



Third Session - Thirty-Fifth Legislature  
of the  
**Legislative Assembly of Manitoba**

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**STANDING COMMITTEE**

on

**PRIVILEGES AND ELECTIONS**

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39-40 Elizabeth II

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*Chairperson  
Mrs. Shirley Rønder  
Constituency of St. Vital*



**VOL. XLI No. 3 - 7 p.m., WEDNESDAY, JUNE 24, 1992**



**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Fifth Legislature**

Members, Constituencies and Political Affiliation

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NAME	CONSTITUENCY	PARTY
ALCOCK, Reg	Osborne	Liberal
ASHTON, Steve	Thompson	NDP
BARRETT, Becky	Wellington	NDP
CARSTAIRS, Sharon	River Heights	Liberal
CERILLI, Marianne	Radisson	NDP
CHEEMA, Gulzar	The Maples	Liberal
CHOMIAK, Dave	Kildonan	NDP
CUMMINGS, Glen, Hon.	Ste. Rose	PC
DACQUAY, Louise	Seine River	PC
DERKACH, Leonard, Hon.	Roblin-Russell	PC
DEWAR, Gregory	Selkirk	NDP
DOER, Gary	Concordia	NDP
DOWNEY, James, Hon.	Arthur-Virden	PC
DRIEDGER, Albert, Hon.	Steinbach	PC
DUCHARME, Gerry, Hon.	Riel	PC
EDWARDS, Paul	St. James	Liberal
ENNS, Harry, Hon.	Lakeside	PC
ERNST, Jim, Hon.	Charleswood	PC
EVANS, Clif	Interlake	NDP
EVANS, Leonard S.	Brandon East	NDP
FILMON, Gary, Hon.	Tuxedo	PC
FINDLAY, Glen, Hon.	Springfield	PC
FRIESEN, Jean	Wolseley	NDP
GAUDRY, Neil	St. Boniface	Liberal
GILLESHAMMER, Harold, Hon.	Minnedosa	PC
HARPER, Elijah	Rupertsland	NDP
HELWER, Edward R.	Gimli	PC
HICKES, George	Point Douglas	NDP
LAMOUREUX, Kevin	Inkster	Liberal
LATHLIN, Oscar	The Pas	NDP
LAURENDEAU, Marcel	St. Norbert	PC
MALOWAY, Jim	Elmwood	NDP
MANNES, Clayton, Hon.	Morris	PC
MARTINDALE, Doug	Burrows	NDP
McALPINE, Gerry	Sturgeon Creek	PC
McCRAE, James, Hon.	Brandon West	PC
McINTOSH, Linda, Hon.	Assiniboia	PC
MITCHELSON, Bonnie, Hon.	River East	PC
NEUFELD, Harold	Rossmere	PC
ORCHARD, Donald, Hon.	Pembina	PC
PENNER, Jack	Emerson	PC
PLOHMAN, John	Dauphin	NDP
PRAZNIK, Darren, Hon.	Lac du Bonnet	PC
REID, Daryl	Transcona	NDP
REIMER, Jack	Niakwa	PC
RENDER, Shirley	St. Vital	PC
ROCAN, Denis, Hon.	Gladstone	PC
ROSE, Bob	Turtle Mountain	PC
SANTOS, Conrad	Broadway	NDP
STEFANSON, Eric, Hon.	Kirkfield Park	PC
STORIE, Jerry	Flin Flon	NDP
SVEINSON, Ben	La Verendrye	PC
VODREY, Rosemary, Hon.	Fort Garry	PC
WASYLYCIA-LEIS, Judy	St. Johns	NDP
WOWCHUK, Rosann	Swan River	NDP

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS**  
**Wednesday, June 24, 1992**

**TIME – 7 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mrs. Shirley Rønder (St. Vital)**

**ATTENDANCE - 11 – QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Cummings, Derkach, Manness

Messrs. Chomiak, Edwards, Evans (Brandon East), McAlpine, Neufeld, Mrs. Rønder, Messrs. Storie, Sveinson

**APPEARING:**

Gerry Irving, Assistant Deputy Minister, Labour Relations Division, Civil Service Commission

**MATTERS UNDER DISCUSSION:**

To consider the report and recommendations of the Judicial Compensation Committee

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\* (1910)

**Madam Chairperson:** Will the committee on Privileges and Elections please come to order. This evening the committee will resume consideration of the report and recommendations of the Judicial Compensation Committee.

When the committee last met, on June 16, 1992, a number of documents were distributed for the committee's consideration. These included: (1) an analysis of the Baizley report on judges' salaries; (2) Judges Pension Plan, with Options; (3) a letter from Judge Collerman, regarding provincial judges' Compensation Committee recommendations.

At that meeting there were discussions regarding the matter of security in and around the Legislative Building. Is it the will of the committee to discuss this matter?

**Hon. Clayton Manness (Minister of Finance):** No, I think we will put that off to a subsequent meeting. Is that agreed?

