PROCEDURAL REPORT

YUKON
LEGISLATIVE ASSEMBLY

SECOND SESSION

30TH LEGISLATURE

April 4, 2002 – May 30, 2002

PROCEDURAL REPORT

YUKON
LEGISLATIVE ASSEMBLY

SECOND SESSION **30TH LEGISLATURE**

April 4, 2002 – May 30, 2002

Speaker: The Hon. Dennis Schneider

Table of Contents

Preface

This report documents procedural events of note that occurred during the 2002 Spring Sitting of the Second Session of the 30th Yukon Legislative Assembly. It is meant to augment the *Standing Orders of the Yukon Legislative Assembly* and other procedural authorities by detailing how rules of procedure and established parliamentary practice were applied to specific incidents that arose during the 2002 Spring Sitting. It is hoped that this report will help readers gain a deeper understanding of parliamentary procedure and practice in the Yukon Legislative Assembly.

The idea for the Procedural Report is derived from the House of Commons Procedural Digest. The Procedural Digest is issued weekly and deals with events in chronological order. However this Procedural Report takes a different approach.

The report covers the entire Sitting and deals with procedural events thematically, as certain kinds of events (seeking unanimous consent to expedite business, incidents of unparliamentary language, for example) tend to recur over the course of a sitting. By approaching events thematically the report illustrates which kinds of incidents dominated proceedings and also the broader context of the issues involved in rulings and statements made by the Presiding Officers. Context is also providing by frequent reference to the *Standing Orders* and procedural authorities, particularly, *House of Commons Procedure and Practice* and *Beauchesne's Rules & Forms of the House of Commons of Canada.*

In using the report readers will note the distinction between the table of contents and the index. Both are arranged in alphabetical order. However, whereas the table of contents focuses on procedural events, the index refers to Members of the Legislative Assembly, bills, motions, standing orders, etc. that appear in numerous entries in the report.

Floyd W. McCormick, Ph.D.
Deputy Clerk
Yukon Legislative Assembly

Introduction

Two days prior to the opening of the 2002 Spring Sitting three government private members – Wayne Jim (McIntyre-Takhini), Mike McLarnon (Whitehorse Centre), and Don Roberts (Porter Creek North) -- left the government caucus to sit in opposition as independent members. This move placed the government in a minority situation. This carried certain political consequences, such as raising the question of whether the government could maintain the confidence of the Assembly for the duration of the Sitting.

However this move had procedural consequences as well. With the opposition in the majority it could exercise leverage, if not outright control, over the Assembly's agenda in ways it could not were the government in the majority. This was illustrated on May 28, 2002 when the opposition voted down a motion to resolve into Committee of the Whole. As a result the government lost control of the agenda on a day designated for government business. As the reader will note in the entry "Business, order of" this led to the calling and deferral of opposition private members' motions in a way rarely seen since the Yukon Legislative Assembly adopted partisan politics in 1978. These, and other, procedural anomalies tested the limits of members' familiarity with the procedures and practices of the Assembly.

Having more opposition members also meant more opposition private members motions. In all the nine opposition members gave 98 notices of motion in the 2002 Spring Sitting, compared to 41 offered by six opposition members in the 2001 Fall Sitting. Coincidentally the independent members gave 57 of those notices of motion in the 2002 Spring Sitting, the exact difference between the number of notices of motion in the two sittings.

Another oddity of these political peregrinations is that the government side was devoid of private members. The only government private member remaining was the Speaker, who does not participate in debate.

But while the independent members proposed the majority of opposition private members' motions the Standing Orders were not changed to allow them to call their motions for debate. They were, however, able to ask questions during Question Period and put 31 main questions to the government over the course of 30 sitting days. As the reader will see in the entry on the question period rotation, the allocation of questions became an issue due not only to the presence of independent members but also due to the movement of one member from the Official Opposition to the Third Party caucus.

Overall incidents of unparliamentary language (as measured by rulings from the Chair) declined to 11 in this Sitting compared to 17 in the 2001 Fall Sitting. Also, in the 2001 Fall Sitting language that suggested, or appeared to suggest, that a member had uttered a deliberate falsehood dominated rulings regarding unparliamentary language. In the 2002 Spring Sitting the most common complaint about language was that comments were abusive or insulting, closely followed by imputations of false or unavowed motive. One final oddity: The government offered no ministerial statements during the 2002 Spring Sitting. It gave 14 such statements in the 2001 Fall Sitting.

Procedural Issues

Acting Chair of Committee of the Whole, appointment of

Standing Order 5(3) says, "If the Chair and Deputy Chair are absent, the Speaker shall, before leaving the Chair upon the Assembly resolving into Committee of the Whole, appoint a member to be acting Chair."[1]

On April 18, 2002, after the House had agreed to resolve into Committee of the Whole it was noticed that neither the Chair of Committee of the Whole, Mike McLarnon, nor the Deputy Chair, Don Roberts, was in the Chamber. The Speaker, Hon. Dennis Schneider, therefore appointed Gary McRobb (Kluane, NDP) to take the Chair. Mr. McRobb called the committee to order and asked if members wanted to recess briefly, as is the standard practice. The committee did recess and when it reconvened Mr. McLarnon assumed the Chair.

Amendments, Speaker's authority to amend

On April 24, 2002 during debate on Motion No. 228 the Premier, Hon. Pat Duncan (Porter Creek North, Liberal) moved an amendment to the motion. After the amendment had been moved the Speaker, Hon. Dennis Schneider, reviewed it and found the first clause to "fall outside the subject matter of the original motion." The Speaker then informed the Assembly that "It is the Chair's prerogative to alter proposed amendments when such changes are easily made and will bring the resulting amendment into order." (*Hansard*, 3362) Support for this prerogative can be found in *Beauchesne's Parliamentary Rules & Forms*, which informs us that

- "It is an imperative rule that every amendment must be relevant to the question on which the amendment is proposed."[2]
- "When a Member hands a motion to the Speaker...the Speaker may...make such corrections as are necessary or advisable in order that it conform with the usages of the House."[3] And
- "The Speaker has unquestioned authority to modify motions with respect to form."[4]

The Speaker then removed clause 1 from the amendment and allowed the Premier to proceed with it in its amended form. (*Hansard*, 3362)

Bills

<u>Amendments in Committee of the Whole</u>

On April 15, 2002 during Committee of the Whole discussion of Bill No. 10, *Third Appropriation Act, 2001-02*, (general debate), Don Roberts (Porter Creek North, Independent) tried to propose an amendment to the line item 'bad debts expense' in Vote 12, Department of

---

[1] All references to the Standing Orders refer to those in effect during the 2002 Spring Sitting.

[2] Alistair Fraser, W.F. Dawson and John A. Holtby, *Beauchesne's Rules & Forms of the House of Commons of Canada with Annotations, Comments and Precedents* (6th edition), (Toronto: Carswell, 1989) §568, page 175.

[3] *Beauchesne's* §566(1), page 174.

[4] *Beauchesne's* §566(4), page 175.

Finance. The Chair of Committee of the Whole, Mike McLarnon, intervened saying, "If there are going to be amendments to budgets, the amendments should come when we actually reach the line item."(*Hansard*, 3152) The committee continued with general debate. Once general debate was concluded the committee proceeded to Vote 12 and Mr. Roberts proposed his amendment.

On May 8, 2002 Mr. Roberts tried to propose an amendment during Committee of the Whole consideration of Bill No. 101, *Child, Youth and Family Advocacy Act* As the committee was still in general debate at the time the Committee Chair, Mr. McLarnon, denied Mr. Roberts leave to propose his amendment. Instead he informed Mr. Roberts that the committee could only consider his proposed amendment once it had proceeded to line-by-line consideration of the bill and had reached the line that Mr. Roberts sought to amend. (*Hansard*, 3603)

Amending a budget bill

The Yukon Government instituted a broad re-organization of the public service that took effect on April 1, 2002. As a result the configuration of many government departments changed as units and programs were shifted from one to another. From a procedural perspective the question that arose was whether capital allocations voted for departments as they existed when the capital budget was passed in the 2001 Fall Sitting (Bill No. 8, *First Appropriation Act, 2002-03*) would have to be re-voted now that those departments, or the amounts appropriated to them, had changed.

This issue was debated on May 14, 2002 during Committee of the Whole consideration of the allocation for the Department of Infrastructure in Bill No. 9, *Second Appropriation Act, 2002-03*. The Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP) argued that the figures denoting capital expenditures were debatable, even though the capital budget had passed months before. One reason offered was that some departments that continued unchanged through the re-organization were now being allocated a different amount of capital spending that they had been in the fall of 2001. This change, he felt, should open those line items for debate.

The argument put forward by the Premier and Finance Minister, Hon. Pat Duncan (Porter Creek South, Liberal) was that the money should not have to be re-voted; the spending authority granted in the 2001 Fall Sitting was sufficient. She explained her government's position this way:

> The member opposite will see that, in that Schedule A...there is no longer a Department of Economic Development. That's a name change. But in the capital budget in the fall, we voted for a certain amount of capital money for Economic Development. That passed this House. That vote has gone through. So, what has happened is that that money that was in Economic Development — some of it has gone to Finance because the economic analysis unit has gone to Finance, some of it has gone to Business, Tourism and Culture. The document that is coming down will show, for example, in infrastructure, that X million dollars was voted under Community Services, this portion of it is under Community Services and this portion is under Infrastructure. That's what it will show. All that Schedule A does is to balance out the new department names with the total amount of the capital. It is no different. The total amount of the capital has been voted

> and cleared this House. This only reallocates it to the new department names. (*Hansard*, 3665)

In other words Hon. Ms. Duncan viewed the vote in the 2001 Fall Sitting as a mandate to undertake certain tasks, regardless of the government department allocated to carry out those tasks. As far as the Premier was concerned "We debated the capital budget in the fall so it is past tense."

The issue was finally given to the Committee Chair Mike McLarnon to resolve. After consulting with the Table Officers the Chair ruled

> Just to explain the procedure, the numbers in the budget under Schedule A are, in fact, debatable and votable because in the previous budget, the departments were under old names. Now the previous departments are non-existent and these are now appropriations to the new departments so they are completely debatable under these departments. All departments not affected are appropriated under the old bill. (*Hansard*, 3666)

In other words any line item that had changed from the previous budget bill was now open for debate. Mr. Fairclough did not, however, choose to debate any of the line items. He was satisfied that the Chair's decision confirmed the position he took on the issue in the fall of 2001 and was now prepared to move on.

Two bills dealing with the same subject

On April 29, 2002 the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) introduced Bill No. 103, *Electoral District Boundaries Act*. This bill was almost identical in content to Bill No. 61, *Electoral District Boundaries Act, 2002*, introduced by the Premier, Hon. Pat Duncan (Porter Creek South, Liberal), on April 11, 2002.

Having two similar bills on the Order Paper at the same time does not present a procedural problem. As *Beauchesne's Parliamentary Rules & Forms* says, "There is nothing in the rules and no precedent to prevent the setting down of more than one bill or motion dealing with the same subject."[5] The only restriction on having two similar bills proceed simultaneously is that once a decision is taken on one bill "the other is not proceeded with."[6]

On May 30, 2002 Bill No. 61 received Third Reading. Immediately thereafter the Speaker, Hon. Dennis Schneider, informed the Assembly that Bill No. 103, being "similar in intent and subject matter to Bill No. 61", would be dropped from the Order Paper. (*Hansard*, 3899)

Bribery

On May 6, 2002 during Committee of the Whole discussion of Bill No. 9, *Second Appropriation Act, 2002-03*, (Environment), Gary McRobb (Kluane, NDP) mentioned that the Raven, a

---

[5] *Beauchesne's* § 624(1), page 192.

[6] *Beauchesne's* §624(3), page 192.

restaurant in his constituency was listed as one of the top 21 restaurants in Canada. He also mentioned that he had invited government members to the season opening the previous week but none had taken him up on his invitation.

In responding to Mr. McRobb's questions the Minister of the Environment, Hon. Dale Eftoda (Riverdale North, Liberal) seized upon the restaurant theme. In referring to the controversy surrounding the government's plans to rebuild Grey Mountain Primary School Hon. Mr. Eftoda said, "I will buy the member dinner at the Raven if he agrees to go to the Grey Mountain School open house Wednesday evening." (*Hansard*, 3536)

When he next had the floor Mr. McRobb said, "I would like to remind the minister that we in the New Democratic caucus do not have to be bribed to do our jobs." Mr. McRobb then made reference to Standing Order 68 which says, "It is a violation of the Criminal Code for a member to corruptly accept or obtain, agree to accept, or attempt to obtain any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted in the member's official capacity." Mr. McRobb said he was

> not raising this concern in an official capacity on a point of order, as I might be able to, but I will just, in friendliness, make the minister aware that the offer of bribes and so on is not only unparliamentary, but it could result in criminal charges. (*Hansard*, 3536)

Hon. Mr. Eftoda expressed regret that "we can't take the opportunity for a little levity in this House...because I know the member has an incredible sense of humour." The Minister apologized if he caused offence but assured the House his motives were innocent.

Business, order of

Standing Order 13(1) stipulates that "After the Daily Routine, the order of business on Monday, Tuesday and Thursday shall be as follows:

> Government Designated Business
> Motions Respecting Committee Reports
> Motions other than Government Motions
> Bills other than Government Bills"

Standing Order 12(2) indicates that "When government business has precedence, that business may be called in such sequence as the government chooses."

On Tuesday, May 28, 2002 Orders of the Day began with a Government Motion (No. 248). The motion having been agreed to the Government House Leader, Hon. Jim McLachlan (Faro, Liberal) rose to move the usual motion "that the Speaker do now leave the Chair and the House resolve into Committee of the Whole." (*Hansard*, 3821) In this way the Government House Leader indicates the business the Government has designated for the rest of that day – whatever bill or bills are in committee.

Standing Order 41 says, "A motion for the Assembly to resolve into Committee of the Whole shall be put immediately without debate or amendment." While the motion is neither debatable nor amendable it is votable and on this occasion, for the first time in the history of the

Yukon Legislative Assembly, the motion was voted down. The Government therefore had to designate other business – debating government motions, dealing with bills at second or third reading - that could be conducted with the Speaker in the Chair.

The government therefore proceeded with Third Reading of seven bills:Bill No. 10, *Third Appropriation Act, 2001-02*; Bill No. 73, *Act to Amend the Workers' Compensation Act;* Bill No. 64, *Spousal Compensation Act*; Bill No. 51, *Official Tree Act*; Bill No. 55, *Act to Amend the Income Tax Act (No.5))*; Bill No. 72, *Act to Amend the Financial Administration Act*; and Bill No. 56, *Act to Amend the Tobacco Tax Act (No. 2.* All these bills received Third Reading.

At this point the Mr. McLachlan requested a short recess so he could confer with the other House Leaders to determine the business for the remainder of the day. The request was granted. After the recess Mr. McLachlan informed the Speaker, Hon. Dennis Schneider, that the government did not wish to designate other business for that day. Therefore, pursuant to Standing Order 13(1), the Assembly proceeded to "Motions other than Government Motions" (there being no "Motions Respecting Committee Reports to deal with).

Since this was not a scheduled Opposition Private Members' Day (every second Wednesday) there had not been any Motions other than Government Motions designated to be called. Therefore the Speaker proceeded to call motions in their numerical order from the beginning of that section of the Order Paper that enumerates Motions other than Government Motions. This list comprises all motions put on the Order Paper since October 23, 2000, the beginning of the Second Session of the Thirtieth Legislative Assembly and not dealt with. Since they did not designate particular motions to be called on this day opposition members are not obligated to debate the motions when they are called. They can, instead, 'defer to the next sitting day.' This is indeed what happened when the Speaker called for Motions Nos. 5, 7, 11, 12, 13, 17, 18, 19, 22, 23, 24, 25 and 30.[7]

Debate on Motion No. 31 stood adjourned from March 28, 2001. Dennis Fentie (Watson Lake, Yukon Party) was offered the floor as he was speaking when debate was previously adjourned. However, Mr. Fentie did not wish to further debate the motion. This, then, afforded other members the opportunity to debate the motion and Hon. Sue Edelman (Riverdale South, Liberal) spoke to it. Subsequently the Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP) took the floor and moved that debate be adjourned. This motion was unanimously approved on division.

This process repeated itself with Motions Nos. 37, 50, 54, 64, 80, 83, 89, 102, 115, 118, 131, 143, and 145 being called and deferred, and Motions Nos. 97 and 149 being called, debated and having debate adjourned.

During this process the Speaker ordered Motion No. 141 withdrawn from the Order Paper as it was obsolete. The Speaker also informed members of a mistake on the Order Paper. The Order Paper indicated that debate on Motion No. 149 had adjourned during discussion of a proposed amendment. Upon review of the record it was discovered that the proposed amendment had been negatived and so debate would take place on the motion.

---

[7] Readers should note that some motion numbers are skipped because those motions have been dealt with previously or the member in whose name the motion is standing was not in the Assembly at the time the number would have been called.

