



**Fourth Session - Thirty-Sixth Legislature**

**of the**

**Legislative Assembly of Manitoba**

**Standing Committee**

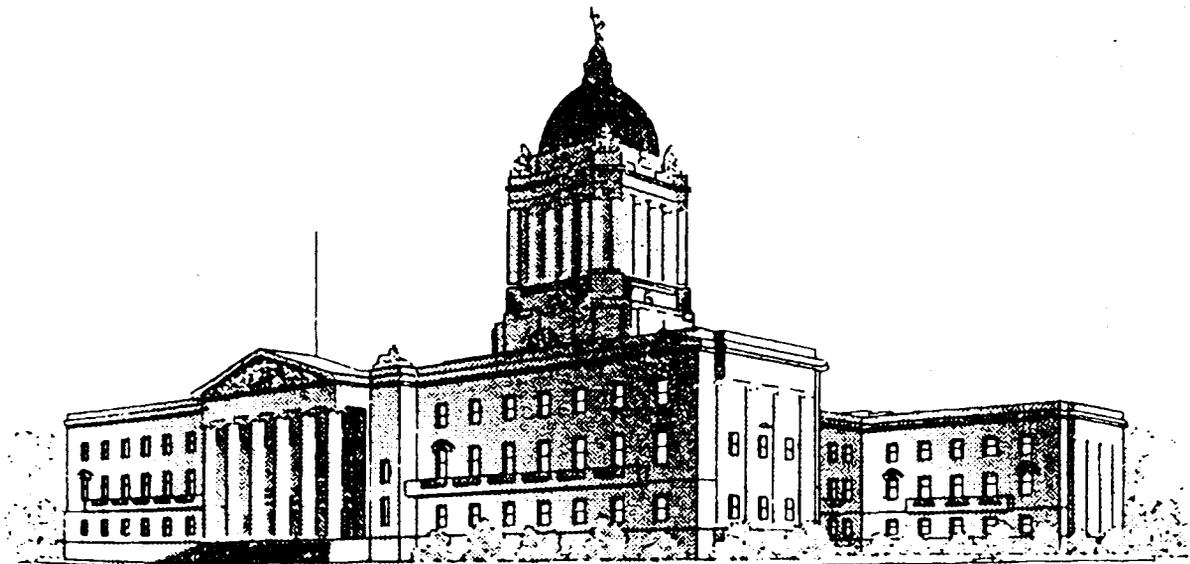
**on**

**Privileges and Elections**

*Chairperson*

*Mr. Peter Dyck*

*Constituency of Pembina*



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**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Sixth Legislature**

<b>Member</b>	<b>Constituency</b>	<b>Political Affiliation</b>
ASHTON, Steve	Thompson	N.D.P.
BARRETT, Becky	Wellington	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave	Kildonan	N.D.P.
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DACQUAY, Louise, Hon.	Seine River	P.C.
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KOWALSKI, Gary	The Maples	Lib.
LAMOUREUX, Kevin	Inkster	Lib.
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PENNER, Jack	Emerson	P.C.
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## LEGISLATIVE ASSEMBLY OF MANITOBA

## THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Thursday, July 16, 1998

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Peter Dyck (Pembina)

VICE-CHAIRPERSON – Mr. Ben Sveinson (La Verendrye)

ATTENDANCE - 10 – QUORUM - 6

## Committee Substitutions

**Mr. Chairperson:** Before starting the business of the committee, there are a number of committee resignations that must be dealt with. I have before me the resignation of the Honourable Mr. Radcliffe as a member of the Standing Committee on Privileges and Elections effective July 16. Are there any nominations to replace Honourable Mr. Radcliffe? I believe that I would have to ask one of the members to do that, who would be Mr. Reimer.

**Hon. Jack Reimer (Minister of Urban Affairs):** I would like to nominate the member for La Verendrye (Mr. Sveinson) for the member for River Heights (Mr. Radcliffe).

**Mr. Chairperson:** Correction here, just one moment please. Okay, this is Mr. Radcliffe's resignation. All we need is a name, so you would nominate Mr. Sveinson.

