PROCEDURAL REPORT

YUKON
LEGISLATIVE ASSEMBLY

FIRST SESSION **31ST LEGISLATURE**

October 30, 2003-December 16, 2003

Speaker: The Hon. Ted Staffen

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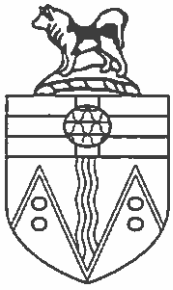

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Table of Contents

Preface

"Parliamentary procedure...is at once the "means" used to circumscribe the use of power and a "process" that legitimizes the exercise of, and opposition to power."[1]

This report documents procedural events of note that occurred during the 2003 Fall Sitting of the First Session of the 31st 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 this time. 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 of the Yukon Legislative Assembly* and procedural authorities, particularly, *House of Commons Procedure and Practice* and *Beauchesne's Rules & Forms of the House of Commons of Canada.*

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Deputy Clerk
Yukon Legislative Assembly

[1] Robert Marleau and Camille Montpetit (editors), *House of Commons Procedure and Practice*, (Montréal: Chenelière and Toronto: McGraw-Hill, 2000) page 209.

Introduction

The 2003 Fall Sitting of the Yukon Legislative Assembly saw a procedural first – the use of the 'guillotine' encompassed in Chapter 14. The 'guillotine' is a mechanism for bringing a Sitting to an orderly end once the maximum number of sitting days allotted for a Sitting had been reached. The result, as noted in this report, is that certain departmental allocations in Bill No. 7, *Second Appropriation Act, 2003-04*, were not debated.

Two of the bills dealt with occasioned some unusual proceedings in Committee of the Whole. Bill No. 39, *Decision Making, Support and Protection to Adults Act*, was an omnibus bill, a bill that enacted more than one law by its passage. In practice this meant the Committee had to refer at times between the main bill and four other bills, attached to Bill No. 39 as schedules.

Bill No. 42, *Territorial Court Judiciary Pension Plan Act, 2003* was not, strictly speaking, an omnibus bill because it did not enact more than one act. However three schedules attached to the bill established the Judiciary Registered Pension Plan, the Judiciary Retirement Compensation Agreement, and the Supplementary Judiciary Pension Plan. Procedurally this form, like that of Bill No. 39, required the Committee to refer between the main bill and the schedules. However unanimous consent was used to deem the contents of the bill read and agreed to after general debate.

In terms of rulings from the Chair there was some innovation regarding the management of the Assembly's time. The first issue had to do with members reading during debate. During debate members are allowed to use speaking notes. However, members are not allowed to read too extensively from previously published documents. On three occasions during the 2003 Fall Sitting the Chair intervened when members were found to be reading too extensively from *Hansard*, the *Blues*, or legislation.

The second issue had to do with relevance and repetition during debate. This issue arises from time to time but came to a head on December 3, 2003 during debate on Motion for the Production of Papers No. 18. In a ruling delivered the next day the Speaker spoke to the rules of relevance and repetition and said he would, in view of the events of this Sitting, in future apply "a more orthodox interpretation of the rules and practices" in this regard.

Procedural Issues

Absence of Member, reference to
House of Commons Procedure and Practice advises

> It is unacceptable to allude to the presence or absence of a Member or Minister in the Chamber. The Speaker has traditionally discouraged Members from signalling the absence of another Member from the House because "a there are many places that Members have to be in order to carry out all the obligations that go with their office."[2]

During Question Period on November 4, 2003 Mr. McRobb said, "Mr. Speaker, I'm at a bit of a loss, here. My question is for the Energy minister. We were told by the government House leader he would be here today. I sent a note over at the beginning of Question Period." At this point Mr. Jenkins rose on a point of order saying, "we can't recognize that a member isn't present here in the House." The Speaker ruled that Mr. McRobb's reference was not in order (*Hansard* 1144).

Committee of the Whole began its deliberations on December 1, 2003 with Bill No. 42. Having reported the bill without amendment the committee sought direction as to the next piece of business to be dealt with. However Mr. Jenkins, the government House leader, was not in the Chamber at that time to give direction. Ms. Duncan brought this fact to the House's attention using the phrase, "in the absence of the government House leader." The committee Chair stated that it was "inappropriate to identify whether a member is here or not." (*Hansard* 1519)

During Question Period on December 4, 2003 the Leader of the Official Opposition, Mr. Hardy, referred to a debate on the previous day said, "I would like the record to state that the two ministers who haven't paid their bills, who were not present for the debate, became present for the vote to shut down the debate." At that point the Speaker called for order and said, "It is inappropriate to mention whether a member is in or out of the House. I would ask the member not to do that." (*Hansard* 1611)

Adjournment of Debate
Standing Order 27(3)(g) says, "No notice shall be required" for a motion "for the adjournment of the Assembly or of a debate." Standing Order 24(2) says motions for the adjournment of debate "shall be decided without debate or amendment."

These rules came into play on December 3, 2003. On that day the first item of business under Orders of the Day was Motion No. 105 standing in the name of the Member for Whitehorse Centre, the Leader of the Official Opposition, Mr. Todd Hardy. Mr. Hardy, being the sponsor of the motion spoke to it first. The member speaking first in reply was the Member for Copperbelt, Mr. Haakon Arntzen. Mr. Arntzen spoke to the motion for approximately two minutes and moved, "that this debate be now adjourned." Pursuant to the above-mentioned standing orders the motion was in order. The Speaker put the motion to the Assembly and as a majority of members indicated their approval of it, debate was adjourned. The House then proceeded to its next item of business.

In the context in which it was used Mr. Arntzen's motion is classified as a dilatory motion, a "superseding motion designed to dispose of the original question before the House either for the time being or permanently." It is important to note that such a motion "can only be

[2] *House of Commons Procedure and Practice* p. 522

moved by a Member who has been recognized by the Chair in the regular course of debate, and not on a point of order."[3]

Adjournment of the House

On November 19, 2001, pursuant to an all-party agreement, the Assembly adopted Government Motion No. 169. In so doing the Assembly amended the Standing Orders of the Yukon Legislative Assembly. The changes added Chapter 14 that includes, among other things, a mechanism for terminating a Sitting of the Legislative Assembly once the maximum number of sitting days has been reached and the business before the Assembly is dealt with. These new standing orders were first used in the 2002 Spring Sitting.

Standing Order 75(1) says, "There shall be a maximum of 60 sitting days per calendar year." Special sittings, such as the special sitting to commemorate Mayo's centennial, do not figure in this equation. As the Assembly had sat for 36 days in the 2003 Spring Sitting 24 days were available for the 2003 Fall Sitting. The House having reconvened on October 30, 2003 December 16, 2003 turned out to be the 24th sitting day.

On that day, following the termination of the sitting and Assent to Bills by Commissioner Jack Cable, the Speaker adjourned the House saying

> As the House has reached the maximum number of days permitted for this fall 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* 1817)

Amendments and sub-amendments

According to *House of Commons Procedure and Practice* "only one amendment and one sub-amendment may be before the House at any one time."[4]

This little used rule was invoked on December 11, 2003 as the Assembly debated Motion No. 186 standing in the name of the Premier, Mr. Fentie. During the debate the Leader of the Official Opposition, Mr. Hardy, moved an amendment to the motion. Later, in debating the amendment, Mr. Fentie moved an amendment to the amendment. During debate on the sub-amendment Mr. Fairclough attempted to move a further amendment. The Speaker ruled, however, that an amendment to a sub-amendment is not in order and that the existing sub-amendment would have to be dealt with before any more amendments could be entertained. (*Hansard* 1743) Eventually the existing sub-amendment was agreed to, thereby amending the amendment. Mr. Fairclough then moved an amendment to the amendment as amended.

Assent

Assent is the final stage in a bill becoming law. The Assent ceremony illustrates the agreement reached by the two components of the Legislature: The Commissioner and the Legislative Assembly. The Legislative Assembly indicates its support for a bill by passing the motion for Third Reading. Once the Commissioner indicates his support by granting Assent the bill becomes law. The only remaining detail is the date on which the bill comes into force. This provision is enumerated in the bill.

For the Assent ceremony the Commissioner is escorted into the Chamber by the Sergeant-at-Arms and takes his place in the Speaker's chair. The Speaker informs the

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[3] *House of Commons Procedure and Practice* p. 458

[4] *House of Commons Procedure and Practice* p. 452

Commissioner that "the Assembly has, at its present session, passed certain bills, to which, in the name and on behalf of this Assembly, I respectfully request your assent." The Clerk then reads out the names of the bills that have passed the Assembly. The Commissioner indicates his assent to the bills by saying, "I hereby assent to the bills as enumerated by the Clerk."

During the 2003 Fall Sitting the Commissioner entered the Chamber to grant assent to the following bills on the following occasions:

- November 17, 2003: *Act to Amend the Public Printing Act*; *Act to Amend the Employment Standards Act*; *Act to Amend the Access to Information and Protection of Privacy Act*; and the *Statistics Act*. (Hansard 1295)
- December 16, 2003: *Decision Making, Support and Protection to Adults Act; Health Professions Act; Fourth Appropriation Act, 2002-03; Territorial Court Judiciary Pension Plan Act, 2003; Act to Amend the Taxpayer Protection Act; Second Appropriation Act, 2003-04*. (*Hansard* 1817)

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."[5] Furthermore "a direct charge or accusation against a Member may be made only by way of a substantive motion for which notice is required."[6] Such remarks cannot merely be injected in debate.

During Question Period on October 30, 2003 the Leader of the Third Party, Pat Duncan (Porter Creek South, Liberal) made the following comments about actions of the Minister of Environment, Hon. Jim Kenyon (Porter Creek North, Yukon Party):

> The Minister of Environment, from his office, has attempted to influence another level of government as the MLA...It appears the minister wrote (a) letter to further his own private interest - in other words, the value of his house...(*Hansard* 1105)... I believe that the Minister of the Environment, the MLA for Porter Creek North, by writing to the municipal government with respect to a land application for subdivision, is writing to further his own...interest. The Member for Porter Creek North has said publicly that he would contact the Conflicts Commissioner, and he has a public responsibility to explain to Yukoners why he has not lived up to that commitment. (*Hansard* 1107)

On November 3, 2003 the Speaker made the following statement:

> Before the House proceeds to Question Period the Chair would like to make a statement about an exchange that occurred during Question Period last Thursday. At that time the leader of the third party accused the Minister of Environment of furthering his private interest by way of a letter the minister wrote to the City of Whitehorse. Such an accusation is not in order. If a member wishes to level an accusation against another member, he or she has two options. If the issue relates to a potential conflict of interest, the member may raise the issue with the Conflicts Commissioner. Members can also raise such concerns by way of a substantive motion for which proper notice is given.

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[5] *Beauchesne's* §50, page 17.

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

> The Chair has no interest in limiting the subject matter that members wish to raise during Question Period; however, such issues must not be raised by accusation.
>
> It must also be noted that after the accusation was made, the Minister of Environment was called to order by the Chair for questioning the motives of the leader of the third party. Such accusations, therefore, lead to disorder. This is another reason members should avoid making accusations. (*Hansard* 1111-1112)

During debate on Committee of the Whole Motion No. 3 on December 1, 2003 Mr. McRobb raised a point of order after the Premier, Hon. Dennis Fentie said of him, "the Member for Kluane basically forced a government of the day to spend $4 million". During the discussion of the point of order that followed Hon. Mr. Jenkins said

> to placate the Member for Kluane, the last foot of the water licence at Aishihik Lake was not used — which cost $4 million to the Yukon public, the Yukon ratepayer, in burning diesel. That's a serious situation, considering the member opposite also has property at Aishihik Lake. (*Hansard* 1530)

Mr. McRobb intervened again at this point arguing that Premier Fentie and Hon. Mr. Jenkins had cast aspersions upon him, specifically that his stand on a public policy issue was motivated by self-interest. The Chair, Patrick Rouble, ruled

> The Chair has no knowledge of the situation that the member referred to earlier [by the Premier]. However, it appears that the member [Mr. Jenkins] was imputing a conflict of interest. (*Hansard* 1530)

The Chair then warned members against making such statements in the House.

During Committee of the Whole consideration of the estimates for the Department of Education in Bill No. 7 Ms. Duncan said the Minister of Education, Hon. John Edzerza, had "abrogat(ed)…his duties under the law" in not having completed a review of the *Education Act*, as required by that act. Once Ms. Duncan was finished posing her question the Chair said:

> Before the member answers the question, the Chair just heard the phrase "an abrogation of his duties" in the context of breaking the law. To accuse a member of breaking the law is simply not in order. In our political system this Assembly passes the laws, but it is the courts, not the Assembly, which determine who has broken the law.
>
> Such a charge cannot be entered into debate. Parliamentary practice dictates that a direct charge against a member can only be made by way of substantive motion for which notice is required. Members are free to express their concern that laws are not being adhered to, but they cannot make a direct charge.
>
> I thank members for their co-operation with that. (*Hansard* 1660)

Ms. Duncan then withdrew the remark, substituting for it a question asking the minister how he intended to uphold the law. Hon. Mr. Jenkins then rose on a point of order arguing that the re-worded question still suggested impropriety by the minister. However the Chair indicated his view that the new phrase was in order.

During Committee of the Whole consideration of the Public Service Commission estimates in Bill No. 7 Mr. Hardy asked the minister responsible for the commission, Hon. John Edzerza, certain questions about a computer misuse investigation. At one point Hon. Mr. Edzerza chose not to respond to Mr. Hardy's questions, remaining seated and saying, "Clear." Mr. Hardy then commented on this behaviour saying, "This is a degree — as I said earlier — of disregard and disrespect and contempt for the Legislature, for the right of people of this territory to know what their government is doing."

After Mr. Hardy posed his next question the committee Chair said he had

> listened to a member use the word "contempt" earlier, which is a very strong word to use in this Assembly. The charge of contempt is one that this Assembly must make. I would ask the member to retract it.