The issue of the government's ability to designate the business before the Assembly also arose on April 29, 2002. During Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03*, (Yukon Housing Corporation) the Government House Leader, Hon. Jim McLachlan (Faro, Liberal) rose on a point of order. In doing so he said

> I would just like to take this opportunity to inform the House that we have been served notice that there may be an amendment coming in part of the administration area of the Yukon Housing Corporation budget. Were this amendment, in fact, presented, we on this side of the House would probably ask that the Yukon Housing Corporation budget be adjourned for that time until we could assess the effects of whatever that would have. We are not able to make those judgements on the fly, so we would request some time to be able to consider the ramifications of whatever it was. That would have the effect of moving the debate into the Yukon Development Corporation. (*Hansard*, 3420)

Mike McLarnon (Whitehorse Centre, Independent) intervened, registering his objection to the Government House Leader's plan. The Deputy Chair of Committee of the Whole, Don Roberts ruled there was no point of order. Hon. Mr. McLachlan's intervention was to provide the Assembly with information. That does not constitute a point of order. Referring to Standing Order 12(2) the Deputy Chair also informed the Assembly that "The government has the right to...call business as they see fit." (*Hansard*, 3420)

Charge against another member

Beauchesne's Parliamentary Rules & Forms advises that "In any case where the propriety of a Member's actions is brought into question a specific charge must be made."[8] Furthermore "a direct charge or accusation against a Member may be made only by way of a substantive motion for which notice is required."[9] Such remarks cannot merely be injected in debate.

On May 16, 2002 during Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03*, (Finance), the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) questioned the Minister of Finance, Hon. Pat Duncan (Porter Creek South, Liberal) regarding the legality of the government's use of warrants to give spending authority to departments that did not exist prior to April 1, 2002. During the course of debate Mr. Jenkins said, "it is a blatant violation of the *Financial Administration Act*" and "this could actually be considered ultra vires, or probably even downright illegal, Mr. Chair." At that point the Chair of Committee of the Whole, Mike McLarnon, intervened ruling that "It's important that we do not accuse members of breaking the law in this Legislature. "Ultra vires" is okay; "illegal" is not, Mr. Jenkins." (*Hansard*, 3728)

---

[8] *Beauchesne's* §50, page 17.

[9] Robert Marleau and Camille Montpetit (editors), *House of Commons Procedure and Practice*. (Montréal: Chenelière and Toronto: McGraw-Hill, 2000). Page 525.

Confidence in the government, matters of

During the 2002 Spring Sitting the government introduced five bills – Bill No. 57, *Government Organisation Act*; Bill No. 58, *Act to Amend the Economic Development Act*; Bill No. 59, *Government Accountability Act*; Bill No. 60, *Act to Amend the Access to Information and Protection of Privacy Act*; and Bill No. 71, *Corporate Governance Act* -- related to its reorganization of the civil service, also called 'Renewal.' The government also announced that should the bills not pass, the government would consider itself to have lost the confidence of the Assembly.

As Marleau and Montpetit advise

> the confidence convention...(is a) complex constitutional subject, a matter of tradition that is not written into any statute or Standing Order of the House...Simply stated, the convention provides that if the government is defeated in the House on a confidence question, then the government is expected to resign or seek the dissolution of Parliament in order for a general election to be held...What constitutes a question of confidence in the government varies with the circumstances. Confidence is not a matter of parliamentary procedure, nor is it something on which the Speaker can be asked to rule.[10]

During Second Reading of Bill No. 60 Mike McLarnon (Whitehorse Centre, Independent) rose on a point of order and asked for clarification:

> We were told at the House leaders' meeting this morning that these were confidence bills, and that's why we were here. I'm wondering if there is a formal process the government has to go through to ensure that the public knows that they're confidence bills. I certainly didn't hear this from the Premier in her opening addresses. I'm wondering if this needs to be publicly stated so that all Yukoners understand — not just the people who were in the House leaders' meeting and the people that are affected — that all Yukoners understand what's at stake in these bills? (*Hansard*, 3373)

The Speaker, Hon. Dennis Schneider, had already stated, in ruling on a previous point of order on the same day that "the House must recognize that a government has the right in our parliamentary system to identify an item of business before the House as being a matter of confidence." (*Hansard*, 3371) He therefore ruled, " There is no point of order. The issue of confidence is not a procedural matter."[11] (*Hansard*, 3373)

Debate, adjournment of

May 29, 2002 was a designated for private members' business. On May 28, 2002, pursuant to Standing Order 14.2(3), the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) designated Bill No. 103, *Electoral District Boundaries Act*, as one item of business to be dealt with that day. When Bill No. 103 was called for debate on May 29 Mr. Jenkins spoke to it for

---

[10] *House of Commons Procedure and Practice*, page 37.

[11] See in this regard *Beauchesne's* §168(6), page 49.

some time and then said, "in order to expedite the business of the House I move that debate be now adjourned."

Standing Order 30(g) says that a motion to adjourn debate may be received when another motion is under debate. However, as Marleau and Montpetit explain, a motion to adjourn (the House or debate) cannot be moved by the Member who had moved a substantive motion currently under debate. The reason for this is that doing so would have the effect of having the Member move two motions at once – the substantive motion and the motion to adjourn.[12]

The Speaker, Hon. Dennis Schneider, therefore ruled "the mover of the motion (is) not entitled to move adjournment of debate." The Speaker then offered Mr. Jenkins the opportunity to continue speaking to the bill. Mr. Jenkins declined. The next member to speak to the bill, the Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP), then moved adjournment of debate. The motion being put, it was agreed to. (*Hansard*, 3843)

Deferred Count

On May 8, 2002 during Committee of the Whole debate on Bill No. 101, *Child, Youth and Family Advocacy Act*, Dave Keenan (Ross River-Southern Lakes, NDP) moved that the committee report progress. There were indications of disagreement from some members. Two members having requested a count pursuant to Standing Order 44(1) Committee Chair Mike McLarnon started the bells ringing for five minutes, as outlined in Standing Order 44(4). Having stopped the bells the Chair called the Committee to order. At that point Gary McRobb (Kluane, NDP) rose on a point of order and citing Standing Order 44.1(1) asked that the count be deferred. This standing order stipulates a count may be deferred on "an appropriation or taxation bill." The Chair asked Mr. McRobb if he felt the standing order applied to Bill No. 101. Mr. McRobb stated, "Clearly the side opposite has attached a monetary cost to this bill and, therefore, it could be interpreted as an appropriation of the taxpayers' money. Therefore it does comply with this section of the Standing Orders." The Chair complemented Mr. McRobb on his inventiveness but ruled there was no point of order and the count proceeded. The motion to report progress was defeated. (*Hansard*, 3593)

Division

Required

On April 4, 2002, the Premier, Hon. Pat Duncan (Porter Creek South, Liberal) moved the following motion (No. 185): "THAT the Yukon Legislative Assembly, pursuant to sections 2 and 3 of the *Ombudsman Act*, recommends that the Commissioner in Executive Council reappoint Hendrick K. Moorlag as the Ombudsman for a term of five years, commencing April 8, 2002." (*Hansard*, 2989) As the first item of business under Orders of the Day the Government House Leader, Hon. Jim McLachlan (Faro, Liberal) requested, and received, unanimous consent to waive notice and deal with the motion at that time. Following unanimous consent the Speaker, Hon. Dennis Schneider, read out the motion. He then informed members, "the effect of section 2 is that for the motion to be carried, at least 12 members must vote for it...In order to ensure that the requirements of section 2 of the *Ombudsman Act* are met, the Chair will now ask Mr. Clerk to

[12] *House of Commons Procedure and Practice*, page 463 and 464.

please poll the House." The result of the division was 16 yea, nil nay. The Speaker therefore declared "the motion carried by the required two-thirds of the members of the Assembly." (*Hansard*, 2995)

On May 13, 2002 the Premier, Hon. Pat Duncan (Porter Creek South, Liberal) moved the following motion (No. 264): "THAT, pursuant to section 18 of the *Conflict of Interest (Members and Ministers) Act*, the Legislative Assembly appoint David Phillip Jones, Q.C. as a member of the Conflict of Interest Commission for a three-year period." (*Hansard*, 3628) As the first item of business under Orders of the Day the Government House Leader, Hon. Jim McLachlan (Faro, Liberal) requested, and received, unanimous consent to waive notice and deal with the motion at that time. Following unanimous consent the Speaker, Hon. Dennis Schneider, read out the motion and the Premier spoke to it. The Premier having concluded her remarks the Speaker said, "Before putting the question, the Chair must draw members' attention to section 18(4) of the *Conflict of Interest (Members and Ministers) Act*. That section requires that the motion appointing a Conflicts Commissioner be supported by at least two-thirds of the members of the Assembly present for the vote. In order to ensure that the requirements of section 18 of the *Conflict of Interest (Members and Ministers) Act* are met, the Chair will now call for a recorded division." The result of the division was 16 yea, nil nay. The Speaker therefore declared "the motion carried by the required support of two-thirds of the members of the Assembly present for the vote, and that Mr. David Phillip Jones has now been appointed as the Conflicts Commissioner." (*Hansard*, 3633-4)

<u>Upon the motion to resolve into Committee of the Whole</u>

Standing Order 41 says, "A motion for the Assembly to resolve into Committee of the Whole shall be put immediately without debate or amendment." While the motion is neither debatable nor amendable it is votable. However the normal procedure is for the motion to be carried on a voice vote.

During the 2002 Spring Sitting division was twice called on the motion to resolve into committee. The first time division was called, on May 23, 2002 the motion was agreed to on a division of 11-5. The Government and Official Opposition caucuses supported the motion while the Third Party caucus and the three independent members voted against it.

Division was called a second time on May 28, 2002. At that time the Official Opposition, the Yukon Party caucus and the independent members voted against the motion and it was defeated 9-7 on division. This was the first time in the history of the Yukon Legislative Assembly that the motion to resolve into committee had been defeated. The consequences of that vote are described above under 'Business, order of.'

Documents, tabling of

Standing Order 38(2) allows any member to table a document "for the information of members..." On April 24, 2002 the Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP), tabled the results of a survey conducted by the official opposition. At that point the Government House Leader, Hon. Jim McLachlan (Faro, Liberal) rose on a point of order. Hon. Mr. McLachlan said

> when the Standing Orders of this Legislature were created and the slot for tabling returns and documents was put in, it was with the understanding that, when members were tabling documents, they tabled the entire results of the documents, not half a story, not part of a story that only they wanted heard. Members on this side have been very careful to table the full results and the full set of correspondence in any matter that related to the Legislature.
>
> Mr. Speaker, to be officially accepted, we want the whole story of the document — not just part of it, not just the part that they favour, their side of the story, not just the picture they want to paint, but the entire document, or it's not acceptable to this side of the House. (*Hansard*, 3329-30)

The Official Opposition House Leader, Dennis Fentie (Watson Lake, NDP) argued that the document was complete and that the House should continue with its business. The Speaker, Hon. Dennis Schneider, said he would take the matter under advisement and the Assembly continued with its business for that day.

The Speaker made a statement on the issue on April 29, 2002. At that time the Speaker said

> The practice of this Assembly is to allow all members to table documents. The few restrictions that apply to such documents are that the author is identified and that they conform to standards of parliamentary language. No attention is paid to whether the document tabled is in any way complete. That is not for the Chair to decide. (*Hansard*, 3395)

Facts, presentation of

During Question Period on April 4, 2002 the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) referred to derogatory comments made on a radio program by a person associated with the Yukon Liberal Party regarding the movement of three members from the government backbenches to the opposition. He then asked the Premier, Hon. Pat Duncan (Porter Creek South, Liberal) if she concurred with the remarks made about the three MLAs. The Premier said, "what the member opposite should be aware of is that the three members in question resigned and offered their resignation to caucus, and that offer of resignation was unanimously accepted by not only the caucus members but all of our front office staff, as well." (*Hansard*, 2991) After a supplementary question on the same subject the Premier said, "three members of our caucus offered their resignation. That resignation was unanimously accepted." (*Hansard*, 2991)

At that point one of the three MLAs to cross the floor, Mike McLarnon (Whitehorse Centre, Independent) rose on a point of order saying, "since facts are being presented in this House, I'd need to seek proof of that resignation, because I stand here categorically knowing that I did not resign. And if that is going to be a statement, proof has to be provided to this House, or else it isn't factually correct." (*Hansard*, 2992)

After an intervention by the Government House Leader, Hon. Jim McLachlan (Faro, Liberal), the Speaker, Hon. Dennis Schneider ruled that there was no point of order, but a dispute

between members. (*Hansard*, 2992) The Speaker further clarified his thoughts on the matter the next sitting day. In a ruling delivered April 8, 2002 the Speaker said

> the most important privilege belonging to members of this Assembly — freedom of speech — results in members being entitled to make statements in this House without having to provide proof. As a consequence, there may well be two or more entirely different versions of events presented to the House. When that happens, the House and the Chair must accept the varying versions of events as being members' differing conceptions as to what actually happened. It is never the duty of the Chair to determine what is factually correct and, therefore, a dispute about facts is not a basis for a point of order. (*Hansard*, 3007)

First Nations language, use of in the Assembly

The working language of the Yukon Legislative Assembly is English. Simultaneous translation in other languages is not provided. Members are free, however, to speak in other languages if they so choose. On April 10, 2002 Lorraine Peter (Vuntut Gwitchin, NDP) spoke in Gwitchin during her tribute to Joe Henry (Joseph Henry Shädä) who died in March 2002 at the age of 103. Mrs. Peter's use of Gwitchin is noted in *Hansard* as:
[Member spoke in native language. Translation unavailable.](*Hansard*, 3073)

Moment of silence

Tributes are the first item of business in the Daily Routine, as outlined in Standing Order 11(2). Occasionally tributes given in the Assembly require a moment of silence. The placement of the moment of silence can be problematic, however, if more than one member wishes to participate in the tribute.

On April 29, 2002 the Minister responsible for the Workers' Compensation Health and Safety Board, Hon. Sue Edelman (Riverdale South, Liberal), rose in recognition of Workers' Day of Mourning for those workers killed or injured on the job. She concluded her tribute by asking the Speaker, Hon. Dennis Schneider, to "allow members gathered here to rise when all members have finished their tributes to work and remember the workers and their families in a moment of silence." (*Hansard*, 3393) Following tributes by Dave Keenan (Ross River-Southern Lakes, NDP), Peter Jenkins (Klondike, Yukon Party) and Don Roberts (Porter Creek North, Independent) the Assembly observed a moment of silence.

Motions, removal from the Order Paper

According to *Beauchesne's Parliamentary Rules & Forms,* "It is the Speaker's duty to call the attention of the mover and of the House to the irregularity of a motion; whereupon the motion is usually withdrawn or so modified as to be no longer objectionable. If the motion is of such a nature that objection cannot be removed, the Speaker may refuse to put the motion to the House."[13]

---

[13] *Beauchesne's* §566(3), page 174-5.

Motions may become irregular for a variety of reasons. On April 4, 2002 immediately before the Daily Routine the Speaker, Hon. Dennis Schneider, informed the Assembly that certain motions would be withdrawn from the Order Paper. Twenty-one motions were withdrawn because two members had been appointed to cabinet. As they were now members of the government (cabinet) motions standing in their names as 'Motions other than Government Motions' were now irregular. The removal of a member from cabinet meant motions standing in his name as 'Government Motions' were now irregular. One motion became irregular due to the passage of a bill that dealt with the same subject matter. (*Hansard*, 2987) On April 16, 2002 the Speaker ordered another motion withdrawn from the order paper. This motion had become irregular (outdated) as it referred to an event that was now past. (*Hansard*, 3173). As mentioned above under 'Business, order of' the Speaker ruled Motion No. 141 out of order on May 28, 2002.

Order and Decorum

Standing Order 17(1) says, "Every member desiring to speak shall rise in his or her place and address the Speaker." This standing order contains three components vital to the maintenance of order and decorum in the Assembly. The first component is that a member wishing to speak must rise to be recognized by the Presiding Officer. The second component is that, when the Speaker is in the Chair, the member must rise in his or her assigned place. The third component is that the member must address his or her remarks through the Speaker and not directly across the floor to another member. The practice of addressing remarks through the Speaker – like the practice of addressing members by their constituency or ministerial portfolio - is meant to help maintain order and decorum by de-personalizing debate. In operation this leads to an admonition against the use of the second person (e.g., 'you' and 'your') in debate. Presiding Officers will generally overlook the use of the second person where it is used generally and not directed at a particular member, particularly in an accusatory manner.

<u>Members Rising in Their Place</u>

Proceedings in Committee of the Whole are less formal than when the Speaker is presiding. However the Chair of Committee of the Whole must still insist on some adherence to rules of order and decorum. On April 23, 2002 during committee debate on Bill No. 9 the Chair, Mike McLarnon, found it necessary to call for order, adding

> The Chair can only recognize members when they're standing in their place, waiting to be recognized. When a member sits down or a member stands up, the Chair has confusion as to figuring out who is asking the question and who isn't. In the future, if members wish to be recognized if they have a question, please remain standing; or, when they sit down, understand that other people standing up can relinquish the speaking order and take their spot. (*Hansard*, 3312)

Beauchesne's Parliamentary Rules & Forms informs us that the Chair need not "only recognize members when they're standing in their place." In fact, annotation 902(5) says, "members may

occupy and speak from places other than those regularly assigned to them."[14] However, while members may speak from a desk other than the one assigned to them the *Members' Procedural Handbook* notes that this practice is "not encouraged."[15] More importantly was the Chair's concern about members rising when they wish to be recognized and taking their seat when another member is speaking. As the Chair advised members who do not rise to ask questions risk ceding the floor to another member.

