

Second Session - Thirty-Eighth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mr. Daryl Reid
Constituency of Transcona

Vol. LV No. 4 - 10 a.m., Tuesday, April 6, 2004

ISSN 1708-668X

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

Member	Constituency	Political Affiliation
AGLUGUB, Cris	The Maples	N.D.P.
ALLAN, Nancy, Hon.	St. Vital	N.D.P.
ALTEMEYER, Rob	Wolseley	N.D.P.
ASHTON, Steve, Hon.	Thompson	N.D.P.
BJORNSON, Peter, Hon.	Gimli	N.D.P.
BRICK, Marilyn	St. Norbert	N.D.P.
CALDWELL, Drew	Brandon East	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
CUMMINGS, Glen	Ste. Rose	P.C.
DERKACH, Leonard	Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DOER, Gary, Hon.	Concordia	N.D.P.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
EICHLER, Ralph	Lakeside	P.C.
FAURSCHOU, David	Portage la Prairie	P.C.
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin	Steinbach	P.C.
HAWRANIK, Gerald	Lac du Bonnet	P.C.
HICKES, George, Hon.	Point Douglas	N.D.P.
IRVIN-ROSS, Kerri	Fort Garry	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
JHA, Bidhu	Radisson	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
LOEWEN, John	Fort Whyte	P.C.
MACKINTOSH, Gord, Hon.	St. Johns	N.D.P.
MAGUIRE, Larry	Arthur-Virden	P.C.
MALOWAY, Jim	Elmwood	N.D.P.
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McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
MELNICK, Christine, Hon.	Riel	N.D.P.
MIHYCHUK, MaryAnn, Hon.	Minto	N.D.P.
MITCHELSON, Bonnie	River East	P.C.
MURRAY, Stuart	Kirkfield Park	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
OSWALD, Theresa	Seine River	N.D.P.
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REID, Daryl	Transcona	N.D.P.
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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Tuesday, April 6, 2004

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Daryl Reid (Transcona)

VICE-CHAIRPERSON – Ms. Bonnie Korzeniowski (St. James)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Mackintosh, Mr. Murray

Messrs. Dewar, Ms. Brick, Ms. Korzeniowski,
Messrs. Loewen, Reid, Reimer, Martindale,
Faurshou, Hawranik

Substitutions:

Mr. Martindale for the Honourable Mr. Doer
Mr. Faurshou for Mr. Penner
Mr. Hawranik for Mrs. Taillieu
Mr. Reimer for Mr. Murray
Hon. Mr. Selinger for Mr. Aglugub at 10:27

APPEARING:

Mr. Kelvin Goertzen, MLA for Steinbach

WRITTEN SUBMISSIONS:

Bill 18–The Improved Enforcement of Support
Payments (Various Acts Amended) Act

Canadian Bankers Association

MATTERS UNDER DISCUSSION:

Bill 6–The Cross-Border Policing Act

Bill 17–The Domestic Violence and Stalking
Prevention, Protection and Compensation
Amendment Act

Bill 18–The Improved Enforcement of Support
Payments (Various Acts Amended) Act

Report and Recommendations of the Judicial
Compensation Committee dated March 12, 2003

Mr. Chairperson: Good morning, everyone. Will the Standing Committee on Legislative Affairs please come to order. Prior to proceeding with business at hand we need to deal with some of the committee resignations and substitutions.

Committee Substitutions

Mr. Chairperson: I have before me the resignation from this committee of the Honourable Mr. Doer, Concordia, effective immediately. Are there any nominations to replace the Honourable Mr. Doer?

Mr. Gregory Dewar (Selkirk): I nominate Mr. Martindale.

Mr. Chairperson: Mr. Martindale has been nominated. Is that agreed? *[Agreed]*

I also have before me the resignation from this committee of Mr. Penner, effective immediately. Are there any nominations to replace Mr. Penner?

Mr. Stuart Murray (Leader of the Official Opposition): I nominate David Faurshou.

