



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

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**STANDING COMMITTEE**

on

**PRIVILEGES AND ELECTIONS**

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39-40 Elizabeth II

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



**VOL. XLI No. 2 - 10 a.m., TUESDAY, JUNE 16, 1992**



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

**Members, Constituencies and Political Affiliation**

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

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS**

Tuesday, June 16, 1992

**TIME – 10 a.m.**

**LOCATION – Winnipeg, Manitoba**

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

**ATTENDANCE - 11 – QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Manness, McCrae, Orchard, Praznik

Messrs. Ashton, Chomiak, Edwards, Helwer, Martindale, McAlpine, Mrs. Render

**MATTERS UNDER DISCUSSION:**

Report and Recommendations of the Judicial Compensation Committee.

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**Madam Chairperson:** Will the Committee on Privileges and Elections please come to order. This morning the committee will be considering the Report and Recommendations of the Judicial Compensation Committee.

This committee last met on July 18, 1991, to discuss matters pertaining to the report of the JCC committee and passed a motion to refer this issue again during the Third Session of the Thirty-Fifth Legislature.

For the committee's information, copies of the Report and Recommendations of the Judicial Compensation Committee 1991 are available at the back table.

The JCC report contains recommendations respecting salaries, pensions and other matters related to provincial court judges in Manitoba.

The treatment of the Judicial Compensation Committee and its subject matter is somewhat different from usual committee considerations. Because of the unusual nature of this committee, I will highlight the details concerning the process to be followed for this committee.

The following motion was adopted by the Privileges and Elections Committee on July 18, 1991:

**THAT** the Standing Committee on Privileges and Elections recommend to the House that the report

of the Judicial Compensation Committee 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.

For the committee's benefit, copies of the motion have been circulated.

On June 4, 1992, a referral motion was adopted in the Legislative Assembly to refer this matter to the Standing Committee on Privileges and Elections.

On July 18, 1991, committee meeting opening statements were made by the minister responsible and both opposition critics concerning the report of the JCC.

I would like to ask at this point, what is the will of the committee? Does the committee wish to make additional opening statements? How does the committee wish to proceed with the report and recommendations of the JCC?

**Hon. Clayton Manness (Minister of Finance):** Madam Chairperson, I would like to do a brief overview of how we have come to this point, although you have done that certainly in part, and then I guess highlight from the government's point of view the Baizley report recommendations, although anybody that has had access to the report for the year certainly is familiar with it. I am prepared to do that although, if committee members wish that I not, I do not need to either. So that is what I come here to do. I would like to make kind of a short opening statement that would encompass all of that.

**Madam Chairperson:** Okay, it is agreed.

**Mr. Manness:** Madam Chairperson, before I forget, I would also like to add as another agenda item, seeing this committee is formally called now, something referred to coming out of a Speaker's ruling which was ruled not in order but I said that I would add to the agenda of this standing committee, and that was the security in and around the building.

Although that is not the purpose for which this meeting is being called, I would like to add that as an agenda item if there is sufficient time either today or at a subsequent meeting of this standing committee to deal with that issue.

Everybody has copies of the report. Yesterday I provided two copies to each caucus of not only the report but, also, an analysis done by the government with respect to the Baizley report and other issues. I would provide copies to all members of the committee. This was also shared with a representative of the judiciary yesterday afternoon, I am led to believe.

As you indicated, we are embarking on a new process. We are moving through some uncharted waters. So certainly the government is going to seek at times direction on how we proceed. Hopefully, everybody will bear with us.

In August 1988 our minister, the Honourable Mr. McCrae, requested the Manitoba Law Reform Commission to examine issues relating to the independence and impartiality of provincial judges. The Law Reform Commission recommended amendments to The Provincial Court Act to provide a vehicle to deal with provincial judges' salaries and pensions. The amendments to The Provincial Court Act were passed in 1989.

Pursuant to these amendments, a Judicial Compensation Committee was convened in January 1991 and, after public hearings, the committee reported its recommendations to the Minister of Justice (Mr. McCrae) in June 1991. At that time the province decided that in light of the recently introduced Public Sector Compensation Management Act, decisions with respect to the committee's recommendations would be deferred.

Following the recommendations of the committee that the pensions be dealt with as an urgent priority in December 1991, the provincial Cabinet requested that representatives of the provincial government and the Provincial Judges Association meet to review the recommendations and provide a report on those recommendations to the cabinet.

The two key areas of the recommendations were salary increases and pension enhancements. Discussions took place to determine a pension plan design that would represent the thrust of the Judicial Compensation Committee report recommendations. That design was then costed by the actuary for the Civil Service Superannuation Plan. The essence of that has been provided in the handout just given to you.