**Madam Chairperson:** Thank you, Mr. Manness. Agreed?

**Some Honourable Members:** Agreed.

**Madam Chairperson:** Agreed.

At the same meeting we had opening statements from the minister responsible, the honourable Mr. Manness, and from the official opposition critic, Mr. Chomiak, and from the second opposition critic, Mr. Edwards. Is it the will of the committee to have additional opening comments?

**Mr. Dave Chomiak (Kildonan):** To assist in the functioning of this committee, a paper has been distributed. I have some questions again, right off the bat, with respect to this. Perhaps we—I do not know if we should entertain questions, if the minister will entertain a couple of questions first, to clarify what is happening.

**Madam Chairperson:** Okay. Actually, my next question was going to be, to ask for some guidance as to how the committee wished to proceed.

**Mr. Manness:** Madam Chairperson, I will try not only to give some, I hope, very brief comments at the start, but also to address some of the questions of Mr. Chomiak.

As you say, Madam Chairperson, last meeting the government tabled background information, and some possible options on salaries and pensions, with the committee for its review and considerations. In all fairness, at that time, the government did not have a predisposition towards any of those options. Government indicated that it was open to reviewing other options. That was a serious request, an offer to members of the committee, particularly on the opposition sides, if they so wished, to bring forward options. We were prepared to cost them and consider them.

After the last meeting, comments of committee members were reviewed and further discussions held with the Minister of Justice (Mr. McCrae) and his officials. As a result of that review and discussions, the focus—and I will talk about the option that has just been tabled, Madam Chairperson—was shifted to pensions as compared to salaries. As we can remember that discussion, there seemed to be some greater concern with

there seemed to be some greater concern with pensions as flowing out of Baizley as vis-à-vis salaries.

Let me also say that government has, internally, again, reviewed this whole matter and has come up with a new option. That has been provided to members of the committee. It is, of course, open for discussion. It should be reiterated that all options being discussed—and I want to emphasize this, because it is very important—would only apply to judicial service accrued on and after the effective date. I do not know where the understanding is with respect to the judicial community, as to how Baizley would apply to them and whether or not there was retroactivity built in, but I want members of the committee to know that the option that I presented certainly would apply to service accrued on and after the effective date.

\* (1915)

As a result of the shift in the focus to pensions, we were prepared to put forward as the government—I think somewhere in the document that I handed out, the additional cost to government being upwards of \$70,000 or \$80,000 a year, as I recall, from option 3 as presented the other day. We are prepared to provide that greater level of input into pensions, but we then would, as an offset, suggest that the next salary increase would be deferred until April 1993, while the benefit accrual rate will be increased beyond the amount, as I said, identified in earlier options.

So, Madam Chairperson, I am prepared to certainly try to address any questions in and around these opening remarks, but I thought we should have something to start at and that is what I put before the committee tonight.

**Mr. Chomiak:** The minister has, to a limited extent, sort of canvassed an outline, a little bit of the history of this. I can indicate for our party that I am having a good deal of difficulty with the process on the basis that I am under the impression that under the legislation this committee is supposed to go back to the Legislature with a recommendation.

The last time we met, we established for the first time that the government was not accepting the recommendations of the Baizley Report. That was the first time that we actually determined that. We also determined that the judges' salaries had been increased between the meetings of this committee,

something that we were unaware of, which also did not fit in with Baizley.

The minister provided us with three options for a pension and, in just viewing the option that has now come forward as a government recommendation this evening, I do not, and the minister can correct me if I am wrong, think this option that is presented to us this evening actually fits in any of the three options that were left with us at the last occasion at which we met.

So I am faced and we are faced with the prospect of having to go back to our caucus, because I am not prepared to make a decision based on something I have not seen tonight.

We are faced with the prospect of having to go back to our caucus and review this matter. Having said that, I want to outline our frustration with the whole process. We had an independent committee set up by the government statutorily to make recommendations on an independent basis. The committee made recommendations. The government took no position on those recommendations.

The Deputy Minister tacitly, in the report, agreed with the recommendations but indicated at the time the government's economic position was such that he could not, at this time, I believe he said, the Deputy Minister of Finance said at this time that the government could not adhere to the increases, they should be deferred until significant improvement takes place in the economy of Manitoba. That is what the Deputy Minister said, who was the government's representative on that independent committee.

We had one meeting last year. The government took no position and there was no conclusion to that particular meeting. It was our attempt to find out what the government's position was. The last time we met, we found out that the salaries had been increased unbeknownst to us. We did determine, I will give the minister credit, he did indicate, at least we had some indication that the government was not accepting Baizley. At least we got to that point last meeting. Three options were presented which we looked at. Now there is another option in front of us.