Mr. Chairperson: Mr. Faurshou has been nominated. Is that agreed? *[Agreed]*

I have also before me the resignation from this committee of Mrs. Taillieu, effective immediately. Are there any nominations to replace Mrs. Taillieu?

Mr. Murray: I nominate Gerald Hawranik.

Mr. Chairperson: Mr. Hawranik has been nominated. Is that agreed? *[Agreed]*

I also have before me the resignation from this committee of Mr. Loewen effective immediately. Are there any nominations to replace Mr. Loewen?

An Honourable Member: I do not know where that resignation came from. I think it was in error.

Mr. Chairperson: It is an error?

An Honourable Member: Yes.

Mr. Chairperson: Does the committee wish that withdrawn then? *[Agreed]*

Mr. Loewen will remain a member of this committee. I also have before me the resignation from this committee of Mr. Murray, effective immediately. Are there any nominations to replace Mr. Murray?

Mr. John Loewen (Fort Whyte): I would nominate Mr. Reimer.

Mr. Chairperson: Mr. Reimer has been nominated. Is that agreed? *[Agreed]*

Mr. Reimer is now a member of this committee.

* * *

Mr. Chairperson: This meeting has been called to consider the following bills: Bill 6, The Cross-Border Policing Act; Bill 17, The Domestic Violence and Stalking Prevention, Protection and Compensation Amendment Act; and Bill 18, The Improved Enforcement of Support Payments (Various Acts Amended) Act. This committee has also been asked to continue consideration of The Report and Recommendations of the Judicial Compensation Committee dated March 12, 2003.

Before we get started, are there any suggestions from this committee as to how long we should sit this morning?

Mr. Dewar: Mr. Chair, I suggest we stay until the bills are passed and the report is passed, stay until the work of the committee is complete.

Mr. Chairperson: Is that agreed, that the committee continue its work until all business items have been concluded?

Mr. David Faurschou (Portage la Prairie): Mr. Chair, I believe that we should look certainly at what is before us this morning. However, I believe that at twelve o'clock we should entertain a motion at that time as to whether to extend our sitting hours, but I believe that all of us have scheduled no later than twelve at the present time. I believe that that would be prudent of committee, to visit our adjournment time at noon.

Mr. Chairperson: Mr. Faurschou has suggested that perhaps the committee might want to sit until twelve noon and then review our sitting time at that point. Is that the will of the committee? *[Agreed]*

All right, we will review the matter at twelve noon, should we arrive at that point.

In what order of business does the committee wish to deal with matters referred?

Mr. Dewar: I suggest we deal with them as listed on the order paper.

Mr. Chairperson: It has been suggested that we deal with the matters listed on the advice notice of this meeting today. Is that the will of the committee? *[Agreed]*

Okay, then, we will proceed with Bills 16, 17 and 18.

For information to the members of this committee, a written submission has been received regarding Bill 18 from the Canadian Bankers Association. Copies, I believe, of this submission have been provided to members at the start of this meeting. Does the committee agree to have this document appear in the Hansard transcript of this meeting? *[Agreed]*

There are currently no presenters registered to speak to these bills. Is there anyone in attendance here this morning who would like to make a presentation?

Seeing no presenters, in what order does the committee wish to proceed with the business of each of these bills? Do they wish to go clause by clause consideration of the bills in order? *[Agreed]*

Bill 6—The Cross-Border Policing Act

Mr. Chairperson: Then we will start with Bill 6. During the consideration of these bills, the titles, table of contents and enacting clauses are postponed until all other clauses have been considered. Also, if there is an agreement from this committee for the longer bills, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular point and at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Before commencing clause-by-clause consideration, I would like to remind members of our revised procedure for calling clauses. Previously, the Chair would call all clauses and sub-clauses for passage either separately or in blocks that conform to pages. For example, shall clauses 3(1) through 3(5) pass would be the question. Last year, however, the House leaders met and agreed that only the main clause, clause 3 for example, would be called for passage even though there are several sub-clauses. This does not preclude members from moving amendments or asking questions on any sub-clause. An amendment, if moved on a sub-clause, questions would still be put on the amendment and the clause, but not on the sub-clause. In other words, when all questions and amendments have been dealt with, only the main clause number will need to be called.