Addressing Members through the Chair

One example of the use of Standing Order 17(1) occurred during Question Period on April 9, 2002. In responding to a question from Wayne Jim (McIntyre-Takhini, Independent) the Minister of Education, Hon. Cynthia Tucker (Mount Lorne, Liberal) said, "the most important people here are the children. And you and other members here seem to forget that from time to time." The Speaker, Hon. Dennis Schneider, called for order and "remind(ed) the minister to address her comments through the Chair and not personalize comments such as "you"." (*Hansard*, 3042)

The Speaker again invoked Standing Order 17(1) on April 11, 2002 during second reading of Bill No. 9, *Second Appropriation Act, 2002-03*. Wayne Jim (McIntyre-Takhini, Independent) was addressing the bill. In the course of debate he used the following phrases:

> For the record, I ask the Premier, how many of these annual intergovernmental meetings has your government held since being elected to office?...(I experienced) what it was like to be the only First Nation MLA within your caucus and Cabinet...It doesn't surprise me one bit that you would cut funding toward First Nations relations...there are children out there who are suffering now. Unlike yourselves...(*Hansard*, 3116)

At that point the Speaker, Hon. Dennis Schneider, intervened saying

> The Chair has been rather patient today; however, I would like to remind the member to please address his comments through the Chair, and try not to personalize them by the use of "you" or "yourselves" or similar words like that. (*Hansard*, 3116)

Mr. Jim vowed to adhere to the Speaker's ruling.

Despite his pledge Mr. Jim again violated Standing Order 17(1) during Question Period on April 16, 2002. In addressing the Premier regarding a First Nations child sent Outside the Yukon Mr. Jim said, "Last Tuesday, a phone call took place between you and the Chief of Kwanlin Dun First Nation in regard to..." At that point Speaker Schneider intervened and reminded Mr. Jim to "address (his) comments through the Chair, not personally across the floor." Mr. Jim continued with his main question but was soon again interrupted by the Speaker after saying, "the child was flown out to Saskatchewan minutes after speaking to you on the

---

[14] *Beauchesne's* § 902(5), page 250.

[15] *Yukon Legislative Assembly Members' Procedural Handbook*, Legislative Assembly Office, April, 2000, page 36. The procedural handbook is not a parliamentary authority. However its contents do reflect accepted practice in the Assembly.

phone." Speaker Schneider again reminded Mr. Jim to "address (his) comments to the Chair." Mr. Jim then complied. (*Hansard*, 3176)

On May 13, 2002 during Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03* the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) questioned the Minister of Infrastructure, Hon. Scott Kent (Riverside, Liberal) regarding aviation and marine services. At one point Mr. Jenkins said, "You don't have to get your back up and you don't have to get your dander in an uproar – just face the realities of your responsibilities. That's all I'm encouraging." Committee Chair Mike McLarnon called for order and asked members to "ensure that we're addressing through the Chair instead of directly." (*Hansard*, 3655)

Addressing Ministers by portfolio

Beauchesne's Parliamentary Rules & Forms advises that "A Minister is normally designated by the portfolio held."[16] The most common violations of this rule come in two forms: referring to the Minister by name, rather than portfolio; and deliberately mis-stating the name of the portfolio.

On April 29, 2002 Hon. Dale Eftoda (Riverdale North, Liberal) was speaking to Bill No. 61, *Electoral District Boundaries Act, 2002* at second reading. Toward the end of his remarks he referred to "Minister Kent in Riverside." The Speaker, Hon. Dennis Schneider , took this opportunity "to remind members here, from time to time in the House, they've been referring to other members by their names, and it's not really appropriate. We'll just asks that members refer to other members by their title or constituency." (*Hansard*, 3410)

On May 6, 2002 during Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03*, (Environment), Gary McRobb (Kluane, NDP) quoted from a government news release regarding the Yukon Protected Areas Strategy. In doing so Mr. McRobb mentioned the Environment Minister, Hon. Dale Eftoda (Riverdale North, Liberal) and the Minister of Energy, Mines and Resources, Hon. Scott Kent (Riverdale, Liberal) by their surnames.

At that point the Chair of Committee of the Whole, Mike McLarnon, called for order and said, "A member cannot do indirectly what they wish to do directly through a letter, which is to name members by their last names in this House." (*Hansard*, 3521) In other words, if members choose to quote documents in the Assembly they must paraphrase, if necessary, to ensure their statements conform to the rules and practices of the House.[17]

On May 15, 2002 the Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP) was speaking to Bill No. 9 (Finance) in Committee of the Whole. At one point he quoted a Liberal news release of March 22, 2000 saying the previous NDP government's "decision to spend $212 million by special warrant was just another example of NDP arrogance, said Liberal Party leader Pat Duncan."" At that point the Chair of Committee of the Whole, Mike McLarnon, called for order saying, "It is important that we remember that, when naming members, we refer to them as the riding they represent or their ministry." (*Hansard*, 3718) This rule applies even

[16] *Beauchesne's* §484(1), page 142.

[17] See *House of Commons Procedure and Practice*, page 522.

where members are quoting directly from published documents. In cases such as that members must paraphrase the document in order to comply with the Assembly's rules of order and decorum.

A similar situation occurred on May 30, 2002 during Committee of the Whole debate on Bill No. 9 (Business, Tourism and Culture). This time Dave Keenan (Ross River-Southern Lakes, NDP) referred to Mr. Kent by name. Once again the Committee Chair intervened to remind members to use proper form when referring to ministers.

A somewhat different issue manifested itself on May 13, 2002 during Committee of the Whole debate on Bill No. 9 (Infrastructure). At that time the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) referred to the Department of Business, Tourism and Culture as "the Department of Blah, Blah, Tourism and Blah Blah."

The Minister of Business, Tourism and Culture, Hon. Mr. Eftoda rose on a point of order saying, "I believe there was a ruling by the Speaker that we would not invent names for ministries." The Committee Chair, Mr. McLarnon, upheld Hon. Mr. Eftoda's point of order and asked that members "refer to the department as it is titled." Mr. Jenkins said, "Mr. Chair, I don't want to dispute what you're pointing out, but the ruling from the Speaker was with respect to (inventing) fictitious names for ministers...It had nothing to do with the department." (*Hansard*, 3644-5)

The ruling referred to by Hon. Mr. Eftoda and Mr. Jenkins was delivered by the Speaker, Hon. Dennis Schneider, on November 5, 2001. In it the Speaker concluded, "inventing names of portfolios to embarrass members of this House, or persons outside this House, will not be accepted." (*Hansard*, 2490) In ruling on the present point of order the Committee Chair said, "We will just expand it to allow for not only an improper name but also a proper sense and respect of the department. So that will take care of all other rulings by expanding it here in the Committee. Please use the name of the department as it is in the budget departments to avoid confusion and also to make sure that the demeanour of the debate is at the proper level." (*Hansard*, 3645)

Interrupting a member who has the floor

On April 24, 2002 the Minister of Environment, Hon. Dale Eftoda (Riverdale North, Liberal) addressed the Assembly during debate on Motion No. 228. Toward the end of the Speaker, Hon. Dennis Schneider, called for order after comments were made by another member. Speaker Scheider said, " The minister has the floor, and it's contrary to Standing Order 6(6), that no member shall interrupt except to raise a point of order. Please allow the minister to continue." Mr. Eftoda then concluded his remarks as the time reached the normal hour of adjournment, 6 p.m. (*Hansard*, 3364)

Members of the public, references to

During question period on May 6, 2002 Don Roberts (Porter Creek North, Independent) questioned the Minister of Health and Social Services, Hon. Sue Edelman (Riverdale South, Liberal) regarding children in government care. In doing so Mr. Roberts used the name of Sandra Gibbs, who at one time ran a facility for children in care. (*Hansard*, 3518) Later that day, during Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03*,

(Environment), the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) named a "Mr. Heynen" who he claimed was being dealt with unfairly by the Department of Environment. (*Hansard*, 3539) During Question Period on May 7, 2002 Mr. Roberts again raised questions about children in government care, this time referring to "the Gibbs contract." (*Hansard*, 3548) Though she did not raise it as a point of order the Minister of Health and Social Services, Hon. Mrs. Edelman said

> Mr. Speaker, we try really hard in this Legislature to talk about policy issues. We try not to talk about individuals. We do that out of respect — out of respect for their privacy and out of respect for the fact that they can't defend themselves here in the Legislature. Mr. Speaker, that's the way it is. Those are the rules of the House. (*Hansard*, 3548)

After Question Period the Speaker, Hon. Dennis Schneider, made a statement on the issue. He said:

> For the last few days, members of the public have been identified in this House. In previous sittings, we have ruled that that is not parliamentary. These people have absolutely no way to defend themselves. Further, it causes disorder in the House. Far be it for the Chair to try to limit debate but, out of respect for other people who cannot defend themselves, I would ask the members if they would be judicious in their choice of words and when they decide they're going to identify a person or a business that can't defend themselves. (*Hansard*, 3549)

At that point Mike McLarnon (Whitehorse Centre, Independent) offered a clarification saying, "the person's name being used here is also the name of the company, which is a contractor." (*Hansard*, 3549) However the Speaker, having already made his statement on the issue asked the member to take his seat and moved on to other business.

Later that day at the Committee of the Whole continued its consideration of the appropriation for the Department of Environment in Bill No. 9 Mr. Jenkins advised the Assembly that his naming of Mr. Heynen the day before had been "done with his complete concurrence and complete understanding." (*Hansard*, 3551) Hon. Mr. Eftoda responded that "Out of respect for what the Speaker ruled earlier today, I was hoping that this specific issue would not come up." (*Hansard*, 3551)

Marleau and Montpetit advise the following as the established practice regarding references by name to members of the public:

> Members are discouraged from referring by name to persons who are not Members of Parliament and who do not enjoy parliamentary immunity, except in extraordinary circumstances when the national interest calls for the naming of an individual. The Speaker has ruled that Members have a responsibility to protect the innocent, not only from outright slander but from any slur directly or indirectly implied, and has stressed

> that Members should avoid as much as possible mentioning by name people from outside the House who are unable to reply and defend themselves against innuendo.[18]

Essentially this practice is designed to ensure the member's parliamentary privilege of freedom of speech is used judiciously and not to the disadvantage of persons who do not enjoy a similar privilege. It does not prevent a member from bringing up an issue of public importance. It only prevents the member from naming individuals involved in the issue.

Personal privilege, point of

A point of personal privilege is an opportunity for a Member "to explain a matter of a personal nature although there is no question before the House."[19] According to *House of Commons Procedure and Practice* a point of personal privilege

> ...is an indulgence granted by the Chair. There is no connection to a question of privilege, and as Speaker Fraser once noted, "There is no legal authority, procedural or otherwise, historic or precedential, that allows this." Consequently, such occasions are not meant to be used for general debate and Members have been cautioned to confine their remarks to the point they wish to make. The Speaker has also stated that, as these are generally personal statements and not questions of privilege, no other Members will be recognized to speak on the matter.[20]

Prior to the Assembly meeting on April 15, 2002 Hon. Sue Edelman (Riverdale South, Liberal) informed the Speaker, Hon. Dennis Schneider that she wished to raise a point of personal privilege that day. The Speaker granted Hon. Mrs. Edelman leave to raise her point of personal privilege during the Daily Routine after Tributes and before Tabling Returns and Documents. At that time Hon. Mrs. Edelman rose to apologize for comments she had made in an email which subsequently became public knowledge. Hon. Mrs. Edelman also informed the Assembly of her resignation as Minister responsible for the Status of Women. (*Hansard*, 3141)

Petitions

<u>Received</u>

Standing Order 66(1) says

> On the sitting day following the presentation of a petition, the Clerk shall present a report upon the petition...and every petition so reported upon...which, according to the Standing Orders or practice of the Assembly, can be received, shall then be deemed to be read and received.

---

[18] *House of Commons Procedure and Practice*, page 524.
[19] *House of Commons Procedure and Practice*, page 136.
[20] *House of Commons Procedure and Practice*, page 137.

On December 3, 2001, the final sitting day of the 2001 Fall Sitting, Dennis Fentie (Watson Lake, NDP) presented Petition No. 5. The sitting day following the presentation of the petition, therefore, was the first sitting day of the 2002 Spring Sitting, April 4, 2002. On that day the Clerk of the Legislative Assembly, Patrick L. Michael, informed the Assembly that Petition No. 5 met "the requirements as to form of the Standing Orders of the Yukon Legislative Assembly." The Speaker, Hon. Dennis Schneider, therefore deemed the petition to have been read and received. (*Hansard*, 2998)

Response by Minister

Standing Order 67 says, "The Executive Council shall provide a response to a petition which has been received within eight sitting days of its presentation." Petition No. 5 having been presented on December 3, 2001 and having been deemed received on April 4, 2002 the cabinet had to respond to it by April 17, 2002. On that day Hon. Dale Eftoda (Riverdale North, Liberal) responded to the petition.

Presiding Officers

Absence of

After Question Period on May 9, 2002 the Assembly resolved into Committee of the Whole to continue debate on Bill No. 9, *Second Appropriation Act, 2002-03*. At approximately 3:45 p.m. the Committee Chair, Mike McLarnon, called for a 15-minute recess, indicating to members present that the committee would reconvene at 4:00 p.m. Mr. McLarnon called the recess because he had an appointment to attend to outside the Assembly. According to procedure the Deputy Chair would taken the place of the Chair.

However the Deputy Chair was also otherwise engaged at 4:00 p.m. and for some time afterward. This effectively stalled proceedings, as the committee could not reconvene without a presiding officer. The reasons for the absence of the Chair and Deputy Chair, and the fact that no contingency plan was made to deal with their absence, were the subject of some dispute among the members of the Assembly.[21]

Procedurally, however, different issues were relevant. One issue was whether another member could be appointed to chair the committee. Had the Deputy Chair's unavailability been anticipated the Speaker could have assumed the chair before the recess and, pursuant to Standing Order 5(3), appointed another member as acting Chair of Committee of the Whole. However, without a presiding officer the committee did not have the ability to reconvene, much less recall the Speaker to appoint an acting Chair.

Another issue was the procedure to be followed to close proceedings at the normal hour of adjournment. Standing Order 2(2) provides for the adjournment of the Assembly when the Speaker is in the Chair at the normal hour of adjournment. Standing Order 2(4) provides for adjournment when the Assembly is in Committee of the Whole. However that process requires that the Chair of Committee of the Whole (or the Deputy Chair, or an acting Chair) rise and

[21] See, for example, Chuck Tobin, "Sitting week ends in angry squabble" The Whitehorse *Star*, May 10, 2002, page 6.

report to the Assembly on the proceedings of the committee. Without a presiding officer the committee could neither reconvene, nor report to the Assembly.

In other words the Standing Orders did not provide direction for dealing with a situation where the Chair had been vacated by one presiding officer without another presiding officer assuming this responsibility.

Fortunately the Deputy Chair of Committee of the Whole, Don Roberts, took the chair approximately 25 minutes before the normal hour of adjournment. Committee business proceeded in the normal fashion for the rest of the day.

Casting Vote

Standing Order 4(2) says, "In the event of a tie vote, the Speaker shall cast the deciding vote and any reasons stated shall be entered in the Votes and Proceedings." *Beauchesne's* advises "The Speaker votes in such a manner as to leave the House another opportunity of deciding the question."[22] This advice is difficult to adhere to when a tie vote arises at Third Reading since this is, by definition, the final opportunity for the House to consider the question.

On May 30, 2002 the Speaker, Hon. Dennis Schneider, was called upon four times to cast a vote at Third Reading. The bills upon which the Speaker cast a vote were: Bill No. 60, *Act to Amend the Access to Information and Protection of Privacy Act;* Bill No. 58, *Act to Amend the Economic Development Act*; Bill No. 57, *Government Organisation Act*; and Bill No. 71, *Corporate Governance Act.* In all cases the Speaker voted for the motion and all four bills passed the House. In all cases the Speaker gave the following reasons for his vote:

> In general, the principle applied to motions and bills is that decisions should not be taken except by a majority. In this case, however, the Chair is aware that the passage of this bill is a test of the confidence of the Assembly in the government. It is my view that questions of confidence are of such importance that an expression of non-confidence should be clearly stated by a majority. The Chair, therefore, votes for the motion. (*Hansard*, 3897, 3898, 3899)

Sir Erskine May advises that "When the voices are equal in a Committee of the Whole House, the Chairman, who does not otherwise vote, gives a casting vote, and in doing so is guided by the same principles as the Speaker of the House."[23] Circumstances required that the Deputy Chair of Committee of the Whole, Don Roberts, cast a vote on May 29, 2002 during committee debate on a proposed amendment to the line item 'Ministers' in Vote 2, Executive Council Office, of Bill No. 9, *Second Appropriation Act, 2002-03*. In doing so the Deputy Chair made the following statement:

> I didn't realize that being Deputy Chair was going to be a difficult task, but I gather it is a very difficult task at times. I guess, when you're placed in a position of leadership,

---

[22] *Beauchesne's* §310(1), page 94.

[23] C.J. Boulton et. al. *Erskine May's Treatise on Law, Privileges, Proceedings and Usage of Parliament* (21st edition), (London: Butterworths. 1989), Page 353.

> obviously sometimes you have to make the right decision, or sometimes you make the wrong decision. And then there are the rules, and the rules are obviously what maintains our Parliament, what maintains our dignity, what maintains what goes on in this House. Even though personally I may have other views about what should happen, I'm bound by the office of the Deputy Chair. I've always liked to be a rebel, but I don't think at this time I can be one, unfortunately. Beauchesne states that in the case of an equality of votes, the Chair shall give a casting vote.[24] In general, the principle to be applied to amendments to bills is that the bill should be left in its existing form. It is therefore my duty to vote against the amendment, and I declare the amendment defeated. (*Hansard,* 3856)

Unlike the Speaker, the Deputy Chair's reasons for the casting vote are not entered in the Votes and Proceedings.

