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The Yukon Legislative Assembly

Number 2

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Debates & Proceedings

Tuesday, May 18, 1976

Speaker: The Honourable Donald Taylor



The Yukon Legislative Assembly

Debates & Proceedings

Erratum
No. 1, 6th Session, 23rd Legislature
page numbers 631 - 654 inclusive
should read 1 - 24 inclusive

Whitehorse, Yukon Territory
Tuesday, May 18th, 1976

Mr. Speaker reads Daily Prayer.

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

Madam Clerk: There is, Mr. Speaker.

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

ROUTINE PROCEEDINGS

DAILY ROUTINE

Mr. Speaker: Prior to the reading of the Order Paper this morning, I have a matter of correspondence to draw to the attention of the House, dated April the 7th, 1976, addressed to the Speaker: "Thank you for your telex A 9256 and the letter of March 3rd which followed with regard to the adoption of a Council Motion concerning the attendance of elected members of the Executive Committee at Federal Provincial Meetings or Conferences. I appreciate the concern which you and the members have expressed. This question, together with other aspects related to territorial representation, is currently under review by an interdepartmental working group and your views will be made known to them. It is my intention to discuss the results of this study with Commissioner Smith when it is completed and I would plan also to discuss it with my colleagues as you request." And this is signed, "Sincerely, Judd Buchanan, Minister of Indian Affairs and Northern Development".

The Honourable Member from Whitehorse West?

Hon. Mrs. Whyard: Mr. Speaker, apropos of that very message, the Commissioner of the Yukon has now received a telex as of yesterday, noting that the Federal and Provincial Ministers of Welfare are meeting in Ottawa on June 1st and 2nd to conclude their discussions under the Social Security Review.

At this meeting, provinces will be asked to give the official view of their government to the two proposals which have been at the core of ministerial discussions for the last three years. The new Social Services Act and the federal proposal on income support and supplementation, which as all members will recognize are two very important pieces of legislation, which will affect us.

The telex continues: "We would like to invite an official from your government to attend this meeting to form part of the federal delegation and to act as advisor to the Federal Minister." The federal minister being the Minister of Health and Welfare. And it goes on with details of time and place.

That is as far as we have got with the working committee, Mr. Speaker, and I would suggest perhaps they should meet a little more frequently.

Mr. Speaker: We will now proceed with the Order Paper. Are there any documents or correspondence for tabling this morning? The Honourable Member from Whitehorse Porter Creek?

Hon. Mr. Lang: Mr. Speaker, I have for tabling the Regulations Report for the period February 13th, 1976 to May the 6th, 1976, pursuant to Section 37(1) of the Interpretations Ordinance.

Mr. Speaker: Are there any further documents? The Honourable Member from Whitehorse Porter Creek?

Hon. Mr. Lang: Mr. Speaker, I have for tabling correspondence received by the Clerk's office. The correspondence is a letter of acknowledgment to motions passed by this Legislature at our last Session.

Mr. Speaker: The Honourable Member from Whitehorse West?

Hon. Mrs. Whyard: Mr. Speaker, I have for tabling a report on Health Conditions in the Yukon Territory, 1975.

Mr. Speaker: Are there any further documents or correspondence? The Honourable Member from Whitehorse North Centre?

Hon. Mr. McKinnon: Mr. Speaker, I have for tabling the Annual Report of the Transport Public Utilities Report for the year ending March 31st, 1976, pursuant to Section 19 of the Transportation Public Utilities Ordinance. Also, Mr. Speaker, I have for tabling Sessional Paper Number 1, Legal Aid Ordinance.

Mr. Speaker, I think apropos of what Mr. Speaker has said and my honourable colleague the Minister of Health and Welfare, that I would also like to table an official report from Habitat, when I received this big parcel the other day which cost the taxpayers \$5.25, I thought probably it was my official ribbons and delega-

tion badges to Habitat. However, we have been informed that the Yukon will have no official accreditation at Habitat. If we go, we will not be delegates, we will not be able to attend any of the plenary sessions at Habitat. We cannot get a hotel room downtown because we will not be official delegates and the only place we will be able to attend is Habitat Forum. So of course we replied on behalf of the taxpayers of the Yukon Territory, "Thanks, but no thanks". But they still seem to be able to waste the taxpayers' money in sending these 20 copies and Mr. Buchwald hopes that I will have these circulated to key people. Mr. Speaker, I will leave them with the Clerk so that she may circulate them to what key people she feels would enjoy these Habitat, latest Habitat, propaganda.

Just another thing, I think all members should be aware of how they can waste the money in the times of restraint. I also received from Barney Danson apropos of Habitat an official issuance of new stamps, 80 cents of valid Canadian stamps, and so that nobody will think there can be any graft involved with myself as far as Habitat goes, Mr. Speaker, I would offer them to any member of the Legislative Assembly who collects stamps.

I think it's just another -- another, you know, it's just an issue of where the Yukon stands as far as the federal government goes on delegations and it's about time that we really got up on our high horse and yelled and screamed about these things that are happening to all Members of this Assembly.

Mr. Speaker: Are there any further documents or correspondence for tabling this morning? We will then proceed to Reports of Committees.

Are there any Reports of Committees? Introduction of Bills? The Honourable Member from Whitehorse Porter Creek?

Bill Number 2, Introduced

Hon. Mr. Lang: Yes, Mr. Speaker. I move, seconded by the Honourable Member from Whitehorse North Centre, for leave to introduce Bill Number 2, entitled "An Ordinance to Amend the Motor Vehicle Ordinance".

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse Porter Creek, seconded by the Honourable Member from Whitehorse North Centre, for leave to introduce Bill Number 2, "An Ordinance to Amend the Motor Vehicles Ordinance". Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: Leave is granted.

MOTION CARRIED.

Mr. Speaker: The Honourable Member from Whitehorse West.

Bill Number 3, Introduced

Hon. Mrs. Whyard: Mr. Speaker, I move, seconded by the Honourable Member from Whitehorse Porter Creek, for leave to introduce Bill Number 3 entitled "Young Offenders' Welfare Agreement Ordinance".

Mr. Speaker: The seconder again, please?

Hon. Mrs. Whyard: The Honourable Member from Whitehorse Porter Creek.

Mr. Speaker: Thank you. It has been moved by the Honourable Member from Whitehorse West, seconded by the Honourable Member for Porter Creek, for leave to introduce Bill Number 3, "Young Offenders' Welfare Agreement Ordinance". Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: Leave has been granted.

MOTION CARRIED

Bill Number 4, Introduced

Hon. Mr. McKinnon: Mr. Speaker, I move, seconded by the Honourable Member from Whitehorse West, for leave to introduce Bill Number 4 entitled "Land Acquisition Fund Ordinance".

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse North Centre, seconded by the Honourable Member from Whitehorse West, for leave to introduce Bill Number 4, "Land Acquisition Fund Ordinance". Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: Leave is granted.

MOTION CARRIED

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

Bill Number 5, Introduced

Hon. Mr. McKinnon: Mr. Speaker, I move, seconded by the Honourable Member from Whitehorse West, for leave to introduce Bill Number 5, "An Ordinance to Amend the Taxation Ordinance".

Mr. Speaker: It has been moved by the Honourable Member from Whitehorse North Centre, seconded by the Honourable Member from Whitehorse West, for leave to introduce Bill Number 5, "An Ordinance to Amend the Taxation Ordinance". Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

Mr. Speaker: Leave is granted.

MOTION CARRIED

Mr. Speaker: Are there any Notices of Motion or Resolution? The Honourable Member from Whitehorse Riverdale?

Mr. Lengerke: Mr. Speaker, Notice of Motion, moved by myself, seconded by the Honourable Member from Kluane, that the regulations relating to the Yukon Government contracts, and in particular those dealing with local employment programs as set out in the Commissioner's Order 1973-75, be more strictly enforced where possible under present circumstances.

Further, that the administration be instructed to review and to bring about amendments by the next legislative session that will ensure a more desirable level of enforcement or governing of the regulations as pertaining to local hiring policies.

Mr. Speaker: Are there any further Notices of Motion or Resolution? Are there any Notices of Motion for the Production of Papers?

We will then proceed to Orders of the Day, to the Question Period.

ORDERS OF THE DAY

QUESTION PERIOD

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

Question re Mosquito Control Programme

Mr. Berger: Yes, Mr. Speaker, I have a question for the Honourable Minister of Local Government. In the last couple of weeks it came over the radio that the mosquito spraying programme was beginning in the Territory and it was announced over the radio that this was not dangerous to animals and people. I happened to see some bags of Abate 2-T in Dawson and it is printed

on there in great big letters, "TOXIC TO BIRDS".

In light of this, at a time now where there's a great influx of shore birds, especially in the Dawson area, I was wondering if anybody looked into the possible danger to these birds, because I personally feel that birds are more effective for killing larvae of mosquitos than any chemicals we can have.

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

Hon. Mr. McKinnon: Mr. Speaker, I'm prepared to get from the technical experts the answer required by the Honourable Member. The only thing that I can say is that any of the chemicals that are used in mosquito abatement control programmes have to be okayed by Environment Canada, and the Environment Canada regulations concerning chemicals that can be used in mosquito abatement control programmes are extremely stringent, and one of the reasons that the provinces got into such problems last year with mosquitos is because of the stringency of Environment Canada regulations regarding the chemicals that were used. I would be happy to get that information from Environment Canada for the Honourable Member.

Mr. Speaker: The Honourable Member from Ogilvy?

Question re Questionnaire on Curriculum

Ms. Millard: I have a question for the Minister of Education. In our budget session last spring, our Minister is quoted as saying, "We will be sending a questionnaire out to the school committees. As you know in the legislation the school committees can become involved in curriculum and we feel that they should be. There will be a questionnaire going out asking how they see the curriculum, how they would like to see it modified and, at the same time, we will be putting our ideas on paper as well, to see what reaction we get from the various school committees".

My question is, how far has this proceeded?

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

Hon. Mr. Lang: Mr. Speaker, presently the resolutions compiled at the annual meeting of the school committees is going to be presented to the department as well as myself and they will be reviewed and then there will be a questionnaire going out to the school committees.

Mr. Speaker: The Honourable Member from Mayo?

Question re Language Laboratory at F. H. Collins School

Mr. McIntyre: Mr. Speaker, I have a written question for the Minister of Education regarding the language laboratory at the F. H. Collins Secondary School. How

many hours has the laboratory actually been used since the 1st of September, 1975? Of this total, how many hours have been devoted to the Y.T.G. Public Service French programme? Three, how many hours have been devoted to the French language programme of students at F. H. Collins Secondary School? Four, have students from other schools used the laboratory? Five, has the laboratory been used for other languages?

Mr. Speaker: Are there any --

Hon. Mr. Lang: I will bring back a reply, Mr. Speaker.

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

Question re Fish Harvesting Activity in Yukon

Mr. Lengerke: Mr. Speaker, I have a question this morning that, if the Commissioner was here, I would probably direct to him, but I'll direct it to the Minister of Local Government. I've heard some news that could well be encouraging news, or I suspect it will be more discouraging than encouraging, but are you aware of any fish farming or harvesting activity in the Yukon by a B.C. firm called Northern Canada Producing? I've heard that -- I believe a fellow by the name of Rick Wichinsky is involved and the report tells us of the use of gillnets, electronic homing devices, and also suggests the establishment of a fish processing plant.

Further, it was reported that, I think, \$90,000.00 was spent in Yukon this past season, and I was really alarmed at that particular report because I just wanted to know if it did have any credibility. Does anybody know something about it?

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

Hon. Mr. McKinnon: No, Mr. Speaker, we do not, it's a federal government function we're always the last to know. We'd be very happy to find whatever information is available and bring that to the attention of all members of the Assembly.

Mr. Speaker: The Honourable Member from Mayo.

Question Re: Amending Taxation Ordinance

Mr. McIntyre: Yes, Mr. Speaker, I have a question for the Minister of Local Government. The minimum \$ 100.00 real estate tax is working a hardship on owners of 25 or 35 foot lots in some of the older sub-divisions. Will the Minister consider amending the Taxation Ordinance to elevate this situation?

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

Hon. Speaker, we'll certainly consider looking at the

Taxation Ordinance and see whether an amendment is justified out of all the flack that came out of the amendments to the Taxation Ordinance raising the minimum tax. I examined each area and each individual case that was brought to my attention personally and I must say the only sympathy I found for any arguments was the one that the Honourable Member from Mayo mentioned and I know that he has problems in Keno and in Mayo.

The A.Y.M. also brought up the subject at their annual meeting because particularly the City of Dawson has the same problem with the regular lots of 25 or 35 foot frontage, We would like to get together with the A.Y.M. and see whether we can make some kind of a law of general application throughout the Territory so there wouldn't be different rules depending whether you're a municipality or outside of a municipality.

I'd be pleased to look at the Taxation Ordinance and different methods of amending it so that we can take into consideration the point the Honourable Member raises. I only hope he'll be willing to give us his time and help to myself, because if there's anybody's an expert on this type of problem, it's the Honourable Member from Mayo.

Mr. Speaker: The Honourable Member from Ogilvie

Question Re: Recreation

Ms. Millard: I have a question for the Minister of Education on recreation. Last spring, March the 10th, a press release was given to us from the Recreation and Amateur Sports Advisory Committee, asking for a detailed accounting of the revenue and expenditures of the respective lotteries since their inception in the Yukon. My first question is has this been done and also when will the control of these lotteries be under Committee?

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

Hon. Mr. Lang: Yes, the area of lotteries is being looked at in regards to authorizing the responsibility of the Sports Federation etcetera. Mr. Gillespie is in charge of that particular area and he is presently preparing a paper for the Executive Committee to examine. I'm told that it's this month that we're supposed to come into Executive Committee.

Mr. Speaker: The Honourable Member from Ogilvie.

Ms. Millard: Just a supplementary, is that the paper that will be going to the Recreation and Amateur Sports Committee?

Hon. Mr. Lang: No, Mr. Speaker. The paper is one that will go to the Executive Committee and we will discuss the area of lotteries and how it will be delegated to other associations to take care of.

Mr. Speaker: The Honourable Member from Ogilvie.

Ms. Millard: The question is that the Recreation and Amateur Sports Advisory Committee has asked for a detailed accounting of the revenue and expenditures of the respective lotteries. Is this not going to be done then?

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

Hon. Mr. Lang: Yeah, that will be taken into account at that time, Mr. Speaker.

Mr. Speaker: The Honourable Member from Kluane.

Question re: Northern Business Task Force.

Mrs. Watson: Mr. Speaker, my question this morning for the Commissioner and it's regarding the conference that the Minister had with the Northern Business Task Force in Yellowknife, regarding the recommendations that they had drawn up for his consideration. And one of the recommendations that I'm very concerned about and namely a policy that would provide for northern businessmen to receive a 10 percent differential on bidding contracts under \$500,000.00 and a 5 percent preference on contracts over \$500,000.00. The newspaper goes on to indicate that this policy which the Minister has adopted for a three year period, trial period, has been adopted by both governments. My question to the Commissioner is is it correct that this preferential bidding on contracts has been adopted by Yukon Territorial Government?

Mr. Speaker: Mr. Commissioner.

Mr. Commissioner: Mr. Speaker, this is not a correct statement and the whole question concerning the recommendations that were made by my Minister at that conference, as they apply to the Federal Government very obviously my Minister was speaking, either with the direct ability to implement those things or indicated that he was prepared to take certain of them up with others of his cabinet colleagues. As far as those things which would apply to the Territorial Governments, we are anticipating some kind of a formal communication with the Minister and that time we will certainly be taking these matters up in the Executive Committee and recommendations that flow from there will be coming to Council.

But no action has been taken at this time contrary to what may have been stated in the press in the particular question that is raised by the Honourable Member.

Mr. Speaker: The Honourable Member from Kluane?

Mrs. Watson: Supplementary question. Would the Commissioner anticipate that the taking this up with the federal government would include a proposal by the federal government that they would increase our capital grant by the additional costs that we may have to incur because of the preferential bidding?

Mr. Commissioner: Mr. Speaker, this I think would have to be an automatic understanding, because as Honourable Members are aware, insofar as capital projects are concerned, 100 percent of the funding is made available to us from the federal government, and if indeed this was to be a policy that the federal government wished to see implemented, as very obviously the recommendation to us is going to be, the extra costs that would be incurred would have to be understood that this would be wrapped up in the total amount of money available for our capital purposes.

Mr. Speaker: The Honourable Member from Kluane?

Mrs. Watson: A further supplementary. My biggest concern though, at the present time, is any possible contracts that will be awarded by the N.C.P.C. when any additional costs to any capital project will be borne by the consumer. Will the Minister be taking that into consideration?

Mr. Speaker: Mr. Commissioner?

Mr. Commissioner: Well, Mr. Speaker, if I may say, the same situation applies, I believe that it is my Minister's intention to seek the concurrence of the Crown corporations that operate in the north to the adoption of this proposed policy, and there has not been any formal communication with the Northern Canada Power Commission, as yet, from the Minister, and I can assure you that the Commission will be going back to the Minister and saying, Mr. Minister, if indeed this is to be the policy and it does incur these extra costs as a consequence of the implementation of it, what is to be the disposition of the recovery of those extra costs? Because at the present time, as the Honourable Member has stated, they would have to be recovered from the user of the utility in question.

Mr. Speaker: The Honourable Member from Pelly River?

Question re: Public Hearing Costs.

Mr. McCall: Yes, Mr. Speaker, I have a question for the Minister of Education. In view of the recent public hearing in Faro of the Yukon Teachers' Association, I was wondering if the Minister could provide this House with the total cost figures from that public hearing?

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

Hon. Mr. Lang: Yes, I'll attempt to get those figures, Mr. Speaker.

Mr. Speaker: The Honourable Member from Hootalinqua?

Question re: New Tax Assessment.

Mr. Fleming: Yes, Mr. Speaker, I have a question for the Minister of Local Government. I'm to understand now that there is a new tax assessment going to be done in the Yukon or carrying on now. Also, I have been led to believe that there is going to be a new type of assessment, a method of assessment that is going to be new, with of course, different figures.

I wonder if the Minister could tell me when this assessment is going to be actually in full swing, and also if we could have at the House here possibly, some paper work on the method of the new assessment that is coming forth.

Hon. Mr. McKinnon: Mr. Speaker, there is no new assessment in the Yukon. Under the Taxation Ordinance, we are bound to re-assess every property in the Yukon every five years, and it's a continuing assessment constantly taking place. Watson Lake, I think, was done two years ago. Whitehorse is the big target this year. The assessment procedure is exactly the same as followed in the Alberta Assessment Manual which is available to all members, and I would be happy to table a book of the Alberta Assessor's Manual in this Chamber.

The Government of the Yukon this year has employed some assessors from the Government of the Northwest Territories, because they follow the Alberta Assessment Manual also, and the reassessment in Whitehorse, as the Honourable Member of course understands, is a major job, and this is last year's and this year's program. But there is no new assessment, it's a continuous assessment every five years under the terms of the Taxation Ordinance, on a well defined basis under the Alberta Assessment Manual.

Mr. Speaker: The Honourable Member from Ogilvie?

Question re: Historic sites officer.

Ms. Millard: I have a question for the Commissioner. Has there been any action in the various resolutions of the Historic Sites and Monuments Board which were made in 1971, 1972, 1974 and again in March of this year, which recommends appointment of an Historic Sites Officer in the Yukon?

Mr. Commissioner: Mr. Chairman, the question of looking after the living as opposed to looking after the dead is constantly before us, and I would like to assure Honourable Members that until such times as the priorities that we have of looking after today's problems are taken care of, the opportunities of looking after yesterday's problems are pretty far down the list.

I would like to have the opportunity of further answering the Honourable Member's question but I'm afraid that it is going to be pretty much in the negative, but I would like that opportunity, Mr. Speaker.

Mr. Speaker: I believe the Honourable Member from Hootalinqua had a supplementary to his last question.

Mr. Fleming: Yes, Mr. Speaker. Supplementary to the Member of Local Government. When he says there will be no new assessment, I'm wondering -- my question would be, under the Alberta Manual, is the assessment not going to be more or less assessed as to value of the property than it was in the past?

Hon. Mr. McKinnon: Mr. Chairman -- or Mr. Speaker, I've never seen an assessment that didn't come in higher than the assessment previous because land and property are worth more now than they were at the last assessment, so every reassessment that's done, except I imagine if it's in an absolute depth of depression type of era, reflects a higher assessment than the one previous.

Mr. Speaker: The Honourable Member from Hootalinqua?

Question re: Swimming Pool At Teslin.

Mr. Fleming: Mr. Speaker, I have a question for the Minister of Health and Welfare.

We are having some problem with our swimming pool in Teslin this year, and it seems that the government or the Health Department or somebody in their wisdom has decided that the building of the pool was not done correctly I presume at the time, and therefore now creates a health hazard, and before opening, they wish us to do a bunch more remodelling. Of course, the people don't feel that this is quite the way. I'm wondering if the Minister could tell us if the Teslin pool is going to be open this summer or not, due to this problem?

Mr. Speaker: The Honourable Member from Whitehorse West?

Hon. Mrs. Whyard: Mr. Speaker, I would be happy to provide that information to the Honourable Member, but it is not in my department, it has not come to my attention. Perhaps the Minister of Education under whose department it is, would be of some assistance.

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

Hon. Mr. Lang: Mr. Speaker, I wasn't aware of this problem. I'll look into it and bring back a reply.

Mr. Speaker: The Honourable Member from Kluane?

Question re: Recreation Grants.

Mrs. Watson: Mr. Speaker, my question is for the Minister of Education this morning, and it's regarding recreation funding, recreation grants that are recommended by the Fitness and Amateur Sport Advisory Committee, and reading over the press release that was issued by the Territorial Government defining the various organizations, I would say that I was absolutely appalled at the amount of money that is given for travel

outside of the Territory.

Now this is recreation funding, and I would say between 60 and 75 percent of our recreation funding is used for either administration or travel outside of the Territory. Now my criticism is not of the Advisory Committee. They only operate --

Mr. Speaker: Order, please. I believe this is ranging into the area of a debate.

Mrs. Watson: Oh, I'm sorry.

Mr. Speaker: Could the Honourable Member kindly state a question?

Mrs. Watson: All right, I'll ask my question, but I would like to indicate that I'm not criticizing the Advisory Committee, they only operate within the parameters of the legislation.

Is the Minister of Education contemplating amending the legislation that will define better for the Advisory Committee and define for the people of the Territory, how we want our recreation funding to be used?

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

Hon. Mr. Lang: This is correct, Mr. Speaker. We are looking into the Department of Recreation and looking into the philosophy of recreation for the Territory, and we are going to be putting emphasis on the financial obligations of the Territory to be spent within the Territory itself. I hope to have a Sessional Paper here this coming November in regards to the Recreation Department and the change in philosophy.