I hope that provides some clarification for members of the committee.

An Honourable Member: Can you say that again? What comes after new procedures?

Mr. Chairperson: If there is agreement on that and an understanding of that, we will now proceed to clause-by-clause consideration of the bills. Does the minister responsible for Bill 6 have an opening statement?

An Honourable Member: No.

Mr. Chairperson: No opening statement. Does the critic for the Official Opposition have an opening statement?

Mr. Gerald Hawranik (Lac du Bonnet): Yes, I do, Mr. Chairperson. We support the principle of the bill, basically, because we know that crimes across provincial boundaries do not know any boundaries and we feel that the bill will allow continuity in the investigation by officers from outside the province to come into Manitoba and investigate crimes within Manitoba.

Mr. Chair, we have some concerns though with the bill, and I noted those in second reading debate as well to a certain extent, but I would like to again mention the concerns that we do have. First of all, the public scrutiny of the officer's conduct within Manitoba once the officer, in fact, is given authority to cross the boundary into Manitoba. The public scrutiny of that officer's conduct is conducted within

the province from which the officer came, according to the bill, and one of the problems, I guess, is that there are three territories in the country, Yukon, Northwest Territories and Nunavut and one province, Prince Edward Island, that do not, in fact, have a public body to which an individual can complain to with respect to conduct of the officer in Manitoba. We have, in Manitoba, the Law Enforcement Review Agency, which is a public body to which an individual can make a complaint with regard to an officer's conduct, but, of course, the LERA in Manitoba does not apply to an officer out of the province according to the bill. The complaint, in fact, has to be made to the province in which the officer came from. With respect to the RCMP, I do not believe that there would be a problem, because the RCMP does have its own public body within which complaints can be made with respect to conduct of RCMP.

With respect to police forces like municipal or Aboriginal police forces, Mr. Chairperson, there is a concern. As I mentioned before, in Prince Edward Island there is no public body within which a complaint can be registered. As well, there is no public body within the territories of Nunavut, Yukon and North West Territories. Officers, whether they are municipal police coming from those jurisdictions or Aboriginal police forces coming from those four jurisdictions, if they come into Manitoba and do something untoward, there is no public body to which an individual can complain and there is no public body that can deal with the disciplinary action that may be necessary against that police officer who came to Manitoba.

That, Mr. Chairperson, is my opening statement.

* (10:10)

Mr. Chairperson: Thank you, Mr. Hawranik.

Clause 1—pass; clauses 2 and 3—pass; clauses 4 to 7—pass; clauses 8 to 11—pass; clauses 12 and 13—pass; clauses 14 to 18—pass; clauses 19 and 20—pass; clauses 21 and 22—pass; clauses 23 to 25—pass. Clauses 26 to 29.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): I thought this was the appropriate place to make a comment on the concerns of the critic.

It is my understanding that the jurisdictions referred to, indeed the territories and Prince Edward

Island, are policed currently by the RCMP. In the event that municipal or Aboriginal police forces were developed in those jurisdictions, I would expect that those jurisdictions would put in place provincial oversight mechanisms. If they did not, it would still be within the power of Manitoba to not allow inter-jurisdictional policing for those particular officers, but there would also have to be a consideration of the internal discipline mechanisms that might be in place for those particular municipal or Aboriginal forces.

I think those are the checks and balances that are in place. Right now the lay of the land is that the public complaints commissioner for the RCMP is available in the event of any misconduct alleged against those officers.

Mr. Chairperson: Clauses 26 to 29—pass; clauses 30 to 32—pass; clauses 33 to 38—pass; clauses 39 to 42—pass; clauses 43 and 44—pass; clauses 45 and 46—pass; clauses 47 to 49—pass; clauses 50 and 51—pass; title—pass; table of contents—pass; enacting clause—pass. Bill be reported. *[Agreed]*

Thank you to members of the committee.

