



Second Session - Thirty-Fifth Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE

on

PRIVILEGES AND ELECTIONS

40 Elizabeth II

*Chairman
Mrs. Shirley Render
Constituency of St. Vital*



VOL. XL No.1 - 10 a.m., THURSDAY, JULY 18, 1991



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

LIB - Liberal; ND - New Democrat; PC - Progressive Conservative

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

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Thursday, July 18, 1991

TIME — 10 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mrs. Shirley Render (St. Vital)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Derkach, Driedger, McCrae

Hon. Mrs. McIntosh

Ms. Barrett, Messrs. Chomiak, Edwards,
Helwer, Laurendeau, Martindale, Mrs. Render

Substitution:

Mr. Martindale for Mr. Ashton

MATTERS UNDER DISCUSSION:

Judicial Compensation Committee Report

* * *

* (1005)

Clerk of Committees (Ms. Bev Boslak): This committee will come to order, please. We must proceed to elect a Chairperson for the Standing Committee on Privileges and Elections. Are there any nominations?

Mr. Marcel Laurendeau (St. Norbert): I nominate Mrs. Render.

Madam Clerk: Mrs. Render has been nominated by Mr. Laurendeau. Are there any further nominations? As there are no further nominations, will Mrs. Render please take the Chair.

Committee Substitution

Mr. Dave Chomiak (Kildonan): Yes, Madam Chairperson. I wonder if I might have leave of the committee to make a committee change.

Madam Chairman: Is there leave that committee substitutions be made?

Some Honourable Members: Leave.

Madam Chairman: Leave. Agreed.

Mr. Chomiak: The member for Burrows (Mr. Martindale) for the member Thompson (Mr. Ashton).

Madam Chairman: It is agreed that Mr. Martindale replace Mr. Ashton.

Mr. Laurendeau: That then will have to be brought forward in the House this afternoon.

Madam Chairman: I would remind Mr. Chomiak that the committee changes he has just made are to be moved by him in the House this afternoon.

Mr. Chomiak: Yes, I will make certain that is done, Madam Chairperson.

* * *

Madam Chairman: This meeting of the Standing Committee on Privileges and Elections has been called to consider the Report and Recommendations of the Judicial Compensation Committee 1991. Does the Minister of Justice have an opening statement?

Hon. James McCrae (Minister of Justice and Attorney General): Yes, Madam Chairperson, the Judicial Compensation Committee Report for 1991 was tabled in the House as required under The Provincial Court Act on July 4 of this year.

Our rules call for the report to be referred to a committee, and the committee to report to the House, and then the House to make its determination. Honourable members will have seen the committee's report. It makes recommendations respecting salaries and pensions and other matters related to provincial judges in Manitoba.

In addition, at page 29 of the report there is a qualification by one of the members of the committee referring to our present economic situation in our province. The government, of course as honourable members know, has been following a fiscal plan and we find ourselves in a particularly difficult economic situation at the present time. I think that in this situation, provincial judges ought to be treated in a manner similar to that that would be embraced in the spirit of Bill 70. Therefore, while I am sympathetic with the situation set out in the Judicial Compensation Committee

Report, we are not in a position at the present time to be able to act on the report.

Therefore, I move that the Standing Committee on Privileges and Elections recommend to the House that the report of the Judicial Compensation Committee 1991 be referred again to a Standing Committee of the House at the beginning of the Third Session of the Thirty-Fifth Legislature for consideration and report.

Mr. Paul Edwards (St. James): Madam Chairperson, I would like to ask the minister whether or not, since tabling of the report, he has had any discussions or correspondence between himself and any representative of the judges on this issue and on his present motion.

Mr. McCrae: Madam Chairperson, I have indeed had discussions with representatives of the provincial judges in Manitoba in setting out the position of the province in these difficult circumstances. I would like to commend the provincial judiciary for the important work they do for Manitobans. It should be noted that probably well over 95 percent of all court appearances in this province are in the provincial court. So that for most people, the provincial court is the only court that they ever have any dealings with, be they pleasant or otherwise. In that sense, if you are talking about people's courts, the provincial court is that court.

* (1010)

It deals with very important matters, criminal matters, young offender matters, and some family matters. All very important matters to the people who come before the courts. We very much appreciate the work done by the judiciary in Manitoba. I am pleased with the progress that the Manitoba judiciary has made with respect to judicial education issues. Manitoba, our provincial court, I suggest, is at the forefront of other jurisdictions in this country when it comes to judicial education, and a judiciary which is in tune with standards of the community in our province.