Mr. Speaker: The Honourable Member from Kluane?

Mrs. Watson: Supplementary. Would that include amendments to the existing legislation which empowers the giving out of grants?

Hon. Mr. Lang: Yes, Mr. Speaker.

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

Question re: Bill C-61.

Mr. Lengerke: Mr. Speaker, I have a written question for the Commissioner this morning, and it's with respect to Bill C-61, I believe, that's before the Parliament of Canada today. It has something to do with the Shipping Act, or the movement of passengers and goods, and I would say the implementation of a Section of that particular Bill will have a drastic impact -- in fact, it may have, it may well destroy the cruise ship business to Skagway and thus into Whitehorse, we would have the curtailment of some 40,000 passengers or tourist visitors to the Yukon every year, which could represent a figure of about oh, somewhere 2.4 million dollars.

Mr. Speaker: Order, please. Perhaps the Honourable --

Mr. Lengerke: My question, my written question this morning, Mr. Speaker --

Mr. Speaker: -- is what action is the Yukon Government taking with respect to the prevention of certain aspects of the federal government Bill C-61 as it reads in Book 1, Section 8, subsection 53, with respect to the movement of passengers and goods on Canadian flag ships?

Mr. Speaker: The Honourable Member from from Hootalinqua.

Question re: Water delivery service at Carcross.

Mr. Fleming: Yes, Mr. Speaker, I have a question for the Minister of Local Government, concerning Carcross. And as he well knows there's a new R.C.M.P. Detachment being, building being put in there now. And there is some concern as to what the water supply will be there, because it is very bad in that area. Especially near the school and near where the R.C.M.P. are building their new quarters. I'm wondering if the Local Minister of Local Government could tell me if they are going to have a water delivery service there this summer or not?

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

Hon. Mr. McKinnon: As the Honourable Member from Hootalinqua knows that there was no budgetary commitment in the present fiscal estimates of the current year for a water delivery system in the Carcross area. If there is a demand that has to be met this year for a potable supply of water, the Department of Local Government will have to take upon itself to make sure that the water system is provided in the community of Carcross.

Mr. Speaker: The Honourable Member from Hootalinqua.

Mr. Fleming: Supplementary Mr. Speaker. I would then ask the Minister of Local Government, why has the representatives of the Local Government already been out there at meetings during the last winter months, suggesting that they do have a water haul and wanting to know if the people wish to have the water haul.

Hon. Mr. McKinnon: Mr. Speaker, a continuing program of the Department of Local Government to try and improve services in every community, whether it be a municipality, a L.I.D. or an unorganized area. We would hope that the people of Carcross would agree that a water delivery system is in their best interest and the Department of Local Government is ready, willing and able to get into the water delivery system in Carcross or any other community, if the people agree to that sys-

tem. We're not in the business of shoving services down the peoples throats if they don't want them.

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

Question re: Report on Arctic Winter Games.

Mr. Hibberd: Yes, Mr. Speaker, I have a question for the Minister of Education. Is the Minister intending to table a report regarding the evaluation of the Yukon participation in the Arctic Winter Games in Schefferville of this year as had been promised in the previous session.

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

Hon. Mr. Lang: Mr. Speaker, they won't be ready until the Fall Session and at that time we in the Legislature will make a decision on the Arctic Winter Games.

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

Mr. Hibberd: I would like to bring it to the Honourable Minister's attention that it was promised to bring the report was within one month of completion of the games.

Hon. Mr. Lang: Yes.

Mr. Speaker: What was the question? The Honourable Member from Whitehorse Porter cCreek.

Hon. Mr. Lang: Mr. Speaker, the coordinator for the Yukon Sports Federation has prepared a report but it is going to the Executive of the Yukon Sports Federation to consider and then it will come to the Yukon Territorial Government. There's another report being prepared on behalf of the Arctic Winter Games Corporation with the help of the Federal Government and also there will be an analysis done by the recreation director, that will be all compiled and put before this House in the Fall Session.

Mr. Speaker: The Honourable Member from Klondike.

Question re: Traffic count.

Mr. Berger: Yes, Mr. Speaker, I've got a question for Mr. Commissionier. In the light that tourism is the second largest industry in the Territory, and that the tourists head count in Dawson went up last year by roughly 25 percent. But the tourist travel pattern had changed to buses instead of individual cars, why is the Department of Highways and Public Works insisting on a high daily traffic count between the months of May and of October, and that way refusing to apply calcium chloride on the stretch between Stewart Crossing and

Dawson. And it's quite endangering actually to traffic in this particular area because dust conditions are very severe.

Mr. Speaker: Mr. Commissioner.

Mr. Commissioner: Mr. Speaker, it is a formula based on traffic count that permits us to get the bulk of the money for the application of calcium chloride. I believe that Honourable Members are aware that that kind of maintenance money is 85 - 15 cost shared between the Federal Government and Yukon, 85 percent of it being federal. We have had to agree on certain formula for procuring money under certain circumstances and traffic count in thhis particular instant is the criteria for getting that particular program in operation. And that is the reason behind the question that is raised by the Honourable Member at this time.

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

Question re: Medical evacuation program.

Mr. Hibberd: Mr. Speaker, I have a written question of the Minister of Health. It has recently come to my attention that the government in B.C. has had considerable difficulty with their medical evacuation program primarily because of the cost and they have withdrawn a large amount of that program. In that case I would be most interested in finding out what are the costs of our medical evacuation program, both within the territory and to outside centres as to the number of patients that are involved and the cost of per patient.

Mr. Speaker: The Honourable Member from Hootalinqua.

Question re: Tagish Bridge.

Mr. Fleming: Mr. Speaker, I have a question for Mr. Commissioner. If and when the Tagish Bridge is built, will there be relocation on the north end for the right-of-way? And this can be a written question, Mr. Speaker.

Mr. Speaker: The Honourable Member from Kluane.

Question re: Haines cut-off and Alaska Highway.

Mrs. Watson: Mr. Speaker, my question is for the Commissioner. On last night's news we heard and saw that Premier Bennett of B.C. is meeting with the Governors of Alaska, Washington and Oregon today. And one of the topics they're going to be discussing and Premier Bennett stated this, was the Haines Road. Now I'm not going to ask you whether you're going to be there, but my question is what information has the Territorial Government received from the Federal Government regarding the proposed paving of the Haines cut-off and the Alaska Highway north.

Mr. Speaker: Mr. Commissioner.

Mr. Commissioner: Mr. Speaker, I think it would be best if I tabled a written answer to this. I have certain information available none of which is completely conclusive Mr. Speaker, so I think it might be best for information purposes if I had it written and made available to committee.

Mr. Speaker: Would this be agreeable to the Honourable Member?

Mrs. Watson: Yes.

Mr. Speaker: The Honourable Member from Hootalinqua.

Question re: Sewage problems in Teslin.

Mr. Fleming: Yes, I have a question for the Minister of Health and Welfare.

We've had some sewage problems, especially in the Teslin area last winter, and low cost housing, or the Housing Corporation especially is one of the large offenders in town, and on November -- May the 11th, we had an inspection, some citizens and myself, the R.C.M.P., of the areas that were very serious, reported by telephone to Whitehorse to the Minister of Health, Federal, Mr. Robinson.

In the meantime I came to town and went back two days later, and there still seemed to be nothing going on, happening, and so I sent a wire to Mr. Robinson --

Mr. Speaker: Order, please. I wonder if the Honourable Member could get to the question, because I believe he is ranging into debate at this point.

Mr. Fleming: Okay. Is there anything being done now to remedy that situation, or to lay charges against the people responsible?

Mr. Speaker: The Honourable Member from Whitehorse West?

Hon. Mrs. Whyard: The Honourable Member knows that a plebiscite was passed to all ratepayers or property owners in Teslin in the last month, requesting their approval for the installation of a sewer system to the used areas which have been having these problems, and this is a matter which comes under the jurisdiction of local government.

I realize that there has been a public health problem in the meantime because of the lack of the system, and the Honourable Member knows, better than anyone in this House, that the problem has to do with the type of soil, the clay, and the lack of any modern facilities in the area.

It is hoped that the installation of this system is going to solve the problem, but until it's installed, I know of no further action that can be taken to amend the situation. Perhaps the Minister for Local Government would like

to add something to that.

Mr. Speaker: The Honourable Member from Hootalinqua?

Mr. Fleming: Mr. Speaker, I think the Minister is probably at a loss to really answer the question, because the question is federal again. I'm asking -- we did ask to have a charge laid. Is there going to be a charge laid by the Health and Welfare Department on the Yukon Housing Corporation, or whoever is responsible? That's the only question.

Mr. Speaker: The Honourable Member from Whitehorse West?

Hon. Mrs. Whyard: Mr. Speaker, I have no knowledge of that situation. No such request came to me, and in any case I am assuming, from what the Honourable Member says, that the request was made to the federal authority, and that answer would have to come from that authority. It's not in my jurisdiction.

Mr. Speaker: The Honourable Member from Ogilvie?

Question re: Dust problem between Stewart Crossing and Dawson City.

Ms. Millard: Yes, a further question to Mr. Commissioner on the dust problem between Stewart Crossing and Dawson City. My understanding is in years before this, there was calcium chloride put on that highway. Does that mean then that the formula with the federal government has changed, because certainly the traffic count has gone up since last year? Has the formula for putting -- the traffic count is the formula, has it been raised so that we are not able to take that into advantage?

Mr. Speaker: Mr. Commissioner?

Mr. Commissioner: Mr. Speaker, I would have to have notice on that particular detail of the question.

Mr. Speaker: The Honourable Member from Whitehorse Riverdale?

Question re: Christ the King School.

Mr. Lengerke: A question for the Minister of Education. I understand the Department of Education are investigating the possibility of taking over total responsibility for Christ the King School in Riverdale? Is there any truth in that, or what progress has been made in that regard?

Hon. Mr. Lang: Mr. Speaker, we tentatively, here in the future, we intend to talk to the Bishop in regards to the school of Christ the King.

Mr. Speaker: The Honourable Member from

Whitehorse Riverdale?

Mr. Lengerke: Any timing on that, Honourable Minister?

Hon. Mr. Lang: I would like to think maybe we could initiate talks this coming summer.

Mr. Speaker: The Honourable Member from Klondike?

Question re: Traffic count formula.

Mr. Berger: Mr. Speaker, further to this dust problem, maybe a supplementary to my question before, and maybe the Honourable Member from Ogilvie. My question would be to Mr. Commissioner. Could the formula be changed to a specific month, and I have in mind June - September when the high traffic flow is in the particular area. Right now the traffic count is from May to October, and May and October are bad months in this particular area.

Mr. Speaker: Mr. Commissioner?

Mr. Commissioner: Could I have the opportunity of having notice on that, Mr. Speaker?

Mr. Speaker: The Honourable Member from Whitehorse Riverdale?

Question re: Tapestry for Territorial Building.

Mr. Lengerke: I think I've got a positive question for the Commissioner this morning. I understand the five piece tapestry that is being completed for the new Territorial Building, it's almost complete, and I now that a lot of women from Old Crow, down as far as Watson Lake and what have you have been involved, and I think that's rather a unique way of completing a project like that.

My question this morning is how many women have been involved to date in making up or stitching the tapestry, and does the Yukon Government intend on issuing some sort of a press release which hopefully, and I hope the media will use that report, to make this kind of story known across Canada, because I really think it's something very unique.

Mr. Speaker: Mr. Commissioner?

Mr. Commissioner: Well, you know, it's my understanding, Mr. Speaker, that this is supposed to be a complete community project, not entirely confined to women, and I wonder if the Honourable Member would broaden his question to allow me to quote the number of people who have contributed to this as opposed to the number of a certain species of people, and I am told by the Honourable Member two removed from my right that 2,500 is the number that we should be talking about.

I think maybe the further question that I would like to

have is, before we give this national publicity, would the Members of the Assembly like to have the opportunity of putting their stitch in, you know, before we go national on the whole subject? That would be the only supplement I would add to it.

Mr. Speaker: Are there any further questions?

Mr. Commissioner: We have a good stitcher across the way here, Mr. Speaker.

Mr. Speaker: I will permit one further question. Your time has just about expired for Question Period. The Honourable Member from Hootalinqua?

Question re Policy of Personnel Office

Mr. Fleming: Some of us are finding some difficulty in the personnel office as to their letting people know as to whether they have been hired or not hired or whether they will get a job and so forth on competitions. I'm wondering if the local Minister -- the Minister of Local Government could get for us the policy of the personnel office in these matters? In other words, as to whether they will let you know if you are not accepted for these competitions and so forth within say, three or four months, so you know whether you should maybe apply for another one?

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

Hon. Mr. McKinnon: Mr. Chairman, as you will well realize when we go through the Public Service Ordinance, that the person in charge of the total personnel in the Government of the Yukon is the man to my left, the Commissioner of the Yukon Territory; I've heard the complaint that the Honourable Member from Hootalinqua raises, and I have asked for some clarification in that area from personnel. We would be happy to place the personnel regulations regarding the hiring of personnel before -- table them before the Assembly, and also the policy concerning the hiring, because the policy is clear and it's unequivocal, and whether it's being followed or not are the questions that are being raised throughout the Yukon Territory. I think it's our job to make sure that that very direct and clear policy is being followed without exception and that's the involvement of my questioning of personnel at this time - can we be satisfied that that is actually happening?

I think there's other questions around the table that have raised the same issue this morning and we would be happy to follow that up because I think all of us are interested in the same end result, and that's the hiring and the proper treatment of Yukon people in the Public Service of the Government of the Yukon Territory.

Mr. Speaker: This concludes our Question Period for this morning. I note in the Order Paper there are no Motions nor Public Bills for processing at this time. May I have your further pleasure?

The Honourable Member from Pelly River?

Mr. McCall: Yes, Mr. Speaker, I would 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 Klondike, 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. Are you prepared for the question?

Some Members: Question.

Mr. Speaker:
Are you agreed?

Some Members: Agreed.

Mr. Speaker: I shall declare the Motion has carried.

MOTION CARRIED

(Mr. Speaker leaves the Chair)

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

(RECESS)

Mr. Chairman: I will now call Committee to order. We have present with us this morning Mr. John McPhail, Director of Personnel, who is present to assist the Commissioner in answering Committee's questions. Does that meet with Committee's agreement?

Some Members: Agreed.

Mr. Chairman: We will then proceed with the clause by clause reading of Bill Number 1, Public Service Commission Ordinance.

Mr. Berger?

Mr. Berger: Yes, Mr. Chairman. I would like to make a motion, moved by myself, seconded by the Honourable Member from Ogilvie, that this Committee adopt the brief by the Y.T.P.S.A. to amend the Public Service Commission's Ordinance as presented to us yesterday.

Mr. Chairman: It has been moved by Mr. Berger, seconded by Ms. Millard, that this Committee adopt the brief by Y.T.P.S.A. to amend the Public Service Commission Ordinance as presented to us yesterday. Any discussion? Mr. Taylor?

Hon. Mr. Taylor: Mr. Chairman, it would seem to me to be a little premature at this time to propose such a motion because I think there's two pitfalls in it. One, if this motion is defeated, as no doubt it would be at this

time, coming prematurely, it would be a decision of the Committee and it would mean that the hard work that's gone into this brief by the Public Service Association would no longer be able to be considered in the consideration of the Bill. Perhaps it would be best to go through the clause by clause reading of the Bill and withdraw this motion at this time because it would place the -- if this motion was defeated, the Bill would be thrown out and we could no longer consider it. Or the brief, I mean.

Mr. Chairman: Mr. Berger?

Mr. Berger: Under those circumstances, I am willing to withdraw that motion at this time.

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, I'm unclear. Could we not still discuss the brief? It's just the motion that can't be reintroduced, isn't that --

Mr. Chairman: The essence of the motion cannot be reintroduced.

Ms. Millard: It's got nothing to do with rejecting the whole brief and not considering it? Well, I withdraw my second then.

Mr. Chairman: One (1)

(Reads Clause 1(1))

Part I, Interpretation 2(1):

(Reads Clause 2(1))

Hon. Mr. Taylor: I'll bow to the Honourable Member from Klwane.

Mr. Chairman: Mr. McCall?

Mr. McCall: Yes, Mr. Chairman, I would suggest further amendments to this particular language which you have just read. I would like to start off with the first amendment. This would come under class or class of positions. I would suggest the word "regionally" be taken out. And the second suggested amendment would come under "employee"; this is an inclusion of language - it would read "Employee means a person appointed or employed in a position in the Public Service". The second suggested amendment, this would come under "established position". The word "established" be deleted, so it would read "position". Further under "establishment", it would read as follows with an inclusion of this language: "Establishment means the total of permanent and temporary positions". It would mean deleting the word "established".

Further amendment, this is a deletion completely under the heading of "position", that need not be in as language.

Mr. Chairman: Do you have a Motion, Mr. McCall?

Mr. McCall: Well, these are amendments, Mr. Chairman, for consideration.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, I didn't get the last one that he suggested.

Mr. McCall: This is under the heading, Mr. Chairman, of "Position". This language which says "position means an established position", that be deleted altogether. It's doubling the wording prior to the particular suggested language.

I say that these are suggested amendments, Mr. Chairman; I mean that as we go through the Bill there will be substantial amounts of amendments. I am presuming that they will be given back to the ex-com at the end of this first reading.

Hon. Mr. McKinnon: Mr. Chairman, in the interests of proceeding as efficiently as we possibly can, it would seem to me that we have listened to the representations from the P.S.A.C. and I am happy that the Honourable Member from Klondike and Ogilvie withdrew their motion because there are some amendments to this Ordinance from a result of the P.S.A.C. brief that I think are going to be accepted by a majority of the Assembly.

If the brief or the motion was that the brief be accepted in totality, then I would have had to vote against the motion or be rejected in totality; I would have had to vote against the motion; but I think that the only approach is we have heard from the P.S.A.C., we hear from the employer what the reasoning is for what is in the Ordinance and then if Members seek changes they will have to deal with the changes section by section, not by any kind of an omnibus motion through the entire Bill. I think that that's the only way to deal properly with the total Ordinance.

Mr. Chairman: Mr. McCall?

Mr. McCall: That's what I'm suggesting, Mr. Chairman. I am not presenting any Motion. All I am suggesting is the amended changes at this point, so that as we go through the Bill nobody will lose sight of the fact there's amendments from page 1 on.

Mr. Chairman: You're bringing these to Committee's attention for future amendments?

Ms. Millard?

Ms. Millard: Mr. Chairman, I would like to make a Motion if I can find a seconder, that, under the section "Interpretation", the definition for casual employee is being changed to read "the person engaged on a non-recurring basis and whose period of employment is not to exceed six consecutive and continuous months". In other words, to delete the words "casual" or "temporary" in the second line, and in the third line delete the

word "intended".

Mr. McCall: Mr. Chairman, am I to assume that we are going to go through making Motions to all these amendments as we go through the Bill? Aren't we getting off the beaten track somewhere?

Mr. Chairman: Then how are we going to assess each amendment as it comes?

Mr. McCall: Mr. Chairman, we're going to be sitting here writing our Motions for every amendment that is going to be coming up. I suggest that we make notation of all amendments until the end of the reading of the Bill and then, if necessary, we can present this back to the Executive Committee so that they can review it with all the amendments together.

Mr. Chairman: At some time, the Committee has to decide if they are recommending these or not, these amendments, not merely a recommendation by one Member.

Mrs. Watson?

Mrs. Watson: Mr. Chairman, why should the Executive Committee consider amendments that aren't going to pass in the House? These things have to be determined here.

Mr. McCall: Well, Mr. Chairman, I'm not questioning the passing through the House. I mean, the Motion necessary at the end of the reading of the Bill, that is fine.

Mr. Chairman: If I am presented a Motion by a Member of Committee, then that Motion must be carried through in the formal manner, and the Motion has been presented.

Mr. McCall: I accept that, Mr. Chairman, but if that is the case then I will present a Motion afterwards as to the suggested amendments I put forward, the amendments I put forward, but I don't see any logic behind it.

Mr. Chairman: Mr. Taylor?

Hon. Mr. Taylor: Mr. Chairman, perhaps we can get out of this dilemma along the lines perhaps suggested by the Honourable Member from Whitehorse North Centre that we go clause by clause through the Bill and if Members have questions to ask we have heard from the employee, now we would like to hear from the employer and perhaps having, as many of these sections are inter-related, perhaps if we went through the Bill clause by clause we could at the end of the Bill then consider those amendments which are required, but perhaps we should hear from the employer's side of the situation before we start even considering a Motion of any kind. That's my submission.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: Yes, just further to that. Mr. Chairman, I would concur with the Honourable Member's remarks and then later on, as we deal with the Bill again, we could deal with each part and then we should - I would suggest that present Motions on each individual part and vote on those and we can go through it in that progression.

Mr. Chairman: In the second reading of the Bill?

Mr. Lengerke: Yes. Second reading of the Bill? No, just immediately after we have asked our witnesses these questions, Mr. Chairman.

Mr. Chairman: At the conclusion then of each part, we would then entertain Motions for amendment?

Mr. Lengerke: Mr. Chairman, once we have gone through it asking the witnesses of anything the Members wish to ask, then we will go through it again and that would be the time we would present the Motions on each individual part.

Mr. Chairman: Is Committee in agreement with that then? Ms. Millard?

Ms. Millard: Yes, I'm in agreement, because we just finished Part I and I have a Motion on the floor.

Hon. Mr. McKinnon: Mr. Chairman, there's only one way to attack this and that's to wade into it. Now, we've got casual employee and we've got a P.S.A.C. brief here that says that the amendment is necessary in Part I to prevent the shameless exploitation of seasonal employees. In here, I would like to ask the person in charge of personnel for the Government of the Yukon Territory, namely the Commissioner of the Yukon, why casual employee is in Part I of the Interpretation section as is, rather than the casual employee definition in the P.S.A.C. brief; then perhaps we can get down, after going through that type of an examination of Section I, to whether we want Motions to flow from this Committee or not.

But there's no other way around but just to wade in and start digging and debating the Ordinance.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, if we are going to wade in, here goes.

I would like to comment on casual employees.

Mr. Chairman: Mrs. Watson, at the present time we do have a Motion on the floor. If you will withdraw that Motion - it has not been seconded as yet. There is a Motion on the floor.

Mr. Berger: I second the Motion.

Mr. Chairman: Now, Mrs. Watson?

Hon. Mr. Lang: Mr. Chairman, we haven't heard the employer's side of the reason for the definition of casual employee, and you put a Motion on the floor. Well, let's hear both sides of the story.

Mr. Chairman: We can now. There's a Motion on the floor, and we're open for debate.

Hon. Mrs. Whyard: What is the Motion, please, Mr. Chairman?

Mr. Chairman: What is the Motion, please, Ms. Millard?

