



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 2

FOURTH SESSION, THIRTY-NINTH LEGISLATURE

PRAYER

1:30 O'CLOCK P.M.

Mr. Speaker laid upon the Table of the House:

LEGISLATIVE ASSEMBLY OF MANITOBA

To the Speaker of the Legislative Assembly.

I, Gary DOER, Member of the Legislative Assembly of Manitoba for the electoral division of Concordia, do hereby declare that it is my intention to resign my seat in the Legislative Assembly for the electoral division aforesaid.

Given under my hand and seal at the Legislative Offices this 21st day of October, 2009

(Signed) Gary Doer

Witness: P. Vogt (signed)

Witness: M. Balagus (signed)

To His Honour, the Lieutenant Governor in Council:

I beg to advise that I have received the written resignation of Mr. Gary DOER, Member for the Electoral Division of Concordia in the Legislative Assembly of Manitoba dated the 21st day of October, 2009.

Pursuant to section 24 of The Legislative Assembly Act, I do now request Your Honour in Council to pass an Order-in-Council for the filling of the vacancy in the representation of the Electoral Division of Concordia.

Dated at Winnipeg, this 21st day of October, 2009.

(Signed) Honourable George Hickes
Speaker
Legislative Assembly of Manitoba

(Sessional Paper No. 1)

Tuesday, December 1, 2009

Mr. Speaker laid upon the Table of the House:

LEGISLATIVE ASSEMBLY OF MANITOBA

To the Speaker of the Legislative Assembly.

I, Bonnie KORZENIOWSKI, Member of the Legislative Assembly of Manitoba for the electoral division of St. James, do hereby submit my resignation as Deputy Speaker of the Legislative Assembly of Manitoba and as Chairperson of the Committees of the Whole House.

Dated this 30th day of November, 2009.

(Signed) Bonnie Korzeniowski

(Sessional Paper No. 2)

Mr. Speaker laid upon the Table of the House:

LEGISLATIVE ASSEMBLY OF MANITOBA

To the Speaker of the Legislative Assembly.

I, Marilyn BRICK, Member of the Legislative Assembly of Manitoba for the electoral division of St. Norbert, do hereby submit my resignation as Deputy Chairperson of the Committees of the Whole House.

Dated this 30th day of November.

(Signed) Marilyn Brick

(Sessional Paper No. 3)

The following petitions were presented and read:

Mr. FAURSCHOU – Legislative Assembly of Manitoba to amend An Act to incorporate The Portage District General Hospital Foundation by increasing the number of board members to seven (increasing the number of board members appointed by the City of Portage la Prairie and the Rural Municipality of Portage la Prairie by one each) to provide for the responsible management of the Foundation. (J. Knight and M. Graham)

Mr. DYCK – Legislative Assembly of Manitoba to urge the Minister of Health to ensure that patients who are awaiting placement in a personal care home are not moved to distant communities and to consider working with the RHA and the community to speed construction and expansion of long term care facilities in the region. (J. Toews, A. Toews, F. Harding and others)

Mr. SCHULER – Legislative Assembly of Manitoba to request that the Minister of Transportation consider the immediate twinning of the PTH #15 Floodway Bridge for the safety of the citizens of Manitoba. (S. Stone, R. Symbol, B. Monchamp and others)

Mr. LAMOUREUX – Legislative Assembly of Manitoba to request the Premier of Manitoba to consider the important role that community police offices can play in making our communities safer. (L. Tolledo, C. Tolledo, C. Acosta and others)

Mrs. DRIEDGER – Legislative Assembly of Manitoba to urge the Minister of Health to consider rethinking her refusal to allow an ophthalmologist to practice in Swan River and to consider working with the community to provide this service without further delay. (C. Nash, P. Alice, A. Bobby and others)

Mr. BRIESE – Legislative Assembly of Manitoba to urge the Minister of Health to consider prioritizing the needs of these communities by ensuring they have access to a family doctor and to consider promptly increasing the use of nurse practitioners in these communities in order to improve access to quality health care. (J. Wallwin, K. Lemky, J. Lackey and others)

Mr. DERKACH, Chairperson of the Standing Committee on Public Accounts, presented its Ninth Report (Third Session), which was read as follows:

Meetings:

Your Committee met on the following occasions:

- November 28, 2005
- December 7, 2005
- December 8, 2005
- March 15, 2006
- December 6, 2006
- December 14, 2006
- March 8, 2007
- October 21, 2009