Bill 17—The Domestic Violence and Stalking Prevention, Protection and Compensation Amendment Act

Mr. Chairperson: The next item we are dealing with will be Bill 17. Does the minister responsible for Bill 17 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): I noticed that the comments at second reading regarded not the legislation per se but rather broader issues of the enforcement of protection orders generally, although it seemed to relate more to criminal law mechanisms of protection. The issue of electronic monitoring, or GPS monitoring, is under review and indeed there are further developments, I understand, in Canada about that.

Interesting, a recent decision in Saskatchewan that looked at GPS as an alternative to incarceration for a repeat sex offender regarding children. We have to be careful. I think it is decisions like that, we have to very carefully consider the cost benefit of GPS monitoring, because I can say for one that I find it, on its face, inviting and attractive, but the experience elsewhere has indicated there are serious and still developing concerns about monitoring. Indeed, if

someone breaches and goes to the corner store, should that require the immediate intervention of local police to the detriment of pursuing other calls?

So the issue of monitoring and enforcement is one of concern, particularly south of the border. I continue to remain interested in pursuing an analysis of this. In fact, there is a meeting scheduled within the department on further findings about the use of this kind of technology.

In terms of bail, Mr. Chairperson, the comprehensive bail review has been conducted. I believe the Opposition has a copy of the product of that review. I know there have been concerns expressed at second reading about the Crown attorneys and opposing bail. We are as well, of course, being criticized for having a very tough bail policy. We do not shy from that. Manitoba is one of, if not the toughest place in Canada to get bail. The policies on domestic violence are in no small way responsible for the strong position taken by Crown attorneys on bail in Manitoba.

I think those are some of the issues that were raised that I wanted to address before we begin discussion today.

I am pleased with the work that has taken place, particularly by the Family Law branch and by the legislative drafters to update this legislation. I guess when you look at the legislation as a whole, assuming passage, this is a bipartisan approach. The legislation was first brought in by the former administration and we are now building on the experience of this legislation. It was initially modelled on Saskatchewan and I believe P.E.I. approaches to domestic violence using civil remedies in addition to the criminal remedies that are more familiar to Canadians.

Mr. Chair, I know Ontario and the Yukon have introduced legislation like this. I know that more recently Ontario has added dating relationships, although I believe that legislation remains unproclaimed.

The changes and the improvements, the strengthening of the legislation is due to consultations that took place with people who are stakeholders. I thank all of those individuals. I think we will have to continue to watch developments here and elsewhere with regard to the use of civil orders of protection or prevention and make sure they are well-known to the

community, to women in particular, and that we continue to be mindful of the specific needs of children, which this bill does. I always believe that improvements can always be found. This takes the initial idea of the legislation further and we will now hope to see passage of this.

Mr. Chairperson: I thank the honourable minister. Does the critic for the Official Opposition have an opening statement?

Mr. Gerald Hawranik (Lac du Bonnet): I thank the minister for his comments as well.

We, too, support the bill in principle. There are other reasons why we would support the bill in terms of what is in it, I think primarily for two reasons: First, by giving the court authority to require a person who has committed domestic violence or a stalking offence and allowing the court the authority to require the individual to receive counselling or therapy I think is an important advancement. Secondly, because the category of persons who can seek protection orders includes other relationships other than spousal relationships, I think that is an important advancement as well.

We do though have some concerns and we did mention it in second reading debate. First of all, enforcement and monitoring is an important aspect of this bill that the minister ought to address. Secondly, resources, you need to have the proper resources to effectively enforce and monitor any court orders under this bill. If you do not have that, there is no point in passing the bill. It is our view that the minister ought to address the fact that resources have to be committed in order to properly enforce and to properly monitor these protection orders.

* (10:20)

Mr. Chairperson: We thank the honourable member.

We will now proceed with clauses.

Clauses 1 to 3—pass; clause 4—pass; clauses 5 to 8—pass; clauses 9 to 11—pass; clauses 12 to 15—pass; clauses 16 and 17—pass; enacting clause—pass; title—pass; Bill be reported.

Thank you to members of the committee.

