



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

Member	Constituency	Political Affiliation
ASHTON, Steve	Thompson	N.D.P.
BARRETT, Becky	Wellington	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave	Kildonan	N.D.P.
CUMMINGS, Glen, Hon.	Ste. Rose	P.C.
DACQUAY, Louise, Hon.	Seine River	P.C.
DERKACH, Leonard, Hon.	Roblin-Russell	P.C.
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DOER, Gary	Concordia	N.D.P.
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EVANS, Leonard S.	Brandon East	N.D.P.
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FILMON, Gary, Hon.	Tuxedo	P.C.
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GAUDRY, Neil	St. Boniface	Lib.
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HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KOWALSKI, Gary	The Maples	Lib.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar	The Pas	N.D.P.
LAURENDEAU, Marcel	St. Norbert	P.C.
MACKINTOSH, Gord	St. Johns	N.D.P.
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MARTINDALE, Doug	Burrows	N.D.P.
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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Tuesday, September 15, 1998

TIME – 1 p.m.**LOCATION – Winnipeg, Manitoba****CHAIRPERSON – Mr. Peter Dyck (Pembina)****VICE-CHAIRPERSON – Mr. Ben Sveinson (La Verendrye)****ATTENDANCE - 10 – QUORUM - 6***Members of the Committee present:*

Hon. Messrs. McCrae, Stefanson

Messrs. Dyck, Kowalski, Laurendeau, Mackintosh, Sveinson, Ms. Wowchuk

Substitutions:

Mr. Sale for Mr. Martindale

Mr. Ashton for Mr. Sale

Mr. Fauschou for Hon. Mr. Reimer

APPEARING:

Hon. Mr. Vic Toews, Minister of Justice and Attorney General

MATTERS UNDER DISCUSSION:

The June 1998 Report and Recommendations of the Judicial Compensation Committee

Mr. Chairperson: Good afternoon. Will the Standing Committee on Privileges and Elections please come to order. This afternoon the committee will be resuming considering the report and recommendations of the Judicial Compensation Committee dated June 1998.

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. Reimer as a member of the Standing Committee on Privileges and Elections effective

September 11. Are there any nominations to replace Honourable Mr. Reimer?

Mr. Ben Sveinson (La Verendrye): Mr. Chairman, does the member have to be here to be nominated?

An Honourable Member: No.

Mr. Sveinson: Then I nominate Mr. Fauschou, David Fauschou, the MLA for Portage la Prairie.

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

I have before me the resignation of Mr. Martindale as a member of the Standing Committee on Privileges and Elections effective September 15. Are there any nominations to replace Mr. Martindale?

Mr. Gord Mackintosh (St. Johns): I nominate the member for Crescentwood (Mr. Sale).

Mr. Chairperson: It has been moved that Mr. Sale replace Mr. Martindale. Is that the will of the committee? [agreed]

We will now turn to resuming consideration of the 1998 report of the Judicial Compensation Committee. Just to remind committee members, this committee met on July 16 to first consider the report, and at that time the committee heard comments from a representative of the Provincial Judges Association, Mr. Rob Tonn. Following the presentation of Mr. Tonn, the committee agreed to defer consideration of the Judicial Compensation Committee report to a further committee meeting to allow the committee members the opportunity to further consider the recommendations of the Judicial Compensation Committee and also consider the comments of Mr. Tonn.

I believe it would be appropriate to have some comments from committee members if they wish to make opening statements and to also seek some

consensus from the committee about how the committee should be proceeding with consideration of the report and recommendations of the Judicial Compensation Committee. I will now open the floor for comments. Are there any, please?

Hon. Eric Stefanson (Minister of Finance): Well, you have already outlined the background and the fact that we have had one meeting of this committee to deal with the Judicial Compensation Committee report, and we had the representation that you referred to on behalf of the Provincial Judges Association. I would see the purpose of today's meeting as being for a few reasons. First of all, I think it is important that we now review those recommendations of the third Judicial Compensation Committee, and I would suggest one way of moving forward will be to do them on a recommendation-by-recommendation basis and have a chance to have discussion about each individual recommendation. Obviously, a part of that will be a chance to receive feedback from the members of this committee.

In terms of our background, Mr. Chairman, I think most members of the committee are aware that in 1989 The Provincial Judges Act was amended to provide for the establishment of a three-person Judicial Compensation Committee. In January of 1997 the third Judicial Compensation Committee was appointed, and the members were Mr. John Green, Mr. Tom Farrell and Mr. Harold Piercy.

That committee was required to report to the minister who must table the report in the Legislature within 30 days. So, after hearings in 1997 and 1998, the committee submitted its report on June 23, 1998. On June 29, 1998, the report was tabled in the Legislature.

So, Mr. Chairman, if there is agreement to proceed on that kind of a basis, what I would be prepared to do is to outline each individual recommendation, put forward some issues and considerations, and then have an opportunity for all of us to give our views and our opinions and our feedback on that. So if there is agreement, I would recommend proceeding on that kind of a basis.

Mr. Chairperson: Is there agreement that we proceed? [agreed]

Mr. Stefanson: Thank you very much, Mr. Chairman and members of the committee. The first recommendation I propose dealing with is the recommendation of the committee that annual salaries of Provincial Court judges be increased to \$105,000 effective April 1, 1997, then \$112,000 effective April 1, 1998, and that the additional annual salaries paid to the Chief Judge and the Associate Chief Judges be increased to \$10,000 and \$3,000 respectively, effective April 1, 1998.

I think some of the issues and considerations that we should keep in mind, as committee members, are the most recent comparison of judges' salaries across the provinces that indicate today Manitoba does rank last. In addition, several provinces either have announced future increases or their judicial compensation committees are currently in the process of deliberating. Manitoba's general economic position, based on a variety of economic indicators, normally places the province in the range of anywhere from fifth to eighth within Canada.

The cost to increase judges' salaries to the recommended amounts is estimated at \$325,000 for year one, and \$212,000 for year two, for a total of \$537,000 over that two-year period. The last increases occurred on April 1, 1995, when salaries rose by 2.3 percent, from \$94,017 to \$96,173. The proposed increases are valued at \$8,827 on April 1, 1997, and \$7,000 on April 1, 1998, for judges.

The government of Manitoba nominee filed a dissenting opinion whereby he recommended a phasing-in of the salary levels over a longer period than the two years recommended by a majority of the committee.

So I think those are some of the issues that we should be considering. I am sure members of the committee might have others. With that in mind, I would be interested in hearing the views of committee members, and I am certainly prepared to put forward some views, as well, on the issue.

Mr. Gary Kowalski (The Maples): I would like to go back to Mr. Tonn's presentation, and I go to page 6 of the Hansard of the last committee meeting where Mr. Tonn said: 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 there will be, if that happens, chaos. Because, as I said, 90 percent of criminal cases in this province are dealt with by the Provincial Court, and there is simply nothing else to do.

So he has put the position that the Judicial Compensation Committee's report, we either accept it or reject it. By looking at it in any other way that, in his legal opinion, we are looking at chaos in the criminal justice system.

I would like to hear some informed reply to that comment. Is this committee obligated to accept this report in its entirety or reject it? What will happen to the criminal charges? Do we have an answer for that?

Mr. Stefanson: Mr. Chairman, we have had legal opinions on those issues as well. First of all, in terms of the role of this committee, the standing committee, which we are all a part of reviewing the Judicial Compensation Committee report, must ultimately issue a report ourselves, which we will do at the appropriate time. The standing committee must justify its decision to depart from the recommendation of the Judicial Compensation Committee by issuing reasons explaining its departure. So if we do not accept a particular recommendation, then it is incumbent upon us to give the reasons why we do not accept that recommendation.

Any departure from the Judicial Compensation Committee recommendations must be justified by the standing committee on a recommendation-by-recommendation basis. That is exactly what I am proposing we do here this afternoon, at least on a preliminary basis, to get a sense of the views of members of the committee, and basically that is it.

So, again, it terms of the review that we have done of how this committee should function, the issues raised by Mr. Tonn, we believe we are doing the appropriate

thing today by meeting and by at least having preliminary feedback on each of the recommendations in the report.

Mr. Chairperson: Before I ask for comment on that, I have before me the resignation of Mr. Sale as a member of the Standing Committee on Privileges and Elections effective September 15. Are there any nominations to replace?

Mr. Mackintosh: I nominate Mr. Ashton, the member for Thompson.

Mr. Chairperson: Mr. Ashton has been nominated. Is it the will of the committee? [agreed]

We have a recommendation here regarding salary. Any further comments to that?

* (1310)

Mr. Stefanson: I am not sure if members intend to necessarily express an opinion on every recommendation. I would appreciate that, and I am certainly prepared to get the ball rolling by giving an indication of this particular recommendation. I believe that with some degree of reluctance because of the degree of adjustment, but having said that, we are prepared to look at accepting the recommendation on the salary increases and also the increases to the differentials for the Chief Judge and the Associate Chief Judge.

Our overall compensation philosophy in Manitoba is to place ourselves traditionally in that sixth-to-eighth range across Canada. As I have already said, that is in keeping with where we are in many other areas of compensation and in terms of other economic indicators, and compensation levels for Manitoba judges should also be reflective of Manitoba's economic conditions and the Manitoba pay philosophy.

With those comments, Mr. Chairman, recognizing that this is an opportunity for preliminary feedback on each individual recommendation, and, as I said in responding to the member for The Maples (Mr. Kowalski), at our subsequent meeting, I believe, we will have to table a written report and have a written

report before us that we will ultimately vote on and take to the Legislative Assembly. We are certainly prepared to indicate today that we are prepared to accept the recommendation on the salary adjustments as proposed by the Judicial Compensation Committee.

