Pelly River that Bill Number 5 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse Porter Creek, seconded by the Honourable Member from Pelly River, that Bill number 5 do now pass and that the title be as on the Order Paper.

Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare that the motion is carried and that Bill Number 5 has passed this House.

**Motion Carried**

Mr. Speaker: May I have your further pleasure at this time?

The Honourable Member from Pelly River?

Mr. McCall: Thank you, Mr. Speaker, I move that Mr. Speaker do now leave the chair and the House resolve in the Committee of the Whole for the purpose of considering Bills, Sessional Papers and Motions

Mr. Speaker: It has been moved by the Honourable Member from Pelly River, seconded by the Honourable Member from Whitehorse Riverdale that Mr. Speaker do now leave the Chair and the House resolve in the Committee of the Whole for the purpose of discussing Bills, Sessional Papers and motions.

Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: I shall declare the motion is carried.

**Motion Carried**

Mr. Speaker leaves the Chair.

**COMMITTEE OF THE WHOLE:**

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

**Recess**

**Bill Number 7**

Mr. Chairman: I now call this Committee to Order. We will proceed with the clause by clause reading of Bill Number 7, "An Ordinance to Amend the Legal Professions Ordinance".

We have with us this morning Mr. Peter Gillespie, and Mr. Willard Phelps, President of the Yukon Law Society.

1. Section 2 of the Legal Profession Ordinance is amended by adding thereto the following new definitions:

(Reads Section 2)

Mr. Chairman: Two: Sections 17, 18, 19, 20 and 22 of the said Ordinance are repealed.

Three: Section 21 of the said Ordinance is repealed and the following substituted therefor (1):

(Reads Section 21(1))

Mr. Chairman: Four: The said Ordinance is further amended by adding thereto the following new Parts and sections: Part II, Protection of Persons Dealing with Barristers and Solicitors. 26(1):

(Reads Section 26(1))

Mr. Phelps: Mr. Chairman, I wonder if I might interject at this point, and state that I believe that the Bill was read clause by clause at the last session. I have had the opportunity of discussing some of the problems I see with this Bill, with the administration, and without trying to tell you how to run through the Bill, it seems to me that we could save some time by simply going to the contentious parts of the Ordinance.

Mr. Chairman: Who is to say what the contentious parts are, Mr. Phelps?

Mr. Taylor?

Hon. Mr. Taylor: Yes, Mr. Chairman. The only way perhaps that that could be done, this being a separate session, is the Bill would have to be read or deemed to have been read, and perhaps it must -- one or the other must occur.

Hon. Mr. McKinnon: Certainly, Mr. Chairman, if the members of the Law Society have only a few points in the Bill on which they wish to make representation, Committee should go to those Sections so that the members can make their representation, then he can leave and be about his business. I would think that that would be much better for the witnesses that we have, Mr. Chairman.

Mr. Chairman: The problem as I foresee it, is that we are not going to be able to consider the Bill in its entirety unless we do go clause by clause reading. What is the wish of Committee?

Mrs. Watson?

Mrs. Watson: Mr. Chairman, I feel quite strongly we should consider the Bill in its entirety, because as you recall, both the Honourable Member from Riverdale and myself weren't present within this House when it was read the last time.

However, I would concur with the suggestion of the

Honourable Member from Local Government, who did suggest that possibly the witness could make his presentation on the various Sections that were in contention last time, and we could ask the witness questions we needed to ask, then he could leave and we could continue with reading the Bill.

This would certainly save his time.

**Mr. Phelps:** I'm not concerned, I'm quite prepared to sit through a clause by clause, and perhaps it's just as well that I do in case there are other questions that are raised.

**Mr. Chairman:** I also would consider that there might be other questions that would be asked of the witness that are not those of particular concern at the moment for the witness.

Perhaps we should proceed with clause by clause. Accounting by Barristers and Solicitors. 27.(1): (Reads Section 27.(1))

**Mr. Chairman:** Two:  
(Reads Section 27.(2))

**Mr. Chairman:** Three:  
(Reads Section 27.(3))

**Mr. Chairman:** Seizure of Property. 28.(1)  
(Reads Section 28. (1) )

**Mr. Chairman:** Two:  
(Reads Section 28.(2))

**Mr. Chairman:** Three:  
(Reads Section 28.(3))

**Mr. Chairman:** Four:  
(Reads Section 28.(4))

**Mr. Chairman:** Custodian.  
29. (1):  
(Section 29. (1) )

**Mr. Chairman:** Mr. McCall?

**Mr. McCall:** Thank you, Mr. Chairman. I would like to ask the Legal Advisor in sub (d), "when by reason of illness or for any other reason ...". What is any other reason? Could you get a little more explicit on this?

**Mr. Legal Advisor:** I think, Mr. Chairman, if the Honourable Member is looking for examples, it might be something which is mental incapacity short of illness. It's covered actually twice, the same such thing is covered twice in the list of Sections.

**Mr. Chairman:** Mr. McCall?

**Mr. McCall:** Thank you, Mr. Chairman. I would like to ask the witness what is incapacitation of sub (d)?

**Mr. Phelps:** Well I must admit I can't come up with any examples on the question you have been asking, but perhaps some bizarre circumstances could arise.

**Mr. Legal Advisor:** It could be undue addiction to drugs, undue addiction to alcohol, it could be the man might go blind and not admit it. There's a number of reasons, it could be related to them.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, it would be that a person is in jail or something like this so he can't practice.

**Mr. Chairman:** That might be considered improperly absent.

**Mr. Phelps:** A lawyer?

**Mr. Chairman:** Two:  
(Reads Section 29. (2) )

**Mr. Chairman:** Three:  
(Reads Section 29. (3) )

**Mr. Chairman:** Four:  
(Reads Section 29. (4) )

**Mr. Chairman:** Five:  
(Reads Section 29. (5) )

**Mr. Chairman:** Thirty, one:  
(Reads Section 30. (1) )

**Mr. Chairman:** Two:  
(Reads Section 30. (2) )

**Mr. Chairman:** Three:  
(Reads Section 30. (3) )

**Mr. Chairman:** Four:  
(Reads Section 30. (4) )

**Mr. Chairman:** Five:  
(Reads Section 30. (5) )

**Mr. Chairman:** General. 31. (1):  
(Reads Section 31. (1) )

**Mr. Chairman:** Two:  
(Reads Section 31. (2) )

**Mr. Chairman:** Three:  
(Reads Section 31. (3) )

**Mr. Chairman:** Four:  
(Reads Section 31. (4) )

**Mr. Chairman:** Five:  
(Reads Section 31. (5) )

**Mr. Chairman:** Clear?  
Part III, Discipline. 32. (1):  
(Reads Section 32. (1) )

**Mr. Chairman:** Two:  
(Reads Section 32. (2) )

Mr. Chairman: Thirty-three, one:  
(Reads Section 33. (1) )

Mr. Chairman: Two:  
(Reads Section 33. (2) )

Mr. Chairman: Three:  
(Reads Section 33. (3) )

Mr. Chairman: Mr. Phelps?

Mr. Phelps: I wonder if I might interject at this point? It's speaking for the Bar, they would like a change in sub-section (2) of Section 33. They would like that amended to "Only persons who are enrolled on the Roll or who are members in good standing in the law society of the Province of British Columbia, or the Yukon Territory, are eligible ...".

Now, the reasons for this are firstly, that we follow the same Canons of Ethics at this time as the B.C. Bar, and secondly the person appointing the members of the Committee will be the Chief Justice of the Supreme Court in British Columbia. We feel that we will be able in the future, to have better liaison with the Benchers in the B.C. Law Society, if it's restricted to B.C. With respect to adding the Yukon Territory, we don't anticipate any member of the Yukon Territory becoming a member for some time, but we think it ought to be in there in case there's sufficient expansion in the number of lawyers in the next few years, that one might be appointed for obvious reasons.

Right now, the feeling of the Bar is that we are too small to have our members disciplining members in Whitehorse, but I would very strongly submit that the people that are—that will be appointed to the Committee, be people who are enrolled in British Columbia.

Mr. Gillespie: Mr. Chairman?

Mr. Chairman: Mr. Gillespie?

Mr. Gillespie: If I may answer that. I think that one would expect that under normal practice, the Chief Justice of the Supreme Court would recommend Committee members from among Benchers in B.C., but should he have some difficulty in finding sufficient members in B.C., we would like to allow him to look to Alberta or other provinces to obtain that additional membership that he is seeking.

As to including the Yukon Territory, as Mr. Phelps said, at the moment there aren't sufficient members here now to be able to choose one from among their midst without creating the possibility that this person, because of the way in which the bar is inter-woven in the Yukon, would find himself in some kind of conflict of interest situation, and therefore, until the bar is bigger, this would not be a good move.

As to the future, and the possibility that the bar will increase in size, it has been the aim of the administration, or the hope of the administration that the Yukon Bar itself would form a society, and in fact replace what we are dealing with here now in this Bill, by forming a society that disciplines itself sometime in the future. So we would like to encourage them be leaving out the Yukon Territory in this particular subsection to do just that.

We are only moving into this Bill because the bar

itself has not been able to do so for a variety of reasons, been able to form its own statutory association.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, I wonder if I could be enlightened as to the number of members there are in the Yukon Bar Association?

Mr. Phelps: Mrs. Whyard, there is about 22 or 3 local members. There is an additional, I believe, 60 or 70 members who are mostly from B.C. and Alberta, but the administration, of course will probably fall on the shoulders of about 18 members who are not employed by the government, either federal or Territorial.

I wonder if I could just expand on my reasons for wanting this limited to the Province of British Columbia. Firstly, in response to Mr. Gillespie, there are something like 2,000 lawyers in B.C., and surely we can find nine people ready, willing and able to serve on this Committee. It would be an honour to most senior lawyers to be selected as such, and I can assure you that there would be no problem there.

Secondly, I should have really interjected on the sub-clause just prior, 33, subsection (1). The Bar feels that it is very important that the public feel that we are independent from any government at any level, because we are called upon from time to time, numerous occasions really, to commence legal actions against the federal government and the Territorial government, and it's very important that the public feels we are not responsible to the government, but that we can be disciplined, and you will notice that the kinds of things that the Disciplinary Committee can do to us is unparalleled in Canada. You know, it leaves us

very little in the way of due process and rights, but we are willing to go along with that.

Now, first of all, the concern is that we want to be assured that the Commissioner doesn't simply supply a list of names to the Chief Justice in B.C., and that it is more or less stamped and the government more or less decides who is going to be on this Committee. We want to be assured, and I would hope that the administration at this time would assure this House that the Chief Justice will decide who he thinks ought to be on this Committee, that the government would have no quarrel with us giving our views to the Chief Justice of the Supreme Court of British Columbia, and that the government will not interfere with the process of selecting this Committee.

Hand in hand with that, we feel that this is less likely to occur if the government, or if the Chief Justice must appoint senior members from the Province of British Columbia, because it's a simple fact that this government has friends across the country, and if they started subtly applying pressure to the Chief Justice to name X and Y and Z, friends of members of this government to the Committee, what would result would be a travesty of justice in my opinion. So I don't think it's much to ask, firstly that this be restricted to British Columbia for that reason, and secondly that we have a statement in the House on Hansard from this administration that they have no intention of interfering or supplying a list to the Chief Justice of the Supreme Court of British Columbia, in his appointing



members on this Discipline Committee. And the reason again is simply that lawyers in the Yukon especially, where you have all these cases against the government, and they come up very, very commonly, the public has to be assured that they are going to somebody who is not under the thumb of the very body that they want to sue or achieve redress against.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Mr. Chairman, I would think in the interest of the Law Society that it would probably, in all probability be better to have a lawyer from Nova Scotia that would have no ties at all with the Yukon, from what you have said, and on top of that, I get the impression that you don't want the government, which I am sure the government doesn't want to become involved in selecting lawyers for the Discipline Committee, I am sure that they will entrust that to the Chief Justice of the Supreme Court of British Columbia, but I got the distinct impression that the bar wants to be able to submit their views on any member that is on that Committee.

**Mr. Phelps:** No, the—

**Hon. Mr. Lang:** From what you have said.

**Mr. Phelps:** Well my answer to that is no. Firstly, it makes good sense that all the members be from B.C. because of them being able to get together, because they have a common ground at this time with respect to what constitutes the canons of ethics. You know, what is unethical, what's unethical in B.C. may vary from what's unethical in Nova Scotia with respect.

Secondly, all I am saying is that in the other provinces, the people who discipline members are voted by the members of the Law Society in B.C. The Benchers are elected democratically once a year, and all I am saying is that surely if this bar wants to, and may do, if they feel that there is a lawyer on that Committee who for some reason ought not to be there, because it's not in the interests of the public of the Yukon, or the lawyers for that matter, all they would be able to do is make a representation to the Chief Justice. They are not restricted from that in this clause.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Then, Mr. Chairman, surely the government should have the same choice.

**Mr. Phelps:** Well no, because again the reason for this independence is that the public has to be able to go to a lawyer and -- with a grievance against the government, and how can they have faith in the lawyer if the government has any hand at all in disciplining that lawyer?

That's the only reason, and that's the common reason across Canada for this independence, and I think in the Yukon where the government is so huge, bureaucracy extends almost into every aspect of our life, and where proportionately the cases are so much greater for that reason, I think it's extremely im-

portant that -- it's obvious to the public that these lawyers are not under the thumb of the government.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, I can't help but interpret what the witness has said as almost an insult to the Chief Justice of B.C. Surely to goodness this is why we have designated such a person in this legislation, someone who is separate and apart from the Yukon, from the Yukon government, from the Yukon's legal profession, to appoint a panel of solid, good lawyers, be they from B.C. or from what province, to sit as the disciplinary committee, and I just can't understand the witness' thinking where the government would influence the Chief Justice's appointment, and yet by the same token, saying that the lawyers should have the -- the lawyers in the Yukon Territory should have some influence on the Chief Justice.

I think all of us feel quite safe that there's justice going to be done because we have a person who is separate and apart, who will be appointing that Board, and that's why I will go along with the Chief Justice in B.C., rather than have the Commissioner do the selection.

But here's another thing that I would like to bring up, and I'm referring to the letter that each one of us received from the Consumers' Association of the Yukon Territory, and they make a suggestion which I am going to give some very serious consideration to, and that is that one of the members on the Discipline Committee should be a lay person, not a lawyer. It's a board, and it should be composed of both lawyers and citizens, so both aspects of the lawyer-client relationship would have fair representation.

I would like to ask the witness' views on that submission from the Consumers.

**Mr. Chairman:** If I may be allowed to comment, I think that the basic thrust of this Bill, as for any professional body, I think is for them to attain a point of self-discipline, and I think that is important in any profession, and I think that's what we are trying to do in this situation, is have the discipline removed from the hands of government and placed in the hands of the profession itself.

They are the ones who know what the situation is, and who are capable of disciplining themselves. Now, it's not protecting themselves particularly, it's just that they know what the situation is, and they are much more effective from an ethical point of view in dealing with discipline on that basis, and I think this is the basic thrust of the Bill we are now dealing with.

I think we should respect that. Mr. Lengerke?

**Mr. Lengerke:** Mr. Chairman, perhaps the concern of the consumers in this particular instance is the fact that this Committee that we are talking about right now, if I understand this correctly, is the Discipline Committee, but it also, if you take a look at 33, sub (4), also acts in the capacity of a Board of Inquiry, and I think this is the concern, and maybe the witnesses can comment here, give their reaction, but I think the concern of the consumers is that when there is an inquiry made via the public, that it does go really to a

board then made up of, as we say in the — the Discipline Committee who are all lawyers, and I think this is their concern.

They want some way that there is a layman on that Board of Inquiry, and I think that's the place the amendment should take place.

Mr. Chairman: Mr. Phelps, do you have any comment?

Mr. Phelps: Yes, I have something to say on that issue. I'm strongly opposed to a member of Consumers or a member of the public being on this Board, and the main reason for this is that really what we have here is a set of procedures, criminal in nature, against lawyers. And the power of this Board far exceeds the power of our court in ordinary life, and the lawyers are willing to go along with this, subject to — they have got to have a lot of faith in the Committee. They have got to, you know, believe that they are going to be treated fairly, because really it is just amazing what can be done on very little evidence.

Their books can be seized, their names can be dropped from the rolls, their clients can be more or less shoved off to somebody else, it's tremendous powers here, and what I'm submitting, with respect, is that everybody here that's charged under a criminal statute, charged criminally, has the right to a fair trial before a judge, and this judge is a lawyer.

I'm submitting to you that in this case, where lawyers are submitting themselves, subjecting themselves to laws which would never be accepted by the general public of Canada or any British Commonwealth, but when the lawyers are willing to go along because of their special knowledge, and special knowledge of defences and so on, and they are saying look it, we want to have a profession that's fair. We want to subject ourselves to this scrutiny and these extra criminal procedures, but surely the quid pro quo is that they can expect to be tried by people equivalent to judges, and all judges are lawyers.

What we are saying is fine, let's have some senior lawyers on this Committee and that's it.

Now, where groups such as the consumers and so on might have input, is into the ethical standards which will be set by the Committee if they feel that some of the rules as to ethical standards are not favourable towards consumers or clients, then surely that's where they should have their input, just as in Canada, if you are charged under the Criminal Code, you go to trial before a judge. If you don't like the law under which you have been charged, you think it's unfair, then this goes to Parliament, and that law is changed. In other words, we have changes in the Criminal Code almost annually, and I'm suggesting that this is where the consumers and the other concerned citizen ought to have input.

