

**Fifth Session - Thirty-Eighth Legislature**  
**of the**  
**Legislative Assembly of Manitoba**  
**Standing Committee**  
**on**  
**Legislative Affairs**

*Chairperson*  
*Mr. Daryl Reid*  
*Constituency of Transcona*

**Vol. LVIII No. 3 – 3 p.m., Monday, December 18, 2006**

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**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Eighth Legislature**

<b>Member</b>	<b>Constituency</b>	<b>Political Affiliation</b>
AGLUGUB, Cris	The Maples	N.D.P.
ALLAN, Nancy, Hon.	St. Vital	N.D.P.
ALTEMEYER, Rob	Wolseley	N.D.P.
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BJORNSON, Peter, Hon.	Gimli	N.D.P.
BRICK, Marilyn	St. Norbert	N.D.P.
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JENNISSSEN, Gerard	Flin Flon	N.D.P.
JHA, Bidhu	Radisson	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
MACKINTOSH, Gord, Hon.	St. Johns	N.D.P.
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MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McFADYEN, Hugh	Fort Whyte	P.C.
McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
MELNICK, Christine, Hon.	Riel	N.D.P.
MITCHELSON, Bonnie	River East	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
OSWALD, Theresa, Hon.	Seine River	N.D.P.
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VACANT	Kirkfield Park	

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS**  
**Monday, December 18, 2006**

**TIME – 3 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Daryl Reid (Transcona)**

**VICE-CHAIRPERSON – Ms. Bonnie Korzeniowski (St. James)**

**ATTENDANCE – 11 QUORUM – 6**

*Members of the Committee present:*

Hon. Messrs. Chomiak, Selinger

Messrs. Dewar, Fauschou, Goertzen, Ms. Korzeniowski, Messrs. Martindale, Reid, Mrs. Stefanson, Mr. Swan, Mrs. Taillieu

**APPEARING:**

Mr. Kevin Lamoureux, MLA for Inkster

**WITNESSES:**

Ms. Susan Dawes, Provincial Judges Association of Manitoba

**MATTERS UNDER CONSIDERATION:**

*Report and Recommendations of the Judicial Compensation Committee dated June 20, 2006*

\* \* \*

**Mr. Chairperson:** Good afternoon, everyone. Will the Standing Committee on Legislative Affairs please come to order.

Our first item of business is the election of a Vice-Chairperson. Are there any nominations?

**Mr. Gregory Dewar (Selkirk):** I nominate Ms. Korzeniowski.

**Mr. Chairperson:** Ms. Korzeniowski has been nominated. Are there any further nominations?

Seeing no further nominations, Ms. Korzeniowski is elected as Vice-Chairperson of this committee.

This meeting has been called to consider the *Report and Recommendations of the Judicial Compensation Committee* dated June 20, 2006.

Before we start, are there any suggestions on how long the committee wishes to sit this afternoon?

**Mr. Andrew Swan (Minto):** I would suggest we sit until 4 o'clock and then review the situation at that time.

**Mr. Chairperson:** It has been suggested that this committee sit till 4 o'clock and then review at that time.

Is it the will of the committee? *[Agreed]*

Thank you to the members of the committee.

I would like to remind the committee that a motion from a member of the committee will be required in order to adopt or reject some or all of the recommendations contained within the report.

I would also like to advise members of the committee here this afternoon that Ms. Susan Dawes of the Provincial Judges Association of Manitoba has asked for permission to speak to the committee today.

Does the committee agree to hear the presentation from Ms. Dawes? *[Agreed]* Thank you to members of the committee.

I'll now call Ms. Dawes forward, if you will, please. Do you have a written presentation?

**Ms. Susan Dawes (Provincial Judges Association of Manitoba):** I have a handout and a live presentation.

**Mr. Chairperson:** Okay. Then we'll distribute your presentation and then, when it's distributed, we'll proceed.

Good afternoon, Ms. Dawes. You may proceed when you're ready.

**Ms. Dawes:** Good afternoon, and thanks very much. I'd like to thank you for the opportunity to speak here on behalf of the Manitoba Provincial Judges Association. You have before you for consideration the report and recommendations of the sixth Judicial Compensation Committee, or JCC, here in Manitoba, and the recommendations of this tribunal are for the years 2005 through 2007. As you may know, the JCC process is an independent tribunal which makes

recommendations to the Legislature concerning all aspects of compensation for judges, and the process was mandated by the Supreme Court of Canada after a series of court decisions concerning judicial independence.

It is designed to depoliticize the setting of judicial salaries and other aspects of compensation through the use of an independent panel, which is to be objective in the sense of considering a wide range of factors, and which is to be effective in terms of having a real impact on the setting of compensation. In this case, we had the government's nominee, Victor Schroeder, a former member of this House, one representative chosen by the Judges Association, Barry Gorlick, and we have the chair agreed on by the parties, Michael Werier.

The tribunal considered the matter. We had lengthy submissions, both oral and written, and the tribunal considered the whole range of factors, including those set out in the act. In Manitoba, it is required now that, of course, the Legislature consider the matter and that it proceed through the standing committee. That's unique, I would note, across Canada and lengthens the process somewhat.

The case law is clear—and I won't get into that today—that the government has to have sound reasons to depart from the recommendations. In this case, I think you have before you a very sound report that provides very good reasons for the recommendations it does make. I will note that in none of them does it put Manitoba judges ahead of the majority of judges in the country. It brings Manitoba into the middle of the pack, which is, as I understand it, where this Legislature thinks this province should be. In fact, in many of the cases the recommendations fall considerably short of the national average in salaries and other aspects of compensation.

I want to talk about the salary recommendations and put them into context for you. The 2004 salary which is still being paid is \$161,257. You'll see there, on your handout sheet I provided, the recommendations: April 1, '05, \$168,000, and proceeding up from there with 3 percent increases per annum in each of '06 and '07. These are very modest recommendations and are extremely reasonable recommendations.

The association presented to the JCC detailed information about all of the factors and, particularly, with respect to compensation in other jurisdictions, what provincial and federal judges earn in the other jurisdictions. There have been some changes since

the hearing and since the report, and I want to highlight some of those for you. In Saskatchewan, our neighbouring province, of course, JCC reported, before the release of our Manitoba JCC report, for the years '06, '07 and '08, and it recommended a very, very substantial increase for judges in that province. As of April 1, '06, you will see they are earning \$195,000. In that report, which is discussed in our own report that's before you today, it's noted that that was found to be the national average by that commission at that time. Now, I think \$195,000 puts into context quite nicely for us the 168 and 173 that the Werier report recommends for Manitoba judges. It can be seen to be very modest, in that, even if this report is implemented, Manitoba judges will remain \$20,000 behind their counterparts in Saskatchewan.

\*(15:10)

I'd also highlight Québec. I think it's an interesting province to look at. There have been a multitude of court actions in that province over judicial salaries, and after the recent 2005 Supreme Court of Canada's decision there has been another decision since which has implemented the recommendations of their commission, such that the salary has increased very substantially there since what was before the Werier Commission. As you'll see in your handout, for that province: 205,000 for 2004, up to 211,510 for the years following, plus cost of living increases. That decision, I would note, is under appeal, but those are the salaries in that province at present.

With respect to Newfoundland, there was a JCC held which reported since the release of this report and was recently implemented. I note for you there the salaries have increased in that province. Again, that information was not before our tribunal and adds context for your consideration today.

The comparison with certain of the other jurisdictions is particularly relevant to your task, given the structure of our legislation. As you may know, The Provincial Court Act provides that the report must designate, or the JCC must designate what's the average of salaries paid to judges in New Brunswick, Nova Scotia and Saskatchewan. Those are the comparator provinces that this Legislature has had to look to in terms of the report. Now that average, it's called the designated average in the legislation, plays a couple of roles. If the commission recommends a salary that is equal to or less than that, the salary recommendations are binding and presumably this process would be abbreviated. If,

however, it's above that designated average, then the Legislature could give reasons why it would depart from the recommendations.

So that is the significance of the designated average, but I point out that it has never been particularly useful because of the timing of the reports in the various jurisdictions. New Brunswick, in particular, has been far behind the other provinces in reporting. It was the subject of a Supreme Court of Canada case, came out in '05, and then recently there's been a commission held and a report filed. My information, as of this morning, is that the government of New Brunswick hasn't tabled that report. It remains confidential; it is not public information. We, reliably, understand that the recommendations for each year of the report are significantly higher than those of the Manitoba committee. Based on our informed calculation, I can tell you that, were that report to be included in this designated average that's cited in the report before you, the average would be higher than the recommendations in the Manitoba tribunal making it binding, making the recommendations of Mr. Werier binding.