He added that should Mr. Hardy wish to charge the minister with contempt of the Legislature he would have to do so by way of a substantive motion for which notice is required. However Mr. Hardy

> refuse(d) to remove the word "contempt," and I will take a look at putting forward a substantive motion in that regard. When a member on the opposite side refuses to acknowledge questions asked, even when we vary the questions, even when we move along, that is a very serious, serious behaviour and action within the legislative process, within the democratic rights of each member in this Legislature.

The Chair insisted that Mr. Hardy withdraw the remark saying,

> Contempt of the Legislature is a very severe charge. It is not one that can be entered into lightly or just used in general debate. Again, I'll ask the member to withdraw the comment. I've made the member aware of his recourse, should he choose to pursue any actions. However, I will once again ask the member to withdraw the comment.

Mr. Hardy then agreed to withdraw the remark saying he would take up the issue at a later date. (*Hansard* 1689-1690)

On December 11, 2003 the Assembly debated Motion No. 186, standing in the name of the Premier, Hon. Dennis Fentie. The motion had to do with the development of a policy for dealing with loans owed to the Government of Yukon. Two of the individuals in debt to the government, by corporate association, are cabinet ministers: Hon. Mr. Jenkins and Hon. Mr. Lang. In debating the approach advocated by the government Mr. Hardy said Yukoners "are going to see this, once again, as two elected leaders who have possibly been able to influence — maybe not directly, but just by their presence — the direction on the settlement of the loans in a manner that is not acceptable to the people of this territory." At that point the Speaker intervened saying he was "uncomfortable with the flow here, in terms of imputing false or unavowed motives. The leader of the official opposition made reference to members influencing for their own interests. I don't believe you wanted to go there, and I would prefer that we kept the debate on a little bit of a higher plane." As noted by the Speaker's comment Mr. Hardy had not made a direct charge against the two cabinet ministers. The Speaker's concern was that the debate was headed in that direction. (*Hansard* 1749)

Committee of the Whole

Appropriation bills, procedure

Committee debate on appropriation and supplementary appropriation bills begins with general debate. Once general debate is concluded the committee opens clause 1 of the bill and then proceeds to the schedules. Schedule 1 contains a department by department breakdown of the appropriations. Only new appropriations are subject to debate. Questions about other information contained in Schedule A such as departmental lapses in funding and overall expenditures should be asked during general debate. Once the schedules have been carried the committee will return to Clause 1 to carry it.

Chair Patrick Rouble reminded committee members of this procedure on November 25, 2003 when Bill No.6, *Fourth Appropriation Act, 2002-03*, was before the committee. Before debate began Mr. Rouble said, "We will go into general debate. I would like to remind members that, as we have only two votes (Office of the Ombudsman/Information and Privacy Commissioner and Public Service Commission) that we will have specific debate on, if there are any questions regarding other departments, they should be asked during general debate." (*Hansard* 1433)

Clauses of bills, standing aside

During Committee of the Whole bills are considered clause by clause in sequential order. Each clause is called, debated and carried. Should the government decide to consider making amendments to a certain clause (or clauses) the clause may, with unanimous consent, be 'stood.' This means that the disposition of the clause is postponed and allows the Committee to continue its business of considering further clauses.[7]

On November 18, 2003 during Committee consideration of Bill No. 41 Ms. Duncan asked the Chair if it would be proper procedure for her to move a motion that clause 3 be stood. The Chair informed her that standing a clause is not a matter for a motion. He misinformed her (due to some errant procedural advice) that standing a clause is a matter for the government to make, as it was a piece of government business that had been called. As noted it requires a request for unanimous consent. In this particular circumstance, however, it was clear that unanimous consent would not be had as the Minister of Health and Social Services indicated his intent to proceed with reading the clauses. (*Hansard* 1344)

Omnibus bills, procedure

One of the bills to be dealt with in this session was Bill No. 39, *Decision Making, Support and Protection to Adults Act*. Before the bill was proceeded with in Committee of the Whole the Chair, Patrick Rouble, gave the following statement outlining the procedure to be followed in dealing with the bill:

> This bill is procedurally complicated in that it shall, if passed, enact four pieces of legislation. One piece of legislation is the bill itself and the other three being the *Adult Protection and Decision Making Act*, the *Care Consent Act*, and the *Public Guardian and Trustee Act*, which are attached to Bill No. 39 as schedules A, B and C.
>
> Procedurally this kind of bill is referred to as an omnibus bill. *House of Commons Procedure and Practice* defines an omnibus bill at page 615 as one that seeks to amend,

[7] *Chair's Handbook Committee of the Whole*, Yukon Legislative Assembly, February 2003, p. 11.

> repeal or enact several acts. It is characterized by the fact that it has a number of related but separate parts.
>
> The procedure in Committee of the Whole will be as follows: when clause 1 of Bill No. 39 is called, Committee will proceed to general debate on Bill No. 39 as a whole. After completing general debate on Bill No. 39, Committee will proceed to general debate on Schedule A, the *Adult Protection and Decision Making Act*.
>
> The Committee will then deal with each clause of Schedule A individually. The Committee will then revert to clause 1 and determine whether to carry it. When clause 2 is called, the Committee shall proceed to general debate on Schedule B, the *Care Consent Act*. The Committee will then deal with each clause of Schedule B individually. After concluding debate on Schedule B, the Committee will revert to clause 2 and determine whether to carry it. Once clause 3 is called, the Committee will proceed to general debate on Schedule C, the *Public Guardian and Trustee Act*. The Committee will then deal with each clause of Schedule C individually. After concluding debate on Schedule C, the Committee will revert to clause 3 and determine whether to carry it. The Committee will then proceed with clauses 4 through 22 and the title in the normal fashion.
>
> Please note that members may use the unanimous consent provision in our Standing Orders to expedite this process. (*Hansard* 1297-1298)

A similar procedure was followed with Bill No. 42, *Territorial Court Judiciary Pension Plan Act, 2003*. Though this bill was not an omnibus bill, it did contain three schedules appended to the bill. Before Committee of the Whole considered Bill No. 42 on December 1, 2003 the Chair, Patrick Rouble made the following statement:

> Bill No. 42, *Territorial Court Judiciary Pension Plan Act, 2003*, has attached to it three schedules. Schedule 1 is the Judiciary Registered Pension Plan, Schedule 2 is the Judiciary Retirement Compensation Agreement, and Schedule 3 is the Supplementary Judiciary Pension Plan. These schedules will be dealt with as their establishment is mentioned in the bill. The committee will therefore proceed with the bill by going first to general debate and then dealing with clauses 1 through 11 in the normal fashion. When Clause 12 is called the Committee will proceed to Schedule 1, the Judiciary Registered Pension Plan. When Schedule 1 is carried the committee will complete consideration of Clause 12, and then Clause 13. When Clause 14 is called the Committee will proceed to Schedule 2, the Judiciary Retirement Compensation Agreement. When Schedule 2 is carried the committee will complete consideration of Clause 14, and then Clause 15. When Clause 16 is called Committee will proceed to Schedule 3, the Supplementary Judiciary Pension Plan. When Schedule 3 is carried the committee will complete consideration of the remaining clauses and the title in the normal fashion. Please note that Members may use the unanimous consent provisions in our Standing Orders to Expedite this process. (*Hansard* 1517)

As it turned out Ms. Duncan did request unanimous consent, at the end of general debate, to deem the clauses, schedule and title of Bill No. 42 read and agreed to. Unanimous consent was granted. (*Hansard* 1517)

Recorded division, request for

Standing Order 44 describes the procedure for conducting a count in Committee of the Whole. One of the differences between a count and a division is that during a count only the aggregate number of members favouring or opposing a proposition is recorded. Members are not polled individually as they are with a recorded division.

On December 1, 2003 the committee completed debate on Committee of the Whole Motion No. 3. When the Chair asked if members were prepared for the question a count was called for. After the bells had rung, but before the count was conducted the Official Opposition House Leader, Mr. McRobb, asked the committee for its unanimous consent for a recorded division. Unanimous consent was not granted. (*Hansard* 1533)

Mr. McRobb's request was unusual and while the Chair agreed to ask the committee if it would grant unanimous consent, it is not clear that such a request is in order. The timing of the request, for example, after the division had been called, was problematic, as is the very nature of a recorded division in committee. It could be argued that had the Assembly wanted its committees to vote in this way it would be allowed for in the Standing Orders. So while the Chair allowed Mr. McRobb to make the request this incident does not establish a precedent and more research on the issue will be forthcoming.

Correcting the record

On December 11, 2003 during debate on an amendment to Motion No. 186 Ms. Duncan said, in reference to a speech made by Premier Fentie "Unfortunately, there was no mention made — no equally as full and extensive mention made of the hundreds and hundreds of Yukon businesses that received similar loans, paid them back in full, continue to operate their businesses, continue to improve their businesses and borrow money and pay it back. There are hundreds of these individuals — another salient detail left out." At that point Mr. Fentie rose on a point of order saying, "To correct the record, as the member well knows, it was stated clearly that out of 1,500 loans, 1,300 were repaid. That's a detail that certainly wasn't left out and was put on the floor of the Legislature by this side of the House." The Speaker ruled that "Correcting the record is not a point of order." (*Hansard* 1735-1736) The Speaker made similar rulings that day regarding points of order raised by Mr. McRobb (*Hansard* 1739) and Mr. Cathers (*Hansard* 1748)

Correcting the record is never a point of order but is taken simply as a dispute between members.

Similarly clarifying one's question is not a point of order. This became an issue during Committee of the Whole consideration of the estimates for the Department of Tourism and Culture on December 15, 2003. During the debate Mr. McRobb asked the Minister of Tourism, Hon. Elaine Taylor, if she could provide the Assembly with a "complete breakdown" of "the tourism stats for last year." The minister then proceeded to respond to the question. At that point Mr. McRobb sought to "clarify (his) question. It was for a complete breakdown of all the stats for visitations, and there are several categories and there are different kinds of questions. If the minister prefers to orate that, we're going to be here for a period of time that exceeds the time we have available. That is not what I would like to see, Mr. Chair. So this exists on paper. She has it in her hand. Can she just undertake — sometime in the next couple of weeks would be nice — if she can provide us a copy of that, please?" The government house leader, Mr. Jenkins, intervened on the point of order indicating that government ministers would not be "providing

everything in writing." The Chair ruled there was no point of order. Clarifying questions is a matter of debate, not procedure. (*Hansard* 1772)

Documents, tabling of

Documents produced by House officers

The practice of the Yukon Legislative Assembly is that the Speaker tables documents produced by House Officers - the Clerk of the Legislative Assembly, the Chief Electoral Officer, the Ombudsman and Information and Privacy Commissioner, the Auditor General and the Conflicts Commissioner. Documents tabled during the 2003 Fall Sitting in this manner include:

- On November 3, 2003: The Conflict of Interest Commission's annual report for the period ending March 31, 2003; a report of the Chief Electoral Officer pursuant to section 398 of the *Elections Act*, on the expenses and revenues for registered political parties and candidates of the 2002 general election; and a report from the Clerk of the Legislative Assembly on the absence of members from sittings of the Legislative Assembly and its committees. (*Hansard* 1111)
- November 12, 2003: The Report of the Auditor General of Canada on the Public Accounts of the Government of Yukon for the year ended March 31, 2003. (*Hansard* 1223)
- November 13, 2003: Election Financing and Other Election Matters, November 2003: Report of the Chief Electoral Officer of Yukon (*Hansard* 1256)
- December 16, 2003: Yukon Human Rights Commission 2002/03 Annual Report (*Hansard* 1787)

Requirement for Tabling

Members regularly use documents when participating in debate. Occasionally other Members, who do not have this source of information handy, ask that such information be tabled so that all Members can fully participate in debate. *House of Commons Procedure and Practice* advises that "where information is given to the House, the House itself is entitled to the same information as the honourable member who may quote the document."[8] In the Yukon Legislative Assembly this only applies to private correspondence not available to Members by other means. Documents in the public domain or that are otherwise in the possession of Members need not be tabled.

During Question Period on November 3, 2003 the Leader of the Official Opposition, Todd Hardy (Whitehorse Centre, NDP) asked the Acting Minister of Finance, Hon. Peter Jenkins (Klondike, Yukon Party) a series of questions about embargoed budget information given to the opposition members at a confidential briefing on October 30, 2003. In the course of his questioning Mr. Hardy read out the title page of the document. At that point Ms. Duncan rose on a point of order saying, "if a member is reading from a document, I understand it has to be tabled in the House." (*Hansard* 1112)

The Speaker did not rule on the point of order at the time. The following day the Speaker delivered the following ruling:

> Before we proceed with Question Period, the Chair will deliver a ruling on a point of order raised yesterday by the leader of the third party regarding the tabling of documents.

[8] Marleau and Montpetit, *House of Commons Procedure and Practice* p. 518.