Election of (Deputy Chair of Committee of the Whole)

Standing Order 5(2) says, "The Assembly may, from time to time as necessary, elect a Deputy Chair of Committee of the Whole who shall be entitled to take the Chair of Committee." The normal procedure for such an election is by way of a government motion that a member be appointed as Deputy Chair.

On April 15, 2002 the Government House Leader, Hon. Jim McLachlan (Faro, Liberal), moved motion No. 217 that "the Member for Porter Creek North, Mr. Roberts, be appointed as the Deputy Chair of the Committee of the Whole." (*Hansard,* 3148) The motion, given without notice, was agreed to.

Neutrality of

Beauchesne's Parliamentary Rules & Forms advises that "The chief characteristics attached to the office of Speaker...are authority and impartiality." Of impartiality *Beauchesne's* says, "Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure and many conventions exist which have as their object, not only to ensure the impartiality of the Speaker but also, to ensure that there is a general recognition of the Speaker's impartiality."[25] The same things can be said of the office of Deputy Speaker (Chair of Committee of the Whole) and the Deputy Chair of Committee of the Whole.

On May 1, 2002 during committee consideration of Bill No. 9, *Second Appropriation Act, 2002-03*, (Yukon Development Corporation), Gary McRobb (Kluane, NDP) made reference to the committee's Chair, Mike McLarnon, having left the Liberal caucus to sit as an independent member. Mr. McRobb spoke about the trade and investment fund and, in reference to the Chair, said

---

[24] *Beauchesne's* §310(4), page 95.

[25] *Beauchesne's* §168(1), page 49.

> I want to thank you personally for bringing that to the attention of the House — the fact that the Liberal government was sitting on and was hiding a report for more than a year, which revealed an independent analysis showing how the trade and investment fund was a very worthwhile government program that really produced results.
>
> I admire your honesty, Mr. Chair, for standing up for what you believe in, and drawing the line between being muzzled and being able to come over here and speak out on such important matters to the Yukon. I agree with you — it doesn't matter what party develops good initiatives; if it's good for the Yukon and makes sense, let's do it. (*Hansard*, 3462)

The Committee Chair then intervened saying, "while the Chair does appreciate the complimentary remarks from Mr. McRobb, please do not include the Chair in the discussions, or else I know that negative remarks will fly at the Chair during the discussion as well. The Chair is neutral during this." (*Hansard*, 3462)

Participation in debate

During the 2002 Spring Sitting two of the Assembly's presiding officers – the Deputy Speaker (Chair of Committee of the Whole) and the Deputy Chair of Committee of the Whole – were opposition members. Both members participated in debate on bills before the committee. This participation is unconventional. As *Beauchesne's Parliamentary Rules & Forms* advises, "Precedent has been created to the effect that incumbents of the Chair will refrain from speaking in debate."[26] It is also common practice that "During divisions (Deputy Speakers) have voted but have not attempted to participate otherwise in the debates of the House."[27] However "the Speaker has ruled that clear restraints are imposed by the House only on the Speaker."[28] So while it is unconventional for presiding officers (other than the Speaker) to participate in debate it is not, strictly speaking, against the rules. Presiding officers other than the Speaker are free to exercise their judgement in determining their level and type of participation in debate.

On May 15, 2002 during committee consideration of Bill No. 9, *Second Appropriation Act 2002-03*, (Health and Social Services) the Chair of Committee of the Whole, Mike McLarnon, announced his desire to ask questions regarding the Alcohol and Drug Secretariat. He announced a 15-minute recess. Upon calling the committee to order the Chair informed the committee that the Deputy Chair, Don Roberts, was not available. The Chair then said, "Rather than recalling the Speaker to the Chair to appoint an acting Chair of Committee of the Whole, the Chair will write his questions to the minister. So we can now proceed with alcohol and drug secretariat." (*Hansard*, 3712)

---

[26] *Beauchesne's* §188, page 54.
[27] *Beauchesne's* §184, page 53.
[28] *Beauchesne's* §188, page 54.

Private member's bill, proceeding to Committee of the Whole

On May 7, 2002, pursuant to Standing Order 14.2(3) the Official Opposition House Leader, Gary McRobb (Kluane, NDP) identified Bill No. 101, *Child, Youth and Family Advocacy Act*, as one item to be called the following day, which was a designated Opposition Private Members' Day. Bill No. 101, standing in the name of Dave Keenan (Ross River-Southern Lakes, NDP), was called for debate on May 8, 2002 and received Second Reading.

Pursuant to Standing Order 57(4) the bill, having received Second Reading, now stood ordered for consideration by the Committee of the Whole. The Speaker, Hon. Dennis Schneider, therefore asked Mr. Keenan if it was his wish that the House resolve into committee to further consider Bill No. 101. Mr. Keenan indicated that he did so wish and the Speaker then left the Chair and ordered the House into committee without the usual motion having been moved.

In following this procedure the decision was made that designating a bill for consideration on Opposition Private Members' Day did not mean designating a single stage for the bill on that day. This would have required a private member's bill be called for second reading on one day, for debate in committee on a subsequent day and Third Reading on another day. Designating a private members bill for consideration on Opposition Private Members' Day meant it could proceed through as many stages as normally allowed under the Standing Orders on one day.

Private members' business

As a rule private members' business is given priority on Wednesdays, after the Daily Routine. Standing Order 14 sets out the process for determining whether the priority, on a given Wednesday, will be allotted to the business of government private members or those in the opposition. Standing Order 14(1) says opposition private members' business is given priority "on the first Wednesday of a Session that private members' business is to be considered, and every second Wednesday thereafter." Standing Order 14(2) allots priority on "the second Wednesday of a Session that private members' business is to be considered, and every second Wednesday thereafter" to government private members' business.

Shortly before the 2002 Spring Sitting began three government private members left the government caucus to sit in opposition as independent members. As a result the only private member left on the government side was the Speaker who does not, as a rule, participate in debate. For the purposes of Standing Order 14(2) therefore the government had no private members.

In dealing with this situation two practices were followed. The first had to do with the designation of government private members' business. Standing Order 14.2(7) says

> When Government private members' business has precedence, the Government House Leader or designate, no later than the time at which the Assembly proceeds to Orders of the Day on the sitting day preceding the call of Government private members' business, may, on behalf of the Government private members, identify the order in which the items standing on the Order Paper or on the Notice Paper in the name of Government private members shall be called.

Given that there were no government private members the Government House Leader was not required, on the sitting day preceding the call of Government private members' business, to announce that there was no government private members' business.

The second practice was that the time allotted to give priority for government private members' business would not be allocated to give priority to opposition private members' business. As mentioned Standing Order 14(2) deals with those Wednesdays when government private members' business has priority. The order of business prescribed for that day indicates that once government private members' business is dealt with the next item of business is government designated business, followed by 'Motions Respecting Committee Reports' and then 'opposition private members' business.'

Procedure, rules of

As noted in *Beauchesne's Parliamentary Rules & Forms*, "The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and enforce them."[29] The Chair of Committee of the Whole, Mike McLarnon, brought this point to members' attention on April 23, 2002 during committee debate on Bill No. 9, *Second Appropriation Act, 2002-03*. At that time Hon. Pam Buckway (Lake Laberge, Liberal), the Minister responsible for the Yukon Housing Corporation, in response to questioning from Dave Keenan (Ross River-Southern Lakes, NDP) said:

> I feel that the conduct of the member opposite constitutes personal harassment, which means objectionable conduct, comments or displays that demean, belittle or cause humiliation or embarrassment. This form of harassment is forbidden under the *Human Rights Act*, and the Yukon *Human Rights Act*. I would ask that the member opposite take note of his conduct and consider others before he speaks or acts. (*Hansard*, 3312)

Hon. Ms. Buckway did not raise the issue as a point of order. Still, Mr. McLarnon informed members that "The Yukon *Human Rights Act* has jurisdiction outside of the Legislative Assembly." (*Hansard*, 3312-3) As Standing Order 1 indicates in the Assembly the Chair maintains order based on the Standing Orders "Sessional or other orders, (or) the practices and procedures of the House of Commons of Canada, as in force at the time...so far as they may apply to this Assembly."

The Speaker, Hon. Dennis Schneider, was asked to intervene in a similar matter on April 24, 2002. During debate on Motion No. 228 Hon. Jim McLachlan (Faro, Liberal) referred to "the aborted Taga Ku project"; a plan for a development on the Whitehorse waterfront that did not materialize. Gary McRobb (Kluane, NDP) rose on a point of order saying

> I am not sure if this is in the House rules, but out of respect for First Nations who have asked all legislators to not mention the word Taga Ku out of respect. There was even a ceremony held by the Champaign-Aishihik First Nation a few years ago to ensure everybody was aware of that. Yet, the government House leader continues to refer to that

[29] *Beauchesne's* §33, page 14.

> phrase, and that is very disrespectful to our First Nations, and he should be stopped. (*Hansard*, 3343)

The Speaker ruled that he had

> no knowledge of the information just related to the Chair by the Member for Kluane. However, the Chair believes it is the Chair's duties only to deal with the procedures in the House and not with the requests from residents outside the House. So, the Chair is only going to deal with the rules and whatever else is laid down in the Standing Orders...So, I would ask the minister to continue, please. (*Hansard*, 3343)

Though they were not ruled out of order Hon. Mr. McLachlan agreed to "withdraw the remarks made and simply refer to it as the 1993 waterfront project." (*Hansard*, 3343)

Question of Privilege

The Speaker, Hon. Dennis Schneider, dealt with two Questions of Privilege during the 2002 Spring Sitting. In dealing with questions of privilege the Speaker's role is to determine if there has been a *prima facie*, or apparent, breach of privilege. If the Speaker decides that a *prima facie* breach has occurred the issue is then given precedence over other matters before the Assembly. However, it is up to the Assembly, not the Speaker, to determine how the issue should be dealt with and to finally determine if a privilege has been breached.[30]

The first Question of Privilege was raised by Mike McLarnon (Whitehorse Centre, Independent) on April 8, 2002 on behalf of himself, Wayne Jim (McIntyre-Takhini, Independent) and Don Roberts (Porter Creek North, Independent). At issue was the possession of, and access to, computer files and equipment belonging to the members which they alleged was improperly accessed by government staff after they left the Liberal caucus to sit as independents. Further, Mr. McLarnon alleged government staff improperly kept these files and equipment from the now-independent members. Mr. McLarnon noted that the files contained information the members had gathered as private members saying, "The right to confidentiality with constituents is necessary to ensure fair representation. When that confidentiality is breached, it seriously affects the ability of the elected members to do their duty in a position of trust." (*Hansard*, 3011). As a remedy Mr. McLarnon asked for, "an immediate apology from the Premier on behalf of the government and an all-party disciplinary committee to find ways that this never occurs again and to bring to account the perpetrators of this very serious and grave crime." (*Hansard*, 3012)

Speaker Schneider took Mr. McLarnon's presentation under advisement and delivered his ruling on April 15, 2002. The Speaker did not find there to be a *prima facie* breach of privilege. He stated, in part

> The freedom of speech enjoyed by members may be characterized as deep but narrow. It is deep in that members are allowed to say almost anything they wish while participating

[30] See Speaker Schneider's ruling of April 23, 2002 (*Hansard*, 3303) and *Beauchesne's* §117, page 29.

> in parliamentary proceedings, such as debates in the Assembly and work in committees. Members are bound only by the conventions of parliamentary language and the Standing Orders. That privilege is narrow in that it applies solely to a member's participation in parliamentary proceedings and does not cover communications between members and their constituents. Further, it is clear that the members in question have been able to fully exercise freedom of speech while participating in the proceedings of this Assembly despite the fact that their files were withheld from them. (*Hansard,* 3146)

The Speaker also considered whether the actions of government staff constituted a contempt of the Assembly. He concluded that

> what occurred, and the manner in which it occurred, was unacceptable. However, the Chair is prepared to give the benefit of the doubt to the persons associated with this event and to find, at this time, that their actions may have been attributable to a lack of proper direction and a lack of appreciation of the independence of private members, even those in the government caucus. (*Hansard*, 3147)

In prescribing a remedy the Speaker informed the Assembly that he had directed the Clerk

> to develop a draft protocol covering the issues that have been brought to light by this event. The Chair further directs that the Clerk is to provide an opportunity for all members to offer their advice on the contents of the protocol and, in due course, to present it to the Members' Services Board for review and adoption. (*Hansard*, 3147)

Mr. Jim raised the second question of privilege on April 18, 2002. The question arose from a comment made by the Minister of Health and Social Services, Hon. Sue Edelman (Riverdale South, Liberal) and a letter the Minister sent to the Chief of the Kwanlin Dun First Nation.

During Question Period on April 17, 2002 Mr. Jim asked Mrs. Edelman questions regarding first nations children in government care. In doing so he suggested the Minister "meet with the chief and council (of the Kwanlin Dun First Nation) at the earliest possible time to rebuild...trust." (*Hansard*, 3208) In response Mrs. Edelman said, "First of all, I didn't realize that the member opposite is suddenly representing the Kwanlin Dun First Nation." (*Hansard*, 3208) Later that day the Minister sent a letter to Chief Rick O'Brien of the Kwanlin Dun First Nation in which she wrote, "I accept that Wayne Jim represents his constituents, however, I am unclear as to whether or not he speaks for the Kwanlin Dun First Nation government."

In raising the question of privilege Mr. Jim said

> the minister has directly attacked my right to ask questions in the House by asking if I had permission from my First Nation government to bring forward questions on behalf of constituents who also happen to be Kwanlin Dun. The member is also implying through this letter that I am solely representing the view of the Kwanlin Dun government on these issues, instead of my sworn duties to all Yukoners and to this Legislature... It is raising a

> direct question of my rights to represent constituents in my riding, who are individuals that are affected by this government's policies, regardless of ancestry. (*Hansard*, 3240-1)

This, he argued, was "an attempt to intimidate members of my constituency and silence me" (*Hansard*, 3241) and constituted a contempt of the Assembly. As a remedy he asked, "that this House take action by asking the Minister of Health and Social Services to take a cultural sensitivity course and offer an apology to the House for her poor and inappropriate choice of tactics." (*Hansard*, 3241)

Speaker Schneider delivered his ruling on April 23, 2002. He concluded

> after due consideration, that the minister's words and actions do not constitute a prima facie breach of privilege or a contempt of the Assembly.
>
> The Member for McIntyre-Takhini is correct to be concerned about safeguarding his rights, and those of other members of the Assembly. However, the Chair is not convinced that the words and actions of the Minister of Health and Social Services have, directly or indirectly, had the effect of obstructing or impeding the member in the discharge of his duties.
>
> The Chair notes, for example, that though it may be felt by the Member for McIntyre-Takhini that the minister questioned his right to ask the questions he did, the minister had already answered a main question and a supplementary question on the issue. The minister then answered the member's second supplementary question. Also, the minister had answered questions on a similar issue the previous day. Further, on April 18, the minister tabled a legislative return that expanded upon the answers she had already provided. The Chair must conclude, therefore, that the member has been able to fully exercise freedom of speech while participating in the proceedings of this Assembly. (*Hansard*, 3303)

At the same time the Speaker said statements that suggest a member is representing someone other than his or her constituents are not in order as they are an imputation of false or unavowed motive, in contravention of Standing Order 19(g). The Speaker suggested that, in future, members who are concerned about such statements raise them as a point of order when they are made.

Question Period

Extraneous Comments ('add-ons')

Guideline 2 of the Assembly's Guidelines for Oral Question Period says a question ought to seek information and should not be argumentative. Guideline 9 says a reply to a question should be relevant to the question asked and should not provoke debate. During Question Period on Thursday May 9, 2002, the Minister of Business, Tourism and Culture, Hon. Dale Eftoda (Riverdale North, Liberal) responded to a question from Gary McRobb (Kluane, NDP). Hon. Mr. Eftoda concluded his answer to the main question with what the minister called "an add-on." This add-on was, in fact, a comment on the previous exchange of questions and answers between

Dennis Fentie (Watson Lake, Yukon Party) and the Minister of Energy, Mines and Resources, Hon. Scott Kent (Riverside, Liberal).

Before Question Period on May 13, 2002, the Speaker, Hon. Dennis Schneider, commented on what he saw as a developing practice in the Assembly. The Speaker made reference to the events of May 9, 2002 and added:

> The Chair has also noticed that opposition members occasionally preface their main question with a comment on a previous exchange to which they were not a party. For example, last Wednesday the Member for Whitehorse Centre commented on the answer given by the Minister of Education in response to questions posed by the Member for Vuntut Gwitchin. The Member for Whitehorse Centre then proceeded to put his main question to the Minister of Environment. (*Hansard*, 3628)

The Speaker then drew members' attention to Guidelines 2 and 9 and concluded his statement by saying:

> Comments on previous exchanges, therefore, are not in order as they do not seek information or are not relevant to the question asked. Such comments also provoke argument and debate. The Chair thanks all members in advance for their adherence to these guidelines. (*Hansard,* 3628)

Hypothetical Questions

On May 13, 2002 during Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03*, the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) asked the Minister of Infrastructure, Hon. Scott Kent (Riverside, Liberal)

> Could the minister just get up on his feet and say yes or no as to whether he would, if there was a complaint that was substantiated under the *Competition Act*, take up the cause and take it before the *Competition Act* tribunal? (*Hansard*, 3648)

The Hon. Mr. Kent referred to the question as "hypothetical" and said, "we would have to address that situation if, and or when it does occur." The Chair of Committee of the Whole, Mike McLarnon, intervened to make a statement regarding hypothetical questions. He said, "hypothetical questions are covered under Guidelines for Oral Question Period. They're certainly allowed in debate, so there's no problem with that." (*Hansard*, 3648)

Hypothetical questions are out of order in Question Period because its primary purpose is "the seeking of information from the government and calling the government to account for its actions."[31] Therefore questions "ought to seek information and, therefore, cannot be based upon a

[31] *House of Common Procedure and Practice*, page 425

hypothesis."[32] Debate on bills and motions serves a broader purpose than simply the seeking of information so a question based on a hypothesis is not out of order during those proceedings.