Presently, members of the committee, there are 39 Provincial Court judges, including a chief judge and three associated chief judges. The annual judicial payroll is \$3.6 million.

The highlights, from our point of view, of the Baizley report recommendations: The Baizley report recommended the following salaries for judges, and those numbers are in your handout. The recommendation was based on an average of judges' salaries in Nova Scotia, New Brunswick and Saskatchewan.

Currently, Provincial Court judges' salaries are tied to the sixth step of the Senior Officer 7 salary range by Order-in-Council, with the chief judge and associate chief judge receiving an additional \$7,000 and \$2,000 respectively. As a result of the link with the Senior Officer 7 salary range, provincial judges' salaries were increased 3 percent effective September 21, 1991.

Secondly, the Baizley report recommended that pensions be made available to Manitoba provincial court judges approximately equivalent to the average of pension benefits available to provincial judges in Saskatchewan, New Brunswick and Nova Scotia. The representatives of the government and provincial judges have determined that the following pension plan design would represent an approximate average of the plans in Nova Scotia, New Brunswick and Saskatchewan.

Now all of the material that I was maybe going to read in greater deal with respect to the averages and the plans per se, are in the analysis presented to you.

\* (1020)

I only would finally point out, the reason that I am in the chair today is because this now is a Finance issue. I chair the Public Sector Committee of cabinet, of which several members are on the committee today; Mr. Praznik, Mr. Orchard are included in that. Because this is a Finance issue, I am, on behalf of the government, taking the lead role in trying to guide this process through the committee at this point in time.

Madam Chairperson, with those opening remarks, let me also say that the government will go on record at this point in time in saying that we cannot accept the Baizley report.

**Madam Chairperson:** Does the critic for the official opposition have an opening statement?

**Mr. Dave Chomlak (Kildonan):** Yes, Madam Chairperson, we are at least one step forward with respect to this process insofar as the last time this committee met in the summertime, we were quite concerned that we did not know what the

government's position was with respect to the Baizley report.

We are now hearing from the minister this morning that the government does not accept the recommendations of the Baizley report, so I can assume from that position that reference to this report is not relevant.

The question then becomes, what are we dealing with in terms of this committee and what recommendations and reports are going to be implemented and have to be implemented by this committee to go back to the Legislature because it is a statutory requirement?

We were provided at 5 p.m. yesterday with a document entitled, Judges' Salaries, which we had a brief opportunity to review and which deals with, the minister informs us this morning, an analysis of the Baizley report.

I am still not clear if this document that the minister called an analysis of the Baizley report is the government's recommendations with respect to judges' salaries or whether we are still sitting in a void with the government making no recommendation. I have a good deal of difficulty dealing with or trying to come to grips with what the government position is.

Secondly, if I review this report that is entitled, government's analysis of the Baizley report, we note that the judges' salary levels have already been increased by the government. While I do not have difficulty with the specific increases since they fall within the lines of those provided to the Senior Officer 7 salary range, which has been the recent practice with respect to judges' salaries, I note that the Baizley report indicated that judges' salaries were basically frozen pending a review of the report.

We have the curious situation of a report and recommendations and the government advising us, advising us retroactively in fact and in fact doing so, retroactively increasing judges salaries, with no input and no consultation from the committee. I say, why, therefore, do we need a committee if the government has implemented the salary increases that were always in effect?

It is very curious, Madam Chairperson, that the government would come to us with a report last July with recommendations, not take a position, then retroactively increase salaries and then come back to us today and say, by the way, we are not implementing the recommendations of the report.

I say, what is the government's position? Secondly, what is the purpose of the committee if the government has already decided that the salaries are going to be increased commensurate with the Senior Officer 7 salary range?

I do not quite understand why we are meeting here today if the government has made that decision. In fact, I query, and I will be querying this later on during the committee hearing, what is the legal authority and the authorization for that increase? Why did the government do it?

Although I suspect that the government had the statutory authority to do so, it certainly breaks the spirit of what was the government's policy in the first place in passing the legislation that set up the independent body, something, I might add, that we were not in favour of in the first instance. It is curious and it is contradictory and I am not certain at all about the process.

More important, the minister indicates this morning that the government met with the judges or cabinet committee recommendation and the matter went to cabinet committee with respect to pensions. Again, it is very curious. We have a committee set up to independently review pensions. There is a recommendation. The government takes no position on the recommendation, sets up a committee and makes recommendations to cabinet for a series of pension recommendations that from my quick analysis, because we only received the report at 5 p.m. yesterday, from my observation is roughly similar to the recommendations of the Baizley committee.