Mr. Chairperson: Is it agreed? [agreed] It is agreed, then, that we accept that recommendation under salary.

Mr. Stefanson: Again, I would just say that that is on a preliminary basis. We will be returning with a written report to this committee, but at least to get a sense from the committee, Mr. Chairman, that that is a recommendation that the committee generally finds acceptable.

Mr. Mackintosh: Perhaps the minister would explain what he means by preliminary basis. This is the committee, this is the decision-making body today. Is he saying that he is going to change his position and come back and the committee has to rework everything, or is he simply saying that the report will reflect the decisions made by this committee today?

Mr. Stefanson: Mr. Chairman, I guess I was suggesting that we are not at a stage that we are voting on each individual recommendation. We will return with a written report that will, again, have all of the recommendations and decisions to be made. But, no, I am not suggesting that we would be looking to change a position from what is laid before this committee today. I just think in terms of the due process that we need to follow, we do need to have a written report. We are looking today for feedback from the committee as to whether or not we can reach agreement on all recommendations or whether we have some disagreement, so I think it is appropriate as we go through each one to get that feedback from the committee, and that will all be taken into consideration and incorporated in a written report that will be brought back to the next meeting of this committee.

So I do not want to leave the impression when I say preliminary that in any way we would change from a position that we are putting on the record today, but we will be returning with a written report.

Mr. Kowalski: I am a little bit confused as to the process. We met earlier. We received this report. We recessed to consider this report. We have it before us, and this committee is the one that decides whether to accept this report or not. Now, I am not too sure what the minister is saying. Is he saying, well, we are here just fishing to find out your views? Well, we have had a long period of time, and we are coming to September 18. If he wanted to bring an alternative position or his government's position to this committee, that is fine. That is his option. But if he is not prepared to do that, why is this committee meeting if we are not going to consider this recommendation? I do not understand the process.

Mr. Mackintosh: Likewise. It is our view that there is actually some urgency in reviewing these recommendations and reporting on them and having that dealt with. This committee's record speaks for itself. The report can be done very succinctly in terms of what the decision making is today. I do not understand why it is necessary to have some further work of this committee beyond today. I am sure the decision making can be done in the next hour or so.

Mr. Stefanson: Mr. Chairman, I do not want to leave the wrong impression. I mean, the purpose of today is for the committee to give feedback to what will become the written report ultimately of this committee. We have to have a written report. If we do not accept some of these recommendations, we do have to provide reasons in that written report.

My view is that if there are recommendations that we disagree on, that is noted, and that will be reflected ultimately in the written report. If there are issues that we agree on, like we have just done with the first issue on compensation, we can note that in the record and move forward. That will be reflected in the written report. It will be only issues that we do not have agreement on that obviously there will be no consensus here today. But if we have agreed on the salary compensation issue, which appears to be the case, then we can move on. That will be reflected in the written report that is brought back to this committee which then will ultimately be a basis of a written report we need to vote on and we need to take forward to the

Legislative Assembly. So I hope that is somewhat clear.

Mr. Steve Ashton (Thompson): I am wondering what the intent is. I mean, if we were to follow the route the minister is suggesting, how long would it take to do that written report? I am hoping that this process is not an attempt to stall this matter reaching the Legislative Assembly. I must indicate I am somewhat surprised. I thought we would be making the decision at this meeting. I thought we would then be required, in fact, to return to the House. I am just hoping that this is not an effort by the government to stall returning to the Legislature. I have every reason to be a bit suspicious. I do not think the government wants to be in the Legislature sitting right now.

But I am just asking because if that is not the intent, I am wondering, if we do complete this meeting this afternoon, how long it will take to provide a written report. I presume it would not take that long, and that being the case, then I would be interested in when the government would intend on calling the next meeting of this committee.

Mr. Stefanson: Mr. Chairman, part of what the process is outlined to be is that we have a responsibility to get feedback from the committee in its totality. That is what this second meeting now presents the opportunity to do. We have had an opportunity to review the report. We had a representation from the Provincial Judges Association.

We have had an opportunity to do whatever research we do as individuals or collectively, and so on. So this is an opportunity to get feedback on each individual recommendation which leads then to a written report, which is what has to be done. A written report has to be tabled and ultimately forwarded to the Legislative Assembly.

It is not a stall tactic in any way. It is a part of the process to get feedback on each individual recommendation. I do not anticipate it will take a long time to have a written report available to be brought back to the committee for a vote and then forwarding to the Legislative Assembly.

So this is the forum to get feedback from this committee on each of these recommendations, Mr. Chairman, and that is the part of the process we are going through right now.

Mr. Mackintosh: Well, in the interest of moving forward in a time-effective way, can I suggest that we move through recommendation by recommendation, and where there is lack of acceptance with regard to a certain recommendation, that we formulate the reasons in a line or two for submission in the report and that this committee make a decision that it will put this report together today as committees do on a daily basis when the House sits. We recognize that there is importance to explaining why this committee may not accept every recommendation, and I am sure that can be done very quickly.

We have the afternoon, why do we not just do the job and get it done?

Mr. Kowalski: I would like to move on, too, but one of the things that I think is not clear is whose responsibility it is to do the report. This is not a report of government; this is the report of the committee, so who does the report? Does the Clerk's Office do the report? Does government do the report? Whose report is it? Who is responsible for what is in the report? This is a report of this committee; it is not a government report. I think the way the minister seems to be approaching this is that he is bringing forward a government report.

So I would like clarification. Who is writing the report? Whose report is it? Who is bringing it forward if it is a report of this committee?

Mr. Chairperson: It is my understanding that the committee is meeting here today to, again, hear the recommendations and the comments that they have to make. Ultimately, the report is written, but then the committee gets together and hears that final draft of the report.

Mr. Kowalski: The question is who writes the report. That is a simple question. Who is going to write that report?

Mr. Ashton: Well, the normal procedure, I believe, and I think it is a very good question the member raises, is that—I mean, obviously the Clerk's Office would write the report. A normal report from the Legislature is really the minutes of the meeting; it is the reporting of the meeting. So what we are essentially dealing with here—and this is why I am somewhat puzzled by this distinction the minister seems to be making about this so-called report. This is the report, this document, the report and recommendations, the Judicial Compensation report.

A committee report is really the minutes of the committee, so I am somewhat puzzled why we would be considering the Judicial Compensation Committee's report, and then there would be some delay so that the Clerk's Office could write what essentially is the minutes of the meeting. So we could then, what, discuss the minutes of the meeting? Normally, the minutes is what follows from the decision-making process before we go to the Legislature.

* (1320)

So I am wondering if there is perhaps some other interpretation the minister has and that perhaps he is expecting his staff to write this report, in which case it is not a report from the committee. I guess it will be the minister's edited version, revised version, of this particular recommendation.

So perhaps the minister could answer. I think the Chair is answering correctly in terms of what we normally understand to be a report, but perhaps the minister has some other idea.

Hon. James McCrae (Minister of Environment): If I may offer my understanding of the process, the Judicial Compensation Committee makes a report, and this committee is bound by the legislation to review that report and make recommendations to the Legislature on the various recommendations. There are a number of recommendations in the Judicial Compensation Committee report.

Now, I assume the minister will put forward his inclinations, shall we say, with respect to these, but the purpose and the reason to these recommendations, the

purpose and the reason for having this committee reviewing it is to get some input from the members of the committee. It is not simply intended in the legislation or in the mind of the Minister of Finance (Mr. Stefanson), if I may be so bold, as to use this committee simply to rubber-stamp his point of view. It may be that his point of view will prevail at the end of the day and it may not be, depending on the input. I know the Minister of Finance is interested in listening to the input of members of this committee, and it is for that reason that the Minister of Finance suggests that we should go through the various recommendations as he has begun that process, get the opinions of members of the committee and then allow the Minister of Finance an opportunity to review that input in order to come forward with an appropriate motion which would be part of the report of this committee.

Now, in terms of the reasoning, which is also required, I understand, the reasoning of the committee would have to form either part of the report or part of the motion which the Minister of Finance would be required to move. At what would probably be a subsequent meeting of this committee, if members wish to take issue with the resolution brought forward by the Minister of Finance, they can do so by way of amendment or proposed amendment, and at the end of the process, if there is a vote or a decision made by the committee, that then forms the report or becomes part of the report of the committee.

Now, that is my understanding of the process. So it is in that sense that it is our expectation, subject to what honourable members will be contributing to the deliberations this afternoon, it is my understanding that we would require a subsequent meeting in order to place before the committee something with appropriate reasoning that can be finally decided upon at a subsequent meeting.

Mr. Ashton: I thank the government House leader for the explanation, but I think it is worth noting that this is the first time I have ever seen this take place. I do not know why the government in this particular case is so nervous about proceeding with the normal procedure, which is if you want to get the view of a committee you put it in the form of a motion. I mean, we have all sorts of bills in this Legislature that are

dealt with that way. I notice the government did not listen to us on labour legislation, did not listen to us on the sale of MTS and various other issues. I am trying to think of one bill, in fact, or one significant item that was before a committee where they listened to us in this way. I suspect that what they are really trying to do here is give some sense on this that they are listening.

I would say the appropriate way to proceed with this is the way we always proceed with this. The minister puts forward the motion, members then discuss it—that is how you get feedback—and then you end up with a decision. To simply run through the report right now and then come back at a subsequent meeting and then deal with the motions is really duplicating the same process.