It ought to say well look it, we don't like this particular rule as to ethics, because this and this and this. But when it comes to be tried, being tried, surely the lawyers ought to expect to be tried by legal people, just as everybody here is tried by a judge who is a lawyer, and a senior lawyer at that.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, I quite sympathize with the witness' concerns regarding the enormity and seriousness of the consequences of any of this inquiry, but I would like to draw his attention to the fact that we have just been working our way through a Medical Professions Ordinance in this House, where there are professional people in an equal situation, a board of inquiry sitting upon their professional capabilities, can in effect end their professional career. We have had no such argument from that profession regarding who shall comprise the Board of Inquiry.

In fact, if I may quote, Mr. Chairman, the section applicable says "A Board of Inquiry shall consist of not less than three persons who are registered in the Canadian Medical Register as duly qualified medical practitioners", which leaves it wide open. The only narrowing of that field is when there is a case of a mental condition of a person, and the Board must include psychiatrists.

But we have a parallel situation here, I believe, in that the medical profession also has very close ties with the B.C. College, but they have apparently enough confidence in this government and the Commissioner to appoint a Board which they feel would be fair to their membership, and none of them have said that they would not act on that Board, and as far as I can see, they have a similar number of people involved in this situation.

I wonder if Mr. Phelps can clarify this for me, because I really cannot see, in my own interpretation, that the Legal Profession are in anything particularly different from the medical.

Mr. Phelps: I'm sorry, I think you are directing your attention, your question at the issue of the—the issue I was raising, in sub-section (2), as to where the Committee ought to come from?

Hon. Mrs. Whyard: Yes, Mr. Chairman.

Mr. Phelps: Or is it—are you quarrelling with my submission about no member of the public being—

Hon. Mrs. Whyard: No, no, Mr. Chairman, the formation of the Committee.

Mr. Phelps: I see. Well, with respect to that item, it's again our position that, because of the nature of the profession, we are involved constantly, on a daily basis of dealing with, negotiating with, drawing up business contracts with another lawyer in town. In other words, the average lawyer in town spends half his day dealing with the other lawyers in town, on behalf of various clients, and we just feel that it's important at this stage that all members on this Committee be from outside the jurisdiction, simply because this contact is so constant and close, that the chances of conflicts are very, very good.

Now, I don't think that's the same thing with respect to doctors. You know, what I do as a professional

lawyer is negotiate and fight cases against other lawyers. That's what I do, all day, every day. Really, it's interviewing clients, getting a position and then going to the lawyer for the other client and arguing or negotiation or whatever, or ultimately going to court. So this is just a constant thing, and at any time, I'm sure that any lawyer in town will have 150 files, on the other side of which will be a lawyer from the other firm on each one. So it's pretty tough to draw our disciplinary committee from the ranks of the local members of the bar.

With respect to my comments about the Chief Justice and so on, certainly I have a great amount of faith in him. I thought it would be useful for the administration to say openly, for the record, for Hansard, that they have no intention of meddling which his choice or supplying him with a list, and that's all we want, a statement of policy, on the record.

We aren't asking for a change, a change in the wording of sub-section (1) of 31. With respect to sub-section (2), it's the feeling of this bar that our ties are so closely linked with B.C. that it's important that the Committee come from B.C., every senior lawyer is from there. We hope ultimately to be able to, and we have strived to do this, but we have come across some hurdles that are difficult to get over. We would like ultimately to have a very close working relationship with that bar, to be able to draw on their personnel and eventually take over discipline, using their Benchers, using their personnel.

I personally see this Bill as an interim step, you know, it might do for five or six or more years until we can finally get together with that bar, and we can draw on their personnel and overcome certain statutory difficulties that they have in B.C.

**Mr. Chairman:** Mr. Lengerke?

**Mr. Lengerke:** Mr. Chairman, I have no qualms with the make-up of the Discipline Committee whatsoever, and the way they are appointed. I don't have any problem with that all.

I didn't really get an answer to my question, and maybe I didn't get an answer because I didn't put it properly, but I'll ask the Legal Advisor first. There is a distinct difference between the Discipline Committee and the Board of Inquiry. I think there's two different functions, but in this Ordinance, I understand it that they are made up of the same people, is that correct?

**Mr. Legal Advisor:** Mr. Chairman, the scheme under which this operates, is that there is a Disciplinary Committee consisting of nine people. When there's a complaint made which gives rise to an investigation, there is in effect a hearing, but three of those people will be a quorum and will carry it off. It is not intended to bring nine strangers into the City to be a board, it's just they would act normally by groups of three, and there would be three from this particular group.

**Mr. Chairman:** Mr. McIntyre?

**Mr. McIntyre:** May I ask the Legal Advisor a question? It seems to me that there is nothing to

prevent the Chief Justice from appointing eight members of the Yukon Bar to this Committee, if they are members of the bar in the province.

**Mr. Legal Advisor:** As it's drafted, Mr. Chairman, it says the Law Society of a province, and I didn't want to intervene, because I thought the question might go away, but some questions don't go away.

A province I take to mean a province in the sense which includes the Yukon Territory and the Northwest Territories, in the meaning which means province and territory -- is distinguishing word when you use Group Y.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, I have a question for the Legal Advisor. I would like to pursue this a little further, the recommendation that the consumers have made regarding the membership on a committee, discipline committee, which would become the Board of Inquiry if an Inquiry were necessary.

If other jurisdictions in Canada have moved into the field of not just having the professional people on their disciplinary committee, whether they do have lay people or people from a different profession on their committee.

**Mr. Legal Advisor:** Well, Mr. Chairman, this has been a swelling and gathering thing within Canada and in other places. It's happened in various States of the United States, and it's happened in Great Britain, but where a professional body has for a long time had the exclusive privilege of governing its own members in their conduct as members of that profession, the fees which they charge, in other words, the complete control, there has been a movement all over the British speaking world, to inject members of the public in some particular form into the professional control. In respect of the land agents, in respect of the doctors, in respect of dentists, chiropractors, lawyers and so forth.

It has had a varying success. In Ontario, they tried to give statutory jurisdiction to the total control of the profession by a group which was nominated by the Attorney-General of Ontario, which became a superior body to the Benchers and governing body of the profession itself. The consensus of opinion appears to be that it didn't work. The Attorney-General of Ontario tended to appoint lawyers not in practice, rather than people from the everyday world to perform this chore, so the identification gradually became rather similar, that the total control was in the hands of the lawyers themselves.

Now, the particular point was raised here was whether or not, at the request of the Consumers' Association, a member of the public should sit on the disciplinary board. Now, speaking as an individual, speaking not as a Legal Advisor of this House, I would have mixed feelings about that. My personal feelings would be, that where it was a group of three people trying an issue of fact and law, such as would happen in respect of a dentist, a doctor and so forth, the best group to have would be a lawyer presiding to deal with the evidence and to deal with the lawyers appearing before him, with two doctors sitting on either side and

with a complete, in effect, total vote on the matter, or else you have a lawyer presiding with three lawyers or three doctors or four doctors.

When you come to the case of lawyers themselves, everybody in this House has had experience of sitting down with a lawyer and getting nowhere, so to speak, and everyone has had experience of sitting down with a Committee which is composed of lawyers, and the lawyers take over and run the Committee.

I would be very pessimistic about the chances of success of a lay person, except a lay person of outstanding ability and experience, sitting with two lawyers in a disciplinary committee and being able to get anywhere. I think it wouldn't necessarily be a success.

Now, so far as controlling policy is concerned and having lay members on, yes, that's one thing, but so far as actually being one of three judges in what in effect is a trial, I think the lay person would be boondoggled by the skill and expertise of the two people sitting on either side of him. That's without saying anything wrong about the two lawyers who would be sitting, it is just that he would be away out in left.

**Mr. Phelps:** I wonder if I might just add something to that. Mr. Lengerke has been raising the distinction between the Board of Inquiry and the Disciplinary Committee, and of grave concern there, and it was going to be raised by myself later, is the issue of solicitor-client privilege.

Now, this is a privilege that is sacrosanct, and is vested in the client, not the lawyer. I would hate to think that anybody, there would be lay people or government people with the powers of an Inquiry Board, because there has been a complaint against that lawyer, going into that lawyer's office and seizing files and looking through all this confidential material, because it may be unrelated.

Now, I'm not saying that because of the lawyer, I'm saying it because when you go to a lawyer and you have a problem that may be fairly kinky, and you tell him all about your personal affairs and personal life and so on, and this is all on the file, that file is privileged. I worry very greatly about lay people, or members of the government, being allowed to swoop into a lawyer's office, because of some allegation and go through these files and try to find something.

I think that the public has to be assured that any investigations which infringes upon their rights, not the rights of the lawyer, but their rights, is going to be conducted in a very incamera manner, and that whatever secrets they have got on these various files, which may not be related, are not going to be taken by lay people or government people and possibly used against them in the future. I think that's a very grave concern, I think that's one of the cornerstones of British justice, is this privilege, and it's not the lawyer's privilege, again it's the clients, and they have got to have this privilege, and they have got to have this assurance of secrecy, in order for the system to work, because otherwise how could a person go to a lawyer and tell him his woes, if there is any chance that this might get leaked out to people.

I must say that most politicians are honest, but there's a few that apparently love to get secret

material and have something on their enemies.

**Mr. Chairman:** Mr. Gillespie?

**Mr. Gillespie:** Mr. Chairman, I would like to answer a few questions that have been raised. A number of matters have been dealt with here, all at the same time.

The witness, Mr. Phelps, has raised -- or sought an assurance from the administration, and I think that I can give that assurance, at least from my point of view to the extent that I am able to do so, that this government, and the Commissioner would have no intention whatever, of in any way interfering with the Chief Justice in the process of selecting members for this Committee. I think I can state that without any reservation at all.

Going from there to the next point in Item, Section 33, sub (2), I would think it again necessary to leave it to the Chief Justice of the Supreme Court of British Columbia to choose from whence he will pick his committee members. Now, under normal circumstances, he would probably choose to pick them from British Columbia. However, should he be aware of a person with particular abilities or attributes, that he would like to have on that Committee from another jurisdiction, I think he should be free to do so, and we should leave that judgement to him as an individual, and our faith in him as Chief Justice.

The third major point that is being brought up is this business of whether or not a lay person should be on this committee. I have looked up on this in two different ways. If that lay person is a very strong forceful individual then some of the dangers, as expressed by Mr. Phelps, could emerge and they could be very real. They could harm the client, they could harm the person who is being potentially being disciplined in a very severe way.

Alternatively, as our Legal Advisor has outlined, that person could be relatively a weak individual, who effectively would operate as a token member of this committee. I am very reluctant, personally, to see any of this tokenism occur in this kind of legislation. There is a danger either way. Either you have an individual who has little effect because the other lawyers on the committee can readily overwhelm him if they so choose. Or, certainly, an individual who would have some difficulty in understanding the technicalities of the legal profession, or you can go the opposite direction where this person, in fact, could do real damage.

Speaking personally, now, I would prefer not to see a lay person on this committee.

**Mr. Chairman:** Mr. Lengerke?

**Mr. Lengerke:** Mr. Chairman, I just want to make one thing clear with respect to my comments. I agree with the fact that there should be no lay person on the Discipline Committee. I have no qualms with the appointments and the way it is done whatsoever. I have asked, and I would just, again, to ask the witnesses, do you, would you have great objection to a lay person, and I know Mr. Phelps answered that, to a lay person being on a board of inquiry. That is the area that I am

interested in?

That particular board comes under the Public Inquiries Ordinance, and I think it does allow the Commissioner to make appointments to that board, and in this fact he is going to use the Discipline Committee for this inquiry board.

I just think there is some merit in being able to appoint a lay person to that type of an inquiry board.

Mr. Chairman: Mr. Gillespie?

Mr. Gillespie: I am not certain that I understand exactly what you are seeking here, Mr. Lengerke. The committee, there are not two boards contemplated here. That is only one and that is the committee which has the powers of a Board of Inquiry when it acts in that capacity.

Mr. Lengerke: I understand that, there is no question in my mind whatsoever on that. The Board of Inquiry then is really the Discipline Committee, isn't it?

Mr. Gillespie: That is correct and it is chosen from among its members.

Mr. Lengerke: Right and as I said—

Mr. McCall: A point of order, Mr. Chairman.

Mr. Lengerke: Excuse me Mr. Chairman, I am sorry.

Mr. Chairman: Mr. Gillespie.

Mr. Gillespie: I am sorry Mr. Chairman. The Board of Inquiry in this instance pursuant to this Ordinance would be chosen from among the members of the Discipline Committee, all of whom are lawyers.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, I put my hand up quite a while ago and I have to revert again, I am sorry.

I am again paralleling the situation with the medical profession. The matter of lay persons being on the Board of Inquiry applied in this instance as well. I think it might be helpful if I just said a few words about how this board would actually operate.

In the first place an inquiry would be called on the complaint of an individual. Now this can be a lay person.

The new section says, the Commissioner may appoint a Board of Inquiry to investigate any charge or complaint made against any person registered under this Ordinance, or into the conduct, mental condition or capability or fitness to practice of any such person.

That means that any patient or any other concerned person may lay a complaint and ask for a Board of Inquiry. One ordinary citizen can do that.

Now the next section goes on to say that the Commissioner shall appoint a Board of Inquiry pursuant to sub-section (1) if he is requested in writing to do so by three members in good standing of the Yukon Medical

Association, and the key word there, Mr. Chairman, is the Commissioner shall appoint. So that if three of his peers request an inquiry into the conduct of one of their colleagues it is mandatory upon the Commissioner to establish that board.

In the ordinary course of events what then would happen is the Board of Inquiry having been named, and they being professional people, then proceed to investigate the facts and the evidence surrounding that complaint. If you go on you find that they have the power to do so, they can summon and bring before it any person, swear and examine, compel production of documents and do all things necessary to provide a full and proper inquiry.

One of the reasons for having them be professionals is that they, at that stage, are definitely going to be seeing confidential documents, particularly in medical cases. They must realize the importance of respecting that confidentiality in every part of their inquiry. I think that is justification for making the board a professional body only.

The lay person certainly has access to just pursue their request for an inquiry they will be interviewed and have an opportunity to give all their evidence and all the information pertaining to the case about which they are complaining. All of that information is then enclosed in the report of the Board of Inquiry and its recommendation is then followed through.

I just thought that might be useful Mr. Chairman, because I can see that the same kind of situations would apply to a legal ordinance.

Mr. Phelps: If I might just respond to that, I think that one of the fundamental principles behind the drafting of this Bill, I think that we have got the concurrence of the administration of this government, is that again, I hate to whip an old horse, but again it's extremely important to the public that a lawyers' discipline committee is being appointed as it is in this legislation by the Chief Justice of the Supreme Court of British Columbia, and that's why that body must form the Board of Inquiry, because otherwise you would have a situation where the public could say well I could go and lay a complaint against Lawyer X in Whitehorse, and then the Commissioner appoints the judges on this case and that would be a travesty of justice.

I'm sure that I have the agreement in principle of the administration, and hopefully everybody here on that.

The other point I would like to bring up is that part and parcel of all this is that the Disciplinary Committee is going to be appointing a secretary, really an officer that will be doing most of the groundwork and making the inquiries and so on and so forth, and again, that person shouldn't be reporting to two bosses. They would be under the complete control of the Discipline Committee, as it's envisaged in this legislation.

The third thing is this, that there is concern from lay people, I suppose, that everything might be buried. There is an appeal from the Discipline Committee to the Court of Appeal. I think that that's good assurance, and a person who is adamant can pursue this, and if they are not happy with the Disciplinary Committee's

findings, then they can go ahead and insist this be appealed, and it goes before the B.C. Court of Appeal, which is also our Court of Appeal. I think that's an important safeguard which is embodied in this legislation.

**Mr. Chairman:** Mrs. Whyard?

**Hon. Mrs. Whyard:** Mr. Chairman, I hope the witness won't consider this a frivolous question, but I'm struck by his concern about the, I think interface is the new popular government word, between the legal profession and government in the Yukon, and the number of law cases involved.

Could he tell me whether this situation also applies in B.C.?

**Mr. Phelps:** Oh yes, yes, in B.C., the Law Society is completely independent of the government, completely. They draw upon, they elect their Benchers who are very senior people, and they have much the same kind of power that, you know, the Benchers have the same kind of power that's set out in this Ordinance, and as a member of the B.C. Bar, I can assure that about once a week we receive notification, or at least once a month of some member being suspended, you know, of course there's 2,500 members or so in B.C., but they swoop down and they are very firm, very firm indeed.

**Hon. Mrs. Whyard:** Mr. Chairman, the question I was trying to get an answer to is, what percentage of B.C. lawyers obtain a great amount of remuneration for their suits against the B.C. Government?

**Mr. Phelps:** Oh, I would say that the incidence in B.C. is probably about one-quarter of the incidence here, simply because the proportion of the population up here involved in the government, the overwhelming presence of the government here, as opposed to in B.C. Even though it's N.D.P. in B.C. and they are trying to rectify that.

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

**Hon. Mr. McKinnon:** That should be stricken from the record.

**Mr. Legal Advisor:** There is a wrong impression being created here. I can't think of a case where any lawyer has won a case against the government since 1967.

**Mr. Chairman:** Is that a wrong impression, Mr. Legal Advisor?

**Mr. Phelps:** And the public thinks that the reason for this is that we are being disciplined by the government.

**Mr. Legal Advisor:** In case the press might pick up the fact that there is a lot of successful cases against the government, there are none.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, I notice that we have in the gallery members of the Consumers' Association, and while we are discussing this Section, I would like the Chairman, if we could let these people appear as witnesses at the present time also, so that rather than call them back at a later date, so we get both sides. They have made a submission, after a brief recess?