Hon. Mrs. Whyard: Do you have a written copy, Mr. Chairman?

Ms. Millard: It's coming. That the definition of casual employee be amended to strike out the words "casual or temporary" and the word "intended" in the second and third lines respectively.

Mrs. Watson: Mr. Chairman, my comments will have to do with casual employee even though the Motion is on the floor. I disagree with the Motion and I disagree with the brief which requests the casual employees be considered permanent employees. But I also disagree with the practices that have been used, or the practices that are being used, by the Territorial Government in their hiring and employing of casual employees within the Public Service of the Yukon.

I think the accusations that the brief has made that they are actually handling them as permanent employees is quite correct. This is what is happening. People are being hired year after year, in some cases going to competition, and it's all settled before the fact. The person who had the casual position, and I'm talking about such things as campgrounds, tourist information, they had the casual position the year before. They are assured that they will get it the next year; they may go to competition, there may be applications, but the person who had it last year is going to get it; they've been assured of it. So why have a competition? In some instances they haven't even gone to a competition and they sort of continue hiring these people year after year.

My objection -- what I would like to see in this Legislation or in the regulations or a defined policy, is how they hire casual employees. I think they have to, many of them should be going to competition. There should be no, there should be absolutely no assurance from one year to another that a casual employee is going to be receiving that employment the next year.

My comments are based very basically on the need within my constituency where people are looking for some of these jobs for the summertime. They haven't had work all winter and they're looking to apply. There's very, very bitter reaction when they know that it's all cut and dried and they might as well not even bother applying because the chap who had it last year is going to get it back again.

They're not even considered and in many instances

they're not even interviewed. And this is the type of thing and this is where I'm thinking that we should have some very clearly defined policy. We are bringing into some of these local communities, where there are not many jobs available in the summertime, particularly if there isn't very much construction, and there isn't this year. People are really looking for these jobs and we're bringing in people from Whitehorse, from other areas. We're bringing in students and our people, in our communities who have families to support, are sitting there and not even having an opportunity to be considered. This is my -- I'm very concerned because of the Public Service Commission Ordinance that we get this clarified now before the Ordinance is passed: whether it's in policy, regulation or in the Legislation, but I think there's a great need. And I think the weakness is not at the personnel level - I think it's at the departmental level.

Some of the comments that were made in the brief I can't help but agree with. For example, "they are at the mercy of local supervisors' likes or dislikes". And I couldn't agree more.

Mr. Chairman: Mr. Fleming.

Mr. Fleming: I can't agree more with the Member from Kluane, and I do because this is exactly my own thoughts and has been my own way of talking about the matter all over the Yukon. I can't understand why we can't come up with something for the casual employee that doesn't give him the right actually to sit back during six months of winter and wait for a job that he knows is there. I, of course, am not smart enough to come up with that answer, but maybe here at this table, personnel manager, some of us should be able to come up with something that doesn't really give him that right, and yet we don't want to take these other rights. I have to agree that no man should be there as a casual employee and then turn around and be fired for a day, not fired but just laid off for a day, go back on and work two months as a casual employee again - which the government can do now, I think, if I'm not mistaken.

I don't think that's right either on the government's side. On the other hand, I see no reason to pay unemployment insurance all winter to some person that is just automatically getting his job back in the spring. In other words, that person should more or less be available to the government, or will work or something, if he's going to have that type of a position, because private enterprise don't have that type; when you leave in the fall, you're responsible to get that job back in the spring. You don't have it waiting there for you always.

As I say, I can't agree more; the Member said it all, I can't say much more on that.

Mr. Chairman: And now perhaps Mr. Commissioner could give the employers' interpretation.

Mr. Commissioner: Well, Mr. Chairman, the comment that has been made by the two Honourable Members that have just previously spoken is not disagreed

with by the Administration and we are quite prepared to bring, come forward here as part of the package that we have here at the present time, with a policy definition or a policy clarification concerning the potential abuses. I believe that is really what the two Honourable Members are saying, that they are not disagreeing entirely with the fact that we want to retain the terminology of casuals but they are violently disagreeing with the manner in which we are, our policy of hiring the casual people and filling the casual jobs as concerned.

I would like to say, Mr. Chairman, that we are not in disagreement at all with that particular concern raised by the two Honourable Members and are quite prepared to come forward with policy clarification and definition that would tend to clear up that particular point.

I would like to suggest, Mr. Chairman, while I'm on my feet, that the reason for us wanting to get this clarified at this time is that, in the present Public Service Ordinance, the terminology "casual employee" is not clearly defined. In the Public Service Staff Relations Ordinance, the terminology "a person employed on a casual or temporary basis unless he has been so employed for a period of six months or more" is clearly defined; and in the proposed new Ordinance here the definition is to bring the two Ordinances into line. In other words, casual employee means a person engaged in casual or temporary basis and whose period of employment is not intended to exceed six consecutive and continuous months of employment.

Now, with regard to the potential abuse that was cited by the Honourable Member from Hootalinqua where, at the present time, we have the ability to employ a person for six months, terminate his employment at that point and re-employ him for another month or two in order to fill out a particular job. We have exhibited a very clear willingness where we see this happening on a continuing basis; obviously there's need for the creation of a permanent position. And it has been our policy to do so and it will continue to be our policy to do that. We do not think that this particular right, if you wish to call it, that we have is one that should be allowed to be abused by the supervisory or people who have the -- that exercise that authority in the hiring situation.

Further, on this matter: under the Public Service Staff Relations Ordinance, Section 27, there was an appeal filed; not an appeal, but an application was put to the Public Service Staff Relations Board concerning seasonal employees. The purpose of requesting the Board to clarify this matter was the hope that all seasonal employees would be considered employees in the bargaining unit and hence they would pay dues and have all the rights of permanent civil servants. The board came down with a ruling, effective January the 15th of this year, stating that "the Board finds that employees who perform duties of a seasonal nature, unless they had been so employed for a period of six months or more, are not employees or a class of employees who are to be included in the bargaining unit found to be appropriate by the Board in the Certificate of September the 30th, 1970".

If casual employees are entitled to become perma-

nent members of the civil service, then indirectly, where the employer through an administrative error fails to break the service of a casual employee prior to the six months, then the employer or the department could indirectly increase their staff establishment notwithstanding that they do not have approval for casual funds or approval from the Commissioner or from the budget that is passed here, to establish a permanent position. Now, there's all kinds of wrinkles in this thing and you know, let's be honest about it, these wrinkles are being used from time to time, and I have several members of the Public Service around about me here at the present time who are familiar with how they operate and I know that there's one ex-civil servant here who could write me a book about how these wrinkles are handled. So you know, let's not kid ourselves that this is something entirely straightforward. The employer has demonstrated to the union that, where it appears that casual services are required on an ongoing basis, the employer will establish a permanent position and offer the casual employee that permanent position and we feel that this is a fair approach. I also believe that the Union, the Alliance, would conceive that the employer has demonstrated his willingness to convert casual employment to permanent employment in the civil service where the nature of the work is ongoing.

Now, yesterday, there were questions concerning the numbers of people who are in casual employment in the government of the Yukon Territory. I do not disagree with the statement that was made yesterday, that it is not too easy to publicly define these numbers because they are not part of an establishment. But in relation to the total number of employees of the Government of the Yukon Territory, casuals continue to be a diminishing percentage of that total. And this year, I think you have a pretty fair example of it. It's a year of minimal monies and, as a consequence, the permanent positions are the ones that are being retained and the casual positions are the ones that are being minimized.

Now I certainly don't think that we want to find ourselves in any different position than that. The permanent people's positions have got to be protected and if there's to be minimal funds available, minimizing the casual or the numbers of casuals is the policy of the Government and I don't think we would like to see any change in that. I may say that last year, in July, one figure that I do have available for Honourable Members is that in the Department of Highways and Public Works in July 1975 we had effectively 200 people on casual employment, of whom 45 were students. I think that this is also a very important point that Honourable Members want to bear in mind, that the retention of this casual situation is quite vital for us to be able to continue our policy of offering students, particularly those who are getting assistance under the Assistance Program that Council vote in the budget each year, that we give them every opportunity we can for employment as casuals during the time that they have during their summer vacations, because this is a vital element in them being able to finance the cost of their education.

I think that finally, Mr. Chairman, the purpose of

proposing a definition of casual employee is to clarify that a casual is an employee when employed in the Public Service but he or she is entitled to specific benefits and rights but not the same rights as permanent employees occupying positions on the staff establishment of a department or branch of this Government. We feel that there has definitely got to be a difference and we want to have that difference clearly clarified so that everybody knows what the rules of the game are.

Mr. McCall: A point of order, Mr. Chairman. There is a Motion on the floor and I think we are getting off the track as far as general discussion of the Motion.

Mr. Chairman: We are discussing it, Mr. McCall. Mr. Berger?

Mr. Berger: Yes, Mr. Chairman, I'm in partial disagreement with what Mr. Commissioner has stated here and partially with what the two Honourable Members have said prior to this. There are many people in the Territory making a living on being casual employees and have been more or less counting on the unwritten law of job security. They have established homes in the Territory, in the outlying areas, and what we are trying to do right now is take this type of job security away from those people by not assuring them that they can have a job for another six months the following year.

In the past the federal government had a policy where they had clearly established a line between seasonal and casual employees. Those people were rehired year after year for the same position were classified seasonal employees. They had all the rights of union and bargaining agencies, they had all the rights of the public civil service. Only people who were classified casual who were only hired on to help the survey on the road, to maybe fill in a job for one or two months, but for some unknown reason, personnel and Y.T.G. decided this was too expensive for them is the only reason I can find. Let's make second class citizens of the other people, and this is exactly -- and I see some members shrugging their heads and so, well I consider a casual employee in this Territory a second class citizen because he has no rights. He's at the complete mercy of the foreman, never mind the superintendent, the foreman can fire casuals on the spot. If he doesn't like the guy's face or dress, the way he shows up on the job, he can fire the guy.

This is why I would like to see the definition changed from casual and go back to the seasonal employee, as an ongoing position of six months and more, this person should be classified as seasonal. Any other positions that only go on for a month, two weeks or two months, make them casual, fine, I have got no disagreement with that.

Mr. Chairman: Mr. McCall?

Mr. McCall: Yes, Mr. Chairman. In view of what the Commissioner has just stated, I'm of the opinion that the last remarks, that I think it is the government's

intention not to allow the same benefits to casual employees as they have with full time employees, and I think if this pattern carries on, you will finish up with just casual employees and no full time employees.

Mr. Chairman: Any further debate? Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, I think the Honourable Member from Whitehorse North Centre made a very good point yesterday in reference to the Ordinance, in regards to, does the casual employee want to be classed as a seasonal employee and whatever you want to call it?

For example, in superannuation, he has to pay 7 percent of his salary, plus the Government of the Yukon Territory has to pay 7 percent of their salary, and it goes to the federal government. If the employee quits in that six months or after, we lose that 7 percent. The taxpayer of the Yukon loses that money to the federal government.

I think the Honourable Mr. McKinnon, he made a very good point yesterday in regards to casual employees. I mean, does the casual employee want to be a seasonal employee or whatever terminology you want to use? I don't think they do.

Mr. Chairman: Mr. Berger?

Mr. Berger: Mr. Chairman, in answer to the Honourable Member from Porter Creek, in the past, no, I agree with him, because they had unwritten job security, where they were hired year after year for the same position, and the Honourable Member from Whitehorse North Centre will have to agree with me, because I know he came year after year into Dawson on the same job from Whitehorse North Centre. And that many people in the Territory -- he was a student at the time.

There are many people in the Territory get all the benefits of unwritten job security. Under those conditions, naturally they would save money, but now, if we establish this type of thing as it is proposed in the Ordinance, this job security is no longer there. The people, it does not mean that they have to be rehired year after year, and as the Honourable Member from Kluane said, and the Honourable Member from Hootalinqua, this is what they are objecting to, that people have no chance of competing on a job.

This is what I'm saying, under the new circumstances, those people would be just too glad to join the bargaining unit and also pay superannuation.

Hon. Mr. Lang: Mr. Chairman, that last statement, I disagree with that. The student that's going, or the casual employee during the summer months, he's attempting to get a few dollars together, if he's going to post-secondary study or whatever. I mean, you have to leave this open to the students and to the population of the Yukon that wants to live that way. Maybe he doesn't want to pay union dues, maybe he doesn't want to pay superannuation. As far as I am concerned, you're infringing upon the rights of the individual to make that

decision himself.

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, I have to point out to the Honourable Members who are discussing the Motion, supposedly, that the Motion reads that a casual employee is definitely a casual -- a person who is only employed in a position which is a non-recurring position, in other words, students. It's including this definitely what you are talking about in this definition.

It also precludes that there will be an additional definition of seasonal, so that the people who are employed regularly every summer in a place like Dawson City, for instance on the ferry, or many places, over and over and over again, they will be included with the union benefits, but this -- what we are talking about is the definition of a casual employee which has to be far more restrictive, so that it will only be for those people who don't care about belonging to the union, who only want to come and work for the summer and go away and forget about it, but there should be also included another definition of seasonal.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: Yes, Mr. Chairman, it was just a question to the Commissioner or one of the gentlemen down there, but what has the practice been in the past? Just for my own clarification, have you had a term employee or seasonal employee classification? Before?

Mr. Commissioner: Mr. Chairman, I would like to have a word about this, and then I wonder if I could have the opportunity of Mr. McPhail giving you, you know, the technical answer to this particular thing. I would trust that Honourable Members in referring to past practices of government would clearly distinguish between the past practices of the federal government and the past practices of the Territorial Government.

Now, they are two different things entirely, Mr. Chairman, and if we get tangled up in this, why very obviously we are in very, very serious trouble, the past practices of the Territorial Government, fine, we are happy to refer to that, but the past practices of the federal government are something over which neither myself nor any of us around here have any opportunity to deal with. It is in that particular context that I wonder, Mr. Chairman, if I would have the opportunity of having Mr. McPhail answer with technical correctness, the question raised by the Honourable Member for Riverdale?

Mr. Lengerke: Mr. Chairman, I agree to that, and I appreciate the Commissioner's comments with respect to that.

Mr. Chairman: Mr. McPhail?

Mr. Commissioner: Well it is vitally -- Mr. Chairman, it is vitally important to what we are talking about here

because remember that we have taken over certain federal functions from time to time, and there has been a clear break, a clear definition as to what portions of those past practices that were handled by the federal agencies that we took over, that we were prepared to continue and those that we were not prepared to continue.

Because our approach has been that when employees came to the Territorial Government from other agencies, when we were taking over federal agencies, that we made them offers of employment, and that they came to work for us in the clear knowledge that the rules and that the terms and conditions that applied to Territorial Government employees were the terms and conditions that were being offered to them.

Now, some of them have had grandfather type things carried over, and I believe that they were possibly mentioned yesterday, and that is an entirely separate condition that prevails only during the time that that particular individual continues in the employ as a consequence of that agency's functions coming to Y.T.G. areas of responsibility.

Mr. Chairman: Thank you. Mr. McPhail?

Mr. McPhail: The answer to that question, Mr. Chairman, is this government has not had a policy of hiring seasonals, and when we took over the D.P.W. transfer, they had the right to declare those people who were employed in and on the Alaska Highway, and as the Commissioner has explained, we offered employment to every single one of those employees, and we protected and grandfathered, I think a number of seasonals.

If I remember at one time we had eight, and I believe right now we have something like four seasonal employees left.

Mr. Chairman: Is there any further discussion?
Mr. Fleming?

Mr. Fleming: I might have got the subject but I wasn't quite clear on the -- only on the one -- I would like to have the wording as to what the Member from Ogilvie wanted, this change, because I'm not quite clear, and there is only one thing. This, as far as casual employee goes, I'm quite prepared to go along with it the way it is, or that way.

What I am concerned about is the one thing that we don't seem to define what these people are going to do. Somewhere in this Ordinance -- I don't think it, it might be in here, but I don't think so, I have been through it three times I think now, and I can't find anything as to what we are going to do, and say are you going to have the job next year, or are you not going to have the job next year? That's the thing that I think we should clarify here somewhere.

That's the only thing that I'm interested -- this Motion on the floor now is, if I could have it read to me, I would be prepared to vote at any time on it.

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, I think one area that we haven't put enough emphasis on, is regards to the definition of casual employee. If he goes on beyond that six month period, through some administrative error he becomes a permanent employee, so what happens with this Motion? And if it did go out like that, you will see permanent man years that we the people elect, the politicians of the day, they have no control over at all, if somebody is attempting hypothetically to build their empire, if you like.

This is a very important area, because when we vote at the budget session for casual -- monies for casual employees, it leaves the elected members some flexibility, but this way if the -- if this is the way it's going to go, if a person is a manager, he says I would sooner have the guy on or two men on for a whole year rather than being able to say hire five men in the summer. It's very important, from the legislative point of view, because if you go with this motion, what you are doing is you are usurping some of the authority of the legislature.

Mr. Chairman: Mr. Berger?

Mr. Berger: Yes, Mr. Chairman, I'm quite in sympathy with the Honourable Member from Porter Creek, but he doesn't seem to see the point. The point is reoccurring jobs. Servicing crews, the ferries in Dawson, tourist information, and I can go on and on. There's many jobs that reoccur in a certain time period, and it usually starts at the 1st of April, and ends on the 5th of October.

They reoccur year after year. Personnel, different departments managed in the past, and I'm quite sure they will manage in the future, to budget for these type of jobs. All that I'm asking for is that those people were treated as seasonal employees, as the federal government had in the past, that those people be given the right as first class citizens, not of second class citizens as we treat them right now, or trying to treat them.

What I'm asking for with this Motion is that those people have bargaining rights, and be included in bargaining units. I see the Honourable Member from Porter Creek trying to crawl under the table because I said bargaining. It's obvious he doesn't like unions, but this is my concern about the whole thing.

Hon. Mr. Lang: Mr. Chairman?

Mr. Chairman: Just a moment, Mr. Lang. Ms. Millard?

Ms. Millard: Well again, Mr. Chairman, I believe that most of these questions can be answered by a further Motion which I intend to put forward on a definition of seasonal employee.

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, I take offence with

what the Honourable Member from Klondike had to say. I have nothing against unions, I think they have been good for the country, but at the same time I think that you have to look at this Ordinance, the Public Service Commission Ordinance in relation to the Public Staff Relations Ordinance. This augments that Ordinance. We are not replacing that Ordinance, and it clearly states in that Ordinance that we have the right to manage -- the Government of the Yukon Territory has the right to management rights.

Now, as far as the casual employee is concerned, I go back once again to what the Honourable Minister of Local Government said. The casual employee may not want to be part of a bargaining unit, he may not want 7 percent of his gross pay taken out of his pay cheque. All these things have to be taken into account.

Mr. Chairman: In view of the fact that -- Mr. Commissioner?

Mr. Commissioner: Mr. Chairman, you know, without attempting to usurp your time on this. The Honourable Member from Hootalinqua had a question of which I trust I answered previously that we are quite prepared to bring forward a clear cut policy, and further more to guarantee its implementation, with regard to the question that he raises. With respect Mr. Chairman, the question raised by the Honourable Member from Klondike, is not a question for anything other than the Public Service Staff Relations Board to decide on, as to whether or not seasonal type people can be included in the bargaining unit and they have made that decision and they come down against it. Now this is the simple facts with which we are placed.

I also would like to make it abundantly clear to Honourable Members that this particular Ordinance that you're dealing here with now, is not exclusively for those people who have the ability under the Public Service Staff Relations Ordinance to have an agency bargain on behalf of them collectively. This is for all the employees of the Territorial Government, and of those employees, we have something in the neighbourhood of, probably well in excess of 150 people, and school teachers who have a separate ordinance, but at least a 150 people who are dealt with underneath this Ordinance who do not have bargaining rights at all. So that when you're talking about this Ordinance, it includes all employees except school teachers of the Territorial Government. The Public Service Staff Relations Ordinance permits a certain group of people within the Public Service to have bargaining rights. So that it is not just for those people who have the potential of bargaining rights that this Ordinance affects, Mr. Chairman.

Mr. Chairman: Mr. Berger?.

Mr. Berger: Yes, Mr. Chairman, I again disagree with the statement of the Commissioner's because the permanent employees in the bargaining unit under this proposed ordinance, have a further right and a further safeguard through the collective agreement. If any-

thing happens to them, if they feel wronged, they can grieve. Casual employees have no rights and this is what I'm saying again and again, those people are treated as second class citizens. Those people, if the foreman decides to fire them, they have absolutely no jurisdiction to turn to, to appeal a case. Personnel is not available for those people to appeal anything like this. So this is why I'm saying, it is those people have to be given the right of every day citizens who belong to the bargaining unit.

Mr. Chairman: Mr. Lang.

Hon. Mr. Lang: Mr. Chairman, if I may interject here. I worked in private enterprise for a fair number of years, in the construction industry, which we're pretty well referring to in the casual area. And if I was fired for not doing my job, I didn't have a place to appeal. I mean if I wasn't doing my job, the foreman was getting paid "X" amount of dollars to make sure the job ran well and if I wasn't doing my job, I was relieved of my duties. It's just that simple. Surely you have to leave some prerogative up to the foreman, if you've appointed him foreman, obviously you think he's capable of managing. I mean otherwise if you set it up that way for a way to appeal, gee just all you'll have is I mean there's enough paper flowing through the government now, hell, you'll triple it.

Mr. Chairman: Ms. Millard.

Ms. Millard: Well Mr. Chairman, I simply have to emphasize that I think a lot of these things can be cleared up with a further motion. I'm not going to present the motion at this time because there's one on the floor. But I would like to say what it will be for members information.

That the definition seasonal will be added to be defined as a person engaged on a recurring basis yearly, whose period of employment is indefinite and who may enjoy the benefits of permanent employees. Now that fits a description of a job I had. It says may enjoy the benefits of permanent employees which means that it's a bargainable thing by the union and the employer.

This certainly fits a job description of one that I had which was in the nursing home in Dawson City, where there were about 3 or 4 casual employees employed perpetually, who every 6 months were laid off for a day and away they went. But we had no rights whatsoever, we could be fired the next day, we had no grievance procedure and that's exactly what happened in many cases.

This kind of definition will give that person many more rights, as well as reducing the casual employees to a more defined position so that they know exactly where they stand and that there's no misuse of the term casual.

Mr. Chairman: I would like to refer Members of Committee to two of our Standing Orders, so that we may carry on in context. Standing Order 45-2 is quite

explicit on this point. Speeches must be strictly relevant to the item or clause under consideration. Repetition or irrelevant discussion; if a member engages in irrelevant debate or becomes repetitious in his speech, the Chairman must caution the member. If the Member so persists, the Chairman may direct him to desist. That's Standing Order 22-2.

Mr. Berger?

