



# Yukon Legislative Assembly

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## HANSARD

Tuesday, November 6, 2018 — 1:00 p.m.

Speaker: The Honourable Nils Clarke

# YUKON LEGISLATIVE ASSEMBLY

## 2018 Fall Sitting

**SPEAKER — Hon. Nils Clarke, MLA, Riverdale North**  
**DEPUTY SPEAKER and CHAIR OF COMMITTEE OF THE WHOLE — Don Hutton, MLA, Mayo-Tatchun**  
**DEPUTY CHAIR OF COMMITTEE OF THE WHOLE — Ted Adel, MLA, Copperbelt North**

### CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
<b>Hon. Sandy Silver</b>	Klondike	Premier Minister of the Executive Council Office; Finance
<b>Hon. Ranj Pillai</b>	Porter Creek South	Deputy Premier Minister of Energy, Mines and Resources; Economic Development; Minister responsible for the Yukon Development Corporation and the Yukon Energy Corporation
<b>Hon. Tracy-Anne McPhee</b>	Riverdale South	Government House Leader Minister of Education; Justice
<b>Hon. John Streicker</b>	Mount Lorne-Southern Lakes	Minister of Community Services; Minister responsible for the French Language Services Directorate; Yukon Liquor Corporation and the Yukon Lottery Commission
<b>Hon. Pauline Frost</b>	Vuntut Gwitchin	Minister of Health and Social Services; Environment; Minister responsible for the Yukon Housing Corporation
<b>Hon. Richard Mostyn</b>	Whitehorse West	Minister of Highways and Public Works; the Public Service Commission
<b>Hon. Jeanie Dendys</b>	Mountainview	Minister of Tourism and Culture; Minister responsible for the Workers' Compensation Health and Safety Board; Women's Directorate

### GOVERNMENT PRIVATE MEMBERS

#### Yukon Liberal Party

<b>Ted Adel</b>	Copperbelt North
<b>Paolo Gallina</b>	Porter Creek Centre
<b>Don Hutton</b>	Mayo-Tatchun

### OFFICIAL OPPOSITION

#### Yukon Party

<b>Stacey Hassard</b>	Leader of the Official Opposition Pelly-Nisutlin	<b>Scott Kent</b>	Official Opposition House Leader Copperbelt South
<b>Brad Cathers</b>	Lake Laberge	<b>Patti McLeod</b>	Watson Lake
<b>Wade Istchenko</b>	Kluane	<b>Geraldine Van Bibber</b>	Porter Creek North

### THIRD PARTY

#### New Democratic Party

<b>Liz Hanson</b>	Leader of the Third Party Whitehorse Centre
<b>Kate White</b>	Third Party House Leader Takhini-Kopper King

### LEGISLATIVE STAFF

Clerk of the Assembly	Floyd McCormick
Deputy Clerk	Linda Kolody
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**Yukon Legislative Assembly**  
**Whitehorse, Yukon**  
**Tuesday, November 6, 2018 — 1:00 p.m.**

**Speaker:** I will now call the House to order.  
 We will proceed at this time with prayers.

*Prayers*

## DAILY ROUTINE

**Speaker:** We will proceed at this time with the Order Paper.

Introduction of visitors.

## INTRODUCTION OF VISITORS

**Mr. Hutton:** I would like to ask all Members of the Legislative Assembly to join me in welcoming some constituents of mine from Mayo, members of Robert Hager's family. Starting from the left, we have: Cathy Samson, Robert's niece; Nancy Hager; Joey Hager; Frank Hager; Christine Hager, Robert's wife of 51 years and partner of 55 years; Roberta Hager; and Josephine and Persis Hager. Thank you so much for being here.

*Applause*

**Ms. Hanson:** I would also ask Members of the Legislative Assembly to welcome back to the Assembly Tim Koepke, former chief negotiator for Canada on all Yukon land claims, including for Na Cho Nyäk Dun. I have to say that when the archives are revealed and the photos are taken of the exquisite executive suites where these negotiations were conducted, you will see photos of Mr. Koepke in the back of a van. That was his office. He had his typewriter set up in there.

We are really happy to have him here today.

*Applause*

**Hon. Ms. McPhee:** I think we should also note that Mr. Koepke is a former officer of this Legislative Assembly, having been the Information and Privacy Commissioner and the Ombudsman for the territory. Welcome.

*Applause*

**Mr. Hutton:** We also have in the House with us Robert and Christine's great-granddaughter, Nákhela.

*Applause*

**Speaker:** Are there any further introductions of visitors?

Tributes.

## TRIBUTES

### In remembrance of Robert Hager

**Mr. Hutton:** It's truly an honour and a great privilege to rise today on behalf of the Yukon Liberal government and the Official Opposition, the Yukon Party, to pay tribute to Robert Hager who was a respected elder and former long-time Chief of the First Nation of Na Cho Nyäk Dun.

Robert was born in 1941 to Edwin and Mary Hager, née Kendi. Edwin Hager's father was Robert Hager, who some of you may have heard about. He went down on the *Princess Sophia*. Edwin's mother had passed away before that, and when his father passed when Edwin was eight years old, he was left as an orphan and raised by his grandparent, Jenny Jimmy. Robert had five brothers and sisters. Tragically, Edwin and Mary's second-born son named Robert passed away at the age of seven years old. Some years later, when Robert was born, he was also given his grandfather's name.

Robert went to his final resting place on May 28, 2016. He will always be remembered as a trailblazing leader in the negotiation of the Yukon land claim and self-government agreements.

Robert was raised by his parents Edwin and Mary. He grew up learning the traditional pursuits of hunting, fishing and trapping, and he taught these skills to all of his children and to many others in the community. He had a deep love of the land and was committed to passing on his wisdom and knowledge of his culture and traditions. Many people learned traditional skills at the Hager fish camp on the Stewart River.

Robert was active over many years leading the negotiating team for land claim and self-government agreements. I would be remiss if I didn't mention some of the people who were on that team: Albert Peters, Bill Germaine, Doug Lucas, Stewart Moses, Kevin Busswood, Tom Cove, Art Pape and Rick Salter. All of them sacrificed a great deal of time away from their families, especially Robert, who was away from his family, his home and the land he loved so much. He saw tremendous change for his people over that 30-year period. He served as chief for the First Nation of Na Cho Nyäk Dun for three decades. He spoke passionately about a life for his people outside the *Indian Act*, where they could live more fulfilling lives without constraint. He dedicated his life to ensuring that his people would be self-determining.

During the negotiation of the final and self-government agreements, Chief Hager stood against the potential settlement agreement in 1984. It took a lot of courage to stand up against the 1984 agreement in principle. After defeating the 1984 agreement in principle, Robert recalled a conversation with then-Prime Minister John Turner, who said, "Well, Robert, you got rid of their agreement and so now you are going way down to the bottom of the list." Robert replied, "I can live under your *Indian Act*, but I still have my status. It is going to take a long time to take that away."

He voted against that deal because it did not include self-government for his people and would see the extinguishment of aboriginal rights and title. That was a compromise he was not willing to make. He saw his goal for self-government come true in 1993 with the signing of the *Umbrella Final Agreement* and the Na Cho Nyäk Dun final and self-government agreements. On that day, he famously said, "Say goodbye Indian Affairs, hello self-government."

He was instrumental in his journey toward the Yukon First Nation land claims and self-government agreements. Robert was known for his collaborative leadership style. He listened to people and worked to build connections. He built

relationships between First Nation and non-First Nation people in Mayo through a joint council forum with the Village of Mayo. Robert's passion for his people and for their advancement through self-government was one of the key aspects of his long and fulfilling political career.

Our Yukon could be a very different place, Mr. Speaker, were it not for the life work of Robert Hager. When you look at the amazing achievements and successes of the Yukon self-governing First Nations, you begin to understand the significance of Robert's decision to stand against the attempt to extinguish aboriginal rights and title and to ensure that Yukon First Nations would have self-government and their right to self-determination.

For his dedication to his people, to his values and to Yukon, we thank him. Today, we remember and honour Robert Hager, and we keep his family, friends and community in our hearts. Thank you, Robert.

*Applause*

**Ms. Hanson:** On behalf of the Yukon New Democratic Party, I'm pleased to join in paying tribute to Chief Robert Hager of the First Nation of Na Cho Nyäk Dun.

Robert Hager was a formidable human presence. From my first meeting with him over 40 years ago when I travelled as a social worker to Mayo to meet with him and members of the then-Mayo Indian Band at a band council, he made clear that his community, his people and he himself rejected the imposition of government authority over the day-to-day decisions that rightfully belonged to them.

Over time, I learned that his views were informed by his earliest experiences of government — as a little boy, being loaded onto the back of a truck and shipped to residential school far from his family and his community. This experience informed his persistence, insisting that kids from his community needing care not be sent out of Mayo — and to him and his wife Christine setting up the Mayo group home, and to his leadership and rejecting the 1984 land claims agreement in principle primarily, as the Member for Mayo-Tatchun said, because the government proposal was based on a buyout of Indian programs and services and essentially was an attempt to ignore the history in place of Yukon First Nations in Yukon.

Mr. Speaker, Robert Hager knew that the federal and territorial governments would eventually have to recognize the right of Yukon First Nation people to govern themselves. It is fitting that when the parliamentary Special Committee on Indian Self-Government published its report, it included, at the front of that report, the following quote from Tolstoy that the Mayo Indian Band had used in their submission to the committee — and I quote: "I sit on a man's back, choking him and making him carry me, and yet assure myself and others that I am sorry for him and wish to lighten his load by all means possible — except by getting off his back." Chief Robert Hager had, as a former negotiator put it, a strength of seemingly relentless defiance in the face of government intransigence.

He pulled together an impressive negotiations team, and in January 1991, it was Chief Robert Hager who moved the motion at the Council of Yukon Indians that was that the impetus for the finalization of the *Umbrella Final Agreement* and the first four First Nation final agreements. Mr. Speaker, it would be an understatement to say that motion created a flurry of activity. A fire was lit under federal and territorial systems like few I had seen before or since.

Robert Hager had a way of getting his message across that was often blunt and occasionally tinged with humour. During one negotiation session at the old Mayo First Nation administration building — and those who are from Mayo will recognize that building; the log structure that had serious settling issues — the place was jammed full. There were elders, negotiators and lawyers, and the negotiations were getting intense. Robert had just finished making some comments about the inadequacy of the government offer when I had to exit to use the washroom. Unfortunately, the lock on the washroom not only didn't work, but the door frame had settled and become stuck, necessitating the removal of the entire door in order to free me. I still have the letter I received the next week from Chief Hager invoicing me and the federal government for \$5 million — point made.

As Haeckel Hill burned here in Whitehorse on the longest day in June 1991, the Mayo marathon came to an end as the First Nation of Na Cho Nyäk Dun, Canada and Yukon reached an agreement on what became, on May 29, 1993, the First Nation final agreement and self-government agreement of the First Nation of Na Cho Nyäk Dun. As my colleague from Mayo-Tatchun has said, Chief Robert Hager was finally able to say on that day, "Say goodbye Indian Affairs, hello self-government."

Tim Koepke, former chief federal negotiator, who is present with us today, said that all of us who were involved through the years always had the greatest respect for Chief Robert Hager in spite of his verbal scolding, because at the heart of his blunt words was a quest to achieve fairness, success and recognition for his people. There can be no more fitting legacy than that, Mr. Speaker.

*Applause*

**Speaker:** Are there any further tributes?

Are there any returns or documents for tabling?

## TABLING RETURNS AND DOCUMENTS

**Hon. Mr. Mostyn:** I have for tabling a legislative return responding to questions about fleet vehicles asked by the Official Opposition during general budget debate on October 25.

**Mr. Hassard:** I have for tabling an e-mail.

**Speaker:** Are there any further returns or documents for tabling?

Are there any reports of committees?

## REPORTS OF COMMITTEES

**Mr. Adel:** I have for tabling the *Standing Committee on Appointments to Major Government Boards and Committees Eleventh Report*, dated November 6, 2018.

**Speaker:** Are there any further reports of committees?  
Are there any petitions?  
Are there any bills to be introduced?  
Are there any notices of motions?

## NOTICES OF MOTIONS

**Ms. Hanson:** I rise to give notice of the following motion:

THAT this House urges the Government of Canada to implement the recommendations regarding advance requests contained in a Special Joint Committee on Physician-Assisted Dying report, entitled *Medical Assistance in Dying: A Patient-Centred Approach*; and

THAT the Speaker of this Legislative Assembly communicate the House's position to the Speakers of Canadian, provincial and territorial parliaments.

**Speaker:** Are there any further notices of motions?  
Is there a statement by a minister?  
This then brings us to Question Period.

## QUESTION PERIOD

### Question re: Access to information and protection of privacy

**Mr. Hassard:** Twice in this House the Premier has made statements suggesting that he and his office know the identity of those submitting ATIPP requests. Can the Premier tell us: Has anyone in the Liberal political offices given direction to public servants on how to interpret the ATIPP act? Has anyone in the Liberal political offices given direction to public servants on what processes to follow when exercising their duties under the ATIPP act?

**Hon. Mr. Silver:** What I can tell the member opposite is that no changes to policy have occurred since his government was in power to where we are now.

**Mr. Hassard:** Previously, when we asked the Premier to explain his comments where he suggested that he and his office know the identity of those submitting ATIPP requests, he stated — and I quote: "... this kind of behaviour would not be permitted." This is an important question because politicians and their staff should not be interfering in the ATIPP process.

Mr. Speaker, would the Premier permit political staff to give direction to public servants on how to interpret or process the ATIPP act?

**Hon. Mr. Silver:** We might as well get to the second supplementary and the crescendo from the questioning and I suppose something about an e-mail — but again, no policy has changed.

**Mr. Hassard:** It is interesting that the Premier wouldn't be interested in answering that question, but we will carry on.

The Official Opposition has obtained a copy of an e-mail exchange between the department and the two most senior political staff in the Premier's office showing evidence of apparent political interference in the ATIPP process. The e-mails show that direction and approval are given from the political office on how the government is supposed to interpret the ATIPP act. Further, direction and approval are given by the political office on how the government is to process ATIPP requests.

Can the Premier tell us if that direction from his staff to politically interfere in the ATIPP process came from him?

**Hon. Mr. Silver:** As the member opposite just tabled an e-mail and said it was just an email, I have no clue what e-mail he is talking about. We will take a look at this e-mail and report back.