Rotation

Standing Order 17(2) says, in part, "When two or more members rise to speak, the Speaker shall call upon the member who, in the Speaker's opinion, first rose." This standing order establishes that there is not, by rule, a speaking order. The recognition of members is at the discretion of the Speaker. Nonetheless, with regard to Question Period, there is an established practice of following a rotation agreed to by the parties in the Assembly.

The Question Period rotation became the subject of discussion at two points in the 2002 Spring Sitting. Before the sitting began three government private members left the government caucus to sit in opposition as independent members. After negotiation among representatives of the parties in opposition and the independent members the independent members were, collectively, given one position in the Question Period rotation, that being position number five. On May 7 a member of the Official Opposition left that caucus to join the Third Party. After again consulting with opposition representatives the Speaker devised a new Question Period rotation based on the following principles:

1. That the number of questions allotted to each party in opposition to the government over the course of a Sitting shall, as much as possible, reflect the number of seats each party has in the Assembly;
2. That priority shall be given to the Official Opposition by giving it priority of place in the Question Period Rotation, including the first two questions; and
3. That one position in the Question Period rotation shall be set aside each day for independent members.

The first principle was met by devising two rotations. The first rotation allotted four questions to the Official Opposition, one to the Third Party and one to independent members. The other rotation allotted three questions to the Official Opposition, two to the Third Party and one to the independent members. A schedule for the use of each rotation was established based on the assumption that six main questions are asked during a given question period. The underlying assumption was that if the rotations were used according to the schedule the appropriate balance between Official Opposition and Third Party questions would be achieved.

The second principle was met by allocating the first, second and fourth main questions to the Official Opposition on all days, and main question six on those days when it was allocated four main questions. The Third Party was guaranteed the third main question on all days, and the sixth question on those days when it was allocated two main questions. As mentioned, the independent members received main question five on all days. This last stipulation also satisfied the third principle established for the allocation of questions in Question Period.

---

[32] *Beauchesne's* §409(3), page 120. See also Guideline 2 of the Yukon Legislative Assembly's Guidelines for Oral Question Period, addendum to the Standing Orders.

Seeking an opinion from a minister

During Question Period on April 8, 2002 Lorraine Peter (Vuntut Gwitchin, NDP) asked the Minister responsible for the Status of Women, Hon. Sue Edelman (Riverdale South, Liberal) questions regarding the movement of the Women's Directorate from being a stand-alone entity to being part of the Executive Council Office. In her final supplementary Mrs. Peter asked, "Will the minister tell us frankly, does she personally approve of these changes?" (*Hansard*, 3010).

As mentioned above the purpose of Question Period is to seek information and as such certain kinds of questions – including questions that seek an opinion about government policy from a minister – are not in order.[33] No point of order was raised at the time the question was posed. The Speaker, Hon. Dennis Schneider, however, made a statement on the matter on April 9, 2002 in which he drew members' attention to the Assembly's Guidelines for Oral Question period and said:

> The general statement says, "A question seeking information about a matter which falls within the administrative responsibility of the Government of the Yukon is in order." Following from this rule no. 3 says, in part, "A question asking for a specific statement of government policy is in order. A question which seeks an opinion about government policy is out of order."
>
> The Chair would ask that members adhere to these guidelines in the future when posing questions. (*Hansard*, 3038)

The issue again arose on April 16, 2002. On April 14, 2002 Hon. Mrs. Edelman resigned as Minister responsible for the Status of Women. Referring to controversial remarks that led to Hon. Mrs. Edelman's resignation, Mrs. Peter asked the new minister Hon. Cynthia Tucker (Mount Lorne, Liberal) "Does the minister agree with the attitudes expressed by the former minister about women members of the Public Service Alliance of Canada?" The Government House Leader, Hon. Jim McLachlan (Faro, Liberal) rose on a point of order invoking Guideline 3. The Speaker "without hesitation" ruled

> that the question as stated by the Member for Vuntut Gwitchin is out of order. The way that the Chair heard it, the member was asking an opinion of the minister. That's out of order. You can ask the minister questions regarding her area of responsibility or portfolio, but not an opinion. (*Hansard*, 3175)

Supplementary questions, relevance to the main question

Guideline No. 6 of the Assembly's Guidelines for Oral Question Period says, "Each member asking a question which is in order shall be allowed two supplementary questions." As the name suggests a 'supplementary' question should be on a similar topic as a main question or flow logically from the answer given to the main question.

---

[33] *Beauchesne's* §409(11), page 121. See also Guideline 3 of the Yukon Legislative Assembly's Guidelines for Oral Question Period, addendum to the Standing Orders.

During Question Period on April 4, 2002 Mike McLarnon (Whitehorse Centre, Independent) asked questions of the government regarding the trade and investment fund. As Mr. McLarnon was posing his final supplementary question the Government House Leader, Hon. Jim McLachlan (Faro, Liberal) rose on a point of order saying

> The Rules of the House clearly prevent the diversion of the supplementaries to another issue. The member was asking about audits and some sort of trade and investment funds. He has bootlegged another supplementary on to that. This line of questioning is clearly out of order.

Mr. McLarnon responded to the point of order by saying

> Mr. Speaker, I hate to explain the principles of debate to the members opposite, because they have never done it in caucus, so I can understand. What you do in debate is set your argument. What you then do is explain what has happened and what conclusions are coming out of it. That's what you do with three questions.

Subsequently the Speaker, Hon. Dennis Schneider, said he would take the issue under advisement and review *Hansard*. He added that, "If the government chooses not to answer, the government does not have to answer." He then asked the Official Opposition to proceed with the next question. (*Hansard*, 2993-4)

The Speaker delivered his ruling on April 8, 2002. The Speaker said

> Neither our rules of debate nor our guidelines for oral Question Period address the issue of how close the thematic connection must be between a main question and supplementary questions. Nonetheless, the fact that supplementary questions are identified as supplementary suggests strongly that there should be some connection.
>
> The manner in which members can best demonstrate the connection between the main question and the supplementaries is to proceed from the general to the specific. The Member for Whitehorse Centre encountered difficulty on Thursday because he went from the specific to the general. His main question was whether the government would table an audit report on a trade and investment fund. He then, in his final supplementary, went on to ask how the government would "achieve an open dialogue with all sides in a meaningful way to address the dire shape of this economy and lessen our dependence on governments such as this?" The Chair is certain that the Member for Whitehorse Centre fully understood the connection he was making between the main and supplementary questions. However, the Chair would ask that he put himself in the position of the listener and he will see that the connection, during the heat of Question Period, is not as readily obvious.
>
> If the Member for Whitehorse Centre had moved from the general question about the economy to the more specific question about tabling an audit report on a trade and investment fund, the relationship between the subjects would have been clearer and the Chair doubts any question of order would have been raised.

So, to repeat, the Chair would urge that members asking questions ensure that the main questions address the broad, central issues and then use supplementary questions to narrow the subject matter down to more specific items. (*Hansard*, 3006-7)

Time limit for questions and answers, notification of

A footnote to Guideline No. 7 of the Assembly's Guidelines for Oral Question Period says the Speaker will generally allow a question of one minute in length.[34] In a statement delivered on October 25, 2001 the Speaker, Hon. Dennis Schneider elaborated on the time limit for questions saying, "The Chair normally gives a warning to the questioner at the 50-second mark that the one minute is about to expire." (*Hansard*, 2334-2335)

During Question Period on May 1, 2002 Mike McLarnon (Whitehorse Centre, Independent) began asking a main question regarding the reorganization of Whitehorse schools. Before he could finish the main question the Speaker intervened saying, "The member's time has expired." Mr. McLarnon appealed to the Speaker saying, "I thought I was going to get a warning, Mr. Speaker." The Speaker then explained that the expiration referred to the 50-second period and that Mr. McLarnon now had 10 seconds to ask his question. (*Hansard*, 3458)

The above situation was not the only one to raise the issue of time limits on questions and answers, and whether those limits, and the Speaker's warning, were being enforced consistently. On May 15, 2002 after Question Period and before Orders of the Day the Speaker made a statement in which he said

> With the recently amended seating order in the House, the Chair is endeavouring to get as many questions in as we can so that all members have a chance to ask questions. If the Chair is going to interrupt each time a member asking a question uses personal accusations or language that may cause disorder, then the Chair will be interfering with debate, and we certainly will get one fewer question, if not two fewer questions, in. Additional to that, I would ask the members to — and it's getting pretty good. Members are pretty much getting their questions in within a minute. Some members are running over time and that, again, is going to impact in the end. We could end up with one fewer question.
>
> So, the answers are within the allotted time limit.

At that point one member made a comment. The Speaker called for order and continued:

> The Member for Whitehorse Centre — do you care to challenge the Chair? The Chair is keeping track of the answers here, and the time. I also have two assistants keeping track of the time. The answers are within the time limit.
>
> After having said that, I'm trying to get a bit of cooperation in here, and it's coming from most members, so that we can get as many questions in here and have the

[34] "Guidelines for Oral Question Period" addendum to *Standing Orders of the Yukon Legislative Assembly*, April 4, 2002.

opposition keep the government accountable. But I can't do this without the cooperation of all members. (*Hansard*, 3692)

Quorum Count

Section 13 of the *Yukon Act* stipulates that "A majority of the Council, including the Speaker, constitutes a quorum."[35] This requirement is restated in Standing Order 3(1). Standing Order 3(3) stipulates that "Eight members, including the Chair, shall constitute a quorum in Committee of the Whole."

Standing Order 3(2) says that

> If, at any time during a sitting of the Assembly, the Speaker's attention is drawn to the fact that there does not appear to be a quorum, the Speaker shall cause the bells to ring for four minutes and then do a count. If there is still not a quorum, the Speaker shall adjourn the Assembly until the next sitting day.

On two occasions during the 2002 Spring sitting the Speaker's attention was drawn to an apparent lack of quorum. Hon. Sue Edelman (Riverdale South, Liberal) brought the first to the Speaker's attention on April 24, 2002 during debate on Motion No. 228. Then, May 28, 2002, during debate on Motion No. 149 Hon. Jim McLachlan (Faro, Liberal) drew the Speaker's attention to the fact that there did not appear to be a quorum in the House. On both occasions the Speaker caused the bells to ring for four minutes and conducted a count. Both times the Speaker found a quorum once the bells had been turned off. Debate then continued.

Relevance in debate

Standing Order 19(i)(b) says, "A member will be called to order by the Speaker if that member speaks to matters other than the question under discussion." According to Marleau and Montpetit, "The requirement of relevance (in debate) is necessary in order that the House might exercise its right to reach a decision and to exclude from debate any discussion which does not contribute to that process."[36] Nonetheless they acknowledge the difficulty in defining and enforcing rules against irrelevant content. As they say, "It is not always possible to judge the relevance...of a Member's remarks until he or she has made some progress in or completed his or her remarks."[37] In practice, therefore, members must police themselves to ensure debate remains relevant to the issue before the House.

On April 10, 2002 Hon. Scott Kent (Riverside, Liberal) was speaking to Motion No. 189 when Dave Keenan (Ross River-Southern Lakes, NDP) rose on a point of order. The substance of the motion was that the Assembly should declare its support for "developing practical cost-effective regulations in the Yukon placer authorization process that will allow the placer mining industry to continue to operate and grow." (*Hansard*, 3079) Mr. Keenan questioned whether Mr.

---

[35] When the new Yukon Act comes into force on April 1, 2003 the section regarding quorum will be section 15 that will read, "A majority of the members of the Legislative Assembly, including the Speaker, constitutes a quorum."

[36] *House of Commons Procedure and Practice*, page 527.

[37] *House of Commons Procedure and Practice*, page 527-8.

Kent's remarks regarding highway construction in Tagish were germane to the motion. Mr. Kent argued that capital improvements, such as highway construction, provided support to the placer mining industry. The Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party), in whose name the motion stood, intervened saying, "I'll accept the minister's explanation. He needs all the help he can get, because he's obviously doing very little for the placer mining industry." (*Hansard*, 3087) With that the Speaker, Hon. Dennis Schneider, saw no need to rule and asked Mr. Kent to continue.

On April 25, 2002 Speaker Schneider chose to intervene on his own during second reading debate on Bill No. 60, *Act to Amend the Access to Information and Protection of Privacy Act*. This situation arose after Mike McLarnon (Whitehorse Centre, Independent) began his remarks by raising a point of order. His question had to do with the confidence convention and whether it was in order for the government to declare Bill No. 60 a matter of confidence in the government. The Speaker ruled that confidence was not a procedural issue and there was, therefore no point of order.

When Mr. McLarnon continued his remarks, however, he again reflected on the propriety of designating the bill a matter of confidence. He also spoke more generally about "whether the government should be in power" and concluded that it should not be. Shortly thereafter the Speaker called for order. He did not rule Mr. McLarnon out of order but said

> The Chair would ask if the member could assist the Chair. The Chair can't connect the relevance between what the member is saying and Bill No. 60, which we are discussing here. If the member could assist me here, I would appreciate it. (*Hansard*, 3373)

Mr. McLarnon soon concluded his remarks.

Standing Order 42(2) addresses the issue of relevance in Committee of the Whole. This standing order says, "Speeches in Committee of the Whole shall be strictly relevant to the item or clause under consideration."

On April 15, 2002 during committee consideration of Bill No.10, *Third Appropriation Act, 2001-02*, (general debate) the Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP) asked if the Premier, Hon. Pat Duncan (Porter Creek South, Liberal) could inform the committee "what the total cost of renewal was for the fiscal year of 2001-02?" The Premier argued that the question was not relevant given that Bill No. 10 did not seek to appropriate funds for renewal. At that point the Chair of Committee of the Whole, Mike McLarnon, called for order and said, "The Premier is quite correct. General debate can be quite general, but if the item is not even discussed in the budget, then we ask members to stay with items to the discussion." However Mr. Fairclough argued that "The capital budget and O&M budget are listed in the supplementary budget. Both are listed. Even though there are zero changes, we still can ask questions in general debate, and I'd like to clarify that through the Chair." The Chair clarified that

> As long as we are not going into items that aren't here...the precedent has been...that we can generally discuss zero votes, but there is a time and place for that. To keep order in the House, we would ask that members focus on the votes and items in this budget,

> because there are only three. We will certainly get a chance to discuss Bill No. 9, *Second Appropriation Act, 2002-03*, at the appropriate time. (*Hansard*, 3151)

Mr. Fairclough explained that he wanted to know how the cost of renewal might have increased costs in the departments for which Bill No. 10 sought appropriations. The Chair concluded that line of questioning was relevant.

Later that day during debate on the appropriation for the Department of Tourism Mr. Fairclough again put a question regarding renewal, this time to the Minister of Tourism, Hon. Dale Eftoda (Riverdale North, Liberal). Hon. Mr. Eftoda again raised the question of relevance saying, "there is no specific line item in this budget that addresses any aspect of renewal." The Chair ruled "that since the member has been able to draw logical conclusion from his question on renewal to budget choices made by the government, that it is a relevant question. The Chair doesn't make any decision whether the question is going to achieve the answer the member wants, but he has drawn the line of relevance. So the question's fair and in order." (*Hansard*, 3158)

Sometimes questions regarding relevance are directed at the answer, not the question. On May 7, 2002 during committee consideration of Bill No. 9 (Environment) Mr. Jenkins rose on a point of order saying

> The minister (Hon. Mr. Eftoda) is wandering all over the block. There's some flexibility, granted, in general debate on the department, but I spoke in general terms about the specific areas, and the minister is going into a great amount of detail. He's just politically posturing with his remarks here today. He's not addressing the questions about Kyoto, which was the subject at hand." (*Hansard*, 3557)

However the Chair ruled there was no point of order. He said, "The range of general debate is not really up to the Speaker or the Chair to decide." Referring to Standing Order 42(3), which places a time limit on speeches in committee, the Chair added, " If it goes too far, hopefully 20 minutes would stop anybody from going further." (*Hansard*, 3557)

On May 13, 2002 during committee debate on Bill No. 9 the Government House Leader, Hon. Jim McLachlan raised a point of order when Mr. Jenkins mentioned computerized axial tomography (CAT) scans during the debate on the line item for airports in the appropriation for the Department of Infrastructure. The Chair asked Mr. Jenkins to bring the discussion back to airports. (*Hansard*, 3655)

Sitting, adjournment of

On November 19, 2001 the Assembly adopted a Government Motion, No. 169. In so doing the Assembly amended the standing orders adding Chapter 14 which outlines, among other things, a procedure whereby members would determine the length of each sitting. These new standing orders came into effect immediately before the adjournment of the 2001 Fall Sitting and were first used in the 2002 Spring Sitting.