Bill 18—The Improved Enforcement of Support Payments (Various Acts Amended) Act

Mr. Chairperson: The next item is Bill 18. Does the Minister responsible for Bill 18 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): I just want to say this is, I guess, out of order, it was on the earlier bill, but I am glad that title was changed. That was a doozy. Actually, the title now is going to reflect what people actually call the bill.

On the maintenance enforcement legislation, Mr. Chair, the critic did indicate at second reading some concern as to whether legislation should prohibit forgiveness of arrears. The department advises that there are many circumstances when it has been shown to be appropriate for the forgiveness of arrears, for example, in situations where the payer has lost employment or is medically unable to work. So The Family Maintenance Act and indeed the federal Divorce Act recognize the need for that type of remedy.

Of course, Mr. Chair, it would be our position that should be exercised in extraordinary circumstances, unusual circumstances where there is clear evidence of inability to pay. That is really what the whole regime is intended to back up that maintenance enforcement has to be a very important debt that requires payment.

In terms of the submission of the Canadian Bankers Association, I will ask the department to provide further analysis of what is set out here, but at first blush I am hesitant to accept in principle the submission because the purpose of this legislation, indeed, earlier bills brought in by the Government, is that maintenance enforcement is the most important debt that can be owed. Debt to children deserves a super priority. That was the intention. There may be some secured creditors who may object to that, and I understand their interest and their financial stake. In this case the amount of the financial stake may in some cases be very nominal and I do not think would be extraordinary in any event.

Mr. Chair, we are talking about the kinds of amounts that are related to penalties and costs, which would flow to the payee, at least the cost part. The penalties would flow to the Province—the penalties to

the payee. I am sorry. I stand corrected. With that observation, we will undertake to review the submission and advise of our position at report stage or third reading.

Mr. Chairperson: I thank the honourable minister. Does the critic for the Official Opposition have an opening statement?

Mr. Gerald Hawranik (Lac du Bonnet): Yes, I do. We support the principle of the bill. There are a couple of reasons for that, one being the penalty. I see in the bill it is up to \$500 for late or missed payments. What is important is, of course, that that penalty in fact go to the payee. I note in the bill that it does do that. I think it is important that the support recipient receive that money and not necessarily general revenue for the Province.

Mr. Chair, it also allows the extraprovincial garnishing orders to be enforced in Manitoba, which I believe allows an effective tracking of deadbeat parents who flee their children and their spouse to avoid making maintenance payments. So I think that is an important advancement as well.

I do have a concern though with respect to the bill, and that is with resources again. Maintenance enforcement already is stretched to the limit in terms of their resources. I know that speaking to a number of family law lawyers who express that concern and the fact that they already are stretched to the limit in terms of what they can do. What we are doing now is in fact adding to that workload.

So I would urge the minister to look at the staffing levels that are there in the Maintenance Enforcement department and perhaps respond accordingly by increasing resources to them to ensure that this bill is not just another bill on the books, that in fact it does have some teeth to it.

Mr. Chairperson: We will now proceed with clause-by-clause consideration. Clauses 1 and 2—pass; clause 3—pass; clauses 4 to 6—pass; clause 7—pass; clauses 8 to 12—pass; clause 13—pass; clauses 14 to 16—pass; clauses 17 and 18—pass; enacting clause—pass; title—pass. Bill be reported.

Thank you to members of the committee.

The next item of business for this meeting is the Judicial Compensation Committee report. We are going to require a substitution.

Committee Substitution

Mr. Chairperson: I have before me the resignation of Mr. Aglugub, the Member for The Maples, effective immediately. Are there any substitutions?

Mr. Gregory Dewar (Selkirk): I am going to nominate the Minister of Finance, Mr. Selinger. He is on his way. Perhaps we could just take a slight recess while he gets here.

Mr. Chairperson: Is it agreed that Mr. Selinger be nominated for the committee? *[Agreed]*

Is it the will of the committee to recess for a few moments to allow the minister to appear?

Mr. Loewen: Is there a time limit? Five minutes is okay. If he is not back, we will just proceed?