**Mr. Reimer:** Oh, I see.

**Mr. Chairperson:** So you nominate Mr. Sveinson.

**Mr. Reimer:** Yes.

**Mr. Chairperson:** It has been moved that Mr. Sveinson replace the Honourable Mr. Radcliffe. Is that the will of the committee? [agreed]

Then I have before me the resignation of the Honourable Mrs. Mitchelson as a member of the Standing Committee on Privileges and Elections effective July 16. Are there any nominations to replace the Honourable Mrs. Mitchelson?

\* (1010)

**Mr. Reimer:** I move, Mr. McCrae for Mrs. Mitchelson.

**Mr. Chairperson:** It has been moved that Mr. McCrae replace the Honourable Mrs. Mitchelson. Is that the will of the committee? [agreed]

*Members of the Committee present:*

Hon. Mrs. Mitchelson, Hon. Messrs. Radcliffe, Reimer

Ms. Cerilli, Messrs. Dyck, Helwer, Kowalski, Martindale, Ms. McGifford, Mr. Tweed

*Substitutions:*

Mr. Sveinson for Hon. Mr. Radcliffe  
Hon. Mr. McCrae for Hon. Mrs. Mitchelson  
Mr. Laurendeau for Mr. Tweed  
Mr. Mackintosh for Ms. McGifford  
Mr. Gaudry for Ms. Cerilli  
Hon. Mr. Stefanson for Mr. Helwer

## APPEARING:

Mr. Robb Tonn, Provincial Judges Association of Manitoba

## MATTERS UNDER DISCUSSION:

The June 1998 Report and Recommendations of the Judicial Compensation Committee

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**Mr. Chairperson:** Good morning. Will the Standing 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 dated June 1998.

I have before me the resignation of Mr. Tweed as a member of the Standing Committee on Privileges and Elections effective July 16? Are there any nominations to replace Mr. Tweed?

**Mr. Reimer:** Yes, I would like to move Mr. Laurendeau for Mr. Tweed.

**Mr. Chairperson:** It has been moved by the Honourable Mr. Reimer that Mr. Laurendeau replace Mr. Tweed. [agreed]

I have before me the resignation of Ms. McGifford as a member of the Standing Committee on Privileges and Elections effective July 16. Are there any nominations to replace Ms. McGifford?

**Mr. Doug Martindale (Burrows):** Do I need to make this a motion?

**An Honourable Member:** Just the name.

**Mr. Martindale:** The member for St. Johns (Mr. Mackintosh).

**Mr. Chairperson:** Mr. Mackintosh has been moved to replace Ms. McGifford. Is it the will of the committee? [agreed]

I have before me the resignation of Ms. Cerilli as a member of the Standing Committee on Privileges and Elections effective July 16. Are there any nominations to replace Ms. Cerilli?

**Mr. Gary Kowalski (The Maples):** I understand Marianne Cerilli resigned as a member of this committee, so there is an opening on this committee.

**Mr. Chairperson:** That is correct.

**Mr. Kowalski:** I would nominate the member for St. Boniface (Mr. Gaudry).

**Mr. Chairperson:** Is it the will of the committee to allow the member for St. Boniface to be on the committee? What is the will of the committee? [agreed]

We now have a vacancy for the position of Vice-Chairperson. Are there any nominations?

**Mr. Reimer:** I nominate Mr. Sveinson as Vice-Chair.

**Mr. Chairperson:** Mr. Sveinson has been nominated. Are there any further nominations? Seeing none, Mr. Sveinson is elected as Vice-Chairperson.

I will now give the committee a very brief background on how the Judicial Compensation Committee report has been dealt with in the past by the Privileges and Elections committee. Previously, the reports of the Judicial Compensation Committee had twice been considered by the Standing Committee on Privileges and Elections in 1991-92 and in 1996. I will just give a bit of background information to committee members about how the reports were considered by the Privileges and Elections committee during these years.

In 1991, the Standing Committee on Privileges and Elections met on July 18 of '91 and agreed to defer consideration of the report until the following session. The Privileges and Elections committee met again on June 16 of 1992. Opening comments were given by a representative from the government and by the opposition critic. The floor was then opened for general comments and questions, and the committee agreed to meet again to consider the matter on June 24, 1992. During the general discussion, the motion was moved by the government House leader that the Privileges and Elections committee adopt Schedule A of the JCC report and recommended to the House. The motion was agreed to.