Again, I ask the government, what is your recommendation and what is your position? The government indicated, the minister indicated that there was a series of actuarial analysis in some reports. I hope that we have access to those in this committee today to query where the government is going with respect to these pensions because, if I look through this document, if this is the government's recommendations, and I do not know if it is the government's recommendations, if this is the government recommendation, we see a supplementary plan that is 100 percent government paid, but I do not know if it is funded.

It appears to me from my analysis, and we are going to have a whole series of questions on this, that there is a very high proportion of unfunded liability with respect to this supplementary plan. I certainly am not prepared and we are certainly not

prepared to pass any kind of a pension scheme without scrutiny and without an opportunity to review this by our caucus, because these matters are very complicated and they have long-term effects, and I do not want to make a mockery of the process that has been entered into with respect to this matter. So I am serving notice on the minister that we have a good deal of concern about the manner and the method by which this whole process has been carried out.

I do not normally do this, but I am just going to draw attention. I had an opportunity very briefly yesterday to review my remarks that I said at this committee last time. I served notice on the government that I was of the impression that they are breaking the spirit of their own freeze on Civil Service salaries by virtue of, if they were going to retroactively deal with judges' increases, and I notice there is a retroactive increase entailed in this matter, although I do note, because we only got it yesterday at five o'clock, that the retroactive increase goes back to September 21, 1991.

I want to know what the basis is on which the government made that decision? I would like to know what the authority is that the government made that decision. I would like to know what the government's recommendation is with respect to that decision. We want to know what all of the ramifications are with respect to the pension plan.

There is a whole series, Madam Chairperson, of questions I have with respect to the Baizley report. I am not quite certain where to proceed insofar as the minister said they have rejected the Baizley report. Again, what is the basis of the government's report and the government's recommendation?

Those are my opening comments. I am just laying out for the minister our position.

\* (1030)

You know, I hear comments from the member for St. James (Mr. Edwards), but I just want to point out that we view this process very seriously, and we do not come upon this lightly. We spent a good deal of time in our caucus and I spent a good deal of time outside of caucus discussing this issue, because we are well aware of the sensitive nature of this particular matter and the position that Manitoba judges are in.

At the same time we, as a caucus, are not going to be pushed into a position where we have to make financial decisions of this kind without adequate

information and without the government outlining to us what their position is insofar as the government has put the process in place.

Those are my concluding remarks, Madam Chairperson.

**Mr. Manness:** I want to react very quickly, and I do not want to get into the debate right now on some certain issues, but I think, first, it is very important that the representative of the official opposition do the right thing. That is, yes, get a fuller understanding, and be a participant in the development of a process. This is new.

Secondly, scrutinize the impact of what it is the government may be recommending. I mean, that is the role of the opposition, to make this system work, or at least work better. I know it is not a favoured system, this process that we have embarked upon, certainly by the Leader of the Opposition, and we will be asking certain questions as to where the opposition stands on the Baizley report.

Much more importantly than that, it is certainly their role to demand that clarity be expressed by the government as to how it sees certain issues, and I am not troubled by that. Let me say, and again, only in passing, because I think it has to go on the record, during the freeze, the Minister of Justice (Mr. McCrae) made it very clear to the judges that they would be part of that freeze—very clear. I do not have to recite specifically what it was that the minister said but, if he is called upon, and he is here, I am sure he would gladly indicate more fully for the record what was said.

Once the freeze came off, as it did for all of us who draw our remunerations and salaries from the public purse, once that came off, the old processes were maintained. The old process is, the existing practice is, that increased salaries of the judges are automatically tied to Orders-in-Council as provided for those in senior Civil Service positions. That is the existing practice. So once the freeze came off and once government, in its wisdom, decided to allow for increases to its senior civil servants under Order-in-Council, judges were tied to that. Nothing changed—absolutely nothing.

Let me also say that the member talks about that there was a meeting between the judges and the Civil Service Commission. Well, I refer to page 28 of the Baizley report, and I quote, further, this is Baizley speaking: "Further, we recommend that representatives of the government of Manitoba and the Manitoba Provincial Judges Association,

including their actuaries, be encouraged to meet for the purpose of conducting discussions for implementing our recommendation. We have said that the pension issue ought to be dealt with as an urgent priority. For greater clarity as to our recommendation, we urge that new pension benefits for Manitoba Provincial Court judges be implemented by October 1, 1991, and have application to all full-time judges in active service as of the effective date of the appointment of this Judicial Compensation Committee; that date being August 8, 1990."

What Baizley was recommending, I thought, and I still think, is that the judges come together with the government, i.e., the Civil Service Commission, and try and lay out the building blocks of the discussion, and that has happened. The member wants to be critical of that, and I say, well, this aspect of Baizley we wanted to accept.