This chapter includes a mechanism for adjourning the Sitting once the maximum number of sitting days has been reached and the business before the Assembly is dealt with. This mechanism is contained in Standing Order 75(3).[38]

On May 30, 2002, the Administrator, Geraldine Van Bibber, assented to the bills having passed the House and having been enumerated by the Clerk. At that point, following a ruling made on April 16, 2002 the Speaker, Hon. Dennis Schneider, made the following statement:

> As the House has reached the maximum number of days permitted for the spring sitting, as established pursuant to Standing Order 75(3), and the House has completed consideration of the designated legislation, it is the duty of the Chair to declare that this House now stands adjourned. (*Hansard*, 3900)

Sitting days, number of

On November 19, 2001 the Assembly adopted a Government Motion, No. 169. In so doing the Assembly amended the standing orders adding Chapter 14 which outlines, among other things, a procedure whereby members would determine the length of each sitting. These new standing orders came into effect immediately before the adjournment of the 2001 Fall Sitting and were first used in the 2002 Spring Sitting.

Standing Order 75(2) says

> When the Government has introduced all legislation, including appropriation bills, to be dealt with during a Sitting, the House Leaders shall meet for the purpose of achieving agreement upon the number of sitting days for that Sitting. The minimum number of sitting days for any Sitting shall be 20. The maximum number of sitting days for any Sitting shall be 40.

Pursuant to Standing Order 74 the government tabled all bills to be dealt with during the 2002 Spring Sitting by the fifth sitting day, April 11, 2002. The House Leaders then met to determine the number of sitting days to be allotted to this sitting.

Standing Order 75(4) says "The Government House Leader shall inform the Assembly of the results of the House Leaders' meetings, held pursuant to Standing Order 75(2), within two sitting days of all Government legislation having been introduced." Pursuant to this standing order the Government House Leader, Hon. Jim McLachlan, (Faro, Liberal) informed the Assembly on April 16, 2002 that the house leader's meetings had not produced an agreement.

This lack of agreement put into effect Standing Order 75(3) which says, "When, pursuant to Standing Order 75(2), an agreement cannot be reached between the Government House Leader and at least one other House Leader representing a majority of the members of the Assembly, each of the Spring and Fall Sittings shall be a maximum of 30 sitting days." Having received the Government House Leader's report the Speaker, Hon. Dennis Schneider, ruled that the sitting would last 30 sitting days and end on May 28, 2002.

---

[38] See 'Sitting days, number of'

The Speaker having ruled, the final sitting day could then only be changed by Order of the Assembly. This became an issue when the Minister of Business, Tourism and Culture, Hon. Dale Eftoda (Riverdale North, Liberal) indicated, due to the government's minority position in the Assembly, he would not attend the Rendezvous Canada event in Halifax, Nova Scotia, from May 17 to 22, 2002. The Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) indicated that this was an important tourism event for the Yukon and offered to pair with Hon. Mr. Eftoda to ensure the voting balance between government and opposition members remained the same. (*Hansard*, 3332-3)

The government did not accept that offer. Instead, on April 30, 2002, the Assembly passed Government Motion No. 249. The motion stipulated that the Assembly would "stand adjourned from its rising on Thursday, May 16, 2002 until 1:00 p.m. on Thursday, May 23, 2002." This adjournment would allow the Hon. Mr. Eftoda to attend Rendezvous Canada without jeopardizing the government's standing in the Assembly as the Assembly would not sit on those days when Hon. Mr. Eftoda would be absent. The Assembly would, in effect, miss two sitting days, Tuesday, May 21 and Wednesday, May 22 (Monday, May 20 being a statutory holiday). To satisfy the Speaker's ruling – that the 2002 Spring Sitting last 30 sitting days - the final day of the sitting would now be May 30, 2002.

Speaking order

Beauchesne's Parliamentary Rules and Forms advises that in the Assembly "Officially there is no list of Members desiring to speak in debate. Any member who wishes to speak may rise and endeavour to catch the Speaker's eye."[39] But while "the Speaker is the final authority on the order of speaking"[40] the Chair does endeavour to follow the wishes of members should there be some informal agreement as to who should take the floor at any given time.

Still there are times when the Speaker must exercise his authority in this matter. On May 8, 2002 during second reading of Bill No. 101, *Child, Youth and Family Advocacy Act*, Hon. Jim McLachlan (Faro, Liberal) rose on a point of order after Hon. Scott Kent (Riverside, Liberal) had concluded his remarks. The basis of Mr. McLachlan's point of order was to offer "the official opposition House leader his opportunity to speak...before I rose to speak." (*Hansard*, 3586). Dave Keenan (Ross River-Southern Lakes, NDP) questioned where such an offer was reflected in the Standing Orders. Rather than address the point of order the Speaker said he would recognize Mr. McLachlan.

Another instance that requires the exercise of the Chair's authority is where two members rise simultaneously. Standing Order 17(2) says, in part, "When two or more members rise to speak, the Speaker shall call upon the member who, in the Speaker's opinion, first rose..." On April 29, 2002 during second reading of Bill No. 61, *Electoral District Boundaries Act, 2002*, an occasion arose where the Speaker had to invoke this standing order. Following the remarks by the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party), more than one member rose. The Speaker said, "Speaker order in the House generally is the government, the official opposition, the third party. I'm going to go to the government now and ask the Member for Faro

[39] *Beauchesne's* §461, page 137.
[40] *Beauchesne's* §462, page 137.

to take the floor." (*Hansard*, 3402) Note that the Speaker's decision was to recognize members according to an established practice. This practice therefore guides, but does not predetermine, the Speaker's opinion as to which member first rose.

Sub judice convention

While members enjoy a wide freedom of speech in the Assembly that freedom is not unlimited. The purpose of the *sub judice* convention is "to protect an accused person, or other party to a court action or judicial inquiry, from suffering any prejudicial effects from public discussion of the issue."[41]

The Yukon Legislative Assembly's adherence to this convention is reflected in Standing Order 19(f). This standing order says, "A member shall be called to order by the Speaker if that member refers to any matter that is pending in a court or before a judge for judicial determination where any person may be prejudiced in such matter by the reference."

On April 23, 2002 during Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03*, the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party), asked the Minister responsible for the Yukon Housing Corporation, Hon. Pam Buckway (Lake Laberge, Liberal):

> Would the minister advise the House of the basis for the lawsuit that I believe is underway between the City of Dawson and Yukon Housing Corporation on this initiative, or is she going to just basically hide behind the fact that it's before the courts and she doesn't want to comment, Mr. Chair? (*Hansard*, 3324)

Hon. Ms. Buckway did not wish to comment on the case for that reason. At that point the Chair of Committee of the Whole, Mike McLarnon, called for order, saying

> This directly applies to something called the sub judice convention, and that is the voluntary restriction of the House to not talk about matters before the courts in order to ensure that there is no prejudice on court proceedings by discussions in this House...this is a voluntary restraint on the part of the House that has been traditionally upheld throughout the years. No particular rule is there, but it certainly is a convention that I will respect as Chair of the House and ask that no further questions be directed toward the actual court case. (*Hansard*, 3324)

The *sub judice* convention was again the topic of discussion on May 2, 2002 during Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03*. At that time Mr. Jenkins asked the Minister of Justice, Hon. Jim McLachlan (Faro, Liberal), questions regarding an individual whom Mr. Jenkins said had "had some difficulties with the Department of Justice, and received some bad advice from government agencies." He sought assurance "that (the Minister) will look into this individual's situation and resolve it, or does (the Minister) wish to discuss it on the floor of the House?" (*Hansard*, 3503). Mr. McLachlan indirectly invoked the *sub judice*

---

[41] *House of Commons Procedure and Practice*, page 534.

convention saying, "When a matter has not been disposed of fully before court, a minister of justice cannot get up and pronounce factual statements on the case." (*Hansard,* 3503) The Chair brought the *sub judice* convention to members' attention and allowed debate to continue. As Mr. Jenkins continued with his line of questioning Mr. McLachlan raised a point of order arguing Mr. Jenkins was contravening a ruling by the Chair. The Chair advised the committee

> the sub judice convention protects the minister from not making any statements... It does not prevent a member from asking about it. So I'd recommend on this that, when the point does come up where, Mr. McLachlan, you feel that you can use sub judice convention to ensure that you don't answer the question, at that point you say it's before the court. But it does not preclude the member from asking the question. (*Hansard*, 3503)

The Chair's interpretation of the convention was consistent with the parliamentary authorities. As *Beauchesne's Parliamentary Rules & Forms* advises, "responsibility (for observing the convention) should principally rest upon the Member who asks the question and the Minister to whom it is addressed...The Speaker should interfere with...freedom of speech only...where it is clear that to do otherwise could be harmful to specific individuals."[42] Furthermore the experience of the House of Commons of Canada suggests, "a Member who calls for the suppression of discussion of a matter on grounds of *sub judice* should be obliged to demonstrate to the satisfaction of the Chair that he or she has reasonable grounds for fearing that prejudice might result."[43]

Unanimous consent

Standing Order 14.3 says, "The Assembly may, by unanimous consent, suspend its Standing Orders or waive procedural requirements and precedents." This standing order was invoked on numerous occasions during the 2002 Spring Sitting. Examples of its use include the following:

<u>To allow a member to adjourn debate a second time</u>

On May 28, 2002, with the time reaching the normal hour of adjournment, the Premier, Hon. Pat Duncan (Porter Creek South, Liberal), moved that the House do now adjourn. At that time Hon. Dale Eftoda (Riverdale North) was speaking to Motion No. 149. To adjourn the House at that point would have first required the adjournment of debate. However, Mr. Eftoda had already adjourned debate once on Motion No. 149, on October 31, 2001. Unanimous consent was therefore required to have the record show that Mr. Eftoda had adjourned debate a second time. The Speaker requested unanimous consent and it was granted.

<u>To deem all clauses and the title of a bill read and agreed to</u>

In dealing with bills the normal process in Committee of the Whole is to first debate the bill in general and then proceed to read each clause individually. This process takes place after the bill has received second reading. Occasionally the Committee will consider the bill to have been

---

[42] *Beauchesne's* §509, page 153 and §511, page 154.

[43] *House of Commons Procedure and Practice*, page 537.

thoroughly debated once general debate in Committee of the Whole is complete. On those occasions a member will request unanimous consent to deem all clauses and the title (and schedules, if necessary) of the bill read and agreed to. The bills are then reported out of committee with or without amendment as the case may be. In the 2002 Spring Sitting such requests were granted on two sitting days. The Government House Leader formally made these requests (as the bills are government-designated business) pursuant to an agreement among the House Leaders. These instances occurred on:

- May 23, 2002: Regarding Bill No. 64, *Spousal Compensation Act*; Bill No. 51, *Official Tree Act*; Bill No. 55, *Act to Amend the Income Tax Act (No.5)*; Bill No. 72, *Act to Amend the Financial Administration Act*; and Bill No. 56, *Act to Amend the Tobacco Tax Act (No.2)*.

- May 30, 2002: Regarding Bill No. 65, *Act to Amend the Dental Profession Act*; and Bill No. 62, *Act to Amend the Employment Standards Act*.

Such requests are not always in order, however. In the above cases unanimous consent was requested for each bill as it was called for debate. On May 28, 2002 Official Opposition House Leader Gary McRobb (Kluane, NDP) asked the Assembly for unanimous consent to collectively give Third Reading to Bill No. 73, *Act to Amend the Workers' Compensation Act*; Bill No. 64, *Spousal Compensation Act*; Bill No. 72, *Act to Amend the Financial Administration Act;* Bill No. 56, *Act to Amend the Tobacco Tax Act (No.2);* Bill No. 55, *Act to Amend the Income Tax Act (No.5)*; and Bill No. 51, *Official Tree Act*. The Speaker, Hon. Dennis Schneider, ruled the request out of order as "The accepted practice is to deal with each bill individually..." (*Hansard*, 3822)

A request for unanimous consent to deem all clauses and the title of a bill read and agreed to is not always granted, even when the request is in order. On April 16, 2002 the Minister responsible for the Workers' Compensation Health and Safety Board, Hon. Sue Edelman (Riverdale South, Liberal) moved that Bill No. 64, *Spousal Compensation Act*, be read a second time. At that point the Official Opposition House Leader, Dennis Fentie (Watson Lake, NDP) rose on a point of order saying all opposition members had, in order to expedite debate, agreed that Bill No. 64 could be deemed read and agreed to in its entirety. The Hon. Mrs. Edelman expressed her view that she be allowed to present the government's "rationale for bringing forward this legislation at this time."

The Speaker ruled that the request made by Mr. Fentie required the unanimous consent of the Assembly and it was obvious, by Mrs. Edelman's words, that such consent did not exist. He therefore asked Mrs. Edelman to begin debate. (*Hansard*, 3177)

<u>To deem all lines in a vote cleared or carried as required</u>

In dealing with appropriation bills the normal process in Committee of the Whole is to first have general debate on the bill as a whole, then general debate on each department (also referred to as a 'vote'). Once general debate on a vote is concluded the Committee will proceed through the departmental appropriation line-by-line. Occasionally the Committee will consider the departmental appropriation to have been thoroughly dealt with in general debate. On such occasions a member will request unanimous consent to deem all lines in that vote cleared or

carried, as required. Instances of such a request being granted during the 2002 Spring Sitting include:

- May 16, 2002: Requested by Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP) regarding vote 53 (Energy, Mines and Resources) of Bill No. 9, *Second Appropriation Act, 2002-03.*

- May 27, 2002: Requested by Dennis Fentie (Watson Lake, Yukon Party) regarding vote 3 (Education) of Bill No. 9.

- May 30, 2002: Requested by Dave Keenan (Ross River-Southern Lakes, NDP) regarding vote 54 (Business, Tourism and Culture) of Bill No. 9.

To defer debate on a motion

Wednesday, May 29, 2002 was scheduled as opposition private members' day. On Tuesday, May 28, 2002, pursuant to Standing Order 14.2(3) Peter Jenkins (Klondike, Yukon Party) gave notice of the items that the Third Party intended to call for debate the following day. One of the items identified was Motion No. 273, standing in the name of Dennis Fentie (Watson Lake, Yukon Party). When Motion No. 273 was called for Mr. Fentie requested that the House not proceed with it. Because the motion had been previously identified as an item to be considered at that time unanimous consent was required to defer debate and proceed with other business. Unanimous consent was granted. (*Hansard*, 3843)

To request a recess

On May 28, 2002 during Orders of the Day the government designated seven bills as the business of the Assembly for that day.[44] The bills having been voted on the Government House Leader, Hon. Jim McLachlan (Faro, Liberal) requested "a 15-minute recess at this time until 3:45 p.m. in order that the House leaders may assemble in five minutes in the Legislative Assembly committee room." The Speaker, Hon. Dennis Schneider, said, "Given the circumstances in the House today I am inclined to agree with the request from the government House leader. However, before making that decision the Chair would like to hear from the House leaders that they agree."[45] The Official Opposition House Leader, Gary McRobb (Kluane, NDP), the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) and Mike McLarnon (Whitehorse Centre, Independent) all indicated their agreement with Mr. McLachlan's proposal. Having obtained indications of agreement the Speaker so ordered the recess. (*Hansard*, 3827)

Later that day the Government House Leader made another request for recess. Once again the Speaker sought the consent of other members and, having received it, called for a recess. (*Hansard*, 3835)

---

[44] The events that led to these bills being designated are described above under 'Business, order of.'

[45] The circumstances of that day are described above under 'Business, order of.'

To waive notice

On April 4, 2002 as the first item under Orders of the Day the Government House Leader, Hon. Jim McLachlan (Faro, Liberal), requested unanimous consent "Pursuant to an agreement between the House leaders...to waive the notice requirement of Standing Order No. 27(1) in order to call the motion respecting the reappointment of the Ombudsman for debate at this time." (*Hansard*, 2995) The Premier, Hon. Pat Duncan (Porter Creek South, Liberal), had given notice of the motion (No. 185) earlier that day during the Daily Routine under 'Notices of Motion.' Standing Order 27(1) requires that such a motion would normally require one clear day's notice before it could be debated. The House granted unanimous consent and the motion was taken up immediately.

The House followed a similar process in dealing with a motion (No. 264) regarding the appointment of a new Conflicts Commissioner on May 13, 2002.[46]

On April 30, 2002 the Government House Leader requested unanimous consent so that the House might immediately deal with Motion No. 243 regarding an extended adjournment of the House so that the Minister of Business, Tourism and Culture, Hon. Dale Eftoda (Riverdale North, Liberal), could attend a tourism event in Nova Scotia. Once again, the House had been given notice of the motion during the Daily Routine. Once again, unanimous consent was granted.[47]

Unparliamentary language

As Marleau and Montpetit advise, "By far, the most important right accorded to Members of the House is the exercise of freedom of speech in parliamentary proceedings."[48] However, this right is limited. Rules against the use of unparliamentary language are one limitation on this right. As Marleau and Montpetit put it

> The proceedings of the House are based on a long-standing tradition of respect for the integrity of all Members. Thus, the use of offensive, provocative or threatening language in the House is strictly forbidden. Personal attacks, insults and obscene language or words are not in order. A direct charge or accusation against a Member may only be made by way of a substantive motion for which notice is required.[49]

In the Yukon Legislative Assembly language is generally regulated by Standing Order 19 that outlines when the Speaker may call a member to order during debate. The same rules, as far as unparliamentary language is concerned, apply in Committee of the Whole. In addition to the standing orders discussed below Standing Order 19(j) forbids Members from speaking "disrespectfully of Her Majesty or any of the Royal Family." Standing Order 19(k) generally forbids Members from introducing "any matter in debate which, in the opinion of the Speaker,

---

[46] For more information on these votes see 'Division, required' above.