**Mr. Chairman:** Is that the wish of Committee? Is that agreed?

**Some Members:** Agreed.

**Mr. Chairman:** We will have a brief recess with deference to our transcriber and then we will have the witnesses.

**Recess**

**Mr. Chairman:** I will now call this Committee to Order.

We have with us now, members of the Consumers' Association, Susan Burns and Leona Lane. They have a brief presentation for us, if they would care to go ahead with their presentation.

**Mrs. Lane:** Thank you.

The Consumers' Association of Canada to which we belong is an organization of volunteers whose function it is to take up the rights of consumers, wherever and under whatever circumstances they seem to be violated.

While the Consumers' Association of Canada, Whitehorse Branch, is pleased to see that the Territorial Government is introducing legislation designed to deal with complaints respect lawyers' discipline, we admit to having some difficulty with certain sections of Bill Number 7. As consumers and volunteers, we have never before had the opportunity of arguing a legal ordinance with lawyers, but clients, of course, are the people who pay the bills.

First, we want to commend the move to remove the onus for discipline from the Legal Advisor to a wider body. Also Section 38 (c), where complainant may appeal to the entire disciplinary committee is, we feel, excellent.

Section 32, sub-section (2) in this Section, we feel that the list of misdemeanours is unnecessarily vague; for example, sub-section 2 (b) states simply "constitutes other professional misconduct.". We wonder what is professional misconduct. We know this depends greatly on interpretation, therefore we feel that it should be stated as clearly as possible, the type of misconduct the law has in mind by giving a non-exclusive list of examples.

We have problems accepting the concept that the Disciplinary Committee is to be composed only of lawyers. We are most emphatic in our view that the clients or the consumers of legal services be represented on any disciplinary board. We have a precedent to this here in the Yukon in the Optometric Ordinance, which allows for a Board of Inquiry, composed of both professional and lay people. We don't have problems with the breach of confidentiality,

many citizens take oaths of confidentiality, including members of this Legislative Assembly.

In the Yukon apparently there is no professional body with powers to discipline. There is therefore also no professional conduct committee or Legal Education Committee where lay people might conceivably have input into deciding what constitutes a disciplinary offence, or non-competitive activity. Perhaps a board of regents or similar body should act as a Board of Inquiry for complaints registered against lawyers. Such a board would be composed of lawyers and citizens, so that both aspects of the lawyer-client relationship would have fair representation.

To be just, we feel that the users of legal services must have representation equal to those who perform those services. We are not looking for tokenism. We are not asking for one lay person, we are asking for equal representation.

**Mrs. Burns:** Section 42 (1) (a), "A lawyer being investigated is given notice in writing at least 10 days before a hearing of the intention to investigate", and it appears reasonable to us that the complainant should likewise be notified in order that the complainant will (1) know that an investigation is occurring, and (2) be given time to prepare a case, should a full hearing be conducted.

Section 45 (1), and I'm quoting from that Section, it says "The Committee and the barrister and solicitor whose conduct is being investigated, may be represented by counsel before the Committee and in any related court proceeding". This is—we have no quarrel with that, but we wonder who takes the case of the complainant? The complainant must also have the right to be represented by legal counsel before the Committee, and in any related court proceedings. Legal Aid should cover such representation where the complainant cannot afford a lawyer.

This again is a question of equal representation by the complainant and the defendant. Something that's not included, but we feel should be considered, should be a provision for compulsory errors and omission insurance for all lawyers practicing in the Territory.

We thank you very much for having been able to make this representation to you, and are most anxious to answer any questions.

**Mr. Chairman:** Are there any questions of the witnesses?

**Hon. Mr. McKinnon:** Mr. Chairman, I haven't got any questions, I've just got a couple of points to make on the whole package that has been presented to this Legislative Assembly, the Medical Professions Ordinance, the Legal Professions Ordinance, Ordinance and the Civil Legal Aid Program.

I am much more impressed with this package, than I am with all the legislation like consumers' protection and landlord and tenant legislation that were passed by this House, which I have termed, and I'm positive that the terminology is correct, as cosmetic legislation, done for political purposes, but had no enforcing ability whatsoever.

I really don't know if everybody is cognizant of the

major turn of events with the package of these three Ordinances, that is being presented. I personally feel that they are a great step forward for the protection of the public and the individual as far as the Yukon Legislative Assembly and its members are concerned.

For the first time, both the medical profession and the legal profession, I must compliment them on their interest and their input into the Ordinances, have allowed themselves to come under a Disciplining Committee, that is probably the simplest procedure in the total of Canada, bar none, for a member of the public to lay a complaint. Any individual under either the Medical Profession or the Legal Profession by a simple phone call, the simple filling of a form, can lay a complaint which triggers a whole series of actions under both the Medical Profession and the Legal Professions Ordinance. I think that's an amazing step forward in the protection of the public of the Yukon Territory.

Further than that, if that person, as far as the Legal Professions Ordinance, does not have the wherewithal to continue that claim, and there is a Committee set up under the Legal Profession -- or under the Civil Legal Aid Program, that says if that person needs representation to follow his case through, that is also taken care of by the package of legislation that is being presented at this Session.

I'm of the opinion that it's a major step forward that has been taken by this House, and I think all members of this House can be proud of the legislation that is before them. I would be of the opinion that it is such a step away from what was before, that members of this Assembly, and members of the public should really give it a chance to work at this time, and see whether or not we have all the loop-holes plugged, and whether under the present legislation, there is ample protection for the people and the public of the Yukon Territory.

I happen to think there is. I think there are major strides being taken by this package of legislation introduced at this Assembly. I just wouldn't like to see it amended at this point, until we have given a major new approach to the whole question, at least a year or a two year period, and see whether there are shortcomings in it, and see whether we do have to amend it.

We have gone an awful long way with this legislation, and I think that we should give it a chance to see whether it works properly at this point in time.

Thank you very much, Mr. Chairman.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman I have one question for the witnesses here in reference to the comments that the Honourable Member just made, I don't think that we would want just a phone call with a complaint. I don't want that type of situation, because a lot of these complaints are not properly thought out and really could be classed as quite frivolous.

I think that there should be some area of screening in that.

I would like to question the witnesses on this Board of regency the concept of the board that they were proposing. I think this may tie in with the remarks of the Honourable Member. You can get all sorts of complaints, but, there will only be a few that are

worthy, likely, of thorough investigation. Some of them may be just frivolous, misunderstandings and this type of thing.

Is the purpose of this board that you were suggesting? So that the original complaint can go to this board?

Mrs. Lane: No.

Mrs. Watson: Then what is the concept of the board?

Mrs. Lane: The concept of the Board is, Board of Regents which would officially act in the same manner as the disciplinary committee as outlined in the proposed ordinance. As I read the legislation, within this board is the mechanism for screening frivolous complaints. The complainants then may have a recourse to another hearing.

Mrs. Burns: I think maybe if we give the example of the Optometry Ordinance where an individual or an optometrist, anybody can say that there is a problem, they request a board of inquiry. This in effect has been done in the Yukon.

The Board of Inquiry consists not only of optometrists but also, and the one that was set up, or was proposed to be set up under one complaint there was an optometrist on this board, there was a person from the Yukon, a lay person, not an optometrist, not a medical person or a legal person, as well as a lawyer.

It is that kind of representation that we are looking for when we are talking about regulating professional conduct. When you look at who is party to a profession, it is the person who performs the service and the person who receives it or pays for it. We believe that the person who receives the service and the person who pays for it must have an equal opportunity to have an input into the fairness and type of relationship that occurs between a professional person and a person who is a recipient of those services.

This is why we are concerned and why we are making this presentation and there does seem to be a precedent in the Optometry Ordinance.

I certainly would agree with Mr. McKinnon when he said that this is a big step forward. What we are asking for is not something that is unheard of, not something that has not been on the books for many years on another profession, perhaps one not quite so powerful as the medical profession or the legal profession, but equally a profession.

Mr. Chairman: Are there any further questions for the witnesses?

Mr. Fleming?

Mr. Fleming: Yes, I would like to ask Mr. Legal Advisor a question as to how I would proceed if I did have a complaint against a lawyer and I had no money. Could I then go to the Legal Aid Ordinance and in some way proceed with my complaint?

Or in the other case, a second question, if I did have money, would there be a different direction which I would take as a person with a complaint against these

lawyers?

Mr. Legal Advisor: No, Mr. Chairman. The one route would suffice for all. If I might briefly refer to the way the thing would be handled would be either a phone call or a letter would originate the complaint. It would come to the attention of the secretary. He is then committed by a section to endeavour to obtain the complaint in writing. It is reported to the Chairman, the Chairman then considers it and directs a preliminary investigation. For that purpose he either directs secretary to do it or he employs special counsel for the purpose.

This is the normal procedure in British Columbia at present, and Alberta.

In other words a lawyer is hired at a fee to look into the matter. He then makes a report. Depending upon that report, the Chairman reviews it, with or without, the committee and he may direct that no further action be taken.

In other words a frivolous complaint is weeded out at an early point.

If further proceedings take place, then there is a formal hearing by the Discipline Committee which may constitute itself into a hearing committee of three for the purpose.

They will then brief counsel to appear in effect, for the prosecution and the lawyer, who is the subject of the inquiry may himself engage counsel to defend him.

It would seem to me unnecessary for the person making the complaint to be represented himself, because that would be a third party. In fact, he would not only be foolish to do it because if the procedure goes ahead the committee will brief counsel for the prosecution who will then have conduct of it and carry it through to a conclusion without any expense to the person making the complaint.

A frivolous complaint at that point would have been weeded out.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, I note that our time has run out, but there is one question that I would like to ask the ladies from the Consumers' Association while they are here.

In the letters which they sent to all members, they brought up a point regarding the Combines Investigation Act as newly amended by the Federal Government, and their argument is that because we have Territorial Ordinances regulating Medical and Legal Professions, they would not be subject to the federal Act, and I'm wondering if they know something I don't, because as far as I know, Federal Acts are -- take precedence over any Territorial laws.

Why would anybody in the Yukon be exempt from a Federal Act?

Mr. Burns: The way I understand it, and because this Federal Act has just been passed, that there really hasn't been anything come out clarifying exactly what is happening, but the Combines Investigation Act regulates the goods and services in the market place, but under the B.N.A. Act, the provinces and territories



have control over the sale of goods and services, and the offering of services in their jurisdictions, so that they may regulate, as you are doing now, legal services.

If this happens in a province or a territory, then the federal law doesn't apply.

Now, whether this federal law applies only to say legal tariffs, if you are talking about the legal profession or medical charges, and not any other, say anti-competitive actions on the part of professionals. That I'm not clear on, but I do know that there has been considerable concern that legislation within the province governing the service sector, which didn't before come under the federal law, if this happens, then the federal government, by virtue of their constitutional agreement, has to say "hands off".

To what extent this affects this particular piece of legislation, I don't know, and I haven't been able to find out in the brief course of our research in this.

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

**Mrs. Burns:** But there is a possibility of that.

**Mr. Chairman:** I know -- Mrs. Watson?

**Mrs. Watson:** Yes, I have one more question for the witnesses, and that regards to the medical profession, where under the Medical Profession Ordinance that is before us now, and one individual can lay a complaint, and the Commissioner may appoint a Board of Inquiry, then the Commissioner must appoint a Board of Inquiry, if three members in good standing with the Yukon Medical Association, ask for a board of inquiry.

Now, then the Board of Inquiry is established, and we say here "consist of not less than three persons who are registered in the Canadian Medical Register as duly qualified medical practitioners". Is this the area where you feel that there should be representation from other professions possibly, or lay people, who are not members of the medical profession?

**Mr. Burns:** Definitely.

**Mrs. Lane:** Yes, similar to the Optometric Ordinance.

**Mrs. Burns:** Someone who would have in their minds to represent the users of those medical services, just as the medical profession would represent the point of view of the medical profession.

We also would like in that case that where a group of citizens has got together and petitioned for a Board of Inquiry, we were saying ten people, but you know whatever number is decided, that this would mandate a Board of Inquiry, the same as when three doctors have decided that a Board is necessary, that that mandates a Board of Inquiry.

In other words, allow the users of the services the same rights and privileges as those that provide the services.

**Mr. Chairman:** If there are -- Mr. Lengerke?

**Mr. Lengerke:** I know the hour is getting late, and I

just want to make this comment, that I can certainly agree with the Honourable Member from Whitehorse North Centre, in expressing the positive action taken by the government with respect to the Legal Professions and the other professions that we have before us.

There is no doubt in my mind that the professions such as the medical and legal take very stringent self-discipline action, there is no doubt about that.

I can also question the enforcing of some other legislation, particularly with respect to consumer protection and so on, but the questions that were raised by the Consumers' Association and other individuals with respect to the questions that we had before us today, the official inquiries and the conduct above or within these professions is important, and it was our obligation and the obligation of this House to make sure that the mechanics and all rights available, the mechanisms, be made known to the public, and I think we have served to do that.

**Mr. Chairman:** Thank you.

If there are no further questions of the witnesses, I would like to thank the witnesses from the Consumers' Association.

**Mrs. Watson?**

**Mrs. Watson:** Mr. Chariman, I'm sorry that I'm pursuing this, but I wouldn't want to have to call the witnesses back.

Going to the Legal Professions Ordinance do you feel that there should be lay representation on the Disciplinary Committee or lay representation on the Board of Inquiry when it is so structured to inquire into a complaint?

**Mrs. Lane:** Well my understanding of the Ordinance is that they are one and the same.

**Mrs. Watson:** Mr. Chairman that is right but there are different members of the committee that would be acting in the various capacities. They have a nucleus of eight or nine. From that they would go further to specifically appoint three, I believe it is, or five, for a Board of Inquiry but the rest of them could be sitting as a disciplinary Committee.

Where specifically, or have you thought of this, would you like your lay representation?

**Mrs. Burns:** I think beyond the shadow a a doubt during any inquiry I feel, you know, it is our position that it is absolutely necessary for both sides of that relationship to be represented. So that I would say that would be our first priority. It is not that we are going to say that we don't want the other as well.

**Mr. Chairman:** Thank you. The witnesses from the Consumers Association can be excused now.

Before we recess, I would like to indicate that when we reconvene at 1:30 we will temporarily consider amendments before we proceed with the Legal Ordinance.

We will recess now until 1:30.

**Recess**

Mr. McCall takes Chair.

**Mr. Chairman:** I will call the Committee to order, and on the advice of the Chairman, I will read -- carry on reading the Sections until the witnesses arrive, and any questions you may ask, you could ask the witnesses when they are here. We are dealing with the Legal Professions Ordinance.

I believe we are at 33 of Section 5, correction 4.  
(Reads Section 33. (4) )

**Mr. Chairman:** Five:  
(Reads Section 33. (5) )

**Mr. Chairman:** Six:  
(Reads Section 33. (6) )

**Mr. Chairman:** Seven:  
(Reads Section 33. (7) )

**Mr. Chairman:** Eight:  
(Reads Section 33. (8) )

**Mr. Chairman:** Nine:  
(Reads Section 33. (9) )

**Mr. Chairman:** Ten:  
(Reads Section 33. (10) )

**Mr. Chairman:** Yes, Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, it says that "Except in respect of hearings in disciplinary matters, a quorum shall consist of five members". What other hearing would there be, other than a disciplinary matters?

**Mr. Chairman:** Mr. Legal Advisor?

**Mr. Legal Advisor:** Mr. Chairman, there may be hearings to consider the procedures or for rules or for any other reason, and you want a majority of the board itself.

**Mr. Chairman:** Any further questions, Mrs. Watson?

**Mr. Legal Advisor:** And five is one more than half, so it's the normal quota for such a quorum but the Discipline Committee will be a board of three members.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, but as Part III is entitled "Discipline", and the section on the Committee is a disciplinary committee, I wasn't aware that they would be given the powers to deal with other matters, other than disciplinary matters.

**Mr. Legal Advisor:** In general it's fair to say, Mr. Chairman, that they are not given any other powers except on disciplinary matters, but they have the power to make recommendations respecting their regulations

and procedures, so you want an input from the whole of the Committee then.

**Hon. Mr. Lang:** Mr. Chairman?

**Mr. Chairman:** Yes?

**Hon. Mr. Lang:** Isn't that stated later on in 34(1)?

**Mr. Legal Advisor:** Yes, Mr. Chairman. In 34 they are given power to make rules, for instance, as an example. That's the very next Section on page 11. The purpose of controlling their committee, they may have to have meetings, but the basic function that they are created for is disciplinary matters, but a disciplinary hearing is what we are talking about in the board of three.

**Mr. Chairman:** Clear?

**Some Members:** Clear.

**Mr. Chairman:** Eleven:  
(Reads Section 33. (11) )

**Mr. Chairman:** Twelve:  
(Reads Section 33. (12) )

**Mr. Chairman:** Thirteen:  
(Reads Section 33. (13) )

**Mr. Chairman:** Fourteen:  
(Reads Section 33. (14) )

**Mr. Chairman:** Fifteen:  
(Reads Section 33. (15) )

**Mr. Chairman:** Sixteen:  
(Reads Section 33. (16) )

**Mr. Chairman:** Seventeen:  
(Reads Section 33. (17) )

**Mr. Chairman:** Eighteen:  
(Reads Section 33. (18) )

**Mr. Chairman:** Yes, Ms. Millard?

**Ms. Millard:** Mr. Chairman, are we going to proceed without the witness this afternoon?

**Mr. Chairman:** I have already suggested, Miss Millard, that the witnesses will be here at 2 o'clock, and there seemed to be no objection from the Committee to carry on reading until these witnesses appear.

Thirty-four, one:  
(Reads Section 34. (1) )

**Hon. Mr. Lang:** Mr. Legal Advisor, in relation to number 9 to 34 (1), wouldn't it be just as easy to say the Committee may make rules with a quorum of five members, (a)—I still don't understand what we have

accepted in respect of hearings and disciplinary matters. I think this qualifies the statement here, and why isn't it put in there?