### Question re: Access to information and protection of privacy

**Mr. Cathers:** It is highly inappropriate if political staff are providing approval and direction to the public service on how to interpret the ATIPP act. The government has many professional lawyers who can interpret the act on their behalf. The act itself is not supposed to be open to political interpretation. By having politicians and their staff politically interfere, the entire process could potentially be abused. The ATIPP process should be at arm's length from the political arm of government.

Can the Premier tell us who in the Liberal Cabinet had knowledge that his two most senior political staff were politically interfering in the ATIPP process?

**Hon. Mr. Silver:** I hate to ruin I guess what will probably be the one question that the Yukon Party asks today, but I don't know what e-mail he is talking about. We will take a look at it and then we will make a comment.

To ask me to speak to the contents of an e-mail that I haven't seen — that is not something I am going to do on the floor of the Legislative Assembly.

**Mr. Cathers:** Mr. Speaker, the Premier can dodge and weave all he wants, but this is an important matter.

Last week, we asked the Minister of Highways and Public Works what the process was in the Cabinet office for tracking ATIPP requests. He responded by saying that tracking was only done through the public website that lists certain ATIPP requests with a 30-day delay.

The Official Opposition has obtained more documents concerning the Liberal offices' political involvement in ATIPP processes. Those documents show that the two most senior political staff in the Liberal offices were closely involved in the tracking of ATIPP requests going as far back as February 8, 2017. This tracking includes sharing of information such as what is being redacted, what sections of the act are being used, whether extensions should be requested and whether or not requests should be closed.

My question is this: What was the purpose of the Premier's two most senior staff tracking all of these ATIPP requests if not to give direction on how to respond?

**Hon. Mr. Silver:** My two most senior staff have a legacy of above-board behaviour. Again, you are going to have to beg the indulgence here. I am not going to take on the Yukon Party on their interpretation of an e-mail until I actually see that e-mail.

**Mr. Cathers:** Again, Mr. Speaker, we see the Premier failing to be accountable to Yukoners.

The Official Opposition has also obtained documents showing the Premier's two most senior staff were receiving documents indicating all open ATIPP requests with details on how they were being processed and proposed paths forward, such as denying the release of information. Further, they were then scheduling face-to-face meetings with senior officials to discuss the information contained in these documents.

Can the Premier confirm if direction was ever given in these meetings to withhold or delay the release of information? Did his political staff ever request the identity of a requester in one of these meetings?

**Hon. Mr. Silver:** Mr. Speaker, again, with the track record of the Yukon Party using half-quotes and trying to piece together narratives of oranges to apples, I will tell you that until I see that e-mail, I am not going to take the Member for Lake Laberge on his word as to the contents of that e-mail.

Again, if the Yukon Party actually was interested, they could have shared that e-mail with me beforehand when they first obtained it, but no, they want to play politics with this. I will answer the question again and say that once I look at this e-mail, I will make a determination, but for me to take the members opposite on their word of the contents based upon conversations about two-percent cuts or substitute teachers — and the list goes on and on — I will beg the indulgence of this House and not necessarily take the Member for Lake Laberge on his word on this one.

### **Question re: Public interest disclosure of wrongdoing process**

**Ms. Hanson:** In the spring, the Minister responsible for the Public Service Commission incorrectly directed that concerned staff come to him or other ministers in government if they had information on wrongdoings within government departments.

To disclose to a minister would actually remove employees' protection from reprisal. In the Public Interest Disclosure Commissioner's 2016 and 2017 annual reports, the commissioner commented that employees were not being informed on how to make disclosures of wrongdoing.

Mr. Speaker, have staff across government been made aware of the rules around disclosure of wrongdoing, and have all departments now implemented and communicated procedures for disclosure of wrongdoing?

**Hon. Mr. Mostyn:** I thank the member opposite for the question on behalf of Yukoners. The *Public Interest Disclosure of Wrongdoing Act* is a mechanism for addressing serious wrongdoings that may be committed within a public entity covered by the act, and it affords specific reprisal protections to employees of those entities. When civil servants

come forward to the appropriate individual, they will be offered protections.

The act's obligations of each public entity include the obligation to ensure wide communication to their employees about the act, including how to disclose wrongdoing. The Public Service Commission works closely the Ombudsman, who is also now the Public Interest Disclosure Commissioner, to coordinate act implementation and communication activities. In addition to briefings offered to public entities and specific communications delivered to all Yukon government employees, the Public Service Commission also prepared and posted on our internal and external websites extensive material about the act that all public entities could reference and use for their own communication purposes.

**Ms. Hanson:** The House will note that the operative word there was "could". It's not the question that I asked. Government departments are not the only ones to come under the *Public Interest Disclosure of Wrongdoing Act*. Employees of all public entities are covered by the *Public Interest Disclosure of Wrongdoing Act*, including Yukon College, Yukon Energy Corporation and the Yukon Hospital Corporation. The same expectations are placed on these public entities as on government departments. It is the responsibility of the heads of these corporations to provide all employees with information about the legislation and how to make a disclosure — and to be protected from reprisals.

Can the minister tell the House whether or not government corporation CEOs have shared this information with their staff and supervisors? Not the PIDWA — CEOs.

**Hon. Mr. Mostyn:** I do appreciate the question. As the member opposite noted, in the 2017 annual report of the Public Interest Disclosure Commissioner, they noted a need for more employee training and awareness about the act. We have actually taken action on this front. For the benefit of our public servants, the Public Interest Disclosure Commissioner is working with departments to enhance our communications and offer greater guidance across Yukon government, including development of guidelines for supervisors and employees that public entities can use.

I can inform the House that in Community Services, the entire department was e-mailed by the deputy minister. There was a discussion at the department managers' meeting, and information on the PIDWA will be prominently displayed on the corporate Internet now under development. I've got actions for the entire government on what we're doing to promote the PIDWA legislation, and I can go into that in detail in the member opposite's next supplementary question.

**Ms. Hanson:** Well, Community Services is one government department. It is important that supervisors know when a disclosure is being made to them by an employee. There are steps that both the employee and the supervisor need to take to ensure that an employee is protected from reprisals, and it is important that disclosures that are made are recognized, investigated and acted on accordingly.

After all, it's about public safety. Given today's revelation about alleged interference in the ATIPP process, it is also critical that deputies, ADMs and other high-ranking

government officials be made aware of their obligations under the *Public Interest Disclosure of Wrongdoing Act*.

Can the minister confirm that all senior government officials are aware of their obligations under the *Public Interest Disclosure of Wrongdoing Act*?

**Hon. Mr. Mostyn:** I must take exception to the member opposite's characterization of what happened in the House this afternoon. I don't think we've seen any evidence on this side of the House. All we've heard are allegations, and we look forward to evaluating the information that's provided and, as the Premier said, we'll get back.

I can go through all departments: Education, Energy, Mines and Resources, Environment, Executive Council Office, Finance, Health and Social Services, and Highways and Public Works. In Highways and Public Works, a department-wide e-mail was sent out to the Deputy Minister and to all staff on August 14. Plans were to send information to departmental managers and supervisors to present at staff meetings. We're going to post the PIDWA snapshot document in common spaces and on the department Intranet site and provide information to all new employees as part of the on-boarding process. From the Public Service Commission, a blog post and e-mail was sent to all departments alerting them to the Public Service Commission's updated guideline document. There's a brochure about public interest disclosure provided to all new employees with on-boarding documents. A link to the brochure is also provided on the Public Service Commission's Intranet homepage.

I have also met with the Public Interest Disclosure Commissioner. I have spoken to her on several matters relating to the events of last year. I was one of the first ministers to do so on this act. I will continue to keep in touch with the Public Interest Disclosure Commissioner as is necessary.

#### **Question re: ATIPP request process**

**Mr. Hassard:** Mr. Speaker, according to documents that we have, on March 1, 2017, in response to a number of ATIPP requests to Finance, the Cabinet office was made aware of sections of the ATIPP act that could be used to disregard and close the requests. Can the Premier tell us: Did anyone in the Liberal Cabinet office ever give direction on what sections should or should not be used in processing an ATIPP request?

**Hon. Mr. Silver:** Mr. Speaker, I hate to disappoint the members opposite, but until I actually see this e-mail that they keep on referencing, I am not going to make comments on it on the floor of the Legislative Assembly.

**Mr. Hassard:** Mr. Speaker, that was a pretty specific question, so it's kind of obvious that maybe the Premier is not sure what is going on in his offices.

Another question for the Premier — a very straightforward question — is: Has a member of the Liberal political offices ever used their personal e-mail to contact anyone to ask if they were the one who submitted a request, Mr. Speaker?

**Hon. Mr. Silver:** Mr. Speaker, it's interesting that the members opposite now have an interest in the ATIPP act, seeing as they were the ones who gutted it and we are the ones who are now putting those measures back into the ATIPP act. The contents therein are extremely important. Accountability is really important to this government. Openness and transparency are as well.

Again, until I see the contents of this particular e-mail that all of these questions are based upon, it is very hard for me to answer these questions. I will let them know again that no policy has changed from when they were in government to when we are in government as far as how the political office works in regard to the ATIPP act, other than, of course, those measures that were gutted from the act by the members opposite.

**Mr. Hassard:** Mr. Speaker, again we see plenty of deflection coming from the Premier. Maybe one thing the Premier should think about is if the practice has maybe changed.

Mr. Speaker, I will ask again: Has a member of the Liberal political offices ever used their personal e-mail to contact anyone to ask if they were the one who submitted an ATIPP request? It's very straightforward.

**Hon. Mr. Silver:** Again, I'm not going to comment on this particular e-mail and the contents therein or the questions that have been derived from this e-mail. I will take a look at it. I would offer to the members opposite that I do have an open-door policy. If there was a concern that the member opposite had with a particular e-mail, he was more than welcome to come in and discuss it. We would have gotten to the bottom of it then, but I guess we could also sit here and answer one question today from the Yukon Party.

#### **Question re: ATIPP request process**

**Mr. Cathers:** Mr. Speaker, in the documents we have acquired, we see a very disturbing trend with respect to requests for documents from the Premier's office. We see extremely high and inflated estimates for the costs associated with collecting information that the public is entitled to. For example, we asked for copies of letters that the Premier received over a three-month period. That is a fairly simple request that can be responded to quickly. When we asked for the information, the response back was that it would cost \$14,000 and take 439 hours. To put that into perspective, it would be the equivalent of hiring one full-time government employee to work 59 business days just to collect a bunch of incoming letters that should only take about 30 minutes to collect.

Can the Premier tell us if the direction to give this inflated cost came during one of the conversations that his senior political staff had with officials about ATIPP requests?

**Hon. Mr. Silver:** Mr. Speaker, I can commiserate a bit with the members opposite, as I have spent time in opposition and I also have asked for wide swaths of information without being very specific, and I have received back from the ATIPP office that it was going to cost a lot of money.

I want to thank the ATIPP office for the time that I spent in opposition when they would work with me to make sure that the specific questions were met with considerations in the way that I applied for that information to really minimize the amount of cost to the Third Party, which I was in at that time.

So again, no policy has changed. The accusations are quite interesting. I wonder if the member opposite would make those same accusations outside of the Legislative Assembly. If so, then we will deal with those at that time. But right now, it just is not something I'm going to do — to talk about some particular hot e-mail that the members opposite have that I haven't seen. With their track record for misrepresenting the facts, I really would rather read this e-mail before I actually make any comments on it or its contents.

**Mr. Cathers:** Unfortunately, this is another time where the Premier has been caught. This is a very serious matter. What we see in response to this is that, when whistle-blowers are in the public service, we hear the Liberals respond by sending in the plumbers. When we as the Official Opposition ask questions that the Premier doesn't like, he threatens to sue us.

With respect to this ATIPP request, we see the government spend a lot of time trying to figure out how to deny or deter us from asking it. We see that the government even sought a legal opinion about the request, presumably to see if they could ignore it.

Mr. Speaker, did anyone in the political offices give direction with respect to handling this ATIPP request?

**Hon. Mr. Silver:** You know, it's interesting that the whole narrative of the Yukon Party is now based upon three pieces of paper. They had all summer to collect information from Yukoners, and they are now ambulance chasing. An interesting tack — how the mighty have fallen, Mr. Speaker.

Again, these accusations that are in the Legislative Assembly are astonishing. I will answer the question about an e-mail once I read that e-mail, but again it's a new — I keep on saying this every day. It is another new low for the Yukon Party. But again, I will read the e-mail and I will get back to the members opposite.

**Mr. Cathers:** This is a serious matter. The Premier can dodge and weave all he wants, but as we've discussed here today, the two most senior political staff in the Premier's office have been providing both input and approval to the departments on how to interpret the legislation on how to process ATIPP requests. We now see that staff in the Premier's office were closely monitoring and tracking ATIPP requests, contrary to what the Minister of Highways and Public Works told the House this week. We also know that the Premier's senior staff were having closed-door meetings with officials about these requests.

The new ATIPP legislation gives expanded ministerial powers. So if Yukoners see the Liberals conducting political interference under the current legislation, then how can they have any faith that, under the new legislation — which provides even more powers to the minister — the Premier and his Liberal government won't interfere any further?

**Hon. Mr. Silver:** The speculation is astounding. As the member opposite preaches to the camera over here, I will direct my answers to the Speaker of the Legislative Assembly. Again, this is just indicative of the style of politics that the Yukon Party is using. If they wanted a real conversation on this, they know exactly where my office is. They also know the background of these two individuals about whom they are making these allegations. It will be interesting for me to read that e-mail and to respond to the Yukon Party on these sweeping allegations here.

### Question re: Procurement Advisory Panel recommendations

**Mr. Kent:** During the 2016 election campaign, the Liberals announced that they would implement the recommendations of the Procurement Advisory Panel by 2018. In a news release issued this past spring, the Liberals announced that the recommendations had already been adopted. One of the Yukon government actions was to propose updates to the contracting and procurement directive, including to the definition of a "Yukon business". Can the Minister of Highways and Public Works tell us the updated definition of a "Yukon business"?

**Hon. Mr. Mostyn:** I appreciate the question to talk about procurement. I am very happy to talk about that subject this afternoon.

We have standard clauses now in our value-driven procurements that give points for First Nation participation and northern experience and knowledge. Since June 1, 2017, we have tendered 157 value-driven procurements with these mandatory clauses. I say this, Mr. Speaker, because we have been working very hard on this file, and I have every confidence that, by the time 2018 comes to a close, we will have a lot more to say about the Procurement Advisory Panel and the execution that we have made on this file.