The minister knows this is not the normal procedure. I do not know if they are nervous about this report or nervous about their own recommendations, but we were coming here to this committee under the impression—and I quite frankly felt we were going to be dealing with this matter. The report was brought in in June, there was a committee meeting in July at which the presentation was received, and we thought that this committee meeting was being held to deal with the deadlines that are involved before September 18. We are here, we can make a decision today. I do not see what the difficulty is. We certainly have difficulty with any open-ended process here. We may want to reconstitute the committee tomorrow.

I do not feel overnight will give the government a chance to make up its mind on what its position on this bill is, but I find it absolutely amazing. I mean, the government has had this since June. Do they not know what their position is on this? Do they really need the members of the opposition to help make up their minds? I guess after 10 years maybe they are starting to hesitate. Maybe the signs, you know, of that tired old government, the sort of political Alzheimer's is setting in, but I would suggest we proceed with our normal way, Mr. Chairperson, and have a motion before. If the minister wishes to adopt the report, we can deal with that motion, and we are prepared to deal with it. We are also prepared to deal with it in the House on an expedited basis.

Mr. McCrae: Just in response to one or two points the honourable member for Thompson has made. He has acknowledged that this is a unique procedure as laid out in what is unique legislation for judicial compensation, so that he should not be surprised if the Minister of Finance (Mr. Stefanson) is seeking input from members of the committee. This is a unique piece of legislation and this is a unique procedure. So, that being said, it sounds a little strange coming from members opposite that they would be not wanting to have their input heard and that we move forward.

So I think that the whole idea, I can tell you from my recollection of this legislation as the minister at the time who brought it forward, was that there was a wish that there be input from members of the Legislature. I think the Minister of Finance is attempting to elicit some input from members of the Legislature from all the political parties that want to make their views known.

If the honourable members have no views and simply agree with the points raised by the Minister of Finance, each and every point as they come forward today, perhaps we could resume this part of the discussion later in this meeting and talk about it some more, but in the meantime I think that the procedure being followed by the Minister of Finance is in accord with the legislation and is in accord with the openness that has been the hallmark of this particular government since the beginning.

* (1330)

Mr. Stefanson: Mr. Chairman, I think one other point worth raising for the member for Thompson (Mr. Ashton) and other members of the committee is that we have also had Legal Counsel involved in the process. They have indicated that this is the appropriate process as mandated by the Supreme Court of Canada when it comes to dealing with issues of judicial compensation and judicial independence.

So not only are we not deviating significantly from traditional process, but we are following a process that has been mandated by the Supreme Court. I think it is very important that we as elected officials follow that

appropriate process and certainly accept that legal advice that has been provided to us.

So with that, I would suggest we move forward on a recommendation-by-recommendation basis as we originally started. We will get feedback from the committee. We will return with a motion that can then be dealt with and voted on by this committee which will become the basis of the written report to the Legislative Assembly.

Mr. Chairperson: Agreed? [agreed] Please proceed.

Mr. Stefanson: The second recommendation, there are two parts. Part A is that the supplementary pension benefit for Provincial Court judges be extended to cover service prior to July 1, 1992; and B, the supplementary pension benefit be paid to judges only upon their retirement. Again, I think some of the issues and considerations that we should keep in mind are that a supplementary plan which is entirely paid by government is provided for all service after July 1, 1992. The enhanced pension benefit that was provided as a result of the first Judicial Compensation Committee was valued at 7 percent of payroll. The second Judicial Compensation Committee recommended extension of the supplemental pension service prior to July 1, 1992. That recommendation was rejected by the standing committee back in November of 1996.

The government of Manitoba submission to the third Judicial Compensation Committee did not support any further increases to judges' pensions. The present value of the recommendation is estimated to cost approximately \$2 million. Three judges over age 70 are currently working and also receiving a civil service pension. Two of these judges also receive the supplementary pension. At this time, the supplementary portion of a pension is payable even if a judge continues to work, and the government nominee dissented with the recommendation to make retroactive adjustments.

As well, the Alberta Legislature in providing reasons for the pension determination in respect of the latest Judicial Compensation Committee stated, and I quote: The recommendations of the commission are

prospective in nature and should not set past remuneration. Fair and reasonable remuneration will be provided by the improvements to salary, pension and long-term disability effective April 1, 1998. In view of judicial independence, it would not be appropriate to provide a specific group of judges with enhanced pension benefits.

So those are some of the issues to consider, and on those two recommendations I would be interested in any views of the committee.

Mr. Marcel Laurendeau (St. Norbert): If I could just get some clarity from the minister, he states in that statement that the judges would not collect any pension or just the extra benefit pension at 69? Under my understanding, at 69 years of age all pensions have to be taken at that time by federal law as well as RSPs, if they have them.

Mr. Stefanson: Right now, judges are able to work to get the regular pension and to get the supplementary pension.

Mr. Laurendeau: As is anyone at this time, there is no legislation that can force them to retire at 69, but there is legislation that forces them to take their pensions at the age of 69. At the age of 69 pensions have to be taken. You have no choice, by law. How is our agreeing to not give them the pension until they retire going to override that law?

Mr. Stefanson: Well, I think we are getting into some peripheral issues. I think, again, looking at the two recommendations, the first one from the Judicial Compensation Committee is that the supplementary pension for Provincial Court judges be extended to cover service prior to July 1, 1992, so we are talking about a retroactive adjustment prior to July 1, 1992. Then the second recommendation is that the supplementary pension benefit be paid to judges only upon their retirement.

Mr. Laurendeau: Could you define for me, then, what supplementary pensions include or consist of?

Mr. Stefanson: Mr. Chairman, the current supplementary plan is that judges contribute 6.4 percent

of salary. The government cost is 15.5 percent of salary, and the number of years of service required to accrue the maximum pension under the supplementary is 23.5 years.

Mr. Laurendeau: I am trying real hard to understand this, but if under the federal Income Tax Act and under federal laws they have to collect their pension when they are 69, how are we inadvertently removing that? We have people who work for government who are over 69 years of age who have to collect their pensions. They have no choice. We have professors at the university who do it. They have to collect it. How are we eliminating that rule?

Mr. Stefanson: Mr. Chairman, I think it is important to remember that they will continue to collect the Civil Service Superannuation Plan. What we are talking about is the supplementary plan, and this is now a recommendation that we have before us from the Judicial Compensation Committee.

Mr. Chairperson: Okay, no further questions? Please proceed.

Mr. Stefanson: Well, I am just curious in terms of any feedback or any comments on these two recommendations, Mr. Chairman.

Mr. Kowalski: I am still very uncomfortable with the process. I am ready to put a motion on it on the floor to either reject or accept this report because you have a legal opinion, but I am very concerned about the September 18 deadline. You have a legal opinion that says if we vary from this, it is fine as long as you give reasons and that, but what I am concerned about is that while that is going on, if people are being released from jail, criminals are allowed to be set free—we have one recent incident where because of a clerical error in B.C., a murder suspect was arrested and later caused a murder in Manitoba, and that really concerns me.

You know, we have waited till the eleventh hour to deal with this, and if the legal opinion the province has got is in any way wrong, we would be causing harm to the citizens of Manitoba in that criminals will be, because of the legal system, allowed to be set free because of compensation to judges.

Well, you know, I do not like the way the representative of the judges came here. I felt blackmailed. I felt that they were playing—yes, and some would say that we are playing into their hands, but the risk is too great here.

So now he asks about this pension thing. We have an opinion from the judges' representative that any tinkering with this whatsoever is political interference. That is what they have said. There is an independent review. We accept it or we reject it. So now to ask on pensions and on the next and the parking and that, we are tinkering. We are tinkering.

So, I do not know, I am almost ready to put forward a motion that we accept this Judicial Compensation Review Committee's report in its entirety and let the government vote it down if they wish because I am worried about that deadline. I do not want to see people who I know can be very dangerous let go. We are playing with fire here. We have waited till the 11th hour, and we are playing with fire here. I am very concerned.

* (1340)

Mr. Mackintosh: I will put our position on the record at this point in terms of the timing of this. Mr. Tonn, in his presentation last time, said that he thought there was—I think his words were a very, very strong probability of a motion being accepted by the court to dismiss a case or somehow deal with a case if the Legislature did not deal with this report by Friday.

I do not think this probability is as strong, but I think there certainly is a risk, and therefore it is the responsibility of the Legislature to manage the risk and contain it. But Mr. Tonn said that not only must the Legislature receive and vote on the report, but he, I think, did more than imply that it also had to accept holus-bolus as a neatly woven fabric, I think were something of the words, this report from the Judicial Compensation Committee.

We believe that the risk is posed with regard to dealing with it by the 18th, but we certainly do not accept Mr. Tonn's advice that the report must be dealt with without change as presented by the Judicial

Compensation Committee. To accept his argument is therefore to accept the argument that the Legislature has no role. Why would we discuss something which we could not change? The paramountcy of the Legislature is supreme over any committee. The Legislature makes the decision as to what the judges' remuneration is to be. Nobody else.

Quite frankly, I certainly do not accept that argument one bit. I was quoted in local media as saying, and I say it again today, I cannot believe for a minute that a judge would dismiss a case solely because he did not get free parking if that was a decision by this committee. You know, it is just too far of a stretch. In terms of the timing, though, of the consideration of this report by the Legislature, that is another matter. I, quite frankly, was astounded by the argument, and I know it is an argument, however, put forward in labour relations context in terms of negotiated contracts coming from collective bargaining that has to be **ratified or recommended by arbitrators**, for example, or mediators, but it does not fit when the Legislature is the decision-making body.