Mr. Berger: Mr. Chairman, I would just like one more attempt at the Honourable Member from Whitehorse Porter Creek. In what I said before, I was not talking about private industry, I was just talking about established fact in the Yukon Territorial Government.

You have one group of people who belong to a bargaining unit are treated one way. You have another group of people who have no rights to belong to a bargaining unit are treated another way. This is all what I am talking about, and obviously the Honourable Member from Whitehorse Porter Creek does not understand it.

Mr. Chairman: Mr. Fleming?

Mr. Fleming: Mr. Chairman, all I was going to say is I think what you read a minute ago. Actually we are on, casual employee means a person engaged in a casual or temporary basis whose period of employment is not intended to exceed six consecutive months. That is what we are speaking of now. We are not speaking of what is going to happen to anybody in the future or anything else.

I would like to hear that Motion, the amendments to that Motion, because I think intended is one of the words that the Honourable Member wanted to cut out and I absolutely agree, because I don't think intended means anything, except that maybe we'll do it and maybe we won't. Employment is not to exceed six consecutive months, I agree with that amendment. I think she also had another one.

Because if it is intended, it can also be abused by somebody at the other end, and they say it only was the intention to do it that way, but we have a reason to believe that it should be done some other way, so I'm quite agreeable in that. I would like to hear the Motion so I know what the other --

Mr. Chairman: Mr. Fleming, the Motion reads that the definition of casual employee be amended to strike out the words "casual or temporary" and the word "intended" in the second and third lines respectively, and the word "non-recurring" be substituted in the place of "casual or temporary".

Mr. McCall?

Mr. McCall: I was just thinking, Mr. Chairman, maybe I should have mentioned Standing Order 44, when I brought up the point of order.

Mr. Chairman: Is there any further discussion on this Motion? Mrs. Watson?

Mrs. Watson: Mr. Chairman, I suggest we consider it during lunch hour before we take a vote.

Mr. Chairman: I will now declare a brief recess, but before we break, I would like to remind members that in order to expedite matters, if there are Motions to be brought forth, there must be a written copy brought to the Chairman before it is brought forward, so it can be expedited immediately.

(RECESS)

Mr. Chairman: I now call this Committee to order. Before proceeding with further debate on this Bill, I would like to draw the attention of the members of committee, what the standards procedures are and what changes they may wish to make in this to be waived during this Bill. We have fairly wide latitude in what we can do. The standard procedure is for the witnesses to appear at the time the Bill is introduced. Following this the clause by clause reading is undertaken and it is during this reading that motions for amendment are taken or that a clause is stook by pending further information or clarification.

It is not customary to withhold amendments until the Bill is reviewed for a second time by Committee. However, if Committee wishes we may waive the Standing Orders and the amendments maybe introduced by a motion on a second rapid review of that Bill before it is passed out of Committee. Do I make myself clear? We either proceed as I have already suggested or we will withhold our amendments until we do a quick review of the Bill.

It is also not customary for witnesses to reappear during the reading of the same Bill. Again if Committee desires the Standing Orders may be waived so that witnesses may be recalled at the conclusion of the first reading of the bill in Committee.

What are the feelings of the members of Committee on these two? I would also remind you that it takes unanimous consent of the members of Committee to waive the Standing Orders.

Are you agreed then that we shall go through the bill and debate it clause by clause and then withhold all amendments until we have completed the clause by clause, and then I will simply read out the heading and any amendments may be introduced at that time. If this is what we agree to, we are waiving the Standing Orders. Are we all agreed to this?

Soem Members: Agreed.

Mr. Chairman: Are we agreed that -

Hon. Mr. McKinnon: Just a point of order, Mr. Chairman, are we not need a motion and then unanimous consent to waive Standing Orders or is it just enough to ask the feeling of the House?

Mr. Chairman: Mr. Taylor.

Hon. Mr. Taylor: Yes, Mr. Chairman, in some instances general concurrence of the House is sufficient, but if members wish an official motion why, this is fine.

Some Members: Agreed.

Mr. Chairman: It has been the policy of the Chamber to really by consensus of agreement although I'm not at all sure that is the way it should be.

I would also recommend that whenever possible, all amendments that are to be submitted be submitted ahead of time, so that the Chairman and the Committee members have an ample opportunity to pursue and assess them, so that if you do have amendments by a Motion, if they could be circulated prior to their introduction.

In view of this method of dealing with Bill Number 1, I would then recommend that the Motion that is now before Committee, be withdrawn until a future time. Are you in agreement?

Mr. Berger and Ms. Millard are in agreement.
Is Committee in agreement?

Some Members: Agreed.

Mr. Chairman: We'll proceed with a clause by clause reading, Part II.

Before we proceed with Part II, Mrs. Whyard, did you wish to speak?

Hon. Mrs. Whyard: Mr. Chairman, yes. If I may, I did have my hand up before we recessed at noon, because it appeared to me that somebody should rise and point out that a number of the items which were being debated in the Committee earlier today, are really not relevant to this Ordinance, but pertain rather to the Public Service Staff Relations Ordinance. I think we should all be very careful to make sure that what we are trying to change or introduce here is part of the Public Service Commission Ordinance, not the Public Service Staff Relations Ordinance, which deals with such things as negotiations and who does what in what bargaining areas. This does not, and we should try very, very clearly to restrain our discussions here to this Bill, Mr. Chairman.

Mr. Chairman: Thank you. Mr. Berger?

Mr. Berger: Yes, Mr. Chairman. In answer to the Honourable Member from Whitehorse West, I would like to also point out to the Committee and to herself, that this Bill and the Public Service Staff Relations Ordinance go hand in hand, and if you have a clear definition in the Public Service Commission Ordinance, you are that much further in the Public Service Staff Relations Ordinance also. If it needs to be amended, I would propose it eventually will be amended.

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, I would like to make the point that the Commissioner made earlier, that this

deals with everybody in the public service, not just the bargaining agent.

Mr. Chairman: Part II, Management and Direction. Three (1):

(Reads Clause 3 (1))

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, I would like some definition of the Commissioner's position, whether or not he is actually a public servant, and therefore under Public Service Ordinance, or?

Mr. Chairman: Mr. Legal Advisor!?

Mr. Legal Advisor: Mr. Chairman, he's clearly a public servant, and in that capacity he's operating within this Ordinance.

Mr. Chairman: Ms. Millard?

Mr. Legal Advisor: But not a public servant of the Territory, of course, but a public servant in the broadest sense of the word.

Ms. Millard: M'hmm, and therefore restricted by all public service law?

Mr. Legal Advisor: No, Mr. Chairman. He's not a member of the Public Service of the Territory governed by this Bill except where it expressly says so, and it always uses the expression the Commissioner shall, this is an attribute of the Commissioner in his capacity as an Officer of this government, and a public servant in general, but he is not bound by the terms of this Ordinance in the same way as the other members of the public service.

Mr. Chairman: Ms. Millard.

Ms. Millard: Well, Mr. Chairman, this brings up the confusion which I find all through this bill, is the difference between the Commissioner of the Yukon and the Commissioner of the Public Service. It is not well enough defined in the bill to state clearly -- are you talking about the Commissioner of the Yukon or the Commissioner of the Public Service Commission?

Mr. Legal Advisor: Mr. Chairman, the design of the Ordinance, as it's drafted is, that whatever the expression 'the Commissioner' is used, it has its normal meaning from its interpretation ordinance. Wherever we intend to use the expression the 'Public Service Commissioner', the whole of the words are stated.

Mr. Chairman: Three -- Mr. McKinnon.

Hon. Mr. McKinnon: Mr. Chairman, I don't want to hold up the progress of Committee but I'm having prob-

lems myself. I've got a brief from the P.S.A.C and quite a bit of it deals with the definition sections. Now we went through casual employee sections and I received yesterday, the reasons for the Alliance wanting it changed and I see their point and I also see the government's point probably why they don't want it changed. But I still don't have the answers to the other definitions that we've gone through this morning which it appears that there's going to be motions for amendments to the Ordinance.

I've heard yesterday the reasons for the P.S.A.C. but I still haven't, don't know, I'm not clear in my mind what the objections to these amendments are from the director of personnel or if there are in fact any objections to the other definitions which the P.S.A.C would like to have amended and which I think amendments will be forth coming from debate this morning to those definitions.

We go to the next class in the Ordinance. We have class or class position means a group of positions involving duties and responsibilities of similar, that the like or like qualifications maybe reasonably required for and the same rates of pay, pay range or pay grades, can reasonably apply to all positions in the group. And in the P.S.A.C. brief we have class should be amended to read 'a group of simialr positions requiring same or like qualifications for which the same rate of pay, pay range or pay grades can be reasonably be applied.' This definition is easier and takes into consideration the definition of the word position which should have a definition of it's own. That sounds emanently reasonable to me and I wonder if there's any reason why that amendment should not be made. I wonder if I can ask the director of personnel that question.

Mr. Chairman: Mr. McPhail.

Mr. McPhail: Mr. Chairman, with respect to the definition of class, the unions' definition incorporates the same or like qualifications for which the same rates of pay, pay range, etcetera. If I understand the union's position, they've introduced an amendment to class because there was no definition of position. To be quite honest, I think, that initially when they got the Bill, if my memory serves me correctly, there was no definition of position. Since then we put out an amended definition of position. Position means an established position and here we're talking about a position being an entity that is created by the Commissioner and once you create a position it can be either created on a full time basis, or on a part time basis. Section 85 of the Ordinance indicates that once you create a position, it's indeterminate. So if you establish a position you know off the bat it's going to continue until it's abolished.

The question is when you establish it, are you establishing it on a full time basis meaning 8 hours per day or 7½ hours per day or 4 hours per day or 3 hours per day, because in each case you're going to allocate funds based on a percentage of a total number of hours, either for a total annual salary or half a salary.

Again if you look at the definition of the employers

class, the employer has indicated that a position involves duties and responsibilities, in its definition of class, as opposed to the Alliance's approach.

Mr. Legal Advisor: Could I explain it this way: the Public Service consists of -- out of this Ordinance -- the Public Service consists of a number of positions. Those positions do not necessarily have to be occupied, they are positions into which people come and go, but the position continues indefinitely. The people who are members of the Public Service as people, are appointed to positions. And when you're appointed to a position, except that you have to serve a probationary period of six months, you're an indefinite term civil servant and you continue on indefinitely until you reach retirement age or you transfer out of the civil service somewhere else or you resign. The Ordinance is not designed to pick up and deal with, in detail, casual employees.

The former Public Service Ordinance only mentioned casual employees at, I think, one place and that was in the list of regulations making powers of the Commissioner. It said the Commissioner may make regulations dealing with temporary or casual employees, and that was all.

They did not have the duties or they did not have the responsibilities or privileges of being a member of the Public Service in the accepted permanent except once or twice in the Ordinance as an adjective describing easily what we mean. We use the word positions a person occupies a position. If he occupies a position he must be appointed to that position and that makes him, personally, a member of the Public Service.

The number of positions in the public service would be perhaps 800, 600. They are divided into classes, and classes have a relationship to each other. For instance, a social worker, there may be a social worker 1, 2 or 3. Each of those is a class, and the people are aggregated together for pay and other considerations into these classes, so that they may be compared together, and when a person does a certain type of social work, they are described as being a member of a class of social worker 1.

If they do extra duties, then they move to a different class, and if they are not moved by the public service, they can appeal under this Ordinance and say they should be properly described as a social worker 2, in which event than their pay is different, because they are defferently described. So the definition class put forward by the Public Service Alliance is marginly different from ours, and if I had been drafting it, I might easily have taken their definition. And the notation that I have at the side of the brief is not bad, because there's only one small difference between their definition and ours, and this is true in the majority of the definitions put forward by the Public Service Alliance. They are very well drafted and they mean precisely what they say. It's just that viewed from my point of view of drafting, I'm drafting with one objective, and the Public Service Alliance appears to be drafting from a slightly different objective.

For instance, throughout the Ordinance in the draft-

ing sections, they throw in the word 'employee' as of and concerning a person who occupies a position. The positions are controlled by this House in the annual budget. There will be, say in my department, 23 positions, therefore, I am prohibited from giving permanency to any other person except people who occupy 23 positions.

If I want to evade the restrictions placed upon me, I can hire people in as casuals. Now, the restriction put on that then is that if I do this, then I suffer in my budget monetary-wise, because I haven't got the money to do it. If I can fiddle to get the extra money to employ extra casuals, then I come up against a second obstruction which is I haven't got the man years to fill them. And this series of accounting an treasury blocks intended to prevent department heads evading the restrictions which are placed on them when the budget is formulated. These are highly technical things and they are subject to rules.

So that part of the object of the drafting is to stop department heads evading the accounting rules which are placed upon them and which should limit down as low as possible, the numbers of permanent public servants, because each year in the budget, one of the first things we pass in the budget is the allocation of money for paying the permanent civil servants.

Now, we don't use that expression, but it's a thought that's in everybody's mind.

Now for argument purposes, when a person is arguing about their pay, they argue that they are wrongly described, that their position is such that that position should be moved to a different class. If they succeed in that argument, than it attracts more money, so that becomes a bargaining item. So all of these things are carefully drafted and the transposition of one word, like in the definition 'similar in class'. The P.S.A. definition is a group of similar positions. We call it a group of positions.

Then they talk about requiring the same or like qualifications, and we talk about a group of positions involving duties and responsibilities so similar that the same or like qualifications may reasonably be required for them. They leave out the word "reasonably" at that point and apply it to a different place. They say, "can reasonably be applied at the same pay range or grade".

So I wouldn't quarrel unduly with accepting the P.S.A. definition, except that ours is drafted from a slightly different point of view of control, and eventually with a view to allowing the Public Service an appeal that they have been wrongly classified, it seems to us that an appeal structure can better be founded on our particular definition.

Now the word "employee" is found throughout the two or three pages of the earlier part of the brief, and they talk about an employee appointed to or employed in the public service. Now the expression "employed" is anathema to me in drafting it from the government point of view, because all kinds of people can accidentally be employed in, who have not been appointed to, and this is important from our point of view.

So perhaps wrongly, I tended to discount the P.S.A. definitions, unless it was a marked change of policy, and

again, perhaps wrongly, to be a little bit suspicious of casually throwing in expressions such as "employee" means a person to or employed in, because it appeared to me that if that definition was permitted, then a dagger was struck at the heart of the intention of the Ordinance, and I'd be going gray trying to pull back and change to try and negate the effect of the change of definition.

Now in speaking honestly to the members, it's tough thing to draft sometimes to reflect an exact intention, so I can't for the life of me, sometimes find a real reason for objecting to the P.S.A. definition, but I'm suspicious. I was made suspicious by the little touching in here and there of words like employed in after employee, because the whole trend of the Ordinance is different, and Mr. McPhail and I would be spending three or four years in adjudication trying to undo the effect of a casual overlooking by me or by Mr. McPhail, of a particular adjective or a particular preposition that was going to ruin us in law cases in the next three or four years.

Now I shouldn't have spoken so long, but this is the reason for the changes.

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, in view of Mr. Legal Advisor's remarks, I can't understand why -- because some of us are taking these amendments which are proposed by the Public Service Association very seriously, why there wasn't some communication between the administration and the Public Service Association down into details of definitions, and exactly what amendments could be possible to -- and in consideration of problems on both sides? Was this ever done?

Mr. Legal Advisor: Well, Mr. Chairman, communication is a two-way street. What we did was got down to the heart of the matter at a point in the drafting stage when we knew precisely what we had in mind, and went to a lot of trouble explaining to the Committee people of the P.S.A., precisely what we had in mind in arriving at a particular decision, and the why's and the wherefore's.

There is no question there was any bargaining, it wasn't a question of saying we will put this in if you don't object to that. That wasn't the process. The process was to make sure that the Public Service Alliance understood, so far as we could make it possible, precisely what every word was intended to mean in the draft as we put it. Then as I understand it, they took it away and they had qualified advice from Ottawa from their people, and they suggested alternatives.

These alternatives were never bargained. It's not a question -- if they want to change the Ordinance as it was put forward by the government, it's for the P.S.A. to come to this House and ask the House to agree with their political position in making a change. It's not for public servants to bargain in that way, and this never happened. But explanations, yes, explanations are given for everything in this Ordinance, and we were available to answer questions on what was in it, which I think was

the proper role to play, and for this House then to either accept this or reject it or make changes, and hopefully not hidden changes.

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, just a further comment on that. I just feel that with this process being the way it is, and with the number of amendments which will no doubt come about, we could end up with a Bill that was really unworkable, because of our inexpertise in making a Bill. But when it's up to us to present the amendments and everything else, it would be much easier on everyone, if there was more communication at the level of drafting of the Bill.

Certainly the ultimate decision has to be made by this House, but just a comment, that I think that this way is very awkward. We may end up with a Bill that's completely unworkable, and it has no input from the people whom it directs.

Mr. legal Advisor: Mr. Chairman, I don't want to comment on this. It's a matter for decision of this House, but we had a process whereby, wherein a similar type of Bill, highly technical was being discussed by this House, and Mr. Hearne and his friends from the Y.T.A. sat in here for weeks at a time, and it turned out to be a negotiating thing and there were genuine difficulties, you know, and this isn't a negotiating body, this is a lawmaking body whose word is the law of the land.

With respect, I don't think that there should be a negotiation process in this House. This House is perfectly competent, as I look around it. perfectly competent to make the law, and I think they should make it.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, I think we lose sight of the fact that any group, any organization, other than the public service who are interested, possibly industry, might want to make a submission before this House, present a brief on the legislation that we are considering now. So it's not a negotiating thing with the government with one group.

You have to -- there are all sorts of other groups within the Territory, within the public, that are very, very interested in this legislation, and whose future could be affected by this legislation, so it's not just a two party thing, and we have to make decisions on behalf of everyone.

Mr. Chairman: Mr. Berger?

Mr. Berger: Excuse me, Mr. Chairman. I would like to get down to the point again, I think we are losing it. I'm still trying to digest what Mr. Legal Advisor is telling us about the Public Service Alliance submission and definition on employee and what his concern is about employee means a person appointed or employed in a position in the public service. I think it should be spelled out, all employees. I still can't digest it in my

own mind why he doesn't want it in there?

Mr. Legal Advisor: Mr. Chairman, our definition is, employee means a person appointed to a position in the public service. The whole Ordinance is written around appointments, recruiting toward the position, an appointment, and as the person is appointed to a position in the manner designated here, then he is not controlled by this Ordinance.

If he happened to be employed as a casual, on a contract or anything else, then a completely different set of rules apply, so we have used the word employee in that specific technical sense. If it's broadened by this definition by adding in the words "or employed in", then a host of other people not contemplated by the terms of the drafting, are brought into the parlour and they are giving lunch with the rest of them, and we don't have enough to handle it..

Mr. Chairman: Mr. Berger?

Mr. Berger: Thank you, Mr. Chairman. I thought that's what Mr. Legal Advisor had said in the first place. He's afraid to get casual people mentioned in here, and I thank him for the definition. Thank you.

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: Yes, I just want to reiterate what the Legal Advisor has said in regards to the casual employees. It's the Legislature that's supposed to have control of the man years within the government. If we don't go with the Ordinance, with the Public Service Commission the ability to appoint, and also leave in at the same time to -- for people that are employed, your casual -- you have no control of the size of the government, at the legislative end of government where rightfully so this power should lie.

Mr. Chairman: Part III - Public Service Commission. Mr. McKinnon.

Hon. Mr. McKinnon: I just want to answer one point raised by the Honourable Member from Ogilvie, and to me it was a very important point. A decision that the political people on the Executive Committee made and didn't make lightly. And that was because this was such an important piece of legislation that had such far-reaching effects, the decision was made at the Executive Committee level to give the P.S.A.C. a draft copy of the legislation several months before it became a public document and was introduced into this House.

The reason that we did it and the arguments that my colleagues and I used, is that the rest of our colleagues at the Legislative Assembly level were mature enough and smart enough to realize that we have to have total communication with the P.S.A.C. and have total understanding of the intent of the Bill prior to it becoming a public document and coming before this House.

I'll tell you something. That, several years ago around this House, if that decision had been made you

would have heard the screaming and the yelling and the hollering for months in and months out. So, the decision, the political decision, that was made at that time was the proper decision, I believe, because of the importance of the Ordinance and I think it's a credit to all members of this Committee that they backed and agreed with that decision that was made. So, where lack of communication can be charged in a lot of areas and will be charged in a lot of areas in the past and will be in the future, this just is not one of those instances where that accusation will wash in any way, shape or form.

Mr. Chairman: Mr. Lengerke.

Mr. Lengerke: I have a question for the Legal Advisor just back to the definitions there for a minute. Establishment. Establishment means a total of established positions and I understand that is full time positions, is that correct?

Mr. Legal Advisor: When you say full time positions, it is not quite -- it is a total of positions. Permanent positions, yes.

Mr. Chairman, they may be part time positions in that there could be a situation in the library where it would be a four-hour job.

Mr. Chairman: Part III - Public Service Commission. Four (One).

(Reads Clause 4(1))

Mr. Chairman: Five (One).

(Reads Clause 5(1))

Mr. Chairman: Ms. Millard?

Ms. Millard: Just clarification on how this will be organized. The way it reads, the whole Commission consists of one person. Is that in actual fact how it's going to be organized or is there going to be a department or a unit that is defined as a Public Service Commission or is it just simply the one person who is the total responsibility for the Commission?

Mr. Chairman: Mr. Commissioner?

Mr. Commissioner: Mr. Chairman, at the present time the equivalent consists of the Commissioner and the director of personnel and the staff that work in his office. What this is saying here is there will be a person appointed who will be the Public Service Commissioner; in other words, this particular day to day responsibility will be removed from the Commissioner of the Yukon and put in the hands of another individual. He will have under his daily direction Mr. McPhail and his staff. This is basically what you are talking about.

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, that is not how it reads to me. It reads, the Public Service Commission shall consist of a Public Service Commissioner. It says that the whole Commission is one person, not that the personnel officer is going to be involved at all, or the director of personnel, or anybody.

A Member: Keep on reading --

Mr. Chairman: Mr. Berger.

Mr. Berger: Yes, Mr. Chairman, I'm in slight disagreement with Mr. Commissioner's statement. Isn't it -- my interpretation of the proposed Ordinance. The Public Service Commission is still responsible to the Commissioner of the Yukon Territory. Isn't this the intent of the Ordinance?

Mr. Commissioner: To the extent that he is a member of the Public Service, yes, this is quite correct. But it clearly delineates in this Ordinance those responsibilities which he is to carry out and delineates how he is to carry them out. And very obviously, interference from the Commissioner is not one of those things that is contemplated in this Ordinance.

Mr. Chairman: Mr. Berger.

Mr. Berger: But it's a possibility. I'm thinking of provincial jurisdiction where the Public Service Commissioner is responsible to the Minister of Labour. In our particular case, Mr. Commissioner of the Yukon Territory would take on the responsibility of the Minister of Labour in this particular field.