I will conclude, Madam Chairperson, by saying that the government's nominee on the Judicial Compensation Committee, and that was Mr. Curtis, stated in his qualification in the report's recommendation, and I quote: "However, in light of the serious economic conditions affecting the fiscal capacity of the province, and the general freeze on salaries in the public sector, it is my view that consideration of an increase in compensation level should be deferred until significant improvement takes place in the economy of Manitoba."

The cost of Baizley was \$7.5 million in pension enhancement for 39 people; and \$.5 million—a half a million dollars—on salary.

Madam Chairperson, I would suggest to the committee that no improvement in the economy has occurred and, in fact, it is likely to deteriorate since the committee wrote that report. I would say that all judges accepted their appointment knowing what was included in the compensation package and, while some increase in salaries and pensions may be warranted, given the current economic climate, a target consistent with Manitoba's relative economic position should be set to be achieved over time as economic conditions improve.

That is the rationale as to why the government cannot accept Baizley, and that is as clearly as I can put it.

Because I want this process to be consensual in nature too, I say it is incumbent that the representative of the NDP and indeed the Liberals tell us where they stand on Baizley. I mean, it is very

easy for them to say, well, government, tell us what are the recommendations, where are you wanting to go and all that. Indeed we may very well do that. It is also incumbent upon the representative of the NDP party to tell us what he thinks of Baizley. I say to him, I want this committee to work in a consensual basis to the extent it can. That is why I have not imposed upon it a strict process, because to do so in my view would be contrary to that approach.

**Madam Chairperson:** Thank you, Mr. Minister. Mr. Chomiak, I wonder if I could ask the critic for the second opposition if he wishes to make an opening statement and then come back to you before we get into the question and answer.

**Mr. Paul Edwards (St. James):** Madam Chairperson, I understand we are loosening some of the strict rules of order. I wanted to just ask the minister to clarify. Obviously it is the intention of the government now to just revert to the Level 7 increases as they occur. That would represent the increase to the judges: 3 percent last year; 3 percent effective September, 1992.

What is proposed by the government with respect to pensions? Is what we have in front of us, which says part way through the package we got, it is entitled, Supplementary Judicial Plan—has there been a change to the pension plan? Maybe I can just ask that. If so, what has the change been?

**Madam Chairperson:** Mr. Edwards, was that your opening statement?

**Mr. Edwards:** Madam Chairperson, no, it was not. I want before I make it to understand exactly what is being proposed by the government. I am not clear as to whether or not they are proposing any improvement or any change to the pension plan. I think I understand that what they are doing with the salaries is simply rejecting the Baizley report and going back to the status quo, but I want to know with respect to the pension plan if they are changing it.

**Mr. Manness:** Madam Chairperson, with respect to salary, the member is right. Given that the 3 percent increase went in, in our view, when we look at the present ranking, there seems to have been some improvement vis-a-vis other provinces.

With respect to pension plans, we have not changed anything to date. I guess what we are considering is whether or not the Baizley model is acceptable. I guess we are saying, from government's point of view, it is not. Yet, we are prepared to hear the commentary coming from other

members of the committee, and we are prepared to consider options, indeed, as presented by other members of the committee and, indeed, the government also has considered options.

Again, we are not wanting to push government options at the expense of other members of the committee who may very well, after the course of a few days, having an opportunity to digest the information that has been presented, to formulate their own. I mean, we are not trying to steamroller this through to a government point of view.

**Mr. Edwards:** Madam Chairperson, I have two comments then. One is that I appreciate receiving this material, which includes very detailed and interesting actuarial material.

As the member for Kildonan (Mr. Chomiak) mentioned, we got this late in the day. Whether or not the government could have had it to us earlier, I am not going to debate. What I am saying is that we, of course, were in Estimates all last evening, and I for one have not had a chance to thoroughly review this report. I realize time is short, generally, in the House these days, but I would like an opportunity to take a more thorough look at it.

\* (1040)

In particular, I am concerned about looking at the pension issue and comparing what the government has in these materials to the Baizley report. I understand from the minister's comments that he may not be averse to that, at least a short period of time to abeyance this and deal with it.

My other concern is a more major concern, and that is the way in which we as a Legislature are generally going to deal with these issues. We have special certain positions in government that warrant special attention when it comes to salary and general employment conditions. I think of the Ombudsman, for instance, the Civil Service Commission, other areas where we, as legislators—it is not only unseemly in the sense that it does not instill confidence in the public in those bodies, but it is also improper and represents a form of conflict in terms of the separation of the bodies that review government, and judges are certainly those, and the government itself.

To have a body like this of elected officials from all parties, but elected officials, debating the issues of the day on a regular basis with respect to salaries and pensions, I find that unfortunate that we are

doing that and appear to be contemplating doing that on a regular basis.