There are so many changes that the department has made on procurement. We are investing in ongoing skill development with more than 100 employees enrolled in a professional procurement certification program. We have partnered with the Organizational Development branch to create a procurement training framework for our staff to ensure procurement is conducted by staff with appropriate expertise. We have spoken in this House on numerous occasions about the five-year capital plan that we have put into place — how we got contracts out the door earlier in the season so that our companies can actually plan their season a lot better. There is much more to say, so I am more than happy to talk about this in the supplementary questions.

**Mr. Kent:** I was hoping that the minister would have given us an updated definition of a "Yukon business", which is what the question that I asked was about.

Another recommendation was to review the bid challenge process. Can the minister tell us what changes were made to the bid challenge process this past spring to meet this action?

**Hon. Mr. Mostyn:** I want to tell the House this afternoon that we continue to meet regularly with local businesses and industry associations on this file, because the

input of our business community and of Yukoners is important to improving this process. It is a very technical and very legal field that is constantly evolving. One of the things that I did when I first came into office is to review the Procurement Advisory Panel report and to start to encourage the department to start to execute on the recommendations made by that report. The Premier has tasked me with executing and actually making good on those recommendations by the end of this year, and I fully intend to do so.

**Mr. Kent:** It would appear from the minister's responses this afternoon that the news release that they issued this past spring announcing that the recommendations had already been adopted contained incorrect information. We know that this minister has some challenges with news releases. You just have to ask the good folks at NATA about that with respect to the *Public Airports Act*.

Can the minister confirm for us if, in fact, this news release that they issued in the spring was incorrect and that the recommendations of the Procurement Advisory Panel have not already been adopted?

**Hon. Mr. Mostyn:** I am saying right now, Mr. Speaker, that by the end of 2018, the Procurement Advisory Panel's recommendations that we committed to implementing within the first two years of our mandate will be implemented.

The problem is — and the members opposite don't seem to understand this — that even implementing the full recommendations of the Procurement Advisory Panel is not going to totally fix procurement. They started this process. They came up with the recommendations. The recommendations are a great starting point, but there is so much more to be done. We are working diligently to make sure that our procurement processes are modern and reflect today's business environment and the economy.

We have the \$1-million exceptions. I have spoken about this before — the 10 \$1-million exceptions. We are the first jurisdiction in the country to implement that. That was a tool that the Yukon government had in its belt for years that was never used. This government actually took that and put criteria around it and actually started to use it, unlike any other government. As I said, we are the first government in the country to do so.

We have created a procurement business committee that is made up of industry representatives. It met three times over the summer. It met again in October. There are all sorts of things that we are doing to improve procurement. I am very proud of the work of the department.

#### **Question re: Species at risk legislation**

**Ms. White:** In every Sitting since 2011, I have raised the question about species at risk and Yukon's commitment to implementing its own legislation.

The federal government's *Species at Risk Act* passed in 1998. It has been 20 years, Mr. Speaker, and there is concern that we are no closer to our own legislation. We know that there have been multiple drafts of this legislation completed for government to consider — but so far, no action. The

Yukon government committed to implementing species at risk legislation. We expect protections that reflect Yukon's unique interests and biodiversity.

Mr. Speaker, are Yukoners any closer to seeing our own species at risk legislation?

**Hon. Ms. Frost:** I can advise the Members of the Legislative Assembly and Yukoners that the Department of Environment is looking very diligently at the pressures that we are seeing across the Yukon with respect to biodiversity and species at risk. We are looking at a strategic approach, and we are working with our partners — the Yukon Fish and Wildlife Management Board and First Nations — to assess the protocols going forward. We will be happy to have a discussion as this process evolves. I look forward to responding to the next question.

**Ms. White:** This summer, media reported on the declining numbers of the Finlayson caribou and hunting restrictions put on them. Within a span of eight years, there was a decline of more than 1,000 Finlayson caribou. That's a lot of caribou when the herd number is just over 2,000.

Yukoners wonder if this meets the criteria of a species at risk, but we don't know, Mr. Speaker, because we have no legislation or regulations to tell us. In a 2017 federal government document entitled *Recovery Strategy for the Woodland Caribou*, Yukon received a failing grade on reporting due to our failure to research and monitor our own caribou populations.

When asked about this last year, the minister spoke of meetings with federal and provincial counterparts but had no answer then.

Mr. Speaker, it's a year later and I will ask again: What has this government's response to this federal report been, and how will the government fulfill its legal obligation to protect boreal caribou without our own species at risk legislation?

**Hon. Ms. Frost:** I would like to thank the member opposite for the great question. When we speak about protected areas and protected strategies, we talk about the species at risk legislation. We know that we have pressures on the Finlayson caribou. We have other pressures. We are taking measures that are necessary with our partners to address habitat. Obviously, it has come out in the federal government's report. We are working with Minister McKenna, we are working with our First Nation partners, and we will continue to assess and review the pressures that we are seeing in the Yukon and come out at the end of that with a strategy specific to the Yukon.

**Ms. White:** Do you know what I think would be great? Yukon-made species at risk legislation or an act. Yukoners take pride in our wilderness and the biodiversity of our home. Yukoners had hoped to see legislation that would protect that. Yukoners know that there are plants and wildlife that need protecting now and into the future. The latest information from the department identifies species at risk, those threatened and those of special concern, but, Mr. Speaker, we have been waiting and it has been 20 years — and no species at risk legislation in Yukon.

When will this minister bring forward legislation that protects Yukon's vulnerable species now and into the future?

**Hon. Ms. Frost:** Noted — 20 years is a long time. In 24 months, we have taken some strategic approaches with respect to habitat protection and protection of specific areas in the Yukon with respect to boreal caribou. We have other pressures that we are seeing right now. We are doing our due diligence by working with our partners — the Yukon Fish and Wildlife Management Board, the renewable resource councils and our First Nation partners — to address and assess each individual respective traditional area as we look at water strategies, at wetland strategies, at the implementation of the Peel plan, at elements to protect the habitat for the boreal caribou — making adjustments as required under the federal species at risk legislation.

We will continue to do that — and most definitely agree that we need to look very specifically at a species at risk process in the Yukon. I can commit that those are things that we are doing, and we will be happy to have further discussions about that process as we evolve.

**Speaker:** The time for Question Period has now elapsed.

### Notice of government private members' business

**Hon. Ms. McPhee:** Pursuant to Standing Order 14.2(7), I would like to identify the items standing in the name of the government private members to be called on Wednesday, November 7, 2018. They are Motion No. 329, standing in the name of the Member for Mayo-Tatchun and the Member for Porter Creek Centre, and Motion No. 339, standing in the name of the Member for Porter Creek Centre.

**Speaker:** Just a clarification to the Government House Leader with respect to the first motion that has been identified to be called tomorrow — could the Government House Leader please clarify in whose name that motion is standing?

**Hon. Ms. McPhee:** In the name of the Member for Mayo-Tatchun.

**Mr. Kent:** If you could just kindly repeat for us the motion numbers and the members, just so we have them. There was just a little bit of a stumble there, I think.

**Speaker:** What I have now is: Pursuant to Standing Order 14.2(7), the items standing in the name of government private members to be called on Wednesday, November 7, 2018, are as follows: Motion No. 329, standing in the name of the Member for Mayo-Tatchun, and Motion No. 339, standing in the name of the Member for Porter Creek Centre.

We will now proceed to Orders of the Day.

## ORDERS OF THE DAY

### GOVERNMENT BILLS

#### Bill No. 25: *Act to Amend the Legislative Assembly Act (2018)* — Second Reading

**Clerk:** Second reading, Bill No. 25, standing in the name of the Hon. Ms. McPhee.

**Hon. Ms. McPhee:** Mr. Speaker, I move that Bill No. 25, entitled *Act to Amend the Legislative Assembly Act (2018)*, be now read a second time.

**Speaker:** It has been moved by the Government House Leader that Bill No. 25, entitled *Act to Amend the Legislative Assembly Act (2018)*, be now read a second time.

**Hon. Ms. McPhee:** Mr. Speaker, it is my pleasure to introduce Bill No. 25, *Act to Amend the Legislative Assembly Act (2018)*, for the Legislative Assembly's consideration.

Pursuant to section 54 of the *Legislative Assembly Act*: "The Members' Services Board of a new Legislative Assembly shall, following the Board's appointment, decide whether the salaries and benefits of members should be reviewed and, if it is decided that a review should take place, the Board must establish a mandate for that review and make the appointment of a person or persons to conduct the review not later than six months after the polling day of the past general election."

Mr. Speaker, section 54 was added to the *Legislative Assembly Act* pursuant to a recommendation made to the Yukon Legislative Assembly by the MLAs Salaries and Benefits Commission in October of 2007. The Members' Services Board of the 33<sup>rd</sup> Yukon Legislative Assembly, following the 2011 general election, decided that a review at that time was not necessary.

The Members' Services Board of the 34<sup>th</sup> Yukon Legislative Assembly, following the 2016 general election, decided at a meeting that the salaries and benefits of Members of the Yukon Legislative Assembly should be reviewed, having not been done for some 10 years. The board subsequently established a mandate for the review, as required by the section I've noted and read into the record, and appointed a consultant to conduct the review and provide an independent report to the board on the results of that review. I think it is important to note that this process, by virtue of it being directed by the Members' Services Board, is one that is neutral. It is a non-partisan approach, Mr. Speaker. The contractors in other occasions and in this one are individuals who have a great understanding of the Legislature and its business and respect for and by the Members' Services Board. I think that is also important, and I will speak in a few moments about the report itself.

Mr. Speaker, statements were made in the Yukon Legislative Assembly during its 2017 Fall Sitting that, unfortunately, were allegations and misinformation that the review was somehow commissioned by the government for its own MLAs and ministers. That is noted in Hansard on November 23, 2017. This allegation could lead to the misimpression that the review was ordered by and subject to the direction of Cabinet or of the government caucus. Mr. Speaker, as you know as the Chair of the Members' Services Board, this not, in fact, the case. Pursuant to the legislative authority that is provided in section 54 of the *Legislative Assembly Act*, it is, in fact, the Members' Services Board of the Legislative Assembly that must first turn its mind to decide to review these issues regarding salaries and benefits

for MLAs, then establish a mandate, set up how the review should be conducted and appoint a consultant to conduct that — three decisions which were taken in this case by the Members' Services Board. I think it is important to note that factor, because this is, as I expect to hear during our conversation and debate in this House, a matter that must be understood by the public.

The mandate that was established for the review by the Members' Services Board set out the following subject matters. I will just stop here for a second to note that, of course, the deliberations of the Members' Services Board are confidential, and I don't expect that anyone will breach those confidences in their submissions on this particular bill, but the decisions ultimately of the Members' Services Board are not necessarily confidential — the deliberations and the discussions, of course, are. It is important to note that, in addition to the openness and accountability — and to add to that in relation to this particular matter — the consultant's report was made public, not only to the Members of the Legislative Assembly, who have every right to see the details with respect to the recommendations made, but in fact, in an unprecedented move, to the public itself. That report lives on the Legislative Assembly website. I am not breaching or even considering breaching any of the terms that bind the Members' Services Board in relating the subject matter and the content that has been made public in this particular report — again, this was a decision that was made by the Members' Services Board itself. I will make further reference to that in a moment.

The subject matters that were set out were: the indemnities and expense allowances of members of the Legislative Assembly; the salaries of the Speaker, the Deputy Speaker, Cabinet ministers, the Premier, the Leader of the Official Opposition and the Leader of the Third Party; the pension plan of members of the Legislative Assembly; and the severance allowances and reimbursement of expenses. Those were the topics in the mandate of this review. The Members' Services Board recognized that, when establishing the mandate, the review of the tax-free expense allowance was required and led the review, in particular, in 2017 — the one that brings us to this day — on the basis of amendments that were being made to the federal *Income Tax Act* that needed to be addressed.

Those amendments take effect January 1, 2019, and will, without amendments to the act that have been presented to this Legislative Assembly, result in a significant reduction of salary for individual MLAs — all MLAs — in this Legislative Assembly as a result of removing a non-accountable, non-taxable expense allowance, which has been availed by the federal government in the past.

It has been and was considered in the past by the federal government to be a legitimate form of partial payment for members of provincial and territorial legislative assemblies. Yukon is one of only three jurisdictions that continues to have such an expense allowance in place, and therefore, this issue must be addressed. That is how the amendments to the *Legislative Assembly Act* have been brought to the floor of this

House. That tax issue, on behalf of the federal government, will affect all of the jurisdictions in Canada.

The Members' Services Board also recognized that a consequence of addressing the issue of the tax-free expense allowance was likely to be a significant increase in MLAs' pensionable income and an increased cost in financing the liabilities of that pension plan. The presentation of the amendments here in Bill No. 25 is designed to deal with that as well.

The consultant communicated with all the caucuses of the Legislative Assembly, informing them that the consultant would be willing to meet with them if so desired. In those communications, the consultant provided the mandate as well as data, information, background information, details on office-holder salaries and pension plans, et cetera and details for review that would be taken into account by the consultant doing the review. There was also included in that information a short history of the Yukon MLA pension plan. There was also a brief statement of the methodology that the consultant would be using, having the professional credentials to carry out this particular review.

I suppose it's worth noting — and it says so in the report — that the only caucus that wanted to have a meeting with the individual conducting the review was the Third Party, and they did so. I can also note that a response from the government caucus was that the members of that caucus might be making individual contact with the consultant, not necessarily as a government caucus. Individuals had that opportunity as well.

One meeting subsequently took place with a member of the government caucus, and a representative of the Official Opposition informed the consultant that the caucus had reviewed the information provided and had determined that it would not want a meeting.

The methodological practice of comparing the pay and benefits of Yukon MLAs with the pay and benefits in place in other jurisdictions led to the need for a consultation with personnel from Clerk's Tables across Canada, as reported by the consultant. We would certainly like to thank all of those individuals who helped in the preparation of not only this report and the recommendations, but their generous and informative responses were very helpful, and their assistance provided extremely helpful information as the issue was considered by not only the consultant, but later by the Members' Services Board.

Mr. Speaker, I am really pleased to be able to speak to a set of amendments that affect all members of this House. We are often speaking about matters that will affect the lives of Yukoners, and I obviously have great pride and responsibility for the pieces of legislation that are brought before this House for us to debate and bring forward — in particular, the personal effect of all of these amendments on the members and our colleagues here in the Legislative Assembly of the Yukon. It is an important opportunity for us to discuss them.