In 1996, the Privileges and Elections committee met three times, on June 4, October 24, 1996, and November 5, 1996. At the June 4, 1996, meeting, the committee heard a presentation from Judge Howard Collerman of the Provincial Court and following his comments a motion was moved to refer the JCC report to another meeting of the committee at which time the provincial judges would be permitted to make a presentation. The motion was agreed to.

At the October 24, 1996, meeting, a presentation was made to the committee by Judge Robert Kopstein and

Judge Murray Sinclair of the Manitoba Provincial Judges Association. At the November 5, 1996, meeting, a motion was moved by the Minister of Finance to adopt Schedule A of the JCC report and recommend it to the Legislative Assembly.

I believe it would be appropriate to have the opening statements from a representative of the government and a representative of the opposition and then open up the floor to general comments and questions. I would also like to inform the committee that Mr. Robb Tonn, who is representing the Provincial Judges Association, has requested to speak to the committee this morning. Is there agreement from the committee to hear from Mr. Tonn, and did the committee wish to hear from him before or after the opening statements? What is the will of the committee?

**Mr. Kowalski:** I would like the opening statements first and then to hear from Mr. Tonn.

**Mr. Chairperson:** Is it agreed to by the committee to have opening statements first and then to proceed? [agreed] I will call then the minister, Mr. Stefanson, please, for opening comments.

**Hon. Eric Stefanson (Minister of Finance):** Mr. Chairman, my opening comments will be very brief. You have outlined some of the history of the Judicial Compensation Committee. In January 1997, the third Judicial Compensation Committee was appointed, and the members are outlined in the report: Mr. John Green was the chair; Mr. Tom Farrell was the government appointee; Mr. Harold Piercy was the appointee of the Provincial Judges Association.

The committee, as we all know, is required to report to the minister who must table the report in the Legislature within 30 days. After hearings in 1997 and 1998, the committee did submit its report on June 23, 1998, and on June 29, 1998, the report was tabled in the Legislature. The Legislature must refer the report to a Standing Committee of the Legislature within 30 days of the report being tabled, and that is the reason for us meeting here today, Mr. Chairman.

The standing committee, obviously, ultimately is required to report on the recommendations of the

Judicial Compensation Committee, and then the Legislative Assembly is required to vote on the report of the standing committee. As you have already outlined, we have representation here this morning from the Provincial Judges Association, providing them the opportunity to provide comments and information to this committee. I look forward to their comments. I also look forward to the input from members of the standing committee here this morning.

So, with those very brief comments, I look forward to hearing from the Provincial Judges Association.

**Mr. Chairperson:** I thank the minister for those comments. Does the critic for the official opposition have a comment? Okay. Then is it the will of the committee to hear the presentation from Mr. Tonn? [agreed]

Mr. Tonn, would you please come. I believe if you would take a mike at the end, if that is suitable with you? [interjection] Okay, great.

Well, thank you very much for coming this morning. We look forward to your presentation. If you would just pull the mike towards you, then I will recognize you, and then I will allow you to start with your presentation. Do you have any handouts of your presentation?

**Mr. Robb Tonn (Provincial Judges Association of Manitoba):** Yes, I have some materials.

**Mr. Chairperson:** Thank you. We will just wait till they are handed out.

**Mr. Tonn:** There are four pieces of paper that I believe will be—

**Mr. Chairperson:** Oh, then we will wait just a little longer.

\* (1020)

**Mr. Tonn:** I was just going to ask the Clerk. To the handouts that deal with reports from British Columbia and Alberta, I have provided one copy of the full report which in each of those I had asked the Clerk to give to the Chair of the committee. I have provided excerpts of

the summaries of those reports for the rest of the members of the committee.