Having said all that, I also had the unpleasant task of discussing our present economic situation with the judges and they with me, and my position this morning is taken after such conversations with the judiciary.

Mr. Edwards: I appreciate the minister indicating to us that he has had discussions. Can he indicate what the position of the judges was with respect to the motion he has put before us, if any?

Mr. McCrae: Madam Chairperson, the judges through their representatives are aware of the position being taken by the government of Manitoba. I think it would be unfair to suggest that everybody, including myself, is particularly happy with the position that we find ourselves having to take. I think, though, that the judiciary is prepared to continue to work with us and in a co-operative way.

Mr. Edwards: I thank the minister for that. I only want to add to his comments that I have enjoyed reading this report. I think it was both an educational and a well thought out report which came before us and, in many respects, a difficult one because we are embarking on this process and this was the first go round.

All of the members, Mr. Baizley, Mr. Piercy and Mr. Curtis, I think, are owed a debt of gratitude from all members of this House for their very conscientious, very thorough effort to put this report before us. I think it sets out many of the principles which will be the blueprint, and should be the blueprint, for future discussion around these matters.

It is indeed a reality of this fiscal period that we do not obviously—and I accept the minister's indication—have funds readily available for increases of the magnitude called for, if at all, in this fiscal year, and that is accepted. I am pleased to see that discussions have ensued, and I take it from the minister's comments there is at least an acceptance on the part of the judges.

I do not suggest approval in any way. I do not suggest that they are happy, but if there is a willingness to continue in a co-operative spirit to try and deal with these issues over a period of time, rather than in the immediate future, then I think that is positive. I note, of course, Mr. Curtis' comments, as one of the three on the committee on page 29 as the minister has indicated.

I only want to add that it is important, in my view, to always keep in mind the importance of judicial independence, and that is at the root of the difficulty that we find ourselves in, in setting salaries for members of the judiciary. It is a problem. One that has been talked about and thought about and is indeed reviewed in this report. That principle is one which is hundreds of years old, was born of the abuse of the judiciary by political regimes many centuries ago, and is a principle which is well worth

maintaining, indeed, essential to maintain in our society.

I know the minister, he and I have spoken on this, certainly understands the importance of judicial independence. I do, and I thank the judges for their patience. I thank the members of the committee for their work which is greatly appreciated, at least by myself. I think I speak on behalf of all members. Thank you.

* (1015)

Mr. Chomlak: Madam Chairperson, I have a number of questions of the minister, and I also have some comments that I would like to put into the record. I presume there is a motion on the floor, so I assume that I can make my opening comments and also question the minister.

Mr. McCrae: Agreed.

Mr. Chomlak: Thank you. Just by way of background, I have to indicate that I had an opportunity to read some of the debates that go back a long period with respect to this particular bill.

When it was in the House, ironically it was I believe Bill 70, when it was debated in the House, and that irony was not lost on me. I was also profoundly impressed, and I do not want this to appear to be elitist, but by the comments of my Leader at the time, Gary Doer, who indicated that by virtue of the passage of that bill and by virtue of the process that we have now put ourselves into, precisely what Mr. Doer predicted would happen has happened.

We are now in a situation where an independent body has recommended rather large increases not only to salaries but to pensions, and consequently the government finds itself in a position where it is faced with the prospects of freezing everyone else's salaries. With respect to judges, the government is in a position where they want to delay. I think that is government by drift. They want to drift along and not make a decision with respect to judges salaries. They want to treat judges differently than they are treating other individuals and other people in the system. Consequently, precisely what Mr. Doer predicted would happen in the Legislature, and I have the Hansard quotes and I reviewed them last night, has happened with respect to the judges salaries and the judges pension rights, Madam Chairperson. So precisely what Mr. Doer predicted has happened, has happened.

We are in a situation where we are now treating judges differently than we are treating other members, other members of the Civil Service, other members of the public, pay clerks. Those at the bottom end of the scale are being treated differently, Madam Chairperson, than judges. We in the New Democratic Party really have a difficulty justifying this kind of move. We note that both the Liberals and the Conservative Party are supporting the position that government by drift, by allowing the salary issue to drift along out of this time period. What the government is doing is saying one thing to judges, and it is saying another thing to the rest of the public.