I look to a way that we can at once be responsible to the taxpayers of Manitoba but, at the same time, be responsible to the tenet upon which our entire system is based, which is the separation of the judiciary from the government. That is an essential part of the judiciary, that it maintain its independence from the political sways of any given day or any given year. The judges must be free and feel free and be seen to be free from political interference, or else the basic tenet of our democratic system starts to be eroded. That is as old as the British justice system itself.

I find it unfortunate that we appear to be contemplating and have done now two years in a row coming to these forums where politics is the name of the game at these committees. I do not want to play that and I do not want to be involved in highly politicized forums dealing with judges salaries on a regular basis.

I think that we need to be responsible and establish some way to distance ourselves on a day-to-day basis, year-over-year basis from this issue. I do not say that that is true for more than a select number of bodies that the government gives money to—judges; and I have mentioned the Ombudsman; I have mentioned the Civil Service Commission; there may be others.

With respect to the present system, that is, tying it to the sixth level initially in 1979, the seventh level in 1987, I do note after the member for Kildonan's comments that it was his government that bumped it up to the seventh level in 1987, seventh level of senior civil servant officer.

I do not think that is a long-term solution, just tying it to the particular Civil Service classification. Those Civil Service classifications are the result of political decisions made by the government of the day as to what increases will be given, general salary ranges. Therefore, I do not find that to be the ultimate solution.

I do not purport here today to have a better way for the long term, but I think we as legislators owe it to the public to start thinking about the long-term ramifications of politicizing this process and, therefore, look at the long-term solutions that we might put into place to depoliticize the setting of salaries for our judiciary.

Those are my comments at this time. I reflect back to my earlier comment and ask the minister for a reasonable period of time to study the materials that he has put before us.

**Madam Chairperson:** I would just like to thank the minister and both opposition critics for their opening statements and, actually, if it is the will of the committee, I do know that one of the members does have a question, but however you wish to proceed.

**Hon. James McCrae (Minister of Justice and Attorney General):** Madam Chairperson, I believe the Law Reform Commission had it in mind to attempt to depoliticize the issue of salaries and pension arrangements for the judiciary. That is why they made the report they did. That is why we followed up with the legislation that we are dealing with.

I believe the honourable member for St. James will recall that his party supported that legislation. It is true the Leader of the New Democratic Party expressed reservations, but I do not recall any standing vote. In fact, I know there was not one. So obviously their position was not too deeply entrenched against the process.

I can expect that in this first real go-around with respect to the operation of this legislation, there indeed will be some sticky patches, if you like, as we get this process going. Over the years, I suggest, once we get it off the ground, a routine, every-two-year review of the judges' arrangements will be made by an independent body reporting to the Legislature, the Legislature making decisions flowing from it. The Legislature is not a rubber stamp and neither is the government, of any report. On the other hand, these reports will be, and this one is, useful to us in our deliberations.

Rather than making this a political matter, it was the intention to do just the opposite. I would have wished, and I do not blame the honourable member for Kildonan for this, but back in 1972 when The Provincial Judges Act was put into effect and what were previously magistrates of the provincial government became provincial judges, it would have been better if in 1972 some mechanism to deal properly with judges' arrangements, and I speak here mostly of pensions, it would have been better if something had been done at that time.

So here we are 20 years later trying to fix something that never was constructed properly in the first place. It is a difficult matter, and I believe

that we should deal with this in as nonpartisan a way as possible. As the Minister of Finance (Mr. Manness) has said, he is looking to other members of this committee to see if there is room for a consensus on a matter that is sensitive. We do have to maintain judicial independence. We do have to ensure that we are also responsible to the taxpayer. That does not make this problem or question any easier, but it is still a question that needs to be addressed.

If we continued in the old way, and the government wanted to address the issue of pensions, perhaps under the old system, we would fall victim to the criticism of opposition spokespersons because of the decisions we make. Well, that is the way governments work. We make decisions, and we take the flak. We should take flak when they are bad decisions, and sometimes we take flak anyway.

I think this process, involving honourable members as it does, does help to protect the independence of the judiciary and will ultimately, as the years go by, be a very good system of adjusting judges' arrangements as those adjustments need to be made.

I make those comments by way of background. I do say that it is very unfortunate that the government of the day in 1972 which passed The Provincial Judges Act and made our judges full-fledged members of the judiciary did not deal at that time with the pension issue because, in a very real way, we are trying to play catch-up and do right on the one side by not only the judges of the court, but also by the taxpayers of Manitoba.

Before I stop, the honourable members want to have all the information. Well, they have the Balzley review. They have the other document that has been presented to them, and that document has input from the judges themselves, as well as the Civil Service Commission.