Now, that again puts the salary recommendations into context, and I think it's important to consider the most current information in coming to your decision, rather than information that may have been available at the time of the hearing or, indeed, at the time the report was issued.

We are developing a history here in Manitoba of respecting the recommendations of judicial compensation committees, and I do note that the fourth and fifth JCC reports were implemented. That was very encouraging to the association, as compared with past instances both in this province and in other jurisdictions where there has not been such respect for the recommendations of JCCs. So, in implementing the last two JCC reports, the Province demonstrated respect for this constitutionally mandated process and respect for the independence of the judiciary.

It is fair to say, I think, that things have changed so much nationally. There has been this upward pressure on salaries since the report was released that we could stand here before you today and say, you've got legitimate reasons to provide a higher salary than what was in the recommendations. Given the information before you, that would be a credible argument in my view. We're not going to do that because we respect the process, and I think it's

important that the process, as a whole, have integrity and that the recommendations that were provided by Mr. Werier be implemented. That is most important to the association.

We're certainly not pointing fingers here, but I would note that we are almost at Christmas in 2006 and you're looking at a report that makes recommendations for compensation starting April 1, '05, so there's a significant portion of retroactivity here. We certainly want this process to be completed as quickly as possible.

So, in summary, I urge you to accept the recommendations of the report. They're the result of what has already been a lengthy process and a process which involved much detailed evidence and argument about the factors relevant to the task. It's certainly the association's hope that the recommendations will be accepted and implemented as soon as possible.

Subject to any questions, which I would be happy to attempt to deal with, those are my comments this afternoon.

**Mr. Chairperson:** Thank you, Ms. Dawes, for your presentation.

Are there any questions from committee members of the presenter? Seeing none, thank you very much for your presentation here this afternoon.

**Ms. Dawes:** Thank you very much.

**Mr. Chairperson:** Does the minister wish to make any opening remarks here today?

**Hon. Greg Selinger (Minister of Finance):** I have remarks, but I'm wondering, before I launch into them, whether there's a willingness to move towards the motion to pass this report. If there is, I'd be ready to do that immediately, and we could have discussion based on the motion.

**An Honourable Member:** Well, we could have discussions on the motion.

**Mr. Selinger:** Yeah, okay. Then I'll dispense with remarks.

**Mr. Chairperson:** I thank the minister.

Does the critic for the official opposition—Mr. Goertzen?

**Mr. Kelvin Goertzen (Steinbach):** I know that these are often difficult reports to deal with because it's not always an easy thing for us as legislators to deal with salaries that we have some direction in,

whether it's our own or others within the system as a whole. It can be challenging at times for committee members because we all answer to constituents who want to ensure that our tax dollars are being used wisely.

With that said, though, of course, we do, certainly, on our side of the House, respect the independence of the judiciary. We know that there have been Supreme Court decisions, some have risen out of Manitoba, that have spoken to this particular issue and the need for security of tenure, of financial security, and of administrative independence, I believe, and that that's been refined as well over the years. So we have tremendous respect for the judiciary and the role that they do. It doesn't mean, though, that we don't sometimes feel that the system can be improved and can be changed, whether it's in regard to salaries in particular or to a selection process, for example, where there's been some discussion federally and some discussion more recently provincially.

We do believe, on our side of the House, that it's not a system that is beyond refining and beyond improving. In fact, I think, if legislators on this committee would go and speak to their constituents, as I know that they do, but if they would speak to their constituents more specifically about the judiciary as a whole and the justice system as a whole, and ask them if they believe that the system is working perfectly, my guess is, not to presuppose what their constituents might tell them, but my guess would be that their constituents would say, no, there are things that they believe could be changed within the justice system to improve it and to make it better, to make it more responsive in some ways, to make it more transparent in other ways.

That's really what I think we strive for here is, on our side of the House, as Conservatives, to look for ways to improve that system, to never think that a system is beyond change, that it's beyond refinement and improvement.

I would certainly, in my discussions with the minister, in particular regarding this, the Minister of Justice (Mr. Chomiak), and more today with the Minister of Finance (Mr. Selinger), say that they should never stop, to look for ways to improve the judiciary and the justice system as a whole, because it isn't a system that is perfect, it isn't a system that couldn't be improved.

So, with those comments, I think we're ready to move to the motion, have debate and discussion on the motion itself.

**Mr. Chairperson:** I thank the critic for the opening comments.

I believe the minister has a motion that he'd like to read for members of the committee.

\* (15:20)

**Mr. Selinger:** Yes. I'm going to move the motion and then ask to speak to it. The motion would be

THAT the Standing Committee on Legislative Affairs adopt the proposal outlined in Schedule A and recommend the same to the Legislative Assembly of Manitoba.

I have copies of the motion and the schedule for circulation.

**An Honourable Member:** You need to read it.

**Mr. Selinger:** You want me to read the whole thing into the record? *[interjection]* You would like that. Okay.

**An Honourable Member:** It's not a question of—

**Mr. Selinger:** Okay. Well, and so moving into Schedule A,

That effective April 1, 2005, salaries for Provincial Court judges be increased to \$168,000 per annum, \$6,439.99 biweekly;

That effective April 1, 2006, salaries be increased to \$173,040 per annum, which would be \$6,633.19 biweekly; and

That effective April 1, 2007, salaries be further increased to \$178,230 per annum, being \$6,832.14 biweekly.

Effective April 1, 2005, which would be my second point, salaries for the associate chief judges be increased to \$173,000 per annum, which is \$6,631.66 biweekly; and

That effective April 1, 2006, salaries be increased to \$178,000 per annum, \$6,824.86 biweekly; and

That effective April 1, 2007, salaries be further increased to \$183,230 per annum, which is \$7,023.81 biweekly.

And you really want this all read into the record?

**An Honourable Member:** Afraid so.

**Mr. Selinger:** That effective April 1, 2005, the salary for the chief judge be increased to \$178,000 per annum, which is \$6,823.32 biweekly; and

That effective April 1, 2006, that salary be increased to \$183,040 per annum, which is \$7,016.52 biweekly; and

That effective April 1, 2007, that salary be further increased to \$188,230 per annum, which is \$7,215.47 biweekly.

Fourthly, that effective July 1, 2006, the current pension plan be amended to provide a guaranteed indexing at the rate of 66.7 percent of the percentage increase in the annual change in the consumer price index for Canada based on the immediately preceding calendar year; and

That effective 60 days following the date of approval by the Legislative Assembly, the age-related reductions to life insurance coverage for judges be changed so that

(a) the coverage for a judge which did not reach the age of 66 before May 5, 2004, not be reduced until the judge reaches the age of 66, at which time it is set at 75 percent; and

(b) that the coverage for a judge who reached the age of 66 but not the age of 70 before May 5, 2004, be increased to 75 percent until the judge reaches the age of 70, at which time it is set at 62.5 percent; and

(c) the coverage for a judge who reached the age of 70 before May 5, 2004, be set at 62.5 percent.

These changes are not to apply to a judge who died before the effective date, just for greater certainty.

But, No. 6, the residual amount of life insurance available to judges at age 75 be increased from \$1,500 to \$4,500. This change will be effective 60 days following the date of the approval by the Legislative Assembly; and

That, 7, the life insurance plan for judges be amended to provide the dependent's insurance coverage be increased to \$17,500 for a spouse and to \$3,500 for each eligible child. These changes will be effective 60 days following the date of approval by the Legislative Assembly.

Eighth, that the dental plan be amended by implementing 2006 Manitoba Dental Association (MDA) Dental Plan fee guide, by increasing the maximum claim to \$1,475 per calendar year and

increasing the maximum lifetime claim for orthodontics to \$1,675. These changes will be effective 60 days following the date of approval by the Legislative Assembly.

Number 9, the Province cover the cost of 80 percent of eligible prescription drug expenses under the current extended health benefits plan to a maximum of \$650 in each calendar year. The participating judges will fund the balance. This change will be effective 60 days following the date of approval by the Legislative Assembly.

That the Extended Health Benefits plan be amended to provide coverage for chiropractic, massage therapy, naturopathy and speech therapy, each to have a \$350 annual maximum and that foot orthotics to have a \$200 annual maximum and that hearing aid coverage to have a \$300 maximum per person per five-year period. The premiums for this coverage are to be paid by participating judges. This change will be effective 60 days following the date of approval by the Legislative Assembly; and

That, No. 11, the northern allowance rate for judges residing in Thompson or The Pas be set as follows:

Effective date of April 1, 2005, Thompson, the single rate would be \$101.72 and the dependent rate would be \$144.79, both biweekly;

And then on April 1, 2005, that the biweekly single rate be \$55.58 and the dependent rate biweekly would be \$90.95 in The Pas; and,

That April 1, 2006, in Thompson, the rate be \$104.26 biweekly for singles and that the dependent rate be \$148.41 biweekly; and

That April 1, 2006, The Pas, the rate be \$56.97 single rate biweekly and the dependent rate biweekly be \$93.22; and

That April 1, 2007, in Thompson, the single rate biweekly would be \$106.87 and the dependent rate biweekly be \$152.12; and

That April 1, 2007, The Pas, the single rate biweekly would be \$58.39 and the dependent rate biweekly be \$95.55.