> At that time the leader of the third party argued that since the leader of the official opposition was reading from a document, that document should be tabled.
>
> The point of order raised two issues: first, whether the action of the leader of the official opposition constituted quoting from the document such that the document should be tabled. The second issue is whether the document should be tabled even if the leader of the official opposition was quoting from it.
>
> As far as the Chair can determine, the leader of the official opposition was reading a cover page or an inside cover page that contained the name of the document and a release date. It appears that the leader of the official opposition was merely identifying the document and not quoting from it in any substantial way.
>
> As to the second issue, the practice of the Yukon Legislative Assembly is that members quoting from private correspondence are required to table that correspondence if so requested by another member of the House. This is required so that all members participating in debate may have access to documents relevant to that debate. It is the Chair's understanding that in this case members on both sides of the House were already in possession of the document identified by the leader of the official opposition. The Chair must rule therefore that the action of the leader of the official opposition does not constitute a substantial quotation of the document as it was already available to members. There is no reason for the Chair to order that it be tabled. (*Hansard* 1140)

A somewhat different circumstance occurred on November 5, 2003 during debate on Motion No. 54. At that time Mr. Cathers made reference to "a document...released by the Yukon Bureau of Statistics. I believe this is already a public document. I don't believe there's a need to table this, although I will if requested." Subsequently Mr. McRobb rose on a point of order requesting that Mr. Cathers table the document in question. Procedurally, Mr. Cathers was correct the nature of the document was such that it would not have to be tabled. However, the Deputy Speaker, Mr. Rouble, ruled

> During the Member for Lake Laberge's comments he indicated a willingness to table the document. As it has been requested by the Member for Kluane that the document be tabled, I would ask the Member for Laberge...to table the documents. (*Hansard* 1166)

A similar event occurred during debate on Motion No. 113. At one point during his remarks Mr. McRobb referred to the content of the *Trade Team Times*, a newspaper insert published in 1999 when the NDP was in government. Mr. McRobb had two copies of the publication with him; one to which he referred the other he offered to send across the floor to Mr. Cathers. Immediately after the offer was made Mr. Cathers rose on a point of order asking that the document be tabled. The Speaker ruled that there was no point of order as Mr. McRobb had already offered to send the document across the floor. As the document was in the public domain there would be no requirement to table it, that is, include it in the working papers of the Assembly. (*Hansard* 1460)

During debate on Motion for the Production of Papers No. 18 on December 3, 2003 Mr. Cathers referred to the Manitoba *Highway Traffic Act*. Mr. Cathers said he "would be happy to provide [members] with the address for that or they may wish to have the entire act printed off for their perusal and tabled." Shortly thereafter Mr. McRobb rose on a point of order and asked that Mr. Cathers table the document. The Speaker ruled there was no point of order but said if Mr. Cathers did provide Mr. McRobb with a copy of the document "it would be helpful to the

flow [of debate] of the House." (*Hansard* 1594) The document was not sent to the Table and would not be as it was a document in the public domain.

On December 11, 2003 the Assembly debated Government Motion No. 186, standing in the name of the Premier, Hon. Dennis Fentie. During the course of his speech on the motion Hon. Mr. Fentie outlined his plan to deal with delinquent loans owed to the Government of Yukon. After he concluded his remarks Mr. McRobb rose on a point of order and made two requests the first of which was that the Premier tabled the document from which he was reading and that the document be "distributed to all members in this House." Hon. Mr. Fentie responded that the document in question was his speech. He argued that opposition members had previously been given access to the information contained in it and there was no need for the document to be tabled. Ms. Duncan then intervened saying that the "written material (in question) is useful to us as there are specific references made to other documents that are publicly available." The Speaker ruled "there are no procedural requirements in this House for any speaker to table their speaking notes." (*Hansard* 1730)

Government Business, calling of

Standing Order 12(2) says, "When government business has precedence, that business may be called in such sequence as the government chooses." *House of Commons Procedure and Practice* affirms that adding "On occasions when the Opposition has protested a change in the projected order of business for a specific sitting day, the Chair has reminded Members of the government's prerogative."[9] The control the government has in calling its business is also reiterated in *Beauchesne*.[10]

On November 3, 2003 Committee of the Whole discussion of Bill No. 37, *Statistics Act* began with statements by Mr. McRobb, Ms. Duncan and Mr. Hardy regarding the order of business. At issue was the fact that Bill No. 37 was called for debate that day despite the fact that the Government House Leader, Hon. Mr. Jenkins, had not, at the House leader's meeting that morning, identified the bill as an item of Government Business for that day.

Given these rules and practices the Chair of Committee of the Whole, Patrick Rouble, made the following statement following remarks by Mr. Hardy:

> Clearly the House leaders are having a dispute about the order of business. It's not the place of the Chair to mediate House leaders' disputes. Rather, all the Chair can do is follow the rules. Those rules state that the government has the right to call its business in the order it prefers on Mondays, Tuesdays and Thursdays. All the Chair can do, then, is rule that the government has the right to call Bill No. 37 for consideration in Committee of the Whole. That has been done. Let us now continue on with general debate on Bill No. 37, *Statistics Act*. (*Hansard* 1126)

A similar event occurred in Committee of the Whole on December 8, 2003. The committee had concluded general debate on Bill No. 7 and was moving to consider departments individually. It was indicated that the Department of Education was to be considered at that time. This was not the understanding that the opposition members had of proceedings. Ms. Duncan indicated her understanding that the committee was to resume general debate on the Department of Health and Social Services. She suggested a five-minute recess to allow those officials to make their way to

[9] Marleau and Montpetit p. 406-7

[10] See §372, p. 111.

the Chamber. When the House returned from its recess the government indicated that it would indeed proceed with the Department of Education. At that point Mr. McRobb rose on a point of order saying:

> I want to put on record the fact that this Yukon Party government has changed the order for the lineup this afternoon. We were instructed at this morning's House leaders meeting that we would be dealing with Health and Social Services following general debate on the budget. We were informed five minutes ago that we would be now having to deal with the Department of Education instead.
>
> This is not in keeping with past practices of this House and other processes in order to have all members of this Legislature prepared for debate. (*Hansard* 1646)

In keeping with his ruling of November 3, 2003 the Chair ruled that there was no point of order. The committee continued with general debate in the Department of Education.

During Second Reading of Bill No. 7 on November 6, 2003 Mr. McRobb said, "I recall the government House leader telling us that this fall we'd be dealing with a busy legislative agenda...where are those pieces of legislation now?" Subsequently the government House leader, Hon. Mr. Jenkins, rose on a point of order. Hon. Mr. Jenkins argued that no discussions had taken place regarding the legislative agenda had taken place and that in suggesting such discussion did take place Mr. McRobb had attributed to him a false or unavowed motive. The Speaker ruled that this was simply a dispute between members and reminded members that "the Chair has no control over what happens outside the jurisdiction of the House." (*Hansard* 1207)

A somewhat different event, related to the calling of government business, occurred on November 18, 2003. The first item of business under Orders of the Day was Second Reading of Bill No. 41, *Health Professions Act*, standing in the name of Hon. Mr. Hart. When the bill was called for Second Reading Hon. Mr. Jenkins rose to introduce the bill. At that point the Official Opposition House Leader, Mr. McRobb, rose on a point of order. Mr. McRobb requested the Speaker's direction regarding that fact that the Second Reading speech was being given by a minister other than the minister in whose name the bill stood. The Speaker ruled that there was not point of order and said, "Cabinet as a whole is responsible for government bills. Thus, any member of the government — Cabinet — can stand up and speak to those." (*Hansard* 1324)

Members
Recognition of

Standing Order 17(1) says, "Every member desiring to speak shall rise in his or her place and address the Speaker." On November 19, 2003 during Second Reading debate on Bill No. 102 Premier Fentie rose on a point of order to call for a quorum count. However the Speaker ruled the request out of order as the Premier was not in his place at the time. (*Hansard* 1363)

During debate on Motion No. 113 on November 26, 2003 the Speaker asked if members were prepared for the question. After taking a voice vote the Leader of the Official Opposition indicated that as the question was called he was on his feet and preparing to speak to the motion. The Speaker saw Mr. Hardy as being on his feet but conferring with another member and not in his place. The Speaker then ruled.

> The Chair can appreciate that the leader of the official opposition was moving toward his position there. Unfortunately, I didn't recognize it; however, I will allow him to speak, in

the interest of democracy. But I would remind all members that when they stand to be recognized by the Chair, they are in their places. (*Hansard* 1465)

A similar event occurred on December 11, 2003 as the Assembly debated Motion No. 186, standing in the name of Mr. Fentie. At one point Mr. Fairclough proposed an amendment to the amendment which had already been amended. After Mr. Fairclough spoke in favour of his sub-amendment the Speaker asked the House if it were prepared for the question. At this point numerous members rose, some calling for a division. There appeared to be some confusion as to whether members were prepared for the division or if another member wanted the floor. Ms. Duncan expressed her desire to speak to the sub-amendment. The Speaker stated, "The Chair, along with some members of the House, was a little confused here. The member could stand up and, presumably, she stood up to participate in the debate, so I'll allow her to proceed." (*Hansard* 1746) The principle here is that where there is confusion as to whether debate on a matter has concluded the Speaker will opt to continue debate.

On December 1, 2003 Committee of the Whole moved to continue debate on Committee of the Whole Motion No. 3, which had been moved by Mr. Hardy during debate on Bill No. 36. When debate on the motion had adjourned the previous day Premier Fentie was speaking to it. When debate resumed on December 1 Mr. Fentie was not in the House. After calling the committee to order the Chair recognized Mr. Jenkins to speak, as he was the first member to rise. This caused Ms. Duncan to raise a point of order. Ms. Duncan asked for clarification saying, "It's not my understanding that Mr. Jenkins had the floor at the time. Another member had the floor, and would that member not resume the debate?" As the Chair pointed out the member to whom Ms. Duncan referred (Premier Fentie) was not present and could not, therefore, resume debate. Mr. Hardy then intervened asking that the Chair cite a ruling or standing order to support his ruling, as Mr. Hardy was "not familiar with where another member can just step in and pick up where another member finished off." The Chair clarified that Mr. Jenkins was not picking up where Mr. Fentie had left off. Indeed, Mr. Hardy was correct on this point; the rules do not permit members to 'split' their time with others. The Chair reiterated that he had recognized Mr. Jenkins as a new speaker as he was the first to rise. Ms. Duncan then argued that opposition members had not been given an opportunity to take the floor as Mr. Jenkins had begun his debate on the motion after being recognized on the procedural point of identifying the business before the committee. The Chair concluded the issue by ruling that debate was to continue on Committee of the Whole Motion No. 3, that Mr. Jenkins had been recognized to speak and "All members will have an opportunity to speak." (*Hansard* 1519)

Presiding Officers and Table Officers subsequently discussed the issue of who properly should get the floor when a member entitled to resume debate is not present. One option was that used by the Chair in the above case, the member who first rises to speak. Another option was to continue with the side of the house (government or opposition) from where the member was speaking when debate adjourned. The disadvantage of this approach is that as members can not split time this would give the side in question two consecutive speeches (meaning up to 40 minutes of floor time) to respond to a single question or answer. The third option discussed was that if a member were not present to resume his or her comments that member would be considered to have concluded their comments. The floor would then revert to the member who had asked the question or provided the answer immediately before the remarks of the member now not present. This would be in line with a view that a debate had begun between two members and should continue. This third option was the one preferred and will serve as a guide

to the Chair in the future, subject to the context of debate, specifically whether there is competition for the floor.

A similar situation occurred on December 4, 2003. Debate had adjourned in General Debate on Clause 1 of Bill No. 7 on December 2, 2003 with Premier Fentie speaking to it. Mr. Fentie was not present when debate resumed on the bill two days later. Immediately after calling the committee to order the Chair gave the following statement regarding which member would be recognized to speak first:

> When Committee debate on Bill No. 7 adjourned, the Premier was speaking in general debate on clause 1. The Chair understands that, given the Premier's absence, Committee will adjourn general debate and proceed to the Department of Health and Social Services. As is the practice of this Committee, departmental debate will begin with a statement by the minister. (*Hansard* 1615)

References to

Beauchesne's Parliamentary Rules & Forms advises, "It is the custom in the House that no Member should refer to another by name." Instead Members should identify one another by the constituency they represent, or the ministerial portfolio or other office they hold (Premier, Leader of the Official Opposition, House Leader, etc.).[11]

During debate on Motion No. 54 on November 5, 2003 the Speaker called Hon. Mr. Lang to order when he referred to "Mr. Fentie, the Minister of Finance -." The Speaker reminded Mr. Lang not to refer to a Member by name. (*Hansard* 1181)

A similar event occurred during Second Reading debate on Bill No. 102 on November 19, 2003. During his remarks Hon. Peter Jenkins made reference to "the Duncan government" a reference to the Liberal Party government led by the Member for Porter Creek South, Ms. Pat Duncan, from 2000-2002. Mr. Cardiff raised a point of order arguing, "I think it's inappropriate for the government House leader to refer to members of this House by name." This led to the following exchange:

> **Deputy Speaker:** The Chair agrees. I would remind the member not to identify members by name, please.
> **Hon. Mr. Jenkins:** Thank you. Let's refer to the "Duncan government".
> **Deputy Speaker:** Let's not.

Mr. Jenkins then used the phrase "The Liberal government under the previous Premier" which was in order. (*Hansard* 1378)

The Chair called Ms. Duncan to order on December 15, 2003 when she mentioned Premier Fentie by name during consideration of the estimates for the Department of Energy, Mines and Resources in Bill No. 7. Ms. Duncan indicated that she was reading *verbatim* from a document that mentioned the Premier by name. However the Chair pointed out that "A member can't do indirectly what they can't do directly." (*Hansard* 1785) As *House of Commons Procedure and Practice* notes, "The Speaker will not allow a Member to refer to another Member by name even if the Member is quoting from a document such as a newspaper article." [12]If members choose to quote from documents that mention members by name they must

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[11] *Beauchesne's* §484(1), page 142.
[12] *House of Commons Procedure and Practice* p. 522

substitute the proper address for the name. Members must also refrain from speaking directly to other members. They must speak through the Chair. The Chair of Committee of the Whole, Patrick Rouble, had to remind the House of this practice during committee consideration of Bill No. 36 on November 20, 2003. At that time the Leader of the Official Opposition, Todd Hardy said, "Turn the page over. There's the "Taxpayer Protection Act Backgrounder". Read it, Premier. Are you reading it Premier? Good, I'm glad to see it." (*Hansard* 1413)

At times the Speaker has reminded members not to modify the names of individuals or their parties in a derogatory manner. The Speaker intervened in this way on the following occasions:

- During Question Period on November 17, 2003 after Hon. Mr. Kenyon referred to Ms. Duncan as "Our lonely Liberal leader opposite." (*Hansard* 1294)
- During Question Period on November 18, 2003 after Mr. Hardy referred to Premier Fentie as "the CEO of the Government of the Yukon Inc." (*Hansard* 1323)
- During Question Period on November 20, 2003 after Hon. Archie Lang referred to the Official Opposition as "the no-development party." (*Hansard* 1384)

Members of the public, references to

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.[13]

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.