\* (1920)

This whole process smacks of ad hockery, and I can indicate I am looking for the government recommendation. The government may make a

recommendation tonight and may move on it as it sees fit. We are not, on the basis of this ad hoc system, in a position to make any recommendations tonight. I can indicate that to the minister right off the bat. I do not know how the minister wants to deal with that, but I thought I would lay it out. We are not even dealing with the recommendation that was presented to us the last time, and this does not even deal with the whole issue of salary—although I appreciate the minister indicated there is, I presume, a salary increase coming in effect April '93, which again has not come to this committee. I do not see how we can possibly deal with it.

**Mr. Manness:** Madam Chairperson, I can understand the frustration, to a point, of the member. He feels, using his words, that some ad hoc system is being practised here. I can tell him that the new process to deal with of trying to move through uncharted waters, so to speak, with respect to not only process but how it is that we provide something to this committee in the first instance to have a starting point—I found it a little bit difficult myself, I acknowledge that.

I mean, this is a new process. I am not asking the NDP party through its representatives to buy in necessarily to a motion that I am going to want to move, but because, you know, I know the course of time that it has taken to bring us to this point, I do not know where else we start. I say that because—I do not care if you are changing the rules of the House, like we are doing in some other informal discussions or whether you are going to try and reach consensus in any other area—somebody has to take the lead in preparing a document and bringing it to a table. We sensed in government that was our responsibility.

We very clearly at the first formal meeting—well, Madam Chairperson, yes, this committee did meet just after the Baizley report and decided in its wisdom to defer the consideration of the Baizley report, and the member might want to be critical of the government for not coming back in a more timely fashion. I can tell the member that this just has not been an issue with the government over the last few weeks because we knew we were coming to the end of the session.

I can tell the member that we have been very much involved and trying to get our arms around this. Where ultimately it may lead—given the fact that public sector wages, once you make a move in one direction, of course, it has great impact

throughout the whole public service. So I can tell him, and I ask him to take my word for it, that we have been working very diligently in this area. I apologize on behalf of the government, and I take responsibility in part, for the fact that we have not had a chance to have this committee meet sooner and maybe have met several times to consider this particular option and/or the whole process.

So I understand his displeasure. I understand his frustration, and I suppose I even understand his unwillingness to come forward with a statement of support or rejection or anything because possibly he feels that the options that we are presenting do not go too far or go too far, the process is bad, and whatever his arguments may be. Nevertheless, Madam Chairperson, the government is wanting this committee at least to be presented with what we consider is a fair option under the circumstances from where we come, given our ability to pay. We would at least hope to draw some comment from the members opposite. We want to pass one of the options. The member asks, well, where does option 4 come, vis-a-vis options 1, 2, and 3 that were not discussed, were presented the other day.

\* (1925)

I would have to say, it is a blend more or less as between option 1 and option 3 as far as principle, but there is additional monies that are provided to make the pension side richer, to use a term. To off-balance that, we would then withhold the automatic salary increase that we had indicated may be coming forward in September '92 and hold it to April '93.

So, Madam Chairperson, I do not have an awful lot more to give the member than that. I am not going to push him like I did the other day. I asked him to take a position. I am not going to necessarily push him to do that today. He has indicated in his last statement that he will not provide a detailed response or take a position on the issue.

**Mr. Leonard Evans (Brandon East):** Madam Chairperson, one could ask a lot of questions and get into the detail of it. You know, why the formula provides for a 2.6 percent increase as opposed to the normal 2.0 percent for the general Civil Service, including senior civil servants such as deputy ministers and so on. Under the Civil Service plan, as I understand it, you earn 2.0 points a year, as opposed to this, which is much richer.

So there may be some rationale for that, and I am not sure whether the Canada Pension Plan is added onto this or not but, really, I guess the point I want to make is that as an experienced member of the Legislature here, I find the procedure somewhat unusual inasmuch as this is really an administrative matter. Normally when the government deals with various elements of administration in government, including the judges—the judges are provincial civil servants in the long run—this is a decision made by cabinet, in its wisdom.

I find it very unusual for the government to move into the legislative arena to somehow or other ask or want the legislative committee and then ultimately I guess the Legislature to make some decision or pass some judgment when there are infinite numbers of decisions that are made throughout the year by the government of the day which are of an administrative nature.

That is the normal procedure, and that is the accepted procedure. I think that that is perhaps the basis of my colleague's reluctance to make any further comment on this. So I would think as an administrator one would have to spend quite a bit of time on this and really delve into it in co-operation with the senior advisers.

That is the way it usually is. So I feel that I am at a disadvantage sitting here being presented with something, and it may be fair, it may not be. I am not passing judgment on it. So I really feel very neutral about the whole thing, just to express my surprise that this whole matter is being discussed in a legislative forum.

**Mr. Harold Neufeld (Rossmore):** As a matter of clarification, the 2.61 per year of service is before Canada Pension Plan, I take it. So the increase goes from 1.8 to 2.61, which is approximately 0.8, approximately an increase of 40 percent. Am I right?

**Mr. Manness:** Madam Chairperson, the member is right in two respects. It is before Canada Pension Plan, and it is roughly a 40 percent increase.