They are saying zero to the public and they are saying to the judges, well, we are going to move it along next year. That is what is going to happen—precisely what Mr. Doer predicted to happen has happened. We are quite concerned, I mean the process is evident. The report was provided to the minister on June 7. It was not tabled in the Legislature until July 4, and now the minister comes and asks us to delay it further until the next session of the Legislature. That, in our view, is treating judges differently, Madam Chairperson.

We want to know what the government's position is. We want to know what the government's position is on a variety of issues. Do they believe that the salaries and the pensions are inextricably bound as the report indicates? Do they believe that the average judges salary should be in line with New Brunswick, Saskatchewan and Nova Scotia? Do they believe that the recommendations in that report, which the report indicates are the minimum to achieve, are in fact what the government is intending to achieve?

Do they agree with a \$30,000 a year average increase in pensions, Madam Chairperson? Does the minister support the position of the Deputy Minister of Finance, the government's appointee, who in his comments indicates he does approve of this report? We want to know what the government's position is. We know what the Liberal and the government position appears to be, and that is to let it drift into the next session. To treat judges differently than they are treating other members of the public, we have a great deal of difficulty with that position, Madam Chairperson.

We want to know what the government thinks about retroactivity of the salaries and the pensions. We want to know what the government intends to

do about this. We get the impression, it is clear. It is clear to us. Delay amounts to treating judges differently, and those are my opening comments. Thank you, Madam Chairperson.

* (1020)

Mr. McCrae: Madam Chairperson, the honourable member is totally wrong, and I hate to have to do this to the honourable member for Elmwood, because he is usually—

Some Honourable Members: Kildonan.

Mr. McCrae: I am sorry, the member for Kildonan (Mr. Chomiak). I have done that before. I have called him the member for Elmwood and that is the wrong thing to do, I apologize.

Mr. Chomiak: I should have corrected you when you were criticizing me, but not when you were complimenting me in the House.

Mr. McCrae: A generally very even tempered, moderate and reasonable kind of member of the Legislature today comes out and says something that is totally wrong, Madam Chairperson. The honourable member finds himself having to adopt a position taken by his Leader, which was a bit of an inconsistent kind of position in the first place.

This exercise that we are into is one that is set out in The Provincial Court Act. The government of Manitoba is comfortable with the process here. The process goes a long way towards respecting the independence of the judiciary, taking out of the hands of the Executive Council these decisions, and putting into the hands of the full Legislature issues like this.

These are sticky issues when it comes to dealing with the arrangements, salary and others for independent people in our society, independent people like members of the judiciary. The honourable member talks about putting things off and uses the expression government-by-drift. What we are doing here today is totally consistent with the fiscal plan of the government of Manitoba. It is totally consistent with not treating the judiciary differently from others that are caught in Bill 70.

What we are saying by this motion today is that the government is not prepared at this time to go forward with any changes, any increases in salary, or other arrangements for judges. That is consistent. I am having trouble understanding the honourable member's position.

You know, the honourable member might be interested to know that others that are caught in Bill 70 received raises in 1990. The last time the judges received a raise in their salary was in September of 1989. So let not the honourable member suggest that judges are being treated in a more favoured way than anyone else.

I think that basically covers it. The honourable member is just totally wrong in what he has said, and we will have to leave it at that.

Mr. Chomiak: I might note that the minister is correct in terms of the judges not receiving the increase since 1989, but I also note the recommendations in the report are that the judges should receive a retroactive pay increase. My question for the minister is, what is the minister's position on all of those recommendations? Indeed, the Deputy Minister of Finance has endorsed this report's recommendation. What is the government's recommendation, having set this process in place, having put it in place, what is the government going to do?

Mr. McCrae: Madam Chairperson, the honourable member's remarks and his question assume that the Legislature is to be a rubber stamp to the Judicial Compensation Committee. That is the incorrect assumption his Leader made back at the time The Provincial Court Act was amended.

Both of those assumptions on the part of both honourable members are wrong. The honourable member wants to suggest that all we are doing is putting off dealing with every point made in the Judicial Compensation Committee Report; in other words, that we will accept every word in that report. This is the difference between the NDP and the Progressive Conservatives.

The NDP, and to some extent the Liberals as well, would like to be totally removed from any process that would allow for government or the Legislature to be accountable to the people, the taxpayers of this province. I do not agree with that approach. I was elected to be accountable for the spending of public money. The honourable member assumes that what this report says is precisely what will be the policy of the government of Manitoba whether it be today or some other time. The honourable member assumes incorrectly, and that is what his Leader did too. They are both wrong, and they seem to have little regard for the principle of

accountability and little regard for the taxpayer who pays the bills in this province.