On December 15, 2003 Committee of the Whole considered, among other things, the estimates for the Department of Health and Social Services in Bill No. 7. During the debate Ms. Duncan asked the Minister responsible, Hon. Peter Jenkins, if he was prepared to release a childcare report for which the government had contracted. In his response Mr. Jenkins mentioned the name of the individual who had been contracted to do the report. Subsequently the Chair made a statement reminding members

> to be very cautious when naming particular individuals as there is no opportunity for those individuals named to comment or defend comments made about them. So again, I would encourage members to follow past practice of this House and be very cautious when naming individuals outside of this Assembly. (*Hansard* 1765)

[13] *House of Commons Procedure and Practice*, page 524.

Motions

For the Production of Papers, out of order

Standing Order 14 mentions motions for the production of papers as an item of private members' business and allocates it a place in the order of business on those days when private members' business has precedence. However the Standing Orders do not discuss such motions in detail. Pursuant to Standing Order 1, therefore, the House refers to the practice of the House of Commons of Canada in determining how to deal with such motions.

House of Commons Procedure and Practice advises that the basic purpose of notices of motion for the production of papers is to allow members to request "that the government compile or produce certain papers or documents and table them in the House."[14] In the Yukon Legislative Assembly the process for calling such motions for debate is the same as that for calling private members' substantive motions. If a motion for the production of papers is adopted it becomes an order of the House; that is, the government must comply with the request made in the motion.

On November 6, 2003 Ms. Duncan gave notice of a motion for the production of papers (No. 19) that read:

> THAT this House do issue an order for the return of records of all correspondence, including verbal, written and electronic, between the MLA for Porter Creek North and the Yukon's Conflicts Commissioner regarding the Conflicts Commissioner's investigation into the proposed subdivision on Wann Road and the disposition of Versluce Meadows in Whitehorse, Yukon. (*Hansard* 1188-1189)

The next sitting day, November 12, 2003, the Speaker gave the following ruling in regard to this notice.

> Before calling private members' business, the Chair would deliver a ruling regarding notices of motion for the production of papers. The ruling concerns Notice of Motion for the Production of Papers No. 19, given by the leader of the third party....
>
> Our Standing Orders make mention of motions for the production of papers but do not discuss them in detail. Pursuant to Standing Order 1, therefore, we refer to the practice of the House of Commons of Canada in determining what is in order and out of order regarding such motions. This information can be found in *House of Commons Procedure and Practice* at pages 398 to 404.
>
> *House of Commons Procedure and Practice* advises that the basic purpose of notices of motion for the production of papers is to allow members to request "that the government compile or produce certain papers or documents and table them in the House." However, the documents requested by the leader of the third party are not in the possession of the government.
>
> In 1995, the Yukon Legislature enacted the *Conflict of Interest (Members and Ministers) Act*. This act established an independent Conflicts Commission to deal with issues of conflict and potential conflict. The office of the Conflicts Commissioner is not subject to the authority of any minister of the government. The Conflicts Commissioner is subject to the authority of the Assembly as a whole. However, the *Conflict of Interest*

[14] *House of Commons Procedure and Practice* page 398

(Members and Ministers) Act establishes the kinds of information that members may access from the Conflicts Commissioner and the process by which that information may be accessed.

It is clear, therefore, that through the *Conflict of Interest (Members and Ministers) Act*, this House has already established the procedures it wishes to follow regarding requests such as that made by the leader of the third party. It is not in order, therefore, for the Assembly to attempt to supersede the provisions of legislation by way of a notice of motion for the production of papers. The Chair therefore rules that Motion for the Production of Papers No. 19 is not in order and orders that it be removed from the Order Paper. (*Hansard* 1228)

Notices of

During the Daily Routine on November 27, 2003 the Speaker gave a ruling with regard to the form and content of notices of motion. The Speaker said:

Since the end of the 2003 spring sitting the Chair has sent two letters to all members regarding what is and what is not in order regarding notices of motion. Annotation 565 of the sixth edition of *Beauchesne's Parliamentary Rules and Forms* says, "A motion should be neither argumentative, nor in the style of a speech, nor contain unnecessary provisions or objectionable words." To put it succinctly, notices of motion that are argumentative — that is, contain argument in favour of the motion proposed — are not in order.

Yesterday members offered 10 notices of motion. Each one contained a preamble that contained words and phrases designed to support the argument in favour of the motion. Such argument was contained in the preambles that begin, "That it is the opinion of this House that..."

Argumentative phrases belong in debate on the motion and not in the text of the motion itself. Since the beginning of the 2003 fall sitting, the Chair has directed the Table Officers to amend any notices of motion that are not in order so that they adhere to proper form once they are on the Notice Paper and the Order Paper. In keeping with this direction, yesterday's notices of motion appear on today's Notice Paper in their amended form. The argumentative phrases in question have been removed from the motions without depriving the motions of their purpose. This leads to the conclusion that the phrases are unnecessary and only serve to make the motion argumentative.

Argumentative motions are procedurally problematic because notice is given at a time during the Daily Routine when there is no question before the House. As such there is no opportunity for members to debate what is being said. At times like this — for example, tributes, introduction of visitors, a point of personal privilege — it is expected that members will refrain from comments that are argumentative. It is at times when members may respond to the comments of other members, such as Question Period, debate on motions or bills, and ministerial statements that partisan statements are allowed.

Over the years the use of preambles has become common in the Yukon Legislative Assembly. Notwithstanding, such a practice need not continue if it stands in contradiction to established parliamentary rules. It should also be noted that the use of

preambles developed over the years and has never been explicitly authorized by way of Standing Orders or other direction from the Assembly to the Speaker.

Given the letters that I have already sent to members on this issue, and the fact that yesterday's notices of motion contradicted the direction contained in those letters, the Chair can only conclude that certain members are deliberately ignoring direction from the Chair. Members should be aware that the Chair's authority with regard to notices of motion goes beyond amending them so that they are in order. The Speaker also has the authority to order that motions that are not in order not be placed on the Notice Paper, and to rule a motion out of order at the time that notice is being given in the House.

Members may argue that such action constitutes restriction on their freedom of speech in the Assembly. Freedom of speech in the Assembly is a fundamental component of the parliamentary privileges of the House and its members; however such freedom is restricted. As noted on page 504 of *House of Commons Procedure and Practice,* freedom of speech "is circumscribed...by the necessity of maintaining order and decorum when debate is taking place. Thus, the right to speak is tempered by the written rules of the House which are, in general, limitations on what may be said, and when, by whom and for how long."

There are other instances where members are restricted in their comments. In addition to those regarding the length of speeches and the use of unparliamentary language Standing Order 52(2) says, "A motion for first reading of a bill shall be decided without introductory statement, debate or amendment." Similarly Standing Order 65(3) says, "Every member offering a petition to the Assembly shall confine himself or herself to the statement of the parties from whom it comes, the number of signatures attached to it and the material allegations it contains." No argument in favour or against the petition is allowed. Parliamentary practice in the Yukon Legislative Assembly also stipulates that members are not to offer comments regarding documents they table, except to inform the House of the name or nature of the document.

The purpose of notices of motion is to allow members to inform the House of business they intend to put on the Order Paper. The purpose is not to argue for those motions. It is clear, therefore, that restricting the use of argumentative language in the text of motions is consistent with rules and practices regarding motions and other rules and practices that circumscribe freedom of speech in the Assembly.

Explicit direction, perhaps in the form of new Standing Orders, will have to be adopted by the House if members wish to have argumentative notices of motion accepted. Barring such explicit direction it is the Chair's intention to follow the rules of procedure as stipulated in *Beauchesne* and other parliamentary authorities.

It is not the Chair's intention to impede members in their work. However, the Chair has the ultimate responsibility in ensuring that matters placed before the House are in order and that direction from the Chair is adhered to. (*Hansard* 1477)

The House then proceeded to notices of motion. The Speaker returned with a ruling on the same matter before adjourning the House that day.

Before the House adjourns for the day, the Chair wishes to further address the matter of notices of motion.

During today's Daily Routine, the Chair provided the House with a statement respecting notices of motion. The Chair explained the need for the wording of motions to conform to the rules of this House. In particular, a motion should not contain argument respecting the proposal being made.

Members will be aware that the Speaker has authority to modify motions with respect to form. A good example of the utilization of this authority appears in today's Notice Paper. On November 26, 2003, members gave notice of 10 motions that began with a preamble introduced by the expression "That it is the opinion of this House that".

In each of those motions the final paragraph provided the distinct proposition for which the member was requesting the approval of the House. Those motions were easily brought into conformity with the rules by dropping the paragraphs carrying arguments respecting the proposition contained in the final paragraph. Members will note that is what has been done in respect to the motions on the Notice Paper of today's date, November 27, 2003.

Nine of the motions given notice today contain preambles. The Chair recognizes that the members who gave notice of motion today would have prepared the text of those motions prior to hearing the Speaker's statement.

The Chair, therefore, has given direction in respect to eight of those motions that the preamble be dropped and, along with needed editorial changes in two cases, the final paragraph be approved as the text of the motion to appear on the Notice Paper for Monday, December 1.

In one other instance, that being the motion of the Member for Kluane respecting a security release policy for Type II mine sites, the motion contained seven statements and then concluded with a paragraph stating "That this House urges the Yukon government to adopt the preceding items." The Chair found that it was not possible to modify the motion in the straightforward fashion used in respect to the other motions and, therefore, due to its irregularity, has given direction that it not be placed on the Notice Paper. (*Hansard* 1507)

He then thanked all members for their attention and adjourned the House.

To report progress, out of order

A motion to report progress in Committee of the Whole is classified as a superseding motion, one that is "proposed with the intention of putting aside further discussion of whatever question is before the House." [15] Standing Order 43(1) says, "A motion that the Chair do now leave the Chair is always in order, shall take precedence over any other motion, and shall not be debatable."

During Committee of the Whole consideration of Bill No. 41 on November 18, 2003 Ms. Duncan moved that the committee report progress on the bill. The committee Chair, Patrick Rouble, put the motion to the committee. It was defeated. Later, Hon. Mr. Jenkins attempted to move a motion to report progress. The Chair, Patrick Rouble, did not put Hon. Mr. Jenkins' motion to a vote as it was ruled out of order. The Chair ruled:

> Pursuant to our Standing Orders 43(2), if such motion is rejected — the motion in question being a motion that the Speaker do now resume the Chair — it shall not be

[15] *House of Commons Procedure and Practice* p. 454

> moved again until after some intermediate proceeding has taken place. As no such intermediate proceeding has taken place, we will continue on. (*Hansard* 1345)

Beauchesne's Parliamentary Rules & Forms defines "intermediate proceeding" as a procedural step that could be entered into the *Journals*. Further debate does not qualify as an intermediate proceeding.

A superseding motion can be moved without notice but the member moving the motion "can do so only after having been recognized by the (Chair) in the course of debate. It is not in order for such a motion to be moved when the Member has been recognized on a point of order..."[16]

Another motion to report progress was ruled out of order according to this practice during committee consideration of Bill No. 36 on November 20, 2003. Toward the end of the sitting day Mr. McRobb rose on a point of order to move that the committee report progress. As the Chair ruled, a motion to report progress (or a motion to adjourn debate) cannot be put before the committee (or the Assembly) on a point of order. Such motions can only be put by a member who has been recognized for the purpose of participating in debate. (*Hansard* 1414)

Withdrawal 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."[17]

Motions may become irregular for a variety of reasons. On October 30, 2003 Speaker Ted Staffen informed the Assembly that "Motion No. 88, standing in the name of the Minister of Health and Social Services, Motions No. 23, 45 and 58, standing in the name of the Member for Porter Creek South, and Motions No. 35 and 72, standing in the name of the Member for Lake Laberge, have been removed from the Order Paper, as they are now outdated."

On November 26, 2003 the Speaker made the following statement regarding withdrawal of motions from the Order Paper:

> Before we conclude notices of motion, the Chair wishes to inform the House of changes to be made to the Order Paper. Motion No. 7, standing in the name of the Minister of Community Services, shall be removed from the Order Paper, as the Chair has been informed that its provisions have been fulfilled. Motion No. 133, standing in the name of the Member for Kluane, requested that certain business be called for government private members' business on this day. As other business has been identified for this day, Motion No. 133 is now outdated and will be removed from the Order Paper. (*Hansard* 1448)

Order and Decorum

Extraneous comments

Standing Order 6(6) says, "When a member is speaking, no member shall interrupt, except to raise a point of order or a question of privilege."

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[16] *House of Commons Procedure and Practice* p. 454

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

During Question Period on November 3, 2003 the Speaker intervened after detecting extraneous comments from a Member. He called for order and said, "I would ask the Member for Kluane not to make extraneous comments when another member is speaking please. It leads to disorder." (*Hansard* 1115)

During Question Period on November 6, 2003 the Minister of Environment, Hon. Jim Kenyon raised a point of order under Standing Order 17(2) while replying to a question from Ms. Duncan, the Leader of the Third Party. His point of order was raised in response to comments coming from the other side of the House while Hon. Mr. Kenyon was recognized by the Speaker as having the floor. The Speaker ruled there was no point of order but "urge(d) the members of the opposition to not have a lot of extraneous chatter here while the member is speaking." (*Hansard* 1191)

During Committee of the Whole consideration of Bill No. 36 on November 20, 2003 the committee Chair, Patrick Rouble, expressed his concern "about the extraneous chatter that's going on. I would remind members to be courteous to the member who is speaking and remain silent while the member is providing an answer." (*Hansard* 1413) The Chair intervened in a similar instance during debate on Committee of the Whole Motion No. 3 on November 27, 2003 (*Hansard* 1501).