**Mr. Legal Advisor:** Mr. Chairman, as you go through, you'll find the expression is "the committee, the committee, the committee". Now, unless it's actually holding a hearing, consisting of three members which is a formal court proceeding, then the Committee must act by a majority.

For instance in sub-section (2) of Section 35, the Committee may summarily apply ex parte to the court for an order, well they have got to decide to apply for an order. They can have a quorum anyway they like, but there is nothing to stop them having an informal meeting and deciding to do it, but it still must be the action of the whole Committee, of at least five of the group.

To put it another way, it would be ridiculous if the Committee could, theoretically split into two forces, if you have three committees acting in opposition to one another. It could happen if you don't provide for a committee of five, a quorum of five.

**Mr. Chairman:** Clear?

**Some Members:** Clear.

**Mr. Chairman:** Thirty-five, one:  
(Reads Section 35. (1) )

**Mr. Chairman:** Two:  
(Reads Section 35. (2) )

**Mr. Chairman:** Three:  
(Reads Section 35. (3) )

**Mr. Chairman:** I would like to ask one question, Mr. Legal Advisor. In sub-section (a) and (b) of (2), there seems to be a lot of language to explain one point.

**Mr. Legal Advisor:** In sub-section (2) of Section 35?

**Mr. Chairman:** 35, Sub-section (2) (a) and (b). There seems to be a substantial amount of language dealing with one point.

**Mr. Legal Advisor:** It appears to be necessary, Mr. Chairman.

**Mr. Chairman:** Thank you.

**Mr. Legal Advisor:** It is quite specific. Don't forget with whom you are dealing.

**Mr. Chairman:** Thirty-six, one:  
(Reads Section 36. (1) )

**Mr. Chairman:** Thirty-seven, one:  
(Reads Section 37. (1) )

**Mr. Chairman:** Thirty-eight, one:  
(Reads Section 38. (1) )

**Mr. Legal Advisor:** The effect, Mr. Chairman—I

can see your puzzlement, Mr. Chairman, the effect is where a matter comes up which the Chairman deems of not sufficient importance to continue proceedings, he is going to have it dropped, a complainant in that case can appeal and say I want it considered, and he can take the appeal with the full Committee against the Chairman's ruling.

**Hon. Mr. Lang:** Mr. Chairman?

**Mr. Chairman:** Yes, Mr. Lang?

**Hon. Mr. Lang:** Just to clarify this in my mind, Mr. Legal Advisor, it's not going to cost the individual any money in order to proceed further, is it?

**Mr. Legal Advisor:** No, Mr. Chairman. If you picked up—well, to put it another way, the complainant may, at this stage, if he wished to consult his own lawyer, and he would be at liberty to do so, but all he has to do to get the matter dealt with is to appeal against the Chairman's ruling that it is frivolous, and then there must be a meeting of the Committee to consider it, and then they will consider it.

**Hon. Mr. Lang:** Yes, but, Mr. Chairman this is my point. It doesn't necessarily mean a lawyer?

**Mr. Legal Advisor:** No, Mr. Chairman, but in this area it's a lawyer's field and I would engage a lawyer if I was involved. I wouldn't have to.

**Mr. Chairman:** Mr. Legal Advisor, could you look at that last sentence in 38 (1). Couldn't that be addressed a little better than what it is?

**Mr. Legal Advisor:** Mr. Chairman, the sentence hasn't been written in English that can't be improved by somebody like Shakespeare or the Legal Advisor, but nevertheless, the meaning is clear if not polished, and what we really mean to say is that the Committee has exactly the same powers as the Chairman had to do what they want to do with the appeals.

So the language which has been chosen to say that is that the Committee may do anything, that the Chairman could have done.

**Mr. Chairman:** Thirty-nine, one:  
(Reads Section 39.(1))

**Mr. Chairman:** Two:  
(Reads Section 39.(2))

**Mr. Chairman:** Three:  
(Reads Section 39.(3))

**Mr. Chairman:** Forty, one:  
(Reads Section 40.(1))

**Mr. Chairman:** Two:  
(Reads Section 40.(2))

**Mr. Chairman:** Three:  
(Reads Section 40.(3))

**Mr. Chairman:** Four:  
(Reads Section 40.(4))

**Mr. Chairman:** Five:  
(Reads Section 40.(5))

**Mr. Chairman:** Yes, Mr. Taylor?

**Hon. Mr. Taylor:** Mr. Chairman, I note in the public gallery one of our witnesses. Perhaps they could join us at this time.

**Mr. Chairman:** Is that the wish of the Committee?

**Some Members:** Agreed.

**Mr. Chairman:** I will have a three minute recess for the witness --

**Recess**

(Dr. Hibberd takes Chair)

**Mr. Chairman:** Are there any questions from members of the Committee of the witness? Mr. Willard Phelps is now present, representing the Yukon Law Society.

**Ms. Millard?**

**Ms. Millard:** Mr. Chairman, I note from the time we went through this before in May, that there was quite an objection to the Commissioner's involvement in Section 33(1) to (18), where the Commissioner has an awful lot of strength in prescribing who is going to be what, and appointing people.

I wonder if the witness could give us the legal -- the Law Society's opinion on this again.

**Mr. Phelps:** Well again it goes back to the fundamental principle of independence, and we have been given assurances in the House now, by the administration, that it's their intention that all this really be done by the Committee which is appointed by the Chief Justice, and with that assurance, we are certainly not going to prolong the argument on it.

**Mr. Chairman:** We will proceed with the clause by clause, page 14. Forty, six:  
(Reads Section 40.(6))

**Mr. Chairman:** Seven:  
(Reads Section 40.(7))

**Mr. Chairman:** Eight:  
(Reads Section 40.(8))

**Mr. Chairman:** Mr. Fleming?

**Mr. Fleming:** Yes, sir, I would like to ask Mr. Legal Advisor how much time maybe would be stated time, I see it in a couple of places and I'm just wondering how far that could go.

**Mr. Legal Advisor:** It would be possible, if we were actually in Alberta or in Vancouver, to state a time, but

we have eliminated the statement of time because it must be a reasonable time. Sometimes, especially in Whitehorse, it's hard to get precise explanations because the barrister may need to consult his client, who may or may not here. He may have to do a bit of research to answer the question, so it's the failure to answer the letter that the conduct unbecoming, but not necessarily failure to answer by a particular date, he might be a day or two late.

If he doesn't answer, then that's conduct unbecoming and that itself would be the subject of a charge.

**Mr. Chairman:** this is a regional provision, this is a law here as stated by our own Supreme Court, but failure to answer such a letter is conduct unbecoming.

**Mr. Chairman:** Forty-one, one:  
(Reads Section 41.(1))

**Mr. Chairman:** Two:  
(Reads Section 41.(2))

**Mr. Chairman:** Three:  
(Reads Section 41.(3))

**Mr. Chairman:** Forty-two, one:  
(Reads Section 42.(1))

**Mr. Chairman:** Two:  
(Reads Section 42.(2))

**Mr. Chairman:** Three:  
(Reads Section 42.(3))

**Mr. Phelps:** If I might --

**Mr. Chairman:** Yes, Mr. Phelps?

**Mr. Phelps:** Mr. Chairman, I heard the representations made by Consumers and they were concerned under Section 42.(1)(a) that the complainant be given notice. I have no objection, or certainly the Law Society has no objection to that, it's just that the complainant normally doesn't get notice because it's not the complainant that's being investigated, but there is certainly nothing wrong with their suggestion.

**Mr. Legal Advisor:** Mr. Chairman, I would concur. As far as I can see, there is no objection to giving the complainant notice as to the time and place, and if this is the request of the House, this would certainly be done:

**Mr. Chairman:** Mr. Lengerke?

**Mr. Lengerke:** Mr. Chairman, I would suggest that the amendment be made, or the addition.

**Mr. Chairman:** Are you agreed?

**Some Members:** Agreed.

**Mr. Chairman:** Forty-three, one:  
(Reads Section 43.(1))

**Mr. Chairman:** Two:  
(Reads Section 43. (2) )

**Mr. Chairman:** Forty-four, one:  
(Reads Section 44. (1) )

**Mr. Chairman:** Forty-five, one:  
(Reads Section 45. (1) )

**Mr. Phelps:** Again, Mr. Chairman, this 45. (1), it was raised that possibly the complainant should have a lawyer or a counsel. My understanding is that the special counsel, it's like a criminal case, the prosecutor would really be representing the complainant. I don't think it's necessary.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, I wonder if I could ask the Legal Advisor on 45. (1), could there be an instance where it would be necessary for the complainant to have legal counsel?

**Mr. Legal Advisor:** Mr. Chairman, it's hard to think of an instance when it would be necessary, but certainly some complainants would certainly feel aggrieved if they were not entitled to be represented. This could happen. There might be—well, some complainants get mixed up between their rights in law or say return of money or the payment of money, from a legal firm with the duty ethically of that lawyer to behave in a certain way, but the thing gets mixed up in their minds, and they could feel they were aggrieved.

I cannot, myself, think of any case when it would be necessary, provided the Committee did its job properly and instructed counsel to proceed, because this Ordinance is only concerned with the discipline, not the recovery of goods or recovery of money, or the prevention of related problems. I can see that people would feel sore if they couldn't give their six and ha'pence when it came to the time to talk.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, I would so move then that the necessary amendments be made to Section 45. (1) to make it possible for the complainant to also have legal counsel.

**Mr. Chairman:** Does the Committee agree?

**Some Members:** Agreed.

**Mr. Chairman:** Forty-six, one:  
(Reads Section 46. (1) )

**Mr. Chairman:** Two:  
(Reads Section 46. (2) )

**Mr. Phelps:** I wonder if I might just interject again. It's not with respect to those Sections, but it's with respect to my notes, and the other point raised by the Consumers just before you broke for lunch, had to do with compulsory errors and omission insurance. I thought I would raise it before I forget about it. I think

it's an important point, and the Law Society is in favour of having such a compulsory plan, but we would like an opportunity to try to investigate to see the best way we could bring this about. It might become the subject matter of regulations or something, but there is no question that we want this to be compulsory.

Right now, everybody who is practicing law in the Yukon Territory, is under the same basic group plan, and it's necessary for us to have the group rates for every law firm to participate in this one plan. However,—that's the local lawyers, and counsel from other jurisdictions are all covered by compulsory insurance, or group insurance, to my knowledge, certainly everybody from B.C.

I would simply ask that this matter be left for a while, because I am sure that we can come up with this kind of a plan and possibly have it imposed under regulations. In other words, we need a bit of flexibility to arrange for this.

**Mr. Legal Advisor:** Mr. Chairman, I am somewhat taken by surprise today, and I'm sure the administration is, by the discussion in relation to errors and omission insurance. Not every Law Society in Canada requires it, and not every State in the — of America requires it. Some do and some don't, and there are variations.

There are also variations in the companies which carry the plan, and it is difficult to get reasonable quotations from companies, because of the narrowness of the market, and because of the lack of experience of some of the major companies in catering to this type of market.

So, so far as I know, it was not the intention of the government at this stage to introduce compulsory errors and omission insurance, but having heard what Mr. Phelps has to say, and if he is opting his head on the block, I'm sure that the administration will accept the kind offer and chop it perhaps next fall.

**Mr. Phelps:** Well I am not quite, I hope, putting my head on the block, but I think our main concern is just that raised by Mr. Legal Advisor, namely that if one or two companies know that we are forced to obtain a group insurance plan for members up here, that we may be held up, from the point of view of a gun in our ribs or something, you know, and we would like to be able to have some flexibility in ensuring that all the lawyers are covered.

Certainly it's the intention of the Society, and for the last two or three years, we have ensured that everybody has had this insurance. Now, if there's any problem or it's brought to anybody's attention that some firm may not be insured, I certainly would like to hear about it, because we are doing this on a voluntary basis at this time. We are small enough, we ought to be able to police that one factor.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Mr. Chairman, just for the record, when would the Bar Society be willing to bring forth something like this?

**Mr. Phelps:** Well, I think that—the difficulty is the

small market, the small number of firms who will give group insurance. I would rather be placed in a position where once a year we can show that every firm is adequately covered, without sort of having a gun placed at our head, where we have to go to a monopoly situation and try to get insurance. They could charge us five times what they do now.

That is the difficulty. I agree with the principle of insurance and the Law Society practices that principle. If it is compulsory it could change the rates drastically, as Mr. Legal Advisor has indicated.

Hon. Mr. Lang: So in other words what you are saying, Mr. Phelps, is that it is cheaper for each law firm to get their own insurance rather than go under a group --

Mr. Phelps: No, no, right now we have got a group plan. That is not the point. The point is that if the one or two companies that offer this kind of insurance -- there is only one or two companies that will offer this kind of insurance, know that we have to have it, that we are in trouble if we don't have it, they might change their rates, group or otherwise.

Mr. Lengerke: Mr. Chairman, I would think then, as I understand it, that if it is mandatory under this legislation, Mr. Phelps's concern is that the rates will go up because the companies so supplying this coverage will know that they have to purchase it and the fees may just become right out of reason.

Mr. Phelps: I am suggesting further that the discipline committee may make it obligatory for us to have -- for all lawyers up here to have this kind of insurance without alerting the insurance companies to that fact.

Mr. Chairman: Forty-seven, one.  
(Reads Section 47. (1) )

Mr. Chairman: Forty-eight, one.  
(Reads Section 48. (1) )

Mr. Chairman: Forty-nine, one.  
(Reads Section 49. (1) )

Mr. Chairman: Fifty, one.  
(Reads Section 50. (1) )

Mr. Chairman: Two.  
(Reads Section 50. (2) )

Mr. Chairman: Mr. Phelps?

Mr. Phelps: Again this is an area of grave concern to the Law Society. Again it deals with client privilege. My instructions are to say that we are against the kinds of powers that are set out in Section 50 because really, the lawyer doesn't have the privilege. The lawyer can't say I refuse to do this or that because of the client. The onus is on the client to waive the privilege. It is his privilege the secrecy of anything he has given to the lawyer, et cetera.

One problem with Section 50 subsection 2, possibly could I ask, is there an amendment in that Mr. Legal Advisor since I last saw it?

Mr. Legal Advisor: No Mr. Chairman. That section as it is presently written does not contain any amendments.

Mr. Phelps: Is there a proposed amendment? From the administration?

Mr. Chairman: There is under subsection 4.

Mr. Legal Advisor: Yes, Mr. Chairman, there was a new clause, subsection 4, which deals, only very marginally with subsection 2, it deals substantially with sub section 3, which has not been read out yet.

Mr. Phelps: Well I am just simply saying, at this time then, before we complete it, this is of grave concern to the Law Society. I haven't seen these proposed amendments, perhaps once you have finished reading these sections I could comment.

Mr. Chairman: Three.  
(Reads Section 50. (3) )

Mr. Chairman: Four.  
(Reads Section 50. (4) )

Mr. Legal Advisor: Mr. Chairman the amendment is an interpolation of a new subsection 4 and the old section 4 will become section 5.

Mr. Chairman: Reading from the Amendments. The following subsection will be inserted as 50. (4), subsequent pages will be renumbered.  
(Reads amendment to Section 50. (4) )

Mr. Phelps: Might I ask Mr. Legal Advisor, have we the concurrence of Parliament that legal proceedings include criminal proceedings?

Mr. Legal Advisor: We can't bind Parliament, Mr. Chairman, but in so far as that can be done this section is largely drafted with reference to the Evidence Ordinance of the Yukon Territory to give us the same effect as privilege. The language used in the Evidence Ordinance the Parliament of Canada so far as they can bind it, and we have done the same.

Mr. Phelps: My concern is simply this, that this is all very well if there is a civil case in process against a client who is compelled to make these answers, but if this kind of evidence gives rise to criminal cases against him, which is far more serious in most cases, then this doesn't protect that client, and he is compelled to give evidence which could be used against him, unless, of course, we have some kind of assurance from the senior government, because criminal law comes under the Federal Government of Canada.

Mr. Legal Advisor: Mr. Chairman, there is nothing we can really do about that. This applies to all answers

given under the jurisdiction of this Council, that a person has the privilege of objecting to answer it, and is given that privilege, and is given such protection as this House can give. We can do no more, with regret I say.

**Mr. Phelps:** Well, again, my concern is simply that the privilege is being taken away from the client, who isn't culpable, the person who is culpable is the lawyer, and it concerns me very deeply that the innocent client might be forced to give evidence that could be used against him in a criminal proceeding.

**Mr. Legal Advisor:** Mr. Chairman, all I can say is that I am informed that this is the law in all of the other provinces who are investigating a lawyer, and it's specifically written into the Alberta Statutes, and this section is a copy from that Statute, and we have adopted that, to write it down, rather than have it argued. That's all I can say.

**Mr. Chairman:** Fifty, five:  
(Reads Section 50. (5) )

**Mr. Chairman:** Six:  
(Reads Section 50. (6) )

**Mr. Chairman:** Seven:  
(Reads Section 50. (7) )

**Mr. Chairman:** Eight:  
(Reads Section 50. (8) )

**Mr. Chairman:** Fifty-one, one:  
(Reads Section 51. (1) )

**Mr. Phelps:** Well, again, of course, this just underlines my concern.

Now, say that suppose in blunt terms, say that a lawyer has a lot of—a huge file on a client, and that client is being investigated say, for fraud, and the lawyer is doing something that's unethical, without the client knowing anything about it. He just doesn't know anything about that. What concerns me is that client could be dragged before the Committee and forced to hand over all these things that might be in this file, to give evidence and this ultimately, if justice—the Department of Justice of Canada were serious enough at prosecuting this person, this ultimately could fall into their hands, and that person could face—could be prosecuted, possibly successfully, on very serious charges, and the only way this evidence was obtained against him is that he happened to have a bad lawyer, through no fault of his own.