I have reminded the NDP over the years, many times: Get your hands out of the pockets of Manitobans. I have said that. Roland Penner hated that when I said that, Madam Chairperson. In any event, I said it and I meant it, and I mean it today.

* (1025)

The discussions between now and the time when we are able to deal with the subject matter of this report will go forward, both within government and in co-operation with the judges. The honourable member is wrong if he assumes that this government is going to take a position that it will adopt everything that some independent committee has to say.

We still have to look at what is the right thing to do in the light of fiscal realities existing at any particular time. The honourable member says that we do not take that into account. Untrue. It is the honourable member and his party who do not intend to take fiscal realities into account. That is why we are spending \$550 million this year to pay interest on debt. I would like to have a little bit of that money for civil servants, a little bit of money of that \$550 million that we are paying on debt to make a better deal for the judges, for anybody else in our society who is facing a freeze this year.

If we did not have to pay that \$550 million this year alone, and we have been doing it each and every year for a number of years, if we did not have to pay that because of the profligacy of the New Democratic Party in this province, we would have money to make better arrangements with people in the public sector.

Mr. Chomiak: While the minister does make my point, the minister had, and the government has, and the Liberal Party has, and the New Democratic Party have taken a position on Bill 70, and the wages of civil servants and many people in society have been frozen. The government has before it a report that talks about massive increases.

I am asking the minister and the government, in light of fiscal reality, in light of the minister indicating this government takes a position, what is the government's position on this report that his deputy minister signed, that his government-appointed members of the committee agreed with that the minister indicates, and I stand to be corrected, that he agrees generally in principle? The Liberal Party

generally agrees with, in principle, I take it from his comments. What is the minister and the government's position on these matters in light of the reality of the situation today?

Mr. McCrae: To be brief about it, Madam Chairperson, our position is that whatever arrangements are ultimately arrived at, we will have to take into account the economic and fiscal situation in the province of Manitoba at the time that decision is made.

Mr. Chomiak: Again, why is the minister and the government not taking a stand today? Why are they delaying the decision? Why are they doing that?

Mr. McCrae: Well, if the honourable member is inviting us to provide the salary and pension increases called for in this report today, then I just plain disagree with that. It is not the appropriate and responsible thing to do at this time. I am sorry, Madam Chairperson, I disagree with the honourable member.

Mr. Chomiak: I note that the minister in his comments said it, not at this time. I remind the minister that it is fairly well on record what our position is with respect to the salaries and the pensions.

I just want to take the opportunity to indicate my comments are in no way an attempt to provide a message to the judges that we do not think that their work is both admirable and, I note the member for St. James (Mr. Edwards) is laughing at that comment, but we have a problem with one of the highest paid groups in society getting increases when we have the highest welfare rates ever in this city of Winnipeg, and when we have—

An Honourable Member: A number of people.

Mr. Chomiak: —a number of people on welfare, when we have the incredible economic conditions, when we have unemployed on every street in every constituency in this province—and the member for St. James (Mr. Edwards) laughs and takes that lightly when these individuals are getting increases and recommended increases and pension increases. When those groups are getting increases, we just have great grave difficulties, notwithstanding the outstanding work judges do, and I have appeared before them hundreds of times. I am one of the greatest admirers of judges, but that does not mean that I have to support wage increases to one of the highest paid members of our society.

Mr. Edwards: I feel compelled to say that I was not laughing at anyone but the member for Kildonan (Mr. Chomiak), and I was laughing at him because his comments are ridiculous. I am embarrassed for him, as a member of the legal profession, in making them. He absolutely twists what is quite apparent. The judges are not getting an increase. He does not seem to understand that and seeks, in I think quite a shameful fashion, to politicize this issue and to slam judges, and then he turns around and says he appreciates their work.

* (1030)

What is it? The truth is, he is out to score political points on the backs of judges. That is what he is doing this morning, and let us be patently clear about that. Madam Chairperson, the real problem with the member for Kildonan's (Mr. Chomiak) comments, and the reason I think he should be embarrassed about them this morning, is that he does not understand the concept of independence of the judiciary. That is pretty clear from his comments. I think that is very unfortunate because those perhaps who have not had the benefit, the privilege of legal training might be excused in not fully appreciating that and in appreciating the importance of that in our constitutional framework. For the member for Kildonan, someone who has had the benefit and the privilege of that training, and as he says has practised in the area, to show such an ignorance of it, or if not ignorance, a disregard for it is truly shameful in my view, Madam Chairman.