[47] For more information see 'Sitting days, number of' above.

[48] *House of Commons Procedure and Practice*, page 71.

[49] *House of Commons Procedure and Practice*, page 525.

offends the practices and precedents of the Assembly." Neither standing order was invoked in the 2002 Spring Sitting.

The application of standing orders against unparliamentary language is highly contextual and the Speaker reserves the right to exercise discretion in applying the rules of debate.

Imputing false or unavowed motives

Standing Order 19(g) says, "A member shall be called to order by the Speaker if that member imputes false or unavowed motives to another member." This rule is supplemented by Guideline No. 8 of the Assembly's Guidelines for Oral Question Period, which is an addendum to the Standing Orders. Guideline No. 8 says, "A question must adhere to the properties of the House in that it must not contain inferences, impute motives, or cast aspersions upon persons within the House or out of it."

On April 11, 2002 during second reading of Bill No. 9, *Second Appropriation Act, 2002-03*, Dennis Fentie (Watson Lake, NDP) made several comments about the government. These included suggestions that government members "care only about their desire to stay in power at all costs" (*Hansard*, 3127); that the government "squirrels...away" money "for its own self-interest"; and that its "lust for power is so great (government members) will do anything to stay there." In reference to recently announced fee hikes Mr. Fentie said, "they are stealing, pilfering $1 million out of people's pockets in this territory. It's all about an election and buying votes." Finally, he referred to the government's use of special warrants to acquire spending authority before the passage of the budget as "very, very, very shady." (*Hansard*, 3130) At that point the Chair of Committee of the Whole, Mike McLarnon, called for order and said

> So far today we have heard words like "thief". We've had motives imputed of taking money out of pockets, and now we are imputing motives of shadiness on the government. I will ask the member to ensure that his language does not incite disorder or impute false or unavowed motives in accordance with the rules in the Standing Orders. (*Hansard*, 3130).

Mr. Fentie apologized and soon concluded his remarks.

On April 16, 2002 during Committee of the Whole debate on Bill No. 9 the Premier, Hon. Pat Duncan (Porter Creek South, Liberal) responded to questions from the Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP) by saying, "The member opposite wants to spend countless hours badgering me for some figure so he can go out and issue a press release." The Chair of Committee of the Whole, Mike McLarnon, called for order saying, "Imputing (false or unavowed) motives is wrong on both sides of the House and we would ask members not to impute motives." (*Hansard*, 3184)

On April 25, 2002 during second reading of Bill No. 60, *Act to Amend the Access to Information and Protection of Privacy Act*, Mr. Fairclough commented on the government's decision to deem its renewal bills matters of confidence. He said, "That kind of tactic, Mr. Speaker, can only be called blackmail on this side of the House." The Government House Leader, Hon. Jim McLachlan (Faro, Liberal) rose on a point of order arguing that the Mr. Fairclough had used "abusive, insulting or violent language used in a manner to create disorder",

a reference to Standing Order 19(i). After interventions by the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party), Mike McLarnon (Whitehorse Centre, Independent), and the Official Opposition House Leader, Dennis Fentie (Watson Lake, NDP) the Speaker, Hon. Dennis Schneider ruled that Mr. Fairclough's remarks violated Standing Order 19(g).

In Committee of the Whole on April 30, 2002 Don Roberts (Porter Creek North, Independent) proposed an amendment to Bill No. 9. Had it carried the amendment would have reduced the appropriation for administration in Vote 18 (Yukon Housing Corporation) by $52,000. In speaking against the proposed amendment the Minister responsible for the Yukon Housing Corporation, Hon. Pam Buckway (Lake Laberge, Liberal) informed members, "While the Legislature has the power to cut the budget of the Yukon Housing Corporation, it does not have the power to say how that cut will be implemented. That is the decision of the board of directors of the Yukon Housing Corporation." In response Dave Keenan (Ross River-Southern Lakes, NDP) said, "Mr. Speaker, I have actually occupied a Cabinet chair on that side of the House longer than the minister has, so I do not need the minister talking down to me in any such manner." The Chair of Committee of the Whole, Mike McLarnon, called for order and said

> We just want to ensure that we are not imputing falsehood or unavowed motives. Just to ensure that we return to a tone of debate that is constructive, I would ask members to just make sure that they understand that "talking down" is considered by one person to have happened and by the other person not, so it could be considered a false or unavowed motive. (*Hansard*, 3436)

On May 6, 2002 during Committee of the Whole debate on Bill No. 9 Gary McRobb (Kluane, NDP) in discussing the Yukon Protected Areas Strategy said he smelled a "set-up" regarding the manner in which the government was dealing with YPAS. He added that anything the Environment Minister, Hon. Dale Eftoda (Riverdale North, Liberal), said to dissuade him of that conclusion "really won't matter" once an election campaign begins. At that point Mr. Eftoda rose on a point of order citing Standing Order 19(g). The Chair of Committee of the Whole, Mike McLarnon, ruled there was a point of order, drawing specific attention to Mr. McRobb's phrase "I smell a set-up." Mr. McRobb agreed that the committee should avoid such imputations adding he wished to "get the minister on record" adding, "I'm not sure what good it would do." Mr. Eftoda again raised a point of order saying Mr. McRobb was suggesting he would in future "impute false or unavowed motives." Mr. McLarnon did not so rule saying he saw, "a fine act of walking the line." (*Hansard*, 3528)

On May 7, 2002 during Committee of the Whole consideration of Bill No. 9 Environment), members debated the situation of an outfitter whose concession was to be taken away by the government due to a series of violations of applicable laws. During debate the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) questioned the severity of the penalty and asked the Environment Minister, Hon. Dale Eftoda (Riverdale North, Liberal), "why...does this minister want to take it upon himself...to destroy another Yukoner's livelihood and destroy him financially?" At that point the Chair of Committee of the Whole, Mike McLarnon, intervened and ruled out of order reference to "The minister...having destroyed an individual or having brought an individual down personally..." (*Hansard*, 3551)

Later that day the committee debated a schedule appended to the appropriation for the Environment Department. During debate Mr. Jenkins said, "the government spent $72,000 on high-speed Internet service to Faro and Ross River, so they could win the election for the Member for Faro..." The Chair intervened cautioning members against suggesting unworthy motives, and asked them to focus on policy. (*Hansard*, 3567)

On May 8, 2002 during Committee of the Whole discussion of Bill No. 101, *Child, Youth and Family Advocacy Act*, Dave Keenan (Ross River-Southern Lakes, NDP), the member in whose name the bill stood, criticized what he considered a lack of action on children's issues by the Minister of Health and Social Services, Hon. Sue Edelman (Riverdale South, Liberal). Mr. Keenan said, "She treats the whole issue as frivolous. She is waiting for something very serious to happen to children" before she acts. The Chair of Committee of the Whole, Mike McLarnon, intervened asking members not to impute unworthy motives or question the character of other members. (*Hansard*, 3598)

Later during the same debate Mr. Kennan said, "the intent of this government is not to protect the children's interests in the Yukon Territory." Once again Mr. McLarnon warned members away from comments about "personal and political agendas" and asked them to concentrate on policy issues and the topic at hand. (*Hansard*, 3601)

On May 16, 2002 during Committee of the Whole consideration of Bill No. 9 (Finance), the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party) commented on the length of a statement by the Premier, Hon. Pat Duncan (Porter Creek South, Liberal). Mr. Jenkins said, "the only reason the Premier has answered the questions twice is because she is on camera right now." Committee Chair Mike McLarnon ruled the statement out of order and asked Mr. Jenkins to retract it, which Mr. Jenkins did. (*Hansard*, 3727)

Later that day during committee discussion of the appropriation for the Department of Energy, Mines and Resources Mr. Jenkins said, "the minister responsible for the environment with millions of dollars in the YPAS (is) hiding all sorts of land grabs...land grabs...that this government has authorized." (*Hansard*, 3745) Mr. McLarnon reminded the committee that this use of the term 'land grab' had been ruled out of order during the 2001 Fall Sitting.[50]

On May 27, 2002 during Committee of the Whole discussion of Bill No. 9 (Education), the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party), counselled the Minister of Education, Hon. Cynthia Tucker (Mount Lorne, Liberal) to "not listen to the former Minister of Education, who led her astray in quite a number of areas." (*Hansard*, 3804) The former Minister of Education, Hon. Dale Eftoda (Riverdale North, Liberal) then rose on a point of order arguing that Mr. Jenkins had violated Standing Order 19(g). Committee Chair Mike McLarnon ruled the statement out of order.

During Question Period on May 28, 2002 Don Roberts (Porter Creek North, Independent) put questions to the Minister of Education, Hon. Cynthia Tucker (Mount Lorne, Liberal) about the building of the Grey Mountain Primary School. He ended his main question by asking: "Why is the Liberal government buying votes at a time when they are claiming poverty?" The Government House Leader, Hon. Jim McLachlan (Faro, Liberal), rose on a point of order and said "accusations regarding the buying of votes" were out of order. (*Hansard*, 3817) Mike

[50] See the statement by the Chair of Committee of the Whole on November 8, 2001 (*Hansard*, 2607).

McLarnon (Whitehorse Centre, Independent intervened saying Mr. Roberts' comments were hypothetical, not an accusation. The Speaker, Hon. Dennis Schneider, ruled that implying the buying of votes was unparliamentary. He added that the Minister did not have to answer the question if she did not wish to.

Accusations that a member has violated Standing Order 19(g) are not always upheld. During Question Period on April 4, 2002 Mike McLarnon (Whitehorse Centre, Independent) said, "...this government has an agenda and it's no one else's...this government will now bury ideas for the sake of political expedience..." (*Hansard*, 2993) The Government House Leader, Hon. Jim McLachlan (Faro, Liberal) raised a point of order saying Mr. McLarnon had violated Standing Order 19(g). Reflecting on Mr. McLarnon's recent move from the government side to sit as an independent member Official Opposition House Leader Dennis Fentie (Watson Lake, NDP) urged "the members on the government side to leave this acrimonious debate to a party convention and allow this House to get on with dealing with the public's business." (*Hansard*, 2993) The Speaker, Hon. Dennis Schneider, ruled that there was no point of order.

Charging a Member with uttering a deliberate falsehood

Standing Order 19(h) says, "A member shall be called to order by the Speaker if that member charges another member with uttering a deliberate falsehood." It is fundamental to orderly debate that members must be taken at their word. As *Beauchesne's Parliamentary Rules & Forms* puts it

> It has been formally ruled by Speakers that statements by Members respecting themselves and particularly within their own knowledge must be accepted. It is not unparliamentary to temperately criticize statements made by Members as being contrary to the facts; but no imputation of intentional falsehood is permissible. On rare occasions this may result in the house having to accept two contradictory accounts of the same incident.[51]

On April 10, 2002 during debate on a proposed amendment to Motion No. 189 Hon. Jim McLachlan (Faro, Liberal) made reference to remarks made by the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party). In doing so Hon. Mr. McLachlan said Mr. Jenkins "has said the Liberals have turned into silence in Ottawa. That is not true." (*Hansard*, 3104) The Speaker, Hon. Dennis Schneider, intervened and reminded members to not refer to truths or untruths in debate. He then asked Mr. McLachlan to rephrase his remarks.

On April 24, 2002 during debate on Motion No. 228 Dennis Fentie (Watson Lake, NDP) rose on a point of order in response to the speech of Mr. McLachlan. Mr. Fentie urged Mr. McLachlan to "correct the facts." Speaking to the point of order Hon. Mrs. Edelman (Riverdale South, Liberal) suggested there was no point of order merely a dispute between members as to the facts. Mr. Jenkins also spoke to the point of order saying Mr. McLachlan "would be blatantly misleading the House in putting (certain) information forward." (*Hansard*, 3341) Speaker Schneider ruled there was no point of order, but a dispute between members. However he also

[51] *Beauchesne's* §494, page 151.

drew attention to Mr. Jenkins' choice of words in responding to the point of order and requested members be cautious in their comments.

During Question Period on April 29, 2002 Dave Keenan (Ross River-Southern Lakes, NDP) asked questions of the Minister responsible for the Yukon Housing Corporation, Hon. Pam Buckway (Lake Laberge, Liberal), about the corporation's policy regarding the use of tax documents as proof of income. In response to Hon. Ms. Buckway's answer to his first supplementary question Mr. Keenan said, "Well, Mr. Speaker, that's just not true; that's just not true at all, Mr. Speaker." (*Hansard*, 3398) The Speaker called for order and ruled Mr. Keenan out of order. He also requested that Mr. Keenan rephrase his remarks, which Mr. Keenan did.

During Question Period on May 13, 2002 the Leader of the Official Opposition, Eric Fairclough (Mayo-Tatchun, NDP) asked questions of the Premier regarding the transfer of funds between departments. In response to Hon. Ms. Duncan's answer to his first supplementary question Mr. Fairclough said, "nothing could be further from the truth." (*Hansard*, 3629). The Speaker called for order and asked Mr. Fairclough to withdraw the statement, which he did.

On May 30, 2002 during Committee of the Whole debate on Bill No. 58, *Act to Amend the Economic Development Act*, Mr. Fentie said, "this Premier should know better than to stand in this House and relay such misleading information." The Committee Chair, Mike McLarnon, intervened ruling the phrase unparliamentary. Mr. Fentie retracted the statement then said, "this Premier is fabricating a picture for the Yukon public." The Chair also ruled that phrase out of order. Mr. Fentie again withdrew his comment and said the Premier's understanding was "a figment of (her) imagination." (*Hansard*, 3889)

<u>Abusive or insulting language</u>

Standing Order 19(i) says, "A member shall be called to order by the Speaker if that member uses abusive or insulting language, including sexist or violent language, in a context likely to create disorder."

On April 22, 2002 during Committee of the Whole debate on Bill No. 9, *Second Appropriation Act, 2002-03*, (Yukon Liquor Corporation) Mr. Jenkins made remarks comparing the level of knowledge of the Minister responsible for the Yukon Liquor Corporation, Hon. Pam Buckway (Lake Laberge, Liberal) with that of Hon. Pat Duncan (Porter Creek South, Liberal) the Premier and Minister of Finance. Mr. Jenkins' comments included: "Hasn't anyone there briefed the minister...I'd encourage the Minister of Finance to give this minister a thorough and comprehensive briefing...The only one who seems to know is the Minister of Finance." Hon. Ms. Duncan, in response to a question from Mr. Jenkins said, "the tone of voice and the language used by (Mr. Jenkins) is not conducive to debate. It's unfortunate that the member chooses to act this way." Subsequently Mr. Jenkins said, "obviously there is more of an understanding at the Premier's level than there is at the minister responsible for the Liquor Corporation's level." At that point Hon. Ms. Duncan rose on a point of order accusing Mr. Jenkins of 'belittling' Hon. Ms. Buckway, making "personal attacks when asking a question" and engaging in a "form of verbal abuse." Mr. Jenkins argued that it was simply a dispute between members and that he was only encouraging "the Premier, the Minister of Finance, to stay tuned because it is obvious she has the answers." After a brief recess the Chair of Committee of the Whole, Mike McLarnon, ruled

> The demeanour and tone of the debate in the House is something that is beyond the control of the Chair. It is up to the individual members of this House to control it.
>
> The Orders and Standing Orders that are determined by this House and the traditions of this House allow some degree of personal opinion as to the performance of members in their duties. Where that line is drawn is up to members, beyond actually breaking the established and standardized rules of this House.
>
> The Chair will counsel members and, being consistent with the Speaker's ruling in the previous session, members will police themselves as far as tone and demeanour. It is the responsibility of each and every member of this House to do that.
>
> The Chair will intervene when rules clearly have been broken. As to tone and demeanour, the Chair will not intervene. (*Hansard* 3283-4)

The Chair's interpretation of his ability to rule based on interpretations of tone and demeanour is somewhat different from those offered by the parliamentary authorities. While it is clear that Members ultimately control the level of order and decorum Marleau and Montpetit, citing seven rulings by Speaker Parent of the House of Commons of Canada, concluded, "In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking; the person to whom the words were directed; the degree of provocation; and most importantly, whether or not the remarks created disorder in the Chamber."[52]

On April 23, 2002 during Committee of the Whole debate on Bill No. 9 (Yukon Housing Corporation) Mr. Jenkins commented that the Minister responsible for the Yukon Housing Corporation, Hon. Pam Buckway (Lake Laberge, Liberal) "doesn't understand the basis of management." He further stated that the manner in which the minister was instructing her deputy minister "smacks of ...a government that doesn't trust its boards and committees." He then asked if the minister understood what it meant to align a Crown corporation with a government department. At that point Committee Chair Mike McLarnon called for order and said

> Just to ensure that the House remains at the level of decorum expected for a parliament, we're just going to give warnings to members to stop using language that might be seen as offensive, provocative or threatening in the House. It is strictly forbidden under the rules. Statements like "the minister doesn't understand" is a provocative statement that incites more debate rather than being issue-related. So just try to keep the language up. (*Hansard*, 3319)

During Question Period on April 25, 2002 Dennis Fentie (Watson Lake, NDP) asked questions of the Minister of Business, Tourism and Culture, Hon. Dale Eftoda (Riverdale North, Liberal) regarding tourism marketing funds. In reference to "the convention opportunities fund" Mr. Fentie used the phrases "this government has decided to kill that fund too" and "the convention opportunities fund that this government has killed." At that point the Speaker called for order.