12. That, commencing April 1, 2005, the Province may pay the annual fees to enrol each Provincial Court judge in the National Judicial Counselling Program; and

13. That each judge be provided with an educational allowance of \$2,500 for each fiscal year to be used

for attendance at seminars or conferences as approved by the chief judge. A judge may first request funding through the judges' regular education budget, and, if funding is refused in whole or in part, this allowance can be used. Any amount of this allowance not used in any given fiscal year cannot be carried over to a subsequent year; and

14. That the Province pay 75 percent of the judges' legal costs and fees for the Judicial Compensation Committee process up to a maximum aggregate payment by the Province of \$35,000; and

15. That, unless otherwise stated, all changes shall be effective on the date of approval by the Legislative Assembly of Manitoba; and

16. In these recommendations, "date of approval by Legislative Assembly" means

(a) The date that the vote of a concurrence, referred to in subsection 11.1(28) of The Provincial Court Act, takes place with respect to these recommendations; or

(b) If the recommendations must be implemented because of subsection 11.1(29) of The Provincial Court Act, the first day after the end of the 21-day period referred to in that subsection.

**Mr. Chairperson:** We thank the minister for the motion.

Just to ensure the accuracy of the information that was read into the record here, is it the will of the committee that the printed and circulated notes would form a portion of the records here this afternoon? [Agreed] I thank the will of the committee. The printed version will form the records to ensure accuracy.

*THAT the Standing Committee on Legislative Affairs adopt the proposal outlined in Schedule A and recommend the same to the Legislative Assembly of Manitoba.*

#### SCHEDULE A

1. That effective April 1, 2005, salaries for Provincial Court Judges be increased to \$168,000 per annum (\$6,439.99 biweekly); that effective April 1, 2006, salaries be increased to \$173,040 per annum (\$6,633.19 biweekly); and that effective April 1, 2007, salaries be further increased to \$178,230 per annum (\$6,832.14 biweekly).

2. That effective April 1, 2005, salaries for Associate Chief Judges be increased to \$173,000 per annum

(\$6,631.66 biweekly); that effective April 1, 2006, salaries be increased to \$178,040 per annum (\$6,824.86 biweekly); and that effective April 1, 2007, salaries be further increased to \$183,230 per annum (\$7,023.81 biweekly).

3. That effective April 1, 2005, the salary for the Chief Judge be increased to \$178,000 per annum (\$6,823.32 biweekly); that effective April 1, 2006 that salary be increased to \$183,040 per annum (\$7,016.52 biweekly); and that effective April 1, 2007 that salary be further increased to \$188,230 per annum (\$7,215.47 biweekly).

4. That effective July 1, 2006, the current pension plan be amended to provide a guaranteed indexing at the rate of 66.7% of the percentage increase in the annual change in the Consumer Price Index (CPI) for Canada based on the immediately preceding calendar year.

5. That, effective 60 days following the date of approval by the Legislative Assembly, the age-related reductions to life insurance coverage for Judges be changed so that

(a) the coverage for a Judge who did not reach the age of 66 before May 5, 2004 not be reduced until the Judge reaches the age of 66, at which time it is set at 75%;

(b) the coverage for a Judge who reached the age of 66 but not the age of 70 before May 5, 2004 be increased to 75% until the Judge reaches the age of 70, at which time it is set at 62.5%; and

(c) the coverage for a Judge who reached the age of 70 before May 5, 2004 be set at 62.5%.

*These changes are not to apply to a Judge who died before the effective date.*

6. That the residual amount of life insurance available to Judges at age 75 be increased from \$1,500.00 to \$4,500.00. This change will be effective 60 days following the date of approval by the Legislative Assembly.

7. That the life insurance plan for Judges be amended to provide that Dependents' insurance coverage be increased to \$17,500.00 for a spouse and to \$3,500.00 for each eligible child. These changes will be effective 60 days following the date of approval by the Legislative Assembly.

8. That the Dental Plan be amended by implementing the 2006 Manitoba Dental Association (MDA) Dental Plan fee guide; by increasing the



maximum claim to \$1,475 per calendar year and increasing the maximum lifetime claim for orthodontics to \$1,675. These changes will be effective 60 days following the date of approval by the Legislative Assembly.

9. That the Province cover the cost of 80% of eligible prescription drug expenses under the current Extended Health Benefits Plan to a maximum of \$650 in each calendar year. The participating Judges will fund the balance. This change will be effective 60 days following the date of approval by the Legislative Assembly.

10. That the Extended Health Benefits Plan be amended to provide coverage for chiropractic, massage therapy, naturopathy and speech therapy (each to have a \$350.00 annual maximum); foot orthotics (to have a \$200.00 annual maximum); hearing aid coverage (to have a \$300.00 maximum per person per 5 year period). The premiums for this coverage are to be paid by the participating judges. This change will be effective 60 days following the date of approval by the Legislative Assembly.

11. That the northern allowance rates for judges residing in Thompson or The Pas be set as follows:

Effective Date	Single Rate (biweekly):	Dependent Rate (biweekly):
April 1, 2005 Thompson	\$101.72	\$144.79
April 1, 2005 The Pas	\$ 55.58	\$ 90.95
April 1, 2006 Thompson	\$104.26	\$148.41
April 1, 2006 The Pas	\$ 56.97	\$ 93.22
April 1, 2007 Thompson	\$106.87	\$152.12
April 1, 2007 The Pas	\$ 58.39	\$ 95.55

12. That, commencing April 1, 2005, the Province pay the annual fees to enrol each Provincial Court Judge in the National Judicial Counselling Program.

13. That each Judge be provided with an educational allowance of \$2,500.00 each fiscal year to be used for attendance at seminars or conferences only as approved by the Chief Judge. A Judge must first request funding through the Judges' regular education budget, and if funding is refused in whole or in part, this allowance can be used. Any amount of this allowance not used in any given fiscal year cannot be carried over to a subsequent year.

14. That the Province pay 75% of the Judges' legal costs and fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$35,000.00.

15. That unless otherwise stated, all changes shall be effective on the date of approval by the Legislative Assembly of Manitoba.

16. In these recommendations, "date of approval by the Legislative Assembly" means

(a) the date that the vote of concurrence referred to in subsection 11.1(28) of The Provincial Court Act takes place with respect to these recommendations; or

(b) if the recommendations must be implemented because of subsection 11.1(29) of The Provincial Court Act, the first day after the end of the 21-day period referred to in that subsection.

**Mr. Chairperson:** Now, are there any questions from committee members with respect to the motion?

**Mr. David Faurchou (Portage la Prairie):** Just as a background to the motion, currently—

**Mr. Chairperson:** Sorry to interrupt, Mr. Faurchou. I forgot, as Chair, part of my role or function here is to make sure that the motion has been accepted, and it is in order, and that it has been moved by Mr. Selinger as the motion has been read into the record already.

The motion is in order. Then we can now proceed to questions. Sorry for the interruption.

**Mr. Faurchou:** Thank you, Mr. Chair. I appreciate the necessary verbiage.

The current status at the present time of the judiciary, I believe that there was a press announcement stating that there were 40 judges, full-time, serving Manitobans. Could you give an update as to that? I know that in past we've had opportunity to bring in judges on a part-time basis to alleviate court backlog, but what is the current status?

**Mr. Selinger:** Thirty-nine judges.

**Mr. Faurchou:** So, then, my understanding is there's one vacancy or two. What is the status then of part-time?

**Mr. Selinger:** Two vacancies, and as I understand it, no part-time at the moment.

**Mr. Goertzen:** Just to follow up on the questions from my colleague from Portage. There has been some discussion in the past about supernumerary judges on the Provincial Court. Can the minister indicate whether or not those discussions—they might not have formed part of this review, but whether or not he's had any thought about supernumerary judges as a part of the process for alleviating the backlog within the justice system?

\* (15:30)

**Mr. Selinger:** I'm aware that there are proposals and considerations being given to the notion of supernumerary judges. This is in the hands of the Minister of Justice and his departmental officials. There is no resolution of that yet, but there is consideration being given to that topic.