Matters under Consideration

- Auditor General's Report – Special Audit: Property Transactions in the Seven Oaks School Division – August 2007
- Auditor General's Report – Examination of the Crocus Investment Fund – May 2005

Committee Membership

Committee membership for the November 28, 2005 meeting:

- Mr. CALDWELL
- Mr. CUMMINGS
- Mr. HAWRANIK
- Mr. MAGUIRE

- Mr. MALOWAY (*Vice-Chairperson*)
- Mr. MARTINDALE
- Mr. NEVAKSHONOFF
- Mr. REIMER (*Chairperson*)
- Mr. SANTOS
- Hon. Mr. SELINGER

Committee membership for the December 7, 2005 meeting:

- Mr. CUMMINGS
- MR. DEWAR
- Mr. HAWRANIK
- Ms. KORZENIOWSKI
- Mr. LAMOUREUX
- Mr. MAGUIRE
- Mr. MALOWAY (*Vice-Chairperson*)
- Mr. REIMER (*Chairperson*)
- Mr. SANTOS
- Hon. Mr. SELINGER
- Mr. SWAN

Substitutions received during committee proceedings at the December 7, 2005 meeting:

- Hon. Mr. GERRARD for Mr. LAMOUREUX

Committee membership for the December 8, 2005 meeting:

- Mr. CUMMINGS
- Mr. DEWAR
- Mr. HAWRANIK
- Ms. KORZENIOWSKI
- Hon. Mr. GERRARD
- Mr. MAGUIRE
- Mr. MALOWAY (*Vice-Chairperson*)
- Mr. REIMER (*Chairperson*)
- Mr. SANTOS
- Hon. Mr. SELINGER
- Mr. SWAN

Committee membership for the March 15, 2006 meeting:

- Mr. AGLUGUB
- Mr. CUMMINGS
- Hon. Mr. GERRARD
- Mr. HAWRANIK
- Mr. MAGUIRE
- Mr. MALOWAY (*Vice-Chairperson*)
- Mr. MARTINDALE
- Mr. REIMER (*Chairperson*)

- Mr. SANTOS
- Hon. Mr. SELINGER
- Mr. SWAN

Committee membership for the December 6, 2006 meeting:

- Mr. AGLUGUB
- Mr. CUMMINGS
- Mr. DERKACH
- Hon. Mr. GERRARD
- Mr. HAWRANIK
- Mr. MALOWAY (*Vice-Chairperson*)
- Mr. MARTINDALE
- Mr. SANTOS
- Mr. SCHULER
- Hon. Mr. SELINGER
- Mr. SWAN

Your Committee elected Mr. DERKACH as the Chairperson at the December 6, 2006 meeting.

Committee membership for the December 14, 2006 meeting:

- Mr. AGLUGUB
- Mr. CUMMINGS
- Mr. DERKACH (*Chairperson*)
- Mr. HAWRANIK
- Mr. LAMOUREUX
- Mr. MALOWAY (*Vice-Chairperson*)
- Mr. MARTINDALE
- Mr. SANTOS
- Mr. SCHULER
- Hon. Mr. SELINGER
- Mr. SWAN

Committee membership for the March 8, 2007 meeting:

- Mr. AGLUGUB
- Mr. CUMMINGS
- Mr. DERKACH (*Chairperson*)
- Hon. Mr. GERRARD
- Mr. HAWRANIK
- Mr. MAGUIRE
- Mr. MARTINDALE
- Mr. SALE
- Mr. SANTOS
- Hon. Mr. SELINGER
- Mr. SWAN

Your Committee elected Mr. SWAN as the Vice-Chairperson at the March 8, 2007 meeting.

Committee membership for the October 21, 2009 meeting:

- Mr. BOROTSIK
- Ms. BRAUN
- Mr. DERKACH (*Chairperson*)
- Mr. DEWAR
- Ms. HOWARD (*Vice-Chairperson*)
- Mr. JHA
- Mr. LAMOUREUX
- Mr. MAGUIRE
- Ms. SELBY
- Mrs. STEFANSON
- Hon. Ms. WOWCHUK

Officials Speaking on Record

Officials speaking on the record at the December 7, 2005 meeting:

- Hugh Eliasson, Deputy Minister of Industry, Economic Development and Mines
- Hon. Mr. RONDEAU
- Jon Singleton, Auditor General

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Officials speaking on the record at the March 15, 2006 meeting:

- Hugh Eliasson, Deputy Minister of Industry, Economic Development and Mines
- Hon. Mr. RONDEAU
- Jon Singleton, Auditor General

Officials speaking on the record at the December 6, 2006 meeting:

- Bonnie Lysyk, Deputy Auditor General and C.O.O.
- Hugh Eliasson, Deputy Minister of Competitiveness, Training and Trade
- Hon. Mr. SMITH

Officials speaking on the record at the December 14, 2006 meeting:

- Bonnie Lysyk, Deputy Auditor General and C.O.O.
- Hugh Eliasson, Deputy Minister of Competitiveness, Training and Trade
- Hon. Mr. SMITH

Officials speaking on the record at the March 8, 2007 meeting:

- Carol Bellringer, Auditor General
- Hon. Mr. SMITH

Officials speaking on the record at the October 21, 2009 meeting:

- Carol Bellringer, Auditor General
- Hon. Mr. BJORNSON
- Mr. Gerald Farthing, Deputy Minister of Education, Citizenship and Youth
- Hon. Mr. SWAN
- Mr. Hugh Eliasson, Deputy Minister of Deputy Minister of Competitiveness, Training and Trade

Reports Considered and Passed

Your Committee considered and passed the following reports as presented:

- Auditor General's Report – Special Audit: Property Transactions in the Seven Oaks School Division – August 2007

Reports Considered but not Passed

Your Committee considered the following reports but did not pass them:

- Auditor General's Report – Examination of the Crocus Investment Fund – May 2005

On motion of Mr. DERKACH, the Report of the Committee was received.

Mr. NEVAKSHONOFF, Chairperson of the Standing Committee on Legislative Affairs, presented its Eighth Report (Third Session), which was read as follows:

Meetings:

Your Committee met on Monday, October 26, 2009 at 6:00 p.m. in Room 255 of the Legislative Building.

Matters under Consideration:

- The Report and Recommendations of the Judicial Compensation Committee dated June 25, 2009

Committee Membership:

- Ms. BRICK
- Hon. Mr. CHOMIAK
- Mr. DEWAR
- Mr. FAURSCHOU
- Mr. GOERTZEN
- Mr. GRAYDON
- Ms. KORZENIOWSKI
- Mr. MARTINDALE
- Mr. NEVAKSHONOFF
- Mr. PEDERSEN
- Hon. Ms. WOWCHUK

Your Committee elected Mr. NEVAKSHONOFF as the Chairperson.

Your Committee elected Ms. KORZENIOWSKI as the Vice-Chairperson.

Motions:

Your Committee agreed to the following motion:

- *THAT the Standing Committee on Legislative Affairs accept the recommendations in Schedule A; reject the recommendations in Schedule B for the reasons set out in that Schedule and, in substitution for the 2009 and 2010 salaries proposed by those recommendations, set the 2009 and 2010 salaries according to the recommendations in Schedule C; and recommend the same to the Legislative Assembly.*

SCHEDULE A

**Recommendations of the Judicial Compensation Committee
accepted by the Standing Committee on Legislative Affairs**

1. That the Province pay 75% of the Judges' legal costs and fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$40,000.00.
2. That the Province pay 100% of Judges' disbursement costs and fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$20,000.00.
3. That, effective the date of approval by the Legislative Assembly, up to 17 weeks of paid Maternity Leave be available, subject to at least a six-month return-to-service commitment.
4. That, effective the date of approval by the Legislative Assembly, up to 37 continuous weeks of Parental Leave be available, with up to 17 weeks of it being paid leave if Maternity Leave is not taken and such paid leave being subject to at least a six-month return-to-service commitment.
5. That, effective the date of implementation of the Standing Committee's report, the Extended Health Benefits Plan be amended to provide
 - coverage to a maximum of \$1,000 in each calendar year for massage therapy, chiropractic care, clinical psychology, physiotherapy;
 - a maximum hearing aid coverage of \$10,000 per person per 5-year period; and
 - premiums for these coverages to be paid by the participating judges.
6. That, unless otherwise stated, all changes be effective on the date of approval by the Legislative Assembly of Manitoba.

7. In these recommendations, "date of approval by the Legislative Assembly" means
 - (a) the date that the vote of concurrence referred to in subsection 11.1(28) of *The Provincial Court Act* takes place with respect to these recommendations; or
 - (b) if the recommendations must be implemented because of subsection 11.1(29) of *The Provincial Court Act*, the first day after the end of the 21-day period referred to in that subsection.