I received this morning a letter from Judge Howard Collerman writing on behalf of the Provincial Judges Association. It provides some information, which he suggests is not complete in this document, and sets it out as he would like it set out, and asks me to share this with my colleagues, which I will do now.

**Mr. Chomlak:** Madam Chairperson, I am tempted to enter into debate, but I am going to attempt to restrain myself. I am still not clear as to what the

government's position is with respect to the Baizley report.

The minister has indicated this morning that this independent process that was set up to review judges' salaries resulted in the report coming before the committee. Subsequent to that, no position was taken by the government last time the committee met. This morning the minister, for the first time, told us the government is rejecting the report. Yet, the government and the minister himself referred at least on one occasion to a recommendation of the Baizley report.

My assumption is that this subsequent document, Judges' Salaries, at least from my quick review, does reflect the recommendation of the Baizley report. The Baizley report makes a whole series of recommendations. I just want to point out to the minister, on page 7 of the Baizley report it says, and I quote: "Part of the reason for there being no increase since 1989 is the establishment of this Committee. Accordingly one of the issues that the Committee will have to address is that of retroactivity."

\* (1050)

The assumption was with this committee set up that there would be no increase until the report of the committee. The committee reports and, subsequently, the government I assume rejects the recommendations of the committee but does implement an increase to the judges' salary. At the same time, the minister tells us, and he refers to I believe it was page 28 of the report, that an approach be adopted as recommended in Baizley with respect to pensions.

Again, I mean, the minister appears to me to be having it both ways. He says that he rejects the recommendations of the Baizley report, and we have before us an analysis, given to us last night at five o'clock, of the Baizley report, analysis of the recommendations of the pensions in the Baizley report. Within this analysis, I might add, he has given us the information that the government has increased the salaries of judges on the old system, and then there are the recommendations that pensions be made available to Provincial Court judges approximately equivalent to the average of pension benefits.

What is the government's position and what are they recommending?

I agree, we are not going to get much further ahead because we are certainly not going to agree to any recommendations without thorough analysis of these pensions. If it means adjourning this committee and coming back at some future time when we have more information, then I am all in favour of that.

What is the government's position? It seems to me they are asking what our recommendations are, but the government has one foot in one camp and one foot in the other camp, and I simply have no idea what their recommendation is.

**Mr. Manness:** Madam Chairperson, I am going to try to address not only Mr. Chomiak's questions and comments but, also, just a few remarks on Mr. Edwards' opening statement.

Mr. Edwards says that he does not want to see this committee become bogged down in political maneuvering, a political process. I accept that, I really do; the government does not want that either. I want to say that this practice of tying judges' salaries to senior civil service levels is not unique to Manitoba. I mean, it is a process that is pretty well established, I am led to believe, across Canada.

Mr. Chomiak asked some very specific questions, and I gather, though, and my sense is that he is trying to take issue with the way the government has handled this or he is trying to take issue with the fact that we have moved in the salary area separate and apart from recommendations, that we did not choose to bring that decision to this standing committee.

I can understand maybe his sensitivity in that area. I guess, then, he is calling the question of process, or is he calling into question the fact that we allowed for the increase? We did so in keeping with the old system. Also, and I will be very candid here, the government believed that there was some falling behind in the Manitoba judiciary vis-a-vis other provinces and that that increase should go ahead and to maintain the rank.

So we did not see that as a monumental decision, quite frankly. We really did not. Now the member may say, well, you are now frustrating the whole legislative process which you put into place, and he may want to continue to make that argument. I can tell him, when we made the decision to allow it to go ahead, I guess we did not reflect, we could not envisage where anybody in this committee, anybody in the Legislature would find fault with providing the 3 percent increase as tied to the senior

civil servant. We really did not expect criticism coming, but maybe there is criticism to come, and the member may want to provide that. We are not hiding from the fact that we did that, and I am giving the rationale why.

The member calls into question really as to what we are trying to prove, particularly on the pension enhancement side. I point out one element. The Law Reform Commission said this on page 26; the government agrees with the statement in the Law Reform Commission Report that, this is a quote: In a democratic society, the government must be responsible for the way in which taxpayers' money is spent.

It further agrees with the conclusion in the same report that the ability of a given province, in this case Manitoba, to pay such amounts should be a consideration in establishing the appropriate level of compensation for judges.

So that is the difficult road that we have to walk. That is why there cannot be, I would say to Mr. Edwards, complete separation as to our role on the financing side.

With respect to what Baizley then said, he said, well, look at the model of the average three provinces, but he did not give us a process, he did not provide a process as to how—I am sorry, I take that back—he recommended a process, but the details of that on how we get to that was not provided.