The *Legislative Assembly Act* requires, as I have noted, that the Members' Services Board of a new Assembly decide whether or not to review these types of salaries and benefits

issues with respect to the Legislative Assembly. As I noted, the Members' Services Board in this case has decided to do so — as it had not been done. The last review, I should note, was in 2007. That was some 10 years ago.

Mr. Speaker, I don't need to tell you, but it is important that Yukoners know and are reminded that the Members' Services Board includes members from all parties of this particular Legislative Assembly — members from the government, from the Official Opposition and from the Third Party. They come together as the Members' Services Board to discuss and decide issues that deal with the Legislative Assembly and other practical matters that deal with and affect the Members of the Legislative Assembly and all MLAs.

In addition to the contractor's terms of reference and respecting the issues that I noted earlier, the Members' Services Board had the assistance of officials with the Legislative Assembly Office. I would like to take the opportunity on behalf of us all to thank, not only the contractor who did the review considered by the Members' Services Board, but all of the officials for their hard work and advice.

Mr. Speaker, the contractor produced a 54-page report with recommendations — some six detailed in number. I would like to turn to the issues that the Members' Services Board considered as part of the review in a bit more detail in their consideration of the MLA salaries.

A key issue, as I noted briefly, in initiating the review was changes to the federal *Income Tax Act* scheduled to come into effect on January 1, 2019. The effect of these changes is to end the tax-exempt status and expense allowance of Yukon MLAs that they currently receive and have for many years. The impact of the federal changes, without taking any action proposed in this bill, would result in MLAs in this House experiencing a net decrease in their basic pay beginning next January. By my calculation, that would reduce MLAs salaries, without any action being taken, between \$4,000 and \$5,000 per person on an annual basis. The result of the amendments before the House increases the nominal amount of the expense allowance to account for the fact that it would no longer be tax exempt. So adjustments have been made, and that's the proposal before this House.

The second issue — also of primary concern — relates to the severance payments for MLAs who have either chosen not to run again or who were not successful in their re-election bid. The original intent of amendments passed by this House in 2007 was that members would have to serve more than one term in order to be entitled to a severance payment with respect to their indemnity. This would be 50 percent of their indemnity and salary. However, the wording in the current provisions in the act has given rise to situations, not once, but twice, where retiring or non-returning members have received a severance payment of 50 percent of their salary — an increase from the intended 25 percent of their salary — because of a single term that exceeded five years. This was, in fact, the case in both 2011 and 2016. Just to be clear, Mr. Speaker, what would have been 25 percent of someone's salary granted as severance on one particular day — by a few

days' extension of the term past the five-year mark — was increased from 25 percent to 50 percent, and it is simply not acceptable.

I submit to all of my colleagues that the amendments that we have here in this act will improve on that system. To avoid this situation in the future, the amendments are introduced here and with them a new formula for determining severance pay for departing members. The new formula is based on each completed year of service up to a maximum of 12 years rather than specific thresholds that drastically increase a severance payment. The new formula reflects the approach that is taken in most other Canadian jurisdictions. It is designed to result in lower and more fair severance payments that are not affected by political decisions regarding the timing of elections.

One of the final issues relates to the salary amounts for what are referred to as office-holders — or in other words, the Premier, ministers, the Leader of the Official Opposition, the Leader of the Third Party, the Speaker and the Deputy Speaker. In consideration of this issue, the Members' Services Board agreed on the principle that would see the salary amounts for office-holders be approximately 25 percent lower than the Canadian average for these positions.

I think it is important to note here, as I go forward with the individual numbers and review them — and I am sure we will hear from our colleagues opposite as well — that, regardless of the numbers we are speaking about, Yukon MLAs and office-holders in this territory will still receive, even with the passing of this bill, a salary that is 25 percent below the Canadian average for office-holders in other jurisdictions.

In applying this principle, it was recognized that the salaries for ministers and for the Leader of the Official Opposition were already at approximately this level; so their salaries in this bill and in the submissions that are being made here today remain unchanged.

For others — the Premier, the Leader of the Third Party, the Speaker and the Deputy Speaker — this bill contains modest salary increases. Under the provision of the bill before the House, these would take effect in April 2019. The increases maintain these salaries at a level of pay that fairly rewards office-holders for their service and responsibilities — that is, Mr. Speaker, if you think fair payment in the Yukon Territory is 25 percent of the national average for all Canadian legislatures.

At the same time, these changes proposed to keep salaries for Yukon office-holders at the lowest in the country with the exception of the Deputy Speaker, who will be approximately between third and fourth, I understand, in the average of the population of deputy speakers in Canada. These provisions respect the principle that I spoke about a moment ago, that the salaries of Yukon office-holders will be 25 percent below the Canadian average for the same positions elsewhere in Canada.

Finally, Mr. Speaker, I would like to note that the figures in the bill before the Assembly reflect legislated consumer price index adjustments that have occurred since 2007 when the matter of MLA pay was last considered in this House.

I would like to take a moment to speak about the financial impact of the bill. The proposed changes to MLA pay and salaries for office-holders will cost just under \$104,000 annually, but the vast majority of that consists of about \$85,000 for the grossed-up expense allowances for MLAs that address the loss of the tax exempt status for all of the members of this House. With the salary increase for office-holders — and we have heard a lot about raising the Premier's salary — I think it is important to note, and Yukoners should know, that the salary increases suggested here in this bill for all office-holders amount to an annual total of \$18,500. More specifically — and to be clear about these annual increases — they are suggested here to be: an increase for the Premier of \$2,940; an increase for the Leader of the Third Party of \$2,860; an increase for the Speaker of \$9,000; and an increase for the Deputy Speaker of \$3,680. Remember, these are the only salary increases for these positions since 2007. The amendments before the House result from a review of the issue of MLA salaries and benefits undertaken by the Members' Services Board. They take a responsible, prudent, fair and measured approach to the issues identified in this review. As I have said, they address the fact that the tax exempt status for MLA expense allowances will end with changes to federal income taxes that take effect in January 2019, which, if it were not adjusted by this bill — as I think I have noted earlier — would result in a reduction of each MLA's salary of approximately \$4,500.

These changes also create a new formula for severance payments that is linked to completed years of service, thereby avoiding higher severance payments based on an election date decision if a single term exceeds five years — a note again, Mr. Speaker, that an election date decision is made by the governing party.

This bill provides for modest increases for certain office-holders, the effect of which is the salaries for all office-holders — the Premier, the minister, Leader of the Official Opposition, Leader of the Third Party, the Speaker and the Deputy Speaker — are still at about 25 percent below the national average.

I have a few more comments with respect to the financial impact. If the current provisions in the act dealing with severance payments were calculated, they could cost as much as \$273,000 more than what is proposed under the new severance formula that is laid out in this bill.

As hon. members are aware, the Members' Services Board decided to deal with pension reform at a later date, and I note that here because it is one of the enumerated topics. The recommendations and costing to reform a pension plan for MLAs were based on combining the indemnity and the expense allowance — the recommendations made. The Members' Services Board deviated from the report's recommendation on that point and decided not to combine the indemnity and expense allowance for the purposes of calculated pension and severance. Those are critical details. As a result, the numbers cited in the consultant's report, which again, as I said, is available publicly, no longer represent the cost-savings arising from this bill. As I've said, the decisions

of the Members' Services Board represent a prudent and responsible course of action.

What I've laid out already, I think, is an evidence-based attempt to come to a reasonable formula that works across the board. I appreciate that this is a complicated or difficult topic to discuss. As a matter of fact, a reporter asked me not that many weeks ago why Yukon MLAs and officer-holders should make 25 percent less than everybody else in Canada. That is certainly a difficult question to answer. I have my own view of that — I think all of us do. What I explained and answered to that reporter is that these are difficult issues. The responsibility for deciding these thorny issues rests on our shoulders. We should not shy away from that. It is one of the responsibilities that we have not only by virtue of legislation directing us to do such reviews if necessary, but to evaluate the reports that come back and make decisions, not only for the individuals who sit in this House now, but perhaps more importantly, for those who will come after us. I urge everyone to not necessarily speak in a political way about these changes. They are fair and balanced, and they took meaningful consideration to get here but will also affect those who come after us. Perhaps that is the most critical factor that we should recall.

We are thinking beyond this government, of course, and beyond the current parties and individuals who are here. It is an opportunity for us to properly consider the issues that have come before us and to bring forward a reasoned and fair bill for consideration. I look forward to the opportunity for us to discuss it here. The increases are modest, I know. I've heard, as everyone has heard here, that this bill may be characterized as raising the Premier's salary. I think we need to remember that it has adopted a principled approach of bringing the salaries of the individual members and position-holders in this Legislative Assembly into a formula that seems fair and equitable across the board.

It is still below — far below — the salaries of other individuals in this country. It is by far the lowest, but nonetheless we are not suggesting any higher increases than that.

What I also should note is that the independent contractor that reviewed this matter and presented the detailed report for consideration by the Members' Services Board and ultimately by the Members of the Legislative Assembly here in this House recommended much, much higher increases with respect to the salary and the details that have not come forward in this bill. By way of one example, the recommendation of the contractor was that, for many reasons — including equity across the country — the Premier's salary should be raised a total of \$25,000 annually. What this bill says is that increase should be \$2,900 annually. That is clearly a decision that was taken by the Members' Services Board based on the principle I have outlined for you and the details I have outlined for you here, Mr. Speaker.

I look forward to the careful consideration of this bill by my colleagues here in the Legislative Assembly. I anticipate their support on this difficult decision but one that we should not shy away from. It is our responsibility to think of those

who will come after us and to think of those decisions in the past that, at this point in my submission to the Legislative Assembly, need revision to come in line with a principled approach for such decisions.

**Mr. Cathers:** In speaking to this, I would note first of all that for the Government House Leader to pat herself and the government on the back for having the courage to make the decision to give the Premier a raise is really a pretty weak justification.

I will, of course, be careful in speaking to this bill because of the fact that I am the Official Opposition member on the Members' Services Board — not to actually compromise the Members' Services Board confidence, since I don't have the authority to do that on my own. But I would note for the public that the Yukon Party's position, whether in public or in committee rooms, has been consistent and will continue to be so on this matter.

I should also note, since the comments by the Government House Leader would lead the average listener to conclude otherwise, that the Members' Services Board decisions are often, but not always, made by consensus. I would suggest that the minister in future might want to note that MSB approved the changes rather than saying that MSB agreed to the changes.

I would note as well that the minister, whether intentionally or through lack of research, made a factually incorrect statement when she claimed that the decision to release this report by the contractor on MLA salaries and benefits was the first time that it had ever been made public. Again, that is factually not correct. On the Legislative Assembly's website, as we speak, the previous report from 2007 is posted there for anyone who wishes to see it.

Mr. Speaker, I would note that the Yukon Party has been consistent in our position regarding this legislation and the MLA pay review. With regards to the MLA pay review, we've been clear for months that it was not a priority for our caucus. We made that clear months ago, as well as the fact that we did not support increases to salaries occurring when the health care review, which we believe is aimed at cutting health care funding, is underway. At a time when government is telling departments, including Health and Social Services and Education, to find cuts, it is not appropriate for the government to table legislation giving the Premier a raise.

As you know, Mr. Speaker, it has been well-established in this House through the leaked memo that came out in early October that departments across the board, including Health and Social Services and Education, have been asked to find cuts by the Liberal Cabinet. We've been very clear about the fact that — at a time when the Liberal government is telling Yukoners they need to tighten their belts and look for cuts in departments, including Health and Social Services and Education — it's simply inappropriate for the Premier to give himself a raise. The Official Opposition will not be supporting any pay increases for elected officials and the Official Opposition will be voting against this legislation.

This is among a number of these other areas where we believe that, regardless of the justification provided by the Government House Leader, this is about leadership and the message that is sent by the current government to departments and to Yukoners; so justifying increases to your own pay at a time when you're making others do with less is not appropriate. It should also be noted that MLA pay, contrary to what the Government House Leader implied, has been indexed to inflation since the last report, so MLAs are not worse off than they were in 2007.

I should note that this Liberal government has found money to address the Premier's desire for a raise while doing other things that are not reflecting the priorities of Yukon citizens, including the delay of medical travel that occurred through the decision of this government to put that review off for a year.

We have seen, as well, the decision last year to flatline funding for the hospital at less than the rate of inflation. This year, the mere 2.5-percent increase provided to the Yukon Hospital Corporation at a time when they're facing unprecedented bed pressure and wait times for surgeries, including cataract surgery, is right around the level of the consumer price index level for this year. On a monthly basis this year, that has on some occasions been slightly lower than that 2.5 percent, but in October, the consumer price index for Whitehorse, when taken on an annualized basis, was 3.4 percent — higher than the rate at which the government has provided an increase to the hospital to meet the health care needs of Yukoners.

Again, to compare apples and oranges and try to justify this increase in pay based on a review of other jurisdictions does not reflect the fact that, at a simple time when the Liberal government is telling Yukoners to tighten their belts and look for cuts in departments, including Health and Social Services and Education, it's inappropriate to increase the salaries of the Premier or any Member of the Legislative Assembly.

With that, Mr. Speaker, I will conclude my remarks and emphasize again that the Yukon Party Official Opposition will be voting against this legislation.

**Ms. White:** Mr. Speaker, it should be no surprise that the Yukon NPD is opposed to Bill No. 25, *Act to Amend the Legislative Assembly Act (2018)*, as we have been clear since this issue became public last spring that we would not support reviewing the salaries of ministers and MLAs until the minimum wage is significantly increased. We asked the government to complete a review of the minimum wage in the very first full Sitting of this Legislative Assembly. The current review of minimum wage didn't come to fruition until the minister was forced to call one when Yukon dropped into the lower half of provinces and territories across the country when it comes to the minimum wage. We think it's really a shame that the minister chose to wait for the government formula to be fulfilled to call for a minimum-wage review as if the fact that people working full-time for minimum wage and living in poverty wasn't enough of a reason to call for a review beforehand.

This government has dragged its feet on increasing the minimum wage and yet managed to complete the minister and MLA pay review and act on it. This shows this government's priorities. Minimum-wage workers need a pay review much more than those of us in this Assembly. This government has said, "Think about the future." We are, and we will vote with minimum-wage workers in mind.

**Hon. Mr. Streicker:** Mr. Speaker, I thank the members opposite for their comments. I will start with the Member for Takhini-Kopper King and talk about minimum wage. I actually had hoped that we would have had a result from the Employment Standards Board by now; however, they wrote to me and asked for more time. When I spoke with them, it was really about having the opportunity to digest all of the information that they got from Yukoners from all sides of this debate, and I respect their request to extend that.