**Mr. Chairperson:** Okay. I thank you for that explanation. Okay. I believe we have our copies. Please proceed.

**Mr. Tonn:** Mr. Chairman, thank you to the committee for inviting me to make representations.

I think it is interesting to note first, in relation to the history that was briefly mentioned, about the way in which this committee and the House have dealt with previous reports. As I am sure the members of the committee are aware, the law has since changed. Accordingly, decisions to defer the matter for periods of time would no longer be permissible, because the Supreme Court has said that things must be dealt with within a very specific time. I take it as a very happy sign that this committee is meeting in the summer during the recess of the House and has done so right away.

The second thing that I want members of the committee to be aware of is the importance of September 18, 1998. I have provided a three-page summary. It says page 12 on the front of it, and you will see a heading Transition Period. This was the decision of the Supreme Court of Canada on reconsideration of its earlier decision in September of 1997, and I would ask the committee to read and study very carefully paragraphs 17 and 18 of that decision.

What happened in that particular situation was that since the Supreme Court had mandated a committee process for every jurisdiction in the country and said that there would have to be time limits, governments went back to the Supreme Court and said—much as was the case in the Manitoba language reference—please give us time in order to implement your decision, because we do not want anybody to be able to come forward and challenge the independence of the provincial courts in the meantime. Of course, the Supreme Court had declared on September 18, 1997, that basically every provincial court in the country and the federal courts were in an unconstitutional situation.

So what the Supreme Court said on reconsideration is, yes, we understand that there needs to be time to fix

the problem, so we are giving you one year. And September 18, 1998, becomes the magic date. What happens on September 18, 1998, is that the suspension of the Supreme Court's decision will disappear, and it will then be permissible for members of the public, such as accused persons, to make a motion before a judge, either of a provincial court or some other court—the Provincial Court would be the one that you would be most concerned with—that the court is not independent. If the decision of the Supreme Court has not been implemented properly by September 1998, the likely result would be that the court would be found not to be independent and anybody that was brought before it would not be able to be tried.

Now over 90 percent of the criminal cases in this province are tried before the Provincial Court, and accordingly, if the situation—if whatever is broke is not fixed by September 18, we jeopardize the stability of our entire judicial system in Manitoba and will be in a situation where it will be impossible to deal with the many accused persons that are brought before the courts, and we can imagine the havoc that that would create.

Now what the court has said is that what is in paragraphs 17 and 18—particularly in paragraph 18, it said that the transition period takes effect. You will see in paragraph 17, they have said that what has to happen in the meantime is governments have to amend legislation where necessary, have a committee process and consider the recommendations of that committee and make decisions, including issues of retroactivity. Retroactivity is very important because, in Manitoba, when we have a problem with retroactivity that needs to be dealt with prior to the 18th of September, although the Supreme Court of Canada in large approved of Section 11.1 of The Provincial Court Act—although there may be some specific minor changes that need to be made, although they generally approved of it—the Section 11.1 of The Provincial Court Act had not been complied with by the Province of Manitoba, and presumably because the government felt, and until of course the Supreme Court made its decision, did not know that that process was not binding.

The process required a committee to be appointed every two years. Anybody can do the math; we know

that we missed two committees, and we are now considering a third report when it should be the fifth. So there is a gap of time that has to be dealt with. You will see that this committee has dealt with that period of time, and I think in a very responsible way.

There were submissions from the judges that there should be retroactive wage increases back to the period of time '94-95. The committee declined to recommend salary increases during that period but recommended instead salary increase effective in 1997 and another one in 1998. What they did do in terms of retroactivity was they recommended retroactive adjustments to the pension plan. So the committee has, in a very careful way, weighed the issue of retroactivity, has turned its mind to it and has made the decision that I think is very fair in all of the circumstances. So it is very important this committee conclude its deliberations and that the House make its decision before September 18 so this issue of retroactivity gets dealt with and we do not have criminals running loose.

There are a couple of things that I think the committee should bear in mind in particular in considering this recommendation. One, you will notice that at the bottom of pages 35 and 36 of the Judicial Compensation Committee report, they have recommended that the report be considered as an entire package and recommended against tinkering by accepting one proposal and rejecting others. The reason for that is that they have taken into account issues such as retroactivity, issues such as balancing off salary with other areas of compensation and have taken into account the period of time. I would note as well that during the period of time that judges' wages were frozen, something like 70 senior members of the civil service received very substantial increases by virtue of reclassifications and placing them into new pay scales. So, certainly, in terms of justifying some increases in salary, in terms of there being comparisons with senior civil service, there is a very strong reason to accept that.