* (10:30)

Mr. Chairperson: Yes.

Thank you to members of the committee. Five minutes then.

The committee recessed at 10:30 a.m.

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The committee resumed at 10:36 a.m.

Report and Recommendations of the Judicial Compensation Committee

Mr. Chairperson: Will the committee come to order, please. We are now dealing with the Judicial Compensation Committee report.

Regarding the Judicial Compensation report, when this matter was last considered in November of 2003, this committee heard a presentation from Miss Susan Dawes of the Provincial Judges' Association as well as comments from the Honourable Mr. Selinger and Mr. Hawranik. I would like to remind members that a motion from a member of this committee will be required in order to adopt or reject some or all of the recommendations contained in the report. If the members have any comments or questions, this would be the appropriate time. Does the minister responsible have an opening statement?

Hon. Greg Selinger (Minister of Finance): Very briefly, we circulated the report at the last meeting, on November 13. I made an opening statement. I am now prepared to circulate a motion which would encapsulate all the recommendations in the report and allow us to have a proper discussion.

Mr. Chairperson: I thank the Honourable minister. Does the Critic for the Official Opposition have an opening statement? No.

Mr. Selinger: Yes, I have several copies of a motion I will circulate.

I move that the Standing Committee on Legislative Affairs adopt the proposal outlined in Schedule A and recommend the same to the Legislative Assembly of Manitoba. The schedule, you will have to have some patience on this, it is a little technical.

1. That effective April 1, 2002, salaries for Provincial Court judges and MLAs be increased to \$152,000 per annum—oh, sorry. It was a slight error there. That was salaries for Provincial Court judges be increased to \$152,000 per annum or \$5,826.66 bi-weekly; that effective April 1, 2003, salaries be increased to \$156,560 per annum.

You okay with all of this, folks?

Mr. Chairperson: Dispense? Is it the will of the committee to dispense with further reading of this material? *[Agreed]*

We thank the honourable members of the committee.

Mr. David Faurichou (Portage la Prairie): You only need one objector to continue?

Mr. Selinger: You want to continue reading?

Mr. Faurichou: Please, because it has been a number of months since we had a chance to do this.

Mr. Selinger: If you can take the pain, I am prepared to try to read it out. I will carry on from where I last left off. I think that was including MLAs—no.

That effective April 1, 2003, salaries be increased to \$156,560 per annum or \$6,001.46 bi-

weekly; and that effective April 1, 2004, salaries be further increased to \$161,257 per annum or \$6,181.51 bi-weekly.

2. That effective April 1, 2002, salaries for the associate chief judges be increased to \$157,000 per annum or \$6,018.32 bi-weekly; that effective April 1, 2003, that salary be increased to \$161,560 per annum or \$6,193.12 bi-weekly; and that effective April 1, 2004, salaries be further increased to \$166,257 per annum or \$6,373.17 bi-weekly.

3. That effective April 1, 2002, the salary of the Chief Judge be increased to \$162,000 per annum or \$6,209.99 bi-weekly; and that effective April 1, 2003, that salary be increased to \$166,560 per annum or \$6,384.79 bi-weekly; and that effective April 1, 2004, that salary further be increased to \$171,257 per annum or \$6,564.84 bi-weekly. It should get easier after that.

* (10:40)

4. That effective April 1, 2002, the current 2.61% pension plan accrual rate for judges be increased to 3 percent to allow a full pension after 23.5 years.

5. That the life insurance plan for judges be amended to provide for a reduction in coverage beginning at age 66 rather than the current age of 56.

6. That the vision care plan under No. 6 for judges be established, which will provide coverage up to a maximum of \$200 each 24-month period.

7. That the current maximum \$200 per year prescription drug coverage for judges under the extended health benefits plan be eliminated (judges pay premium).

8. That the extended health benefits plan for judges be amended to provide coverage for hearing aids up to a maximum of \$1,000 every 5 years (judges pay premium).

9. That all judges be entitled to 30 days vacation calculated on the basis of two and one half days per complete month of judicial service per vacation year.