Mr. Stefanson: I certainly agree with the member for St. Johns' comments in terms of the role of this committee. I think the other comment that Mr. Tonn made is he indicated that the Legislature must vote on the increase and the remuneration of the judges of the Provincial Court recommended by the JCC by September 18 or the Provincial Court will cease to be an independent and impartial tribunal as required by the Constitution of Canada. The Constitutional Law branch of the Province of Manitoba says that counsel for the association is not correct in his statements before the standing committee that the Legislature must vote on the increase and the remuneration of the Provincial Court judges by September 18, 1998.

The second point that Mr. Tonn made is that there is a reasonable apprehension of bias on the part of Provincial Court judges that would disqualify a Provincial Court judge from entertaining a defence motion along the lines advanced by counsel for the association in his submissions before the standing committee. Again, the Constitutional Law branch of the Province of Manitoba says there is no reasonable apprehension of bias on the part of the Provincial Court

judges that would disqualify a Provincial Court judge from entertaining a defence motion along the lines advanced by the counsel of the association.

Certainly, as the member for St. Johns has outlined in terms of our role, he is correct. In fact, it is in keeping with the recommendations in terms of how we deal with issues of judicial compensation as to deal with them on an item-by-item basis. If we accept them, fine. If we have reasons that we do not accept them, then we should be providing those reasons.

So, again, I would suggest that we carry on. We were on the issue of pensions, and I am looking for feedback. Again, I am prepared to indicate that from my perspective, in terms of those two recommendations, that we would look at accepting that the supplementary portion of the pension is paid only on retirement, but we do have a great deal of difficulty accepting the retroactive application of the supplementary pension plan.

We have cited reasons relative to that in the past. There are a number of reasons why we would have difficulty accepting that. Amongst those reasons would be the fact that it has been suggested that the pension improvements be provided on a fully retroactive basis. I believe that that assumes that judges have made no personal pension arrangements prior to their appointment to the judiciary. With respect, no other group of Manitoba workers could expect to make no personal pension arrangements before the age of 42, which is the average age of appointment and then have a new employer. In this case, the citizens of Manitobans make up for their failure to make for appropriate arrangements. So that is certainly one key reason that we have difficulty accepting the retroactive application of the supplementary pension plan.

Hon. Vic Toews (Minister of Justice and Attorney General): I just wanted to make one comment. I know that a reference was made likening the judges' position to that of employer-employee. I think the statement by the Minister of Finance was more comparing it rather than indicating that the judges were in any way in an employee-employer relationship. I am sure that was the intent of the comments to simply illustrate the position rather than to categorize them.

Mr. Chairperson: Any further comments on that? If not, please proceed.

Mr. Stefanson: Mr. Chairman, do I assume that there is general acceptance of those conclusions?

Mr. Chairperson: If there are no further comments, that is my assumption.

Mr. Ashton: Mr. Chairperson, once again this illustrates the difficulty the minister is putting forward. Instead of raising the discussion and seeking feedback in the normal way, we are having members say agreed, agreed, agreed. Well, if it is agreed, to what, agreed to a motion? I think we suggested a motion. The member for The Maples (Mr. Kowalski) suggested a motion. It seems that when they get to the end of their presentation, they want some sort of definitive decision, but before they start, before they know what the consensus of the committee is, they are very tepid.

I suggest the minister cannot have it both ways, one way or the other. Either we are dealing with this as a decision-making process or else we are just allowing the minister to talk, give his views on these matters, and then members that feel this is an appropriate process comment. You cannot have it both ways.

Mr. Chairperson: As Chair, I would just like to indicate, my sense of it is that when there is an opportunity for questions or comments, that that is the opportunity that is given. If there are none, then we move to the next item.

Mr. Stefanson: Mr. Chairman, I think we have already debated this at length that the process is to look for feedback. Obviously I cannot force members of the committee to give feedback, or members of the opposition, but we certainly encourage them that this is our opportunity, and we are prepared to outline positions on each recommendation. I have done that with the first two, and I encourage members to provide feedback. If they choose not to, obviously that is their choice at the end of the day.

Mr. Chairperson: Let us proceed.

Mr. Stefanson: Mr. Chairman, the next recommendation suggests that all benefits to which judges are entitled be separately documented and that they not be tied to the benefits of civil servants by way of statute, regulation or government policy. I think the issues for consideration are that judges' benefits are not generally separated out from those of government employees except for those noted in The Provincial Court Act.

So, again, looking at this recommendation, it would be my view that it would be appropriate to accept the separate benefit documentation for Provincial Court judges. It has nothing to do with the level of benefits, it is simply the documentation. I am wondering if committee members have any comments and are inclined to agree with that.

Mr. Chairperson: If there are no questions or comments, proceed, please.

* (1350)

Mr. Stefanson: Okay, Mr. Chairman, the next issue has to do with sick leave. The recommendation is that sick leave for judges be limited to a maximum of 208 days and be that any additional discretionary sick leave be eliminated.

Again, the issue is for consideration or that the usual maximum accumulation of sick leave for government employees, as an example, is 208 days. Extension beyond 208 days does require Civil Service Commission approval, and by practice there have been no extensions that have been approved since the long-term disability plan for civil servants was introduced in 1984.

Again, Mr. Chairman, we are looking for feedback from the committee. I am certainly prepared to give my view of that recommendation.

Mr. Chairperson: As there are no comments or questions, shall we move on?

Mr. Stefanson: Mr. Chairman, I would recommend or suggest consideration of accepting the capping of sick

leave at 208 days and accepting the elimination of sick leave extensions as recommended by the committee.

Some Honourable Members: Agreed.

Mr. Chairperson: Agreed.

Mr. Stefanson: Long-term disability is the next recommendation, Mr. Chairman. There are two recommendations from the Judicial Compensation Committee: (a) that long-term disability benefits for judges be continued to age 65; and (b) that the definition of disability be changed to the following or something similar to the following: the continuous inability as a result of illness or injury to perform the principal duties of a judge.

Again, the issues I believe for consideration here are that currently coverage ceases once an employee is eligible for an unreduced pension, meets the rule of 80; that is, 55 years of age plus 25 years of service or age 60 and 10 years of service.

The government of Manitoba long-term disability plan is self-insured with a 1 percent imputed premium. Great-West Life estimates that the cost increase at 50 percent to 60 percent would be approximately \$17,400 per year and the revised definition of disability as soon as a judge cannot be required to perform a nonjudicial position as a result of a long-term disability rehabilitation program.

Again, Mr. Chairman, in terms of these recommendations, I would be prepared to suggest that we accept the extension to age 65 and we accept the definition of disability and that, in accepting these recommendations, it should be noted that the extension of long-term disability to age 65 occurs in jurisdictions where there is mandatory retirement, but that is an issue we will discuss later. So, again, I would suggest acceptance of these recommendations.

Mr. Chairperson: Any questions or comments? Being none, agreed.

Point of Order

Mr. Ashton: A point of order, Mr. Chairperson. You know, it seems that once again there is some confusion

here. The minister is simply running through. Members will either give feedback at the time the minister speaks or after the minister gives his entire presentation or at the next meeting.

I mean, this is not a process that we have selected here, but for you to say agreed, maybe you as an individual, Mr. Chairperson, agree with it, and I realize that maybe—you know, the intent it is given at, but the committee is not doing anything other than sitting here listening to the minister. If we have motions on the floor, we can have agreement or disagreement, but the minister chose not to go that route so we are simply listening to the minister, and it is not appropriate to say agreed or disagreed. The committee is not agreeing or disagreeing with anything because the minister has chosen not to put anything forward in the way of a substantive motion to which we can indicate that agreement.

Mr. Stefanson: Mr. Chairman, there is nothing stopping members of this committee of any political party from agreeing with other members or agreeing with recommendations, and I have been prepared. Because of the silence when I have read the recommendations into the record, I have been prepared to try to initiate discussions by outlining a position we are prepared to take on an issue, and I am looking for feedback from members of this committee. I appreciate, even if the feedback is as simple as saying agreed, that then we know that members of this committee agree with those recommendations, so I do not think that is inappropriate at all.

I agree we are not voting on each individual recommendation, but the feedback from members of the opposition or any members of the committee can be as simple as to say, yes, that makes sense; I agree with that.

Mr. Ashton: Just on a point of order, I will make it clear that we did not select this process, we were not consulted about this process and we absolutely are amazed that the minister now seems to want to get some definitive statement from the committee after his verbal comments without any motion. I suggest, Mr. Chairperson, that you bring the minister to order. If

there is a motion on the floor, we will deal with the motion.

I thought the member for The Maples (Mr. Kowalski) made a good point here, but you cannot have it both ways. You cannot start off saying, well, we are not really going to be making decisions, we are not really going to be moving motions, and then when you get to the end of your comment in a process that you have chosen to then turn around and say agreed. Agreed to what? Agreed to what? Every word you said? Agreed to what?

There is nothing on the floor of this committee right now. The committee has no motion and unless there is a motion on the floor, the committee is not making any decision whatsoever, and it is inappropriate for—a minister can say what he wants on the record, but it is inappropriate for the committee to be recording through the Chair that there is agreement. The only way to have agreement or disagreement on this package from the compensation committee is in the form of a motion.

I would suggest the minister stick to giving his presentation, his comments. We can deal with it, and once we get to a motion, there will be a decision of this committee but not before that time.

Mr. Toews: Just a couple of points. Firstly, I want to clarify, if there is some misunderstanding here, that this process is the process that has been required by the Supreme Court of Canada. It is not our process in the sense that this is the process that we would have chosen, because as I understand it many provinces chose other processes. The Supreme Court of Canada has told us that there is a specific process, and I believe the minister is attempting to live not only to the letter but the spirit of that judgment.