**Mr. Neufeld:** I do not take any objection to that. I think that judges do not sit long enough to build up a decent pension plan as if they were in the same type of plan as the civil servants are in, but I just wanted to get clarification on that. Does this mean that they will be retiring at age 65 though? That is the second question I have. Do they still have the option of going to 75?

**Mr. Manness:** Under the present laws, there is no compulsory retiring at any age.

\* (1930)

**An Honourable Member:** I thought it was 75.

**Mr. Manness:** Federally, the Supreme Court. Right now there is no legislative compulsion at any age of retirement.

**Mr. Edwards:** Mr. Chairperson, just some questions for clarification as well. The government cost in this preferred option which has come before us is listed as 15.5 percent. What is it now?

**Mr. Manness:** Madam Chairperson, it is 8.5 percent.

We should go shortly. Everybody is waiting.

**Mr. Edwards:** Madam Chairperson, if we are going to reconvene the committee meeting—

**Madam Chairperson:** A recorded vote is requested, so I would like to just suggest a recess?

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The committee took recess at 7:30 p.m.

#### After Recess

The committee resumed at 7:42 p.m.

**Madam Chairperson:** I would like to call this meeting back to order.

**Mr. Edwards:** Madam Chairperson, maybe I can get some procedural questions out of the way at this point. I do not have a copy of the act in front of me. My friend does. As I recall—now I have got it in front of me—there are some procedural requirements under the Provincial Court Act.

We have received the report. It has been referred to this committee under 11.1(5). We should report within 60 days or such time as the Legislative Assembly may direct. Now, I am not aware of the referral date. It may not have been more than 60 days ago.

I guess my first question is this: Has the Legislature given us any direction that we can go beyond the 60 days? I guess my second question is: If we do not decide this tonight, if we do not come to a conclusion, if the conversation that has gone on between the member for Kildonan (Mr. Chomiak) and the minister is taken to mean—which I am sensing that it is—that we should now go and study this fourth option, and the session, in fact, closes today, what then?

What would the minister propose we could do within the confines of the act in terms of coming to some conclusion on this? Would this committee then reconvene between now and when the next session started to bring a report forward at the beginning of the next session? Can the minister comment procedurally what options we have at this point?

**Mr. Manness:** Basically, all we can do as a committee is refer it back to the Legislature. I suppose without recommendation the Legislature could decide—the Assembly could decide what it wants to do with it and failing, doing nothing, I would think, in the context of the next few hours or days, the process by the legislation would begin again. There would be another Baizley-type committee struck.

**Mr. Edwards:** To that extent—and I am not purporting to have the answers particularly—I am interested in knowing the minister's view. Would we be able to have this committee meet sometime after the closing of this session to table its report at the commencement of the next session, or is that not possible? Is the minister saying that by commencing a new session we have to go back to square one and get a new report? Is that a necessary result of not dealing with it conclusively in this session?

**Mr. Manness:** Madam Chairperson, legislation 11.1(6) says: "Where the Legislative Assembly receives and votes on the report of a standing committee that is received under subsection (5),"—and the member read subsection (5)—"the government shall proceed to implement the report in accordance with the vote of the Legislative Assembly, and all Acts, regulations and administrative practices shall be deemed to be amended as necessary to implement the report."

The legislation does not lay out what would happen if no report is sent to the Assembly. It was always conceived that we would come to some conclusion at this standing committee and make a report to the Legislature.

**Mr. Edwards:** I am just exploring options. When was it referred? Can the minister tell us the referral date?

**Mr. Manness:** Madam Chairperson, July last year, 1991.

**Mr. Edwards:** We are way past the 60 days at this point. Would it be, and perhaps the minister can comment on this option when he consults with legal counsel which I note is here.

**Mr. Manness:** Well, Madam Chairperson, I ask the member to realize that the House was adjourned, and the House, of course, came back into being December '91.

**Mr. Edwards:** Is the option available, in the minister's view, whether or not he supports it, to have this committee reconvene at some point between now and the commencement of the next session to review this fourth option which has come forward and to come to a conclusion, to come up with a report, whatever that report be, to be tabled in the Legislative Assembly at the commencement of the next session. There is nothing in here that I think ties it specifically to having to do it within the session that it is referred. I do not see that here, and what I think we would need quite clearly though, is under 11.1(5) we would need the Legislative Assembly to direct us to give us further time. We would need a direction from the Legislative Assembly to give us more than 60 days, but if we had that, it strikes me that we could come up with a recommendation in the interim period to be tabled at the commencement of the next session. Is that an option?

**Mr. Manness:** In isolation, looking only at itself and not looking at the legislation, probably it is an option. Unfortunately the legislation is here, and the next process of building on the Baizley, and going along working toward recommendations will kick in automatically. Can you imagine then, every two years—and I do not know what specific date, but certainly I am led to believe it begins in the fall, early fall, so you would have a situation, some might call it bizarre, when the same time you were considering at this Standing Committee and putting finality to some option that within a space of a few months after that, a new Baizley report would come out with recommendations that might be totally at odds with a solution that you are trying to work toward in the committee. That is the dilemma.