Mr. Commissioner: With respect, Mr. Chairman, that is not the situation at all. I'm not aware of any provincial jurisdiction in which the Public Service Commission is responsible to the Minister of Labour. Now, maybe I can be smartened up on this, Mr. Chairman, but I'm not aware of where this transpires. As far as I'm aware, why the Public Service Commission is a separate entity, that is directly responsible to the Legislature. Unfortunately, the way the Yukon Act is written, we don't have that opportunity here. There is the question raised by the Honourable Member that there is a possibility of the Commissioner interfering, the Commissioner of the Yukon interfering with the duties of a Public Service Commissioner; the Ordinance, the intent of the Ordinance, is set up in such a manner and you will see as you read on in this particular section here, that he is, literally speaking, immune from that kind of potential interference. He has a clear field within which to operate.

Mr. Chairman: Mr. Fleming?

Mr. Fleming: Mr. Chairman, I don't want to belabour the subject. I was about to ask the question of the Commissioner, and I think he did say something about not being responsible to the legislation. Now, does the Commissioner -- I mean the Public Service Commis-

sioner, and this Commission, are they not responsible to the Yukon Legislative Assembly here, or what responsibility do we have over them?

Mr. Commissioner: Mr. Chairman, that is not possible to do under the manner in which the Council, the Legislative Council, is set up under the Yukon Act. But the facts of the matter are, as you go along in this particular section I think it will be clearly defined to you just precisely what this man's responsibilities are and the immunity that he has from interference from the Commissioner.

Mr. Chairman: Six (One).

(Reads Clause 6(1))

Mr. Chairman: Seven.

(Reads Clause 7)

Mr. Chairman: Eight.

(Reads Clause 8)

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, my first question is why, in 6(1), there's a restriction of ten years and then in 6(2) the restriction is done away with? Why is there a restriction in time at all on the appointment of the Commissioner?

Mr. Legal Advisor: Mr. Chairman, it's guesswork how you arrive at it, but the intent of the drafting was to give the Public Service Commissioner a measure of independence in making his decisions from the Government. At the same time, one is torn not to give him too much. Department heads are appointed at pleasure but they are appointed on the initial period usually for a period of five years. It was thought that ten years would span more than that distance and it would also span more than one government in the Territory, taking it that if we moved to provincial government as some people suggest shortly the period of office would be five years for a government. It would give him a period of two governments, and give him a measure of independence.

The actual drafting of the remainder of the section is taken from the protections which are afforded a magistrate appointed pursuant to the Magistrate's Court Ordinance of this Territory, so that's how the draft was really arrived at.

Mr. Chairman: Mr. McIntyre?

Mr. McIntyre: Mr. Chairman, in the unlikely event that the Commissioner -- that the Public Service Commissioner is suspended, who takes his place? There's no provision for anyone to appoint a deputy, and the deputy that he had appointed, I imagine, would be tarred with

the same brush as he would have been himself, prior to the inquiry.

Mr. Chairman: Mr. Commissioner?

Mr. Commissioner: Mr. Chairman, although it is not specifically mentioned here, the point that Mr. McIntyre or Councillor McIntyre raises is very obviously a good one but I do not believe, and subject to comment from Mr. Legal Advisor, that there is any inhibition in the Commissioner appointing someone in an acting capacity for the particular period of time that is referred to. But perhaps Mr. Legal Advisor might like to comment on that?

Mr. Legal Advisor: I would prefer a moment to check it out but I think in our Interpretation Ordinance we have the power to act to appoint a person to act in the stead of any public officer who is unable to perform his duties, but I would prefer to check it. But it is a good point raised.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: Thank you, Mr. Chairman. The Honourable Member from Mayo asked my question, but I do have just one minor one with respect to 6(2)(b) - "The Public Service Commissioner is given a reasonable notice". What is the reasonable notice? Does that refer to the 15 days further on down, or is that --

Mr. Legal Advisor: No, Mr. Chairman. It would depend on the facts of the matter, and then the judge who was -- if a point was raised, I didn't get time, the judge would automatically adjourn. Reasonable notice is a thing that's normally used in relation to court documents.

Mr. Chairman: Mr. Berger?

Mr. Berger: Yes, Mr. Chairman. I would like to go back to Section 5(1) and raise the question why was it decided that the Commission shall consist of only one person? I'm just going through the B.C. Act here and I believe in other jurisdictions it's the same thing, where the Commission shall consist of five members appointed by the Lieutenant-Governor-in-Council. One of them shall be designated the Chairman; and, further to Mr. Commissioner's answer to my question prior to this, in this section here it says the Chairman has the stature of a Deputy Minister and is subject to the direction of the Minister designated under Section 7 and shall be charged with administration of this Act.

Section 7 says, "A member of the Executive Council", in other words the Executive Committee or the Minister of Labour, "designated by the Lieutenant-Governor-in-Council is charged with administration of this Act". In other words, it's clearly defined in there and says that he is in charge of the Act. And he shall lay before the Legislature within 15 days of the commencement of the first session in each year a report of the work of the

Commission under this Act in the preceding year.

In other words, there is a possibility in the provincial legislation of a Minister of Labour being in charge of the Act, and not the Deputy Minister.

Mr. Commissioner: Mr. Chairman, I think what the Honourable Member is saying is that it is possible that in the province -- in a provincial situation, that the Public Service Commission could be responsible to any Minister. Isn't that what he is really saying? I mean, that was my point originally. I have never heard of them being responsible to the Minister of Labour, Mr. Chairman, that's the point that I make.

Unfortunately, we do not have a provincial set-up here and until we have I'm afraid that the wording that we have here now with regard to the Commissioner of the Yukon is a requirement of the Yukon Act and we do not have the ability to infer ministerial responsibility or executive responsibility until such times as our Yukon Act is changed.

At the present time, our Executive Committee has elected people on it based on a ministerial instruction, and to say that the day will or will not come when the Commissioner of the day will decide that in this particular instance he wishes to delegate the authority that is given to him here concerning the reporting aspects of the Public Service Commissioner, it may well happen. I don't know, but we cannot -- we do not have the legislative competence, is that correct, Mr. Legal Advisor, to so state it in our Ordinance at this time.

Mr. Chairman: Mr. Berger?

Mr. Berger: Mr. Chairman, I would like to go back to 5(1) one more and point out to the Committee the danger of having only one Public Service Commissioner, and I would suggest that it should be three persons, and one Chairman out of the three persons, and I think the danger then of any future Commissioners interfering with anything like this could be possibly eliminated.

Mr. Chairman: Mr. Commissioner?

Mr. Commissioner: Mr. Chairman, we have a total of approximately 900 or 950 public servants in the Yukon. You need three Public Service Commissioners like you need another head. Let's get practical about this thing. I mean, there's so much money in the public till and I'm paying enough taxes now, even if everybody else around here isn't, and I'm certainly not about to suggest that we need any more than one Public Service Commissioner. If he can't conduct the duties and the requirements of the job, why, fine, he can go out and hire more help to help him, but as far as needing a myriad of Public Service Commissioners, why, I'm afraid I can't -- I'm not prepared to suggest that the Executive Committee would entertain any particular changes in this.

I would like to suggest in the Province of British Columbia, I don't know how many thousand public servants they have but they may have several hundred thousand for all I know, but there is certainly no rela-

tionship at all as far as the responsibility - the scope of responsibility - is concerned; I would suggest that one is plenty.

Mr. Chairman: Ms. Millard?

Mr. Millard: Mr. Chairman, the question is not how many employees should be in the Public Service Commission but just how much power is invested in one man, which is far more than I understand is presently, since the Commissioner works with the Director of Personnel and onward down.

This way, the Commission consists of one person and in definition of what the Commission can do and what the Commissioner can do, which is one interchangeable in this Bill, I find that he has direct control over everything that's happening in the public service. I find that anathema to me.

Mr. Chairman: Is it going to change if there are three?

Ms. Millard: One would hope that it would be a little more democratic, Mr. Chairman.

Mr. Chairman: But they still are not answerable, and in the case that has just been cited to us by the Province of B.C., they are answerable to the government of the day, and in this instance the government of the day is the Commissioner, for us.

Ms. Millard: Yes, but we are getting away from the argument of one person or three people being answerable to anyone. I mean, that's the next further step in a democratic system. Those people should be answerable to the public servants that are under them.

Mr. Chairman: Well, I think the Commissioner did answer the question as to the best of his ability regarding three versus one, so you changed it around to say where are they responsible to. Now, those two questions have now been taken up. They have been answered. If you don't agree with the answers, that's your right, to disagree.

Ms. Millard: That's exactly what I was saying.

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, in regards to a couple of questions put forth by the Member from Klondike, if you look at 204 and 205 there is definite violations and it's against the law to attempt to influence the Commissioner, the Public Service Commissioner, and it's definitely an infraction.

We are attempting to remove the Public Service Commission from the government as far as we can, so that you don't get the political patronage and whatever that has gone on in the past in various other governments. We have been very fortunate in this government that we've had good administration for the last ten

years.

A Member: Let's read the Bill.

Mr. Chairman: Powers of the Public Service Commission. Nine (one):

(Reads 9(1))

Mr. Lengerke?

Mr. Lengerke: Yes, Mr. Chairman. Maybe I could get a reaction from the Legal Advisor or the Director of Personnel with respect to the union's position as far as consultation is concerned. What would your comment be with regard to their position, the way they have outlined it? Are you confident enough that that kind of consultation takes place in the way you have written the present Bill before us?

Mr. McPhail: Mr. Chairman, joint consultation is negotiated in the collective agreement and those subject matters which are included under joint consultation are specified in the collective agreement.

We do hold monthly, joint consultation meetings with the union. To be frank, we cover a wide range of topics but, with respect to their brief, I have to state that the Yukon Public Service Staff Relations Ordinance clearly indicates that those items are not to be negotiated for or upon.

Mr. Lengerke: Thank you.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, I would like any of the witnesses to possibly expand on (1) "Negotiate on behalf of the Territory", very briefly the mechanics.

Mr. McPhail: Mr. Chairman?

Mr. Chairman: Mr. McPhail?

Mr. McPhail: There are only two authorized bargaining agents in the Yukon Territorial Government. One of them is under the present Yukon Public Service Staff Relations Ordinance, which is the Public Service Alliance of Canada, and as I think you are aware the Yukon Teachers' Association under Part 8 of the School Ordinance.

What this does is give the power to the Commission under the authority of the Commissioner to negotiate on behalf of the government with respect to those authorized bargaining agents.

Mr. Chairman: Mrs. Watson.

Mrs. Watson: Mr. Chairman, further to that. Who set the parameters of the negotiations - this is where I'm concerned?

Mr. Commissioner: Mr. Chairman, the Executive Committee. And of course also, too, the legislation, Mr. Chairman. It's very, very clearly defined in the Public Service Staff Relations Ordinance what this body has said that we can negotiate on. This is very, very clear.

Mrs. Watson: Mr. Chairman, the parameters of dollars, that's what I'm concerned about.

Mr. Commissioner: The parameters of the dollars and those things that translate into dollars, Mr. Chairman, are definitely the prerogatives of the Executive Committee and the Commissioner is duly bound in the process of coping with that particular mandate which I believe is the term that would be properly used here, to seek the advice of the Executive Committee, and the parameters of that mandate are outlined at that point and are then passed on to -- in this instance would be passed on to the Public Service Commission. It is within the parameters of that mandate that they are allowed to negotiate.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, I think that clearly indicates the necessity of having this Commission responsible to someone within the government, because if we gave this Commission, if they were off on their own, they could negotiate any salary settlement that they wished. We would be responsible then to finding the dollars. So I think it's very, very important; I think this is one of the key areas.

Mr. Chairman: Delegation of Authority. Ten (One):

(Reads Clause 10(1))

Mr. Taylor?

Hon. Mr. Taylor: Yes, Mr. Chairman, when the Public Service Commissioner delegates some of his powers, indeed he can in fact delegate any of his powers, to a subordinate officer of the Commission, is not yet the Public Service Commissioner still wholly responsible for the actions of the person to whom he has delegated the authority?

Mr. Legal Advisor: Yes, Mr. Chairman. The actions of the person who is exercising the delegated authority are in law the actions of principal. The question of principal and agency and the responsibility of the person who delegates it down. It's his act, although in another person's name.

Hon. Mr. Taylor: Okay, I just wanted to clarify that.

5Mr. Chairman: Ms. Millard?

Ms. Millard: I'm wondering on two subjects why they haven't been considered in this part. One is that the Public Service Commissioner at the moment may dele-

gate his authority; why was it not considered that he shall have to delegate his authority in case he's not there? And in the second part, I'm wondering why the administration did not think of limitations to the authority that's delegated?

Mr. Legal Advisor: The question of delegation of authority or appointing somebody beneath you to act on your behalf is always a tough question within the Public Service, and books and books have been written about it and De Smith's got something like 360 pages on that subject alone. The question is always asked, is there an implied power at common law to delegate or does it require legislative authority. And the better opinion seems to be that in almost all cases you can delegate without the legislative power to do it. Except it happens to be one of a number of special groups. They would be a judicial type power so that, notwithstanding this, the Public Service Commissioner would not be allowed by this to delegate his power to, say, take an appeal. He could appoint somebody to act for him as an independent person. But he couldn't delegate it down to a junior to hear that case and decide that appeal. Nor where it's a question of making regulations which have the force of law. He cannot delegate that. But you will never say he shall delegate his powers because you say he shall; you're in a real box because then he doesn't retain any power. You give him the option to delegate what powers are required to efficiently carry out the Public Service.

Now, if you notice the two sub-sections here; one is that he may delegate his powers to members of his own staff; the second is he may delegate to a department or a department head certain powers of control within that department and pull them back. So, specially it's broken into two to represent that dual capacity. One to deal with his own staff and the second to deal with the staff of the various departments of the Public Service.

Of course, sub-section 3 is a very important section. It allows him to pull it back or control it in any way he wishes. And this would be a very solemn thing to do. In the brief of the P.S.A. they specifically adverted to this and they wanted it spelled out. But from a practical point of view, it is not always easy to spell out. You can spell out to classes of people and say the head of that department may do certain things. But sometimes you give them something extra and you can't publicize it in time. You just say, okay, carry on.

It's quite a difficult thing and you try to make it as wide as possible and at the same time leave it subject to control.

Mr. Chairman: Ms. Millard.

Ms. Millard: Well, the conditions that the person is subject to are put down by the Public Service Commissioner, no-one else?

Mr. Legal Advisor: By the person delegating down the power. In a legal sense, it might, you can understand. When the certain purchases can be made in a department. You might give a certain officer power to

purchase up to \$200.00, another up to \$5,000.00, another up to \$10,000.00. It's that kind of a condition although they're not purchases he's dealing with. Certain decisions he will give to certain people, but not beyond that. And certain decisions then of an important nature might have to be reported back to the Commission first before they took effect, so this is retention of control.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Mr. Chairman, the question for the Legal Advisor will some of this delegation be in a formal nature, delegation, for example, to some of the officers within the Commission. Will there be a formal declaration of certain basic powers that officers can embark upon or will it be just sort of an internal thing within the department?

Mr. Legal Advisor: Yes, Mr. Chairman, there was a certain formal designation and certain things that may be of that nature. And there will be certain formal designations to departments. But there would be differences within the departments. Mr. Baker's department will have certain delegations down at the lower level than for instance the legal department. It depends on the size of the department and the wide flung nature of the operation. There may be certain delegations necessary to operate efficiently in Herschel Island which are not necessary in Porter Creek.

Mr. Chairman: Part IV, Appointment and Powers of Deputy Heads. Eleven (One):

(Reads Clause 11(1))

Twelve (One):

(Reads Clause 12(1))

Thirteen (One):

(Reads Clause 13(1))

Fourteen (One):

(Reads Clause 14(1))

Fifteen:

(Reads Clause 15)

Sixteen:

(Reads Clause 16)

Seventeen:

(Reads Clause 17)

Eighteen:

(Reads Clause 18)

Nineteen:

(Reads Clause 19)

Mrs. Watson?

Mrs. Watson: Mr. Chairman, maybe I could ask the Commissioner this question regarding the appointment of deputy heads. What is the cut-off dates? You are going to grandfather in the existing deputy heads. Now, when do you-- when deputy heads, after a certain time, will they be grandfathered in or will they come under this legislation, the five year appointment?

Mr. Chairman: Mr. Commissioner?

Mr. Commissioner: Mr. Chairman, I think the answer to that question as raised by the Honourable Member, is contained in the coming into force date, Section 218, on page 50. "This Ordinance or any portion thereof shall come into force on such day or days as may be fixed by the Commissioner", and everything prior to that date, Mr. Chairman, will be grandfathered, if that is the terminology that you wish to use, and from that date onward, that -- the particular aspect replied to here will be in effect.

Mr. Chairman: Mr. Chairman: Mr. Berger?

Mr. Berger: Yes, Mr. Chairman. I have a question to anybody, on Section 18, as the Ordinance reads right now "Except as otherwise provided by the Commissioner, in the absence of a Deputy Head, a Unit Head or any other employee designated by the Deputy Head has the powers and shall perform the duties of the Deputy Head". I'm just thinking if any road foreman or so, is absent for some reason or other, and he said to Joe, you're going to be in charge, as far as I am concerned this is no good.

I think it should be in there that this shall designate the employee in writing that he is in charge of this operation, of a department.

Mr. Legal Advisor: Mr. Chairman, they are talking about a deputy head here, not the duties of a road foreman. In that instance, it will be Mr. Baker is the deputy we assume he's the deputy head of that department. His duties, Mr. Baker's duties are what we are talking about, not the road foreman's down lower.

Mr. Berger: Mr. Chairman?

Mr. Chairman: Mr. Berger?

Mr. Berger: It does not say that, it says "or any other employee". It does not say deputy head.

Mr. Legal Advisor: "Shall perform the duties of the Deputy Head" is the rest of the sentence, Mr. Chair-

man.

Mr. Berger: No it does not say "shall", it says "designated by the deputy head", has the power and shall perform", but I think it should be designated. It shall be designated as being in charge of an operation.

Mr. Legal Advisor: Oh I'm sorry, I'm reading from the actual Ordinance, Mr. Chairman.

Mr. Berger: No, I was referring, Mr. Chairman, I was referring to the actual Ordinance.

Mr. McPhail: Perhaps I could answer the Honourable Member. With respect to delegation from a road foreman in the question you raised, that's a matter for internal policy within the department. In terms of the Ordinance before the members, we're talking about in the absence of a deputy head he may delegate down someone on his department to act in his absence.

Mr. Chairman: Mr. Berger?

Mr. Berger: Mr. Chairman, I understand the Ordinance, but it doesn't have to be on the road. It could be any place. It doesn't have to be necessarily on the road.

It says here, "any other employee". It could be Joe or Mary from any department, and they could be saying that you are going to be in charge, and I think it should be a uniform policy, not that each department come up with its own policy and say now I'm going to write a letter designating you as being in charge, and the other department says I'm not going to do this.

I feel this should be nailed down in the Ordinance, you shall do so.

Mr. Commissioner: Well, Mr. Chairman, with respect, there are practical limitations to what the Honourable Member is talking about, and while I don't personally disagree that in any kind of a well run job whoever's in charge, it should be known who is in charge, I don't dispute this at all. But I think that really the level of management that the Honourable Member is referring to is certainly one that can be dealt with as a matter of internal direction or internal policy, not something that should be getting dealt with in this Ordinance.

If indeed this is an area of omission that Honourable Members feel that we are guilty of at the present time, why certainly we are quite prepared to see what can be done to improve that error or omission, but I certainly don't think that trying to deal with it in this Ordinance is exactly the direct way of doing it, Mr. Chairman.

Mr. Chairman: Mr. Berger?

Mr. Berger: Just one more thing, Mr. Chairman. I think it's very important to nail this down right in this Ordinance, because a road foreman or any other person has the power to suspend somebody, and this could be the position of a person's job.

In the case of a casual employee, the road foreman

can fire the person right on the spot, and if he designates his authority without in writing to somebody, I could see possible complications arising out of this.

Hon. Mr. Whyard: Mr. Chairman, may I ask the Honourable Member then what his interpretation of the next Section would be?

Mr. Berger: It doesn't say that in here either.

I hate to bring this up with my own personal experience. I didn't want to bring this up, but I was put in the position as an acting foreman without it being in writing in the Territorial Government, and I had to go through the union because I got into trouble, and I had to get it nailed down through the union, that if I am going to be put in the position as an acting foreman, I want it in writing, so everybody's aware of this. Not that Joe, the foreman, comes around and says you're going to be the foreman, and then he disappears.

Hon. Mrs. Whyard: Mr. Chairman, with respect, I think -- I can see the point that the Honourable Member is making, it's a very good point, but I think the sections we're dealing with here deal with the absence of a deputy head only. Section 18 and 19, the deputy head only, in his absence, and I think the point that the Honourable Member is making certainly should be covered elsewhere, but I can't see how you can work it into this particular section of the Act.

Mr. Berger: Mr. Chairman, the thing is it does not say a unit head, "a deputy head, a unit head or any other employee", this is my point, any other employee.

Mr. Chairman: Sorry, Mr. Berger, I think the way you should have your break in your sentence, "except as otherwise provided by the Commissioner in the absence of a deputy head, a unit head or any other other employee designated by the deputy head has the powers", et cetera. That's the way it reads. With reference to the absence of a deputy head.

Mr. Berger: Thank you, Mr. Chairman.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: Well it's been taken care of, Mr. Chairman, thank you.

Mr. Chairman: Ms. Millard?

Ms. Millard: I hate to bring it up still, but I understood it right from the beginning, as I think the Member from Klondike did, was that any employee can be appointed to -- be designated by the deputy head to have the responsibilities of that deputy head, and that's what bothers me. Well that's what bothers me and that's what I understand bothers the member from Klondike, is that any employee can be designated to be a deputy head in the absence of the deputy head.

Why is that so? Why can it not be in the absence of a

deputy head, a unit head may take that -- why does it have to be --

Mr. Legal Advisor: In some departments, Mr. Chairman, the deputy head -- sorry, the assistant head of the department is not a unit head. For instance, in education, you have two unit heads, one for the city and one for the outside areas, but the Assistant Superintendent of Education is a unit head of nothing, he is just the assistant to the boss.

Ms. Millard: Mr. Chairman, for the protection of the employee, what if a principal of a school was appointed to be deputy head in the absence of the deputy head, and he has no real choice in practice, because he's asked to do it and if he turns it down, probably the next time he asks for a transfer or something, he won't get it, so he goes ahead and does that. But there is no protection for him as an employee designated by the deputy head to take over the deputy head's responsibilities. You know, he could be making all kinds of mistakes, and he will get the blame for that, not the deputy head who has appointed him into that position.