In the gallery

Standing Order 6 outlines the Speaker's authority to preserve order and decorum in the Chamber. This authority extends beyond the floor of the Assembly to the gallery.

During Question Period on October 30, 2003 the Speaker intervened after participation from the gallery during a question from the Leader of the Official Opposition, Todd Hardy (Whitehorse Centre, NDP). Before allowing the Minister responsible for the Public Service Commission, Hon. John Edzerza (McIntyre-Takhini, Yukon Party) to answer the question the Speaker said

> Before the minister answers I would like to remind members of the gallery that we are delighted to have you here but we would respectfully ask you not to participate, please. (*Hansard* 1105)

The Speaker made a similar statement during Question Period on November 25, 2003. (*Hansard* 1417)

Point of Order, raising

During debate on Motion No. 54 on November 5, 2003 Ms. Duncan referred to Government Motion No. 101 which was agreed to the previous day. Ms. Duncan said

> The Yukon Party government passed a motion through the House seeking Monday, November 10, off, using a transparent excuse that it would be better for rural members, when in fact it was about the previously planned personal schedule of the Premier. (*Hansard* 1176)

At that point Mr. Rouble rose on a point of order arguing that Ms. Duncan had imputed a false or unavowed motive to government members. Intervening on the point of order Mr. McRobb said, "We all know in this Legislature that the first duty upon anyone calling a point of order is to cite

the reference from the House rules, and that should be known by the member (Mr. Rouble) because he is the Deputy Speaker and he is familiar with the rules, and he should have done that. So therefore there is no point of order." (*Hansard* 1176)

Before Question Period on November 6 the Speaker delivered a ruling on the point of order. In relation to this issue the Speaker said

> During debate on the point of order the Member for Kluane noted that the Member for Southern Lakes did not cite a Standing Order when raising his point of order. It is certainly helpful for the Chair if members refer to a specific Standing Order when raising a point of order. However, it is not necessary. Similarly, it is helpful to the Chair if members raising a point of order are as specific as they can be about what words they found to be offensive. (*Hansard* 1189)

During debate on Committee of the Whole Motion No. 3 on December 1, 2003 Mr. McRobb raised a point of order in response to a comment by the Premier. The government House leader, Mr. Jenkins, then intervened. During his intervention Mr. McRobb raised a second point of order based on a comment made by Mr. Jenkins during the course of his intervention. Procedurally this is out of order. There can not be two points of order on the floor at the same time. The first must be dealt with before the second can be addressed. The Chair dealt with both points of order in one ruling. (*Hansard* 1530)

During debate on an amendment to Motion No. 186 on December 11, 2003 the Premier, Mr. Fentie, raised a point of order in response to certain comments by Ms. Duncan. The Speaker ruled Mr. Fentie's attempt to "correct the record" was not a point of order. Immediately after the Speaker's ruling Ms. Duncan said, "The unfortunate display by the Premier doesn't recognize that-." At that point the Speaker intervened. Taking Ms. Duncan's remarks as a comment on the Premier having raised a point of order the Speaker called for order and said, "A member of the House can stand up on a point of order. The Chair may agree or disagree with that point of order. However, it is the member's privilege to stand up on a point of order." Ms. Duncan then clarified that she did not dispute the Premier's right to raise a point of order and "was referring to the continual standing up and turning of the back to the speaker addressing the Assembly, as the unfortunate display, and the laughter and kibitzing that goes on on the side, on which you call us to order, is disturbing when we are addressing a very serious issue. Unfortunately, I find it disrespectful." (*Hansard* 1736)

Private Members' Business

The Yukon Legislative Assembly reconvened on Thursday, October 30, 2003. As the 2003 Spring Sitting lasted 36 sitting days, pursuant to Standing Order 75(1) this Sitting will last a maximum of 24 sitting days. Given Standing Orders 14(1) and 14(2), the Order of Private Members' Business for the upcoming Sitting will be:

November 5: Opposition Private Members
November 12: Government Private Members
November 19: Opposition Private Members
November 26: Government Private Members
December 3: Opposition Private Members
December 10: Government Private Members

Pursuant to Standing Order 14.2(2) the roster for determining the order of business on Wednesdays when Opposition Private Members' Business has precedence is:

Position 1: Official Opposition
Position 2: Official Opposition
Position 3: Third Party
Position 4: Third Party
Position 5: Official Opposition
Position 6: Third Party

Private Members' Business this sitting

November 5: Opposition Private Members' Business

Position 2. Official Opposition. On April 23, 2003 Mr. Hardy was speaking to Motion No. 54, standing in his name, when debate adjourned. As debate on this motion did not begin until after 5:00 p.m. the Official Opposition retained Position 2 by resuming debate on this motion. Debate adjourned at 6:00 p.m. with Mr. Arntzen speaking to the motion.

November 12: Government Private Members' Business

Motion No. 27, Mr. Arntzen. Debate adjourned at 6:00 p.m. with Hon. Ms. Taylor speaking to the amendment by Mrs. Peter.

November 19: Opposition Private Members

Position 3: Third Party. Bill No. 101, Ms. Duncan. Negatived on division.
Position 4: Third Party. Bill No. 102, Ms. Duncan. Debate adjourned at 6:00 p.m. with Mr. Jenkins speaking to it.

November 26: Government Private Members

Motion No. 132, Mr. Cathers. Agreed to as amended.
Motion No. 113, Mr. Rouble. Debate adjourned at 6:00 p.m. with Mrs. Peter speaking to it.

December 3: Opposition Private Members

Position 5: Official Opposition. Motion No. 105, Mr. Hardy. Debate adjourned by Mr. Arntzen.
Position 6: Third Party. Motion for the Production of Papers No. 18, Ms. Duncan. Debate adjourned at 6:00 p.m. with Mr. Lang speaking to it.

December 10: Government Private Members

No government private members business identified for this day.

Props, use of

House of Commons Procedure and Practice advises that "Speakers have consistently ruled out of order displays or demonstrations of any kind used by Members to illustrate their remarks or emphasize their position. Similarly props of any kind, used as a way of making a silent comment on issues, have always been found unacceptable in the Chamber."[18]

[18] *House of Commons Procedure and Practice* p. 520

During debate on Motion No. 27 on November 12, 2003 the government House leader, Hon. Peter Jenkins, rose on a point of order during remarks by Premier Fentie. Mr. Jenkins argued that the Member for Kluane, Mr. McRobb was displaying props in the House. The 'prop' in question was a photocopy of a newspaper article that Mr. McRobb displayed in such a way as to be visible by Members on the government side. The Speaker ruled there was no point of order but indicated he had noticed "messages popping up, and I'd ask the Member for Kluane to not do that." (*Hansard* 1242-1243)

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.

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)

During Question Period on November 12, 2003 Mr. Fairclough began his main question by saying, "I hope that I am not dismissed like the Premier has done to my colleague." This statement was in reference to the previous exchange of questions and answers between Mr. Hardy and Premier Fentie. The Speaker intervened saying, "I remind the member that it is inappropriate to make comments about a previous question." (*Hansard* 1224)

Speaker Staffen ruled in a similar fashion during Question Period on December 2, 2003. At that time Mr. McRobb began his main question with the statement, "I think I hear a shuffle coming." The Speaker took this as an editorial comment on the previous exchange of questions and answers between the Leader of the Third Party, Ms. Duncan, and the Minister of Environment, Mr. Kenyon and ruled it out of order. (*Hansard* 1544)

Length of questions and answers

During Question Period on November 12, 2003 Hon. Mr. Kenyon raised a point of order while Ms. Duncan was asking her final supplementary question. Hon. Mr. Kenyon said

> Pursuant to...Guideline No. 7 of the Guidelines for Oral Question Period, "a one-sentence preamble will be allowed in the case of each supplementary question." The previous question, at 11 sentences and two questions, and this one at eight and rising, makes one wonder if there is a question to all of this.

In responding to the point of order Mr. McRobb and Ms. Duncan argued that Speakers had, historically, allowed some flexibility in the application of Guideline No. 7. Hon. Mr. Jenkins, the government House leader, argued for a more orthodox application of the guideline. The Speaker ruled that he had allowed, and would continue to allow, flexibility regarding the length of questions and answers and ruled Ms. Duncan's question in order. (*Hansard* 1225-1226)

The Speaker's ruling was in accordance with the footnote to Guideline No.7 that reads, "Over the years a practice has developed whereby Speakers will allow questions up to approximately on minute in length, and responses of approximately one and one-half minutes. Speakers reserve the discretion to depart from this practice from time to time should the circumstances warrant."

Providing answers

Attached to the Standing Orders are the Guidelines for Oral Question Period. As an addendum to the rules the Guidelines are not Standing Orders but do provide guidance in how the rules are applied. Specific Rule No. 10 of the Guidelines for Oral Question Period states, "A Minister may decline to answer a question without stating the reason for his or her refusal. Insistence on an answer is out of order. A refusal to answer cannot be raised as the basis of a question of privilege." What this means, in practice, is that the Speaker cannot order that a minister answer a question. The content of an answer, if there is an answer at all, is not a procedural matter. As *House of Commons Procedure and Practice* notes, "The Speaker ensures that replies adhere to the dictates of order, decorum and parliamentary language. The Speaker...is not responsible for the quality and content of replies to questions."[19]

During Question Period on November 27, 2003 Mrs. Peter posed certain questions to the Minister of Environment, Mr. Kenyon, regarding game farming. The minister concluded his answer to Mrs. Peter's second supplementary question by citing Specific Rule No. 10. (*Hansard* 1482) While it was in order for Hon. Mr. Kenyon to invoke Specific Rule No. 10 it is an unusual practice to cite the rule as a defence for not answering a question. This rule is rarely invoked and when it is this is usually done by the Speaker when a questioner insists on an answer.

Quorum Count

Section 15 of the *Yukon Act* stipulates that "A majority of the members of the Legislative Assembly, including the Speaker, constitutes a quorum." 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.

Quorum count was called for on the following occasions during the 2003 Fall Sitting:

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[19] *House of Commons Procedure and Practice* p. 433

- November 5, 2003 during debate on Motion No. 54. (*Hansard* 1176)
- November 19, 2003 during Second Reading debate on Bill No. 101. A quorum was present so the Speaker did not ring the bells. (*Hansard* 1356)
- November 19, 2003 during Second Reading debate on Bill No. 102. Premier Fentie called for a quorum count, however the Speaker ruled the request out of order as the Premier was not in his place at the time. (*Hansard* 1363)
- November 20, 2003 during Second Reading debate on Bill No. 36. (*Hansard* 1405)

Reading during debate

It is a principle of parliamentary debate that members should offer their own words when they have the floor. While members are allowed to refer to notes, reading at length from published documents is not allowed. Standing Order 19(d) says, "A member shall be called to order by the Speaker if that member in the opinion of the Speaker, refers at length to debates of the current Session or reads unnecessarily from Hansard or from any other document, but a member may quote relevant passages for the purposes of a complaint about something said or of a reply to an alleged misrepresentation."

During Second Reading debate on Bill No. 102 on November 19, 2003 Mr. McRobb rose on a point of order during remarks by Hon. Mr. Hart. Mr. McRobb's argument was that the minister's remarks, which by that time had taken more than an hour, were a deliberate filibuster designed to ensure the House did not deal with another piece of business that day. Mr. Cathers intervened on the point of order pointing out the Hon. Mr. Hart as first to reply to the motion had unlimited time. The Speaker ruled

> There is no point of order; however, the Chair has been very patient in listening to the Minister of Community Services quote at length from a variety of documents. This includes quotations from legislation, *Hansard* and government directives. Standing Order 19(d) states that a member shall be called to order by the Speaker if the member is, in the opinion of the Speaker, referring at length to debates of the current session or reads unnecessarily from *Hansard* or from any other document.
>
> Members are expected then to provide the House with the information in viewpoints in their own words. It is not expected, nor is it in order to read excessive portions of any documents into the record. The Chair must ask the Minister of Community Services to cease reading at length from documents. He still has the floor, however; and the Chair would ask him to provide the House with his views on Bill No. 102. I would ask that you do that now, please, sir. (*Hansard* 1369)

Hon. Mr. Hart concluded his remarks shortly thereafter.

The Speaker intervened later in the same debate during remarks by Mr. Arntzen. The Speaker determined that the member for Copperbelt was reading section 105 of the *Employment Standards Act* into the record and noted that Hon. Mr. Hart had already done this. Mr. Arntzen proceeded to other material. (*Hansard* 1375)

This issue again arose on December 16, 2003 during committee consideration of the estimates for the Department of Energy, Mines and Resources in Bill No. 7. At one point during a speech by the minister responsible, Hon. Archie Lang, Mr. McRobb raised a point of order saying, "obviously the minister has no respect for this House. We've got 40 minutes left to

debate this budget. What he's saying he put on the record yesterday. Check page 1781 in the Blues. It's all there." The Chair ruled there was

> no point of order; however, the Chair does take exception to the member's comment about stating that a member does not have any respect for this House. The Chair made a ruling yesterday regarding Committee of the Whole. All members are aware that members have 20 minutes to speak and the debate can continue on unlimited number of times. The matter before the Committee is general debate on the Department of Energy, Mines and Resources. We'll continue the debate.