SCHEDULE B

Recommendations of the Judicial Compensation Committee rejected by the Standing Committee on Legislative Affairs

1. That the April 1, 2009 salaries for Judge/Master increase by 5% to \$201,774.
2. That the April 1, 2009 salaries for Associate Chief Judge/Senior Master increase at a differential of 5% greater than the salary set for Judge/Master, to a salary of \$211,862.
3. That the April 1, 2009 salaries for Chief Judge increase at a differential of 8% greater than the salary set for Judge/Master, to a salary of \$217,916.
4. That the April 1, 2010 salaries for Judge/Master increase by 5% to \$211,862.
5. That the April 1, 2010 salaries for Associate Chief Judge/Senior Master increase at a differential of 5% greater than the salary set for Judge/Master, to a salary of \$222,455.
6. That the April 1, 2010 salaries for Chief Judge increase at a differential of 8% greater than the salary set for Judge/Master, to a salary of \$228,811.
7. That interest is to be paid on any retroactive salary increases, fixed at the rate equal to the pre-judgement rate fixed by the Court of Queen's Bench.

Reasons

In reviewing the report of the Judicial Compensation Committee, the Standing Committee has examined each of the recommendations individually and collectively. The reasons for rejecting these recommendations are as follows:

Recommendations 1 to 6:

- The recommended salary increases for 2009 and 2010 fail to properly take into account, or to properly balance, the six factors that the Judicial Compensation Committee is required to take into account in making its recommendations.

- The recommended increases go beyond what is considered appropriate and necessary for maintaining judicial independence.
- The Judicial Compensation Committee majority did not adequately address the Government's position that the existing salary level, together with the value of pension and other benefits, has been more than adequate to attract and retain an acknowledged pool of highly qualified candidates.
- The April 1, 2008 salary increases, which the Standing Committee acknowledges are binding on the government, already involve a significant increase in cost to Manitobans.
 - The recommendations for the introduction of maternity and parental benefits, which the Standing Committee accepts, also add to the cost to Manitobans.
- The Judicial Compensation Committee majority has not fairly and reasonably recognized the total compensation for Judges in Manitoba.
 - In addition to a significant benefit package, the Judges pension arrangements are significantly better than those of other provincial employees and are currently among the most generous in Manitoba.
- The Judicial Compensation Committee process is valuable and serves the public interest for the most part; however the Government must consider the recommended salary increases for 2009 and 2010, compared with public servants or the private sector. The recommended salary increases for those years would be unfair and unreasonable to the Government in relation to other public service salary increases in order to maintain what it regards as the greater good of the public service. The recommendations are also inconsistent with the current policy of negotiated wage restraint in the public service, absent special circumstances. The recommended increases will foster a perception that Judges are not shouldering their fair share of the burden in difficult economic times.
- The substituted salary increases for 2009 and 2010 (set out in Schedule C)
 - would provide fair and reasonable compensation in light of prevailing economic conditions in Manitoba and the government's current financial position while still preserving judicial independence and the ability of the judiciary to attract and retain candidates for the judiciary; and
 - would be more consistent with the provincial approach for public servants in the majority of the service for groups that have recently concluded agreements and for groups that are in the final years of agreements reached before the global economic downturn.
- The April 1, 2008 binding salaries were determined by the Judicial Compensation Committee in deference to the legislation regarding the designated three Province average, and the Committee accepted that a three Province average (Saskatchewan, Nova Scotia and New Brunswick) was the appropriate comparator. The Judicial Compensation Committee erred in later rejecting the government's position that the three province average should be preferred. The 2009 and 2010 recommended salary increases were arrived at in error as they are based on the wrong assumption that previous JCCs supported that salary should follow a national average, however that average is calculated, and is inconsistent with what the JCC accepted as the appropriate comparator for 2008.

- The government has a responsibility to review the recommended salary increases within the context of the current provincial and global economy. This Judicial Compensation Committee's recommendations are weighted more in favour of trying to achieve a mid-point or national average rather than on the economic conditions of the province and is a failure to properly balance the six factors outlined in the legislation. The Judicial Compensation Committee correctly stated that the recommendations must consider the economic conditions of the Province, that this was a time for prudence and Provincial Court Judges were part of the Manitoba community. The Judicial Compensation Committee then erred in that, while recognizing the recommended increases were greater than those received by many Manitobans over three years, stated that the strength of the economy and the necessity to provide fair and reasonable salaries were the reasons for the differential; both justifications are inconsistent with the Committee's own findings.