I really think it's too broad that "any other employee" is included in there, and I still would like to know why. It seems to me that there are plenty of people around other than any other employee.

Mr. Legal Advisor: Mr. Chairman, it wasn't intended to limit it in any way, it was intended to give flexibility, and I think Mr. Taylor made the point earlier that if the person who was appointed by the deputy head or anybody else to do the job, it's the act of the appointing person, and that appointing person carries the can for being so stupid as to appoint a ninny to act for him.

Mr. Chairman: At this point, we will declare a brief recess.

(RECESS)

Mr. Chairman: Part V, Classification of Positions.

Hon. Mrs. Whyard: Mr. Chairman, there's a member absent.

Mr. Chairman: Well we can only wait for so long.

Classification of Positions, twenty: (Reads Clause 20)

Twenty-one:

(Reads Clause 21)

Twenty-two:

(Reads Clause 22)

Twenty-three:

(Reads Clause 23)

Twenty-four:

(Reads Clause 24)

Twenty-five:

(Reads Clause 25)

Twenty-six:

(Reads Clause 26)

Twenty-seven (1):

(Reads Clause 27 (1))

(Reads Clause 27 (2))

Twenty-eight:

(Reads Clause 28)

Twenty-nine:

(Reads Clause 29)

Thirty:

(Reads Clause 30)

Thirty-one:

(Reads Clause 31)

Thirty-two:

(Reads Clause 32)

Thirty-three:

(Reads Clause 33)

Thirty-four:

(Reads Clause 34)

Ms. Millard?

Ms. Millard: I think the general contention that I have, and certainly the union has with this, is that most of these factors should be bargainable, and we have been informed previously by our Legal Advisor that this just doesn't happen because it's under the Public Service Staff Relations Ordinance.

Is there any intention in the administration to include this type of thing under the Public Service Staff Relations, and if not, why not?

Mr. Legal Advisor: No, Mr. Chairman.

Ms. Millard: Mr. Chairman, I did also ask why.

Mr. Chairman: Mr. Commissioner?

Mr. Commissioner: Mr. Chairman, we simply do not consider that it is appropriate that they should be in that particular category.

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: Mr. Chairman, there's one thing that I don't understand, is that two months ago we went through the exercise of passing a budget, and various departments, and my department in particular, were in the area of twelve million dollars. And we've hired an administrator to manage, a deputy head to manage that department, as best he can.

Now surely he should have some flexibility in regards to organizing the organization, the internal organization of that unit or department, whatever you like, You've got to have some flexibility.

Mr. Chairman: Mr. Berger?

Mr. Berger: Thank you, Mr. Chairman. Obviously the Honourable Member from Whitehorse Porter Creek has never heard of bargaining rights and bargaining units and so on. I can't understand this section at all, because to me it's obvious, without even receiving this brief from the Alliance, it completely disregards the proper relationship between the employee and the employer.

I think if you want to have a good relationship between the employee and the employers.

I think if you want to have a good relationship in your work force, I think you should, and you shall foster all possible ways and means of getting along with the employee. I have to use an example which happened in Europe, and it seemed to be to the amazement of a lot of Canadians and North Americans, that in Germany and Austria, we have very few strikes. The labour relations with management are very good.

Well, over there, they found the solution to the problem. Management found out that they can't get along without labour, and labour found out they can't get along without management, and here we are going backwards again. Here we say you're labour, we are going to dictate to you what you are going to have, and what you can receive. We are going to go into bargaining with you, we are going to bargain for certain classifications and a certain standard of wages, and then two days later, the Public Service Commissioner has the right to turn around and cancel this, according to this Ordinance.

I think this is completely against any proper labour standards and labour relations, and I would suggest to whoever drafted this up, should take a course in labour relations.

Mr. Chairman: Mr. Lang?

5Hon. Mr. Lang: Mr. Chairman, if you read on in the Bill itself, we have an Appeal Board for classification, which is just being introduced to the public service. If

one doesn't like the interpretation put down by the Public Service Commission, that appeal is there.

I think we have to remember once again, to go back to what the Commissioner said. This is for the government in totality, not just strictly a bargaining agent or whatever. It's for government in totality.

Mr. Legal Advisor: Mr. Chairman, the Honourable Member is making the point that something is not bargainable. This particular section deals with the description of the duties of each position within a class. They are set down in general terms, but it's impossible to delineate every single type of letter a person may post and every single duty he may occupy during the day.

There is a description for the class, and if a person is given duties which are outside that description, then it becomes a matter for bargaining and for pay purposes, and all of the amount of remuneration and the terms and conditions of the job, they are bargainable, and they are established in the contract. What is not bargainable, in accordance with these, is whether or not he does the particular thing. In other words, he does the job and afterwards he has the right to bargain. He can ask for a revision of his position, in other words, he can be moved from say a social worker 2 to a social worker 3 if he's doing a higher level of work.

If he's not satisfied with the review, for the first time in this Ordinance, in the sections that have yet to come, he would have the power to appeal to an independent person and he either wins or loses that appeal, and it's harsh to say it's not bargainable, when in fact the money and remuneration is bargainable, and he has the right to appeal on the other factors.

Mr. Chairman: Ms. Millard.

Ms. Millard: Well that brings up the question that I had in section 26. If a person is classified in a certain area and they're given a definition of their duties. It says here that they can be, that the statement of the duties does not affect the power or duties of the employee, in other words the whole section is pointless. You're saying we're going to write it down but we don't really have to pay any attention to it.

You're also saying that the person can grieve that. Well the Appeal Board will certainly go back to the Ordinance and take a look and say, will it can be done.

Mr. Legal Advisor: With respect, Mr. Chairman that section is taken slightly out of its context. What that is talking about is other ordinances, not this Ordinance. For instance there maybe a person who's a Clerk III in the Legal Department. His working title is Clerk of the Magistrates's Court, or Deputy Clerk of the Magistrates's Court. Now that's what we mean by that section. It doesn't affect his powers to certify a judgment or to receive money on behalf of the Court or to do certain statutory things. They are taken out of this Ordinance and that's what that section is intended to mean. It's not intended to refer to the bargaining or anything else.

Mr. Chairman: Ms. Millard.

Ms. Millard: Mr. Chairman, with respect the section goes on further to say that any statement of duties is not affected, the statement does not affect the authority of the Deputy Head to control and direct the work of an employee, which I read as being it doesn't really matter what the statement of duties says, which has been part of the basis on which the bargaining unit is directing its negotiations. It doesn't matter what that statement says because the Deputy Head can still go ahead and control and dictate to that person without any recognition of the state duties.

Mr. Legal Advisor: And direct him but he can't control him but the employee then under Section 35 can request a review of the position and if he's doing higher duties he gets more money.

Mr. Chairman: Mrs. Watson.

Mrs. Watson: Mr. Chairman, in the drafting in Section 23, 24 and 25, 23 you're saying the Public Service Commissioner. 24 and 25 you're saying the Commission. Is there a reason why there's the difference in the three sections?

Mr. Legal Advisor: Yes, Mr. Chairman.

Mr. McPhail: Mr. Chairman the reason is that generally speaking the Commission would employ classification officers who would make recommendations. And vested in the power of the Public Service Commissioner his authority only to create, divide or amend or abolish classes. At the present moment the authority is vested with the Commissioner of the Territory.

Mrs. Watson: 24 and 25 actually relate to a classification officer, officers within the Commission and the ultimate authority is in 23.

Mr. McPhail: That's correct.

Mr. Chairman: Mr. Commissioner.

Mr. Commissioner: Mr. Chairman, just as a matter of interest. When I came into this job in 1966, we didn't even have a classification system in the Government of the Yukon Territory. It was introduced around about 1967 or 1968 and collective bargaining was introduced as a consequence of the concurrence of the Council of the day, around about 1970, '71 and here we are now in 1976, we're introducing here a classification appeal system. I think that Honourable Members should be quite happy and satisfied with the evolution of this particular aspect of our relations with our employees. It is not entirely a negative situation.

Mr. Chairman: Right to Classification Review, 35.

(Reads Clause 35)

Mr. Chairman: Thirty-six.

R(Reads Clause 37)

Mr. Chairman: Thirty-eight.

(Reads Clause 38)

Mr. Chairman: Thirty-nine.

(Reads Clause 39)

Mr. Chairman: Mr. Fleming.

Mr. Fliming: Mr. Chiarman, I would like a little clarification on 38. The review within six months a further classification. Now do they mean a furher clas-sification after 35 and 36 or is that with 35 and 36, why the six months?

Mr. Legal Advisor: Mr. Chairman, so that there won't be a series of reviews in relation to the same thing without a substantial change, because of there is a sub-stantial change then that wouldn't apply.

And of course a further appeal coming on as opposed to that so it could be a review, possibly an appeal, and then you want to block off a second review starting of a second appeal.

Mr. Chairman: Ms. Millard.

Ms. Millard: Mr. Chairman, I'm just wondering how necessary that restriction is because I can see it hap-pening more often that there may be an necessity for another review within six months, rather than putting a restriction on which just makes it more cumbersome.

Mr. McPhail: I'm not sure I understood the question, Mr. Chairman, but if an employee requests a review of their classification, then a Commission classification officer would go out and conduct an audit, come back, review the position in relationship to other positions, come froth with a classification recommendation, and let's assume that he his recommendation was no change, that would go back to the employeee. The emp-loyee then under the terms of this Ordinance would have the right ot appeal that classification decision to an independent chairman. So suddenly the employee has an opportunity for a further review but not by the Com-mission. And that's something that has not been avail-able before. The reason we put in six months is because we gave the employee a second avenue. If the employee's very serious and feels that the Commissions decision is incorrect, they do have a right to appeal that decision to an independent chairman. So in all likelihood they get a second review in a matter of a couple months with a retroactive protective date.

Mr. Chairman: Ms. Millard?

Ms. Millard: So the further application is with the

same class involvement?

Mr. McPhail: Yes, that's right, same complaint.

Ms. Millard: Same complaint.

Mr. McPhail: In other words -- okay.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: Thank you, Mr. Chairman. I noticed my notes with regard to Section 39, I put in within 10 days, and I read the Y.T.P.S. brief and they also suggest that. Would there be any objection to that kind of an inclusion?

Mr. Legal Advisor: There's no objection to a notifica-tion hearing.

Mr. Lengerke: Good.

Mr. Legal Advisor: What happens in practice, as of course the administration would know, is that it's in-stantaneous notification to the employee in practice, he's waiting at the door to hear the result. But I don't think there would be an objection to putting in a time limit.

Mr. Chairman: Right to Classification Appeal. Forty: (Reads Clause 40)

Forty-one:

(Reads Clause 41)

Forty-two:

(Reads Clause 42)

Forty-three:

(Reads Clause 43)

Forty-four:

(Reads Clause 44 (1))

Forty-five (1):

(Reads Clause 45 (1))

Forty-six (1):

(Reads Clause 46 (1))

Forty-seven (1):

(Reads Clause 47 (1))

Forty-eight (1):

(Reads Clause 48 (1))

Forty-nine (1):

(Reads Clause 49 (1))

Fifty (1):

(Reads Clause 50 (1))

Fifty-one:

(Reads Clause 51)

Fifty-two:

(Reads Clause 52)

Fifty-three (1):

(Reads Clause 53 (1))

Mr. Chairman: Mr. McCall?

Mr. McCall: Can I go back to Section 51 for a second here? Informal procedure.

When I read this a number of times in the past, I'm a little concerned. I'm under the impression that this is in conflict with Federal code concerning arbitration procedure, and I would like some clarification, if I may, on this particular piece of language.

Mr. Chairman: What section are you referring to?

Mr. McCall: The federal code concerning arbitration procedure.

Mr. Legal Advisor: Mr. Chairman, it's not intended to be bound by the Arbitration Ordinance of the Territory, or by the Federal Arbitration Code dealing with labour matters. It's intended to be a specific board of inquiry with its own informal procedure, so that the person who is the chairman, will have the capacity to visit other offices to see what other people are doing across the board, to call for any document, not only in the department that he's auditing or checking on, but on any other department.

But he must act fair and impartially so that all the material he compiles must be shown to the other side, and they must be given a chance to comment on it. So this is the intention, so that he can do this and not be bound by the formalities of a decision of court and have both sides come to him with material. He can go out and inquire, this is the intention.

Mr. Chairman: Mr. McCall?

Mr. McCall: Mr. Chairman, that's not what it implies here. This is why I am saying I feel, I suspect there is a conflict here as to the federal code concerning arbitration or any other type of inquiry and procedure.

Mr. Legal Advisor: There may be a conflict in the

sense that this may be drafted differently from the powers that are given to an arbitrator appointed under the federal code, but that's intentional, not accidental, and we're not bound by that procedure. We set up our own procedure.

Mr. Chairman: Mr. McCall?

Mr. McCall: Well, Mr. Chairman, with the intentional concept as the Legal Advisor is implying, I'm hoping that we're not going to accept a Kangaroo Court system.

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, I would like to know if the administration has given any consideration to calling the Yukon Public Service Staff Relations Board also a classified appeal board, and why this was not done. It seems to me there's a duplication of many boards.

Mr. Legal Advisor: Mr. Chairman, with respect, this is a new deal. We are setting up a new system to deal with this particular technical matter, and it's rather like an auditor looking at a book. Jobs are audited, jobs are compared, to see whether the person saying I should be given a higher classification is justified in that or not.

There may have to be comparisons here or the Commissioner may -- we would expect the Commissioner would be a technical official appointed from outside this jurisdiction, and he would have the capacity to compare with other jurisdictions and everything else in order to arrive at a fair decision. He's an independent person.

He will not be sitting normally all the time in a court with people making a presentation to him on one side that the person should go and the other side presenting something that says he should go down. He's really investigating a matter and giving a decision, and he's bound by the rules of fairness, and he can in fact, notwithstanding this, no council has succeeded to my knowledge, of ever keeping the high court's nose out of the business of arbitration, adjudication or investigation.

While this appears to be water tight, it is anything but, and the high court will hit him with an arbitration -- sorry, a Certiorari Writ if he offends against the rules of natural justice and fair play, but this is an attempt to be informal, as best we can, but it's getting tougher to draft these sections.

Ms. Millard: Mr. Chairman, I think Mr. Legal Advisor went back to the other question that was asked. He didn't answer mine, which was, has there been any consideration given to putting this classification appeal under the Public Service Staff Relations Ordinance in other words, under the Staff Relations Board?

Mr. Legal Advisor: Yes, it was considered Mr. Chairman, and rejected.

Ms. Millard: Mr. Chairman, could we have some indication why?

Mr. Legal Advisor: Because the government did not feel that the machinery and the mechanism of the Public Service Staff Relations Board, as at presently constituted, was able to handle the technical field that we would be having, or would be speedy enough to deal with the matter. It requires, as chairman, it would have to be a highly qualified and experienced technical officer, not a lawyer. And the normal persons appointed to hear disputes between parties on a grievance matter or an interpretation of an Ordinance or any such thing is always a lawyer and the government felt that a lawyer was not the person to hear these kinds of matters. It should be a technician.

Mr. Chairman: Mr. McCall.

Mr. McCall: I'll reserve my question until we get to Section 54.

Mr. Chairman: Right, Ms. Millard.

Ms. Millard: Yes, since we're going back over what we've read, page 12, Section 46, is there any consideration given to extending the number of working days after receipt of the classification decision that it should be delivered to the Public Service Commission? Section 46.

Mr. Commissioner: Mr. Chairman, Section 47 does that notwithstanding Section 46, the time for appeal maybe extended by the Public Service Commissioner where he is satisfied the employee was not made aware of the decision.

Ms. Millard: Yes, I'm thinking in terms of other conditions, not only where the employee was not made aware of the decision, but simply a longer period than fifteen days. Perhaps thirty.

Mr. Legal Advisor: Mr. Chairman fifteen days, is fifteen working days, which is in effect

Ms. Millard: Three weeks.

Mr. Legal Advisor: Three weeks, so three weeks is a long time when a person is awaiting results and can pick it up and hurry it on.

Mrs. Millard: Except when you're living in Dawson City and the mail plane isn't landing or something like that. There are a lot of complications or in Old Crow where sometimes there isn't a plan for 2 or 3 weeks.

Mr. Chairman: With respect that's covered by Section 47, I think.

Ms. Millard: Yes.

Mr. Chairman: Fifty-four.

(Reads Clause 54)

Mr. Chairman: Fifty-five.

(Reads Clause 55)

Mr. Chairman: Fifty-six (1)

(Reads Clause 56 (1))

Mr. Chairman: Fifty-seven (1)

(Reads Clause 57 (1)

Mr. Chairman: Fifty-eight (1)

(Reads Clause 58 (1))

Mr. Chairman: Fifty-nine (1)

(Reads Clause 59 (1))

Mr. Chairman: Sixty (1)

(Reads Clause 60 (1))

Mr. Chairman: Sixty-one (1)

(Reads Clause 61 (1))

Mr. Chairman: Sixty-two.

(Reads Clause 62((

Mr. Chairman: Mr. McCall.

Mr. McCall: Yes, Mr. Chairman, my first question is in reference to Section number 54. I would suggest that this particular section is not really necessary. I think that from this point on, we get off the rails as to the intent of this particular bill. Go down to Section 60 to Section 62. What is being suggested in the Bill is that there is only token involvement of representatives of the main body of people that work for the Yukon Government. I'm a little concerned and I would like some clarifications on these last three sections, that is 60, 61 and 62. Why just advisors? Why not part of the Board?

Mr. Legal Advisor: Mr. Chairman the matter was thrashed out at great length within the government and the eventual decision come to was that it is better to have one technically qualified person available to do it. But as a safeguard to have him forced, if the bargaining agent want it that way, forced to have an advisor who would put in any special grounds or any technical expertise that he may have. Then you're forced then if you allow the bargaining agent to have an advisor, you're forced to balance it out with a third person. So in effect you're making it a one man decision however way you go, and rather than have split decisions with a minority decision, decision was taken to one final decision. One point of interest is there is a preselection procedure enjoined on the board, that is when a person appeals to

this particular board, they name the class they want to be put to and they either achieve that result or they don't. But they don't achieve any mixed result whereby the decision maker would cast around throughout the Civil Service for a nice convenient slot into which to put it. And in effect then supposing a person was appealing from a I position to a II position that the adjudicator would not be able to say, well it's not really a two it's a one A and then look around the different departments and find some parallel, it's either a win or lose decision.

Mr. Chairman: Mr. McCall.

Mr. McCall: Mr. Chairman, as I pointed out before under Section 51, if you do not have a proper procedure to follow, there is no procedure. So your advisors are thrown through a window like everything else. And if the ruling is brought down where you don't need advisors in certain cases, you haven't got any procedure. And I say you're giving off the tracks in your suggestive language from Section 51 down to 55, up through Section 60, you have no procedure according to your suggested language here. So you're mentioning procedure now as to the intent, there's no such procedure.

I would suggest that you follow and study the statutes in the Federal code, if not you're going to be in court anyway.

Mr. Legal Advisor: Mr. Chairman, there's no way of avoiding the Court. All of these things end up in a Court at some point of time, but the thing is to try and put it off as far as possible to let the system get working before we get to the stage of being in the Court and to give it a fair trial. This is admittedly trial and we're trying to make it work and we don't want to be formal, at least in these early stages. There may come a time in a year or two years time when we want more detailed procedure and more protection for one side or the other. But in the initial stages I think that if we give them a loose procedure, but put in safeguards that they must be fair, they must be impartial, they must give sight of the document to each of the advisors and they must consult with the advisors before giving a decision. I think then we've got protection enough to carry on with at least for a year or two and if we fail, then we failed with a good try.

Mr. McCall: Mr. Chairman, I will differ with the Legal Advisor on this point, because if we are about to adopt a Bill of such importance I can't accept the point and the principle that it should be allowed to be flexible to the point it could be uncontrollable.

I'm a little concerned about this particular language, as I have suggested, because if we are going to get off the rails now, passing this Bill, with this type of language which is going to be enacted, we're in some very serious problems at a later date somewhere down the tube and I don't want to see that because this is too important a Bill for us to allow so much flexibility and inconsiderations when you're dealing with people's lives, especially working lives.

Hon. Mr. Lang: Mr. Chairman?

Mr. Chairman: Mr. Lang?

Hon. Mr. Lang: Well, I disagree with the Honourable Member. I'm not a lawyer but it definitely shows that the government was taking the employee's position in good stead. He's asked for a classification, he's been turned down by one area, so he has a recourse to go to ask for another reclassification.

I don't understand what you're getting at. My understanding is this type of process is used in most of the provincial jurisdictions across Canada. The courts must be full of them.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, could I suggest that we read the next three sections because they do throw a little more light on this?

Mr. Chairman: Sixty-three (One):

(Reads Clause 63(1))

Just a minute, Mr. ---, I'll finish reading this.

Mr. McCall: I'm sorry.

Mr. Chairman: Sixty-four (One):

(Reads Clause 64(1))

(Reads Clause 64(2))

Sixty-five (One)

(Reads Clause 65(1))

Mr. McCall?

Mr. McCall: Yes, Mr. Chairman. As I said a moment ago, the Honourable Minister for Health and Welfare should let us get on with the language. In Section 63(1) it states, as you have just pointed out, read out, "in order that sittings of the Board may conveniently dispose, where appropriate", we're getting back to no procedure. Read your language.

Mr. Legal Advisor: Mr. Chairman, the intent of the language in that section is that there will be -- assuming we have a group of people, we will have a person come to hear the appeals, and he can aggregate them all together, say in the second week of October, or if he's a fisherman he can do it in the second half of June, and he can do the appeals and he can do his fishing at the same time. But at least it will reduce the expense to the Territory of a visit every week or two weeks. He might have six appeals; he can do them all in a period of two weeks. This is the intention, but the safeguard to the employee is, if they are-- all the appeals are heard during the

fishing season; then any employee who wins his appeal would get retroactive pay back to the date when he put in his Notice of Appeal, notwithstanding the delay, and that appeared to me to be reasonably fair.

Mr. Chairman: Mr. McCall?

Mr. McCall: Mr. Chairman, if the intent is as the Legal Advisor states, I have never seen anything like it in all my life as far as loose language.

Mr. Chairman: Perhaps you have other vocations besides fishing, Mr. McCall?

Mr. McCall: Yes, I work, Mr. Chairman.

Hon. Mr. Lang: A simple question again, Mr. Chairman.

Mr. Chairman: I said avocations.

Mr. Lengerke: With respect to 64(1), I was just wondering why the retroactive pay wouldn't commence with the day it was proven the fellow was doing that particular job?

Mr. Legal Advisor: Mr. Chairman, I thought that might be asked. That's a hard one to explain, or it's even a hard one to defend, but -- and when we were doing it first, our temptation was, quite candidly, to put it back to the time when the duties changed. It then became clear that a change in duties for a large number of positions is not a swift change. It consists of giving a small extra piece of duty or a second small extra piece of duty or a transfer from one particular desk to a second desk, accompanied by half their former work plus a new piece of work, and so on.