Debate continued but became disorderly as Mr. McRobb, using the *Blues* of December 15, 2003, read the minister's speech out loud as the minister was giving it. It was obvious, at that point, that the minister was, at least in part, giving the same speech as he had the day before. The Chair therefore referred to Standing Order 19(d) indicating that "the member appears to be reading at length from *Hansard* and I would encourage the member to continue on to make his point in general debate." (*Hansard* 1809)

Reconvening the House

At the conclusion of its special sitting in Mayo on June 12, 2003 the Assembly approved the following special adjournment motion

> THAT this House, at its rising, do stand adjourned until it appears to the satisfaction of the Speaker, after consultation with the Premier, that the public interest requires that the House shall meet;
> THAT the Speaker give notice that he is so satisfied, and thereupon the House shall meet at the time stated in such notice and shall transact its business as if it had been duly adjourned to that time; and
> THAT, if the Speaker is unable to act owing to illness or other causes, the Deputy Speaker shall act in his stead for the purpose of this Order. (*Hansard* 1102; *Journals* 91)

When the time came to reconvene the House for the 2003 Fall Sitting the Speaker, hon. Ted Staffen was in Dhaka, Bangladesh, attending the 49th annual international conference of the Commonwealth Parliamentary Association. Therefore, pursuant to the special adjournment motion, the Deputy Speaker, Patrick Rouble, issued the following notice on October 10, 2003:

> Take notice that pursuant to Standing Order 73 of the Yukon Legislative Assembly and being satisfied pursuant to the said Standing Order that the public interest requires that the House shall meet, I appoint 1:00 p.m., Thursday, October 30, 2003, as the time for such meeting in the Yukon Legislative Assembly Chamber, Whitehorse, Yukon, for the purpose of transacting its business as if it had been duly adjourned to that time.

Relevance in debate

House of Commons Procedure and Practice advises that "The requirement of relevance 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."[20] Accordingly Standing Order

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

19(b)(i) says, "A member shall be called to order by the Speaker if that member speaks to matters other than the question under discussion." Nonetheless the procedural authorities acknowledge the difficulty in defining and enforcing rules against irrelevant content. According to *House of Commons Procedure and Practice*, "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."[21]

During debate on a proposed amendment to Government Motion No. 101 on November 4, 2003 Mr. McRobb rose on a point of order during remarks by Mr. Jenkins. Mr. McRobb said, "the government House leader has drifted off the substance of the amendment to this motion. He has gone on talking about the supplementary budget and other matters that are not related to this, and I would ask that you call him to order." Premier Fentie intervened on the point of order saying, "much has been coming from the other side in terms of inferences that this side of the House does not cooperate. The government House leader is merely pointing out many instances where that particular case is happening when trying to deal with the opposition members." Speaker Staffen ruled there was no point of order saying "the Chair has allowed latitude in this discussion from all members." He did, however, ask Members to "refocus themselves" on the amendment. (*Hansard*)

The Speaker intervened during Hon. Mr. Hart's Second Reading speech on Bill No. 102 on November 19, 2003. The subject of the bill was an amendment to the *Employment Standards Act* that would have seen school bus drivers included as persons covered by the fair wage schedule. Hon. Mr. Hart had been quoting *in extenso* from a government document relating to contracting policy when the Speaker intervened and said

> The Chair is losing the train here in terms of your speaking about Bill No. 102. Would the minister just kind of pull himself back together there, please, and speak to the bill. The Chair is losing the relevance here. (*Hansard* 1367)

On November 26, 2003 Mr. McRobb proposed an amendment to Motion No. 113, which was under debate at the time. In responding to the proposed amendment Mr. Cathers referred to it as "a very hastily prepared amendment in an apparently desperate effort by the Member for Kluane." At that point Mr. McRobb raised a point of order. Mr. McRobb said he knew "where the member is going" and acknowledged that there was a typographical error in the form of the amendment (he was identified as the Member for Whitehorse Centre). However he suggested members get beyond that and debate the substance of the amendment. Mr. Cathers argued this was merely a dispute between members. The Speaker ruled there was no point of order but asked "members to carry on and tighten your discussion up just a little on the amendment." (*Hansard* 1462)

Later, during debate on an amendment to the amendment, Mr. Jenkins raised a point of order during remarks by Mr. McRobb. Mr. Jenkins argued, "pursuant to Standing Order 35(b), when amending a motion, a member, other than the mover, shall confine debate to the subject of the amendment." He then suggested Mr. McRobb was not confining himself to the subject of the amendment but was "wandering all over." Mr. McRobb argued his remarks were relevant to the amendment before the House. The Speaker ruled there was no point of order but said, "The Chair has also given latitude to all sides of the House on these Wednesdays. If the members would care for that latitude to carry on, I would suggest that they focus themselves a little bit better, or the

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

Chair will have to step in more, which he is loathe to do; however, if forced to, he will." (*Hansard* 1465)

On December 3, 2003 the issue of relevance and repetition reached its apex as members debated Motion for the Production of Papers No. 18, standing in the name of Ms. Duncan. The motion read

> THAT this House do issue an order for the return of the following correspondence from the Minister of Justice:
> (1) the letter from the RCMP that the Minister of Justice publicly stated existed, saying the RCMP agreed with her decision to release a tow truck from impound, and
> (2) the legal case that was presented to the minister by the lawyer acting for the tow truck company.

A Motion for the Production of Papers is different from a usual substantive motion in that if carried, it constitutes an order, one with which the government must comply. Such a motion is also limited in scope in that the issue at hand is whether the House ought to order certain documents be returned to it.

At one point in the debate Mr. McRobb rose on a point of order arguing that the member speaking to the motion at that point, Mr. Cathers, was, due to the irrelevance and length of his comments, wasting the time of the legislature. The Chair ruled that latitude had been allowed to both sides on private members days and that would continue. (*Hansard* 1593)

Later in the same debate Mr. Fairclough rose on a point of order. Mr. Fairclough said

> Mr. Speaker, the member opposite is in violation of our Standing Orders 19(b)(i) and (ii), and also (c), as he persists in needless repetition. I ask that the member direct his attention to the motion that is before him. It is about production of papers. We don't need to hear their government's history and what they are doing at this point. It is the motion that we are debating.

In his defence Mr. Cathers argued that Mr. Fairclough's interjection was "an attempt by the members opposite to interrupt me. I remind them that I do have unlimited time to lay out the full picture as I believe it to be on this. I don't believe that any repetition — if there has been any — has been needless, as evidenced by the number of months in which this has gone on with failure of the members opposite to understand the full range of this." The Speaker said he would "review the Blues…and come back tomorrow with a ruling." (*Hansard* 1595)

The Speaker's statement did not end the issue. Later still, Mr. McRobb rose on a point of order arguing, "This is a motion for the production of papers. Why doesn't the government just provide the information instead of arguing about why we don't need it?" Again Mr. Cathers defended his method of argument and again the Speaker ruled there was no point of order. (*Hansard* 1596)

Shortly thereafter, however, the Speaker intervened as Mr. Cathers continued. The Speaker said, he was "not sure what the member is making reference to. I seem to have lost the flow here. Would the Member for Lake Laberge be kind enough to tell the House what document he is either quoting from or making reference to, please?" Mr. Cathers informed the House that the document in question was *Hansard*, specifically from Committee of the Whole debate on Bill No. 14, *First Appropriation Act, 1999-2000*, in the area of the Department of Community and Transportation Services. (*Hansard* 1597)

Later still Ms. Duncan rose on a point of order after Mr. Cathers started discussing reform of federal marijuana laws. Ms. Duncan asked the Deputy Speaker to ask "the Member for Lake Laberge to focus on the motion." Mr. Cathers said, "The rules of our House allow unlimited time for debate by the first two speakers for the specific purpose of allowing members to present a full range of matters relevant to the debate at hand, as they determine it." In his ruling the Deputy Speaker said, "While it is correct that the first member responding to a motion does have unlimited time, I would encourage all members to keep their comments focused on the motion before us today. The Chair has allowed some latitude in this discussion, but looks forward to the member bringing the topic back on track." (*Hansard* 1598)

Moment later, as Mr. Cathers continued his discourse on controlled substances, Mr. Hardy rose on a point of order saying, "The motion is about the production of papers, not about rolling papers." The Deputy Speaker ruled that "all members have the opportunity to raise a point of order. However, they don't all have the opportunity to raise a joke." (*Hansard* 1598)

The Speaker delivered his ruling on December 4, 2003. The ruling read as follows:

> Before proceeding to Orders of the Day, the Chair will deliver a ruling on a point of order raised yesterday by the Member for Mayo-Tatchun during debate on Motion for the Production of Papers No. 18, standing in the name of the Member for Porter Creek South. At that time the Member for Mayo-Tatchun argued that certain remarks by the Member for Lake Laberge were not in order in that they violated Standing Orders 19(b)(i), 19(b)(ii) and 19(c). The Chair said he would review the Blues and return with a ruling today.
>
> After reviewing the Blues the Chair finds that there was a point of order. Certain remarks by the Member for Lake Laberge did violate Standing Order 19(b)(i) in that they addressed matters other than the question under discussion. The scope of the motion was whether the House should order the return of certain documents related to a decision by the Minister of Justice to release a commercial vehicle from impoundment. The Member for Lake Laberge introduced many other subjects into debate, which he spoke on for too great a length, and did not connect to the motion on the floor.
>
> Certain remarks by the Member for Lake Laberge also violated Standing Order 19(c) in that they were needlessly repetitious. Early in his remarks the member said that all the information needed to judge the actions of the Minister of Justice had already been made public and that there was no need to, in his words, "start digging through the Whitehorse dump to see if there's an old Post-it note referring to the issue." He then proceeded to use the term "phantom Post-it note" 24 times during the rest of his remarks.
>
> It should also be noted that the nature of the speech by the Member for Lake Laberge led to disorder in the House, including points of order being raised and extraneous comments by members who could not gain the floor.
>
> The Chair realizes that this ruling does not remedy what occurred yesterday. However it could serve to prevent such occurrences in the future.
>
> In dealing with these concerns the Chair is restricted to the rules and practices of the House. The Standing Orders and the procedural authorities enable the Speaker to restrict comments that are irrelevant or repetitious. However, recent practice in this Assembly is that such rules have not been strictly enforced. On the other hand, the Chair notes that, during this sitting, members on both sides of the House have expressed concerns about relevance and repetition, usually through points of order and most often

during consideration of private members' business on Wednesdays. The Chair, then, takes this as an indication that members desire a more orthodox interpretation of the rules and practices. The Chair can and will, therefore, place increasing emphasis on enforcing the rules respecting relevance and repetition in debate.

If members desire to see proceedings on Wednesdays reviewed and, perhaps, changed, that is for them and not the Chair to decide. The Chair encourages members, if that is their desire, to follow the usual practice for reviewing the rules and procedures of this House, that is by referring the matter to the Standing Committee on Rules, Elections and Privileges.

The Chair thanks members for their attention. (*Hansard* 1615)

Rulings, challenging of

Standing Order 6(1) says, "The Speaker shall preserve order and decorum, and shall decide questions of order. In deciding a question of order or practice, the Speaker may state the Standing Order or other authority applicable to the case. No debate shall be permitted on any such decision, and no decision shall be subject to an appeal to the Assembly." Should a member wish to challenge a Speaker's ruling the member must do so by way of a substantive motion for which proper notice is required.

During Question Period on December 2, 2003 the Speaker called Mr. McRobb to order after Mr. McRobb prefaced his main question with an editorial comment on a previous question-and-answer exchange. Mr. McRobb responded by saying, "Thank you, Mr. Speaker, but I believe that I was not commenting on a previous question." At that point the Speaker called for order and said, "Please respect the rulings of the Chair. It is not open for debate. The Chair made a ruling; I would ask that the member respect it." He then asked Mr. McRobb to carry on with his question.

Speeches, Time limits for

Standing Order 42(3) limits speeches in Committee of the Whole to 20 minutes, though members may enter debate as often as they wish. Committee Chair Patrick Rouble invoked this standing order twice during the 2003 Fall Sitting:

- November 25, 2003: During committee consideration of Bill No. 36, *Act to Amend the Taxpayer Protection Act*, when Premier Fentie used all of his allotted time. (*Hansard* 1444)
- December 15, 2003: During committee consideration of estimates for the Department of Energy, Mines and Resources in Bill No. 7 when Hon. Mr. Lang used all of his allotted time. (*Hansard* 1781)

Termination of the Sitting, as per Standing Orders

On November 19, 2001 the Assembly adopted Government Motion No. 169. In so doing the Assembly amended the Standing Orders of the Yukon Legislative Assembly. The changes added Chapter 14 that includes, among other things, a mechanism for terminating a Sitting of the Legislative Assembly once the maximum number of sitting days has been reached and the business before the Assembly is dealt with. These new standing orders came into effect immediately before the adjournment of the 2001 Fall Sitting.

While other aspects of Chapter 14 had been used since then the 2003 Fall Sitting marked the first time Presiding Officers had invoked termination mechanism. Standing Order 75(1) says,

"There shall be a maximum of 60 sitting days per calendar year." Special sittings, such as the special sitting to commemorate Mayo's centennial, do not figure in this equation. As the Assembly had sat for 36 days in the 2003 Spring Sitting 24 days were available for the 2003 Fall Sitting. The Assembly having convened on October 30, 2003 the 24th sitting day turned out to be December 16, 2003. On that day Committee of the Whole was considering the estimates for the Department of Justice in Bill No. 7 when the time reached 5:00 p.m. At that point the committee Chair called for order and said

> The time has reached 5:00 p.m. on this, the 24th day of the 2003 fall sitting. Standing Order 76(1) states: "On the day that the Assembly has reached the maximum number of sitting days allocated for that Sitting pursuant to Standing Order 75, the Chair of the Committee of the Whole, if the Assembly is in Committee of the Whole at the time, shall interrupt proceedings at 5:00 p.m. and, with respect to each Government Bill before Committee that the Government House Leader directs to be called, shall:
> "(a) put the question on any amendment then before the Committee;
> "(b) put the question, without debate or amendment, on a motion moved by a Minister that the bill, including all clauses, schedules, title and preamble, be deemed to be read and carried;
> "(c) put the question on a motion moved by a Minister that the bill be reported to the Assembly; and
> "(d) when all bills have been dealt with, recall the Speaker to the Chair to report on the proceedings of the Committee. It is the duty of the Chair to now conduct the business of the Committee of the Whole in the manner directed by Standing Order 76(1)."