It is unfortunate about the timing, but the two things are using separate approaches. One is through the Members' Services Board — the one that we have before us today, Mr. Speaker. The other one is an independent board that is charged with reviewing our minimum wage. I look forward to that. I look forward to the day when we can have that discussion here in the Legislature.

Today I will talk about the other one. The issue that I have is that both the Official Opposition and the Third Party are going to focus in on the \$3,000 piece of this piece of legislation and not focus in on the other parts of this legislation, which have to do, for example, with changing the severance package. I wish there was a way that they could vote independently on different pieces, but they both stated here, just moments ago, that this is their principled approach that they will take.

What it would do is leave us in this place where we give out severance packages of \$100,000, which makes no sense to me. When I try to think about the situation, I think it is much more important to look at where the heart of the matter lies. The \$3,000, or a little under \$3,000, which would go to the position of the Premier — would be to get all of this House in alignment so that it is 25 percent under the national average. I am not sure if I heard the Minister of Justice say it, but my understanding of this is that this number is the lowest in Canada.

I also just want to say that anytime we have had discussions about this on our side of the House, it has not been about a partisan approach. It has been about trying to find a way to get this pay into a place that uses a formula so that it is not a divisive debate. I respect that everybody has their position on it. I am going to try to draw some attention to some evidence that I worked through to try to assess these rates.

Mr. Speaker, one of the things that I am going to talk about is travel expenses. Last week in this Legislature, the Official Opposition spoke several times about the travel rates. They talked about them and said that we are raising the travel rates, and therefore we are trying to get more money into our hands. I am going to discuss that vis-à-vis this bill. I looked

back at the travel rates. This year it is 62 cents a kilometre, and last year it was 60.5 cents a kilometre. I averaged out the numbers over the time that we have been here in office, and it came to 60.4 cents a kilometre. Then I went back to the previous term and the numbers that I got from the Legislative Assembly Office here, and I asked for the numbers for the travel rates and I averaged them out. It came to 60.6 cents a kilometre. It is no different virtually over time. It does go up and it does go down — I appreciate that.

The members opposite, when they talked about it, compared it to medical travel. Of course, one is a travel rate, and the medical travel is a travel subsidy. One of the things that the Minister of Health and Social Services has said in this House is that we have one of the highest rates of medical travel. It is not meant to pay all of the costs; it is meant to support our citizens.

My understanding is that the budget this year for that medical travel is over \$14 million. I have heard the minister say that this number was increased significantly. I will check with her, but I think the number was increased by \$2 million for medical travel. I will get that information.

When the Member for Lake Laberge stood up and spoke, he talked about — that we weren't increasing the budget to Health and Social Services enough. That was one of the criticisms. I took a look at past budgets; I looked back over time. What I see is that this year, the Health and Social Services budget has increased by over 10 percent — 10 percent, Mr. Speaker. That's the number that it has gone up.

I looked back and there was one year back there — and this goes over time, and it does go up. I think it is reasonable to expect the costs of Health and Social Services to go up. But I looked at the 2014 budget on Health and Social Services, which was \$307.8 million, but in the previous year, it was \$325.2 million. Actually, in the one year there, the party opposite decreased the budget to Health and Social Services by five percent — wow — so I am looking for this evidence to try to understand how these comparisons are drawn.

I will focus for a moment then on MLA travel, which is reported in an annual report. I grabbed that report and grabbed the reports for several years prior. I looked at it and said to myself: How were we doing as a government? — in this criticism. We have four rural members on this side of the Legislature, and they have four rural members on their side of the Legislature. I just took a look at the numbers. I asked myself the question: Who is collecting this mileage rate that is out there? It's not just all mileage, because there is a category that would be per diems. There is transportation. Under travel, there is transportation and per diems. The transportation portion is the 62 cents a kilometre, which we heard lots of criticism about last week.

I took a look at it and tried to ask myself: How much are the four rural members charging here, and how much are the four rural members opposite charging? They are more than double this side of the House — more than double. I thought maybe that is because it has to do with ministers, and ministers have to claim travel differently.

Then I looked back to when they were ministers on the other side, and then I compared it to this side of the House. I found that in 2012-13 they were 33 percent higher than the four members here, which includes several ministers. Things changed over time, so I looked forward. In 2013-14, they were 40-percent higher than we are charging. Then in the year 2014-15, they were 28 percent higher than the four members here have been this year, and in that year, Mr. Speaker, I noted that the cost for fuel was 62.5 cents — okay.

I am looking at this trying to understand what the evidence is — what does it say? Is it that the government on this side is charging too much and trying to reap some sort of benefit through these expenses which we are discussing as part of this bill? No, that is not what I see. I think it is important that we support our rural members of this Legislature, no matter which side they come from, to be able to travel here and to be able to travel back to their ridings. In fact, I saw today — it just struck me — one of the members opposite arriving from a restaurant with some food. I looked across, and I thought to myself, “Okay, that’s terrific, but that’s being paid for by us — by Yukoners.” It just struck me at that moment that I would be really happy if we reviewed them, but the way I want them reviewed is to try to think of them not as “this government”, but rather as “all members of this Legislature” and how we serve the territory.

In the bill that we have before us, the whole notion was that we should try to find a formula, that it should be modest, that it should be less than the rest of the country, that it should be balanced, that it should be fair for the positions that exist here and that we should get rid of these severance loopholes that led to extreme payouts — those are the ones that are of concern. I saw some sort of statistic — maybe I heard the Minister of Justice refer to it — on how many years of this pay it would take to make that difference for those severances. I just want to say that the criticism about it having to do with this Premier is misplaced. The criticism about it having to do with the members on this side of the Legislature is misplaced. The evidence doesn’t display that in any way. I would be happy to share the analysis that I did with the members opposite and to make that public and for us to take a look — again, my criticism is not that we pay for travel. The point that I am making is that the real costs lie here in how we make those claims, not in whether it is 62 cents or 60.5 cents.

I appreciate that the members opposite are taking a principled approach to what they believe is important around here. However, my perspective is that there is a misfocus on the rate of pay, and what we really should be looking at is where there are unfortunate costs being incurred, because the system is not evidence-based at this point.

**Speaker:** If the member now speaks, she will close debate.

Does any other member wish to be heard on second reading of Bill No. 25?

**Hon. Ms. McPhee:** I always hold great hope for the debates in this Legislative Assembly. I respect the process,

and I truly believe — or I wouldn’t be here — in our democratic process.

I am, again, unfortunately, disappointed that the submissions or debate brought to the floor of this House by the Member for Lake Laberge have deteriorated into personal insults and criticism of the Premier raising a salary simply. It’s certainly open to the members opposite to categorize things the way they would like to, but Yukoners are not paid any service when that is the case. That sort of misinformation precedes, Mr. Speaker. The pay change —

**Some Hon. Member:** (Inaudible)

#### Point of order

**Speaker:** Member for Lake Laberge, on a point of order.

**Mr. Cathers:** For the Government House Leader to just use the term “misinformation”, clearly directed toward me, appears to be in contravention of Standing Order 19(h), which is to accuse another member of uttering a deliberate falsehood. That term has been ruled out of order in the past because it is considered the same as accusing a member of knowingly misleading the House.

**Speaker:** Minister of Justice, on the point of order.

**Hon. Ms. McPhee:** Mr. Speaker, I didn’t say anything about a deliberate falsehood. What I was speaking about was the characterization of the information by the member opposite, and in my view, that was improperly done.

#### Speaker’s ruling

**Speaker:** In my recollection, I heard nothing with respect to an allegation of having uttered a deliberate falsehood. If I am mistaken, I will get back to the House.

As far as the general debate, I would suggest that the criticism — if it is deemed to be necessary in the debate — be with respect to government, government policies or opposition or opposition positions and to depersonalize the debate whenever possible. There is no point of order at this time.

**Hon. Ms. McPhee:** The pay change proposed for members of this Legislature, were made by the Members’ Services Board, an all-party committee of this house. If the opposition takes issue with my using of the word “approved” rather than “agreed to”, I have no trouble with that. I think “approved” and “agreed to” are the same thing, so I have no issue with that comment whatsoever.

Mr. Speaker, this is the same Members’ Services Board practice that was used. The requirement of the *Legislative Assembly Act* in section 54 to instigate this review is, as I’ve said, the same practice that was used by previous governments — last time, in 2007. The government of the day at that time, now the Official Opposition, certainly had no problems supporting pay increases at that time.

The MLA compensation review takes place after every election. To support the discussion with the Members’ Services Board, I have noted that a non-partisan report was commissioned to outline suggested options. That report suggested a substantial increase in salaries. This was

discussed and the decision was made to drastically reduce the suggested increases. That report, as I've noted, is online. I'm pleased to hear that I was wrong, and that the report from 2007 is online as well. I think that's great.

It is important to understand that when this process began, the Leader of the Official Opposition was already making 75 percent of what other opposition leaders make across Canada. Bill No. 25 simply brings the other two party leaders up to that same level. I think it is unfortunate and interesting to see that the Official Opposition will take the position that the other two leaders in this House deserve to have less salary. I don't know why there is that discrepancy and the time, in my view, is now to remedy that situation.

The increase that is presented in Bill No. 25 will bring the Premier and the Leader of the Third Party in line with the salary of the Leader of the Official Opposition and will put all leaders' salaries and, in fact, all MLA salaries at still 25 percent lower than all Canadian provinces and territories or the average of those. The salaries that are paid to Yukon office-holders, such as ministers, the Premier, the party leaders and the Speaker, are still the lowest in Canada by 25 percent below the national average.

The Official Opposition and the Third Party, by voting against Bill No. 25, will, in fact, be supporting a salary cut for each MLA in this Legislative Assembly of about \$4,500. They will also be supporting the idea that no change should happen to the severance pay process that has resulted, not once, but twice, in a situation that is untenable.

Yukoners will remember the decision by the previous government to delay the last election by about a week, until after a five-year mark of their mandate, and that resulted in a change that allowed members of the Yukon Party caucus at that time — and others, but the decision was made by the Yukon Party government at the time — resulted in those who did not get re-elected or decided not to seek re-election collecting severance pay that was double — from 25 percent of their salary to 50 percent of their salary. Failing to support this bill will leave that situation in place.

To put perspective on that, the severance pay that was paid out simply after the election in 2016 would take about 35 years of the proposed \$2,900-and-change increase to the Premier's salary here in this bill to be paid out all at one time in order to make the same value of what was paid out after 2016 — all for just one week extra of work. Mr. Speaker, I defy you and any of us to find Yukoners who think that is a fair expenditure of their money.

The changes that are contained in this legislation will cost just over \$100,000 a year. The lion's share — \$85,000 — of which will be distributed evenly among the members of this House to address the loss of an expense account allowance and result in a reduction of their salaries, if it is not sorted out, that are being imposed as changes to the federal *Income Tax Act* are made.

Mr. Speaker, I appreciate the opportunity to have laid out these facts for Yukoners so they might fully understand Bill No. 25 and why we have brought it to this House. It is not about a single person in this current Legislative Assembly. It

is about a principled decision going forward for those who will come after us. I appreciate the opportunity to speak to it.

**Speaker:** Are you prepared for the question?

**Some Hon. Members:** Division.

#### Division

**Speaker:** Division has been called.

#### Bells

**Speaker:** Mr. Clerk, please poll the House.

**Hon. Mr. Silver:** Agree.

**Hon. Ms. McPhee:** Agree.

**Hon. Mr. Pillai:** Agree.

**Hon. Ms. Dendys:** Agree.

**Hon. Ms. Frost:** Agree.

**Mr. Gallina:** Agree.

**Mr. Adel:** Agree.

**Hon. Mr. Mostyn:** Agree.

**Hon. Mr. Streicker:** Agree.

**Mr. Hutton:** Agree.

**Mr. Hassard:** Disagree.

**Mr. Kent:** Disagree.

**Ms. Van Bibber:** Disagree.

**Mr. Cathers:** Disagree.

**Ms. McLeod:** Disagree.

**Mr. Istchenko:** Disagree.

**Ms. Hanson:** Disagree.

**Ms. White:** Disagree.

**Clerk:** Mr. Speaker, the results are 10 yea, eight nay.

**Speaker:** The yeas have it. I declare the motion carried.

*Motion for second reading of Bill No. 25 agreed to*

**Hon. Ms. McPhee:** Mr. Speaker, I move that the Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

**Speaker:** It has been moved by the Government House Leader that the Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

*Motion agreed to*

*Speaker leaves the Chair*

#### COMMITTEE OF THE WHOLE

**Chair (Mr. Hutton):** Committee of the Whole will now come to order, please.

The matter before Committee of the Whole is continuing general debate on Bill No. 24, entitled *Access to Information and Protection of Privacy Act*.

Do members wish to take a brief recess?

**All Hon. Members:** Agreed.

**Chair:** Committee of the Whole will recess for 15 minutes.

*Recess*

**Chair:** Committee of the Whole will now come to order.

**Bill No. 24: Access to Information and Protection of Privacy Act — continued**

**Chair:** The matter before the Committee is continuing general debate on Bill No. 24, entitled *Access to Information and Protection of Privacy Act*.

Is there any further general debate on Bill No. 24?

Seeing none, we will proceed to clause-by-clause debate.

*On Clause 1*

*Clause 1 agreed to*

*On Clause 2*

*Clause 2 agreed to*

*On Clause 3*

*Clause 3 agreed to*

*On Clause 4*

*Clause 4 agreed to*

*On Clause 5*

*Clause 5 agreed to*

*On Clause 6*

*Amendment proposed*

**Mr. Hassard:** I move:

THAT Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, be amended in clause 6 at page 17 by inserting the following, and re-numbering the following paragraphs accordingly:

(e) to prohibit Cabinet, ministers, and employees appointed to a position pursuant to the *Cabinet and Caucus Employees Act* from interfering with the public's right to access information, the interpretation of this act, and providing direction regarding access-to-information requests.

**Chair:** The amendment is in order.

It has been moved by Mr. Hassard:

THAT Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, be amended in clause 6 at page 17 by inserting the following, and renumbering the following paragraphs accordingly:

(e) to prohibit Cabinet, ministers, and employees appointed to a position pursuant to the *Cabinet and Caucus Employees Act* from interfering with the public's right to access information, the interpretation of this act, and providing direction regarding access-to-information requests.