So our experience was that outside, where this system is currently in operation, it's a very difficult thing, accompanied by a lot of evidence as to when was the point of time when this happened. Rather like saying a man is bald when he has a certain number of hairs; has he got hair when he has one more hair or something? So it's a hard thing to define.

Mr. Chairman: Or when some of it is curly perhaps. Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, could I ask for clarification on Section 65(1) where we are excluding certain confidential and management personnel from sections of this appeal procedure? They would not, for example, have an advisor named from the bargaining because they are not members, right.

What I want to ask is, if they were members of a professional organization, would it be suitable for them to ask to have a member of that organization appear at this appeal board?

Mr. Legal Advisor: It's not a question of suitability, Mr. Chairman. The bargaining unit has the exclusive

right to the privileges of bargaining and they are reserved under this Ordinance to the bargaining unit. It would be inappropriate for any other organization, under cover of being a professional organization, to come in because the person is not a member of the bargaining unit, therefore he has to go it alone.

Mr. Chairman: I would like to ask the Commissioner or Mr. McPhail, again regarding the problem Mr. Lengerke brought up regarding retroactivity, would it not be appropriate that the retroactivity would go back to the time when a most recent change was made in that job?

Mr. McPhail: Mr. Chairman, if -- perhaps I can take an example. If an employee requested that their position be reviewed and then we asked the employee to update their own position description, have the department check it over to make sure that in fact the duties the employee says that he or she is performing are in fact the duties, that may take several weeks.

Then the request comes in to us formally with an updated position description; we would send out, technically the Commission would send out, a classification officer. They would audit the position with the employee and then, with the employee's supervisor, come back; and, for the sake of argument, let's assume that the employee requested that her position be classified from a clerk typist 2 to a clerk typist 3 and the Commission said no change. All right. At that point in time, the employee has 15 days from the date that the deputy head I think he had ten days, we're suggesting to give her the notice of classification decision to appeal to the Public Service Commissioner, attention Chairman of the Classification Appeal Board.

Now, let's just assume that, for the sake of argument, that the Commission said we agree and the position was reclassified to a clerk typist 3. As I read the procedure, we still have given the employee to appeal it to a higher class, if they so name the class. And to answer -- that's just to indicate that the employee still can appeal even if they get a favourable decision.

But when we audit the position with the employee, what could occur is that the employee has updated the position description. We sit down with the employee and, without a doubt, she's doing some additional functions. Some of the functions she's not performing yet; they've been assigned and she's quite candid and she says frankly they have been delegated down, I'm aware of them but I have not performed them yet as I have not had an opportunity. This particular phase of my work does not occur for another four months.

So you can run into a situation where the employee, through a job audit, just is not performing all the functions of the job and at the point in time that she feels that she is, then she will re-request a classification. It's very difficult for a Chairman, during an audit of an employee during a hearing, to figure out precisely when the employee is performing those duties.

Mr. Chairman: It's not when the person was doing

those duties; it was when they were expected to perform the duties?

Mr. McPhail: They're only expected, Mr. Chairman, when they're assigned, but you can -- that's right, but you can assign a block of work to an employee in different phases, if you follow -- it will take the employee perhaps six months to complete all those on an ongoing basis and only at that point in time is the employee performing sufficient additional duties to recommend a reclassification to a higher class level.

Mr. Chairman: That's exactly what we are saying.

Mr. McPhail: Yes, but that's -- at that point in time she requests a classification review and if she's correct then the decision is made at that point in time.

Mr. Lengerke: Mr. Chairman, I need a little further clarification there, because the witness says six weeks or six months down the road they are going to be doing additional duties. You know, why would there even be a Notice of Appeal at this point in time then, if in fact that person wasn't doing those duties?

Mr. McPhail: Because the employee has the right to submit a classification request on their own. The employee may feel, even if the Department doesn't back up the employee.

See, the employee has the right to submit an appeal, notwithstanding what the Department has assigned, and the Department might freely admit that they have assigned the work. There's no dispute about that, but frankly the employee hasn't been in a position a sufficient length of time to perform all those duties and, during a job audit, that will become very apparent.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: No, Mr. Chairman, that's fine. I'll probably raise that point again. I've been involved in that kind of a thing and I know it's a very touchy subject but I would still like to go back to the time that we can prove the person was doing the job.

Mr. McPhail: If I may add, Mr. Chairman, technically speaking, the employer pays for work performed, not "will do" factors or maybe the employee will perform this or maybe the employee will not perform that. When you do a job audit, since you are comparing them from position to position, you have to substantiate in any classification hearing that the employee in fact performs those functions. Because the Chairman is going to say, did the employee do this, this, this and this, and they will be asking the employee.

Then they will ask the Commission, if that's the case then why is your decision this or why is your decision that?

Mr. Chairman: Mr. McCall?

Mr. McCall: I see no logic in that explanation, but anyway, 64(1), Mr. Chairman; there's an insertion of language here which I find rather amusing. We go down as far as where it states, "...any remuneration payable to him shall, so far as may be, be paid retroactively from the date of the delivery of the notice of appeal..." Actually, those four words, "so far as may be", I don't know what they are there for, but it looks effective enough, but it is completely irrelevant.

Mr. Legal Advisor: It's a very important word, Mr. Chairman. What you do use to make a calculation -- he was working for, say, a month at a certain range of salary. There may be overtimes and various other things, in and out, sick leave and what-have-you. So you can't say he will be paid exactly something; he will just be paid in a similar manner to, as you will calculate using what he did do.

It's a very handy little phrase.

Hon. Mrs. Whyard: You're sorry you asked.

Mr. McCall: This is utterly ridiculous. As far as I'm concerned, that language is not necessary. I write contracts and legal language myself. I'm not a lawyer, but if that was presented to me I would tell the individual where to go because the point is this, that it's completely dead language and it looks to me like somebody is trying to fill a sentence by trying to condense as many words as possible in a sentence for it to look good.

That is not really necessary, that language.

Mr. Chairman: Mrs. Whyard?

Hon. Mrs. Whyard: Mr. Chairman, before we leave the section on classification, I know it's appeals and I may be a little behind here, but there is -- there could be confusion arise sometime down the line, as my friends on the right are always saying. In the Corrections Branch we refer to classification officers. Now, they are not classification officers in this context and classification of departing residents from Whitehorse Correctional Institute has nothing to do with this. Incoming or outgoing. Maybe I'm the only one that will ever be confused by these words and they would never be applied under the terms of this Commission, but to an outsider classification officer means one thing in this context and another thing in Corrections.

I suppose I have the assurance that everyone here is never going to be confused in this matter?

Mr. Legal Advisor: Depends whether you've got an insider or an outsider, Mr. Chairman.

Mr. McCall: Here we are, we're confused already. The Minister has given an interpretation other than what the government has given us.

Hon. Mrs. Whyard: I just made that point, Mr. Chairman.

Mr. Chairman: I don't think you did, Mrs. Whyard. Ms. Millard?

Ms. Millard: Before we leave this section, I'd like to go back to page 12 and 12, Section 51. The classification appeal board shall consider the appeal and shall have the right to interview either of the parties or any officer having knowledge of the duties of the position which is the subject of the appeal. I'm wondering whether it was considered that perhaps this interview should take place with both parties present.

Mr. Legal Advisor: Mr. Chairman, it was put in deliberately to allow the chairman to go not only to the department in question but for comparison purposes to other places. To examine a factual situation. If he decides that special knowledge -- if something happens that requires the other people to be there, well, then, they will be there. It wouldn't be in the form of a hearing. It's an inquiry he makes to find out what happened.

Mr. Chairman: Ms. Millard?

Ms. Millard: Mr. Chairman, I would just like to say that I feel both parties certainly should have knowledge of exactly what's going on to conclude the decision that the Appeal Board is going to make.

Mr. Legal Advisor: They will have knowledge of it, Mr. Chairman, but they won't necessarily be there.

Ms. Millard: So that all the material coming from the Appeal Board will be available to all parties?

Mr. Legal Advisor: It will be available to the advisors in documentary form. They would be told what the decision is and they'd have the opportunity of making representations. In a normal, any form of a normal, hearing or representation the person to whom you're speaking will put the opposite side to you and allow you to make a case. It's intended to be a fair chance for the employees to effect an appeal. And the odds are most employees win their appeals because they would be perfectly satisfied with the review given by the Commissioner in the first place.

Mr. Chairman: Mr. McPhail, I still have a problem with your definition of what classification of an employee. My understanding would be that you hire a person because they have qualifications to fulfil a certain job and therefore they are paid on that basis; because they don't do all those things, are they paid less?

Mr. McPhail: No, but if the supervisor, Mr. Chairman, assigns them additional duties. Let's assume they hire a clerk typist 2 but he continually as a secretary stays with a particular individual, he eventually hands over a little more responsibility; with a little more responsibility she becomes knowledgeable in his operation; she becomes knowledgeable about the operation of his office, of any particular legislation he's dealing

with, or regulation. So she, through her own ability, learns more and more on the job and because of her own ability he assigns more tasks. At some point in time, he's suddenly going to say to himself, I feel that my secretary is entitled to be classified as a clerk typist 3 because she's doing additional work. At that point in time, we will prepare a position description and send it in and ask for a review.

Mr. Chairman: Then I would suggest at this point in time that she was assigned those particular duties is the time that she should be so classified and not the time that the appeal was made.

Mr. Lengerke?

Mr. Lengerke: Mr. Chairman, isn't there a difference there? That is a decision by the supervisor, that's not an appeal by the employee.

Mr. McPhail: No, but in that case, if the supervisor updated the employee's position description and sent it in, a classification decision would be made either she should be a clerk typist 3 and if so we would use the date that position description was received in our office for additional remuneration. If the answer from the Commission was no change, 15 days from that date, Mr. Chairman, would be the retroactive date if she appealed.

Mr. Chairman: Mr. McCall?

Mr. McCall: Yes, Mr. Chairman, I'm curious as to what Mr. McPhail is saying. Am I led to assume that you have this sort of right now under the contract of obligations the government has with the union, that you can just up and change a job classification even though it's recognized as one job? You can move it up into another job without anything, only appeal?

Mr. McPhail: No, the departments alone can recommend that a position be re-classified, Mr. McCall. Departments can recommend that a position be allocated to a different class of employment, from a clerk typist 2, to a clerk 3, to a clerk 1, to a clerk 2, from an engineer aid to an engineering inspector, but they do so based on the work that they've assigned to the employee. What you're saying to the Commission is, "because we've assigned these responsibilities where the employee is now carrying out these additional responsibilities, we feel that position should be allocated to a different class of employment which frankly is paid more".

Mr. Chairman: One moment please. If you have -- but Mr. McPhail, if you have -- Order please. Mr. McPhail, if you have added qualifications to the point where the employee feels they should be re-classified and at that point in time makes that application and then 15 days later makes the appeal, do you feel that is won by that employee, they have been performing those duties at that point in time, that they were assigned those new duties. But they are not re-classified or repaid from that

time. It is only at the time that the appeal was made. And that process that has gone on, I'm led to believe by employees of the Territorial Government, has gone on for several years although this will be corrected by this Ordinance, it has gone on for years. And their re-classification system to get them re-classified.

Mr. McPhail: If the employee, Mr. Chairman, decides that they feel their position should be reclassified, as you know, they can put in a request but before they put it in obviously we would send it to the department to ensure that the duties the employee says they are doing are in fact correct.

Do you follow what I am saying? I might say in rare cases the department may disagree, but let's assume they didn't; then the date that we receive the updated position description that the employee says they are doing, if our audit substantiates that additional responsibilities to be correct and that position can fit into a different class, then that date is the correct date.

If we say no, all right, that we don't feel the position should be updated to a different class, then on that date their position remains the same. The employee then has the option to appeal our decision in 15 days and under the example you used you're correct, 15 days later, if you won the appeal, there would be a gap of 15 days.

Mr. Chairman: Mr. McPhail, I think the gap goes considerably longer than 15 days as has been the practice in the past and this is my concern about it. We have a set-up and a timetable here that has not been followed in the past and the employee might suffer for a protracted period with the appeal system.

Mr. McPhail: I'm afraid I disagree, Mr. Chairman. When the position comes in, that's the date. Usually the department recommends a date for us that they would like to see the position reclassified.

The only time that that may not occur is when the Commission itself is requested by a department, let's say, to look at all clerk typists; that may take four or five months for the Commission to do because they have to go to 14 departments. But generally speaking, on a single position coming into the Commission, the position description indicates the date that the assigned duties have been updated, and we usually discuss it with the department and our policy has been to use the middle of the month, just prior to the 15th or after the 15th.

Mr. Chairman: Well, I'm reassured to hear it from you, Mr. McPhail, but the practice seemed to be otherwise in the past.

Ms. Millard?

Ms. Millard: Mr. Chairman, I'm pretty confused about reclassifying the position or reclassifying the person. So far all I've heard is that if the position requires more duties then the position is reclassified. What about if the person obtains better education, better qualifications, than the position that he's in, will that person be also reclassified, or can he be?

Mr. McPhail: Mr. Chairman, --

Ms. Millard: The question is can he be and is there any procedure for appeal in that case?

Mr. Chairman: Mr. McPhail?

Mr. McPhail: Employees occupy positions and we classify positions. If the employee is in that position, the employee gets additional remuneration, Mr. Chairman, but we deal not -- we deal on positions, not on individuals, Mr. Chairman.

Mr. Chairman: Clear? Ms. Millard?

Ms. Millard: I'm also curious about copies of the proceedings that take place under the Classification Appeal Board. Is there any restriction in general of restrictions to obtaining copies of the proceedings after the appeal in any other legislation, or has it been considered that it might be included in here that the copies of the proceedings be available to all members after the appeal and after the decision, in case it does go to further arbitration by the court?

Mr. Legal Advisor: I'm not sure; you see, it's going to be very difficult to get a court from this particular board and I'm not sure what documents we're talking about. There would be bundles of comparison documents and what have you, and there will be chairman's notes and what have you, but I don't know what -- there will be no transcripts.

Ms. Millard: In certain cases, I would feel there must be transcripts made of appeals to the board.

Mr. Legal Advisor: No, Mr. Chairman. If somebody asked me after this Ordinance had been passed, should be supply a shorthand typist to take a transcript of the proceedings of a classification board, I would automatically say no, heaven forbid. It's not intended to make it a court proceeding; it's intended that this man will come from wherever he comes from and do his job, and that is, act as an appeal board and listen to everybody, read all the documents, make a decision and go home.

That's what the intention is.

Ms. Millard: So, Mr. Chairman, I can assume that since there will be no record further appeals to an adjudicator or to a judgment, they will have no consideration of what went previously? It would start all over again.

Mr. Legal Advisor: I don't want to repeat the same answer, Mr. Chairman.

Mr. Chairman: Part VI, Pay and Allowances. Sixty-six (One):

(Reads Clause 66(1))

Sixty-seven (One):

(Reads Clause 67(1))

Sixty-eight:

(Reads Clause 68)

Mr. McCall?

Mr. McCall: Mr. Chairman, I would like to get a clarification on subsection (b). In making a similar comparison, are you talking about private industry, or another government agency?

Mr. Legal Advisor: It seems to me to be a comparison for everything, Mr. Chairman.

Mr. McCall: Mr. Chairman, that's not what it says. I would further ask for clarification on that point, for that reason.

Mr. Legal Advisor: Mr. Chairman, for a similar occupation or employment, however employed. There will be some occupations which will only be public service occupations, and there will be some occupations which will be both in private industry and in government, but he's making a comparison.

Mr. McCall: Mr. Chairman, I'm not satisfied with the answer.

Mr. Chairman: Sixty-nine:

(Reads Clause 69)

Seventy:

(Reads Clause 70)

Seventy-one:

(Reads Clause 71)

Seventy-two:

(Reads Clause 72)

Seventy-three:

(Reads Clause 73)

Seventy-four:

(Reads Clause 74)

Seventy-five:

(Reads Clause 75)

Seventy-six:

(Reads Clause 76)

Seventy-seven:

(Reads Clause 77)

Seventy-eight:

(Reads Clause 78)

Mr. Berger?

Mr. Berger: Mr. Chairman, just a question of clarification. I presume that Section 68 to 78 belongs to, perhaps to some extra-ordinary employees. I was thinking of maybe the managerial level or casual employees, because there's nothing mentioned about the collective agreement in there.

Mr. Legal Advisor: It applies across the board.

Mr. Berger: Mr. Chairman, I beg your pardon then, because in 73 it says "... where an employee is required to perform for a temporary period, the duties of a higher position than the one held by him, the Public Service Commissioner may, in accordance with the regulations, authorize the payment ...". Isn't this tied down with the collective agreement, and the Public Service Commissioner shall pay this?

Mr. McPhail: Collective agreement also covers acting pay, Mr. Chairman, and that would apply, but there are employees outside of the bargaining unit, for example, confidential secretaries and managerial employees, who also are entitled to receive acting pay and in accordance with the regulations under this Ordinance, they would get acting pay.

Mr. Berger: Well Mr. Chairman, I think we require another section for the people in the bargaining unit.

Mr. McPhail: That's covered, Mr. Chairman, under the Yukon Public Service Staff Relations Ordinance. They have the right of bargain for that and they have, Mr. Chairman.

Mr. Chairman: Mr. Fleming?

Mr. Fleming: Yes, Mr. Chairman, why a rate of pay on appointment, and then appointment higher than the minimum rate, 74 and 75? I'm confused as to the way they always put down the rate of pay of a person appointed to a position in the public service shall be the minimum rate for the class, then you go to 75, and "Notwithstanding Section 74, "they immediately tell you that it can be higher.

Now, give me the reason for that..

Mr. Legal Advisor: It's a question of drafting, Mr.

Chairman, You've got to have two sections, and you've got to have a notwithstanding in one or the other, and it just happened to go into the 75 instead of saying notwithstanding 75 and do it in the reverse way.

What we are trying to do is to establish the basic right of a person to the A point on a salary scale on appointment, but to give the flexibility that if it's a person coming from another jurisdiction and he may have to bargain to get say -- suppose it's an A,B,C,D,E,F, scale, that he will say well I'm already on the A or the B where I am, so they will offer him the C or D, so the Public Service Commissioner has that authority to offer him one point up to attract him. So it's difficult to draft.

Mr. Cairman: Mrs. Watson?

Mrs. Watson: It's been clarified.

Mr. Chairman: Ms. Millard?

Ms. Millard: I'm curious about 76, where the Public Service Commissioner shall authorize the rate of pay to be paid to a person appointed to a position of deputy head.

Is there no restriction on this at all, is there no regulations or anything on the pay for a deputy head? I mean, if he's got a good friend that he wants to, you know --

Mr. Legal Advisor: Mr. Chairman, this is the restriction instead of the other way around. The deputy heads will be appointed at pleasure by the government as such. Now in order to make it difficult for them to appoint \$80,000.00 a year men, the Public Service Commission must authorize the rate of pay in accordance with the normal rules and so forth, so this is the restriction, not the other way around.

Ms. Millard: But isn't it the Public Service Commission who appoints the deputy heads? It's the Commissioner?

Mr. Legal Advisor: No, the Commissioner of the Yukon Territory.

Ms. Millard: Of the Yukon.

Mr. Chairman: Part VII, Organization and Establishment. Seventy-nine (1)

(Reads Clause 79 (1))

Mr. Chairman: Eighty (1)

(Reads Clause 80 (1))

Mr. Chairman: Eighty-one, (1)

(Reads Clause 81 (1))

Mr. Chairman: Eighty-two.

(Reads Clause 82)

Mr. Chairman: Eighty-three.

(Reads Clause 83)

Mr. Chairman: Eighty-four.

(Reads Clause 84)

Mr. Chairman: Eighty-five (1)

(Reads Clause 85 (1))

Mr. Chairman: Eighty-six.

(Reads Clause 86)

Mr. Chairman: Eighty-seven.

(Reads Clause 87)

Mr. Chairman: Eighty-eight.

(Reads Clause 88)

Mr. Chairman: Eighty nine.

(Reads Clause 89)

Mr. Chairman: Ninety.

(Reads Clause 90)

Mr. Chairman: Ninety-one.

(Reads Clause 91)

Mr. Chairman: Ninety-two.

(Reads Clause 92)

Mr. Chairman: Ninety-three.

(Reads Clause 93)

Mr. Chairman: Ninety-four.

(Reads Clause 94)

Mr. Chairman: Ninety-five.

(Reads Clause 95)

Mr. Chairman: Mr. Fleming.

Mr. Fleming: Yes, could I have some clarification on 95, please? 95, yes.

Mr. Legal Advisor: Mr. Chairman this is a person

may be engaged say in a library service for a period of two hours per day, that might be a position, it would be called a part time position. The Deputy Head may ask that it be extended from two hours a day to three hours a day or more likely from two hours a day to four hours a day. This is an informal method of doing that. Extending the hours of a part time position but how would not be able to create a full time position through this method because it's only applied to a part time position.

Mr. Chairman: Mr. Berger.

Mr. Berger: Yes, Mr. Chairman, I have a question for the Legal Advisor. I find this sort of a contradiction between Section 83 and 87. In 83 it says the establishment of any department, branch or division of the Public Service shall not, except with the approval of the Commissioner, exceed the number of positions approved by the Commissioner in respect of such department, branch or division.

In 87 it says a casual employee is not appointed to or employed in a position. I can see the possibility arising that a department head could possibly fill the positions with casuals and possibly exceed the allotted positions and I think we definitely need some changes.

Mr. Legal Advisors: Speaking loosely that can be done. But speaking, not using these terms in a technical sense but speaking in a technical sense he cannot do that. He's got a number of positions and that's all he's going to get except with the approval of the Commissioner. He will get that if he includes it in his budget and gets the man years whatever approved. Until you get that approval, the Public Service Commission will not allow him to establish that position.

The converse of that is a casual is not employed in a position. He has authority money wise and through appropriations to employ casual people to perform certain works. But no employment of a casual has the effect of creating a position, so he cannot permanently add to his empire. That's the intention of that.

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

Mrs. Watson: Mr. Chairman, but there's nothing precluding him from temporarily adding to his empire until his money runs out. This is the danger if they're not filling permanent positions, there are vacancies in permanent positions and I think this is the thing that Mr. Berger, is there any way that you can sort of curtail this?

Mr. Legal Advisor: This is the Commission's job to keep on top of this coupled with the Treasury controls which operate. The two together should be reasonably effective, but it all depends on the ingenuity of the department head to be frank.

Mr. Chairman: I would remind committee members to restrict their questions of the Legal Advisor regarding legal matters and questions regarding the essence

of the Bill to the two people in the corner who are shepherding it through Committee. A lot of the questions going to the Legal Advisor are not appropriate to him. Ms. Millard?