Consequently, I would say to the member opposite, no more information can be provided as to our analysis, indeed our conclusions drawn from Baizley. The member can ask specific questions and he may want to do so, but right now I am hard pressed to provide him any more information.

I will, though, if he presses hard enough and, if he would like us to indicate whether or not we have an alternative in mind and whether we have some other options that we have looked at without selecting, and we are prepared to share with the committee, the answer to that is yes.

Also, we would ask him, as a full member of this committee, to put forward an option, not today, in fairness, in the sense that some of the analysis did not arrive until yesterday but, indeed, in a subsequent meeting.

**Mr. Chomlak:** Madam Chairperson, I appreciate the minister being forthright in terms of his comments regarding the questions I raised.

The point is that Baizley recommended, roughly, that the Manitoba judges' pensions move to the average of the three provinces, that judges continue under the equivalent superannuation plan of the Civil Service and that, thirdly, there be a supplementary pension tied in to the judges. That is what Baizley, as I recall, recommended.

The analysis before us today and the analysis that went to cabinet and the analysis that the judges were asked to look at—the minister said it was an analysis, unless I misinterpreted it—the analysis that I assume Judge Collerman was responding to is based on the Baizley recommendations. We have before us an analysis of the Baizley recommendation, and the minister has told us he rejects, the government rejects, the government has clearly rejected Baizley with respect to the salaries. So what is the government's position with respect to the superannuation plan that is before us?

I mean, is the government saying, they have had it since December, and they still have not made a decision, they are asking this committee to make a decision, but the minister has already said, we are not going to make a decision today because we have to review it further? Is that the government's position? I do not understand it.

\* (1100)

**Mr. Manness:** Madam Chairperson, the government is saying clearly for the record, we cannot accept the Baizley recommendation with respect to pension enhancement. The cost of that is unacceptable.

We are saying that we have looked at the finances available across all of government, and we are prepared to share with the committee options which we would like, without preference, that we are prepared to share with the members of the committee and ask them to take them back, either delete or add to them at their will, and adding to them quickly before the next meeting, asking if they want us to do the costing—us meaning the Civil Service Commission, whose representative is sitting beside me—and wanting a cost of what it is they deem to be an appropriate option, I am saying we will do that in advance of the next meeting.

**Mr. Chomlak:** What are the options the government is proposing for us to make comment on?

**Mr. Manness:** Well, I am prepared to share those with the committee but, before I do, I would like to

get some sense from the members of the committee whether or not they agree with Baizley, that we should move to the three-province average as recommended in his report.

The members say, well, it is the government's position. The government's position is that we do not accept Baizley's recommendation that we move to the three-province average. That is very clearly stated for the record.

**Mr. Chomlak:** I want to understand this clearly. The government's position on pensions is that we not move to the three-province average, but you are asking us what we want to do.

**Mr. Manness:** Madam Chairperson, the pension plan recommended by this Baizley report was the approximate average of the plans in Saskatchewan, New Brunswick and Nova Scotia. The current Manitoba plan ranks ninth compared to other provinces. The plan recommended in the Baizley report would rank third or fourth.

The options that we are prepared to present to the committee would move us basically from ninth, would change the ranking. Well, it would move us up. This is not always fluid and dynamic. It is hard to say what position, but certainly it would not come under third or fourth. It would move us certainly up at least one position.

**Mr. Chomlak:** Madam Chairperson, so now we are moving in toward the government recommendation. Baizley is rejected, which would bring us up to third. We are now ninth according to the minister, and the minister is saying the government proposal would roughly bring us up to one rank higher than ninth. Can we see that proposal?

**Mr. Manness:** Yes, Madam Chairperson, if it is the will of the committee. I will tell you why it looks like I have been reluctant to get to that point right now. I did not feel it was fair to other members of the committee so quickly to lay out again the government's options. I thought that members of the committee would want to talk about process. I really did. I thought that they would want to give us their views on Baizley but, quickly, if they want to move to the government option package, I will present that right now.

**Mr. Edwards:** Madam Chairperson, I am a little bit confused now. The comparison, which is given in the documents handed out, the Civil Service Superannuation Plan versus Baizley plan, it is my understanding that, and I am taking this from the

documents that were handed out, the Baizley plan would represent the plan of getting to the average of the three provinces, I assume. The Civil Service Superannuation Plan is the one the minister has just told us about, which would improve our rank, but we are not sure by how much.

**Mr. Manness:** No, that is a mistake. This is the current one.

**Mr. Edwards:** Okay, I am sorry. So that is the current versus the Baizley plan that is in here, and now the minister is going to be supplying us with documents showing some midrange position, something between those two. If he is going to do that, I would like to see it, and I appreciate him giving it to us.