**Mr. Hassard:** I will be brief in speaking to the amendment. I think that we have been pretty clear in our support for the act, but I just felt that amending clause 6 in this way would just add a bit of clarity to the act and I think, at the end of the day, make an already strong act just that much stronger.

**Hon. Mr. Mostyn:** I thank the members opposite for striving to improve ATIPP. I am glad they have seen the light on this score. There has been a long history of the opposite being the case, and I am really glad to see them taking an interest in actually improving an ATIPP bill. That said, the

suggestion by the members opposite made through this amendment is really unnecessary in that the anonymity provisions in this bill are very clear. They are spelled out in section 45.

As well, the head is responsible for access requests here in the act, Mr. Chair, and that responsibility cannot be fettered or restricted in any way. The amendment that the member is suggesting is really not necessary, although I do appreciate the effort in bringing this forward.

**Ms. Hanson:** Mr. Chair, I find the structure of the proposed amendment to be inconsistent with the way the purposes of this act are set out. I haven't had the chance, other than the last minute or two, to look at this, but when I look at the purposes of the act, I want to read this act as: a positive purpose in terms of the protection of the privacy of individuals, and the negative part is by limiting and controlling how any information about them is collected, used and disclosed; positive by requiring public bodies to implement security measures to prevent a privacy breach; positive in ensuring that individuals have access to their personal information held by public bodies and reinforcing the right to request correction of it; and positive in the important requirement to make types of information openly accessible. I read the purposes of this legislation, (a) to (f), as being structured in a very positive way. I'm not sure where suddenly a prohibition fits in there. I would hope that as we go through the detailed legislation, we will see where the legislation actually acts to achieve the prohibition that the Leader of the Official Opposition has just articulated.

I guess all I am saying is that, although I understand the intent underlying the proposed amendment, I think it may be redundant, so I am not going to support it.

**Hon. Ms. McPhee:** Thank you for the comments from the other side. I didn't necessarily intend to speak to this amendment, but I think it's important to note — perhaps I am describing the puzzling situation before us in this proposed amendment much like the Leader of the Third Party noted — that Cabinet, which this is making reference to in the amendment, is not, in fact, a public body under the ATIPP act.

It is misleading in my view and perhaps a non-starter, because a request that would come through ATIPP for particular pieces of information or particular documents that would be with respect to a particular minister, of course, come through that department or are dealt with by that department.

Obviously the minister responsible for those needs to respond and needs to make available any records that they might have, and perhaps individuals who work in the Cabinet office might also be required, and properly so, to provide that information in order to respond to that. Having this paragraph added to the current language and requirements of the ATIPP act would, I think — despite the comments that it's to improve — probably make it far more complicated, because it is attempting, in my view, to add an additional public body or require activities on behalf of what is currently not an entity under ATIPP. It's simply going to be confusing for the public and not appropriate. The way that ATIPP is structured to work

is so that Yukoners can have access to information by virtue of their request.

I understand (e) — “to prohibit Cabinet, ministers, and employees appointed to the position pursuant to the *Cabinet and Caucus Employees Act* from interfering with the public’s right to access to information...” — it is assumed that this is somehow related to the questions from Question Period today. I have not seen the e-mail. I find this to be a very difficult amendment.

Let me just say that amendments on the floor of the House, I think, are always an opportunity for all of us to consider things that we may not have thought about before. Generally, with respect to the details of this particular amendment, I find it to be problematic, not only because it appears to be politically motivated in attempting to resolve a problem that is perceived by members of the opposition — and we will deal with that perception and the concern that they have. Adding a new paragraph to what has been a very carefully considered and studied piece of legislation that is now on the floor of this House, on the fly, is simply, in my view, not an appropriate activity and not something that will make this legislation better.

I also note that this is not something that the Information and Privacy Commissioner saw as an issue or as a problem, and the structure of the ATIPP act and the authority of the Information and Privacy Commissioner under that is clearly a place for some of these matters, allegations and otherwise to be dealt with if they are of concern to individuals.

**Chair:** Is there any further debate on the amendment? Are you prepared for the question on the amendment? Are you agreed?

**Some Hon. Members:** Agreed.

**Some Hon. Members:** Disagreed.

**Chair:** The nays have it. I declare the amendment defeated.

*Amendment to Clause 6 negatived*

**Chair:** Is there any further debate on clause 6?

*Clause 6 agreed to*

*On Clause 7*

*Clause 7 agreed to*

*On Clause 8*

*Clause 8 agreed to*

*On Clause 9*

*Clause 9 agreed to*

*On Clause 10*

*Clause 10 agreed to*

*On Clause 11*

**Ms. Hanson:** I just ask the minister to reflect again: Which of the recommendations from recommendation 2 of the Information and Privacy Commissioner are contained in clause 11 and which are not?

**Some Hon. Member:** (Inaudible)

**Ms. Hanson:** Her dots would have gone (a) to (h), and we have (a) to (e) here.

**Hon. Mr. Mostyn:** I have been informed that 2(a), 10(4)(a), 2(c) and 2(d) are all covered by clause 11.

*Clause 11 agreed to*

*On Clause 12*

**Ms. White:** In an effort to help my colleague get through this, pursuant to Standing Order 14.3, I request the unanimous consent of Committee of the Whole to deem clauses 12 through 26 of Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, read and agreed to.

### **Unanimous consent re deeming clauses 12 through 26 read and agreed to**

**Chair:** Ms. White has, pursuant to Standing Order 14.3, requested the unanimous consent of Committee of the Whole to deem clauses 12 through 26 of Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, read and agreed to.

Is there unanimous consent?

**All Hon. Members:** Agreed.

**Chair:** Unanimous consent has been granted.

*Clauses 12 through 26 deemed read and agreed to*  
*On Clause 27*

**Ms. Hanson:** Can the minister confirm whether or not section 27 achieves the purpose of the first recommendation from the Information and Privacy Commissioner, which was that consideration be given to amending part 3 of the old act to expand the authority of Yukon public bodies to collect and disclose personal information to facilitate innovation?

**Hon. Mr. Mostyn:** Yes, it does. There are also controls to protect the privacy of individuals: (1) we need Cabinet approval; (2) there has to be a privacy impact assessment; and (3) that privacy impact assessment must go to the commissioner.

*Clause 27 agreed to*

*On Clause 28*

**Ms. Hanson:** I just want to confirm with the minister that, as we debated at second reading with respect to clause 28, the notion that this is going to require regulation — section 28, as I recall. This is with respect to providing client-centred services and approving of a personal identity service. Are those are going to be prescribed in regulation?

**Hon. Mr. Mostyn:** That is correct.

*Clause 28 agreed to*

*On Clause 29*

**Ms. Hanson:** This is one area that the Information and Privacy Commissioner had focused on quite a bit in terms of data-linking activity and the importance of making sure that there is this overall structure to it. I am just asking the minister to confirm that the recommendation made by the commissioner is reflected in this provision — and if he could articulate how.

**Hon. Mr. Mostyn:** Yes, it does and — very similar to the last answer — there must be Cabinet approval. There must be a privacy impact assessment done, and that privacy impact assessment must go to the commissioner.

*Clause 29 agreed to*

*On Clause 30*

*Clause 30 agreed to*

*On Clause 31*

*Clause 31 agreed to*

*On Clause 32*

**Ms. Hanson:** Again, this is with respect to the second recommendation that the Information and Privacy Commissioner had raised around breach of privacy. First of all, she made a recommendation that there be a requirement that Yukon public bodies notify individuals about a breach of their privacy — theft, loss or unauthorized access. I am reading this again because this recommendation is much shorter than all of the language in clause 32 — all the way through to (11). I just want to confirm the key elements of what she was identifying here. A breach of their privacy — examples of theft, loss or unauthorized access, disclosure or disposition of personal information — and that the Yukon public body submit a report about the breach to the office of the Information and Privacy Commissioner for review and comment. Can the minister confirm that, among other things in the details of this section, this has been achieved?

**Hon. Mr. Mostyn:** The responsibility for an employee to report is actually contained in section 31 of the act. Once a privacy breach has been reported, section 32 kicks in. It requires the designated privacy officer to assess the privacy breach, and it then details a process to determine the significance of the risk of the information being released. If it is significant, they have to notify the individual and the commissioner.

**Ms. Hanson:** I just want to clarify the intention of section 33, because it speaks to the information management service. At one point, I was thinking that this may have been referencing recommendation 1 in terms of authorizing the creation of a service provider to be responsible for a centralized citizens' services, but when I read this, I am reading that — and I will ask the minister to correct me if I am wrong — section 33(1) basically allows one public body to provide another public body with personal information that may be held by that public body.

I guess what I am looking for is: Where is that streamlined, or where is the integration of that in terms of centralized citizens' services? It is just like one body to the other. It sounds rather ad hoc, so I am asking for a clarification on that.

**Chair:** Just to clarify — we didn't carry 32.

*Clause 32 agreed to*

*On Clause 33*

**Ms. Hanson:** I'm hoping that the minister got that.

**Hon. Mr. Mostyn:** I am going to get to the relevant sections that clause 33 addresses in a second, but I will say for the member opposite that section 28 is the identity citizens' services that were referred to.

Section 33 strictly allows one public body to manage the information of another, and it allows regulations to be put in place. Currently, it is not regulated.

This clause puts the regulations in place and puts some controls over the management of information within the public body.

*Clause 33 agreed to*

*On Clause 34*

*Clause 34 agreed to*

*On Clause 35*

**Ms. Hanson:** I am somewhat like a jack-in-the-box here because there are lots of sections.

Just a question with respect to the personal information correction request — is there a reason why there is a finite timeline to have this? Is it reasonable that the onus is placed on an individual to find out that there is incorrect personal information on government documents? Most of us wouldn't have a clue, but when it does come to light, you do want it corrected. When I read this, it basically gives you a 12-month window within which to do it, and I'm just wondering if that's a correct reading. What is the correct reading if that's not right? Lastly, why would there have to be a limit placed on the time frame within which one can identify and correct personal information?

**Hon. Mr. Mostyn:** There is no time limit on an individual making a submission to this for a correction of information, but section 22 does put an obligation on public bodies to ensure that the information they have is accurate and relevant. That is the section that does that. It puts an obligation on government to make sure its information is correct. Under this section, the 12-month period that I believe the member opposite is referring to is an obligation on a public body that identifies a mistake to send out corrections to any public body that was given that mistaken information in the previous year.

*Clause 35 agreed to*

*On Clause 36*

*Clause 36 agreed to*

*On Clause 37*

**Ms. Hanson:** This is a privacy complaint section that says: "An individual may, if they reasonably believe that a public body has collected, used or disclosed their personal information in contravention of this Part, make a complaint to the commissioner by filing the complaint in accordance with section 90." I have looked ahead at section 90, and I am just asking a straightforward question, because section 90 is quite long. Are there any time constraints with respect to when a person can make a privacy complaint?

**Hon. Mr. Mostyn:** I believe the Leader of the Third Party is asking if there is a time limit, and indeed there is. It is 30 days. However, the caveat on that is if that 30-day period passes and a complaint is made, the commissioner has the ability to still accept the complaint — to accept the time. There is no limit on that. It could be years.

*Clause 37 agreed to*

*On Clause 38*

**Ms. White:** Pursuant to Standing Order 14.3, I request the unanimous consent of Committee of the Whole to deem clauses 38 through 44 of Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, read and agreed to.

**Unanimous consent re deeming clauses 38 through 44 read and agreed to**

**Chair:** Ms. White has, pursuant to Standing Order 14.3, requested the unanimous consent of Committee of the Whole to deem clauses 38 through 44 of Bill No. 24, entitled *Access*

to *Information and Protection of Privacy Act*, read and agreed to. Is there unanimous consent?

**All Hon. Members:** Agreed.

**Chair:** Unanimous consent has been granted.

*Clauses 38 through 44 deemed read and agreed to*  
*On Clause 45*

**Ms. Hanson:** Clause 45 speaks to the applicant information not being disclosed. The general rule of the game, as I read it, in section 45 is that the access and privacy officer must not disclose to any other person the name of an applicant or whether the applicant is an individual or a corporation. However, in 45(2), it says — so that section is subject to the next section that says, “The access and privacy officer may disclose an applicant’s name to (a) a designated access officer for the responsive public body if (i) the access request is for the applicant’s personal information” — I get that — “(ii) the disclosure is necessary for the head of the responsive public body to respond...” If they consent, they can give it to the commissioner. If the commissioner has requested the disclosure of that information, are there any other circumstances that an applicant’s name or whether or not they are an individual corporation would be released under this legislation?

**Hon. Mr. Mostyn:** I don’t even have time to do up my button. The answer is no.

*Clause 45 agreed to*

*On Clause 46*

*Clause 46 agreed to*

*On Clause 47*

*Clause 47 agreed to*

*On Clause 48*

**Ms. Hanson:** Clause 48 deals with a refusal of access request. In this one, it talks about how “... the access and privacy officer may decide to refuse to process an access request if...” — and then there are a whole bunch of reasons: (a), (b)(i), (ii), (iii) — 48(1)(b)(iii) is the one that struck me. I would just ask for a clarification, Mr. Chair.

It says: “... based on the amount of information that could reasonably be identified as relevant to the access request, the amount of research, compilation and examination of information that would be required to be undertaken by the responsive public body would unreasonably interfere with the responsive public body’s operations.”

What constraints are placed on a public body to simply say, “I don’t want it; it’s too big, too much and we’re not doing it”? I’ve been around the public service for 30 years — in my previous life — and I can find instances where people may have said that, and you have to go back and say, “Well, actually, no.”

Is it by regulation, or what constrains the ability of a public body to say that it’s too big, too much, and we’re not doing it?

**Hon. Mr. Mostyn:** The member opposite raises a great point. I’m really glad she did, but we are going to get into interpretations here. We can talk about a request requiring a public body to review thousands of paper records to respond to a specific question that an applicant has — like for how

many X type of applicants were granted a medical waiver over the past five years. That type of thing may put a profound burden on the public body, and that’s open to interpretation.

The control that we have on that, which has been built into the act, is the next section, subsection (2), where it says that, before it is refused, the applicant who submitted the application request will be consulted and the head of the responsive public body must respond. In those two cases, if that doesn’t answer the applicant’s concerns, it can then go to the commissioner. A complaint can be filed with the commissioner, who would then review the whole thing. So there are controls in place on these interpretations.

*Clause 48 agreed to*

*On Clause 49*

**Ms. Hanson:** The minister referenced section 49, which is a complaint in respect of a refusal of access request. It says: “An applicant may, in respect of a decision to refuse to process their access request, make a complaint to the commissioner by filing the complaint in accordance with section 90.”