**Mr. Edwards:** We are close to that dilemma in any event, in the sense that if we were to come to a conclusion tonight and make a recommendation to the Legislature, which, let us say, assume that it accepted, we would be implementing a recommendation just months before we had to do it

anyway. I mean, we are close to having to do the Baizley report in any event. I take the minister's statement to mean that another series of what has occurred is going to start in the fall no matter what, so what we are really talking about is whether or not it is better to come to a conclusion now a few months ahead, which is ridiculous in and of itself, or simply take the time to consider this and put something into place for the beginning of the next session, and if we did that, that would be, obviously, for that period of time, until such time as we had exhausted the next process and the Legislature had dealt with it again which might be another two years away.

**Mr. Manness:** The member is right, but let me say to the committee, I have had, the Minister of Justice has had, several meetings with representatives of the judiciary. I have had one meeting recently and I would like to leave with the committee the view that I honestly do not believe the judges would wait that period of time. This has been a pressing issue, and let me also say that I do not think the next report, Baizley and fashion, would come down yet necessarily for eight or 10 months and then we go through this process again. So by my calculation, we are certainly a minimum of a year away, if not a year and a half, and I believe that we gone as far as we can.

\* (1950)

Therefore I would strongly recommend it to the committee, in spite of the fact that the NDP party is not supportive of this legislation. I hear Mr. Evans, and he said this should be held administratively, and those were the arguments that Mr. Doer and members of the party put on the record when the bill was passed, but the people have spoken through their elected officials and have decided that they want this type of process.

I mean, if we believe in democracy, that is the case. So I am saying, administratively, the old way we would have had it handled by now, but here we are fighting with a new process, and I would like to leave the impression at least of this committee, that the government would like to deal with it in one fashion or another.

As far as process, we should meet then again over the next half year and without the pressure of options in trying to reach a conclusion, maybe spend time just dealing with the process.

Members opposite said, well, maybe you should have done that several months ago and had the

process hammered out, and I accept that criticism, but we are where we are tonight, and I think it is very incumbent upon good process within the courts that this be dealt with.

**Mr. Edwards:** I take the minister's point, and I agree with it to the extent that this is a system and we have got it and we should make it work as best we can. I want to ask specifically on the option put before us tonight then, if I could for some points of clarification.

Is there an assessment of what the extra cost is going to be for the government?

**Mr. Manness:** Madam Chairperson, I am going to call Mr. Gerry Irving of the Civil Service Commission forward to, in the sake of time, answer these questions directly.

**Mr. Gerry Irving (Assistant Deputy Minister, Labour Relations Division, Civil Service Commission):** The current costs are 14.9 percent of payroll, and under this option it would jump to 21.9 percent of payroll, an increase of 7 percent, or an annual increase of \$252,400.

**Mr. Edwards:** Is that additional expense of \$252,400 entirely made up from contributions from the government?

**Mr. Irving:** That is correct.

**Mr. Edwards:** Can the minister indicate, or through Mr. Irving indicate what the present cost is so that we can compare what the increase has been?

**Mr. Irving:** The present cost of government is 8.5 percent, judges are paying 6.4 percent, for a total cost of 14.9 percent. Under the revised model here the government cost would become 15.5, judges' cost 6.4, for a total cost of 21.9.

**Mr. Edwards:** I understand then in percentages. The dollar figure given of additional total cost for the government was \$252,400. I am sorry, additional cost. I want to look at that in terms of what we are spending overall. What is the dollar amount that we are currently spending?

**Mr. Irving:** The present cost, the total cost \$536,000; the government cost \$306,000; the judges' contributions \$230,000.

**Mr. Edwards:** Do we then take it that the government presently spends—I am talking about the government only—\$306,000, is going to be spending \$558,400?



**Mr. Irving:** Yes, under that option the cost would go up to \$558,000, an increase of some \$252,000.

**Mr. Edwards:** Which is better than a two-thirds increase in the cost of the government's contribution. It strikes me substantial. The other options, and I apologize, I do not have them in front of me, where does that cost compare, the additional \$252,400? How does that compare to the other three options?

**Mr. Manness:** Madam Chairperson, we have limited copies of the options and the costs that we had provided the other day, if there are individuals on the committee who would like to see them.

**Mr. Edwards:** I see here at Table 1 on the options, option 1, option 2, option 3, government costs 374 for one, 414, 46. This is therefore—the government cost going to \$558,000, this is by some substance the richest of the four. Would it not be?

**Mr. Manness:** The last question in your comment?

**Mr. Edwards:** This option 4 in terms of expenditures for the government is the richest of the four. Is it?

**Mr. Manness:** Unquestionably when you look at all four of them; but as I said in my earlier comments, to offset part of that extra additional cost, we would then hold salaries frozen for six months and there would be a saving there.