**Mr. Goertzen:** Is there any discussion regarding extended court sittings and times of sittings? I know that British Columbia, for example, has gone to longer sitting times, as an example, or as a way to try and alleviate their backlog within the British Columbia court system that might have formed part of the discussions, as well, in terms of workload.

**Mr. Selinger:** Well, bearing in mind that, actually, that's outside the terms of discussion of this report on judicial compensation, I can say that that type of matter would be part of the consideration of supernumerary judges.

**Mr. Goertzen:** I appreciate from the minister that there is a certain scope that we're dealing with in terms of this report, though I also recognize that I think that most Manitobans would be concerned when we're having discussions about whether to move forward on an increase on judicial salaries if we didn't have those sort of discussions regarding workload and what the future might be for the composition of the court. If those discussions weren't a part this committee, I think it makes it more difficult to justify to Manitobans why it is that individually they're voted to move the report forward or to not. So I think there needs to be some latitude in terms of those discussions within the context of the report that we are dealing with here today.

The other question I have for the minister, if he prefers to defer to his colleague from Kildonan, he certainly can from my perspective. The annual reports of the Provincial Court, there was an annual report put out a couple of years ago, and I don't know. Contained within the report it dealt with usage of court time and the number of hours that particular

courtrooms were used. I haven't seen a more recent annual report. Can the minister indicate when the last annual report came forward from the Provincial Court?

**Mr. Selinger:** I'll ask the Minister of Justice to respond to that question.

**Hon. Dave Chomiak (Minister of Justice and Attorney General):** Mr. Chairperson, if we haven't tabled the most recent annual report, we will be tabling it intersessionally very shortly.

**Mr. Goertzen:** Can the minister then indicate which was the most recent report that was tabled?

**Mr. Chomiak:** I'll have to get back to the member on that.

**Mr. Goertzen:** I look forward then to the Minister of Justice providing the most up-to-date annual report of the Provincial Court because I do believe that they were helpful. I think it would actually be helpful in terms of making a decision here today because there was good information contained within the report in terms of usages of courtrooms and times and where it was that resources may be needed to be applied to and where things were successful and maybe where they weren't successful.

I want to ask the minister particularly about a couple of things that are contained within the report. I refer him to page 82, which is, I am reluctant to call it a dissenting opinion from Mr. Schroeder representing the government, I believe, but it is a counter-opinion on some of the issues that were contained within the report, not the recommendations, per se, but the background. In regard to page 82, the government representative indicates that he believes that Saskatchewan judges would be paid more on a general basis because of economic reasons. He says specifically, mostly for economic reasons, indicating that Saskatchewan's economy is significantly stronger than Manitoba's.

It's the position, obviously, of the government representative on the report. Is that, then, his position as well?

**Mr. Selinger:** No, my position is that all the people on the judicial review committee agreed with the recommendations, some for varying reasons. I'm not here to debate the specific rationales they came with; I am here to advance the recommendations as unanimously put forward by the review committee.

**Mr. Goertzen:** Well, it's interesting, though, because obviously when the government appoints a

representative to the committee, I would assume that it's done so under the rationale that that representative will put forward the opinion of the government. In fact, if you look through the language of the report, the minister will find that it's written in a sense in that the government or the Province said or argued, so it is Mr. Schroeder arguing on behalf of the government of Manitoba, the current NDP government. Certainly, I don't think Mr. Schroeder is a stranger to the government, so, when he indicates that economic reasons would drive Saskatchewan's salaries higher because their economy is stronger than Manitobans, I think it's important that the minister speak to that issue.

**Mr. Selinger:** I'm referring the member to The Provincial Court Act, section 11.1(5). It's one person designated by the minister, one person designated by the judges of the court, and one person who shall act as the chairperson designated by the first two. These individuals make their argument. They don't take tight instructions from government. They don't follow a script prepared by anybody in government. They use their best judgment and their best argument, and we're not asking them to follow any specific set of rationale put forward by us. We're picking an individual that we think will represent a view that will be reasonable and balanced in the public interest.

**Mr. Goertzen:** Well, I think it's quite apparent for anybody who follows the words of the Minister of Finance, more generally in the Legislature and maybe more broadly in the public, that the government representative wasn't following the script as put out by the Minister of Finance. I'll refer the minister to page 30 of the report, and other members of the committee, contained within paragraph 2. The report states that the Province, and so now I'm quoting, it's not indicating that Mr. Schroeder as an independent individual, it's using the vernacular of the Province as a whole. "The Province did introduce various economic reports in the form of articles within the *Winnipeg Free Press* which painted a slightly more sobering picture of Manitoba's economy."

It's interesting when you go through the report, because you see in many different places the judiciary, on one hand, is sort of promoting the economic performance of the province, and yet the province itself, as represented by Mr. Schroeder, is saying that it's more dismal and it's more sobering, the economic picture of the province.

So I wonder if the minister could expand upon the economic reports that were provided to this judiciary or to this committee which suggested that Manitoba's economic picture was sobering.

**Mr. Selinger:** First of all, the member who was appointed by the government makes the arguments based on his best judgments, and, quite frankly, from the looks of the quote on page 30, he was just wrong. We're doing better than that. So the reality is that he has to follow a number of factors considered in the legislation that guides the compensation committee under The Provincial Court Act. The factors he has to follow are 11.1(16).

The compensation committee, in making its report and recommendations, must consider the following factors: "(a) the nature of the judges' role and the independence of the judiciary; (b) the need to attract and retain excellent applicants to the judiciary and the statistics with respect to the recruitment, retention, resignation and retirement of judges; (c) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in Manitoba and the overall economic and financial state of the Manitoba economy."

On that point, the designate was speaking with the best information he had at that time about the state of the economy. As we all know, economics is, at best, not a precise science of prediction when it comes to the economy. Some would say it's the dismal science when it comes to predictions, including economists themselves.

So that was the best information they had at the time and they operated in good faith. It also goes on to say that "(d) the principle that public resources must be managed efficiently and effectively in the context of the government's current financial position; (e) the cost of living and the growth or decline in real per capita income in Manitoba; (f) the manner in which the compensation package paid to judges in Manitoba compares to judicial compensation packages in other jurisdictions in Canada, having regard to the differences between jurisdictions."

\* (15:40)

**Mr. Goertzen:** I think it's actually shocking in some ways, and I don't like to use that word too often as to overstate the matter. But I, in my short time as an elected official here in the Legislature, I am not sure that I've ever seen a situation where the government has said that their representative in negotiations was wrong. That is, in fact, exactly what the minister said

on the record. He said that his representative was wrong. Now we're being asked to vote on a report where the government has acknowledged that their representative brought forward false information, or wrong information, according to—well, the minister can dispute that. We can look at *Hansard*. But he clearly said that the information was wrong. So, now, we're going to be voting on a report where the government's own representative brought forward wrong information?

**Mr. Selinger:** I would ask the member to remember my comments in their entirety, not to cherry-pick them. I indicated the designate put forward the best information he had at the time on the economy. I indicated that these predictions are often subject to change and revisions, and the revisions indicate that the information at the time is, actually, a little understated in terms of the performance of the economy. The economic performance predictions are doing better than was the information available at the time.

It wasn't wrong, deliberately, which was the implication of the member, and an unfortunate one at that. It was the best information the member had at the time. I ask the member to read the lead sentence on the second-last paragraph on page 30: "The Province acknowledged that Manitoba was not to be considered a 'poor prairie province' as that term was utilized by counsel for the Judges in her closing submission."

So the members operate on the best information they have to make a case for a wise and reasonable allocation of salary for judges.

**Mr. Goertzen:** Well, of course, I certainly didn't indicate that Mr. Schroeder had put forward deliberately wrong information. In fact, I would suggest that he probably put forward the correct information, and that it's the government in all other forms, other than when it comes to negotiations on salaries, that it's putting forward wrong information. The fact of the matter is that, purposeful or not purposeful—and I suspect that it wasn't purposeful—information was put forward that the minister now indicates was wrong, whether it's deliberate or not deliberate, and we are supposed to vote on a report that, to his own admission, had wrong information that was the premise of where some of the discussions came forward.

Now, I don't know what the impact would have been of that wrong information. It might have led to a recommendation of higher salaries; it might not

have. But the reality is that we're now being asked to vote on judges' salaries based on what the minister admits is wrong information.

**Mr. Selinger:** Once again, I think the member is putting an unfortunate characterization of what I said on this. He himself indicated that this was a dissenting opinion, even though the recommendations were agreed to. That would suggest, even, whether you call it whatever you like, a dissenting opinion, a minority opinion, a counter-opinion, it was not the majority view. The majority view was based on a different set of rationales, even though all members agreed on the recommendations.