Whatever one thinks about salaries, whatever one thinks about what they are paid and what they should be paid or what they should not be paid, the point is this member is seeking this morning to politicize in a very obvious fashion the issue of remuneration for judges which is a part of their independence, a critical part of the maintenance of their independence. Far more important than the result of what they actually get paid or do not get paid is that, is the principle of independence.

We searched and we must find a system whereby they are fairly remunerated, whatever that may be, and we have one recommendation in front of us. There is no obligation to accept it. It is not written in stone. We are not legally obligated. But far more important than that, than the result, is the process whereby the independence of the judiciary is maintained. If the member for Kildonan does not understand that, I am at a loss to understand how

he has participated in this system this long and not understood that.

If he is saying we should scrap it after four or five hundred years, let him say so, but he has come here this morning to quite patently politicize this issue in an extremely regrettable, and I would suggest, shameful fashion.

Mr. Chomiak: I normally do not engage in discussions of this kind, but I feel compelled to perhaps put a few comments on the record with respect to the inaccurate analysis by the member for St. James (Mr. Edwards). If the member for St. James feels that this process is somehow compromising the independence of judges, then indeed the member for St. James has the process wrong.

If the member for St. James thinks that judges are influenced by matters of this kind and that somehow this crosses the bounds into affecting the independence of judges, then the member for St. James has trouble understanding the process. Yes, for four or five hundred years judges have been independent and will continue to be independent and will be independent despite what arrangements we make with respect to salary or pensions.

The only matter at issue is the question of the process by which it is adopted. A process that we warned would result in difficulties, have resulted in difficulties, have resulted in the drift, and have resulted in a situation where we are caught, and judges themselves are caught in a potential politicization of the issue, precisely because the government and the Liberal Party are allowing this matter to drift on endlessly without the government taking a stand with respect to the recommendations.

Mr. Edwards: I just have one further comment. The member for Kildonan's (Mr. Chomiak) premise, which he bases his comments, is that remuneration is divorced from independence. He is wrong. That link was made hundreds of years ago. It will continue to be made. It is a very real factor, not the only factor, but it is a very real factor in protecting the independence of the judiciary.

He has missed the boat on this and, in my view, to the detriment of our reputation as legislators in dealing with this issue. I am ashamed for his failure to understand what we are doing here.

Madam Chairman: Thank you, Mr. Edwards. Is the committee ready for the question?

An Honourable Member: Yes, ready.

Madam Chairman: The question before the committee is the proposed motion of the Minister of Justice (Mr. McCrae), that the Standing Committee on Privileges and Elections recommend to the House that the report of the Judicial Compensation Committee 1991 be referred again to a Standing Committee of the House at the beginning of the Third Session of the Thirty-Fifth Legislature, for consideration and report. Shall the motion be passed?

Some Honourable Members: Agreed.

Madam Chairman: Agreed and so ordered.

As that concludes the business referred to this meeting, the meeting is adjourned.

An Honourable Member: Recorded vote, please.

Mr. Chomiak: Yeas and Nays, or whatever the process is in committee.

Mr. McCrae: We agreed. We cannot have a recorded vote when we agreed.

Madam Chairman: I am sorry, I did not hear you.

Mr. Chomiak: Is it in order to have a recorded vote on this matter, Madam Chairperson?

Mr. McCrae: Not after we have agreed to it.

An Honourable Member: We did not agree.

Madam Chairman: Yes, it is. All in favour, please say yea.

Some Honourable Members: Yea.

Madam Chairman: All against the motion?

Some Honourable Members: Nay.

Madam Chairman: In my opinion, the Yeas have it.

Mr. McCrae: Madam Chairperson, I believe Mr. Chomiak and his colleagues would like to have the vote counted. -(interjection)-

An Honourable Member: It does not matter.

Mr. McCrae: No, it does not matter. All right.

Mr. Edwards: Well, I would like it counted. I would like it recorded. -(interjection)- I would ask for a recorded vote.

A COUNTED VOTE was taken, the result being as follows:

Yeas 7, Nays 3.

Madam Chairman: The motion is accordingly carried. Committee rise.

COMMITTEE ROSE AT: 10:38 a.m.