Secondly, I have heard the minister explain his position on certain points. I agree with that, and I have indicated my agreement on each and every one of these points. I understand that this is not a formal motion, but I think the minister requires some assurance that we are moving in a direction that, generally speaking, the committee agrees with. The members talk about having it both ways. Well, if you want to sit in the weeds and not indicate what your position is, that is fine. But I think as a member of this committee I am

entitled to say I agree with the comments of the minister.

Mr. Stefanson: Carrying on, Mr. Chairman?

Mr. Chairperson: Well, I think that before we carry on, simply that it has been my intent here to move ahead in our process whether we say agreed or not. I believe what the minister and Mr. Toews indicated is absolutely right. We are asking for feedback here, and the process that we are using is allowing that to take place.

Mr. Ashton: Mr. Chairman, what I am suggesting is if the Minister of Justice (Mr. Toews) or anybody else wishes to put their opinion on the record, that is fine. My concern is with the process that is normally used to adopt a motion or a position of a committee. You as Chair at this point, because of the procedure chosen by the government, not by members of the opposition, should be merely chairing the meeting and not at any time putting on any statement of agreed or disagreed. We will get to that only in the form of a motion.

I am not trying to fault you. I think you are trying to keep the discussions going but just because members who do not get recognized on the record from their seats say agreed or disagreed or it is a nice day does not mean, Mr. Chairperson, that you should be putting those comments on the record because as Chair what you end up doing is making a statement on behalf of the committee, and I remind you that when we have the committee report, you will be reporting the committee's report to the Legislature based on the decisions of the committee.

So my concern is that we are not dealing by motion here. It is not appropriate to say agreed, disagreed, whatsoever. It is appropriate for individual members to make statements, not for the committee.

Mr. Chairperson: Thank you for the words of wisdom.

Mr. Sveinson: Mr. Chairman, I think that everybody here should also know that if there are disagreements with what the minister has said, that will also be noted in Hansard. Thank you.

* * *

Mr. Chairperson: Shall we please proceed.

An Honourable Member: Yes, agreed.

Mr. Stefanson: The next issue is under life insurance. The Judicial Compensation Committee recommended that the \$70,000 cap on salary be eliminated from the life insurance plan for judges. Again, some of the issues we should consider are that the existing cost-sharing formula would, in fact, be maintained and that the current benefit is for multiples of up to five times salary but right now is capped at \$70,000 per multiple.

Employees, I believe, pay approximately 80 percent. I believe the costing of this recommendation would be approximately \$94 per judge or about \$3,500 per year for government. To keep the discussion moving forward, Mr. Chairman, I am prepared to suggest to this committee that we consider accepting the removal of the \$70,000 cap and would look forward to feedback from committee members whether or not they agree with that.

Mr. Chairperson: Are there any further questions on that or comments?

An Honourable Member: No.

Mr. Chairperson: Please proceed.

Mr. Stefanson: The next issue is dental insurance, and the Judicial Compensation Committee recommendation, two parts, that the dental insurance plan for judges be changed to pay benefits according to the Manitoba Dental Association fee guide in effect at the time of treatment, and (b) that the plan cover up to two dental examinations per annum per patient.

Again, issues I think this committee should consider are that the dental fee guide used for benefits is updated from time to time. The plan does provide for one dental examination per year, and there is a minimal cost for these changes. I believe the cost would be approximately \$2,000 per year.

Again, with the mood of this committee, to keep discussions moving forward, I would suggest we consider accepting the current dental fee guide and we accept the provision for two dental examinations per year, again, as recommended by the Judicial Compensation Committee. Again, I would be curious if members of the committee are prepared to indicate whether they agree with that recommendation.

Mr. Laurendeau: I am not sure if I do yet. Are you saying that this will be under the same guide as the employees of government have today, because I was of the understanding that the employees of today only have one examination per year. I would like to know why they—

Mr. Stefanson: Mr. Chairman, this will be a better benefit for judges. Current government employees have one dental exam per year.

Mr. Laurendeau: So we are saying that they get a better benefit than the other employees of government. For what reason? They have got worse teeth, I guess.

Mr. Stefanson: The member is correct, but I mean there sometimes are differences in terms of plans and benefits. We are looking at all of these recommendations from the Judicial Compensation Committee. We are suggesting that these recommendations be accepted.

* (1400)

Mr. Laurendeau: Is this where we disagree with you then, Mr. Minister, because I do not agree that they should get any better benefit than any other employee of government. They get better money, they get better plans, and they do not have to run for their jobs.

Mr. Stefanson: The purpose of this committee meeting today is to get feedback, and I appreciate the member's feedback.

Mr. Chairperson: Any further comments on that? Hearing none, let us proceed.

Mr. Stefanson: Mr. Chairman, parking. The Judicial Compensation Committee recommendation is that

government-paid parking be restored to the judges as of July 1, 1998. I think there are some issues that we should consider. All provincial employees, including deputy ministers, pay for their parking. All elected members, including I believe all elected members, pay for their parking. The government nominee dissented on this recommendation. The cost of this recommendation is estimated at \$21,600 per year, and judges have paid \$50 per month for parking since 1991.

I guess one other issue. There have been issues raised about security. Judges do park in a secure area. It is videoed; it is locked. I believe it is amongst the most secure arrangements that we have in terms of parking lot facilities, so the issue really is the difference between security versus whether or not judges should, in fact, be paying for the parking. Again, in keeping with moving issues forward, I would suggest that we have difficulty accepting this recommendation, the provision of free parking to Provincial Court judges, for some of the reasons that I already touched on. It is not a security issue. Everybody else pays for parking, and it is not unreasonable, I believe, for judges to pay for their parking. I would be interested in opinions from committee members.

Mr. Mackintosh: We think that paying for the parking of judges is not something we can support at this time, and we base that position on two observations.

The first is that in response to questioning at the last hearing to Mr. Tonn as to the rationale behind that request, our recommendation from the committee was the concern about security. We do not think that the arguments that were put forward demonstrate that security and free parking are necessarily linked at all, that provisions have been made for security for judges; and second of all, I think that deference should be given to the report of the compensation committee except where the recommendations are clearly lacking in foundation or are contrary to another significant area of public policy. I do not think it is a good policy for government, in particular, to underwrite cost of private transportation by vehicle; and third, I would think that it is not good policy to give judges this kind of perk when no one else in the public service in Manitoba enjoys that perk.

Mr. Chairperson: Any further—

Mr. Kowalski: In regard to the report when it talks about the possibility of a rebate of all parking charges since 1991, I am wondering if someone can give me some information on how much that will cost. Why are we looking at that? What would be the impact of not doing it at this point? I wonder if the minister has any information in regard to that.

Mr. Stefanson: Mr. Chairman, I believe what the member for The Maples (Mr. Kowalski) is referring to, if I understand it correctly, is not a recommendation of the judicial compensation, but the issue raised by legal counsel for the Manitoba Judges Association that, in effect, the government rebate the parking that has been paid by judges since 1991. I indicated the estimated cost is \$21,600 per year, so that gives you a sense of the financial magnitude, and the fact that we have difficulty and are not prepared to accept providing free parking today, it would make absolutely no sense to even be considering any retroactive rebate of parking to judges that have paid it since 1991.

Mr. Kowalski: I am referring to the report that says it may have been unconstitutional to eliminate free parking. That is the committee who reviewed this, but then it may be unconstitutional for us to revoke the free parking in 1991, and that is why I am asking that question. If it is unconstitutional, whether we like it or not, we are going to get hit with a big, big hit. So that is what I am referring, not to Mr. Tonn's remarks, but the committee that reviewed it had put in their report that it may have been unconstitutional to eliminate free parking.

Mr. Ashton: Mr. Chairperson, there are elements of this debate that become Monty Pythonesque, if I can use that term. It gets into the realm of legal absurdity when we are talking about eliminating free parking being unconstitutional, so I just wanted to put that on the record. I have some difficulty in going through some of these items. I am just wondering if the Supreme Court does not perhaps have better things to deal with than, you know, the constitutional challenge on free parking.

Mr. Stefanson: Mr. Chairman, the simple fact is that we do not accept the fact that it would have been unconstitutional.

Mr. Chairperson: Any further questions? Then please proceed.

Mr. Stefanson: Mr. Chairman, I do appreciate the feedback from committee members on this particular recommendation.

The next recommendation is in the area of professional allowance, and the Judicial Compensation Committee recommended that rather than providing each judge with a professional allowance, government should reimburse judges for all expenses occurred in carrying out their duties, and judges should be provided with the necessary tools such as personal computers to perform their duties as efficiently and professionally as possible.

I believe issues to consider are expenses currently being paid in accordance with government policy and that necessary tools and equipment are provided in consultation with the Chief Judge and are subject to budgetary review and limitations. So, again, in terms of this entire recommendation, Mr. Chairman, we believe that this issue is already being addressed and therefore would recommend that we accept reimbursement for reasonable expenses on the basis that this is presently being provided and accept provision of necessary tools on the basis that judges are being provided with the necessary equipment to do their duties. As a result of all of that, a specific recommendation is not required in this area, because this issue we believe is, in fact, being addressed.

Mr. Toews: So if I get the minister's position correct then that your position, the minister's position, is that there be no change.

Mr. Stefanson: That is correct, Mr. Chairman.