My suggestion is that we adjourn this to a date. I do not mind it being relatively close, but at least a few days hence. Let us do that.

**Mr. Chomlak:** Madam Chairperson, we do not have a problem with that, although I have a few more questions with respect to this matter prior to adjourning, and I would agree. We want to have this costed out and have an opportunity to come back to the government to see what the ramifications are.

My questions to the minister though are back on the salary issue, and that is, I want to understand clearly what the government position is. The government position is to not accept the recommendations of Baizley with respect to judges' salaries, but to continue on the linking of judges' salaries to Civil Service Senior Officer 7 salary range. Since the government has done that, I have to assume that that is in fact the government position.

**Mr. Manness:** Madam Chairperson, I must confess, in the salary area, I am prepared to listen to representations made by the committee. Certainly at this point the government is coming here and saying, well, we believe that given the agreement that has been entered into under the master MGEA agreement; and given that we would expect to extend that to our senior civil servants; and given at this present time that judges are tied to that; that if no other changes were made, either unilaterally by the government and/or this committee, then the judges would receive a 3 percent increase in September 1992.

The salaries then would be, if the member wants to write this down, provincial judges \$94,000, that is

part of it; associated chief justices \$96,000; and the chief justice \$101,000. That is in the material.

**Mr. Chomlak:** Madam Chairperson, so the minister is saying to us, subject to the committee coming back with recommendations, the government is going to continue the current practice of tying in judges salaries to Senior Civil Service Level 7. Is that correct?

**Mr. Manness:** Yes.

**Mr. Chomlak:** Of course salary levels will have an impact on the pensions, so the bumping up automatically will increase the pensions for the judges. That is correct?

**Mr. Manness:** Correct.

**Mr. Chomlak:** While I just go through my material, I am wondering, will we have access to pension-oriented actuarial people during the next occasion when the committee meets?

**Mr. Manness:** Yes.

**Mr. Chomlak:** I am just flipping through the material and I actually had it here. I note that the recommendations of Baizley would have put judges at the salary level, just an average judge, as I understand it, at \$95,000 retroactively to January 1, 1991. So, other than the increase in September, that is the only increase that judges have received since '89. Is that correct?

**Mr. Manness:** The short answer is yes, only one at this point. Of course we are proposing the automatic one that would occur in September 1992 also flow.

\* (1110)

**Mr. Chomlak:** Madam Chairperson, my only concern, and I pointed it out in my opening remarks and I understand somewhat why the government did what it did, but I am concerned in terms of process, and I will admit it is process, that we were not informed of these increases, that they went through. Certainly the Baizley report left the impression, not necessarily left the impression, I think it was the understanding that the salaries would be frozen, but these salaries went up September '91 unbeknownst to any members of this committee other than I suppose—well, I will ask the minister—it was through some Order-in-Council. Is that correct?

**Mr. Manness:** The question again.

**Mr. Chomlak:** Were the salary increases in September '91 via an Order-in-Council?

**Mr. Manness:** Yes. It was by Order-in-Council. I do not know whether that Order, which is a public document, as the member knows, made specific reference to judges. As a matter of fact, I am led to believe that the Order as a matter of fact did specifically highlight judges and the fact that they were tied in by specific linkage to senior officer step level. So there was specific reference to the judges in that Order that was passed, that public document. I kind of would suggest to the member it was pretty much in the public domain.

**Mr. Chomlak:** I will certainly accept that suggestion and indicate that, no question, Orders-in-Council are in the public domain and it is up to the public and certainly us as legislators to acquaint ourselves with changes.

**Mr. Manness:** I want to correct this. The original Order-in-Council that was of course published that tied judges to this was passed by the former government, and all we have done, of course, is continue to pass that.

**Mr. Chomlak:** Then my point is well made, that we were certainly left with the impression in the committee—or perhaps I only in the committee was left with the impression, if you read the Baizley report, I think with good reason, that there would be no increase in judges' salaries and that there was an increase unbeknownst to this committee. I think the minister will have to accept that.

**Mr. Edwards:** Madam Chairperson, I think we have a consensus that we should advance to this point on the second issue. I want to take the initiative and simply indicate with respect to the security concerns, we appreciate the minister raising it at this meeting.

I wonder if he has any proposals for discussion. Our House leader, the member for Inkster (Mr. Lamoureux), I would want to be involved in those discussions. I wonder if we might adjourn that issue as well to the next sitting in the hopes that maybe in the interim some informal discussion could take place.

**Mr. Doug Martindale (Burrows):** We would also like to postpone this to a future meeting so that we can discuss it at caucus first.

**Madam Chairperson:** If it is the will of the committee, committee rise.

**COMMITTEE ROSE AT:** 11:14 a.m.