It concerns me very deeply that clients can go to a lawyer and face those kinds of consequences. I don't think it's right, I think that I speak for all the members of my profession when I say that.

**Mr. Chairman:** Mr. Phelps, what alternative could you give us? How else could this information be obtained for the Committee?

**Mr. Phelps:** Well, in most cases, where there is a complaint against a lawyer, that complaint arises

because the client is upset and wants to have the lawyer prosecuted, so that client that's aggrieved will naturally give his consent, and I would suspect that in most cases, the other clients involved who have nothing to hide would give their consent. So I would think that in 99 per cent of the cases, surely the clients would be quite agreeable to letting their files be used for these purposes.

It's only in the very rare instance that there is going to be a client who could suffer because of some wrongdoing by a lawyer, and what I am suggesting is that surely we don't need to compel all clients, because they would attend voluntarily in most instances, and certainly the large majority of the cases that come before this Committee will be a case where a lawyer has done something injurious to a client, and that's the client that wants the lawyer disciplined, and he is going to cooperate in every way possible.

What bothers me is simply that there is going to be one percent or one-tenth of one percent that won't be protected, and of course, normally that's the most serious kind of situation.

**Mr. Chairman:** Mr. Fleming?

**Mr. Fleming:** Mr. Chairman, just as a matter of principle, but I would like to ask the witness if he doesn't feel too though that in the case of a client being more or less forced to give evidence which does incriminate him in some way, wouldn't you say that possibly he had already done something wrong where he should be incriminated in some way anyhow?

**Mr. Phelps:** Well the problem is that the cornerstone of the whole system, that the privilege which belongs to the client, is sort of a sacrosanct privilege, and it's just fundamental to British justice, and it's hard for me to give all kinds of examples and so on to underline it, but certainly I know of a lot of cases where people wouldn't have come to see me if they thought I could just give this evidence to the police, or that the police could actually walk into my office and seize my books, or my files.

What person who faced serious criminal charges would ever go to a lawyer if the police could walk in and just grab the books, and in effect, this allows that to happen.

**Mr. Chairman:** But Mr. Phelps, by analogy the medical profession enjoys no such protection, their files are available to courts on demand.

**Mr. Phelps:** But --

**Mr. Chairman:** And there is also the question that the patient, as your client, may suffer because of it.

**Mr. Phelps:** But I just suspect that the relationship between the lawyer and the client, especially in criminal proceedings, is founded on that fundamental issue, namely privilege.

I'm just simply suggesting that most clients wouldn't go to a lawyer if the police could walk right in and grab that file and use the contents of the file, and could bug the conversation and use that conversation

in court, and I'm suggesting that this is the only crack in the system, right here, Section 51 and 50, that it opens that area.

Now, I wish there was some way that we could get further assurance or possibly we ought to -- these Sections ought to be reworded, and we ought to see whether or not the obtaining evidence from the various clients is a problem, because as I say, in most of the cases, the client is going to be going after the lawyer, and he's going to be the person complaining, in most of the cases, and in the other cases, most clients have nothing to hide, so they won't mind having their files used for this limited purpose, but in a few cases, I could see the relationship between lawyers and -- all you would have to have is one serious fraud case, where the Crown, the Government of Canada, obtained evidence from this kind of a situation, and actually obtained a guilty charge against a client, who was innocent as far as this procedure was concerned.

That would only have to happen once, and imagine the ramifications that would have with respect to all lawyers and their clients. It is so fundamental to criminal law, and unfortunately this body has no way of ensuring that the Department of Justice of Canada or the R.C.M.P. will respect this sacrosanct relationship.

Now, it may be, it's possible that a court might be awfully concerned, but that would have to be tried. In other words, when the thing got to court and they were using this evidence, there might be some safeguard there, but that would have to be tried.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Mr. Chairman, hopefully none of our lawyers will have to go before a discipline body, hopefully.

I hear the witness saying that this should be rewritten, this is the most important, one of the more important points in the legislation, and I recall, I happened to be a member of this House when we set this legislation aside for six months, in order to have the local Bar Society to look into the legislation and see what they could come up with for any changes that may make this better legislation, and I have to agree personally with Mr. Fleming in regards to if the individual involved, in question, if something comes up that is that important that he has obviously done something illegal, surely you as a lawyer and as a citizen would think that he should be tried before the courts on such a case. Wouldn't you think?

**Mr. Phelps:** Definitely not.

**Hon. Mr. Lang:** I definitely say that it would be a travesty of justice.

**Mr. Phelps:** No, no, no.

**Mr. Chairman:** Mr. Fleming.

**Mr. Phelps:** Lawyers -- clients wouldn't go to lawyers on criminal matters if the police could use everything they said to the lawyer. There's no way they would ever go to a lawyer, they would have to be

crazy. It's the cornerstone of the system.

**Mr. Chairman:** I would ask the witness not to engage in debate.

**Mr. Phelps:** Oh.

**Mr. Chairman:** Mr. Fleming?

**Mr. Fleming:** Thank you, Mr. Chairman.

I would like to ask the Legal Advisor a question, I don't quite understand. Under the same thing, we will say that the applicant or the person that is hiring the lawyer, has a conversation of course with the lawyer in the office and so forth and so on, and probably it is written down on paper, and then the lawyer does something wrong and of course he then takes the lawyer to the Committee to try and get this straightened out, and in the process of all of this, the police and so forth, seize all the papers.

Now, anything that is spoken between the lawyer, done between them, this is not under oath. What would they do in this case when it is in the court? Can those papers, could they be used against that person as evidence?

**Mr. Legal Advisor:** A hypothetical case, Mr. Chairman, but they could not call the lawyer and ask him in any court, criminal or otherwise, what did your client say to you? Or what did you say to your client? They can't tamper with the confidential relationship, in a criminal court or otherwise, between a lawyer and his client.

The theory behind it is that when clients are in the throes of a conflict in the court, they need to have at least one friend that they can talk to frankly and who in turn can give them frank advice. That's the theory behind this relationship of solicitor and client. The contrary is that this is for the protection of the client in a criminal proceeding. It's not intended to protect the client in a civil proceeding, and this Section is aimed at a number of variations of the same theme that can occur.

One is where a lawyer, as is common, is acting for more than one client, and another situation where he's acting for a company and individuals or directors or are shareholders, and he was accused by one party of acting in the interests of his rival after the fall-out, and of either stealing documents, stealing securities or arranging for a fraud or other thing to happen, and then the Committee is called on to investigate. Acting at the instance of one client, they are liable to be met with the answer, "I'm sorry, those documents are the property of another client", so they then call in the client and they say "Will you permit that lawyer to give evidence", and he says "Oh no, I won't", and then the Committee is powerless in the circumstance, to continue the investigation.

This can happen in either two individuals or two companies or a company and an individual. Now, that's one class of a case, but there's a second class of case, and that's when there's no client at all. Lawyers have been accused throughout Canada, of acting fictitiously, under fictitious names, inventing trust companies, investments, income tax deals, foreign



companies. None of the lawyers in this area, but it has been alleged, and they do so in the name of a fictitious client, so that when an investigation is likely to occur, then a client who doesn't exist, will refuse to give permission to the lawyer to answer any questions.

Now, this has been alleged on a large scale in some areas of Canada, excluding the Yukon Territory, so -- to date, at the rate of 14 million dollars per annum, and I'm asking the House to let the drafts stand with the protection that is given in the other Section.

**Mr. Phelps:** Well, just if I may reply and not enter into debate, of course, but I think what my friend is referring to is the case of over-seas companies in places such as the Cayman Islands and so on, and Lichtenstein, where these companies are formed and so on, and it's pretty hard, even with this legislation, to obtain any evidence with respect to companies formed in the Grand Cayman Island, and I doubt that it would very often be a matter of concern in this jurisdiction.

The other point I would like to make is that we spent a considerable amount of time, the Law Society that is, in drafting legislation, an entirely new Ordinance, and this was taken up with the B.C. bar, and for various reasons we were unable to bring it forth, most of them being problems that the B.C. Bar find insurmountable, unless their Statute is amended, which is a fairly long term proposition.

However, there is not this kind of power in the Law Society of B.C. Statute. That power is not codified in any clauses in their governing statute, which deals with disciplining members and so on, and I just simply say that what this body, this House has to weigh, is on the one hand the very cornerstone of the relationship between solicitor and client, and on the other hand, the possible abuse, bearing in mind that most clients would willingly let their files be used for this kind of prosecution, bearing in mind that in most of the cases, it will be the person who's accusing the lawyer that will be the person most adamant in having the thing aired, and it will be his privilege that he can waive.

In other words, it is up to the client to waive the right, and I'm simply saying that -- I'm asking that you as people of common sense, realize that surely this will not be a defence in very many cases. On the other hand, what you are being asked to do, with respect, is possibly destroy the relationship that has existed since the twelfth Century between lawyers and their clients.

That's all I have to say, really.

**Mr. Chairman:** Mr. Taylor?

**Hon. Mr. Taylor:** Well, Mr. Chairman, at this point I return to the whole question of civil liberties, and it occurs to me after listening to some of the debate that has taken place on this subject, that perhaps someone can be aggrieved and I was looking at the Canadian Bill of Rights, and I'm wondering as to its application in respect to this question, where it gives to Canadians, the right of the individual to life, liberty, security of the person and and enjoyment of property, and the right not to be deprived thereof except by due process of law.

It's pointed out to me that there are several interpretations on what is due process, but it is under due process, I'm informed, that substantially deals with

the propriety of how legislation is judged. Life, personal liberty and security of the person, it was noted that the specific guarantees of procedural fairness set out elsewhere in the Bill of Rights would continue to apply to any interference with contracts or property, and it seems to me, unless someone could point out where I am wrong, that this is in fact what we are talking about right now, and if indeed this is what -- my assumption is correct, that what we are dealing with is the rights of the individual before the law, then the Canadian Bill of Rights has spelled out the fact that they must have that protection from the law.

I would find much -- find myself much in accord with the comments made by the witness in this regard, and I think this matter should be looked into far more closely before a decision is made on accepting the Bill as it's written, in this light and that is the protection of the individual's rights and property, concurrent with the intent of the Canadian Bill of Rights.

**Mr. Chairman:** Ms. Millard?

**Ms. Millard:** I understood in May when this was put over until the fall, that there would be several negotiations between the administration and the Law Society on just these points. I find this really, we are going over the same things we did last spring.

I wonder if someone could tell us how often the Legal -- the Law Society has met with the administration and discussed all these fine legal points of things that should have been more or less decided.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** I see Mr. Gillespie in the back there. Maybe it would be wise to have him come in and explain the situation.

**Mr. Chairman:** Is that the wish of the Committee?

**Some Members:** Agreed.

**Mr. Phelps:** I might say, I think it's fair for me to say that I have raised these areas of concern with Mr. Legal Advisor and with Mr. Gillespie, and I think one of the results, although I never did see this amendment, as probably it was not proper that I should see it before you, but I think with this amendment, it is probably the result of the consultation I did have with them, and I suspect the other amendments flow from us stating our areas of concern, but of course we don't have that kind of input into creating legislative Bills and so on.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Mr. Chairman, I have a question. I'm a client, and I have a lawyer, and I find that the lawyer has also this other client that I am more or less in opposition with, and he has sided with this other client, so therefore I go to the Disciplinary Committee and I say, I have been aggrieved by this lawyer because he has not gone along with the Code of Ethics, I think that's what you refer to it as.

Now, okay therefore in order to prove my case, I have to more or less have some of the information or

files or whatever that the other client has given to the lawyer in question, so therefore, with the way this reads, right now we can get that information, but if we were to say no, it is the privilege of the client to say whether or not this information should be given, then therefore there would be really no way of disciplining that lawyer, because they wouldn't know whether or not he had done anything wrong. Is that not correct?

**Mr. Legal Advisor:** Yes, Mr. Chairman. The technique is in that situation, which I would advise if I was the person, defending a lawyer in question, would be to advise him to say in answer to questions, "I'm very anxious to answer it, and it's a very good question to ask me, and I'm trying to cooperate in every way with this Inquiry, but unfortunately my client has said he is claiming privilege, so he tied my hands and I cannot answer it".

And then your friend, Mr. Lang --

**Hon. Mr. Lang:** I get it.

**Mr. Legal Advisor:** -- you would get it in the neck, rather than your friend.

**Mr. Phelps:** If I might--

**Hon. Mr. Lang:** And therefore, Mr. Chairman, the lawyer would still carry on and do business, and not been disciplined?

**Mr. Legal Advisor:** Well --

**Hon. Mr. Lang:** Later on with other clients?

**Mr. Legal Advisor:** You're making the assumption the lawyer has done something wrong.

**Hon. Mr. Lang:** Well I am --

**Mr. Legal Advisor:** There would be no decision as to whether he did anything wrong or did not do anything wrong. The investigation would come to an end at that point.

**Hon. Mr. Lang:** Well this is my point, Mr. Chairman, is then the lawyer can carry on doing business and maybe go on to bigger and more unethical things.

**Mr. Phelps:** If I might --

**Mr. Chairman:** I would like to remind members of Committee that you have to be recognized from the Chair. For the record, Mr. Gillespie has joined us as a witness.

**Mr. Phelps:** May I comment on that, Mr. Chairman?

**Mr. Chairman:** Mr. Phelps?

**Mr. Phelps:** Well, Mr. Lang has pointed out, put his finger on the problem, there is no question, and all I am submitting is this: That what would happen is not that the lawyer would be asked certain questions, he would

say unfortunately my client won't allow me to do this, but the client could be approached by the Disciplinary Committee, and I'm just suggesting that in very, very few cases would the client refuse.

This is just a value judgment, that weighed against, that weighed against the case where the client might refuse because there's evidence that might put him in a criminal position.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Well, Mr. Chairman, then that means that myself and the public for that matter would not be getting justice, which I am sure that all of us want to see done.

It wouldn't be in the interest of that client to give that information.

**Mr. Phelps:** All I can say in answer to Mr. Lang is, that in view of the importance of the principal which is being violated, possibly we should try to do without these powers and if it seems that there is a breakdown in justice, even one case, then bring it back to the House. Certainly, you are violating a fundamental cornerstone of justice which has been with us since the adversary system.

**Mr. Chairman:** Mr. Gillespie did you have a comment to make.

**Mr. Gillespie:** Mr. Chairman when I was sitting in the gallery I heard the Legal Advisor say, I think, that this particular section that we are proposing to use here is taken directly from the Alberta Statute so this is not a new proposal, it is not a new violation, if you want to call it that.

The dilemma has clearly been expressed in discussion between Mr. Lang and Mr. Phelps. B.C. has chosen to approach it in one way, Alberta has chosen to approach it in another way.

We are proposing to adopt the Alberta method which is also the method we have in our Evidence Ordinance which permits us to use client privileged information in camera, in confidence, in matters of this sort.

Our concern is very much that we be allowed to do that in order to be able to protect the public.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, the witness was suggesting that we remove this section, and if there is an indication of where there has been an abuse of this privilege, well then we should bring it in.

I would suggest that we leave it in, and if we find where there is an abuse and where a client has suffered very much because he has been forced to disclose information, well then maybe we would look at amending it.

I would rather—I think the chances and the protection of the public are within the section that is in here now.

**Mr. Legal Advisor:** Perhaps Mr. Phelps can confirm this. I made inquiries from the Law Society of

B.C. as to whether or not they had such a section and they said they did not need this section because they would not allow a lawyer to refuse to answer, that in effect the law was the same in Alberta, although they haven't got around to putting it in their statute.

I am slightly puzzled why a stand is being taken when in fact B.C. do not give this privilege to lawyers by custom.

**Mr. Phelps:** Again, I am not just exactly sure of how they have resolved this, but this problem again is that the lawyer isn't claiming the privilege. I think that is the answer you got, it is the client that claims the privilege. The lawyer can't stand on the privilege at all. It is not his privilege.

I just don't see it as a problem. The point is simply this, that the client is approached and if there is a client that is reluctant, it is probably because he has got something to hide and doesn't want it used criminally against him.

With respect to Mr. Gillespie's remarks about the Evidence Ordinance, that Ordinance does not apply in any way to criminal matters.

The protection of our Evidence Ordinance is just completely without value when it comes to criminal matters. There is a Canada Evidence Act, that Evidence Act applies to the Criminal Code of Canada and our Evidence act does not.

**Mr. Gillespie:** Mr. Chairman I will be happy to remove that half of my argument.

**Mr. Chairman:** Fifty-one, two  
(Reads Section 51. (2) )

**Mr. Chairman:** Three:  
(Reads Section 51. (3) )

**Mr. Chairman:** Fifty-two, one:  
(Reads Section 52. (1) )

**Mr. Chairman:** Two:  
(Reads Section 51. (2) )

**Mr. Chairman:** Three.  
(Reads Section 51.(3))

**Mr. Chairman:** Four.  
(Reads Section 51.(4))

**Mr. Chairman:** Five.  
(Reads Section 51.(5))

**Mr. Chairman:** Six.  
(Reads Section 51.(6))

**Mr. Chairman:** Seven.  
(Reads Section 51.(7))

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Chairman:** How was the figure of three hundred dollars derived. A fine of not more than three hundred dollars, in 52.(2)?

**Mr. Legal Advisor:** I think it was on the advise of the Honourable Member. I am not sure, really Mr. Chairman. I think it was probably copied from some other piece of legislation.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Do you think that that amount of money is enough or do you think it should be increased or-- the reason I ask Mr. Chairman, because three hundred dollars isn't very much these days.