As it turned out there was only one government bill before the committee, Bill No. 7, *Second Appropriation Act, 2003-04*. There were no amendments before the committee to be dealt with. As per Standing Order 76(1)(b) therefore the Chair recognized the Premier, Hon. Mr. Fentie as the sponsor of Bill No. 7 for the purpose of moving a motion that the bill be deemed read and carried. Mr. Fentie did move such a motion and it was agreed to.

Pursuant to Standing Order 76(1)(c) Hon. Mr. Fentie moved that Bill No. 7 be reported without amendment. This motion was agreed to after a count. As the committee had, at that point, agreed to report the only bill before the committee the Chair, pursuant to Standing Order 76(1)(d), recalled the Speaker to report on the committee's proceedings. The Speaker assumed the Chair and asked for, and received, the report from the Chair of Committee of the Whole. The Chair reported to the Speaker that "Committee of the Whole has considered Bill No. 7, entitled *Second Appropriation Act, 2003-04*, and has directed me to report it without amendment." Members indicated their agreement with the Chair's report and the Speaker declared the report carried.

The report of the Chair having carried the Speaker invoked Standing Order 76(2)(d), which states:

> On the sitting day that the Assembly has reached the maximum number of sitting days allocated for the Sitting pursuant to Standing Order 75, the Speaker of the Assembly, when recalled to the Chair after the House has been in Committee of the Whole, shall:...
> (d) with respect to each Government Bill standing on the Order Paper for Third Reading and designated to be called by the Government House Leader,

(i) receive a motion for a Third Reading and passage of the bill, and
(ii) put the question, without debate or amendment, on that motion."

The Speaker, therefore, asked the government House leader to identify which bills the government wished to call for Third Reading. The government house leader, Hon Mr. Jenkins, indicated that the government wished to call Bills Nos. 39, 41, 6, 42, 36 and 7. These were all the government bills that sat at Third Reading. All the bills were called in their turn and voted on without debate or amendment. All passed the house. The termination process, which began at 5:00 p.m. was over by 5:23 p.m. when the House adjourned. (*Hansard* 1814-1817)

Tributes, by the Speaker

The first order of business during the Daily Routine is Tributes. Members deliver most tributes. However, occasionally the Speaker will give a tribute. When the Speaker does so it is done on behalf of the whole house. The Speaker delivered the following tributes during the 2003 Fall Sitting:

- November 3, 2003: In recognition of Max Ayers, former Deputy Sergeant-at-Arms, who passed away in September 2003 (*Hansard* 1109)
- November 3, 2003: In recognition of Gordon McIntyre, Deputy Sergeant-at-Arms, who passed away in July 2003 (*Hansard* 1109)
- November 6, 2003: In recognition of Remembrance Day (*Hansard* 1187)
- November 20, 2003: In honour of Sam Johnston, former Speaker and MLA, upon his induction into the Yukon Sports Hall of Fame (*Hansard* 1383)

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 2003 Spring Sitting. Examples of its use include the following:

To deem all content of a bill read and agreed to

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 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 carried. The bills are then reported with or without amendment as the case may be. The following are instances where unanimous consent was used in this way:

- November 3, 2003: Ms. Duncan requested and received unanimous consent to deem all clauses and the title of Bill No. 35, *Act to Amend the Public Printing Act*, read and carried.
- November 3, 2003: Mr. Cardiff requested and received unanimous consent to deem all clauses and the title of Bill No.38, *Act to Amend the Employment Standards Act* read and carried.

Other instances of members being called to order under this Standing Order include:

- "I have to wonder what the motives are here, and certainly not to cast aspersions on motives, one has to assume that the motives are less than pure on the other side." Hon. Jim Kenyon, October 30, 2003, (*Hansard* 1108)
- "Maybe the member bringing forward this amendment has compensation for taking the contract away from the school bus drivers who were protected by the union at the time and earning union-scale wages." Mr. Arntzen, November 19, 2003 (*Hansard* 1374)
- "this government's vindictive attack on the Dawson City Council." Ms. Duncan, December 4, 2003 (*Hansard* 1611)
- "The minister has no compunction whatsoever to help us to move along quickly and that's why he stands up and insists on orating a response." Mr. McRobb, December 15, 2003 (*Hansard* 1767)

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 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.[24]

A procedurally unusual event occurred during Question Period on November 27, 2003. At that time Mrs. Peter posed a question the Minister of Environment, Mr. Kenyon. In responding to Mrs. Peter's main question Mr. Kenyon said, "Approximately three weeks ago in the *Yukon News*, the member asking this question said, and I quote, "The minister lied." Now, that, of course, is a word that we can't use in here. While I do try to concentrate more on reputable media, and haven't perhaps checked completely —." At that point the Speaker intervened saying, "You cannot bring into the House what you cannot say in the House. That means you cannot quote an article and presume that it won't be out of order, because it is out of order. I would ask that the minister retract that." Mr. Kenyon retracted the remark. (*Hansard* 1481)

The unusual nature of this incident is that Mr. Kenyon did not accuse Mrs. Peter of deliberately misleading the House. Rather, he said (by way of a media report) that she had accused him of lying. Regardless, the Speaker found the words could lead to disorder which is why he intervened. As noted, the Speaker was also concerned that Mr. Kenyon used the quote of a third party (a newspaper) to use in debate a phrase that is otherwise out of order. A principle of parliamentary debate is that a member cannot do indirectly what he or she cannot do directly. Hence quoting unparliamentary language from a third party is not in order.

During debate on Committee of the Whole Motion No. 3 on November 27, 2003 Mr. McRobb said of Mr. Cathers, "his constituents…won't think it's funny should this bill pass in its

[24] *Beauchesne's* §494, page 151.

present form without the truth being brought to the fore…" At that point Mr. Jenkins rose on a point of order citing Standing Order 19(g), the imputation of a false or unavowed motive. As it was not clear to the Chair what false or unavowed motive had been imputed he asked Mr. Jenkins to indicate which statement he found objectionable. Mr. Jenkins indicated the statement was a reference to "tell the truth." Mr. McRobb then intervened saying Mr. Jenkins had misquoted him adding "I'm not pointing the finger at any individual; I'm merely speaking to the issue." The Chair ruled there was no point of order. (*Hansard* 1501) As Mr. McRobb pointed out it is the direct accusation by one member that another member is misleading the House that is not in order. General comments as to whether the truth is being revealed are in order.

A similar event occurred on December 1, 2003 during debate on Committee of the Whole Motion No. 3. During debate Mr. McRobb said, "What's wrong with a process that uncovers the truth of the matter?" At that point Mr. Fentie rose on a point of order arguing the Mr. McRobb's wording constituted an accusation that government members were deliberately misleading the House. The Chair ruled

> Pursuant to the Standing Order 19(h), it is inappropriate to charge another member with uttering a deliberate falsehood, in this instance no direct accusation was made; therefore, there is no point of order. (*Hansard* 1528)

Other words and phrases ruled out of order under this Standing Order included:

- "Certainly one of the things that concerned me, again, is the twisting of truth." Hon. Jim Kenyon, November 5, 2003, (*Hansard* 1157)
- "this member…is doing a disservice to the public by adding negatively to a debate with insinuations and fabrication.", Premier Dennis Fentie, November 12, 2003, (*Hansard* 1225)
- "They often rewrite history and have a tendency to "talk down" when they talk about the First Nation people." Mr. Hardy, November 12, 2003, (*Hansard* 1247)
- "past governments were cooking the books." Premier Dennis Fentie, November 19, 2003, (*Hansard* 1356)
- "Words from the members opposite don't mean much any more." Eric Fairclough, November 20, 2003 (*Hansard* 1388)
- "He's now trying to rewrite history, revisionist history, to get his name on the *Taxpayer Protection Act*." Gary McRobb, November 20, 2003 (*Hansard* 1403)
- "I appreciate the member opposite's twist on the facts." Hon. Archie Lang, November 25, 2003 (*Hansard* 1421)
- "But what they can bring forward is misleading information with regard to the –," Todd Hardy, November 27, 2003 (*Hansard* 1484)
- "there are inaccurate answers from the ministers – done on purpose, I believe." Mr. Fairclough, December 4, 2003 (*Hansard* 1628)
- "That's totally incorrect and the minister knows that." Mr. Fairclough, December 4, 2003 (*Hansard* 1631)
- "Things sure have changed since that Premier left this party…There is a lot more honesty on this side." Todd Hardy, December 9, 2003 (*Hansard* 1668)
- "The member opposite continues to bring what I believe to be misinformation to the floor of this House." Hon. John Edzerza, December 9, 2003 (*Hansard* 1673)

day when the opposition was prepared to debate Bill No. 7 the government house leader was acting like the Grinch Who Stole Christmas. The Speaker intervened saying, "The Chair does not know whether the Grinch is Disney-esque or not, but I would ask that the member not refer to cartoon characters." (*Hansard* 1747)

Other words and phrases ruled out of order under this Standing Order included:

- "I appreciate the minister is a novice at being in charge of the Executive Council Office..." Ms. Pat Duncan, November 3, 2003 (*Hansard* 1128)
- "We were elected 11 months ago to take on a task from probably one of the most mean-spirited governments ever elected in the Yukon Territory's history." Hon. Archie Lang, November 13, 2003 (*Hansard* 1271)
- "The lights may be on in Dawson, but they're not on with this minister" Mr. McRobb, November 19, 2003 (*Hansard* 1348)
- "I find the member from the opposite side is quite capable of maligning individuals in one way or another." Mr. Lang, November 19, 2003 (*Hansard* 1349)
- "when the election happens...they can go out and spend like drunken sailors to purchase votes." Mr. Hardy, November 20, 2003 (*Hansard* 1390)
- "it sure seems like the only methane in this building is coming from the members opposite." Brad Cathers, November 20, 2003 (*Hansard* 1400)
- "I've just experienced witnessing a vapour lock in a cranium." Hon. Mr. Fentie, December 2, 2003 (*Hansard* 1558)
- "This member is famous for bringing incorrect information to the floor of this Legislature." Hon. Mr. Fentie, December 2, 2003 (*Hansard* 1567)
- For "the members opposite...to spend months...slinging mud at the Minister of Justice...is simply disgraceful." Mr. Cathers, December 3, 2003 (*Hansard* 1587)
- "I do ask [members opposite] to...not throw mud at members on this side..." Mr. Cathers, December 3, 2003 (*Hansard* 1592)
- "the slurs cast on [the Minister of Justice] by the members opposite" Mr. Cathers, December 3, 2003 (*Hansard* 1601)
- "I'm sure the backbenchers there are just ready to take over because of this incompetent minister." Mr. Fairclough, December 4, 2003 (*Hansard* 1631)
- "the member('s)...information...(is) totally incorrect; it's right off the wall." Hon. Peter Jenkins, December 9, 2003 (*Hansard* 1666)
- "this minister...hasn't got a clue what's going on" Todd Hardy, December 9, 2003 (*Hansard* 1685)
- "Put up or shut up." Hon. Mr. Fentie, December 10, 2003 (*Hansard* 1697)
- "the member opposite, the party of one, even loses debates in her own caucus." Hon. Dennis Fentie, December 10, 2003 (*Hansard* 1716)
- "that's a shameful display by the member opposite." Hon. Dennis Fentie, December 11, 2003 (*Hansard* 1724)

Offending the practices and precedents of the Assembly

Standing Order 19(k) says, "A member shall be called to order...if that member introduces any matter in debate that...offends the practices and precedents of the Assembly."

This standing order was invoked on December 8, 2003 during Committee of the Whole consideration of the Department of Education estimates in Bill No. 7. At that time Ms. Duncan said the Minister of Education, Hon. John Edzerza, was engaged in a "Santa Claus, million-dollar tour, since we are getting close to Christmas. The minister has got $1 million in this supplementary budget, and he is travelling around the territory playing Santa Claus asking schools what they want." In response Hon. Mr. Edzerza said, "The member opposite keeps referring to this as a Santa Claus budget. Well, I don't believe in Santa Claus and I only believe that this is —." At that point Mr. McRobb rose on a point of order saying, "What kind of an Education minister is this to make such an outrageous statement as he doesn't believe in Santa Claus? Hasn't he learned anything since he was a little kid? We all believe in Santa Claus. That's the position of our party. We know where the Yukon Party stands, however." The Committee Chair, Patrick Rouble ruled, " The Chair must concur, and I will cite Standing Order 19(k) which states, "A member shall be called to order … if that member: introduces any matter in debate that … offends the practices and precedents of the Assembly", and I would encourage members not to make disparaging remarks about good old Saint Nick.

While this exchange may be viewed as a bit of good-natured humour it is worth noting that members have given notice of motions affirming their belief in Santa Claus. For example on December 3, 2001 the Hon. Pam Buckway gave notice of the following motion:

> THAT it is the opinion of this House that an official visit by Santa Claus is expected on Christmas Eve. Not a creature shall stir without official permission. This will include indigenous mice. Special stirring permits for necessary administrative actions shall be made available. Members will settle their brains for a long winter nap prior to 10:00 p.m. December 24. The uniform for the nap shall be pyjamas, with kerchiefs, suitable for drowsing. Stockings shall be hung by the chimney with care. Necessary safety precautions should be taken to avoid fire hazards caused by carelessly hung stockings.
> At the first sign of clatter from the lawn, all members shall spring up to evaluate the noise and cause. Immediate action should be taken to tear open the shutters and throw open window sashes. There shall be a 24-hour call-in line designated to the reports of miniature sleighs being driven by jolly old men in red suits, calling out, "On, Dasher. On, Dancer. On, Prancer and Vixen. Up, Comet. Up, Cupid. On, Donner and Blitzen."
> Santa Claus shall enter homes through standard chimneys or alternate means deemed necessary where there are no chimney facilities; and
> THAT this House encourages all members, at the most opportune time, to rise and wish a "Merry Christmas to all, and to all a good night." (*Hansard*, December 3, 2001, 2969)

While the House did not debate or pass the motion the widespread applause from members at the time notice was given indicated support for the motion. Mr. Arntzen moved a motion in a similar spirit on December 16, 2003. Motion No. 210 reads, "THAT this House urges Old Saint Nick to deliver gifts to all the children in the Yukon Territory on Christmas Eve." (*Hansard* 1787)

Hence, it may be taken as a practice of the Assembly to affirm its belief in Santa Claus and that any statement to the contrary is not in order.