10. That all newly appointed judges have an advance of 85 days sick leave on their appointment and that the credits continue but will be eroded until fully erased.

11. That an allowance of \$1,500 per judge be paid on the approval of the Chief Judge in accordance with guidelines to be developed similar to those presently in use in the provinces of Saskatchewan and Ontario.

12. That the Province pay 75 percent of the judges' legal costs and fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$30,000.

13. That unless otherwise stated, all changes shall be effective on the date of approval by the Legislative Assembly of Manitoba.

Mr. Chairperson: We thank the honourable minister.

Motion presented.

Thank you to members of the committee.

The motion is in order. We are now to proceed with discussion regarding the motion.

Mr. Faurshou: In light of the pension plan accrual rate, after the 23.5 years of service on the bench, I look in the report here, I am on page 50, that the pensionable allowance then for judges retiring after that time invested is \$81,576.

Am I correct in that amount, in light that it is significantly less than the comparative provinces to which we refer in this schedule?

Mr. Selinger: That is correct.

Mr. Faurshou: Then, on approval of this schedule, this was the intent to do so, in light that we had throughout the whole comparative studies on all aspects of a compensation package, wanted to be within the median average of the other comparative provinces. This does not seem to be in sync with that effort.

Mr. Selinger: This is the recommendation of the Judicial Compensation Committee. They looked at all the factors. This is a significant improvement in the pension from the former accrual rate up to the 3 percent, the former accrual rate being 2.61 percent. This allows them a full pension after 23.5 years. The JCC committee felt that improvement would be well received by the judges.

Mr. Faurshou: It is not that I am looking to increase the compensation on pensionable benefits. It is just to note the inconsistency in that regard.

Further to the pension plan, although I was not a sitting member when the initial report was brought forward, the question I had in regard to transferral of pensionable benefits to surviving spouses, I would like clarification in that regard. I believe the original recommendation made full transferral to spouse upon the passing of the judge.

Mr. Selinger: To clarify, Mr. Chair, previously, there was a discount of the judge's pension upon electing a two-thirds spousal pension. That discount has been removed. There is no discount on the judge's pension, but the two-thirds spousal pension is still available to be elected by the judge.

Mr. Faurshou: Thank you for that clarification.

As the schedule we are discussing today, could the minister provide us with the current numbers of judges on the bench presently? I know within the Department of Justice there was, in the past, a number of part-time considered judges. I am wondering how the schedule affects that or whether we still have the services of judges which are considered part time versus full time.

Mr. Selinger: My understanding is that currently we have 40 full-time judges serving on the bench.

Mr. Faurshou: Thank you very much for the clarification. So we have 40 full-time judges, but the second part to my question, do we currently have the services of those individuals considered of a part-time nature?

Mr. Selinger: Yes, I am going to ask the Minister of Justice to clarify whether there are supernumerary or part-time judges.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Supernumerary judges are on the federal Queen's Bench court. In the Provincial Court when we came into office there were 39 full-time positions. I think there was one vacancy at the time. We filled that vacancy and then we added a further full-time position. Since we have been in office and indeed before there have been only full-time positions.

Mr. Chairperson: Mr. Faurschou, further questions?

* (10:50)

Mr. Faurschou: I do want to compliment the amount of work and effort that has effectively gone into the schedule which we have before us. I know it has been a number of years of work and study.

I know that it was alluded to by the minister, I believe, tongue-in-cheek, in regard to MLAs. However, I do believe very much in the statement that is within the report, the safeguarding of the independence of those who serve on the bench.

I do believe though that legislators very much are wanting to be viewed and conduct themselves in similar status. So I do not think the tongue-in-cheek remark in reference to MLAs was all that far-fetched. Perhaps some particular mechanism similar to what the judges have here would not be out of order, Mr. Chairperson, at some juncture in time.

I see also that this is a review within the legislation to be conducted every three years, which, again, keeps things current. With those remarks, I am pleased to see the Schedule A before us today and once again compliment all those making an effort in this regard.