Another thing that I would comment on is that the committee has made a recommendation to deal with legal costs in terms of presentations before the committee. I am not going to make a long argument about that except to say to you that the Supreme Court of Newfoundland has recently found that that is an obligation of the public purse. The reason for that is as

the Supreme Court has affirmed, the judiciary and the Legislature are separate branches of government and each should be funded out of the public purse. Government is able to use resources to put forward the recommendations of the majority. The judges should be provided with resources at public expense in order to be able to do their statutory duty in terms of appearing before the committee. You will note that even in the minority report of Mr. Farrell, he indicates that while he thinks the committee does not have the authority to recommend compensation for legal costs, it should be included in the legislation.

Something that is also very important for you to consider is page 16 of the report of the committee. You will see at page 16, the committee particularly said we did not give full weight to the significant increase in Nova Scotia, which is to \$124,000 effective April 1, 1998, for a couple of reasons. First, \$124,000 seems to be high in comparison to judicial salary rates in larger, stronger provinces of Ontario, British Columbia and Alberta where the cost of living is generally higher.

\* (1030)

I have provided to you summaries of the reports in British Columbia and Alberta, which were delivered subsequent to this committee's consideration. In fact, the British Columbia report—which you have a copy of—has now come into law, has been accepted by the Legislature, and it has increased the salary to \$134,000 effective January 1, 1998, \$139,000 January 1, 1999, and \$144,000 January 1, 2000. So if the committee were to reconsider its decision in light of what has happened in British Columbia, part of its rationale for recommending the lower salaries in Manitoba might not be there. Secondly, you will see the Alberta recommendations which have not yet been determined by the government, but this report has just recently come out recommending salaries of \$142,000 effective April 1, 1998, and then another change to \$152,000 on April 1, 1999.

So again, I would say, in light of the recommendations in British Columbia and Alberta, that the recommendations in Manitoba are very thrifty and might not be at that same level had the information from British Columbia and Alberta been available to the committee.

The other thing that is important to note is that in Newfoundland, by order of the Supreme Court of Newfoundland, the salary of provincial judges in Newfoundland is to be raised to \$112,000 effective 1994. We do not know yet whether or not that decision will be appealed by the government, but that puts Manitoba in a situation of being far and away the lowest-paid judiciary in the country.

The other thing that I think I would say in conclusion that is very important to consider—and I have included for you sections of the first decision of the Supreme Court of Canada. You will find those summaries in a small package that begins with page 80, and I would draw the committee's attention to the last sentence of paragraph 166. The Supreme Court of Canada said that the responsibility of the government is to make particular proposals to the compensation committee to increase, reduce or freeze judges' salaries. That is again emphasized in the middle of paragraph 174 at page 84. In fact, the government did not make particular proposals to the committee, but rather submitted only general outlines, and when it was specifically asked whether or not there was a specific recommendation, declined to make one.

I say this to this standing committee because I want the standing committee to know that if the report of the committee is not accepted and the government now makes a different recommendation, in other words, makes a specific recommendation different from that which the committee has done, it will not be complying with what the Supreme Court told it to do, because the Supreme Court told the government that if it wanted to do something specific, it had to make that recommendation to the committee and give the committee an opportunity to report on that.

So I say that, if this committee report is not accepted in its entirety and implemented by September 18, there is a very significant probability that the Manitoba Provincial Court will be placed in a situation of unconstitutionality and will be unable to function.

Obviously, I am not speaking in terms of saying what decisions of particular judges would be. I have no knowledge of that. I make this observation as a lawyer who is fairly familiar with the principles of judicial independence and judicial compensation.

I would advise this committee that, in addition to being counsel to the Manitoba judges association, I am also counsel to the Newfoundland judges association, the British Columbia judges association, and the Canadian Association of Provincial Court Judges. So I have had a lot of time to consider this matter, probably more than anyone else in the country.