For further clarification, the Province was not the designated member of the judicial review committee. It was a representative from the Province providing information to the three members of the committee, which then they took into consideration.

**Mr. Goertzen:** You know, but it is interesting because it's not the only part of the report where it seems that the Province, and I'm using the phrase—so the minister, he might want to argue with me on a political basis, but he's, essentially, arguing against the report then.

On page 29 of the report, beginning with paragraph 2, it says: "With respect to the consideration of prevailing economic conditions, the Province submitted that Saskatchewan is entitled to virtually no equalization payments from the federal government, and therefore Saskatchewan should not necessarily be linked to Manitoba."

I don't think it could be any clearer in the report that—it's funny because, in all the advertising that the government is putting out there on the economy of the province or other branding exercises, I don't remember, maybe the minister can clarify, if anywhere in that branding exercise he's put forward, that the province shouldn't be linked to Saskatchewan because they're doing that much better than us, that they're not getting any federal transfer payments.

**Mr. Selinger:** Well, I think the member is really wandering off the purpose of this meeting today. He may wish to debate that politically himself, but I wish he wouldn't contaminate the proceedings here in his discussion.

The Province, not the designated members of the Judicial Compensation Committee, argues a variety of different factors that should be considered in terms of the economic criterion that's stated in the

act. They do that, and the members of the committee, including the provincial designate, consider that. As the member himself said, the designated member of the compensation committee had some slightly dissenting opinions towards the end of the report but accepted the recommendations in their entirety. That would suggest that, even though there were slight differences on how the evidence was reviewed by the compensation committee, there was unanimity on the recommendations for judicial compensation. The member himself may wish to ask questions about other matters related to the economy and government announcements related to that, but I would hope that he wouldn't contaminate this report with his discussion in that regard and we'd get on to dealing with the recommendations.

**Mr. Goertzen:** Well, far away for me to contaminate anything. I think I have to clean up the record here for the minister because he's trying to rely on the fact that Mr. Schroeder, his representative on this report, put forward, again I would call it a counter-opinion, because it doesn't nullify the recommendations. But Mr. Schroeder indicates in his counter-opinion that Manitoba trails Saskatchewan, mostly for economic reasons. So, in fact, that is what the representative from the government is stating very clearly.

Now the only contradiction here is that the minister is saying that the government representative was wrong and that he was relying on information that was either outdated or improperly provided, or whatever the rationale is, but he's indicating that the government representative was wrong with the economic information that he brought forward to this committee which, presumably, they relied on in good faith.

**Mr. Selinger:** First of all, a couple of clarifications. The person we designate on the Judicial Compensation Committee does not act on instructions from the government. He offers his own views and his own opinions based on the evidence that he has put in front of him. The evidence that the member quoted, the forecasts are actually better than that, which is why I indicated they were wrong. They may not have been wrong at the time, but in retrospect they have been corrected.

I was very clear on at least two occasions in my comments that economics is, at best, a forecasting science that has quite a bit of variation, which is why many people have called it the dismal science. Some would say that it's art and science combined together when it comes to making forecasts, and the reality is

that even with the best forecast by any economist, conditions arise which change the outcomes, conditions not foreseeable by any of the forecasters.

The Province makes the case on the financial state of the economy as part of the process for the members of the Judicial Compensation Committee to review what the reasonable salary structure should be for our judges in Manitoba, and they try and put it in context. They make positive comments. They make comments that talk about the growth rate in the province. They make comments such as one that I will quote here from their original submission: "The combination of modest taxation levels and low living costs means Manitobans enjoy a high standard of living . . . A superior quality of living with lower personal costs and taxes – that is The Manitoba Advantage." They source that from Manitoba budget papers.

So, once again, the member seems to like to take one specific point that was made and expand it into a broader discussion about advertising campaigns, branding campaigns, and does everything he can but deal with the recommendations of the report which were unanimously approved by every member of the committee after all the evidence was considered, and they wanted to recommend in a unanimous way that these judges receive the compensation that I have moved in the motion.

I was wondering if the member would like to actually address the motion.

**Mr. Goertzen:** Again, as I have said in the past if the minister is indicating that the economic performance of the province isn't relevant to the salaries that have been recommended, that's a bit of a stretch. I'm not sure what he would think is important. I can't think of a situation that's more germane to the discussion than the fact that the Province, and I'm using the words of the report, that the Province has said that the economic conditions are more dismal than what the judges have said. What an awkward position for the minister to be in to be arguing that the judges were right about the economy and his representative was wrong, and then yet we should just go ahead and pass this particular report.

\* (15:50)

I'm going to move on to a different line of questioning, but I think that the minister needs to be very clear in terms of whether or not we can rely then on what his representative put forward in the report. He's indicated that he was wrong, whether it

was in hindsight or in foresight. You can read the *Hansard* because he's very clear in saying that he was wrong. So how is it that we can rely on this report as being an accurate reflection of what the judges should be paid?

**Mr. Selinger:** Again, when you have a process like this, information is put forward, the best information at the time. In retrospect, some of it will be wrong, some of it will be understated, some of it will be overstated. That is the simple import of the comment I made about it being wrong.

In retrospect, the factors to be considered I read into the record. The one factor that I asked the member to consider, which was, I think, the focus of this discussion here, was factor (c) under 11.1(16): "the need to provide fair and reasonable compensation for judges, in light of prevailing economic conditions in Manitoba and the overall economic and financial state of the Manitoba economy." The members of the Judicial Compensation Committee also get information put forward by the representative of the judges.

This is a labour negotiation. People put their best positions forward. The members of the compensation committee consider all perspectives. They make a wise decision, in their view, about what they think is fair and reasonable for the judges. That's the nature of the process.

The member is going from a misunderstanding, apparently, of the process to a set of conclusions related to the Province and related to the decision that's being taken in front of us. He goes completely off the record of the Judicial Compensation Committee, which there was a unanimous recommendation, all supported by even those members of the committee that had a slightly different version of the evidence in front of them. There was a unanimous recommendation—*[interjection]* When you speak, did I interrupt you?

**An Honourable Member:** Actually, you did once.

**Mr. Selinger:** So you have to do it twice? *[interjection]* Now you've done it three times. That's excellent. You're showing yourself to be a civil human being.

**An Honourable Member:** Move on, Greg.

**Mr. Selinger:** The fact of the matter is that we have a unanimous recommendation. The evidence was considered. It was presented by both sides. There's obviously going to be a difference in interpretation

of how that evidence is presented. What we have is confidence in the members of the committee considering that evidence from a variety of perspectives and making a balanced decision on what the recommendations should be.

If the member disagrees with that recommendation, perhaps he could say that. Otherwise, perhaps we could move towards accepting it.

**Mr. Goertzen:** Well, I can understand why the minister is upset. I'd be upset too if I, as the Minister of Finance, had appointed a government representative who said that the economic performance was dismal, and now he's going to have to try to defend that. So he can be upset, he can be concerned and he should be. I'm sure that those quotes will come back to confront him again at another time, as they should, because I think that Mr. Schroeder was probably, actually being quite truthful when he put forward the economic position.

I'm willing to defer a question to my colleague from Portage unless the minister wants to respond to that.

**Mr. Selinger:** Once again, the member, unfortunately, makes inaccurate information available on the public record. The Minister of Justice appoints the member of the committee, not the Minister of Finance. So the member might want to spend a little time reading the act before he proclaims to understand it and know it.

It's nice to have a lot of wind here. I wish it was colder, then we could harness it to wind power and actually make some money out of it. Otherwise, maybe we could move on with the recommendations of the committee.

**Mr. Faurschou:** Mr. Chairperson, in evaluating what is before us this afternoon, I want to draw the committee's attention to page 32 where, in fact, the report does state that MLAs' salaries, Manitoba ranks eighth. *[interjection]* Well, let me just point out there how figures can be misleading.

While salary alone, we do rank eighth, but in a total evaluation of the compensation and support package that we operate under representing the constituents to which we have that responsibility, in fact, of 13 jurisdictions, three territories and 10 provinces, we rank thirteenth. The kicker to all of that is that if one was to look to the twelfth place, we don't even see that twelfth place on the horizon. We're that far behind. That's why I'm very, very

supportive of the mentioning in 7.5 on page 40 that the parties agree that the compensation commission, in fact, look at the total compensation rather than just strictly looking at the salary alone. I really want to say that has a lot of merit.

I believe, though, that in years past, as I've sat on this committee before in evaluation of past compensation commission reports, we have made significant strides in the areas of pension, eligibility for that pension, spousal eligibility to the pension and supports for judicial personnel in the province of Manitoba, and I'm wanting to make absolutely certain that we compensate our judges fairly.