* (1410)

Mr. Mackintosh: Just reading the report from the committee in that regard, it does say that there is change needed as far as I can see. In other words, I

take it from this report that all reasonable expenses currently are not being reimbursed. Second of all, we have some concern about the recommendation without the assurances that first of all there will be a cap, and second of all there are clear constraints and guidelines as to what would constitute a reasonable expense.

One of the expenses that was set out in the report as an example was attendance at conferences and other continuing education functions. I do not think it would be in the public interest, for example, if the Legislature allowed an allowance for every judge to go to, say, Tokyo for an annual international jurists convention. That would be unreasonable and that would not be in the interests of justice or the perception of justice in the province. So I say to the minister that we think this should be reworked, that the compensation committee should go back to the drawing board and draw up both a maximum amount that is claimable and strict limitations on the kinds of expenses that are reasonable.

For example, it would be important that there be some standards, some guidance as to international travel, I would think that it would be one, to the extent of other kinds of attendance at conferences. I use that as one example. I say that though accepting that they should be entitled to personal computers, and I am surprised that that has not already been provided. If it has been so provided since the time of the committee report and today, then that is great, but with that caveat our concern that they be given personal computers to do their duties, the issue of professional allowance not be accepted by this committee until the conditions that I have set out are met.

Mr. Chairperson: Thank you. Are there further comments or questions?

Mr. Kowalski: I am not too sure. Have we also dealt with their request for \$15,000 to cover—

An Honourable Member: That is next.

Mr. Kowalski: That is next. Okay.

Mr. Stefanson: Again, I appreciate the feedback from the member for St. Johns. There are other issues related to this. The fact we are currently implementing

the desktop management initiative with some 7,000 computers, the judges are a part of that whole new system. I appreciate his comments in terms of not providing an allowance, but I also appreciate his comments relative to some of the other issues.

Our review of this was that we did feel that the needs are, in fact, being met, and therefore a specific recommendation is not required, but, as we all know, we will be having one more meeting of this committee, and I do appreciate the feedback from the member for St. Johns (Mr. Mackintosh).

Mr. Chairperson: Any further questions? Comments? Please proceed.

Mr. Stefanson: Mr. Chairman, the next recommendation was the issue just raised by the member for The Maples (Mr. Kowalski). The Judicial Compensation Committee recommendation was that Provincial Judges Association of Manitoba be reimbursed by the government for its costs of having submissions prepared and submitted through the Judicial Compensation Committee by way of an allowance up to a maximum of \$15,000 commencing with the costs associated with the current committee.

Again, issues that we should consider are, first of all, the government nominee dissented on this recommendation on the basis that the matter falls outside the scope of the committee's mandate. As well, the government of Manitoba has already paid for the costs of the chairperson and the judges' appointee on the Judicial Compensation Committee. The Provincial Judges Association appears to see the Judicial Compensation Committee as an arbitration process with the association and the government in an adversarial relationship. The Judicial Compensation Committee is a fact-finding and recommending body and does not require legal representation and extensive briefs paid for by government. If the association chooses to be represented in this manner, it should be required to pay for those services.

Obviously, there is nothing precluding any individual members of the judicial association from making individual representation, and I am sure most of them have the skills to do just that. So, once again, I think it

is evident from some of the reasons I have touched on in issues that we have difficulty accepting this recommendation. I would again appreciate the views of this committee.

Mr. Mackintosh: The Supreme Court of Canada characterized the conduct of the government as either in ignorance of or a complete disrespect for judicial independence. All of the legal costs that were incurred by the judges of the Provincial Court of Manitoba were due to that ignorance or complete disrespect. I think it is only just that their costs, as required, be reimbursed by the government.

Mr. Kowalski: I do not know what professional fees judges pay—I guess the equivalent of what I as a member of the Winnipeg Police Association pay union dues. I understand that through the good management of a former president of the association, we now have a surplus of \$4 million in that fund. I would not expect, when the City of Winnipeg police officers go and look for benefits from the city, that they would expect the taxpayers to pay for their research. I cannot understand why these people who are well paid, are by no means short of money, cannot afford the paltry sum of \$15,000 for their own research. I do not know about their association, what their budget is, but \$15,000 seems like—for them to ask the taxpayers of Manitoba to pay for that insignificant amount, I think they are nickel and diming us. I do not think it is valid.

I would like to ask for a summary now if it possible from the minister where we have deviated—all the points where we have deviated from the recommendation of the compensation committee. Mentally, I know it is the parking. I know it is these professional expenses now. That is only two right off the hop, but could you just review for me where we have deviated or at some point in this process before we leave today where we have deviated from the Judicial Compensation Committee's recommendations?

Mr. Laurendeau: Before we go on to the minister, Mr. Chairman, I do have to agree with Mr. Kowalski and the minister that if we start supplying each association in this province money to be going after whenever there are negotiations or discussions, we could not afford it, not only as a government but the

associations would be forming very rapidly throughout the province and the country. So I have got to agree with the minister and Mr. Kowalski on this one that we cannot afford to start paying associations back money towards what they did for reporting on a process.

Mr. Ashton: I just want to follow up because—and I am just trying to think of an analogy to this—does this mean that the MGEU will be able to from now on in submit a bill for all of the services that it has provided its members leading to the negotiation of a contract or any other government union? This is essentially what that provision is. I think the real test on this is what is reasonable, and I do not know if this is something that is standard or reasonable. I suspect the government is not considering extending that to other organizations and associations.

I realize we are over a barrel in a way. I just get a little bit frustrated dealing with some of these things because we have this big threat of the constitutionality hanging over our head, which I think is reasonable. Everybody agrees with the independence of the judiciary. In fact, I would really even go one step further. I mean, in this case I would argue if the judiciary is going to be independent that it should pay for its own association fees. I would say that if anything this is the reverse onus. It creates a dependency. Government is essentially going to be paying. I would suggest that judges get out of the courtroom mentality for a second, because I assume this is thinking of it like legal costs and put themselves in another situation. I would say that most unions would reject getting this kind of money because there might be some assumption they are not independent from their employer. So we might want to consider this \$15,000 in light of the spirit of the Supreme Court and in a way that is different from the recommendation of the committee.

* (1420)

Mr. Kowalski: As the minister kept saying he wanted our feedback for preparing a report, I think that is very important because whether there will be legal actions after we make it will depend on if we deviate from these recommendations of the committee, the reasons we give. I think that is very important that when we

reject that \$15,000, if we reject that \$15,000, that we put one of the reasons is that it sort of detracts from their own independence. I think that is a very important point that Mr. Ashton has made.

Mr. Stefanson: Again I appreciate the feedback on this issue. I hope there is finally a recognition of why we have had to go through the process we have today even though we had some disagreement at the outset of the meeting. But the question from The Maples, just to summarize the recommendation from the Judicial Compensation Committee and where at this stage we are deviating from those recommendations, it is primarily in three areas from our perspective at this stage, the one we have just discussed, not accepting the payment of an allowance of up to a maximum of \$15,000 for the cost associated with the Provincial Judges Association. The other one is the issue of parking, not accepting paying for parking for the judges which, I believe, at a cost of a little over \$21,000; and the third area is suggesting not to accept the retroactive pension adjustment prior to, I believe, it is July 1, 1992.

Again, we have touched on reasons, I think, in all three of those areas. Obviously when we return with a motion, the reasons based on the discussions here and the information we have will be clearly outlined as part of that motion.

I have one other issue related to our review that we touched on at our last committee meeting, which I think is an important issue for us to at least again touch on today and perhaps do something with at our next committee meeting, and that is the issue of mandatory retirement. Just some issues related to mandatory retirement, and I hope members that were here can recall the discussion with Mr. Tonn.

Manitoba does not have a mandatory retirement age for Provincial Court judges. All other Canadian provinces have a mandatory retirement age. The most frequent age is 65, which five provinces have. Three provinces have a mandatory retirement age of 70, and New Brunswick has a mandatory retirement age of 75. Four provinces have provisions for possible extensions usually with annual approvals required. Three of these provinces have a mandatory retirement age of 65.

I believe that there should be a review of this whole mandatory retirement and that this issue should be placed before our next Judicial Compensation Committee. There may be changes required to The Provincial Court Act, but based on the information that we have gathered relative to other jurisdictions and the discussion we had with Mr. Tonn when he appeared here, I believe that this issue should be placed before our next committee meeting for consideration of this committee. I would certainly hope that members at least agree with us removing that issue at our next committee meeting.

Mr. Chairperson: Any comments?

Mr. Mackintosh: The minister neglected to deal with our comments regarding professional allowance and the lack of a cap and criteria as to what would constitute a professional allowance. We urge the minister to consider that and not simply reject what our input actually was on that head.

Mr. Kowalski: Just to clarify, I had asked the minister for where his position deviated, not the committee's position. So there were other disagreements from his position, and the question I had asked for him is where his position had deviated from the committee's. So there were other disagreements raised.

Mr. McCrae: Yes, Mr. Chairman, just taking account of what the honourable member for The Maples just said, whatever summary happens or happened moments ago really is an expression of the minister's observations as a result of the discussions we have had today. As he said in his comments, there will be the requirement of a resolution of this committee by way of a motion which would at a subsequent meeting be the subject, again, of the approval or otherwise of the committee, and that is how we formalize the work of this committee.

I think the way things have transpired today tend to bear out the validity of the reasoning of the Minister of Finance (Mr. Stefanson) as we set about to do our work this afternoon.

Mr. Kowalski: Well, if that is what this summary was, then it was inaccurate because there were other

comments. There was a concern by a committee member about the benefits. There was a concern raised about the professional allowances. So I disagree with what the member just said. The summary originally given by the minister was where his views deviated from the Judicial Compensation Committee's report. That is what I took it as, the three points.