**Mr. Phelps:** There is two things. There is the three hundred dollars plus the cost of the investigation which would probably mount into the thousands and thousands of dollars, you are talking about at least a three man committee sitting in judgement. You are talking about costly Court Reporters and other counsel acting for the committee.

You are talking about an investigator that will be travelling up here and staying at hotels and investigating the matter thoroughly.

Whether or not the fine is more or less than three hundred dollars I think is secondary to the rest of it. I have no comment aside from that.

**Mr. Legal Advisor:** Mr. Chairman, out of this subsection what the committee is doing is only having him reprimanded not trying to impose a finding of guilt, so one would assume that the amount of the fine would be fairly low.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** A reprimand to me means obviously that he has done something wrong.

**Mr. Watson:** But not serious.

**Hon. Mr. Lang:** Okay.

**Mr. Chairman:** Fifty-three, one.  
(Reads Section 53.(1))

**Mr. Chairman:** Two.  
(Reads Section 53.(2))

**Mr. Chairman:** Three.  
(Reads Section 53.(3))

**Mr. Chairman:** Fifty-four, one.  
(Reads Section 54.(1))

**Mr. Chairman:** Two.  
(Reads Section 53.(2))

**Mr. Chairman:** Three.  
(Reads Section 54.(3))

**Mr. Chairman:** Four.  
(Reads Section 54.(4))

**Mr. Chairman:** Five.  
(Reads Section 54.(5))

**Mr. Chairman:** Mr. Lengerke?

**Mr. Lengerke:** I think the Honourable Member from Kluane has a question first, Mr. Chairman.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, the expenses that are listed in 54 sub one, and those are the expenses that are listed when the barrister and solicitor is awarded costs or has to pay the costs.

Now who would normally pay the costs, the expenses of the committee? I would say the government? The cost of any transcripts, witness fees and the fee payable to the solicitor acting on behalf of the committee at the hearing, is this also a charge against the government?

**Mr. Legal Advisor:** Mr. Chairman, this particular method is unusual. The normal thing is that there's a Law Society, and the Law Society would pay a per diem at the rate of 50 or \$100.00 a day to each member of the Committee itself who attend.

It would also pay the bill of the counsel who appeared for the Committee and investigated the matter, which would come to say, 1,500 or \$2,000.00. It would also pay the costs of any witnesses brought to the hearing that would be required to prove that the case against the particular barrister and solicitor. So on average, the cost of a small case could run to \$2,000.00, a big case could run to \$13,000.00

Now, that's what that list would make up in a big case, \$12,000.00, \$15,000.00, it can be a very sizeable amount.

**Mrs. Watson:** Mr. Chairman—

**Mr. Chairman:** Mrs. Watson.

**Mrs. Watson:** —then if we have a big case, it could well be that the Territorial Government would have to pick up the complete cost of that hearing?

**Mr. Legal Advisor:** Yes, Mr. Chairman, but again assuming that the person was found guilty, and assuming the person was ordered to pay the costs, and again assuming that at that time he had any money left, they would be able to recover the costs.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, further to that, in a typical situation such as this, if the barrister and solicitor is found guilty, is he always asked to pay the costs? Is this part of the disciplinary action that the Committee takes?

**Mr. Legal Advisor:** Depending, Mr. Chairman, if there happened to be a court matter, the judge might be more lenient. In a Law Society matter, it varies from Law Society to Law Society, but if the accused lawyer does not pay, the members themselves have got to pay it out of their own pocket, so they are inclined to force the accused to do the paying.

Now, in this situation I couldn't predict, the Com-

mittee might be aware of the fact that there was a government standing behind them and might be inclined to be a little bit more lenient, and truth to tell, perhaps they should be because the lawyer may have to go to Vancouver to hear his case, and he may be put to some trouble, because it's not always required that a Committee come here. He may go out, but whichever way it goes, he—in defending himself, he has a higher expense than a lawyer would in Vancouver, so it would not be unfair to show him some mercy at the end of it all.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, further to that, if this is brought into force not on a day to be fixed by the Commissioner, but immediately, do we have any money in the budget appropriated for the Legal Professions Ordinance?

**Mr. Legal Advisor:** Yes, Mr. Chairman, we have some modest sum. The House was kind enough to vote the appropriation in advance.

**Mr. Chairman:** Mr. Lengerke?

**Mr. Lengerke:** Yes, Mr. Chairman, I think my question has been answered, but just while we are up and also while we are on fees, it sort of prompts a question in my mind, and I didn't know where the heck I would ask this, but I would ask the witness, does the Yukon Law Society, have you adopted the fees of the B.C. Law Society, and another question is, how are these fees set? I would be kind of interested in knowing.

**Mr. Phelps:** Well it's a fairly complicated question. There is, first of all we have under our Rules of Court, and we pretty well adopted the same Rules of Court as B.C., we have as a tariff which covers a lot of items, non-criminal items, but court cases, real estate transactions and so on, and these fees are approved by the judge from time to time.

Since I have returned here and been in practice, I think we have only had one change and that was about three years ago, and it's a fairly complicated system of taxing an account. You can, in special circumstances, make arrangements with clients, you know really a contract for fees, that's another way.

We are pretty well basing our average fee structure, I say pretty well, on a booklet that comes from Vancouver, and it's simply -- it's prepared by the Vancouver Bar, and it's -- they call it an "Average Fee Structure", to which we add 20 percent, and that's simply the increased cost here.

I might say that the result is this, in some matters we tend to charge slightly more, and most matters we are about the same, and some cases less.

The example of where fees are considerably less are mainly criminal, and the reason is we don't really have the hardened criminal up here, so that you don't really have that kind of case where you are dealing with the underworld, or people that can afford to pay a reasonable fee. In fact, most of our criminal fees are legal aid fees.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: I don't want to stay on the subject of fees too long, but I just maybe can get one more question clarified in my mind. I know that since I have been in the Yukon, I have had a lot of people suggest to me, that for instance, fees as charged by a lawyer for real estate transactions are high up here, and I can't really comment one way or the other myself on that, but maybe you could enlighten me a little further on that.

Maybe you could tell me what percentage, based on real estate fees --

Mr. Phelps: Well there's a schedule, and it's set out in the Supreme Court Rules, and we are all charging the same. Really the fee is that used in B.C., and it's based on the value of the property, there's a minimum if it's a very small transaction, because the work involved, because there is a minimum amount of work involved, no matter how much the property is worth, and the fee increases with the value of the property, mainly because the lawyer is sticking out his neck and say this is going to be a good deal, and if a \$50,000.00 transaction fails and it's his fault, he's going to get sued for a lot more than if a \$6,000.00 transaction fails and it's his fault. We are simply following the same procedure, and pretty close to the same rates as B.C. and Alberta, and again, in the rules themselves, this has been approved by the Judge. To my knowledge, everybody's adhering pretty well to this.

Again, if a client is upset, they have the right to complain to the judge.

Mr. Chairman: Mr. Berger?  
Mrs. Watson?

Mrs. Watson: Mr. Chairman, the government, or the state is providing some measure of protection for the legal profession through this type of Ordinance, whereby we more or less allow the legal profession, the standards that we want lawyers to have in the Yukon Territory. This is common practice across the country, it's accepted. You set the standards. We give you the protection where you have your own disciplinary action.

We have had suggestions where lay people should be involved in the Disciplinary Committee, and the professional people feel that they should be judged on their ethics by their peers. Now, where -- for example, with the fee structure, do all lawyers follow faithfully the fee structure that has been adopted, or are there instances where they will sort of charge what the traffic will bear? Is there any assurance to the public, because it's the public through this legislation who is giving you the protection. What kind of assurance does the public have that a fair and equitable fee -- a fair fee structure is being used and is being used by all lawyers?

Do you do anything, any disciplining yourselves with your own Society here in the Yukon?

Mr. Phelps: What happens in Vancouver, in B.C., is that where a client disputes a Bill, they have the right

to, under their Ordinance, their Statute rather, to have the Bill taxed.

Now, that is a little bit unclear in the Yukon Territory. Our Ordinance isn't really too clear on that point, but I submit that certainly a client has the right to go to the judge and have him decide if it's fair, and that's the ultimate sanction.

With respect to the fees charged and so on, let me say this, that a young lawyer just out of law school with very little experience can't expect to charge nearly as much as a senior lawyer. It varies on the skills, and the kind of work, and there's a lot of variables, and to give you an example, if I get in touch with a firm in Vancouver that specializes in income tax and estate planning, that firm will charge something like \$100.00 an hour to give me an opinion about how to plan an estate for a person up here. And you are willing to pay that, because that firm can do -- is so knowledgeable in the field, that the per hour rate might seem very steep, but they can do it very quickly and they are very good.

The average lawyer might charge, say \$55.00 or \$60.00 an hour which is a common rate in B.C. It might take him four times as long to give an opinion which wouldn't be worth as much. There is that kind of variable, but there is a lot of standard kinds of action that can be easily decided upon, like an uncontested divorce, or a house transaction and so on, and to my knowledge, it's pretty standard here.

I think the public ought to realize though, that they can make waves and what they would do in those circumstances, is to have this brought to the Judge.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: Yes, just one interesting point there. The witness again said or has referred to is, in the case where you have a young lawyer, a new lawyer, just recently graduated and has served his apprenticeship and the rest of it or whatever, and he is charging a fee, how does the client know that this fellow is just -- you know, inexperienced, and he's going to get his bill and based on a schedule of experience. Is there any protection this way, and that's --

Mr. Phelps: Well I understand the concern and there's no absolute protection. There is only that one proviso I can give you, and I would think also that this Committee may have something to say about that when they impose the regulations.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: I would just like to say, Mr. Chairman, I realize that this kind of a situation would prevail amongst many services, you know, we can go to the automotive trades and everything else, but I thought that was interesting.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, with that example that you used where you were doing an estate for a client, and you phoned Vancouver to a top lawyer who charged \$100.00 an hour, you say the fee structure here

is 20 percent plus, would you turn around and charge your client \$120.00 for that advice?

**Mr. Phelps:** Heavens no, Mrs. Watson. No, that would be a disbursement. When you have to use the sheriff to serve documents, when you have to obtain any kind of expertise from any other kind of firm, a doctor or a lawyer that specialized in something like that, that is simply a disbursement and the client -- you explain to the client what you are doing, and charge -- he pays that fee, nothing plus.

We aren't retailing a whole-sale service.

**Mr. Chairman:** Mrs. Whyard?

**Hon. Mrs. Whyard:** Mr. Chairman, I would just like to point out that anyone consulting a member of the legal profession is not hindered in any way from inquiring what this service is going to cost him. I'm sure that now lawyer is going to object to answering that question. It's a fair question, you can say how much will it cost me if you do this, and they'll tell you, and if you think it's too much, you walk out of the office and that's the end of that, and this applies to all professional people.

You can ask the doctors the same question.

I would just also like to add, Mr. Chairman, that if we continue to inquire of this witness, we are going to have to pay professional fees this afternoon.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, I think we have a right to, as I said before, I think that we do give professional people protection under the law, and this is fine, but we should be looking at ways and means where we can give the consumers, the people who are buying that service some sort of protection, and I'm trying to grope and find out just where you can, and we have the Yukon Law Society using the schedule of fees that they use in B.C.

I would like to know whether this is one of the highest schedules in Canada, or isn't it? -

Now, these are the type of things that I think we have every right to ask here. Because I feel that we need to give professional people some type of protection and the medical people and the legal people, but on the other hand, I don't feel very badly at all in standing up here and putting forth these type of questions, and I would like to know how the B.C. schedule compares to other provincial schedules. In fact, I would like to have copies of them.

**Mr. Phelps:** Well firstly, if I may answer most of the words contained in this long, long Bill Number 7, they are contained for the protection of the clients. It's the lawyer that has to be subjected to prosecution, to all kinds of very strong police powers.

To answer your question, the highest, to my knowledge, the highest fees in Canada are probably in the Toronto area of Ontario, and there's instances there where they charge quite a lot more than we do, you know, given common--sort of a standard type of case like a divorce case, they are probably 20 percent

higher than us.

Vancouver, I think is about on a par with Edmonton. I am talking about average costs, and I think across Canada that the hourly rate and so on is pretty close, except that Ontario, for some reason, stands out in my mind as being exceptionally high. I think it's also, if I may say so, I think that lawyers living here or in the north are entitled to some rewards for the cost of living here, and that's why I mention this. 20 percent seems to be standard tacked on to the average fee schedule.

But then again, the average lawyer up here I don't think enjoys the same income as the average lawyer in Vancouver or Calgary, I'm sure of that, given, you know, the same type of person, the same experience and so on.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Mr. Chairman, just to pursue this a little further, in other words, there is nothing actually written down, other than for the few things that are delineated by the judge. Any other cases, there's nothing saying that the lawyer in the Yukon Territory can't charge what the traffic can bear?

**Mr. Phelps:** Well, I think the--

**Hon. Mr. Lang:** It's up to the lawyer.

**Mr. Phelps:** No, I think the Appendix M to the Supreme Court Rules is pretty comprehensive. It's awfully hard, it's been simplified somewhat, because originally it was so much per folio, whatever that meant and so on, it was pretty hard to bring a Bill within its ambit.

No, I think the--basically, there is pretty well the same protection as there is in B.C. I would hope that the Discipline Committee would get around to clarifying the procedure. Frankly I would like the public to be, you know, made aware of their rights with respect to fees and so on, but again, it's just like any other industry, you know, there's going to be a variance, and there's always going to be the odd person who charges more than they ought to in the circumstances.

**Mr. Chairman:** I will now declare a brief recess.

#### Recess

**Mr. Chairman:** I will now call the Committee to order.

**Mr. Lengerke,** prior to the recess, did you have a question for the witness?

**Mr. Lengerke:** No, I am not going to carry it through.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Yes, I do have one though. There is, I have an understanding now that there is a schedule of fees that they use within the Yukon Territory. I'm wondering if we could have this schedule made available to us, because it is going to affect us a great deal when we consider Legal Aid. I would like to see comparison of this schedule of fees with other

jurisdictions.

**Mr. Phelps:** Certainly—I'll endeavour to—my problem is that I have a book in my office, but it's old, it's just about three years old, but that's what I have been using, and I am glad that I have been called before you because you have reminded me to raise my fees, but I'll get the latest average, it's a bound booklet, and provide it.

**Mrs. Watson:** Mr. Chairman, that doesn't answer my question. I want the schedule of fees that they are charging at the present time.

**Mr. Chairman:** Mr. McCall?

**Mr. McCall:** I think we have opened up a can of worms here.

**Mr. Chairman:** Yes, we do have a reluctant witness, don't we?

**Hon. Mr. McKinnon:** He's not hostile yet.

**Mr. Chairman:** Fifty-five, one:  
(Reads Section 55. (1) )

**Mr. Chairman:** Two:  
(Reads Section 55. (2) )

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, one question regarding 55. (1), "Order that the name of the barrister and solicitor be struck off the roll". That is the Yukon roll, does that still entitle the barristers and solicitor to practice law in any other Province of Canada?

**Mr. Chairman:** Mr. Legal Advisor?

**Mr. Legal Advisor:** Mr. Chairman, legally yes, but the Society is notified from Province to Province and they would take appropriate action, I would expect.

**Mr. Chairman:** Fifty-six, one:  
(Reads Section 56. (1) )

**Mr. Chairman:** Two:  
(Reads Section 56. (2) )

**Mr. Chairman:** Mr. Gillespie?

**Mr. Gillespie:** Mr. Chairman, I think I am seeing something that I should have found before coming before this Committee.

Back in 52. (2), where the Committee has reprimanded a barrister and solicitor, it may in addition, fine him a sum not exceeding \$300.00, and then in 55. (2), the Committee may in addition to a reprimand, fine him a sum not exceeding \$5,000.00. I may be reading this too quickly at the spur of the moment, but there seems to be a contradiction here.

I wonder if I could ask the Legal Advisor?

**Mr. Legal Advisor:** With respect, Mr. Chairman, one is where it goes through the whole gamut, and he's

found guilty of conduct unbecoming; in the other one, it just considers that his conduct is conduct, in other words, they are not making a formal finding of guilty, they are just issuing a reprimand, which is equivalent to an admonishment without a formal finding, and in such a case they impose a fine of \$500.00.

In this case he's guilty of something, and they may not suspend him, but they will give him a heavy fine.

**Mr. Gillespie:** Thank you, Mr. Chairman.

**Mr. Legal Advisor:** \$5,000.00 is the fine for this.

**Mr. Chairman:** Appeal to Appellate Division, 57.  
(1):  
(Reads Section 57. (1) )

**Mr. Chairman:** Two:  
(Reads Section 57. (2) )

**Mr. Chairman:** Three:  
(Reads Section 57. (3) )

**Mr. Chairman:** Four:  
(Reads Section 57. (4) )

**Mr. Chairman:** Fifty-eight, one:  
(Reads Section 58. (1) )

**Mr. Chairman:** Two:  
(Reads Section 58. (2) )

**Mr. Chairman:** Three:  
(Reads Section 58. (3) )

**Mr. Chairman:** Fifty-nine, one:  
(Reads Section 59. (1) )

**Mr. Chairman:** Mr. Fleming?

**Mr. Fleming:** I am still a little confused here when Mr. Gillespie asked that question as to the \$300.00 and the reprimand and then you go over to (2) or 55(c) and it says reprimand the barrister and solicitor again, which in a sense I don't see why it's even there, and then in addition to an order of suspension, or reprimand, I don't see why reprimand should be there again either, because it looks like you could charge him \$5,000.00 just for a reprimand.

I feel that you have already gone through it over here and he has possibly paid his \$300.00 or just had a reprimand and been back again.