But to just look solely at the, I guess, with the motion before us, that it is very much, as the minister said, cherry-picking in the overall compensation package. If the minister could comment as to where we are as far as 7.5?

**Mr. Selinger:** Yes. The motion, that rather long motion that I read into the record, most of the items were additional benefits and other matters related to dental, drugs, education, pension. So it was a total compensation package that the committee reports spoke to. So it's not just salary; it's the total compensation for a judge. As the member will recall, the representative that spoke to us today on behalf of the judges indicated that, again, in retrospect, there have been some movements in other jurisdictions, but that, overall, they wanted to respect the process of using the Judicial Compensation Committee's recommendations as a very strong basis for us making a decision without tweaking them. So the recommendation here, that we have in front of you, is exactly the recommendations made to us as it was the previous two occasions because we're starting to build a culture of minimizing political interference in the compensation paid to judges by having these arm's-length committees that work through an arbitration model, in effect, for working out what the judges' salaries could be.

So I want to confirm for the member that it is a total compensation package. They operate on the best information available to them, at the time, on benefits, on salaries, on economic conditions. Some of that information, as I've indicated earlier, will subsequently, in retrospect, be inaccurate or, in fact, wrong because of conditions changing after the fact. But the reality is that the process has been finalized. This committee report was delivered to us in June of '06, as I recall, and it would probably be to the benefit of everybody if we moved this forward as

quickly as possible because it's getting, kind of, out of date and more things are going to change by the time we get it to pass it in the Legislature.

So the short answer is it is the total compensation package based on the best information and judgments of the time, and the faster we bring it into effect the more accurate it will be.

**Mr. Chairperson:** As Chairperson, I must remind members we agreed to review the 4 o'clock sitting time this afternoon, and the hour is approaching 4 p.m.

What is the will of the committee?

**Mr. Chomiak:** To 4:30.

**An Honourable Member:** I'm willing to work more than that.

**Mr. Swan:** I suggest that we sit until 4:30 and re-examine, if Mr. Goertzen is still in full flight at that time.

**Mr. Goertzen:** I understand that the Member for Minto only likes to work about an hour a day, but I'm certainly willing to stay as long it takes to deal with this report.

**Mr. Chairperson:** It has been suggested to the committee that this committee sit until 4:30 p.m. and review at that time.

Is that the will of the committee? *[Agreed]*

\* (16:00)

**Mr. Faurchou:** I thank the minister for his response and as it pertains to that. I know the presentation here today really was very much based upon salaries only. It would be, as a layperson here, certainly understanding business and bottom lines, but this really doesn't give a true picture of the costs of the judiciary to Manitoba taxpayers. I think that, in future, we should have a bottom line based upon past practice or experience, shall we say, so we can make a more comparative analysis from our perspective as well.

Now, dealing directly with the motion, I would like to ask very specifically is this normal practice, then, to be two-thirds indexing of CPI here in Canada, the pension plan that the judiciary is to receive.

**Mr. Selinger:** First of all, the report speaks to all the terms of reference given to them in the act. The report goes beyond salaries to look at other forms of benefits as well, and the recommendation or the

motion I put in front of you speaks to all the recommendations made in the report. Many of them are sort of in addition to salary related benefits, which I've indicated, including education, including Pharmacare, dental care, et cetera.

Your question to me is on the two-thirds indexing. My information is that, and I'd have to get specific information but I'm giving my best answer from a similar question I asked myself, about half the jurisdictions have this type of arrangement and about half don't. So that would position us sort of in that kind of a context.

**Mr. Faurschou:** Item 13, in regard to the availability of an educational budget to the judiciary, why is it not being suggested that the unused monies not be carried over to the next year, because quite aware of some of the very hefty tuition of some programs for the judiciary that \$2,500 would not cover a charge for some programs that are available? I'm wondering, is it government policy then that pre-empts the carryforward of unused budgetary monies or why is that restricted by 13?

**Mr. Selinger:** Just to put it in context, the education budget administered by the Chief Judge in '05-06 was \$40,000. In '06-07, it's \$53,278. So this is an amount in addition to that for each judge. The short answer is why they didn't carry it over, because that's what they agreed to in this arbitration model where you have one from the judges, one from the government and a third person chairing the committee. When they considered all the factors, they decided not to have carry-over here and the factors they considered were obviously the total context but the \$53,000 under the control of the Chief Judge and this additional amount. They thought that carrying it over would not be necessary given the total amount of money available.

**Mr. Faurschou:** I was just wanting to clarify from the government's position. Is that the government's position that this not be considered?

**Mr. Selinger:** The government's position is that we should accept the report's recommendations in its entirety and not cherry-pick.

**Mr. Faurschou:** Well, I just wanted to say that I'm not cherry picking, I'm asking for clarification of the government's position on the carryforward of available educational budget. It's something that I believe is very important not only to the judiciary but to all civil servants, that they be given the ability to

remain current and up to date to the technology and understanding of their responsibilities.

**Mr. Selinger:** Yes, once again, our position is that we should accept the report's recommendations in its entirety. I don't think it's appropriate for me to go in there and start making individual commentary on each of the specific recommendations. We accept them in their entirety because it protects an arm's-length process and it was a committee with balanced representation on it and an independent chair to deal with that balanced representation.

They came up with a package that they thought would be sufficient to meet the criteria under the act, which I enumerated earlier about the purpose of the committee to retain people to make sure we have excellent people in the court, to make sure that it considers economic conditions, to make sure it considers comparable salaries in other jurisdictions for similar functions of judging.

Once again, on this two-thirds CPI guarantee, I've got information on that, it's in the report on page 55. It indicates that in the vast majority of provinces, if not all but one, in all but two-three? Is there a third one there? I see three discretionaries, well, not counting Manitoba; in all but two other jurisdictions it's guaranteed. So that would suggest that in seven out of nine of the jurisdictions—three excluding Manitoba? Okay. I don't see that, oh, yes, there's one, Nova Scotia. In six out of nine it's guaranteed; in three it's discretionary. So we're falling in the mainstream in that regard. That probably was influential in the recommendation of the committee.

**Mr. Faurschou:** Those are the two very specific questions, but I will wrap up my engagement in discussion here by coming back to my original point that, while we have a motion before us, it is difficult for me to feel comfortable in making certain that the judiciary here in Manitoba is adequately compensated without knowing the entire package and the bottom line as to where the dollar amount that is required to support. That is a failing, I believe, in this motion that it does not, and also in the report that we as legislators are now asked to effectively support or not support a recommendation, which, to my evaluation, leaves us very wanting for a lot of information, because in Manitoba the cost of living in relation to the other places in Canada is significantly more modest whereby, though, the entire package of compensation, the supports that are hired for the judiciary—I would feel much more



comfortable if we had a bottom line for the taxpayers of Manitoba that we could effectively offer a comparison to feel comfortable with. Frankly, this report does leave me wanting for that information, and I'm wondering whether or not that we're able to support this particular report before us or a motion as presented today.

**Mr. Selinger:** Yes, the report actually puts all of the recommendations in some form of comparative context with other jurisdictions. So you do get a pretty good idea at the end of it of where the—  
[interjection]

Once again, the member is interrupting. I can't believe it. Are you taking lessons from the Member for Steinbach (Mr. Goertzen)? Okay, we'll have to send you guys to etiquette school.

The reality is that the report actually tries to put it all in comparative context. They don't come up with a total number. They leave that up to the government to do the precise calculations of that. I can indicate to the member that our calculations suggest that over the life of the agreement it'll be about \$766,000 of additional payroll. It'll be another \$5,000 for legal and other fees reimbursement. The pension change doesn't have an identified cost, which tells you that it'll probably be substantial. The education allowance is another \$54,000. The benefits recommendations, \$33,250 in total. So that gives you an idea. The pension, as you know, will be affected by further changes in CPI as we go forward over a long period of time. So it would be an estimate at best. That gives you just some idea of what the cost would be, the incremental cost over the base salaries right now.

\* (16:10)

**Mr. Goertzen:** I'd like to ask the minister, I don't want to unnecessarily agitate him; we haven't even started asking questions about Crocus yet, but if I direct him to page 23 of the report, paragraph 3, line 2, and I'll read it into the record. It states: "Particularly, the Judges questioned Manitoba's reference to our province ranking lowest for two of the six representative families and third lowest for the other four, whereas Manitoba came fourth on a cross-country comparison for higher income earners."

I wonder if he could clarify what Manitoba's position was, which statistics he's indicating? Is that in relation to average incomes for representative families or is that related to a tax load? Where is it

that we rank so poorly according to the Manitoba representative?

**Mr. Selinger:** I am going to just verify that with our members here who are going to just check the nature of that reference. I think I know what it means, but I want to make sure before I put it on the record.