The additional ones, with some feedback, he may have heard from the committee, but that is not what he was talking about.

Mr. McCrae: I do not think we have any disagreement here. I simply think that the minister asked for and has received some input, and he will have to make a judgment about what he believes the consensus is, put it all down in the form of a resolution. If the resolution runs across troubled waters, that is one thing. If it finds support, that is the other thing. I think we understand that.

Mr. Mackintosh: Just to return briefly to an issue I raised earlier, and that is the concern we have about the risk of the Legislature not dealing with this by the 18th or at least immediately and the view that we have gone through everything presented by the committee, and I think a position can now be formulated by the legislative committee.

So what I recommend is that we put together a motion right now which will constitute the report of the committee and get this reported to the Legislature. If the Clerk of the committee would take on that job, we certainly are here to assist and perhaps if we can adjourn for half an hour or so, we can come back and get the job finished today.

Mr. Stefanson: Mr. Chairman, I would suggest we proceed as we discussed when we started this committee meeting that there will be a requirement for one more meeting of the committee. House leaders can determine that date. We will return with a motion dealing with all of the recommendations and providing any reasons for any recommendations that are not being accepted.

I appreciate for some of the first issues that we dealt with, Mr. Chairman, that there was not necessarily an

awful lot of feedback, but on some of the subsequent issues, as we got into them, we received significant feedback. I appreciate that very much. The member for St. Johns (Mr. Mackintosh) himself just asked us to seriously consider recommendations that he touched on relative to professional allowances and so on. So I am sure our House leaders will arrive at an appropriate date for the subsequent meeting. We have to have a written motion ultimately, and we will return with that information at that meeting. Obviously, it will provide us with an opportunity to review Hansard to see precisely what members did say, what their positions are. That is how we outlined it at the beginning of this meeting, that we should proceed, and we think that would be the responsible way to proceed.

Mr. Ashton: Mr. Chairperson, I always like it when I am at these meetings and it is suggested that it be put to the House there as well. Our position is clear. We can deal with it now. We can adjourn for half an hour. We could adjourn. We can come back tonight. We are concerned about this. I also want to put on the record, too, for this great study of Hansard that the minister is going to undertake theoretically here, the minister I think should be aware, and I think we have placed this concern—you know, a lot of what I am dealing with here as an MLA is I know what my view is, and I found it interesting in the report, by the way, where the committee even talks about what may or may not be popular with the general public. The difficulty we are dealing with here is the 18th deadline.

We can talk about the judicial interpretations. Personally, I wish in a way that the judges had not asked for some of these things. Some of these things, when you are dealing with a power that is involved here by having this process set in place, I think once you get down that path, there is a certain amount of discretion has to be asked for. I say that because we have been through this as MLAs. You know, we set up a process. We did not make—I think only one member of the Legislature made a presentation to the committee that was in place. He is not here anymore, but I thought it was inappropriate. I never once made a presentation to the commission that took place.

The funny part was, and the interesting part was, the commission came back in with recommendations that, for example, moved our pension plan in line with everybody else in the private sector. In fact, probably less than funded pension plans, because we have a 7 percent RSP, more, obviously, than many people who do not have a pension plan, but we had no say in it. That is why I am a little bit concerned that the minister—and this is one of the problems I have had with this process here, if we were to sit here and come up with what I think is a fair report, I think a fair report does involve anything that brings things in line in a lot of cases with what is done with other similar employees, in this case public sector employees or even MLAs.

The difficulty is, though, we are really concerned about this deadline. I think our critic has put that on the record. I think any delay is not going to help the process; it is only going to hurt the process. I think if the minister wishes, we can adjourn for longer than half an hour. We are prepared to deal with it. There is not much point in us scattering. We have out-of-town members here. It is going to cost money to have the committee called back to order. I think that it may be a more simple process than the minister feels. I do not think it requires the study of Hansard. It is obvious from the discussion the minister had his own areas where he had difficulty with the report. We are still not sure, by the way, until we see a motion, whether we were just discussing in the abstract or discussing in the form of the report.

You know, in the end, we are going to have a choice. It is going to be based on a motion. It is going to be either to accept or reject this framework or to give reasons if we disagree with certain items. There is not a heck of a lot of options out there to us. As I say, I am dealing with a bit of an abstract here as a member on behalf of my constituents. That is one of the reasons I prefer it to be in the form of a motion, and I would suggest we deal with it today. Half an hour adjournment, an hour adjournment I think would be appropriate. We are not intending on debating it extensively, but we do want to have some sense of decision before the 18th.

Mr. Toews: In respect, first of all, of the issue of the 18th, I have heard the minister cite the various opinions indicating that we are, in fact, proceeding appropriately. As to the suggestion that we unduly rush this process without giving us the opportunity to consider some of the comments made by members opposite which I have heard for the first time today and I think need some consideration, even if this committee were to accept a report or agree to a report tonight, it does not change the argument that was advanced by counsel for the judges. His argument was that if the Legislature does not accept this by the 18th, so the issue is not should we get this done today because of the so-called 18th deadline. Even assuming that that deadline was there, it is an issue for the Legislature to consider.

This is not simply a matter where the committee can sit here and make that determination and make those expenditures on behalf of the people of Manitoba. The Legislature will have to ultimately consider this. So I would caution against the undue haste being advocated by the member for Thompson (Mr. Ashton) and agree with the suggestion of the Minister of Finance (Mr. Stefanson).

Mr. Mackintosh: Well, first of all, we reject the notion that there is undue haste if we come back in half an hour or this evening to complete, which is a summing up of the discussions that took place here today, particularly given that the report of the Judicial Compensation Committee was provided to the government on June 22, even before the Legislature rose.

But I want to return to the issue of the timing of the Legislature's dealing with this report. Mr. Tonn, as we all know, made a very strong argument that there was a very, very strong probability that a motion would be accepted by the courts if the matter was not dealt with by the Legislature by the 18th of September, which I think is this Friday. It is our view that the risk is not, I do not think, as great as Mr. Tonn suggested to this committee, but nonetheless there is a risk, and the risk would be significant in outcome if a motion was made by defence counsel before the Provincial Court which resulted in the dismissal of a criminal case. The public interest would be terribly affected.

Now, what compounds the risk is the fact that the decision making would be by a judge of the Provincial Court. It would be made by a person in an absolute conflict of interest. It would be made by a person whose own monetary situation is at stake. So even if there is a minimal risk in terms of the legal chances, it is nonetheless a significant one.

I know the federal government has now filed an application in the Supreme Court of Canada asking for direction as to whether an extension of the suspension of the judgment of the Supreme Court of Canada is necessary, and they have also asked that if it is necessary to extend the suspension that it be extended so as to allow the federal government, at least, to do the necessary work to comply with the Supreme Court's order. You know, the Supreme Court has been pretty good to Manitoba in the past when you look at the French language issue, for example, where the court said we are not going to rule that all the laws of Manitoba are now invalid. They said we are going to give Manitoba time to comply; we do not want chaos. Similarly here the judgment was suspended, and in spite of that the government has not been moving quickly on this report which was, again, received on June 22.

So there is a responsibility on the government to manage the risk, to eliminate the risk, and it can do so. The committee can deal with this report today, and the Legislature can meet this week. There is no reason why it cannot. Well, the government House leader is laughing. Is there some golf tournament that we do not know about? I mean, this is our duty.

I want to make the point that not only do we have a responsibility to comply with the Supreme Court of Canada which gave the Legislature ample opportunity to deal with this report, we have an obligation as legislators to comply with the Supreme Court's direction.

Again, I make the point to the members of this committee that it is highly inappropriate for the government to thumb its nose at the order, at the direction of the Supreme Court of Canada. The Supreme Court says we will give you time. Let us

comply. What message is it for the government to disregard a direction of the Supreme Court of Canada?

Now, quite frankly, I do not know what the remedy or the sanctions may be for the Legislature not dealing with this report by the 18th of September, whether it is a dismissal of a case, whether it is an adjournment indefinitely, but I am concerned that there will be some impact on the administration of justice that will not be favourable. I do believe that, if a motion is made, the courts will certainly look for some kind of remedy. There has to be some remedy. There has to be some response. The Supreme Court of Canada of all bodies cannot make orders that have no enforceability.

So I would move

THAT this committee request the government to immediately reconvene the Legislative Assembly to receive and vote on the report of this standing committee.

Having made that motion, that, of course, then requires this committee to get on with the business and just conclude its report.

Mr. Chairperson: Could I have the motion in writing, please?

Motion presented.

* (1440)

Mr. Stefanson: Mr. Chairman, first of all, we through our Legal Counsel and senior officials are in constant discussion with the federal government and with other provincial governments on this entire issue related to judicial compensation and other judicial matters.

We have a Constitutional Law branch of the Province of Manitoba that brings particular expertise to government, which we value and we utilize, which I am sure previous governments have valued and utilized. As I read into the record earlier, their best legal advice to us is that the statements made by Mr. Tonn at our previous committee meeting are not correct in his statements before the standing committee, that the Legislature must vote on the increase and

remuneration of Provincial Court judges by September 18, 1998. So we value that advice and we accept that advice. Therefore we believe we are in compliance with all of the direction of the Supreme Court of Canada. That is part of why we are here today, to get feedback from the committee. We will have a subsequent committee meeting where we will have a motion that we will vote on and ultimately that motion will be brought to the Legislative Assembly here in Manitoba for a vote.

We are in compliance, and therefore I would suggest that the motion introduced by the member for St. Johns be defeated.