I am very concerned that, if this report is not implemented in its entirety on September 18, what will happen is criminal lawyers in this province will start making motions that the court does not have jurisdiction to convict their clients and that there will be, if that happens, chaos, because, as I have said, 90 percent of the criminal cases in this province are dealt with by the Provincial Court, and there is simply nothing else to do. The grace period will expire if what is broken is not repaired by that period of time.

That is the conclusion of my submission. Unless members of the committee have any questions for me, I thank you very much again for inviting me.

**Mr. Gord Mackintosh (St. Johns):** I have a few brief questions. We thank you for your subtle suggestion that the Legislature meet before September 18, Mr. Tonn. Is it your opinion that there is a possibility or is it a probability that those motions would be accepted by the court according to the Provincial Judges Association?

**Mr. Tonn:** Yes, it is my opinion that there is a very strong probability that those motions would ultimately be successful. Whether they would be successful before a Provincial Court judge or successful before a Court of Queen's Bench judge, I cannot tell you, but I can say that, because of two very significant facts: (1) that the government declined to make specific recommendations to the committee; and (2) because of the previous two committees that should have been appointed that were not, it is clear that there is a problem in Manitoba that needs to be corrected. I think that those two facts alone would likely result in any decision contrary to the recommendations of this committee to lead to finding unconstitutionality at the end of the grace period.

**Mr. Mackintosh:** Mr. Tonn, are you aware of any other legal opinions, other than the one you expressed,

as to the probable outcome of a failure of the Legislature to meet before the 18th of September to deal with this report?

**Mr. Tonn:** No, I am not aware of any other opinions.

**Mr. Mackintosh:** Mr. Tonn, just out of general interest, have you or are you aware of any calculation done of the cost to the province, the taxpayers of Manitoba for the conduct of the provincial government?

I just want to note for the record, as it should be done in this Assembly, that the Supreme Court of Canada found the following, and I quote from the majority decision: I now turn to the highly inappropriate conduct of the Manitoba provincial government in the time period following the implementation of the salary reductions in that province. This conduct represents either an ignorance of or a complete disrespect for judicial independence.

What in your view has been the cost of that either ignorance or disrespect?

**Mr. Tonn:** I think that the cost of that has been an undermining of public confidence in the judicial system in this province and throughout. I sincerely hope that we can restore that public confidence by showing a greater respect for the independence of the court. I do not think that it is a cost that can be measured in dollars, but I think it is a cost that can be measured in the erosion of the confidence of our entire system of government which includes both the legislative and judicial branches.

I deeply regretted that it was necessary to take the legal action that the judges took. I deeply regretted that there was that kind of finding, because I do not think that is good for the Legislature. I do not think that is good for the judiciary. I do not think that is good for the public. This committee and the Manitoba Legislature now has an opportunity to try to mend that problem and restore that public confidence.

\* (1040)

**Mr. Mackintosh:** Turning now to the specifics of the report, I just wanted to clarify the position of the judges association through you. Under the issue of parking,

the assertion is made by the committee that taking public transport to work is not an option, that due to the nature of their work, their personal safety may at times be at risk and that they require the security of a personal vehicle and secured parking.

Mr. Tonn, are you aware whether there have been instances, and I do not want you to be specific, but is there an actual documented history of personal threats to judges in Canada and particularly in Manitoba? I ask that question because, as you well know, all public servants in Manitoba and members of the Legislature and, indeed, the Premier pay for parking. We have to look at these recommendations in light of other aspects of public policy, as well, but with deference I would submit to the committee and its recommendations. But what is the background to that finding by the committee, Mr. Tonn, if you were involved at all in making those presentations or dealing with that issue before the committee?

**Mr. Tonn:** Yes, I did make representations to the committee, and parking was part of the package. In the province of Quebec, it had been found earlier that there was a situation of danger to judges, and that is why parking was ordered to be provided to judges. In Manitoba, I am not aware of any attack on a provincial judge on his way to work. We are all aware that one of the members of the Manitoba Court of Appeal was recently held hostage in his home for a period of time, the honourable Justice Huband.