Ms. Millard: My question is with Section 84, is there any time limit or any time restriction on the time that it will take to abolish an existing position?

Mr. McPhail: No, Mr. Chairman, The department would put recommendation forward that a position be abolished from the Staff Establishment, Treasury would be notified etcetera. I might add that we get very few of those.

Mr. Chairman: Ms. Millard.

Ms. Millard: Mr. Chairman, I'd like to know than if there is any provision for consultation with the union on abolishing positions?

Mr. McPhail: No, Mr. Chairman, any recommendations we receive to abolish a position are 99.9 percent of the case the position is vacant. It has not been filled for a considerable period of time.

Mr. Chairman: Mr. Lengerke.

Mr. Lengerke: Yes, Mr. Chairman, just a question with respect to the casuals in Section 83, to Mr. McPhail. Is it not practice that you do establish a number of or set out casual positions and delegate them to a number of departments, say after budget time, after that?

Mr. McPhail: No, Mr. Chairman, departments budget man years. For example, although the library may budget 2 additional man years, they may employ four pages from high school but they aren't given positions or "X" number of dollars just to cover excess peak loads. The same thing with motor vehicles, they probably budgeted a quarter of a man year to help out in licenses this year. They may employ four extra girls for four weeks.

Mr. Lengerke: Mr. Chairman, I should have worded that a little differently. But they are given money to cover certain man years.

Mr. McPhail: That's correct, Mr. Chairman.

Mr. Lengerke: And they are given that sometime after budget time and each department understands roughly how many man years it might have to employ casual people.

Mr. McPhail: That's part of the budget and it's included in the budget.

Mr. Lengerke: Okay.

Mr. Chairman: Part VIII, Appointments.
Ninety-six:

(Reads Clause 96)

Ninety-seven:

(Reads Clause 97)

Ninety-eight:

(Reads Clause 98)

Ninety-nine:

(Reads Clause 99)

One hundred:

(Reads Clause 100)

One oh one (1):

(Reads Clause 101 (1))

(Reads Clause 101 (2))

One oh two:

(Reads Clause 102)

One oh three:

(Reads Clause 103)

Mrs. Whyard?

Hon. Mrs. Whyard: This relates really to Section 102. I'm wondering if "examinations, tests", et cetera, include physical examinations or health examinations?

Mr. CMcPhail: Mr. Chairman, that would be covered under Section 103.

Mr. Chairman: Mr. Fleming?

Mr. Fleming: Mr. Chairman, I understood we were going to read the part right through and then go back, you know, on that --

Mr. Chairman: I will read through to Section 115.

Mr. Fleming: Okay.

Mr. Chairman: One oh four:
 (Reads Clause 104)

One oh five:

(Reads Clause 105)

One oh six:

(Reads Clause 106)

One oh seven:

(Reads Clause 107)

One oh eight:

(Reads Clause 108)

One oh nine (1):

(Reads Clause 109 (1))

(Reads Clause 109 (2))

One ten:

(Reads Clause 110)

One eleven:

(Reads Clause 111)

One twelve:

(Reads Clause 112)

One thirteen:

(Reads Clause 113)

One fourteen:

(Reads Clause 114)

One fifteen:

(Reads Clause 115)

Mr. Taylor?

Hon. Mr. Taylor: Mr. Chairman, just one question in 114, where the Commission certifies that the candidate is qualified for the appointment, and then the candidate turns out that he is in fact not qualified, that you know the documents he possesses may say one thing, then what happens?

Mr. Commissioner: Mr. Chairman, that was covered in an earlier section here where if it is found 104, "Any person who in the course of any test, examination or interview for a position in the Public Service knowingly makes use of any false documents or gives any false information may be dismissed by the Commission and his appointment cancelled".

I think that is possibly what the Honourable Member is wondering about.

Hon. Mr. Taylor: Yes, that was my point is that it automatically takes any credibility from the certification, and the certification would become null and void?

Mr. Commissioner: Yes. Mr. Chairman, what -- this

particularly applies where we will say that we are hiring people and they require certain basic professional qualifications, you know, in order to be a properly qualified candidate, and it turned out that the documentation that was provided was false documentation, why very obviously there will be automatically a nullification of their qualifications, so they would no longer be eligible and would automatically be dismissed.

Mr. Chairman: Ms. Millard?

Ms. Millard: Section 96, I'm interested in the exclusive right and authority of the Commission to appoint. Can this be delegated to the deputy heads?

Mr. McPhail: Yes, Mr. Chairman, but the practice of the present employer is that all appointments, and that means the authorizing, writing to the candidates, negotiating a rate of pay on appointment, has been done centralized, but it could be delegated.

Mr. Chairman: Mr. McIntyre?

Mr. McIntyre: Yes, Mr. Chairman. I wonder if the witness could explain why anybody should be appointed to a position without a competition?

Mr. Commissioner: What section particularly?

Mr. McIntyre: That's 108 (a).

Mr. McPhail: Mr. Chairman, the Ordinance is designed that if the Public Service Commission conducts a competition, and let's assume they restrict it to a department, three or four employees apply, out of the three or four -- out of let's say four employees, the Commission certifies three, then they turn back to the department and say, in our opinion, three of these people are qualified to handle the position, but the selection rests with you. The department can come back and say I would like candidate X, and we are prepared to offer candidate X the job.

So in some cases, if the department recommends an exemption from competition, and that person appears well qualified, frankly if we run the competition, I'm prepared to say that the Commission would certify them, and since the department has already indicated that they would like to select the individual, if we're satisfied and we can defend the certification, we will approve the exemption.

Mr. Chairman: Mr. McIntyre?

Mr. McIntyre: In the same connection, I'm not really happy with the situation where the Public Service Commission would go back to a deputy head and say pick one of the three, because I think that's the obligation of the Public Service Commission to rank them one, two, three and the deputy head -- it should be incumbent on him to pick the one that's been appointed by merit or suggested by merit.

Mr. McPhail: I don't think it should be up to the deputy head to select one of the three.

Mr. MyIntyre: What is the rationale on that?

Mr. McPhail: Mr. Chairman, the rationale is that we've got deputy heads serving at pleasure accountable for their departments, and as long as we're assuring the public that somebody is qualified to do it, I've given him the right to select. But from the practical point of view, generally speaking they select the individual most highly recommended.

Mr. Chairman: Which really begs the question, doesn't it, why should there have to be a competition, because your natural competition would result in the same selection?

Mr. McPhail: It may, it could.

Mr. Chairman: Well if it doesn't, it is a fairly serious difficulty.

Mr. McPhail: From an objective point of view it certainly should, but in some cases, Mr. Chairman, we may certify three, we may recommend candidate number 1, candidate number one may turn down the job. We may go to candidate number two.

Mr. Chairman: That is taken care of in the normal competitive procedure, is it not?

Mr. McPhail: Yes, generally speaking, it's taken care of, but there may be additional reasons that if the person they are recommending for exemption would appear to be very well qualified, the Commission may obviously feel that that person will rank number one, and if I run a competition, I'm just wasting my time. The Commission is just fooling the internal department.

Mr. Chairman: Aren't you running the danger of not being forced to call a competition, and thereby selecting persons that are not necessarily the best qualified?

Mr. McPhail: The onus, Mr. Chairman, is on the Commission to stand behind its certification. They have to be satisfied that that person is sufficiently qualified. Generally speaking, we conduct competitions.

Mr. Chairman: Mr. McIntyre?

Mr. McIntyre: This is just supplementary. I'm not too happy with the first two, because in a small Public Service such as we have, it seems to me that all jobs should be open to competition from all departments and divisions, and not narrowed down to one department.

In the Public Service of Canada, one can see where it's advantageous to narrow a competition to a department, but in our small public service, certainly our departments are getting inbred by promotion from within.

Mr. McPhail: Mr. Chairman, I suppose the latter could occur, but, for example, if there's a vacant road foreman position in the Highway Maintenance Division, we always restrict those to the Department, and all employees in that Department, in Highway Maintenance have an opportunity. Frankly, there are not other employees in other departments performing similar jobs.

If there were, then we may restrict it to two or three departments.

Mr. Chairman: Mr. Fleming?

Mr. Fleming: Yes, Mr. Chairman. I'm concerned about 98, "Where it is practicable and in the best interest of the Public Service, appointments shall be made to positions in the Public Service from amongst persons who are Canadian Citizens or landed immigrants". I don't find this first line or two "where it is practicable and in the best interest" of hiring our Canadian citizens and landed immigrants, I think that we should hire them definitely, and this more or less gives them -- or I would like some explanation as to why, when it would be in the best interests of us to be hiring somebody who isn't a Canadian citizen or otherwise?

Mr. Chairman: Mr. Commissioner?

Mr. Commissioner: Mr. Chairman, with respect, we have to be a little bit cautious. Remember that we are talking about the whole spectrum of the trades and professions that we have to hire in the Public Service, and I don't think that it is any news around this table that from time to time we have very great difficulties in recruiting people who fall into the categories of Canadian citizens or landed immigrants. From time to time we have to look elsewhere, and certainly there has to be some understanding that certainly our priorities are in the areas listed, but we're not restricted from going elsewhere because when jobs are to be filled, particularly in professional fields, we sometime find it rather difficult to maintain that, and that's what it is all about.

Mr. Chairman: Mr. Fleming?

Mr. Fleming: Yes, Mr. Chairman, I understand the answer there, that in a job such as -- some high priced job, but what I'm actually worried about, more or less, is right down to the casual level, where it can happen, and I think maybe it has happened possibly a few times, and I'm wondering if we shouldn't maybe make sure that it don't happen.

Mr. Commissioner: I would be hopeful that the policy question that I promised the Honourable Members this morning in connection with this would clarify that particular. But I hope Mr. Chairman, the Honourable Members will understand that the converse has got to be permitted to us where it is a necessary situation.

Mr. Chairman: Mrs. Whyard.

Hon. Mrs. Whyard: Well, Mr. Chairman, I wanted to go to Section 105, which deals with the list of employees who are qualified for certain positions and there is a list kept. My concern is that I don't see anywhere, spelled out, that someone is actually going to go and look at those lists each time a new position is advertised. What guarantee does the person who applied two years ago for something have that there is someone going to re-view their interest in this new position upcoming, for which they may be emanently qualified. Are they assuming too much when they assume that because they are on a list and there is a dossier with their qualifications that they will automatically come up as in a computer stream for that position.

Mr. Chairman: Mr. McPhail.

Mr. McPhail: Mr. Chairman, to answer that question, generally speaking, if we advertise in the Whitehorse Star for an eligibility list let's say for people interested in employment in secretarial positions, the idea is that when they apply we put them on a list that we tell them that if (a) first of all if they have been certified (b) that their name will be retained for a certain period of time. Thereafter the onus is back on them to reapply. So to answer your question they know the time span that they will be considered for.

In many cases that when we've done this sometimes we go back and phone only to find out the person's no longer interested. They haven't notified us but, it cuts both ways.

Mr. Chairman: Mrs. Whyard.

Hon. Mrs. Whyard: So, Mr. Chairman, this is notification really then to present employees that they must not assume they will automatically be considered for any new positions just because of their qualifications being on file. They must reapply every time a position is advertised.

I'm making this point Mr. Chairman, because I'm under the impression that some employees feel that they don't have to keep re-applying, they will automatically be considered for a position.

Mr. McPhail: That's correct. They would have to re-apply Mr. Chairman, unless at the time they submitted their application they indicated they wanted it to be considered on specific competitions A, B, C, D, E. And it's up to the Commission to move that application across those competitions.

Mr. Chairman: Ms. Millard.

Ms. Millard: I'm interested in that section also under re-employment lists. The way I read that it is a list which is established of people who can be approved for employment again with the Territory. Is that correct, is this in actuality a kind of black list of people who aren't on that list can't be employed again?

Mr. McPhail: I would like to make it very clear that there is no blacklist, Mr. Chairman. The purpose of putting it in the Ordinance is to ensure that the Commission can establish such lists so that if an individual has left, a woman has gone on maternity leave and resigned, she may very well indicate that she would like to be considered for re-employment, but by the way only after next Christmas. At least we have some mechanism, you know, of saying there is someone out there that has got a record with us who by the way we'd better see if we are in a pinch, we can contact.

Mr. Chairman: Perhaps Ms. Millard needs reassurance that the teachers don't have a blacklist as they do in B.C.

Mr. Berger?

Mr. Berger: Mr. Chairman, I would like to go back to 99. I would like to ask Mr. Legal Advisor if a person is religious has he obviously got any religion? Are those two definitions necessary in that section?

Mr. Legal Advisor: There is a valid point made in the brief and the Honourable Member makes a valid point; I looked it up and we copied this direct from the Fair Practices Ordinance of the Territory and in the Fair Practices Ordinance it does say race, religion, religious creed, colour and so on. It adds in something that the Public Service Alliance has forgotten: sex and marital status.

I don't know, personally, the difference between a religion and a religious creed, but apparently it is common in the British legislation; we have got it in our legislation so I thought, *ex abundanti cautela*, to just put it in.

Mr. Commissioner: Mr. Chairman, with respect, it was subject of great debate around this table. I remember it very vividly and the end result was that we decided it was the only way to get the Ordinance passed, was to put those two words in, and that is why they got into Fair Practices Ordinance.

Mr. Chairman: It strikes me, with reference to that, all these other things that are listed one can have a colour ancestry or a sex but can one be without a religion and still be considered? That is not the way it is worded, that is all. Mrs. Watson?

Mrs. Watson: Yes, Mr. Chairman, several sections; I refer to Section 99 again first, and I do have some concern on that and I mentioned it during our budget session on the Fair Practices Ordinance and the Northern Careers Programme that the federal government has embarked upon now where they are trying to, or endeavouring to, give priority to people of a certain race for employment in government positions.

My question to the Commissioner is, are there any indications that the federal government is going to try to have the Territorial Government adopt some of these

programmes where we will have to endeavour to employ or give priority for employment to people of the Indian race? Is there any indication that this Northern Careers will splash over into the Yukon Territory?

Mr. Commissioner: Well, Mr. Chairman, it would be something that would have to, if such was the case, it would be something that would have to be dealt with by this Council but I think also that there has been a conscious attempt from time to time and with the understanding of Council that disadvantaged people certainly have certain priorities and certain special programmes and certainly I would be very hopeful that there would be nothing in this section here or in any other part of the Ordinance that would dilute the government's ability to institute programmes if it was the wish to do so for disadvantaged people.

Mr. Chairman: Mrs. Watson?

Mrs. Watson: I would agree to a certain degree, but there are various types of disadvantaged people and I think that you are taking care of certain aspects of that when you are talking about handicapped people who have physical disadvantages and then you have mentally disadvantaged people, but if anyone tried to interpret socially disadvantaged you couldn't tie socially disadvantaged to a race, I don't think, and apply it to a hiring practice within a public service. I would hope that this type of thing wouldn't splash over into the Territorial Government.

Section 108, and I have some concern over those sections. I have a very, a rather apprehensive -- I feel that somehow we are giving a great deal of authority and power to department heads in this section where they can recommend people to be hired by not going to competition. Also, where they can recommend that you hire your people out of a certain department. It makes me really quite nervous even though the department heads are hired, department heads or deputy heads are hired by the Commissioner, that there does, and I couldn't agree more with the Member from Mayo, that this, I am not very easy about it at all. If we are truly hiring by merit, really we could only justify having 108(b).

Mr. McPhail: Mr. Chairman, with all due respect, probably our percentage ratio is something like 90 percent open competitions as opposed to internal competitions. Of course, from the union point of view they would like to see more internal competition, so the Commission finds itself somewhat trying to balance off the desires of the union to make sure that internal competitions are fair and that, in some cases where they should truly be restricted to departments, they are first restricted to the departments then opened up if no suitable applicants are found.

Our practice has been that a deputy head can recommend an exemption but that doesn't necessarily mean that an exemption will be approved by the Commission. In some cases we say a flat 'no' and we say that you

must go by restricted competition within the Public Service, not just the approval of the exemption. There aren't that many exemptions approved and there are not that many restricted competitions to the Public Service. By and large, we go the route of open competition.

Mr. Chairman: I am in sympathy with the Member from Kluane; the danger still exists that you are in a position to hire a person who you want to hire without exposing yourself to open competition, and the way this is worded you can do that. That is a very dangerous prerogative for you to have. Mrs. Whyard?

Hon. Mrs. Whyard: I have only been in this position for one year, but this discussion is of great interest to me at this time because I have heard only the opposite side of this argument in the year I have been with the department, because the feed-back I get from the Public Service is that we don't promote the people who are here already doing the jobs and who could move up and automatically assume this extra responsibility and pay. We are always holding competitions and bringing people in from outside. That is what I continually hear and, to my knowledge, in my area I can think of only one position that has been filled in over a year without an open public competition.

I really see no great threat here. Somebody must know something more than I do.

Mr. Chairman: Well, I can only say that I have seen it happen, Mrs. Whyard, on one occasion and that was enough to disturb me a good deal. Mr. Berger?

Mr. Berger: Mr. Chairman, just to stay on 108, the only problem I had was 108(a) by exemptions from competition. I personally feel it is a complete contradiction with 100 where it says all appointments to position in the Public Service shall be made on merit. Here in 108(a) it says by exemption from competition. I wonder if there is any reason for this type of thing?

Mr. McPhail: All I can again reiterate, Mr. Chairman, is that when the deputy head requests that an employee be exempted from competition, a deputy head then must justify to a Commission why that employee should not go through at least an internal competition, and if the Commission is satisfied, and the Commission so recommends that the exemption be proved. It's not just granted offhand.

Mr. Chairman: Mr. Lengerke?

Mr. Lengerke: My comment was just going to be this, that competition is not the only thing that establishes merit.

Mr. Chairman: Mr. McIntyre?

Mr. McIntyre: Are there any appeal procedures? They are not in this section.

Mr. McPhail: No, Mr. Chairman.

Mr. McIntyre: Well shouldn't there be an appeal section, especially for closed competitions?

Mr. McPhail: No, Mr. Chairman.

Mr. McIntyre: Why not? Can you justify that?

Mr. McPhail: Mr. Chairman, with a 35 percent turnover, we haven't got ourselves in the position of handling appeals. We haven't got the staff and generally speaking, if an employee is not granted a promotion, or is not appointed to a position, we're always had an open door policy and will explain to the individual why.

Mr. Chairman: Mr. McCall?

Mr. McCall: I would like to move, Mr. Chairman, that Mr. Speaker now resume the Chair.

Mr. Chairman: A seconder?

Mr. Fleming: I'll second it.

Mr. Chairman: It has been moved by Mr. McCall, seconded by Mr. Fleming, that Mr. Speaker do now resume the Chair. All those in favour?

Some Members: Agreed.

Mr. Chairman: Contrary?

MOTION IS CARRIED.

(MOTION CARRIED)

(Mr. Speaker Resumes Chair)

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

May we have a report from the Chairman of Committees?

Mr. Hibberd: Yes, Mr. Speaker. The Committee convened at 10:57 a.m. to discuss Bills. Mr. Commissioner, and Mr. McPhail, Personnel Director, were present during Committee's review of Bill Number 1. Committee recessed at 12:05 p.m. and reconvened at 1:35 p.m. I can now report progress on Bill Number 1.

It was moved by Mr. McCall, seconded by Mr. Fleming, that Mr. Speaker do now resume the Chairman and the Motion was passed.

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

Some Members: Agreed.

Mr. Speaker: May I have your pleasure at this time? The Honourable Member from Whitehorse Riverdale?

Mr. Lengerke: Mr. Speaker, I move that we now call it 5 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 5 o'clock. Are you prepared for the question?

Some Members: Question.

Mr. Speaker: Are you agreed?

Some Members: Agreed.

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

(MOTION CARRIED)

Mr. Speaker: This House stands adjourned until 10:00 a.m. tomorrow morning.

(ADJOURNED)

(Faint, mirrored text from the reverse side of the page, including phrases like 'The Speaker', 'Members of the Assembly', and 'The House')'

SESSIONAL PAPER NUMBER 1
1976 SECOND SESSION
LEGAL AID ORDINANCE

Mr. Speaker,
Members of the Assembly:

Earlier this year at its First Session the Legal Aid Ordinance was enacted. This Ordinance provided for the introduction of a comprehensive program of criminal and civil legal aid in the Territory. The scheme was to be cost shared by the Government of Canada and pursuant to the Ordinance the Commissioner was authorized to enter into an agreement with Canada to bring this about. At the same Session of Council an appropriation of \$70,000 was voted to cover the expenditures for legal aid in the financial year 1976 - 77.

During the discussions with the Government of Canada leading to the preparation of the legal aid scheme a question was raised as to how expenditures would be met which exceeded the amounts envisaged in any financial year. At the time the upper limit of expenditure was placed at \$75,000. The proposal being made by Canada was that any expenditures above the limit of \$75,000 would be fully borne by the Territory.

During a visit to the Territory the Honourable Mr. Otto Lang, the Minister of Justice and the Attorney General of Canada informed the Government - and later confirmed this by letters dated December 8, 1972 and July 8, 1974 - that he was prepared to bring a proposal to Cabinet to remove the upper limit on cost shared expenditures. If his proposal was accepted the result would have been that while the Territory would estimate expenditures annually, the agreement with Canada would provide that all expenditures without any upper limit would be cost shared equally by Canada and the Territory.

In supporting the proposed ordinance, the Honourable Members were informed by the Administration about the proposal to Cabinet and that the proposed agreement with Canada would not have any upper limit on the cost shared expenditures with Canada if Mr. Lang's proposal was accepted.

I regret that I must inform the House that the Honourable Ron Basford who succeeded to Mr. Lang's portfolio early this year, wrote to me in February last informing me that in view of the present economic situation and the restrictions which have been imposed on Government department he had come to the conclusion with regret that it would not be appropriate now to place before Cabinet Mr. Lang's proposal that total expenditures without limit should be borne equally by the Territory and the Federal Government.

In his letter, however, Mr. Basford has proposed that during the first two years of the cost share agreement the upper limit on expenditures to be cost shared by the two Governments for legal aid should be fixed at \$100,000. This limit would be reviewed after two years; i.e. prior to April 1, 1978.

I am advised by my officials that they do not expect

expenditures in legal aid to exceed \$70,000 this year. They further advise that they expect to stay below the limit of \$100,000 at least until the end of the financial year 1978 - 79. In other words, they feel that they can meet the conditions during the term of the proposed agreement but that when the new agreement is negotiated they may have to ask that the limit be raised for the second year of that agreement.

In the light of the fresh information contained in this paper I would ask for an expression of the opinion of the House as to whether the present ordinance should be put into force, and whether the agreement should be entered into containing the \$100,000 upper limit per annum for the next two years.

James Smith
Commissioner