---

[52] *House of Commons Procedure and Practice*, page 526. *Beauchesne's* makes a similar point at §486, page 143.

Referring to changes to the Standing Orders made during the 2001 Fall Sitting of the Assembly he said

> The Chair would like to step in here and make a statement. Recent amendments, including sexist and violent language, were just put into the rules as being unacceptable per 19(i) of the Standing Orders. The Chair has allowed it to continue on "killing" this and "killing" that but, the last time the Legislature sat, that was language that used to cause problems in here. It was likely to, and did, create disorder. The Chair has allowed it to continue on but, twice now in the first supplementary and again in the final, it has been used. I would ask members to remember the agreements we made in the past and be more judicious in their choice of words.

On April 30, 2002 during Committee of the Whole Don Roberts (Porter Creek North, Independent) proposed an amendment to the appropriation for the Yukon Housing Corporation in Bill No. 9. The proposed amendment, if carried, would have reduced the appropriation for administration in Vote 18 by $52,000. In debating the proposed amendment the Minister responsible for the Yukon Housing Corporation, Hon. Pam Buckway (Lake Laberge, Liberal) referred to the proposed reduction as "reckless slashing." Mr. Keenan rose on a point of order asking if the phrase 'reckless slashing' was acceptable. Committee Chair Mike McLarnon ruled the phrase out of order. (*Hansard*, 3425)

Later in debate on Vote 18 Gary McRobb (Kluane, NDP) referred to the government as "this Liberal ship of fools." The Chair ruled that the phrase cast aspersions and broke the standing orders. He asked for an immediate withdrawal, which Mr. McRobb provided. (*Hansard*, 3444)

During Question Period on May 1, 2002 Lorraine Peter (Vuntut Gwitchin, NDP) asked the Minister of Education questions regarding the government's plan to rebuild Grey Mountain Primary School. In the course of her second supplementary question Mrs. Peter referred to the Education Act review as a "farce" and said that once the government lost its majority in the Assembly "all hell broke loose." At that point the Speaker called for order and asked Mrs. Peter

> to be very cautious in her choice of words, starting with "farce" and then "with all hell breaking loose". That is not acceptable — not in the least — in this Legislature. I'll give the member the opportunity to start again on the final supplementary, but please, please be careful in your choice of words. Keep some professionalism in here. (*Hansard*, 3456)

Mrs. Peter apologized for her choice of words and retracted the statement.

On May 2, 2002 during Committee of the Whole debate on Bill No. 9 (Justice) the Minister of Justice, Hon. Jim McLachlan (Faro, Liberal) said Mr. Jenkins was looking for "another whipping boy, because he didn't like the answers he got." Committee Chair Mike McLarnon stated that the term "whipping boy" is one that should be avoided. (*Hansard*, 3504)

On May 7, 2002 during Committee of the Whole debate on Bill No. 9 (Environment) the Minister of Environment expressed criticism of the mode of questioning employed by Mr. Jenkins. In doing so Hon. Mr. Eftoda said

> The member has alluded to the fact that, yes, the individual is 72 years old. He has brought personal history of mine to the floor of the Chamber. This member will do anything. I still find it disgusting what he's doing but that's his choice because — (*Hansard*, 3552)

At that point the Committee Chair Mike McLarnon called for order indicating that the minister was casting aspersions on the character of Mr. Jenkins. The Chair asked members to focus on policy. Hon. Mr. Eftoda apologized to Mr. Jenkins and expressed his inteintion to adhere to the ruling.

On May 8, 2002 Committee of the Whole discussed a private member's bill, Bill No. 101, *Child, Youth and Family Advocacy Act*. The Minister of Health and Social Services, Hon. Sue Edelman (Riverdale South, Liberal) criticized the bill, which was based on similar legislation in British Columbia. In doing so Hon. Mrs. Edelman said members who supported the bill simply copied it off the internet and "didn't even (make) the effort to even Yukon-ize (its) terms and conditions." As for those members who supported the bill Hon. Mrs. Edelman said, "They have a clear contempt for their role as legislators in this House." Committee Chair Mike McLarnon called for order and asked members to "keep away from that language to make sure the Committee of the Whole demeanour does not degenerate." (*Hansard*, 3594)

During Question Period on May 15, 2002 Mr. Jenkins asked questions of the Minister of Environment, Hon. Mr. Eftoda regarding the government's moratorium on identifying new areas for protection under the Protected Areas Strategy. In doing so Mr. Jenkins asked the minister if he would "now come clean and admit that his news release of April 24 was a complete and utter sham, designed to give the impression that he had ordered a slowdown of YPAS, when in fact it is full speed ahead." In response the minister took exception to the word "sham" and said, "I would question the Member for Klondike's credibility on a vast number of issues." The Speaker then called for order saying he did not wish to limit debate and would address the issues of language at the end of Question Period. At that time the Speaker spoke of his desire to get as many questions in as possible. However he noted the difficulty placed on the Chair in doing this if he is required to intervene due to unparliamentary words and phrases being used. The Speaker reminded member of the need for their cooperation in ensuring the smooth running of the Assembly. (*Hansard*, 3691-2)

Later that day during Committee of the Whole debate on Bill No. 9 (Health and Social Services) the Minister of Health and Social Services, Hon. Sue Edelman, in referring to Mr. Roberts, said, "the member opposite...rarely listens to what individuals tell him." Committee Chair Mike McLarnon said such comments are likely to incite argument and asked members to keep their remarks focused on policy. (*Hansard*, 3697)

Still later during the same debate Mr. Roberts remarked that Hon. Mrs. Edelman "shows a disdain for caucus by saying that caucus doesn't make any decisions." Once again the Chair intervened and reminded members to focus on policy. (*Hansard*, 3701)

During Question Period on May 16, 2002 Mr. Fentie asked questions of the Minister of Environment, Hon. Mr. Eftoda regarding the devolution of responsibility for forestry from the Government of Canada to the Government of Yukon. Hon. Mr. Eftoda, in referring to Mr.

Fentie's recent move from the New Democratic Party to the Yukon Party, called Mr. Fentie "the Member for Klondike's new sandbox playmate." The Speaker called for order and asked the minister "not to be personal and offensive." (*Hansard*, 3725)

Beauchesne's Parliamentary Rules & Forms informs us that "Remarks which do not appear on the public record and are therefore private conversations not heard by the Chair do not invite the intervention of the Speaker, although Members have apologized for hurtful remarks uttered in such circumstances."[53] Occasionally the Chair will intervene, however, if ignoring such remarks is likely to lead to disorder. On May 6, 2002 during Committee of the Whole debate on Bill No. 9 (Environment), the Minister of Environment, Hon. Mr. Eftoda engaged Mr. McRobb in debate. At one point Hon. Mr. Eftoda said

> If the member is willing to listen to the answers, I would be more than willing but he doesn't have to bring outside aspersions into this House. Mr. Chair, I will not tolerate that. I have indicated that I would respect his comments, but if he wants me to provide those comments in a respectful and diligent way, I would suggest he leave my family out of it. (*Hansard*, 3526)

The remarks that caused Hon. Mr. Eftoda to say this were not on the record. Nonetheless Committee Chair Mike McLarnon reminded the committee, "while remarks said (by members not recognized by the Chair) are not recorded by *Hansard*, they are certainly heard and the Chair will ask the members to be judicious in their comments, even if they are not in *Hansard*." (*Hansard*, 3526)

<u>Raising a point of order regarding unparliamentary language</u>

One issue that arose during the 2002 Spring Sitting was the manner in which members raise points of order regarding unparliamentary language. In referring to one example of this problem the Speaker, Hon. Dennis Schneider delivered a statement on April 29, 2002 in which he said

> In some cases it is clear which words or phrases are offensive. At other times it is not so clear. The Chair would appreciate it if, in future, members would identify those words or phrases they find offensive, and which Standing Order they believe has been breached, when raising points of order or advising the Chair as the Chair prepares to rule on points of order. I think we recall the difficulties the Chair had last week trying to determine what the point of order was. (*Hansard*, 3395)

The incident the Speaker referred to occurred on April 24, 2002 during debate on Motion No. 228. At one point Hon. Jim McLachlan (Faro, Liberal) asserted that the government had responded to concerns expressed by the Leader of the Third Party, Peter Jenkins (Klondike, Yukon Party). Hon. Mr. McLachlan said, "the Member for Klondike can now drive clearly to Whitehorse and not have to worry about seeing the corners at a very high rate of speed." Mr. Jenkins then rose on a point of order saying, "The Member for Faro is casting aspersions on my

---

[53] *Beauchesne's* §486(4), page 143.

character." After the Speaker asked for guidance as to how the Member for Klondike was being maligned Mr. Jenkins said, "Mr. Speaker, I would encourage the Speaker to review *Hansard* and bring back a ruling. There's more being said by the Member for Faro that accomplishes just what I laid out, which is contrary to the rules, Mr. Speaker." (*Hansard*, 3340-1) However the Member for Klondike did not mention what standing order had been breached or what words or phrases had breached the standing orders.

A similar situation occurred later that day during debate on the same motion. This time Gary McRobb (Kluane, NDP) raised the point of order regarding abusive or insulting language. While Mr. McRobb did cite Standing Order 19(i) he did not indicate the specific words he found to be abusive or insulting. In ruling on the matter the Speaker said he did not hear remarks he found to be abusive or insulting. (*Hansard*, 3363)

Statistical Summary

Sitting Days: 30.
Sitting Time: 145 hours and 39 minutes.
Tributes: 40
Visitor Introductions: 66
Documents Tabled: 74
- **Legislative Returns:** 34
- **Sessional Papers:** 35
- **Filed Documents:** 5

Committee Reports: 0
Petitions Presented: 0
Responses to Petitions: 1 (Presented in the previous Sitting)
Bills Introduced: 24
- **Government Bills:** 23
  - **Government Bills receiving Assent:** 16
- **Private Members' Bills:** 1

Motions: 49
- **Government Motions**
  - **Notice of:** 12
  - **Agreed to:** 5
  - **Withdrawn:** 0
    - **Ordered Removed:** 1 (Member dropped from Cabinet; from a previous sitting)
- **Motions other than Government Motions**
  - **Notice of:** 98
  - **Agreed to:** 0
  - **Negatived:** 0
  - **Adjourned Debate:** 5 (3 from a previous Sitting)
  - **Withdrawn:** 24 (23 introduced in a previous Sittings)
    - **Ordered Removed:** 24 (Members appointed to Cabinet - 21; motion outdated – 3. All introduced in previous Sittings.)
- **Motions respecting committee reports.** 0
- **Motions respecting witnesses appearing in Committee of the Whole:** 0 **Motions of urgent and pressing necessity:** 0

Ministerial Statements: 0
Question Period Time: 15 hours and 48 minutes
Percentage of Sitting Time spent in Question Period: Approximately 10.85%
Main Questions Posed in Question Period: 188
- **By the Official Opposition:** 120
- **By the Third Party:** 37
- **By Independent Members:** 31

Time devoted to individual bills[54]

Bill No. 9, Second Appropriation Act, 2002-03: 83 hours, 41 minutes.

(Breakdown)

Second Reading: 12 hours, 7 minutes

Committee of the Whole: 71 hours, 34 minutes

- General Debate: 23 hours, 44 minutes
- Yukon Liquor Corp.: 3 hours, 8 minutes
- Yukon Housing Corp.: 7 hours, 21 minutes
- Yukon Development Corp.: 5 hours, 14 minutes
- Justice: 5 hours, 18 minutes
- Environment: 7 hours, 33 minutes
- Infrastructure: 8 hours, 45 minutes
- Health and Social Services: 6 hours, 6 minutes
- Finance: 1 hour, 44 minutes
- Energy, Mines & Resources: 2 hours, 21 minutes
- Education: 1 hour 49 minutes
- Community Services: 5 hours, 24 minutes
- Executive Council Office: 2 hours, 18 minutes
- Ombudsman: 4 minutes
- Elections: 3 minutes
- Legislative Assembly: 4 minutes
- Public Service Commission: 19 minutes
- Business, Tourism & Culture: 2 hours, 26 minutes

Third Reading: Division.

Bill No. 10, *Third Appropriation Act, 2002-02*: 20 minutes

Second Reading: 19 minutes

Committee of the Whole: n/a

Third Reading: 1 minute.

Bill No. 51, *Official Tree Act*: 25 minutes

Second Reading: 14 minutes

Committee of the Whole: Unanimous consent granted to deem all clauses read and carried. Reported out of Committee without amendment.

Third Reading: 11 minutes

Bill No. 55, *Act to Amend the Income Tax Act (No. 5)*: 35 minutes

Second Reading: 14 minutes

---

[54] Pursuant to Standing Order 52(2) "A motion for First Reading of a bill shall be decided without introductory statement, debate or amendment."

Committee of the Whole: Unanimous consent granted to deem all clauses read and carried. Reported out of Committee without amendment.
Third Reading: 21 minutes

Bill No. 56, *Act to Amend the Tobacco Tax Act (No. 2)*: 45 minutes
Second Reading: 35 minutes
Committee of the Whole: Unanimous consent granted to deem all clauses read and carried. Reported out of Committee without amendment.
Third Reading: 10 minutes

Bill No. 57, *Government Organisation Act*: 25 minutes
Second Reading: 15 minutes
Committee of the Whole: 8 minutes
Third Reading: 2 minutes

Bill No. 58, *Act to Amend the Economic Development Act*: 50 minutes
Second Reading: 28 minutes
Committee of the Whole: 20 minutes
Third Reading: 2 minutes

Bill No. 59, *Government Accountability Act*: 59 minutes
Second Reading: 31 minutes
Committee of the Whole: 26 minutes
Third Reading: 2 minutes

Bill No. 60, *Act to Amend the Access to Information and Protection of Privacy Act*: 1 hour, 1 minute
Second Reading: 54 minutes
Committee of the Whole: 4 minutes
Third Reading: 3 minutes

Bill No. 61, *Electoral District Boundaries Act, 2002*: 1 hour, 58 minutes
Second Reading: 1 hour, 46 minutes
Committee of the Whole: 10 minutes
Third Reading: 2 minutes

Bill No. 62, *Act to Amend the Employment Standards Act*: 9 minutes
Second Reading: 7 minutes
Committee of the Whole: Unanimous consent granted to deem all clauses read and carried. Reported out of Committee without amendment.
Third Reading: 2 minutes

Bill No. 64, *Spousal Compensation Act*: 17 minutes

Second Reading: 8 minutes

Committee of the Whole: Unanimous consent granted to deem all clauses read and carried. Reported out of Committee without amendment.

Third Reading: 9 minutes

Bill No. 65, *Act to Amend the Dental Profession Act*: 21 minutes

Second Reading: 20 minutes

Committee of the Whole: Unanimous consent granted to deem all clauses read and carried. Reported out of Committee without amendment.

Third Reading: 1 minute

Bill No. 71, *Corporate Governance Act*: 25 minutes

Second Reading: 19 minutes

Committee of the Whole: 4 minutes

Third Reading: 2 minutes

Bill No. 72, *Act to Amend the Financial Administration Act*: 24 minutes

Second Reading: 16 minutes

Committee of the Whole: Unanimous consent granted to deem all clauses read and carried. Reported out of Committee without amendment.

Third Reading: 8 minutes

Bill No. 73, *Act to Amend the Workers' Compensation Act*: 50 minutes

Second Reading: 18 minutes

Committee of the whole: 18 minutes

Third Reading: 14 minutes

Bill No. 101, *Child, Youth and Family Advocacy Act*: 4 hours, 15 minutes

Second Reading: 1 hour, 56 minutes

Committee of the Whole: 2 hours, 19 minutes

Bill No. 103, *Electoral District Boundaries Act*: 9 minutes

Second Reading: 9 minutes

Time devoted to individual motions

Motion No. 31: 25 minutes
Motion No. 97: 10 minutes
Motion No. 149: n/a
Motion No. 189: 3 hours, 54 minutes
Motion No. 228: 4 hours, 19 minutes
Motion No. 248: 15 minutes
Motion No. 264: 5 minutes
Motion No. 273: Unanimous consent granted to not proceed.

References

Boulton, C.J. (editor); J.F. Sweetman, D.W. Limon, H.M. Barclay, W.R. McKay, A.J. Hastings, and R.J. Willoughby (Assistant Editors, House of Commons); and B.P. Keith (Assistant Editor, House of Lords), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (21st edition). London: Butterworths. 1989.

Fraser, Alistair; W.F. Dawson and John A. Holtby, *Beauchesne's Rules & Forms of the House of Commons of Canada with Annotations, Comments and Precedents* (6th edition). Toronto: Carswell. 1989.

House of Commons of Canada. *An Act to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts.* Royal Assent granted March 26, 2002.

Marleau, Robert, and Camille Montpetit (editors), *House of Commons Procedure and Practice.* Ottawa: House of Commons, Montreal: Chenelière, and Toronto: McGraw-Hill. 2000.

Tobin, Chuck, "Sitting week ends in angry squabble", The Whitehorse *Star*, May 10, 2002.

Yukon Legislative Assembly. *Hansard.* Second Session of the 30th Legislature. 2001 and 2002.

Yukon Legislative Assembly. *Members' Procedural Handbook.* Legislative Assembly Office. April 2000.

Yukon Legislative Assembly. *Standing Orders of the Yukon Legislative Assembly.* April 4, 2002.

Index