Yes, that's what I thought. This actually is not a negative comment. This reference refers to affordability, and this is the fact that Manitobans, in various categories or various formations of families, have very low living costs and taxation levels combined. So it's the Manitoba advantage in terms of Manitoba being a very affordable place to live.

I wouldn't want the member to get agitated himself by misinterpreting the information. I want him to know that that means Manitoba is a very affordable, competitive place to live and that was the evidence presented. That was the quote I actually used earlier on when I put it on the record in terms of the submission made by provincial officials to the compensation committee.

**Mr. Goertzen:** Far from being agitated, I wanted to clarify in terms of whether or not that was the strength of the argument from the government representative and why, presumably, he was looking for different compensation levels and perhaps why he put forward a report that was somewhat counter in terms of what went on more broadly.

I want to ask—it probably is more appropriate if the minister wants to defer to his Minister of Justice (Mr. Chomiak), and I think that that would be fine—in relation to judges and the selection process, and it relates to this report, in that, I think when we deal with salaries as a whole and how we compensate individuals, Manitobans would expect us to look at it from a broader perspective in terms of judges more generally. I have, in the past, had opportunity to speak to the Minister of Justice. I think we've had some cordial conversations regarding this particular topic, but I wonder if he could indicate—if the current minister, the minister in the chair, has a willingness to defer—what his position is on allowing, for example, nominees for the provincial bench to come before a committee such as this to have discussions regarding their nominee status.

**Mr. Chairperson:** Gentlemen, ladies, before we go down that road, please, as Chair, I must remind members of the committee that there is information contained within the report that this committee is discussing here today. I believe the question that was

asked by Mr. Goertzen falls outside of the bounds of the report itself, and, therefore, I must recommend to the committee that that question not proceed and not be allowed.

**Mr. Goertzen:** Well, I would maybe ask the Chair to look at it in a new light, the light being that when we're dealing with how judges are compensated, which is what the report is particular to, it does deal with a number of issues more broadly in terms of the role of judges and how they interact more generally with our system. In fact, there are references to the Supreme Court, which talks about the role of judges and the nature of the judiciary. So there is a broader perspective in terms of the outlay of information within the report that I think does pertain to the question of judges potentially coming to a committee like this to answer questions. I shouldn't say judges, those who are nominated to become Provincial Court judges before they're sworn in, coming to a committee like this. It would talk about the broader aspects of the judiciary, which is referenced within this report and, I think, which then leads to salary recommendations in the future that people and the public can generally have confidence in.

**Mr. Chairperson:** For the information of committee members, as Chair, I would like to remind members that the business before this committee is the *Report and Recommendations of the Judicial Compensation Committee*, and that we currently have before us a motion that was presented to all committee members. The subject matter of the current discussion does not appear in the report in question.

I would cite for members of this committee *Beauchesne's* citation 831(1), and I quote: "A committee can only consider those matters which have been committed to it by the House."

*Beauchesne's* citation 832 also advises that, "As creatures of the House, committees can only consider those matters which have been committed to them by the House."

I must, therefore, indicate to the member that, as Chairperson of this committee, I have made a ruling with respect to the question that was presented, and the member has two options: he can accept the ruling or he can challenge the ruling of the Chair. Those are the options that are available to the member, with respect.

**Mr. Goertzen:** With respect, I challenge your ruling, Mr. Chairperson.

**Mr. Chairperson:** The ruling of the Chair has been challenged.

Shall the ruling be sustained?

**An Honourable Member:** No.

**An Honourable Member:** Yes.

#### Voice Vote

**Mr. Chairperson:** All those in favour of sustaining the ruling of the Chair, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, signify by saying nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In the opinion of the Chair, the Yeas have it.

Mr. Goertzen, the ruling has been sustained.

#### Formal Vote

**Mr. Goertzen:** Yeas and Nays, Mr. Chairperson.

**Mr. Chairperson:** Yeas and Nays have been called, recorded vote.

*A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 3.*

**Mr. Chairperson:** The ruling of the Chair has been sustained.

**Mr. Goertzen:** I think that we're going to proceed to the motion, Mr. Chairperson.

Prior to that, I want to put in the form of a statement or a question, if you would prefer, on the record. Here's the dilemma that we face as committee members on our side of the House who need to act respectfully to this particular report. On the one hand, and I'll deal with the most recent issue, we would've, not to challenge your ruling again—you've made your ruling and we respect that—but I think it would've been nice if the government had indicated that they were willing to have the discussion on how judges become members of the bench. Certainly, I know that it could've been, I think, a respectful discussion, but it seems as though, as the government of the day—and we'll certainly take this out more broadly—that the government of the day feels that a status quo is okay when it comes to the justice system. They can go forward and tell Manitobans that, and perhaps Manitobans will, I doubt it, but

perhaps Manitobans will come back and say to them, yes, we agree that nothing should change within the justice system, and we're willing to live with how things are. Quite frankly, that's not good enough for me or for the party that I'm proud to be a part of, and I think we will be looking for a different direction when it comes to justice.

We've been pleased to see reforms happening on the federal level, and disappointed that the provincial government is stuck in the proverbial mud when it comes to trying to improve justice for Manitobans more generally. So, from that perspective, it's very difficult to vote for this report as a first instance.

Secondly, there were good questions raised by my colleague from Portage regarding the nature of the number of judges and the make-up of the bench and the elimination of part-time judges. Certainly, we've heard the issue about supernumerary judges come up, and that doesn't seem to have been addressed either in the context of discussion of this report and preparation for supernumerary judges, perhaps, on the court, which might be—it wouldn't be a cure-all, but it, certainly, would be one step in alleviating the horrendous backlog, the remand culture, that has been created under this NDP government here in Manitoba. That's not addressed in the report. It doesn't speak to those particular issues, which, I think, is unfortunate.

\* (16:20)

Perhaps most alarming, Mr. Chairperson, is the fact that the government representative put forward information which the minister, in my recollection—he can certainly look at *Hansard*—but in my recollection indicated was incorrect, and not purposely, perhaps, incorrect, but he says was incorrect. That's on the one hand when it comes to the negative aspects of Manitoba's economy. Yet, when I ask him the question regarding the positive aspects, he comes forward and says, oh, that's absolutely correct. That's exactly my point is that the government representative, apparently, when it deals with information that is more negative towards the economy, was wrong and misled, and the dismal science of economics has led him down the wrong path. Yet, when I ask the question about something that the government would see as more positive, he says: Absolutely, he was correct, and we're proud of the Manitoba advantage. Well, what a contradiction.

Here we are now as committee members expected to vote on a report where the government, on one hand, says: We don't want to cherry-pick

recommendations out of the report, but let's cherry-pick what our own government representative put forward as information on the report, a tremendous position for us to be put into when we're dealing with salaries that are well in excess—would be expected to be in excess of what the average Manitoban would make.

So, based on the fact that it doesn't address key issues regarding the composition of the judiciary, based on the fact that the government representative either put forward incorrect information or was given incorrect information to put forward, and that was partly the basis of how these recommendations came forward, and based on the fact that we can't have any sort of meaningful discussion about how changes could happen more generally in the judiciary, we're left with no position but to vote against this report, Mr. Chairperson.

**Mr. Selinger:** Yes, it's unfortunate that the Member for Steinbach (Mr. Goertzen) has politicized this to the extent that he has today. It's been a fairly shameful presentation and misconstruction of the evidence. The member wished to speak to the appointment process. Of course, the Legislature and the Standing Committee on Justice are available to do that. The purpose of this report was quite clear. The terms of reference for the meeting today were quite clear and the member deliberately abused that. It's unfortunate that he did that, being that he's a House Leader. He's supposed to be the one that upholds the processes of the House so that everybody can function in a fair and unbiased way in their legislative responsibilities.

The questions that we did get from the Member for Portage la Prairie (Mr. Faurichou) actually were on the report. They were actually quite good questions and we answered those questions straightforwardly, which is what we should be doing. That spoke to matters of the number of judges, that spoke to matters of whether there is anything that could be done in terms of the total compensation package, were all of those matters considered. So, of course, we respect those questions because they respect the process that we're dealing with today.

Then the member, in a final flourish of rhetorical irrelevance, wishes to speak about the contradiction between the Manitoba advantage. The only reason I corrected the record on that is because he just interpreted the report wrongly. It wasn't that I was affirming or disaffirming the Manitoba advantage at the time it was presented in the report. I said all the

information in the report retrospectively could be reviewed in the light of things that have changed since then: information on the economy, information on the Manitoban advantage, information that we heard today about awards in other jurisdictions with respect to the judges. But, at the time that that information was considered, it was the best information available and it was considered by the members of the Judicial Compensation Committee, and sure there are changes since that process.