Can the minister confirm whether or not the commissioner has the ability under this act, I guess in accordance with section 90, to make a binding determination that the refusal be overturned?

**Hon. Mr. Mostyn:** I am going to refer back to the discussion that we had last week about this. With regard to the question posed by the Leader of the Third Party, no, the response is not binding in this case. It is only a recommendation, but as we noted the last few times that this has been before the House, including the Information and Privacy Commissioner’s appearance, there is a high degree of compliance. This is very rarely not followed.

*Clause 49 agreed to*

*On Clause 50*

*Clause 50 agreed to*

*On Clause 51*

*Clause 51 agreed to*

*On Clause 52*

*Clause 52 agreed to*

*On Clause 53*

*Clause 53 agreed to*

*On Clause 54*

**Ms. Hanson:** Clause 54 and the one following it raise a basic fundamental question in terms of access to information and freedom of information. It is a principle question that I am asking the minister. Here we talk in extensive detail about the determination of costs associated with an access to information request. I guess what I am looking for is the balance in how this is determined and how it is set out. Are we actually costing in this legislation the public service costs associated with a freedom of information or an access to information cost when those are already costs to government? We have public servants whose job it is to know where the information is, to manage the records, to keep it and to pull it when requested. What is the balance here in terms of ensuring that, effectively, citizens have a right to public information without having to pay on top of what they are already paying

as citizens through their tax system for that public information to be retained? As I said at the outset, it is a principle question.

I know that people will always go to the extreme examples of where somebody is asking for all of these outrageous kinds of requests. That is not the normal request of the normal citizen or the normal opposition party; it is a focused kind of thing. To send back redacted material or to say that it is too costly or that it costs — my personal bias, Mr. Chair, is that it should be the exception to the rule that we are asking the public and asking citizens to pay for public information. I am looking for what that exception is, or are we at different points of view in terms of what is public information?

**Hon. Mr. Mostyn:** I thank the member opposite for the question. This is actually a wonderful topic of conversation and it goes in so many different directions. This afternoon we have heard about exorbitant fees suggested for the collection of information. I have had that happen to me in a former life to dissuade me from asking for information. I think it might have been on restaurant inspections or something — I got a fee of thousands of dollars. We could say that was exorbitant. We could say that maybe the record-keeping within this institution of government was not up to snuff and so it took a lot of time to collect the records.

There are a number of things being done to improve things here. It is an investment in information technology, so that we have quicker recall and easier recall of documents that people are asking for — that helps. The second thing is to be proactively putting information before the public through the open data repository and other things. The goal should be that citizens of this territory should be able to get the information they require from government without putting through an access to information request. That is a principled underpinning of this legislation; it is to make more information available to our citizens and therefore not force them through this onerous task of actually asking for information from the government. They should be able to get it easily and quickly. The access and information request in and of itself should be the very last resort of a citizen of this territory. I think that the member opposite and I are probably very much in agreement on that score.

That is the open access provision that underpins this. There is also the access and privacy officer who will estimate the costs of fulfilling the request. That person, that individual, does not have any — they are a third party, so they are not the one collecting the information. They are unbiased. They will say, “To collect this information should cost this much.” It’s not like — there will be an estimate and that estimate will be provided to the individual making the request before they go ahead. If it’s too high, the access and privacy officer can work with that individual, in part, to hone their request — much like the Premier talked about earlier today — working with the ATIPP coordinators to make sure the requests are honed-in so that we actually get to the nut of the request and make it as efficient and easy for all involved.

The last thing is that there is an appeal process, so if the request is still too onerous for the individual, they can appeal to the access and privacy officer to waive the fees — those fees can be waived. I believe, in the last year, the amount of money collected under ATIPP from the citizens of the territory is about \$10,000. I don’t believe it is very much money. Really, fees are a crude way of allocating resources as well, so it helps people assess how valuable that information is, recognizing that, from where I come from, it is the public’s information. They have a right to it and we should make it available and as easy as possible.

**Ms. Hanson:** I would just ask the minister, then, based on what, in terms of costs? Minister X says, “I want this information.” He goes to the government system and the system is not charging Minister X for that cost. A citizen comes forward and says, “I want this information, XYZ”, and she’s being charged. I guess my question is, why? If it’s to serve internal to government, it’s not a charge, but if it’s to serve outside the government to the citizen, you are charging, because it’s the same public servant who is being asked to generate this information.

I guess I’m looking for the distinction between why those sources of information — which could be almost anything, when you look at the range of information and the kind of data that we gather as government agencies and departments and that we need to make use of as we’re making decisions — so we ask people to retain records, and we’ve gone — it’s in this legislation; it’s in the recommendations of the Information and Privacy Commissioner. That data includes everything from your cellphone calls right up to the Cabinet documents, ultimately. If you want it for the purposes of internal to government, we’re not charging it — it’s across the board — but if a citizen says, “I need that information; I want that information”, what is the basis for charging the citizen versus the government department or agency?

**Hon. Mr. Mostyn:** I thank the member opposite for this question and for the conversation this afternoon. It’s a good question. If a government department asks for information, the government department gets it for free, and then I come wandering around and say that I want that information, and government charges me for that information. That’s an assumption, however, and there may be no fee for that information if it’s readily available. The fee isn’t charged on every request, and it won’t be if that information has been requested before. The model that we’re looking at is that once an information and privacy request has been granted, that information is then provided and made available to everybody so that in subsequent requests it should be readily available and that should go for government departments, provided that information is supposed to be publicly available.

Having this service centralized and in the access and privacy officer’s domain where they’re going to start to collect a history of what has been charged for X document, a history of what documents have been provided and a history of what documents are available should ease and make this process less onerous, quicker, more efficient, less costly and more available.

I think that's what we're trying to get at, because this is the citizens' information. They should have access to it as readily as possible with the controls — the exceptions — under the privacy rules we're enacting in this legislation.

*Clause 54 agreed to*

**Chair:** Do members wish to take a brief recess?

**All Hon. Members:** Agreed.

**Chair:** Committee of the Whole will recess for 15 minutes.

*Recess*

**Chair:** Committee of the Whole will now come to order.

The matter before the Committee is continuing clause-by-clause debate on Bill No. 24, entitled *Access to Information and Protection of Privacy Act*.

*On Clause 55*

**Ms. Hanson:** We just had this conversation about our mutual notion that there should be minimal constraints on public accessing of public information. I believe that's a paraphrase of the minister. Now we're talking about a section here that talks about the applicant's decision to pay — so this is basically where they're talking about it. They're going to get a cost estimate in 55(1), and upon receiving the cost estimate for accessing their access request — because there's going to be a cost. They have to pay prescribed costs, so there are two parts to the question. The second part of this clause talks about a waiver, but I'll come to that in a minute. How are prescribed costs established?

**Hon. Mr. Mostyn:** The rates for the bill will be set through regulation. We're going to be moving to an hourly rate, not a page-based rate. I think currently it's hourly and pages. We're actually just going to go to an hourly rate; so there will be an hourly rate assessed on these for the information, and it will be set by regulation.

**Ms. Hanson:** Just to clarify, will that be the current minimum wage — \$11.32 an hour? Or what would be the prescribed rate? What's a fair rate? I mean, I'm not being totally sarcastic here, but I am in a sense, because prescribed for a person who's making that minimum wage — \$11.32 — it may seem a lot, but to most, it doesn't. But if it is the prescribed median wage of a Yukon public servant, that's a whole different number. So how will the prescribed rate be established?

**Hon. Mr. Mostyn:** I think it was clever to reference the minimum wage. I understand the sentiment — I understand the sarcasm, but I also understand the sentiment of the members opposite, because we are talking about citizens' information and we are talking about looking after — keeping in mind paying attention to those in our society who are less fortunate, who are not making as much money as others — wealthier citizens — and information should not be the domain of the wealthy — it should be the domain of everybody. So I appreciate the remark and the reminder.

I am not going to commit to a figure here today on the floor of the House, but I will say that the regulations will be

set after consideration of what the rates are in other jurisdictions and what makes sense. The current rate that is being charged per hour was set in 1995. It has not changed since then and it is \$25 an hour. If it were adjusted to inflation, it would be \$36 an hour. I am not suggesting that before the House today at all. I am mentioning it merely for informational purposes.

We will do research and set a rate that is appropriate and in line with some of the other jurisdictions that we will look at and what makes sense for the territory. That said, there is a waiver in this where people who don't make a lot of money can ask the access and privacy officer to waive the fees. At the same time, I believe that they will have more information available at their fingertips as well — keeping in mind that this process and access to information request, with all of the hoopla that goes along with it, will be a last resort. It should be the exception — the rare exception — rather than the rule. I hope that protects all of us and certainly those most in need in our society.

**Ms. Hanson:** Can the minister then confirm, with respect to 55(1)(b), that when developing the regulation, consideration of ability to pay will be embedded in that definition or in the determination of a waiver?

**Hon. Mr. Mostyn:** I don't want to provide a spoiler, but the waiver of prescribed costs is actually section 56, the next section, and there can be regulations setting that out in the next one, so that's really where those rules will be made.

**Ms. Hanson:** Still on 55? Okay, well, I'll hold off on that aspect on 56. Still, even with a waiver, 55(2) basically says that if you can afford to pay for the whole thing, you get it all, and if you can't afford to pay for it all, you get part of it. How does that achieve the purpose that the minister's articulating in terms of the right of the citizen to have access to public information?

**Hon. Mr. Mostyn:** The intent of subsection (2) is to allow an applicant to narrow their request. It provides flexibility — if the initial request was very broad and when the cost came in it was much higher than they thought, the applicant could narrow the request. That is enabled through subsection (2), and that is really where we are coming — that is the intent of subsection (2) — to provide the flexibility to allow an applicant to hone their request on the information that they really want.

**Ms. Hanson:** I don't want to be argumentative, but that is not the way that I read that. It says, "If an applicant agrees to pay the prescribed cost for processing only a portion of their access request..." — under the subparagraph above, the access request is considered to be only that portion of the applicant's original access request, and the remaining portion of the access request is, for the purposes of this act, considered to be abandoned.

It may sound nice to say that you have agreed to narrow it, but you had to abandon it because you couldn't afford it. Am I correct in understanding that is what is achieved by this?

**Hon. Mr. Mostyn:** The Third Party's diligence on this legislation is much appreciated.

It is certainly providing me a deeper understanding, and I hope I can recount some of this to you as well.

Subsection (2) is a choice on the part of the applicant. They have agreed to the request. It comes to this next stage and they have all this material and they say, “Whoa. I’m reconsidering my \$375. I only want this small part.” This allows them to take that smaller part, pay the \$35 and then it severs the rest of that request; otherwise, there would be some ambiguity about what happens to the rest of the information. It’s an operational piece. It’s a choice on the part of the applicant to do this once they have made their request, and it builds in that flexibility — as I said earlier — into the act to allow a requester to sever off a portion of the request, take that and then it allows the civil service to handle the rest of the request, which then goes into limbo. It gets turfed away.

**Ms. Hanson:** Is that going to be based on an informed assessment of what that whole package looked like before they have to abandon part of it?

**Hon. Mr. Mostyn:** Yes, I guess the short answer is that they will have more information on which to base their information. It’s called an access to information summary. It is a new provision in this bill. It identifies who has what information, where the information resides and how much it is going to cost to get that information into your hands.

The APO — the access and privacy officer — must give that summary to an applicant with the cost estimate. Then the applicant can then decide, based on that information as a summary, how much of this information they want. How much am I willing to pay? They can then make an informed decision.

Hopefully that will alleviate some of the concerns I have heard this afternoon whereby individuals have made an access request for \$375 and then got 150 pages of redacted material with nothing in it. Hopefully this type of summary might take care of those types of situations.

*Clause 55 agreed to*

*On Clause 56*

**Ms. Hanson:** I was excited at clause 55 when the minister said that there would be clarification in clause 56 about my question with respect to waivers, but sadly I don’t see it.

My question was: Is there a consideration of ability to pay with respect to applying for a waiver? I looked at “Decision” but it doesn’t tell me. It just says that they can. They may decide to provide a notice to the applicant, but it doesn’t say what the criteria are. My question still remains: Will consideration of ability to pay be set out, and presumably in regulation, with respect to determining the waiver or not?

**Hon. Mr. Mostyn:** I can inform the Leader of the Third Party, following her incisive question, that, yes, the ability to develop criteria is there through regulation.

So that’s the mechanism by which such criteria will be decided and that will be up to Cabinet to decide whether, for example, an income test is to be considered in these applications. That will be laid out in a regulation.

*Clause 56 agreed to*

*On Clause 57*

**Ms. White:** Pursuant to Standing Order 14.3, I request the unanimous consent of Committee of the Whole to deem clauses 57 through 68 of Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, read and agreed to.

#### **Unanimous consent re deeming clauses 57 through 68 read and agreed to**

**Chair:** Ms. White has, pursuant to Standing Order 14.3, requested the unanimous consent of Committee of the Whole to deem clauses 57 through 68 of Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, read and agreed to. Is there unanimous consent?

**All Hon. Members:** Agreed.

**Chair:** Unanimous consent has been granted.

*Clauses 57 through 68 deemed read and agreed to  
On Clause 69*

**Ms. White:** Pursuant to Standing Order 14.3, I request the unanimous consent of Committee of the Whole to deem clauses 69 through 73 of Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, read and agreed to.

#### **Unanimous consent re deeming clauses 69 through 73 read and agreed to**

**Chair:** Ms. White has, pursuant to Standing Order 14.3, requested the unanimous consent of Committee of the Whole to deem clauses 69 through 73 of Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, read and agreed to.

Is there unanimous consent?

**All Hon. Members:** Agreed.

**Chair:** Unanimous consent has been granted.

*Clauses 69 through 73 deemed read and agreed to  
On Clause 74*

**Mr. Cathers:** Looking at this section, section 74 applies under a section of the act entitled “Division 9: Information to which access may be denied”. In looking further down in that section, section 74, it refers to a number of broad types of information where the head of a responsive public body may deny an applicant access to information held by the responsive public body, and then it lists a handful of exceptions to that.

In looking at that, I have some questions regarding what exactly that definition applies to. Section 74(1)(a) refers to advice or recommendations prepared by or for a public body or a minister. That broad circumstance under which the head of a responsible public body could deny information seems to be, in fact, a significant broadening of the types of information that the government may refuse to release.