I am certainly aware of a number of circumstances where dangerous situations have erupted in the courtroom itself. It is not a large leap to understand that if someone wishes to seek revenge on a judge that one can do that. For this reason, there were very significant changes made in the building of the new Provincial Court Building which provided for the first time secure and locked access to the garage. There is a separate elevator that goes to the parking garage for the judges and the senior government people that work there. There is a separate elevator system for accused persons. This province has begun to recognize the need for security of judges. That is why that particular recommendation was made, and I suspect that is why the committee has recommended it to you.

**Mr. Chairperson:** Are there any further questions?

**Mr. Stefanson:** Thank you, Mr. Tonn, for your presentation here this morning. I just have one or two questions dealing very specifically with the report as opposed to some of the other issues that you have raised here this morning. I should indicate to you that we do not agree with your interpretation relative to whether or not we are in compliance with the Supreme Court ruling. We obviously believe that we are. That is another separate issue to be reviewed.

I also disagree with you in terms of your representation relative to whether or not the government made a submission or recommendations to the committee, but again, that is a separate issue to be dealt with.

What I would like to deal with is the specific report which is before the committee today and is the responsibility for this committee to deal with. I really have just two questions. Picking up on the question from the member for St. Johns (Mr. Mackintosh), and you touched on it with your concluding remarks in responding to him, that the issue—and you talked about the one judge being pursued in his home and so on, but the issue is really the secure, safe parking. That is, in fact, being provided.

The issue in the report is who pays for it, whether or not judges themselves should pay for it, not unlike everybody else who derives compensation from the provincial government and has a relationship to the provincial government in terms of funding sources. That is really the issue. I guess I would be interested if you could focus very specifically on the justification from the association's perspective and the recommendation in this report as to why judges should not be paying for that themselves, not unlike everybody, from the people around this table who are elected to everybody who works directly for government.

**Mr. Tonn:** Yes, I will respond very directly and very simply to that question. We are talking about \$500 or \$600 per year. The committee said this is the salary; these are the benefits. I suppose they could have said instead of a hundred and five thousand dollars, a hundred and five thousand dollars, six hundred, and the judges pay for the parking. That is the simple answer.

They took everything into consideration, and the salary reflects that.

The other thing that I would say and, obviously, I do respect that there may be differences of opinion, but the government and I were of different opinions about the legality of Bill 22 as it affected the judges, and it turned out that I was right.

I would say this: it is a terrible thing to make a risky manoeuvre on because the consequences may be so great if the government is in fact in error in its opinion, however honestly they believe in it.

**Mr. Stefanson:** Just one other question, Mr. Chairman. On page 20 of the report in the section under Judicial Pensions, the second paragraph states: "Given the absolute level of the pension benefit currently available to retiring Judges, it is conceivable to this Committee that there may be Judges who are continuing to work beyond normal retirement age solely because they cannot afford to retire." It then goes on to talk about eight judges, at the very bottom, in the last sentence, "ranging in age from 63 to 70 accepted the package and retired. Notwithstanding these eight retirements, the average age of all Manitoba Judges has increased from 55.0 years in 1990 to 56.6 years in 1997."

Kind of related to that whole issue—even though there is not a recommendation in the report—is the fact that many other jurisdictions have mandatory retirement in place. I am wondering if that is an issue that the judges association has taken any position on and whether you have any comments that you can provide to the committee on that issue.

**Mr. Tonn:** I certainly do not have any instructions from the Provincial Judges Association with respect to the question of mandatory retirement. So I cannot speak for them specifically on that point. But I would observe as a lawyer—and it is interesting, it was my firm and my partner, Mr. Myers, who is responsible for the decision that there be no mandatory retirement in Manitoba based on the Human Rights Code.

I would say that there is mandatory retirement for judges in other provinces. There are circumstances, I believe, in which it could be lawful that there be

mandatory retirement, but obviously those circumstances would not be lawful if they jeopardized the financial security of judges. So that entire package would have to be taken into consideration.

I would say that it is perhaps a matter for the Legislature to consider in the future, and it is not something that would be beyond the competence of the Legislature to deal with. But you would have to be very, very careful about the way in which you did it because you would want to make sure that there is security. In the federal system, for example, where there is a mandatory retirement age for judges, there is an opportunity for judges to be supernumerary and there is, of course, a much, much more generous pension plan that kicks into effect after 10 years on the bench. So, in that kind of context, I think it is something the Legislature could consider.