**Mr. Edwards:** What would the saving be?

**Mr. Manness:** In the range, and this would be an accurate range, \$60,000 to \$75,000.

**Mr. Edwards:** So that takes it down more into line with the option 3 cost. Let me just get it straight what the minister is proposing with respect to the offset of salary increases. The increment which was scheduled to come into place in September, which we have received figures for, would not happen. Would the judges then go on—would they catch up ever or would they simply lose that increment forever and be—I mean, well, the former minister for mines and energy is saying, think about it, of course, they will catch up. He knows more about bureaucracy than I do, obviously. I would appreciate the answer anyway.

**Mr. Manness:** Madam Chairperson, what would happen? Two things. Firstly, we would break it away from the senior Civil Service natural tie, and I think that was a concern with some members of the committee. That would happen because no longer

would we then by way of Order-in-Council have it automatically married to a senior—what is it Class 7 or senior Civil Service series? Secondly, after that, we then would again await the next report and recommendations coming from the report of another basic-type round. No, the government would not feel committed to somehow lock-step it to some other series, because we are moving to a new process now, and I think that is what the Legislature asked us to do.

**Mr. Edwards:** If you take, and it is clear now they are being bumped right off the scheme as it were of regular incremental increases, and if they are to be taken out of that on a permanent basis—in fact the \$60,000 to \$75,000 saving may be the initial saving or for the initial period of time. As time went on, more and more would be saved, barring putting them on some other form of incremental increase.

**Mr. Manness:** That is pure conjecture and speculation, and the short answer is yes, but again this committee could decide by way of recommendation to give a base-line boost of 10 percent for some reason, depending what the arguments are. So, you know, once you depart, you are right, it is hard to do your comparisons after that point in time.

**Mr. Edwards:** Let me just make the observation that sporadically getting together to do base-line boost is not going to be a good system, and that surely what we need, and I think this is consistent with what the member for Brandon East (Mr. Evans) was saying is that there should be some way surely, as we do, as other civil servants do, as generally pay scales are done, to build in incremental increases of some kind. If they are not going to be lock-step with the civil servant level, so be it, but I would simply make that observation. I would hate to be leaving it at a set amount, getting together on a regular basis.

\* (2000)

**Mr. Manness:** Madam Chairperson, two points. Firstly, the judges themselves supported this type of process. Secondly, the Law Reform Commission recommended this process, so that the incremental increases not be tied automatically to the Civil Service base-line changes.

**Mr. Edwards:** The idea is then that every two years, as we go through this, we rethink the whole salary issue in its entirety each time. I think we should talk about that process, but in any event—not

the least of reasons of which is Mr. Baizley may be making a fair amount of money on this.

The next question I had on the proposal before us, is there any indication as to where this last proposal fits in respect to Saskatchewan, Nova Scotia and New Brunswick, which we were directed to look at by Mr. Baizley?

**Mr. Manness:** Although hard comparisons are not exactly easy, we will share with the committee, whereas Baizley recommended we move into the third-fourth tier or rank, we feel this comes somewhere between 7 and 6, maybe closer to 6 in rank.

**Mr. Edwards:** Was there any discussion about options 1, 2, 3 or 4, let us call the latest option 4, with the judges? Has any of that taken place?

**Mr. Manness:** Discussion with the judges. I will say that the judges reacted. They had a chance to react on options 1 and 2 and 3. Discussion per se, as to the detail, no. There was a meeting held.

**Floor Comment:** Which option did they like best?

**Mr. Manness:** As a matter of fact they did like an option, it was called Baizley.

**Mr. Edwards:** Just to clarify. They had no opportunity to react similarly to option 4, as yet?

**Mr. Manness:** Madam Chairperson, again, in fairness to the process, I am trying not to negotiate with the judges outside of this committee. So, no, very honestly, I heard the representation but it was not on negotiating options.

**Mr. Edwards:** The option talks of the 2.61 percent rate. The years of service to the maximum amount would stay the same. Is that correct, 23 point some years?

**Mr. Irving:** You have to do 23.5 years, that is correct.

**Mr. Edwards:** What is the percentage? Maybe Mr. Neufeld, he has got a quick mind on this, what is the maximum percentage? Does it stay the same?

**Mr. Irving:** The maximum percentage would provide a judge with an approximate pension of that \$45,000 after 23.5 years.

**Mr. Edwards:** What is the percentage?

**Mr. Neufeld:** Mr. Edwards got away from his salary discussion, but I was going to say that we should probably limit this discussion to the pension and not

worry about the salaries. The salaries will look after themselves. I am sure if they have not yet got arbitration they are going to get arbitration. So, I do not think—and for that reason alone, I say there is going to be a catch up.

So we should limit our discussion here, I think, just to the pension plan. [interjection] So what is my recommendation? I would like to suggest that we adopt this particular option. I think that judges have a limited working life, 2.61, and I am glad of that. [interjection]

Well, we could limit the number of years to age 65, and after that their pension will not increase. We could do that, but I think we should limit our discussion to the pension itself and the option in front of us.