Could the minister elaborate on exactly what, in the view of the act as advised by his legal advisors, is captured in this section and what is not?

**Hon. Mr. Mostyn:** I welcome the Member for Lake Laberge into the discussion this afternoon. I thank him for the question and for the clarity and the scrutiny he is providing to this piece of legislation.

I can report that section 74 that he has flagged as “broad” is a replica of section 16.1(a) of our existing legislation, one

that I am sure he is well familiar with, but with clearer language. Every jurisdiction in the country has exactly this provision, Mr. Chair, and because this provision is universal across the country and so well known it is easily interpreted by the Information and Privacy Commissioner.

**Mr. Cathers:** While I do appreciate some of the information provided by the minister, it does appear to me to be a change from what is in place. It also seems that, under the broad area — if you are looking at the entirety of this section of the act, since it allows for a rather broad area — “... that being advice or recommendations prepared by or for a public body or a minister...” — and it says in the section immediately above that — and I quote: “... the head of a responsive public body may deny an applicant access to information held by the responsive public body if the head determines that disclosure of the information would reveal...” and then there is this notable section, subsection (a): “... advice or recommendations prepared by or for a public body or a minister...” Now that seems to cover a very wide tent of matters. It would seem, from reading it, that it would potentially allow for information that is provided to ministers at a bilateral meeting with officials or a weekly meeting — if the minister would prefer the term — or status meetings, as some departments call them, and that any of that information, if it fell into the category of “advice” or “recommendations”, would potentially be something that the head could refuse to disclose unless it meant one of the more rather limited series of criteria captured under 74(2), which list a number of areas of information that the minister can’t refuse to disclose.

In specifying under section 74(2)(i), the minister makes reference that — if the minister has made a decision about “a plan or proposal to establish a new program or change an existing program if the plan or proposal has been approved or rejected by the...” minister — it seems to leave open a rather wide gamut of areas about which the minister could refuse to release information. For example, if the Minister of Highways and Public Works were considering potential upgrades to the Dawson City runway and the broader area and had not yet made a decision on it, it would seem that it would allow the minister to refuse to release that information to the public. It would seem, in the case of the RCMP auxiliary constables who have been patiently waiting for two years under this government watch for the minister to make a decision about whether to support the three tiers of policing in this area, that if they were to ATIPP — or if we were to ATIPP — to find out the status of that proposal, it would allow the minister to refuse to release it if a decision hadn’t been made. I would just ask the minister to provide some clarity in this area, because it does appear that the definition is being broadened of the areas where the government can invoke the curtain of secrecy.

**Hon. Mr. Mostyn:** This is a great discussion. I welcome it with the Member for Lake Laberge and members of the Official Opposition on this point — I truly do.

I mentioned in my earlier answer that this is a well-known clause — its wording. It is familiar to information and privacy commissioners across the country, and so we have a very good idea of how it will be interpreted. The tradition

throughout the country has been a narrow interpretation, so we are fairly confident with that. It is also subject to a long list of criteria in subsection (2).

I want to take this moment to also talk about some other changes in this piece of legislation that the member opposite may not be entirely familiar with, and that is the change of the release of information from 15 years to 10 years. We are now going to roll back the amount of time the government can hold information in secrecy from 15 years to 10 years. This is a very dramatic rollback of our clutching of information within this government. If information held by this government is older than 10 years, it will go out to the public. I think that is also a great improvement and provides a lot more information to the public.

There is also another provision in this act I will draw the member opposite’s attention to, and that is the public interest override that will apply to this section. If there is proven public interest in having this information that the member opposite wants — be it information about airports or about RCMP auxiliaries or any number of things — if it was in the public interest, we could release that information. A demonstrated need would certainly compel me to release such information, and hopefully it will do the same for others in this House if they ever have the chance to release information again.

Lastly, Mr. Chair, I would like to draw the members opposite’s attention and remind them about an act — a notorious clause in our old access to information and protection of privacy law — clause 16(1)(b), which was deemed to be overly broad. It was brought in by a former government. It said, “... consultations or deliberations involving officers or employees of a public body or a Minister relating to the making of government decisions or the formulation of government policy...” That clause was widely seen by many information and privacy commissioners to be overly broad and a vast overreach of authority. I am happy to say that this troubling clause is now repealed in this new piece of legislation which should — I would imagine — give the members opposite great comfort that more information will be made available now that this draconian clause is struck from the record.

**Mr. Cathers:** In looking at the legislation and in pulling up the existing access to information act, I thought the minister told me that section 74 was based on the existing section 61 of the *Access to Information and Protection of Privacy Act*.

Could he clarify what section that was?

**Hon. Mr. Mostyn:** I would be happy to. It’s section 16(1).

**Mr. Cathers:** I will look at that section the minister made reference to. I had heard him incorrectly and I thank him for clarifying that.

I would just at this point like to start with noting that, since this does appear to us to be a broadening of what is covered in this area, the minister made reference to briefing binders. Briefing binders would appear to fall into the area of advice or recommendations prepared for a public body or a

minister, because briefing binders are an accommodation of factual information and advice to ministers on what to say.

Will the minister assure us here in this House that section 74 of the act will not allow the government to refuse to release ministerial briefing binders?

**Hon. Mr. Mostyn:** Once again, I thank the member opposite for the question and I respect the question. I realize that access to information is not a speciality of the member opposite, so I understand his inquisitiveness on this file. I'm more than happy to provide him with the information he's requesting.

The current act that we have before us right now scopes briefing books completely out of right of access. There is no right of access in any way, shape or form to briefing books — gone, not there, can't get it, so don't even ask. The act doesn't even apply to briefing books in its current state. We're fixing that with this new piece of legislation. This section 74 is a discretionary section, and whether or not it applies to a briefing book — again, briefing books are in. You can get access to briefing books; you have access to them — it's not like they're banned. If this section applies to briefing books, it's done on a case-by-case analysis. So if it fits the criteria for exceptions and if information within a briefing book fits the criteria, it can be rejected.

However, there are a bunch of clauses under section 2 that say this must still be included, so even if you don't want to give all the information, you must provide in these briefing books all of this information — facts, for example, factual information in a record which is new must be disclosed. You cannot hold it back. It is a right of access that is currently not even considered in our existing legislation. That legislation was passed in 2012, I believe, absolutely denying the public's right of access to briefing books. In 2018, that right is restored. The public right to briefing books is now in the act; factual information must be disclosed, and all government information held has to be revealed within 10 years instead of 15. We're carving five years off the holdout that we have had in this territory for a long time.

If there was any sort of discretionary holdback of information determined on a case-by-case basis on briefing books, which is currently absolutely verboten — held in secrecy by government because of the rules that were imposed on the territory in 2012. You cannot holus-bolus hold back information in a briefing book anymore. You have a right to the information in it, and that right is protected through this provision that we are talking about — 74(1) — which, as I said earlier, is language that is common throughout the nation in access to information legislation and is well known, well interpreted and well understood by the Information and Privacy Commissioner. I hope that helps the member opposite understand this piece of legislation.

**Mr. Cathers:** Actually, I understand this legislation, and what we just heard the minister say is that the curtain of secrecy effectively — I am paraphrasing what he said, but he did confirm that it will apply to ministerial briefing books, in his words, “on a case-by-case basis”. Effectively, the contents of ministerial briefing books are primarily two things: One is

factual information, which is normally available through ATIPP requests outside of the briefing books because it is held within departments; and the second and more notable piece is the advice and recommendations on what the minister may wish to say or may wish to do. By completely providing the ability for the Liberal government to claw back and keep all of that advice and recommendations secret in not just ministerial briefing books, but, in fact, broadening it to apply to other matters, it does seem in this area that, on the one hand, they have made the headline announcement that they are making ministerial briefing books available and isn't that wonderful, and on the other hand, they have given themselves the ability with section 74 to completely undo all of that. Again, I do have to remind anyone listening and reading that the minister himself just said that, “on a case-by-case basis”, they would, in fact, be able to prevent the release of briefing books and the information contained therein.

Now, the minister made a comparison to section 16(1) of the existing act, and it also applies to 16(2), but in comparing 16(1) and 16(2), in fact, there are some significant differences between those sections. Those include the ones that I have highlighted, and it also includes the fact that, under the current act, a public body must not refuse to release an environmental impact statement or similar information.

Again, in the list that is contained under section 74(2), there does not appear to be that same restriction. It appears that it would allow the government to refuse to release an environmental impact statement. Now, if that is in another section of the bill, of course, I have not have not had the opportunity to go through the legislation as many times with the assistance of officials as the minister. So if that information is provided otherwise, I could stand to be corrected.

Another statement by the minister appears to refer to the power of the minister, which is substantially added to in this legislation. The minister referred to a certain argument that he said would compel him to release that information. He said, and I believe I'm quoting him correctly here: “... hopefully it will do the same for others in this House...” So we're now relying on whether ministers are being convinced of the argument to release the information. That's certainly what it appears to be.

With regard to section 74(1), it does appear to be broadening the ability of the government to bring down the curtain of secrecy to a wide range of advice and recommendations that are prepared not just for a minister, but for public bodies. It appears that it would allow the government to redact all of the advice contained in briefing books prepared for a legislative Sitting and effectively render this meaningless, so I've prepared a constructive amendment that I hope will help the government in this area. It would confine the ability of the government to refuse to release Cabinet information of this type.

*Amendment proposed*

**Mr. Cathers:** Mr. Chair, I am pleased to move:

THAT Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, be amended in clause 74 at paragraph (1)(a) at page 84 by:

- (1) deleting all words after the word “prepared”; and
- (2) replacing them with the words “for Cabinet; or”.

**Chair:** The amendment has been reviewed by Mr. Clerk and it is found to be procedurally in order.

It has been moved by Mr. Cathers that Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, be amended in clause 74 at paragraph (1)(a) at page 84 by:

- (1) deleting all words after the word “prepared”; and
- (2) replacing them with the words “for Cabinet; or”.

**Mr. Cathers:** Again, I think that this amendment strengthens the legislation. I listed a few of the examples of where this clause differs from the existing section of the act that is currently in force. I noted that, unchecked, this section provides a very broad ability for the head of a public body — which under the new act is, in fact, the minister — to be able to choose not to release information in this area, because advice or recommendations prepared by or for a public body or a minister is a broad area, and the list underneath it — of the matters that they are not allowed to refuse to release — is somewhat limited. It does become a situation where we are seeing that it appears the government is giving themselves the ability to undo everything that they announced with their headline announcement of releasing ministerial briefing books. They are able to redact all of the advice and recommendations from those briefing books before releasing them. In fact, it appears to broaden their ability to refuse to release advice and recommendations to cover materials that a minister may receive in the course of a weekly or bi-weekly meeting with department staff and to cover matters contained within the public body.

Therefore, we believe that this proposal, which narrows that ability to refuse to release advice and recommendations to cover recommendations prepared for Cabinet, would respect the principle of Cabinet confidentiality without giving each and every minister the broad ability to interpret the act as they choose, in what the Minister of Highways and Public Works characterized as a situation where, while he would release the information — I quote: “... hopefully it will do the same for others in this House...” Relying on how “hopefully” ministers would be convinced to release information is not a sound basis for legislation.

We have already seen concerning reports about a possible involvement of a senior political staff member of the Premier’s office in choices about whether or not to release information, and for the minister himself to make reference to hoping that others would be convinced to release information is concerning, so we’re providing a constructive amendment. If the government supports it, it will allow them to continue to have advice and recommendations prepared for Cabinet kept confidential, but there would not be this broadening of the curtain of secrecy that this section of the act, section 74, appears to provide.

**Hon. Mr. Mostyn:** While I admire the effort and — I will say it again — the deathbed conversion of the members opposite to information and privacy law, the past practice has not given me much confidence in their ability to bring forward such amendments or changes to legislation.

I have spoken about this for a little bit this afternoon and had a robust conversation with the Member for Lake Laberge on this fact. I will repeat for the member opposite’s benefit that the language contained in this bill is well honed and well known across the country.

The members opposite might want a boutique piece of legislation — something that they thought up that they thought was a good idea — but we have been down that road before. We were down that road in 2012 and had one of the most regressive pieces of ATIPP legislation in the country. I am referring, of course, to their amendments to the act in 2012 that did all sorts of things, including striking briefing books, putting them well beyond the reach of anybody in the territory.

I know this because I actually had asked for them, as my old institution had asked for the briefing books, and it was denied.

I know how hard it was to get the briefing books after that 2012 legislation, and I think that was a step back for the territory.

Here we are again in 2018. Now we are moving forward with a new piece of legislation that I think will prove itself to be much more beneficial to the people of the territory. It will put more information in their hands and will improve the way government conducts itself.

We are going to respectfully — I do not support this amendment that the member opposite has put forward.

Seeing the time, Mr. Chair, I move that you report progress.

**Chair:** It has been moved by Mr. Mostyn that the Chair report progress.

*Motion agreed to*

*Debate on the amendment to Clause 74 of Bill No. 24 accordingly adjourned*

**Hon. Ms. McPhee:** I move that the Speaker do now resume the Chair.

**Chair:** It has been moved by Ms. McPhee that the Speaker do now resume the Chair.

*Motion agreed to*

*Speaker resumes the Chair*

**Speaker:** May the House have a report from the Chair of Committee of the Whole?

### Chair’s report

**Mr. Hutton:** Mr. Speaker, Committee of the Whole has considered Bill No. 24, entitled *Access to Information and Protection of Privacy Act*, and directed me to report progress.

**Speaker:** You have heard the report from the Chair of Committee of the Whole.

Are you agreed?

**Some Hon. Members:** Agreed.

**Speaker:** I declare the report carried.

**Hon. Ms. McPhee:** Mr. Speaker, I move that the House do now adjourn.

**Speaker:** It has been moved by the Government House Leader that the House do now adjourn.

*Motion agreed to*

**Speaker:** This House now stands adjourned until 1:00 p.m. tomorrow.

*The House adjourned at 5:24 p.m.*

**The following sessional paper was tabled November 6, 2018:**

34-2-82

*Standing Committee on Appointments to Major Government Boards and Committees Eleventh Report* (November 6, 2018) (Adel)

**The following legislative return was tabled November 6, 2018:**

34-2-166

Response to matter outstanding from discussion with Mr. Hassard related to general debate on Bill No. 2017, *Second Appropriation Act, 2018-19* — fleet vehicle purchases (Mostyn)

**The following written question was tabled November 6, 2018:**

Written Question No. 31

Re: Robert Campbell Highway traffic study (McLeod)