Vote, correction of

During division on second reading of Bill No. 101 Mr. Hardy cast a 'nay' vote. He immediately corrected himself and entered his vote as a 'yea.' As the correction was made immediately, before another member had cast a vote this was procedurally unproblematic. The Clerk reported the result of the division to the House as, "Mr. Speaker, the results are 10 nay, 5 yea, and one re-thought yea. The final result is, therefore, 6 yea, 10 nay." (*Hansard* 1358)

Wasting Time

On December 15, 2003 Committee of the Whole debated, among other things, the departmental estimates in Bill No. 7 for the Department of Health and Social Services. At one point during the debate, after what he perceived to be an unnecessarily long response to a question, Mr. McRobb rose on a point of order saying,

> I take exception to the type of tactics demonstrated by this member. We have a limited amount of time in this Legislature to complete the supplementary budget, and he is clearly wasting time. This clearly indicates that there is a problem with these predetermined sitting days because it plays to the advantage of the government to waste time.
>
> Under the old rules we would see a much more co-operative atmosphere in here, one in which the government would be eagerly providing this side with some answers and not wasting time.

Hon. Mr. Jenkins responded that Mr. McRobb's point of order was based on a dissatisfaction with the Standing Orders that limits the number of days the Assembly may sit. The Chair ruled that there was no point of order. (*Hansard* 1761)

Minutes later Mr. McRobb again rose on a point of order, this time in response to Hon. Mr. Jenkins' statement that the would prefer to deal with questions at that time, on the floor of the Assembly, rather than provided written responses at a later date. Mr. McRobb said, "I would remind the Member for Klondike that indeed there is another way to do things here to expedite the proceedings. We have only about five to six hours to debate the rest of this budget. We are all tired of hearing him go on at length. He can provide a simple legislative return to the questions asked and we could all move on. We would appreciate that.

The Chair again ruled that there was no point of order. He then elaborated on the nature of speeches in Committee of the Whole. He said, "Standing Order 42(3) states that speeches in Committee of the Whole are limited to 20 minutes. Standing Order 42(2) says that those speeches should be strictly relevant to the item or clause under consideration. Procedurally, the item under consideration is general debate in the Department of Health and Social Services. The idea of the item under consideration is not limited by the precise question put to the minister."

This issue again arose on December 16, 2003 during committee consideration of the estimates for the Department of Energy, Mines and Resources. During remarks by the minister responsible, Hon. Archie Lang, Ms. Duncan rose on a point of order saying "it's incumbent upon us…to address the questions and responses and to focus our questions…I thank the minister for the repeat of his general debate speech; however, we have heard it before and this is unnecessary at this point." Consistent with his previous ruling the Chair ruled that there was no point of order. (*Hansard* 1808)

In other words as long as responses are relevant to the matter before the committee and are not unnecessarily repetitious the Chair can not rule on whether a member is 'wasting time.' (*Hansard* 1761)

Written Questions

The purpose of written questions is to seek from the government "detailed, lengthy or technical information." The rules of the House of Commons of Canada allow for written questions to be posed to private members but in practice this is not done primarily because the rules don't really provide private members with a means of providing answers to written questions.[25] Private members in the House of Commons are severely restricted in their ability to table documents.[26]

The situation in the Yukon Legislative Assembly is somewhat different. Standing Order 37(1) says, "Written questions may be placed on the Order Paper seeking information from

> (a) members of the Executive Council relating to public affairs; and
> (b) private members, including Committee Chairs, relating to any bill, motion or other public matter connected with the business of the Assembly in which such members may be concerned."

On December 15, 2003 Steve Cardiff (Mount Lorne, NDP) tabled a written question regarding the delivery and affordability of potable water. The question, addressed to the Minister of Health and Social Services, hon. Peter Jenkins (Klondike, Yukon Party) did not receive a response prior to the end of the 2003 Fall Sitting.

[25] *House of Commons Procedure and Practice* page 438
[26] *House of Commons Procedure and Practice* page 519

Statistical Summary

Table 1: Sitting Days

	Monday	Tuesday	Wednesday	Thursday	Total
October	0	0	0	1	1
November	2	3	4	4	13
December	3	3	2	2	10
Total	5	6	6	7	24

Table 2: Allocation of Sitting Time

	Number	Time consumed	Percentage of sitting time
Debate on Bills	12	64 hours 37 minutes	57.5%
Debate on Motions	11	22 hours 41 minutes	20%
Question Period	24	12 hours 50 minutes	11.5%
Other	n.a.	12 hours 15 minutes	11%
Total	**n.a.**	**112 hours 23 minutes**	

Note: In this case 'Other' includes elements of the Daily Routine other than Question Period, prepared statements and rulings by the Speaker and the Chair of Committee of the Whole, recesses between the Daily Routine or Orders of the Day and Committee of the Whole, and Assent proceedings.

Table 3: Documents Tabled

Type	#
Legislative Returns	5
Sessional Papers	34
Filed Documents	12
Total	**51**

Daily Routine
Tributes: 27
Visitor Introductions: 43
Ministerial Statements: 2
Written Questions: 1
Committee Reports: 0
Petitions Presented: 1
Responses to Petitions: 0

Table 4: Bills

Bills	Government	Private Members	Total
Introduced	10	1	11
Debated	10	1	11
Passed	10	0	10
Negatived	0	1	1
Assented to	10	0	10

Table 5: Time devoted to individual bills

Bill #	Name	Second Reading	Committee of the Whole	Third Reading	Total
6	*Fourth Appropriation Act, 2002-03*	27 minutes	53 minutes	none	1 hour 20 minutes
7	*Second Appropriation Act, 2003-04*	6 hours 35 minutes	24 hours 29 minutes	none	31 hours 4 minutes
35	*Act to Amend the Public Printing Act*	5 minutes	8 minutes	4 minutes	17 minutes
36	*Act to Amend the Taxpayer Protection Act*	3 hours 20 minutes	11 hours 11 minutes	none	14 hours 31 minutes
37	*Statistics Act*	17 minutes	2 hours 15 minutes	9 minutes	2 hours 41 minutes
38	*Act to Amend the Employment Standards Act*	7 minutes	2 minutes	1 minute	10 minutes
39	*Decision Making, Support and Protection to Adults Act*	13 minutes	3 hours 32 minutes	none	3 hours 45 minutes
40	*Act to Amend the Access to Information and Protection of Privacy Act*	9 minutes	12 minutes	15 minutes	36 minutes
41	*Health Professions Act*	40 minutes	4 hours 47 minutes	none	5 hours 27 minutes
42	*Territorial Court Judiciary Pension Plan Act, 2003*	14 minutes	12 minutes	none	26 minutes
101	*An Act to Amend the Taxpayer Protection Act*	1 hour			1 hour
102	*An Act to Amend the Employment Standards Act*	3 hours 20 minutes			3 hours 20 minutes
	Total	16 hours 27 minutes	47 hours 41 minutes	29 minutes	64 hours 37 minutes

Note: Introduction and First reading is not included as Standing Order 52(2) says, "A motion for First Reading of a bill shall be decided without introductory statement, debate or amendment."

Table 6: Appropriation Bills, Committee of the Whole debate by department

Department	Bill No. 6		Bill No. 7		Total	
	hours	minutes	hours	minutes	hours	minutes
Health & Social Services	none		5	37	5	37
Education	none		5	18	5	18
General debate		40	2	41	3	21
Public Service Commission		11	2	56	3	7
Executive Council Office	none		1	40	1	40
Tourism & Culture	none		1	28	1	28
Energy, Mines & Resources	none		1	9	1	9
Finance	none			36		36
Highways & Public Works	none			22		22
Economic Development	none		1	20	1	20
Women's Directorate	none			16		16
Justice	none			10		10
Office of the Ombudsman		2		3		5
Community Services	none		No debate		No debate	
Environment	none		No debate		No debate	
Yukon Housing Corporation	none		No debate		No debate	
Elections Office	No appropriations					
Legislative Assembly	No appropriations					
Yukon Development Corp.	No appropriations					
Yukon Liquor Corporation	No appropriations					
Loan Capital & Amortization	Not applicable					
Total		53	23	36	24	29

Note: Bill No. 6 and Bill No. 7 were both supplementary appropriation acts. The term 'none' refers to those departments or corporations that did not have an appropriation in Bill No. 6. The term 'No appropriation' refers to those departments or corporations that did not have an appropriation in either bill. The term 'No debate' refers to those departments or corporations that did have appropriations in Bill No. 7 that were not debated due to the termination of the Sitting (see: 'Termination of the Sitting, as per Standing Orders). 'Loan Capital & Amortization' is only applicable to main appropriation acts.

Table 7: Motions

Motions	Government	Private Members	Total
Notice of	6	114	120
Debated	5	5	10
Adjourned Debate	1	4	5
Agreed to	4	1	5
Negatived	0	0	0
Withdrawn	1	0	1
Ordered Removed	1	5	6
Not placed	1	1	1

Table 8: Time devoted to debate on motions

Motion # & Subject	Debate		Disposition
	hours	minutes	
27. Re Prevention of Oil and Gas Exploration Within the Arctic National Wildlife Refuge	4	21	Adjourned
186. Re Permanent Solution to Outstanding Government Loans Issue	4	20	Adjourned
54. Re Yukon Party Government's Commitment to Retain Government Workforce	3	52	Adjourned
18. Re Correspondence and Legal Case Surrounding Impoundment and Release of Tow Truck[27]	3	21	Adjourned
132. Re Government Working with Other Groups to Improve Investment Climate	2	55	Agreed to as amended
113. Re Provision of Funding for School Upgrades and Replacement of Carmacks School	1	21	Adjourned
101. Re Adjourning House From November 6 to November 12, 2003	1	18	Agreed to as amended
105. Re Prohibiting Members to Serve in Cabinet While More Than One Year in Arrears to Government		37	Adjourned
104. Re Urging Government of Canada to Recognize All Aboriginal Veterans in the Same Manner		32	Agreed to
193. Re Appointment of Jasbir Randhawa and Brian MacDonald to be Members of the Yukon Human Rights Commission		2	Agreed to
194. Re Appointment of Vicki Wilson and Donna Mercier to the Yukon Human Rights Panel of Adjudicators		2	Agreed to
Total: 11 (3 agreed to, 2 agreed to as amended, 6 adjourned debate)	22	41	

Other Motions for which notice was given

Motions respecting witnesses appearing in Committee of the Whole: 1 (negatived)

[27] Motion for the Production of Papers

Motions for the production of papers: 7 (1 adjourned debate, 1 ordered removed from the Order Paper)

Table 9: Statistical Review of Question Period

Sitting Day/Date	Main Questions	First Supp.	Final Supp.	Total Questions	Total Time	Question Time	Response Time	Points of Order	Questions over limit	Responses over limit
1. October 30	8	**8**	7	**23**	**35:35**	18:05	17:30	0:00	4	1
2. November 3	7	7	7	21	34:55	17:30	16:20	1:05	3	0
3. November 4	7	7	7	21	33:35	17:55	14:45	0:55	**6**	0
4. November 5	6	6	6	18	29:40	15:30	14:00	0:10	4	1
5. November 6	6	6	6	18	30:40	15:15	15:25	0:00	3	1
6. November 12	*5*	5	5	*15*	30:50	14:20	13:40	**2:50**	**6**	2
7. November 13	6	6	6	18	33:55	15:30	18:25	0:00	3	1
8. November 17	7	7	6	19	29:20	15:25	13:55	0:00	3	0
9. November 18	6	6	6	18	32:20	15:25	16:40	0:15	2	0
10. November 19	6	6	6	18	31:55	16:05	15:50	0:00	3	1
11. November 20	7	7	7	21	33:25	17:20	16:05	0:00	2	2
12. November 25	6	6	6	18	32:40	15:50	16:00	0:50	**6**	1
13. November 26	6	6	6	18	32:05	15:40	16:25	0:00	*1*	0
14. November 27	6	6	6	18	32:30	16:10	16:00	0:20	4	0
15. December 1	7	7	7	21	32:05	17:45	14:20	0:00	4	0
16. December 2	*5*	5	5	*15*	30:00	14:25	15:35	0:00	4	1
17. December 3	7	7	7	21	32:10	17:45	14:05	0:20	3	1
18. December 4	8	**8**	7	**23**	31:40	16:40	15:00	0:00	3	0
19. December 8	7	7	7	21	29:30	16:40	*12:50*	0:00	2	0
20. December 9	7	7	6	20	31:05	15:20	15:05	0:40	2	0
21. December 10	7	7	7	21	32:05	16:00	15:30	0:35	4	1
22. December 11	8	**8**	6	22	34:05	**18:30**	15:10	0:25	4	**3**
23. December 15	7	7	7	21	*29:15*	15:50	13:25	0:00	*1*	0
24. December 16	**19**	*2*	*1*	22	33:25	*12:35*	**20:50**	0:00	3	1
Total	171	154	148	473	12:48:45	6:27:30	6:12:50	8:25	80	17

Note: Highest totals in **bold**; lowest totals in *italics*.

References

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.

Canada. *Yukon Act.*2002, c.7.

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

Yukon Legislative Assembly. *Chair's Handbook Committee of the Whole*. February 2003.

Yukon Legislative Assembly. *Hansard*. First Session of the 31st Legislature, Volume 3 (October 30, 2003-December 16, 2003). 2003.

Yukon Legislative Assembly. *Journals*. First Session of the 31st Legislature (October 30, 2003-December 16, 2003). 2003.

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