**Mr. Legal Advisor:** No --

**Mr. Fleming:** I still am not clear on it.

**Mr. Legal Advisor:** As I said, the intention is that a reprimand would be issued without a formal finding of guilty. Section 55 requires that he is found guilty, he be reprimanded without being found guilty of the offence charged. It might be -- that charge is abolished and he pleads guilty to an equivalent or lesser offence, or being careless, not answering a letter to his client, but

not actually taking the client's money, so he is reprimanded and fined for it.

So in this case he is found guilty of the offence charged, and to go to this length, it would have to have been a fairly serious matter.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman there may be provisions for this in the Ordinance. I can't recall it. If a barrister or solicitor is found guilty of some misappropriation of funds before the committee, is there any place where he has to pay back to the party from whom these funds were taken, to make restitution to the person that he sort of illegally taken the funds from, or if there has been a glaring over charging of fees, is there any place where, if he is found guilty, he would have to pay this back to his client, or the victim of his sort of unethical behaviour?

Mr. Legal Advisor: No, Mr. Chairman.

Mrs. Watson: Mr. Chairman, should we not consider that?

Mr. Chairman: Mr. Legal Advisor?

Mr. Legal Advisor: Perhaps this might be considered. It doesn't find its place here. The reasoning behind it is that a committee of this nature is not a court and cannot make an order in a matter which may not be precisely before it.

There may be, no doubt that money has been taken, but a doubt as to how much and how much should be repaid. That would be the subject of a separate action or of a criminal charge. That committee may or may not have before it. It is deciding only a single issue. Has this particular person been guilty of conduct unbecoming a barrister and solicitor.

I would apprehend that during the course of the last day of the trial, the person knowing he was going to be found guilty, or knowing that a penalty was going to be imposed, would hasten to ask for an adjournment or suggest that an adjournment be granted so that he could take certain steps to remedy the matter. That might be one of the steps which he would take.

It would be difficult for us to give this committee the power to actually decide what might be a complicated law case and make an order. That was the answer to the first question. At this point I have forgotten what the second question was.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, if the client who had been wronged would the evidence from the testimony and the document of the court of inquiry be available to the client to use as evidence in an action with the courts, or is it privy to the committee?

Mr. Legal Advisor: Yes, they would be made available upon payment of the normal charges and would be available with the exception that where a charge of a criminal nature, and the protection of the Evidence Act and the protection of the particular

section we sought, that question could not be used as a portion of that evidence.

Of course, documents which were made available you could get a copy of them from some other source. So he would be saved a considerable amount of trouble in bringing his law case and bringing it to a successful conclusion.

The answer to that question, in general terms, yes.

Mr. Phelps: I might also add, if I may, that the lawyer who has been suspended may desire to make these payments on a voluntary basis in order to practice law again, that is the sanction. It is not a judgement that can be used and enforced against him, but he may not be allowed to practice again if he doesn't pay up.

That is certainly the underlying --

Mr. Legal Advisor: Yes except in some of these cases, and again, anything we discuss does not relate to the Yukon Territory but to across Canada, generally. Sometimes there are cases which involve frightening amounts of money that go astray. It is completely outside the power of an individual to ever recover those monies which have gone an gambling investment, or been stolen by confederates of the particular person being dealt with. He has no power to recapture that money. He might be suspended and then make an application five or ten, fifteen years later for permission to come back.

If it was a small sum that it be made condition on him paying that money back, but not being a lawyer he would have little access to high income anymore so he mightn't be able to pay these large sums of money.

If he was able to pay a reasonable amount of money they would let him get back his gown after a few weeks.

Mr. Phelps: If I might just make the comment, unless he went to work at Faro.

Mr. Chairman: Mr. Legal Advisor, would it be within the authority of the committee under this ordinance to direct that some legal action be taken?

Mr. Legal Advisor: No Mr. Chairman. This has one narrow function. This is a disciplining committee and the whole of this procedure, technical as it is, is directed to a single end and that is to decide a guilt or not guilty verdict on one issue, ethical conduct.

Mrs. Watson: Mr. Chairman, could they not recommend that he be suspended and not be allowed back on the role until restitution is made to his client, wouldn't that be a term of one of their suspensions possibly.

Mr. Legal Advisor: That would be a fairly normal one, yes, Mr. Chairman.

Mr. Chairman: Sixty, one.  
(Reads Section 60.(1))

Mr. Chairman: Sixty-one, one.  
(Reads Section 61.(1))



**Mr. Chairman:** Two.  
(Reads Section 61.(2))

**Mr. Chairman:** Three.  
(Reads Section 61.(3))

**Mr. Chairman:** Sixty-two, one.  
(Reads Section 62.(1))

**Mr. Chairman:** Two.  
(Reads Section 61.(2))

**Mr. Chairman:** Three.  
(Reads Section 62. (3) )

**Mr. Phelps:** If I may just interject, Mr. Chairman. There was one point that I did raise with the administration, and that is where a barrister and solicitor has been suspended it ought to be mandatory that the other members of the bar in the Yukon and members outside the Yukon be notified in writing immediately

**Mr. Legal Advisor:** Who should be notified, Mr. Chairman?

**Mr. Phelps:** The members of the bar, the other barristers and solicitors. I don't think there is anything mandatory with respect to that notice being given. It ought to be given because the lawyers will be dealing with that individual and if they aren't notified immediately something grave could -- some grave consequence could result.

**Mr. Gillespie:** Mr. Chairman if my interpretation is correct that is covered in 61 sub 2. The discipline secretary shall give notice of any suspension and striking off of a barrister and solicitor to the secretary of any provincial law society, and that phraseology would include the Yukon Territory.

**Mr. Phelps:** I am saying that notice ought to be given to the lawyers wherever possible. That is what happens in B.C. As a member of the B.C. Bar you receive notice right away, written notice and it is just a good precautionary step.

**Mr. Legal Advisor:** Mr. Chairman this happens in B.C. and other places because each lawyer there is a member of the Law Society and they get a monthly or bi-monthly publication which contains the news. In the item just immediately under the obituary notices is included news of departed brethren.

They all read it and they find out about it. I would apprehend that if we sent notice to Alberta in relation to a member of the Alberta Bar who was coincidentally a member of the Yukon Bar that will be published in the Alberta Journal Gazette every month, the same way as B.C. It would be hot news.

**Mr. Phelps:** All I am saying is that I would like to know about it in case I am dealing with that person.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, I don't think the Legal Advisor answered that. Would it be possible to notify each individual member within the Territory, or should it be to the Law Society?

**Mr. Legal Advisor:** It would be an extra chore that we would hesitate to take on, if we have 80 members, it means that we have to send out 80 letters telling them what happened. They could obtain the news, in any event, at roughly the same time, through their Law Society Gazette. It seems an unnecessary chore.

**Mr. Phelps:** My point is simply this, that surely this isn't going to be such an everyday occurrence that it's going to be too burdensome to the administration, and surely, it's important that practicing lawyers know for the protection of their client immediately—or as soon as possible about the suspension, because that person may have been in the process of absconding with funds, trust funds, and you may, as a lawyer, be about to send him a large cheque in trust, of your client's, and he might take that as well, and I think that we ought to be, as a matter of course, notified in writing immediately.

**Mr. Chairman:** Mr. Gillespie?

**Mr. Gillespie:** Mr. Chairman, I agree in principle with what the witness has said. I think though, that again in 60 (1) (3) (a), that the Committee would direct, in an instance of the sort that Mr. Phelps has just described, that the bar who might be affected in the Yukon would be given that Notice.

In other words, I think that in this particular matter, we could leave it up to the Committee to direct that notice is properly given to all those who are most heavily concerned with that.

**Mr. Chairman:** Mr. Lang?  
Mrs. Whyard?

**Hon. Mrs. Whyard:** Yes, Mr. Chairman, I would agree that—with the witness that notification should go out in the mail. Frequently professional journals are quarterly, or less, and the time lapse would be important in that case.

**Mr. Chairman:** Is that the wish of the Committee?

**Some Members:** Agreed.

**Mr. Legal Advisor:** Could I ask just one question? He's a member of the B.C. Bar; does he get a letter every time a B.C. bar member is disciplined or struck off?

**Mr. Phelps:** Yes.

**Mr. Legal Advisor:** Personally?

**Mr. Phelps:** No, I get a notice, a notice is mailed to me.

**Mr. Legal Advisor:** Otherwise than the Gazette, the monthly Gazette?

**Mr. Phelps:** No, I receive this information in a letter that contains these grave tidings.

**Mr. Gillespie:** May I ask a question, Mr. Chairman?

**Mr. Chairman:** Mr. Gillespie?

**Mr. Gillespie:** Is not this question covered in 61 (2)? Or should it say "provincial or territorial law society", rather than just saying provincial law society?

**Mr. Legal Advisor:** No, Mr. Chairman, it's not covered in this, because what the witness is asking for, is a special letter be sent to every member of the Yukon Bar, giving him news if it happens to be hot news.

**Mr. Phelps:** Just a mimeographed notice, that's all.

**Mr. Legal Advisor:** But I think this can be done as a matter of routine.

**Mr. Chairman:** Mr. Fleming?

**Mr. Fleming:** Yes, Mr. Chairman, I would just like Mr. Legal Advisor to answer me something. I'm just wondering, not that I don't trust all lawyers, but in the case where the Committee has found the lawyer possibly guilty of an offence, and suspended him and he does come to a Court of Appeal and proves his case was actually not guilty, and he had been proven guilty by the Committee due to their corroboration together, you know, as three people or five people saying he was guilty, some way, you know, that they should—what action can be taken against the Committee? Would the Committee be suspended or not?

**Mr. Legal Advisor:** We have taken care of that one, Mr. Chairman, there is a Section saying that nothing the Committee does is wrong.

**Mr. Chairman:** Clear?

Sixty-three, one: I'll read the amendment:  
(Reads Section 63. (1) )

**Mr. Chairman:** Two:  
(Reads Section 63. (2) )

**Mr. Chairman:** Three:  
(Reads Section 63. (3) )

**Mr. Chairman:** Four:  
(Reads Section 63. (4) )

**Mr. Phelps:** This, Mr. Chairman, is a very hot potato. It's one of the things that the members of the bar feel very, very strongly about. Again, I have brought this concern to the attention of the administration, and hence the -- this amendment.

I would also like to say at this point, that pending how I am received, Mr. Nielsen would like very much to, on a personal basis, comment on this to you.

Now, Mr. Nielsen has been tied up in court today, I don't know if he's out free yet, but perhaps I could

make some comments and you can determine whether you would like to hear him this afternoon or at some other time.

The basic amendment has come a long way towards appeasing the members of the bar. Our feeling is simply this; that the funds ought to be under the control of the Law Society. We are quite in agreement with them being used for the purposes set out here, in the administration of the Ordinance, that's fine, the administration of the Legal Aid Ordinance, that's fine, and if there's anything left over to go to the law library.

Really, the only area of concern, and it's a very strong concern to people such as Mr. Nielsen and myself, is that we want to ensure that this money that comes from trust accounts, does not end up being completely and forever controlled only by the government, that we ought to have some control over the spending of the money.

Now if it's set up in a trust account, possibly it could be that the signing authority could be such that we would sign jointly with the government officials or what-not. The point is that given the strong feeling about government interplay in the affairs of lawyers and their clients, I would suggest, to you, that cooperation of the bar is essential here, that the request is reasonable, because the intention of the bar is to spend the money in accordance with the priorities as set forth in sub-section (2). I would myself like to see this set up in such a way that you would have the cooperation, the full cooperation of the bar, because if somebody feels on principle strongly enough about it, if there are any members of the bar feel strongly enough about this point, about control not being given completely over to the government, then of course they can insist that every drop of money that would come into trust be placed in a special account for the client, in the interest of the client and no money would accrue to the fund. I'm suggesting that the bar, every member is in agreement with the money being spent in this way. It's simply a matter, really, of the next fall step as to how this money is to be controlled.

I am also suggesting that, you know this cooperation is necessary, and there are those who feel strongly on principle that the money ought not to be gobbled up by the government, or even taken into a completely government controlled bank account. That's the position I outlined, and I think it is fair to say that it's the position of all the lawyers, and very strongly the position of Mr. Nielsen, and certain other individuals.

So what I am, I guess briefly saying, is that there has to be complete assurance that the money is to be spent in the legal field, which includes this Ordinance, and there ought to be some, even if it's joint control, there ought to be some control vested in the president or the president and secretary of the Law Society as well as the government.

**Mr. Chairman:** Mr. Lang?

**Mr. Phelps:** I think --

**Hon. Mr. Lang:** Mr. Chairman, I just want something clarified.

If we do pass this, I don't know if I heard you right

or not, you suggest that it would still be up to the individual solicitor whether or not they wanted that trust money to go into the government instead of in trust?

**Mr. Phelps:** No, the wording is that this often happens. Right now the situation, to give you some background, is this; that it's improper for a lawyer to collect interest on trust monies, because the money is the clients.

In very large transactions or transactions that are going to take a long time, the client comes in to you and you say look, this is going to take some time and you give me quite a lot of money. I am going to set up a special account, a special interest bearing account, possibly in a separate bank and you will get the interest, you see. So it's open for the lawyer in every case to say to the client, look, I'll put this money into an interest bearing account and you will get the interest.

**Hon. Mr. Lang:** Yes, but --

**Mr. Phelps:** It's just a matter of degree and how strongly --

**Hon. Mr. Lang:** But Mr. Chairman, I think the difference here is we are dealing with trust accounts that are changing every day, eh, isn't this the difference?

I mean, in relation as a client to a solicitor, I would most definitely want the interest if I had a lot of money and was going to go over a set period of time of six weeks, but in a day or two days, this is where this money would accrue from is the short transactions.

**Mr. Phelps:** No, what happens is that, you're right, they are mostly short transactions and so on, but there is nothing preventing, on a very large scale, saying to the client, well do you want this in an interest bearing account, or do you want the government to get it?

**Hon. Mr. Lang:** Well, Mr. Chairman, my question is, then why isn't the client doing it now if it's going to be that --

**Mr. Phelps:** Well --

**Hon. Mr. Lang:** -- for his own financial benefit?

**Mr. Phelps:** My answer is --

**Hon. Mr. Lang:** I would only think, to assume to think that people that are dealing with large amounts of money have an idea of the -- how a financial transaction takes place, and also an idea of interest rates, and if the monies, and this is -- if the money is that substantial, I am sure that they are going to go into a trust account, or -- for the interim period.

I can't see it for a day or two days.

**Mr. Phelps:** No, it's a question of degree, with respect, it's very seldom a day or two days, but anyway it's a question of degree, and it's a question of how strongly the client feels about it, you know, on principle.

Some of them may say no, I want it in my own ac-

count.

**Hon. Mr. Lang:** So if we do pass that, it is still up to the client to see whether or not he wants a trust fund set up. This is to pay monies that are sitting in the bank and not being used, is that not my interpretation -- that's my interpretation of it?

**Mr. Phelps:** Nothing affects any arrangement made between a barrister and solicitor and his client, to deposit monies in a special account or not.

All I am saying is this, that members of the Bar, a large number of members of the bar feel very strongly about this issue of control, Mr. Nielsen being one of the most vocal on that issue, and I'm suggesting that what we are asking is that some of the control not -- over this money be partly vested, at least partly vested, in the Law Society and in the government.

It's not that we are against using it for these things, it's being against the principle of a certain kind of taxation that may operate to the detriment of the client. You know, it's the fundamental principle of how far government can go in intermeddling with such things.

**Hon. Mr. Lang:** Mr. Chairman, I--

**Mr. Chairman:** Mr. Gillespie?

**Hon. Mr. Lang:** I would ask Mr. Gillespie to explain the transactions or whatever that takes place here in these trust funds, because I don't think--myself I am having difficulty understanding why any client would want to let any of his interest accrued from trust funds, go to the government or go to the lawyers or sit in some place where it can't be used, and I would like to-- maybe Mr. Gillespie can elaborate on that.

**Mr. Gillespie:** Mr. Chairman, I can't elaborate at length on the question that Mr. Lang has raised, other than to say that the way he described it earlier on, as I understand it, it is quite correct. For the most part these transactions are transactions that occur over a day, and monies are moving in and out of this trust account in such a way that it would be virtually impossible for anybody to keep track of the interest accruing to a particular individual, and so neither the lawyers nor the banks nor the clients feel it worthwhile to keep track of that money, and therefore don't. Therefore, the money just sits in the bank, and the interest at this point in time stays with the bank. It doesn't go to the client, to the lawyer or to the government, to a foundation or anything, so this is why it's done in that way, and this is why there is the sum of money that we are concerned about here.

**Mr. Phelps:** Perhaps I could just approach the problem in a different way, and see if it makes any sense to the members.

What the government is asking from the clients is for the lawyers to say look, we normally put your money in a non-interest bearing account, and this is common practice, and that's so that we aren't tempted to do the wrong thing and collect interest from it, and

it's partly a bookkeeping chore, so the next step is, we say to the client, now that's the normal practice.

If you have a large number, amount of money or a situation where you might be able to benefit from that principal and derive interest, then of course we will make special arrangements. We will put in a 90 day note, or we will put in a six and a half percent or whatever, and this is done—I hate to estimate how often it is done, but it is done on a fairly regular basis.

Now, the third step is this, then we say to the client now look, the government has passed an Ordinance, and they would like to use your money. The government would like to use your money, this trust money, and they propose to gobble up this money and spend it as they usually do on Lord knows what. Do you want us to place your money into a trust account that will give them the interest?

They could say no way, no way, I don't like the way they are spending that money. It's my principal, and it's my interest, and if there is no interest comes from it, that's fine. They can say that, and we can say fine, we will put that into an account with no interest.