\* (1050)

#### Committee Substitution

**Mr. Ben Sveinson (La Verendrye):** Mr. Chairman, if I might interrupt just for a moment and move a substitution: Mr. Stefanson for Mr. Helwer, with leave of the committee.

**Mr. Chairperson:** First of all, we need to have leave of the committee to accept the resignation of Mr. Helwer. Is there leave? [agreed]

Then the second request is to ask the honourable minister to sit in on the committee in place of Mr. Helwer. Is there leave for that? [agreed] Thank you, Mr. Sveinson.

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**Mr. Chairperson:** Shall we proceed? Are there any further questions? If not, what is the wish of the committee?

**Mr. Reimer:** On page 39 of the Report and Recommendations, the very last one, the recommendation for reimbursement for the submission that was put forth by the Provincial Judges Association of Manitoba. I am not aware of it, but when associations are dealing with the government, whether

it is the MMA or other groups, is this a normal position that they would ask for compensation for presentations as put forth before this committee?

**Mr. Tonn:** No, that is not a normal situation. The difference here, sir, is that there is no constitutional obligation for the government to bargain with the MMA. That is the situation in this province, but it is not a constitutional obligation. When the Supreme Court gave its ruling and its landmark decision, I think everyone will recognize, last September, it said that there must be a constitutional process and that both the government and the judges must participate in that process before the Judicial Compensation Committee. The Supreme Court of Newfoundland has considered further—and again, that decision has not yet been appealed, and I do not know whether it will be—that because the two branches of government must both participate before the committee, that each should be at equal advantage, not one branch being paid out of the public purse and the other branch being paid out of their own pockets.

I would say to you that it would be similar, sir, if you or Mr. Stefanson wished to get an opinion as to the viability of the legislation or make recommendations before a committee, that you not be able to use Mr. Pruden or Mr. Irving or to hire Mr. Olson unless you take the funds out of your own pocket. That is the comparison, and that is the difference. It is only because of the constitutional obligation of this commission that it is necessary for the judges to be compensated for their counsel.

**Mr. Reimer:** I just refer back to sitting on various committees over the years when CUPE and some of the other associations lobbied the government in regard to legislation or for compensation packages, that part of their package did not seem to have the requirement that government reimburse these people, who were lobbying for salaries, to the expense of coming to the committee to lobby for salaries. It just seems a bit obvious, in a sense.

**Mr. Tonn:** There is an obvious difference, and that is that CUPE is not a branch of government and the judiciary is. That is the difference. The problem—and I say this with the greatest of respect to the members of the government—the reason why you lost the case in the

Supreme Court was because the government did not understand that distinction and because the government treated its negotiations with the judges in the same manner in which it treated negotiations with CUPE. That is why the Supreme Court was very harsh in its language about the government's dealings with the judiciary. So I hope that this government will now understand and appreciate that distinction.

**Mr. Chairperson:** Are there any further questions?

**An Honourable Member:** No, I think that is it.

**Mr. Chairperson:** Okay, then I wish to thank you, Mr. Tonn, for your presentation this morning and for answering our questions. Thank you very much.

**Mr. Tonn:** Thank you very much, members of the committee, for what I consider to be some probing questions. Thank you.

**Mr. Chairperson:** What is the will of the committee?

**Mr. Stefanson:** Mr. Chairman, unless some members have some comments that they would like to put on the record today relative to the report, to put forward their views, I would suggest that the committee adjourn for all of us to take into consideration the representation made here this morning and to convene a subsequent meeting at the call of House leaders to continue to deal with the report.

Certainly, from my perspective, I think this submission this morning from the Provincial Judges Association has been beneficial and certainly of value, and they have raised some issues that should be reviewed, and, therefore, we should take the appropriate time to do just that.

**Mr. Chairperson:** Is it then the will of the committee that we adjourn and at the call of the House leaders to then meet again? [agreed]

Committee rise.

**COMMITTEE ROSE AT:** 10:57 a.m.