Recommendation 7:

- The Standing Committee does not accept the view that awarding interest on retroactive salary increases is within the scope of benefits on which the Judicial Compensation Committee may make recommendations. Further, no such payments of interest have been recommended by any previous Judicial Compensation Committee.
- The Standing Committee does not accept the characterization by the chair that interest falls within the scope of 'benefits' as contemplated by The Provincial Court Act. If interest was intended, given the clear time lines within the legislation, interest would be clearly spelled out.

SCHEDULE C

Recommendations of the Standing Committee on Legislative Affairs substituted for recommendations of the Judicial Compensation Committee

1. That effective April 1, 2009, salaries for Judges/Masters be increased by 2.9% to \$197,736 per annum (\$7,579.88 bi-weekly); and that effective March 31, 2011, salaries for Judges/Masters be increased by 1% to \$199,722 per annum (\$7,656.00 bi-weekly).
2. That effective April 1, 2009 salaries for Associate Chief Judge/Senior Master be increased by 2.9% to \$205,245 per annum (\$7,867.70 bi-weekly); and that effective March 31, 2011 salaries for Associate Chief Judge/Senior Master be increased by 1% to \$207,306 per annum (\$7,946.73 bi-weekly).
3. That effective April 1, 2009 that the salary for Chief Judge be increased by 2.9% to \$211,373 per annum (\$8,102.60 bi-weekly); and that effective March 31, 2011 that the salary for the Chief Judge be increased by 1% to \$213,491 per annum (\$8,183.80 bi-weekly).

Public Presentations:

By leave, your Committee heard one presentation on the Report and Recommendations of the Judicial Compensation Committee from:

Susan Dawes

Provincial Judges Association of Manitoba

Reports Considered:

Your Committee has completed consideration of the Report and Recommendations of the Judicial Compensation Committee dated June 25, 2009.

On motion of Mr. NEVAKSHONOFF, the Report of the Committee was received.

Mr. Speaker presented:

Report of the Special Committee on Senate Reform dated November 9, 2009.

(Sessional Paper No. 4)

Hon. Mr. RONDEAU, the Minister of Healthy Living, Youth and Seniors made a statement regarding today, December 1, 2009, being Worlds AIDS Day,

Mrs. DRIEDGER and, by leave, Hon. Mr. GERRARD commented on the statement.

Pursuant to Rule 26(1), Messrs. BRIESE, WHITEHEAD, EICHLER, JENNISSON and DYCK made Members' Statements.

Mr. WHITEHEAD moved, seconded by Ms. SELBY:

THAT the following address be presented to His Honour the Lieutenant Governor:

We, the Members of the Legislative Assembly of Manitoba thank your Honour for the gracious speech addressed to us at this Fourth Session of the Thirty-Ninth Legislature of Manitoba.

And a debate arising,

And Mr. WHITEHEAD and Ms. SELBY having spoken.

The debate was, on motion of Mr. MCFADYEN, adjourned.

Tuesday, December 1, 2009

By leave, it was agreed to deal with motions to appoint a new Deputy Speaker and a new Deputy Chairperson of the Committees of the Whole House, with the understanding that this is not to count as an interruption of the Throne Speech debate in accordance with Rule 45(2).

Hon. Mr. SELINGER moved:

THAT Marilyn BRICK, Member for the Electoral Division of St. Norbert, be Chairperson of the Committees of the Whole House and Deputy Speaker.

And a debate arising,

During the debate, Mr. FAURSCHOU rose on a point of order regarding Rule 13(1) with respect to the election of the Deputy Speaker.

And Mr. FAURSCHOU and Hon. Mr. BLAIKIE having spoken to the point of order,

WHEREUPON Mr. Speaker ruled that there was no point of order.

From his decision, Mr. FAURSCHOU appealed to the House,

And the Question being put, "Shall the ruling of the Chair be sustained?" It was agreed to.

And the debate continuing,

And Hon. Mr. SELINGER and Mr. FAURSCHOU having spoken,

And the Question being put. It was agreed to.

Hon. Mr. SELINGER moved:

THAT Mohinder SARAN, Member for the Electoral Division of The Maples, be Deputy Chairperson of the Committees of the Whole House.

And the Question being put. It was agreed to.

The House then adjourned at 3:41 p.m. until 1:30 p.m. Wednesday, December 2, 2009.

Hon. George HICKES,
Speaker.