**Mr. Edwards:** That is a good point Mr. Neufeld has raised. What is the average length of service? Is there any indication as to what that is?

**Mr. Manness:** The only information we have is that the average age of appointment is 42. Certainly we are led to believe that this profile of ages, average age with respect to present judges, is increasing very rapidly. There seems to be some significant reluctance to resign by a number of judges, and so consequently the administration is having some difficulty in making plans for the future at this present point in time.

**Mr. Edwards:** The average age of 42 is interesting to know. The average length of service would be more interesting to know. Maybe the minister—I will let the minister answer.

**Mr. Manness:** Madam Chairperson, in this paper we have found that the current average age is 55.

**Mr. Edwards:** That does not answer the question, but that also was interesting.

**Mr. Manness:** Sorry.

**Mr. Edwards:** The average age is 55; the average age of appointment is 42. We are still not sure what the average length of service is. Maybe the minister has that.

**Mr. Manness:** We have distributions: up to five years, 11; more than five up to 10, five; more than 10 up to 20, 18; greater than 20, four. So that tells you if the average is 43, there are four judges, obviously are—I understand there are some that are 70 and over.

**Mr. Edwards:** This does, however, raise the point that Mr. Neufeld was raising and that is that in the normal course someone starting a pension plan and a career is not 42 years of age. So that is a factor that should be considered, I would suggest, by the committee without commenting specifically on the proposal.

**Mr. Chairperson:** Mr. Neufeld, you had your hand up quite a while ago. Has your question been answered?

**Mr. Neufeld:** One more question I do have is this schedule indicates to me that at age 65 the employer's contribution ceases towards this pension plan. Is that correct?

**Mr. Irving:** The contributions would cease, that is correct and the only contributions would be within the superannuation plan. That is correct. It would max out at 23.5 years. Each year they would contribute up to 23.5 years, the government would contribute under that model.

**Mr. Neufeld:** If he or she were to continue in office after that, the pension would go up only by the contribution that the judge himself or herself would make.

**Mr. Irving:** The supplementary plan would provide no additional benefit and the benefit would all be under the superannuation plan.

**Mr. Neufeld:** I guess I would have to have some explanation of what a supplementary plan is.

**Mr. Irving:** The supplementary plan is base of the enhanced accrual formula beyond the 1.8 roughly in the Civil Service Superannuation formula. That portion would be enhanced.

Simply put, it would be the Civil Service Superannuation Plan plus a top-up, which would be an enhanced portion.

**Mr. Neufeld:** How is that top-up funded?

**Mr. Irving:** The top-up under the proposal is paid for by the government.

\* (2010)

**Mr. Neufeld:** Does that mean that the 15.5 percent that is in here under this option would be increased?

**Mr. Irving:** No, that is a total cost contained for both.

**Mr. Neufeld:** Now, I will have two-point question and then I will keep quiet. Does that mean that the

15.5 already includes the top-up? Secondly, is this pension plan indexed?

**Mr. Irving:** The 15.5 includes the top-up. That is correct. The plan itself would be indexed in accordance with the Civil Service Superannuation Fund, basically what the fund can afford.

**Mr. Chomlak:** I think that all of the questions were very valid. To me, it illustrates part of the problem with the process. A lot of these issues were dealt with and canvassed in the Baizley report itself, which I am still not clear what portions the government is accepting or rejecting, which makes it confusing, because the Baizley report did recommend continuation of the Civil Service plan with a supplementary plan. Clearly, that is the direction the government is going. What is at issue, as I understand it, is the extent of that plan, in fact, the extent of the topping-up is, in effect, what we are talking about here.

Just to refer back to a question of the member for Rossmere (Mr. Neufeld), the Baizley report also indicated that the salary and pension issue must be, I think they said, "inextricably linked," that there is a linkage. I do not know—I think the government has now decided that that linkage definitely breaks down, but I am not clear which—I will come back to this.

**Mr. Manness:** Madam Chairperson, to help out, I would like to move, at this time, because it will be followed then with a detailed schedule of recommendations that will address some of these very specific issues—

I would move that the Standing Committee on Privileges and Election adopt the proposal in Schedule A and recommend the same to the Legislative Assembly of Manitoba.

## SCHEDULE A

### RECOMMENDATIONS ON JUDICIAL COMPENSATION

1. That salaries for provincial court judges be maintained as follows:

- a) Provincial Court Judges \$ 91,274
- b) Associate Chief Judges \$ 93,279
- c) Chief Judge \$ 98,272

2. That effective April 3, 1993, salaries for provincial court judges be increased 3 percent to as follows:

- a) Provincial Court Judges \$ 94,017

b) Associate Chief Judges \$96,017

c) Chief Judge \$101,017

3. That Order-in-Council 831/89 be rescinded.

4. That The Civil Service Superannuation Act continue to apply to Provincial Court Judges as though they were employees within the meaning of that Act.