So the member unfortunately just simply misread the report incorrectly because he probably didn't put it in the context of reading the whole report at one piece. He probably just selected out a paragraph that he thought he could get some political mileage on.

So the report is quite, I think, balanced. It has been accepted by the government in its entirety. We have no desire to change any of the recommendations made. The recommendation we have in front of us deals with all the matters raised in the report of compensation and benefits. We hope now we can move to a vote and take this process an additional step forward and get in place the salaries that our judges deserve.

**Mr. Goertzen:** Well, in the spirit of bipartisanship, which I like to always bring forward to the committee or to the Legislature, the Minister of Finance indicated that the issue of the broader questions about how judges are selected should be brought forward to the Standing Committee on Justice.

I'm glad to see the Minister of Justice (Mr. Chomiak) is here and perhaps we can reconsider the position. If the Minister of Justice wants to indicate today that in the month of January he will call the Standing Committee on Justice and we can have a discussion based on how judges are selected and the ability for them to come forward at committee, if the Minister of Justice will make that commitment to me here today, I think we could proceed differently.

**Mr. Selinger:** I move that we call the question now.

**Mr. Chairperson:** The question has been called—Mr. Lamoureux.

Okay, the advice I'm receiving is that Mr. Lamoureux will have the opportunity to ask his questions now. Go ahead, Mr. Lamoureux.

**Mr. Kevin Lamoureux (Inkster):** Mr. Chairperson, I can sense the frustration and I can appreciate the

Member for Steinbach (Mr. Goertzen) is doing what he feels is right. I, too, sense a great deal of need to have the types of discussions that he is talking about in the dialogue that I've had with my constituents.

There is a perception, and it's a very real perception that is out there. I think that the Minister of Justice would do well for the Province by at least allowing for more public dialogue. In particular, I would suggest to the Minister of Justice that we do have some sort of a standing committee dealing with the issues that the Member for Steinbach has raised, in the month of January. I think it's a reasonable thing to do.

I don't have any specific questions in regard to the report. I just wanted to get on the record stating that. Thank you, Mr. Chairperson.

**Mr. Chairperson:** Is the committee ready for the question?

**Some Honourable Members:** Yes.

**Mr. Chairperson:** The committee's ready for the question. The question before the committee, do they wish to have the motion read back?

**Some Honourable Members:** No.

**Mr. Chairperson:** So then, just to briefly relate, it has been moved by Mr. Selinger, that the Standing Committee on Legislative Affairs adopt the proposal outlined in Schedule A and recommend the same to the legislative committee.

There's an attached Schedule A that has been circulated to committee members and will form part of the record of this committee.

*THAT the Standing Committee on Legislative Affairs adopt the proposal outlined in Schedule A and recommend the same to the Legislative Assembly of Manitoba.*

#### *SCHEDULE A*

*1. That effective April 1, 2005, salaries for Provincial Court Judges be increased to \$168,000 per annum (\$6,439.99 biweekly); that effective April 1, 2006, salaries be increased to \$173,040 per annum (\$6,633.19 biweekly); and that effective April 1, 2007, salaries be further increased to \$178,230 per annum (\$6,832.14 biweekly).*

*2. That effective April 1, 2005, salaries for Associate Chief Judges be increased to \$173,000 per annum (\$6,631.66 biweekly); that effective April 1, 2006, salaries be increased to \$178,040 per annum*

(\$6,824.86 biweekly); and that effective April 1, 2007, salaries be further increased to \$183,230 per annum (\$7,023.81 biweekly).

3. That effective April 1, 2005, the salary for the Chief Judge be increased to \$178,000 per annum (\$6,823.32 biweekly); that effective April 1, 2006 that salary be increased to \$183,040 per annum (\$7,016.52 biweekly); and that effective April 1, 2007 that salary be further increased to \$188,230 per annum (\$7,215.47 biweekly).

4. That effective July 1, 2006, the current pension plan be amended to provide a guaranteed indexing at the rate of 66.7% of the percentage increase in the annual change in the Consumer Price Index (CPI) for Canada based on the immediately preceding calendar year.

5. That, effective 60 days following the date of approval by the Legislative Assembly, the age-related reductions to life insurance coverage for Judges be changed so that

(a) the coverage for a Judge who did not reach the age of 66 before May 5, 2004 not be reduced until the Judge reaches the age of 66, at which time it is set at 75%;

(b) the coverage for a Judge who reached the age of 66 but not the age of 70 before May 5, 2004 be increased to 75% until the Judge reaches the age of 70, at which time it is set at 62.5%; and

(c) the coverage for a Judge who reached the age of 70 before May 5, 2004 be set at 62.5%.

These changes are not to apply to a Judge who died before the effective date.

6. That the residual amount of life insurance available to Judges at age 75 be increased from \$1,500.00 to \$4,500.00. This change will be effective 60 days following the date of approval by the Legislative Assembly.

7. That the life insurance plan for Judges be amended to provide that Dependents' insurance coverage be increased to \$17,500.00 for a spouse and to \$3,500.00 for each eligible child. These changes will be effective 60 days following the date of approval by the Legislative Assembly.

8. That the Dental Plan be amended by implementing the 2006 Manitoba Dental Association (MDA) Dental Plan fee guide; by increasing the maximum claim to \$1,475 per calendar year and increasing the maximum lifetime claim for

orthodontics to \$1,675. These changes will be effective 60 days following the date of approval by the Legislative Assembly.

9. That the Province cover the cost of 80% of eligible prescription drug expenses under the current Extended Health Benefits Plan to a maximum of \$650 in each calendar year. The participating Judges will fund the balance. This change will be effective 60 days following the date of approval by the Legislative Assembly.

10. That the Extended Health Benefits Plan be amended to provide coverage for chiropractic, massage therapy, naturopathy and speech therapy (each to have a \$350.00 annual maximum); foot orthotics (to have a \$200.00 annual maximum); hearing aid coverage (to have a \$300.00 maximum per person per 5 year period). The premiums for this coverage are to be paid by the participating judges. This change will be effective 60 days following the date of approval by the Legislative Assembly.

11. That the northern allowance rates for judges residing in Thompson or The Pas be set as follows:

Effective Date (biweekly):	Single Rate (biweekly):	Dependent Rate (biweekly):
April 1, 2005 Thompson	\$101.72	\$144.79
April 1, 2005 The Pas	\$ 55.58	\$ 90.95
April 1, 2006 Thompson	\$104.26	\$148.41
April 1, 2006 The Pas	\$ 56.97	\$ 93.22
April 1, 2007 Thompson	\$106.87	\$152.12
April 1, 2007 The Pas	\$ 58.39	\$ 95.55

12. That, commencing April 1, 2005, the Province pay the annual fees to enrol each Provincial Court Judge in the National Judicial Counselling Program.

13. That each Judge be provided with an educational allowance of \$2,500.00 each fiscal year to be used for attendance at seminars or conferences only as approved by the Chief Judge. A Judge must first request funding through the Judges' regular education budget, and if funding is refused in whole or in part, this allowance can be used. Any amount of this allowance not used in any given fiscal year cannot be carried over to a subsequent year.

14. *That the Province pay 75% of the Judges' legal costs and fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$35,000.00.*

15. *That unless otherwise stated, all changes shall be effective on the date of approval by the Legislative Assembly of Manitoba.*

16. *In these recommendations, "date of approval by the Legislative Assembly" means*

*(a) the date that the vote of concurrence referred to in subsection 11.1(28) of The Provincial Court Act takes place with respect to these recommendations; or*

*(b) if the recommendations must be implemented because of subsection 11.1(29) of The Provincial Court Act, the first day after the end of the 21-day period referred to in that subsection.*

Shall the motion pass?

**Some Honourable Members:** Pass.

**Some Honourable Members:** No.

**Mr. Chairperson:** Agreed that the motion shall pass?

**An Honourable Member:** No.

**Mr. Chairperson:** No? Do you wish to have a recorded vote?

**An Honourable Member:** Just do Yeas and Nays.

**Mr. Chairperson:** Yeas and Nays?

**An Honourable Member:** No, you ask, all in favour.

#### Voice Vote

**Mr. Chairperson:** All in favour, signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please signify by saying nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In the opinion of the Chair, the Yeas have it. The motion is accordingly carried.

If there are no further comments or questions, is it the will of the committee to report to the House that we have completed our consideration of this matter? *[Agreed]*

The hour being 4:28 p.m., what is the will of the committee?

**Some Honourable Members:** Committee rise.

**Mr. Chairperson:** Committee rise. Thank you to members of the committee. Merry Christmas to everyone.

**COMMITTEE ROSE AT:** 4:28 p.m.

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