You might get some interest, but normally it has to be a minimum amount of time but that's your privilege. Or we can say look, your money won't get you any interest. There are some things that can be done with that money which are good, and they are related to law, and they can be used to discipline lawyers, and the money can be used for legal aid, and it can be used for the law library, and we like these uses, and we are asking, you know, I would like to see you put this money in a place where the interest can be earned and used for that.

Now, what I am suggesting to you is this, that if, most clients would say well fine, if it's going to be used for these purposes, we're assured of that, and you think it's a good idea, yeah, I think it's a good idea, but if you feel strongly against the government having it, you know, it's your choice.

Now, you can see the different reactions. Now, what I'm suggesting is simply this, that if the Law Society members have some control over the spending of the interest which the client's money earns, then you are going to get more cooperation from the lawyer who is selling the client into earning this money for you. It's the client's money, not ours.

**Hon. Mr. Lang:** Oh, I realize that.

**Mr. Phelps:** And that's the point, I think that's the point that Mr. Nielsen would raise in a far more stronger fashion, but that's the issue. All I am saying is fine, we agree with this kind of purpose. We are simply saying that in order for us to assure clients that they are doing the right thing in allowing the government to use their money and earn interest from it, that we ought to have some control over it, so we can assure them it is going to be used for beneficial purposes. I think that's the crux of the argument, and that's all I wish to say.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** Well, I see your point, but on the other hand, I get the impression that we are almost

being blackmailed, in order to be able to get this money, and I fully realize it's the client's money, but in order so that the lawyers in Whitehorse will stand up for the Government of the Yukon Territory, they want signing authority, and if we are not prepared to give that signing authority, then they may not be prepared to ask for that monies to go to the government.

**Mr. Gillespie:** Mr. Chairman, you can cut it either way and you can get the same thing as far as I can understand. I don't see why the local bar should feel so strongly about this matter, because we can do nothing as proposed in this amendment, we can do nothing that wouldn't be done if the money were held in some kind of a foundation, as opposed to an internal trust account.

This trust account, pursuant to this Ordinance, can only be used to receive money from that single source, from these trust accounts, and it can only be used for certain purposes as outlined here. There will always be an accounting of the monies that are taken in, there will always be an accounting of the monies disbursed. This whole Section looks forward to the day when the bar should form itself as a statutory body or a statutory society, and when that time comes, all the books of account will be there, both the -- showing both the amounts of money taken in and the amounts of money disbursed.

I see no reason why they should feel as strongly as they do, and really all that we are -- one of the things that we are achieving here, by this process, is simply an ease of administration. The money comes in, we don't have to bill them for the monies that we expend on their behalf. By "them", I mean the foundation that would be set up, if as the Bar Society proposes, there were to be set up a foundation. The money would be received by the foundation, the Territorial Government would in turn spend money in the administration of this Ordinance, and in legal aid, and towards the expenses of the law library.

We would then have to turn around and bill the foundation, and then receive the money in return, and it seems like an awful lot of administration to achieve nothing, that isn't achieved in the way we have got it set out here, that I can understand.

**Mr. Phelps:** My only reaction is I can't see much in the way of administration. If it amounts to the same thing, why not allow it to go into a foundation with those goals only, and the money be used that way?

But the point is that there are some members who feel very strongly about it, and I think this has gone myself personally, I feel that this has gone part way to our position. I myself personally, you know I am here speaking for the bar, I am telling you what they think, and some of them feel more strongly than I do. I just don't see that -- I don't see why there should be any problem with a foundation that would simply commit its money to you.

But you know, it may sound like a fairly picayune point, but that being the case, I think you should consider that you would have a lot more co-operation from certain members than you have now. I don't see anything against a law foundation which would be established to provide the money for these purposes only.

**Mr. Chairman:** Mrs. Whyard?

**Hon. Mrs. Whyard:** Mr. Chairman, whether or not it's a picayune point, perhaps we could clarify that question by asking what kind of money are we talking about here? What is happening to it now, and how does Mr. Phelps visualize the Law Society administering this through the Territorial Treasury?

I fail to understand how the two bodies could jointly be paying bills and depositing funds, since you don't have a full time office or a full time employee for the Law Society at this stage, how would you visualize this working?

**Mr. Phelps:** My suggestion is simply this, that we have a law foundation, its purposes would be in accordance with what you have got here in sub-section (2) of the amendment, and all that would happen is they would operate a bank account, a trust account. The interest would go into that trust account, and once a year they would hand it over to the government, that's all. They would have the control of doing it and they could say to the client, those who feel very strongly about it, look it, we can assure you that this is what it is going to be used for, and there's that extra incentive to some people who feel very strongly about the government swallowing up this money.

I know that there's a lot of people in a free Territory such as this, that if they are asked, for some reason, to give money in a charitable way to an institution like this government, they may balk. I can think of one or two examples, and really that's what's being asked of them, that they act in a charitable way towards the government, and this simply makes the pill tastier. It puts candy coating on it, so to speak.

**Hon. Mrs. Whyard:** May I have an answer, Mr. Chairman?

**Mr. Chairman:** Yes. Mrs. Whyard. You didn't answer her first two questions.

**Mr. Phelps:** That there would be a law foundation established. Oh, I'm sorry.

That is very hard to answer. I suspect, and I'm only guessing, that the average trust monies right now, on a year-round basis of all the law firms, and I'm giving you—it's a guess, would be in the neighbourhood of 350 to 400,000.00, sort of a constant cash position. I understand from Mr. Legal Advisor, that the banks would pay something like, am I correct in three and a half or four percent on that money? It's a current account, so you wouldn't get what you would normally get for packages, of money put in for 90 days or something, and so your revenue would probably be in the area of—I'm guessing, you know, 11 to 15,000 a year.

**Mr. Chairman:** The other part of the question was what is happening now?

**Mr. Phelps:** Oh, what happens now is nobody gets any money. You have special accounts for clients that

you know will get some interest, and the bank rubs its hands with glee whenever a new law firm comes to town.

**Mr. Chairman:** Mrs. Whyard?

**Hon. Mrs. Whyard:** Mr. Chairman, then if I understand this clearly, there is some vague figure in the area of 350,000 which is the sum total for all the legal firms in this area?

**Mr. Phelps:** Yes, it would approximate that much on money that would not be placed in special interest accounts for the client.

**Hon. Mrs. Whyard:** And at the moment, nobody is deriving any interest from the—

**Mr. Phelps:** That's right, except the bank.

**Hon. Mrs. Whyard:** So then why would anybody in their right minds object to having some interest derived and put to some good purpose?

**Mr. Phelps:** Well I suspect that the answer to that is simply this, that they have to be approached to do this for the government of the Yukon Territory, or for the administration of legal aid and so on, and if it's put -- if it's done in the way I am suggesting, then they are more likely to do it.

There's a lot of people who would just balk at giving money to the government. They feel bitter about being overtaxed as it is. I can think of a lot of people who think that they pay a lot of taxes, that go to welfare recipients, and they feel this is possibly unjust. I don't know, I think there is one or two members around this table that feel that way.

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Well, Mr. Chairman, how does that money get into that account now? You know, do you mean to say you are going to sell it to clients and you are going to say there are two ogres that will get it? The Benevolent Law Society or the Y.T.G.?

**Mr. Phelps:** No, I'm suggesting--

**Mrs. Watson:** How does it get in there now?

**Hon. Mr. McKinnon:** The least of the two evils will take it.

**Mr. Phelps:** What I'm suggesting is simply this, that the trust money, the client has to be made aware that he is allowing somebody to use that principal for the purpose of earning interest.

I can't just take your money and use your interest on it. It's the same problem.

**Mrs. Watson:** What are you doing with it now?

**Mr. Phelps:** I explained that there is no interest. There is no interest on this money.

**Mrs. Watson:** Can't you tell him the same thing? There is no interest now.

**Mr. Phelps:** We're using his money. We're suggesting that the government should be allowed to use his money. I could say that, certainly. Would you rather it went to the government?

**Mr. Legal Advisor:** Let me explain one point. The reason the legislation is drafted the way it is is because it is doubtful how much legislative power this Territorial Council has in relation to the banks which has reserved power from it under the Yukon Act as it is in the other provinces.

The technique that is used to impose this tax was to direct the lawyers over whom we have control to tell the banks what to do with the interest. They are asked to instruct the banks to pay interest which can be collected. It is a technical matter.

**Mr. Chairman:** Mr. Legal Advisor, I think you have just supported the witness' stand.

**Mr. Legal Advisor:** I'm not standing to support or unsupport anything. I'm protecting a matter. This legislation is drafted that way.

**Mr. Chairman:** Mr. Fleming?

**Mr. Fleming:** You might say the same thing about me because I do support the witness from this stage. I am supporting him. The money that is taken, I understand it is taken now, there is no interest to anybody and it's a private person's money and I feel in the case of their society, in the case of their work, that they are the ones that are helping to earn interest on this money.

It is my money. It's their money. It's being put into a bank and of course the government is going to get their paws on it, you might say, but the fact remains that I still should have something to say about it and so should they, because they are earning it. I think they should have more or less a right to say who and where it is spent to rather than just throwing it down the drain.

**Mr. Chairman:** Mr. Lengerke?

**Mr. Lengerke:** Yes, Mr. Chairman, just an observation here. I would venture to say this that even if the interest does stay with the bank then I would think that it would have quite an influence to the bank in the banks dealings with the law firm.

**Mr. Phelps:** All I can say in answer to that is that of course, it always does, but I suspect that if they have that kind of money at three and a half percent it will still have that kind of influence, or nine percent.

**Mr. Lengerke:** Yes, just following up on that Mr. Chairman, I just want to say that there is nothing wrong with that.

**Mr. Chairman:** Mr. Lang?

**Hon. Mr. Lang:** No, Mr. Chairman.

**Mr. Chairman:** Mrs. Whyard?

**Hon. Mrs. Whyard:** Mr. Chairman I think we are all aware of the fact that it was recently disclosed to the citizens of Canada that the banks in this country have just reported an all time high in their annual profits. In fact one of them had an increase of one hundred and eighty per cent in its overall profits for its operating year. I think that anything we can do to get in on this gravy train and get it into the hands of the administration is well worth circulating.

**Mr. Chairman:** Mr. McIntyre?

**Mr. McIntyre:** Mr. Chairman, I wonder if I can ask the Legal Advisor a question. In view of all the discussion about the interest in the bank, couldn't we -- have we the power to say in this Ordinance that all of the costs of administration be borne by the law society and forego the interest?

**Mr. Legal Advisor:** We have that power Mr. Chairman.

**Mr. McIntyre:** Well let's do it.

**Mr. Chairman:** Mr. McKinnon?

**Hon. Mr. McKinnon:** Mr. Chairman, I was one of those who was very much convinced by the members of the Law Society who made this point the first time we went through the Ordinance. I thought that we had met all of their objections by the amendments to this ordinance. The reason being that we have specified exactly, and these are the only reasons, and a separate account of the government, the only method in which this money earned on interest can be used, and from what I understand from the witness, the Law Society agrees to the method that the government has seen fit to spend the interest on this money.

Then Mr. Chairman, there was no way that the Government of the Yukon Territory could fenangle, in any way, shape or form this account because it becomes a public account of the Yukon Territory.

It is a separate account that has to, by law, come before this House and before the Assembly and before the public for tabling. The accounts state exactly how much monies go in to it, what they are disbursed for on the lined items in these three areas, and these three areas only, that the money and the interest can be used for.

I thought that with this amendment which I supported, in subcommittee on legislation, that all of the objections that had been raised by members of the legal profession would have been met.

I am very interested with all the safeguards that go on with the public accounting of the accounts of the Yukon Territory to the point where even the Auditor General has a look at these special accounts and says that -- to the government of the Yukon that you are either using the money under the statutory

requirements which you said you are going to use it, or you are not. There is no way that those total efforts of of the Law Society hadn't been protected and hadn't been included in this amendment.

I am rather surprised to find out that they have not been. I would be very interested in seeing a draft amendment by the members of the Law Society as to how the objections, which I thought we had met, are not met. Even more, their interest in this matter could be safeguarded, because I thought we had taken every aspect of it into consideration with the amendments to this Bill Mr. Chairman.

**Mr. Phelps:** The only reply I can make is that again, there be the extra step of the Law Foundation which would have these purposes and pay it over. That is the only thing. I have admitted already that since I raised the difficulty the government had come, certainly, a good part of the way. It doesn't seem to assuage the fears of some of the members of the bar.

**Mr. Chairman:** Mr. Lengerke?

**Mr. Lengerke:** Mr. Chairman could we then ask the Legal Advisor to see if he could make some specific amendments to 63.(1) and spell this out and maybe do this in conjunction with the Law Society.

**Mr. Legal Advisor:** Mr. Chairman, the Legal Advisor drafted this particular section and he reproduces, as he thought, what represented the policy of the government after receiving representations from the Law Society. The intent being to create a special identifiable fund. Now that fund will be administered by the Territorial Treasury, by this Council. The only alternative is to create still a special fund and have it administered by the treasurer of the Law Society.

**Mr. Lengerke:** Yes.

**Mr. Legal Advisor:** But then they would be paying government bills with that money and that would be funny.

**Mr. Lengerke:** Okay, Mr. Chairman.

**Mr. Phelps:** Well again all I can say is that it is not our money, it is the clients' money.

**Mr. Chairman:** Sixty-four, one:  
(Reads Section 64. (1) )  
(Reads Section 64. (2) )

**Mr. Gillespie:** A typographical error, Mr. Chairman?

**Mr. Legal Advisor:** It should be just Ordinance, rather than "part" because it is transferred.

**Mr. Chairman:** Sixty-five, one:  
(Reads Section 65. (1) )

**Mr. Chairman:** Sixty-six, one:  
(Reads Section 66. (1) )

**Mr. Chairman:** Sixty-seven, one:  
(Reads Section 67. (1) )

**Mr. Chairman:** Is it the wish of Committee that the Law Society come out with specific recommendations in the areas that have come into question?

**Some Members:** Agreed.

**Mr. Phelps:** May I just ask this question, Mr. Chairman? I take it we are dealing then with the point on the law foundation that I have raised?

**Mr. Chairman:** Yes.

**Mr. Phelps:** And again I haven't come back to the Law Society with respect to this amendment, because I haven't seen it before today. I understood there was something in the works for this, but I should discuss it with the members to see how strong they are and exactly what they want from here.

No, I haven't had a chance to discuss this particular amendment. I am saying their position was X, and I'll just see how flexible the membership is.

Secondly, on the question of privilege, those are the two areas, aren't they?

**Some Members:** Yes.

**Mr. Chairman:** When can we expect you to be available, Mr. Phelps?

**Mr. Phelps:** Doesn't a guy ever get a chance to practice law? I think that possibly Wednesday, would Wednesday be—

**Mr. Chairman:** Yes.

**Mr. Phelps:** No. Wednesday I can't. How about Thursday?

**Mr. Chairman:** Mrs. Watson?

**Mrs. Watson:** Mr. Chairman, I see no need for the witness to be here. They can send us a written submission, but I don't see any need for the witness to be here whatsoever.

**Mr. Chairman:** Mr. Gillespie?

**Mr. Gillespie:** Mr. Chairman, I wonder if it wouldn't be an idea for the local bar to prepare a written submission and have that examined by the administration, because the administration has to indicate at that time in this Committee, whether it is prepared to go along with what they are recommending or not, so we need to have it in the administration's hands in time for the administration to examine it, before it is dealt with in Committee, if we may.

Mr. Chairman: Agreed?

Some Members: Agreed.

Mr. Chairman: Is Committee in agreement with that? If that can be made available, on fairly short notice.

Mr. Phelps: I would think so, because there is, we have narrowed the issues down substantially.

Mr. Chairman: The Chair will now entertain a Motion for Mr. Speaker to resume the Chair. The witness may be excused.

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

Mr. Chairman: Is there a seconder to that?

Mr. Lengerke: I second that.

Mr. Chairman: Agreed?

Some Members: Agreed.

Mr. Chairman: Carried.

(Mr. Speaker Resumes the Chair)

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

The Chairman: Mr. Speaker, Committee convened at 10:35 this morning to discuss Bills, Sessional Papers and Motions.

Mr. Gillespie, Administrator, Mr. Willard Phelps, president of the Yukon Law Society, were present as witnesses during the review of Bill Number 7. Mr. Phelps was excused as a witness when Committee recessed at 11:40 a.m. Upon Committee reconvening at 11:45 a.m., Susan Burns and Leona Lane representing the Consumers Association presented to the committee of the Whole a brief relating to Bill Number 7. Mr. Chairman on behalf of the Committee thanked the representatives of the Consumers Association and excused the witnesses. Committee recessed at 12:10 p.m. and reconvened at 1:30 p.m. with Mr. McCall in the Chair.

The Chairman resumed the clause by clause reading of Bill Number 7. After a brief recess the Chairman returned to the Chair and Mr. Phelps was invited to enter the Chambers as a witness on Bill Number 7. Later Mr. Gillespie joined the Committee as a witness.

I can report progress on Bill Number 7.

At 4:20 it was moved by Mr. McCall, seconded by Mr. Lengerke that Mr. Speaker resume the Chair and this motion was so carried.

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

Some Members: Agreed.

Mr. Speaker: May I have your further pleasure? The Honourable Member from Whitehorse Riverdale?

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

Ms. Millard: I second that motion.

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse Riverdale Seconded by the Honourable Member from Ogilvie that we do now call it five o'clock. Are you prepared for the question?

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare the motion is carried.

**Motion Carried**

This House stands adjourned until 10:00 a.m. Tuesday morning.

**Adjourned**