Mr. Ashton: I really want to indicate to the minister I am very concerned about the argument. I have every respect for the Constitutional Law branch of the government, but what the minister is reading into the record and repeating is a legal opinion. We had, I think, a clear statement of intent by the counsel for the judges, that this is something that they consider to be their legal opinion, their legal interpretation and there is a risk element. As I said before, this puts us all in a real dilemma.

I do not think this report would be the report that I would draft representing the constituents—as MLA for Thompson, but we are not into that situation. We have the Supreme Court decision and the concern again is the potential ramifications of not dealing with this expeditiously. I am trying to think of what the downside would be of making a decision today. By the way, to the Minister of Justice (Mr. Toews), I hardly consider dealing with it hastily when we have had the report since June of 1998 and the committee last met July 16, 1998. It is not as if this is the first time we have dealt with this. It is not as if this is the first time we were aware of the ramifications of the Supreme Court decision.

I am concerned, and I have put this on the record and I support our Justice critic wholeheartedly. I do not want to risk, for a few days extra or a few weeks or a few months, whatever suits the government's schedule of having somebody, even one criminal get off on some challenge to the constitutionality of the court itself based on the Supreme Court decision.

If anybody thinks that is far-fetched, there are things I have seen happen in the legal system the last number of years that I would have considered to be far-fetched. I think there are MLAs around this table that have seen it from other perspectives perhaps, both sides. Look at the member for The Maples (Mr. Kowalski). But when you have independent courts and you have the power the courts have with the Charter of Rights in particular, the shift we have seen in our legal system, I think it is not unreasonable to say there is a chance that this might happen.

Now, it might be one in a hundred; it might be one in a thousand. I do not want to have that responsibility. I do not want to be an indirectly responsible member for this committee, because I am trying to balance off here the risk of somebody getting off on what I would consider to be the most bizarre technicality possible. I do not want to risk that happening. That is why I am suggesting that we—

An Honourable Member: A bizarre technicality.

Mr. Ashton: On bizarre technicalities, and I say that. I think we are all in agreement on that, but you know the end result of this is we have to make a decision on this. I think we have to do it. It has been mandated by the Supreme Court decision. I fully agree with our Justice critic, the September 18 deadline is of significance to some. It is right here in the presentation to this committee in July. Let us not take the chance, and I just cannot think of a downside.

We could deal with this matter now. We can call the House back in an expedited fashion. I know from our caucus as House leader and our Justice critic and can say we are willing to sit. We do not have to sit extensively, if that is the concern of the government. I am sure they do not want to be dealing in Question Period with various different issues that are happening on a daily basis. If they want an extensive fall sitting, well, fine, I do not think we would have any difficulty with that, but we are saying on the record here that if it takes dealing with this matter today and calling the Legislature back this week, if necessary, to get it within the September 18 deadline, why would we not do it?

I mean, what advantage is there to the government to be sitting there saying, well, our legal opinion says this? Do you want me to trot out how many other significant legal opinions have proven in the light of court decisions that took place subsequently not to have been the case? Why would we risk that? I, for the life of me, as MLA for my constituency, would rather err on the side of caution on this and in this case caution, I believe, is dealing with this.

Let us adjourn. If half an hour is good enough, let us come back tonight. It is a very simple motion. The minister can draft it up. He has the expertise here; we can deal with it tonight, and we can deal with this matter in the Legislature as soon as possible.

Mr. Stefanson: Mr. Chairman, you know, the report from the Judicial Compensation Committee as mentioned was received in June, and I believe within a matter of days the Minister of Justice (Mr. Toews) referred that report to the standing committee. In fact, the committee report was submitted on June 23 and on June 29 a report was tabled in the Legislature and referred to the standing committee of the Legislature. So certainly the Minister of Justice dealt with this report in a very expeditious manner.

You know, what is very interesting is this report, prepared by the three individuals I read into the record who have had access to expertise and have made these recommendations to us, they do not raise that issue at all. They do not raise any concern about the September 18 deadline; they do not raise it as something that needs to be voted on by the Legislature, that should be voted on. They are making specific recommendations relative to judicial compensation, issues not touched on by them. The first time the issue is raised is here at committee by representation on behalf of the judges, Mr. Tonn. We have already indicated to members of this committee very clearly the advice that we have from the Constitutional Law branch of the government of Manitoba, and we value and respect that advice and accept that advice. The recommendation was that it had to be from Mr. Tonn as the only one that has recommended it be voted on by the Legislature by September 18, 1998.

So, again, Mr. Chairman, I would suggest that we follow the process that we discussed at the outset of this meeting. We have all outlined to varying degrees positions on many of the issues. We have put some reasons on the record. We have a sense of what some of the concerns and some of the issues to be addressed are from this committee. We will return with a motion at a subsequent meeting to be determined by the House leaders.

With that, Mr. Chairman, we should adjourn this committee.

Mr. Mackintosh: Well, again, I appeal to the minister and the members of the committee, first, with regard to the committee on judicial compensation. It was not their mandate to consider dates and they made their report within the context of the Supreme Court judgment which clearly gave the September 18 deadline. Mr. Tonn is not the only one who has an opinion in this regard. We now, and it should be self evident from the Supreme Court decision, that there is a deadline here and therefore implies that there be some consequences if the deadline is not observed. As well, Justice Canada obviously has a concern, and their client the Government of Canada, by proposing the notice of motion in the Supreme Court of Canada on September 4. They have filed documentation which indicates very clearly their concern about the public interest and the hearing of criminal trials. They are very concerned that there be no adverse impact on the administration of justice as a result of the deadline and the inability or the failure of governments to abide by the Supreme Court ruling.

We are elected as legislators, so let us legislate. Let us do the job that is required. Again I state that it is not merely the elimination of the risk that is the issue here, it is also the matter of respecting and abiding by a direction from the highest court in the country.

I also, in conclusion, would say and assure the committee that I am confident that the House leaders would be able to enter into an agreement to contain the debate. I cannot see why more than one sitting would be required to deal with this matter. I am sure that arrangements can be made that are detailed and can assure the government that this is not some ruse to get

into some extended fall session for Question Period and so on. It is to deal with a matter that is urgent.

* (1450)

Mr. Kowalski: I think I started this afternoon with my comments about the concern about the September 18 date. Also, I think I suggested even putting forward a motion to either accept or reject this report because of my concern for that because, as the member for Thompson (Mr. Ashton) alluded to it, as a police officer I have seen people I know were guilty, absolutely guilty of some very serious offences, get off in court. I have seen a number of times when legal opinions have come from opposite ends, very learned legal opinions. That is why people have often settled out of court because of the risk that even though if they had legal opinion in their favour, the risk of not was enough to consider, okay, how can we settle out of court?

The risk here is great, and I am looking at what is the impediment to meeting that deadline. Here we have a committee. I think there is not that much disagreement on what this committee believes in. That is our job. We can call the Legislature back, and why take the risk? There is no reason not to call the Legislature back and deal with this if we are able to. If it was an impossibility, if we were in the middle of a blizzard, if members were somewhere else. But there is no reason to not do this. Why does the government have any hesitation at all? The government so far has not given a reason for not doing it.

Mr. Stefanson: Mr. Chairman, I think what is misunderstood here is the fact of what the Supreme Court of Canada said is you have to have a process. They did not say you have to vote on recommendations by September 18, they said you have to have a process. We believe we are in compliance with a process. In fact, if you read the ruling of the Supreme Court, they were complimentary of Manitoba, and they noted the process in place in the Province of Manitoba.

So it is nothing to do with voting on the recommendations of the Judicial Compensation Committee by September 18, it is having a process in place that is in compliance. All of our Constitutional

Law recommends that we do have a process that is in compliance with the Supreme Court of Canada. So that is the issue, Mr. Chairman. It is not voting on these, or even voting on these recommendations even by the Legislative Assembly would not preclude if Mr. Tonn or the Judges Association thought that the process was not in compliance, challenging that compliance and so on. So that is the issue.

Our legal advice says we are in compliance. Not uncommon in all kinds of issues, we have different legal opinions. We value our constitutional law. As already mentioned by the member for St. Johns (Mr. Mackintosh), their track record is very good. So we are in compliance. There is no need to call the Assembly, and we should adjourn and have a subsequent meeting to deal with this issue of this committee.

Mr. Mackintosh: Well, I have two final points. First of all, how can the Supreme Court be assured that Manitoba is in compliance with the process until it completes the process? So when you look at the judgment as a whole and you look at the wording and intent of the September 18 deadline, it must surely mean that the process must have been completed by that time, and there has been compliance with the direction set out by the Supreme Court. Second, that deal is supported by Justice Canada and the Government of Canada and its notice of application because it says in there what the problem is is that Bill C-37, which is the federal Judicial Compensation package, will not have Royal Assent by September 18. So there are legal opinions out there that are different, and so long as there are different opinions, and I am sure there are many, we should manage the risk because it is our duty.

Mr. Chairperson: Any further debate of the motion? I shall then read the motion again moved by the member for St. Johns (Mr. Mackintosh) that this committee request the government to immediately reconvene the Legislative Assembly to receive and vote on the report of this standing committee.

Voice Vote

Mr. Chairperson: All those in favour of this motion, please indicate.

Some Honourable Members: Yea.

Mr. Chairperson: Those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it.

Formal Vote

Mr. Steve Ashton (Opposition House Leader): A count-out vote.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 4, Nays 5.

Mr. Chairperson: I declare the motion defeated.

It has been moved that we adjourn.

Some Honourable Members: Agreed.

Mr. Chairperson: Agreed and so ordered.

COMMITTEE ROSE AT: 2:54 p.m.