5. That effective July 1, 1992, for full-time service as a Provincial Court Judge accrued on and after that date, a supplementary pension plan for Provincial Court Judges be established based on the following terms and conditions:

a) the supplementary plan provides benefits and entitlements that, in combination with those provided under The Civil Service Superannuation Act, will equal those that would be provided under that act if the calculation of the allowance was based on an accrual rate of 2.61 percent per year of service;

b) the maximum number of years of benefit accrual equal 23.5;

c) the supplementary pension plan be administered by the Civil Service Superannuation Board and the Lieutenant-Governor-in-Council may provide for payment from and out of the Consolidated Fund to the board of such amounts as he fixes to reimburse the board for the costs of the administration of this part; and

d) all payments made under the supplementary plan be a charge upon and paid out of the Consolidated Fund without any further or other appropriation by the Legislature.

**Madam Chairperson:** It has been moved by the Honourable Mr. Manness that the Standing Committee on Privileges and Elections adopt the proposal in Schedule A and recommend the same to the Legislative Assembly of Manitoba.

Can I dispense with reading Schedule A?

**Some Honourable Members:** Dispense.

**Madam Chairperson:** Dispensed. [interjection]—Question? Okay.

All in favour of the motion—

**Mr. Neufeld:** I am trying to determine, the supplement is the portion paid for by the government in its entirety—the premium to fund the supplement will be paid by the government in its

entirety? If that is clear, I am prepared to entertain the question.

**Mr. Manness:** Madam Chairperson, the answer is yes.

**Mr. Edwards:** Mr. Chomiak can go ahead.

**Madam Chairperson:** Okay.

**Mr. Chomiak:** We have called for the question, Madam Chairperson. In line with my earlier remarks, we have not, basically, changed our position. The government has brought in its recommendation.

I think we have called for the question; we are basically going to abstain from voting on this. I do not have an opportunity to review with my caucus. It is a fourth recommendation. I have put my comments and our concerns on the record.

**Mr. Edwards:** I must admit, this dribble-in process of getting information and options from the government is a concern. I mean, why did we not have all this stuff at the outset? What is the secret in holding back this stuff?

We are dealing with option 4 and then all of a sudden we have here a Schedule A, which goes beyond what we were talking about. It talks about the—[interjection] Well, it also says—and maybe I did not ask the question, but it would have been nice to have a Schedule A here to say—that the salaries are, in fact, going to be bumped up to what they were to have gone to in September 1992, April 3, '93.

I was of the impression that when the minister said they were bumped off the level system, the Civil Service system, that meant that they were off. There would be no increase until we met again and went through the process again. Now, he is obviously saying something different in Schedule A. But it is a concern the way we are getting information in this committee. [interjection]

You know, we start the committee; we got three proposals. We got here, we got a fourth proposal. Now, Schedule A incorporates that fourth proposal, but perhaps I misunderstood earlier on. It does appear to keep on track, albeit in a delayed fashion, April 3, '93, an increase which would have occurred in the normal course on September 21, '92.

Anyway, the minister has his hand up.

**Mr. Manness:** Madam Chairperson, I cannot accept that criticism. I said at the beginning, as a result of the shift in focus to pensions, the next salary

increase would be deferred until April of 1993. I also said that no longer would judges' salaries be linked to general MGEA master agreement-type increases. I said that. Not only that, I said that last meeting, I also said it would not be linked by way of Level 7, Senior Officer series increases. I made myself very clear on that.

Now, the member could say I should have presented the motion and the schedule right at the beginning. I could have done that, Madam Chairperson, but it was because of an overabundance of caution, trying not to lead the committee—even though we have a majority on this committee—trying not to lead it to the government end.

Now if the member is saying that this process—and this probably is not the time to debate process, but another time that he would like the government quickly, right at the beginning to lay out what its favourite options are and then talk about it, fine; that is the way then. That is up for consideration, and let us do it that way next time. If that is the wish of the committee, then all of a sudden the process is maturing. So I take the criticism as a recommendation to a better process in the future.

**Mr. Edwards:** I say this regretfully, because I wanted to feel in a position, and had looked at the

materials beforehand, to come to a conclusion here. I appreciate the government feels it has to do something; it is going to do something. I do not feel in a position to make that decision here and now.

I explored some other options. They do not appear open in terms of delaying this process, and I appreciate the frustration of the judges. I think they have waited a long time for some sort of resolution. Unfortunately, these matters are complicated, in particular the pensions issues. We are going to abstain as well, at this point, and look forward to the process discussions that the minister promises will be coming in the future. Hopefully, we can come to a better process.

**Madam Chairperson:** All in favour of the motion, please say yea.

**Some Honourable Members:** Yea.

**Madam Chairperson:** Those opposed.

In my opinion the motion has carried.

Is it agreed that I will report this to the House?

**Some Honourable Members:** Agreed.

**Madam Chairperson:** Agreed. Committee rise.

**COMMITTEE ROSE AT:** 8:20 p.m.