Mr. John Loewen (Fort Whyte): I wonder if the minister has any numbers at hand that would indicate the total cost of implementing these recommendations to the provincial Treasury?

Mr. Selinger: The costs in '02-03 revised is \$358,000. The incremental costs in '03-04 is \$205,200 and the incremental costs in '04-05 is \$211,365 for incremental costs of \$774,565. The additional one-time accrued pension liability as a result of increasing the accrual rate from 2.61 to 3 percent is \$5.4 million. That is indicated in the report on page 50. The additional annual current service costs are about \$558,000 or we have said \$600,000 here. The benefits—the life insurance increase in fund liability is \$48,700; the vision care is \$4,500; and the professional allowances \$70,500.

Mr. Loewen: Can the minister indicate whether those expenses are going to be accounted for in this year's financial statements, or are they expenses that are going to be budgeted for next year?

Mr. Selinger: All the salary costs will be in the Justice budget for the coming year and there will be adjustments for the prior years. We will be able to handle the adjustment for '03-04. The '02-03 adjustment will be handled probably in this year's adjustments. The pension liability will accrue to the pension liability under the Civil Service Superannuation Fund section for judges and the other costs for benefits will be built into the base of the budget.

Mr. Loewen: Will it be the minister's intention to cover the additional pension costs in terms of a set-aside this year, or is he just planning to—

Mr. Selinger: It is an accrued liability. It is one-time accrued liability. We are not fully cash paying for it. It goes to the accrued liability and the superannuation fund.

Mr. Loewen: So that particular one is contrary to the Government's policy of ensuring that all departments—I think it started in 2002-2001—cover their accrued pension costs?

Mr. Selinger: No, this is not contrary to that. What we made a decision on in previous budgets was that all new employees would have their pension liabilities on behalf of the employer covered on a go-forward basis. These are judges and existing positions. They are not new employees.

Mr. Loewen: Can the minister give us a little more description on how the judges are going to bill for the work they have put into the Judicial Compensation Committee? I mean, how is it going to be determined how much judges are owed?

Mr. Selinger: That is directly the recommendation 12 of Schedule A. Quite simply, they will submit a bill for the time and effort they put into costs and fees they put into the compensation process. That will be scrutinized and, if validated, it will be paid out up to the aggregate amount of \$30,000 indicated here under recommendation 12.

Mr. Loewen: Just for clarification, would this recommendation 12 include any payments to members of the committee?

Mr. Selinger: No, it will not.

Mr. Loewen: I just want to ask the minister—I am referring to page 29 of the report. There is the listing

of salaries paid to judges, associate chief judges and chief judges in three other provinces: Saskatchewan, Nova Scotia and New Brunswick. The recommendation that we see before us today will certainly raise Manitoba's rates—and I am looking at Manitoba's 2004 rates—substantially higher than the rates in the other provinces in 2002. Does the minister have any further information on where the salary rates are going in the other provinces? In other words, I am trying to determine if we are getting ahead of the game. You know, Mr. Chair, here are some significant increases in terms of dollar amounts and percentages. Are other provinces following that pattern as well?

Mr. Selinger: Yes.

Mr. Loewen: Does the minister have some figures with regard to how much a judge, an associate chief judge and a chief judge would be paid in these three provinces in a time period relevant to 2004?

Mr. Selinger: I am checking to see if we have the data. We do not have it currently available to us, but I can tell you that, as a result of court decisions, the processes now are more arms length from government. There are these compensation committees of some form that convene themselves in various jurisdictions and look at comparable rates across the country and then keep their people relatively competitive, so the trend has been up all across the country. We work on a comparable basis with Saskatchewan, Nova Scotia and New Brunswick, and we are very close to those averages.

Mr. Loewen: Well, perhaps the minister might look at it a little bit from the opposite perspective. Perhaps one of the problems in Manitoba is that our income tax rates are so high that the judges are seeing that they need significant increases in order to match up their take-home pay. Maybe if the minister would be willing to reduce income tax rates to make Manitoba competitive with other provinces, we would not be forced for such large increases in salary and the resulting cost to government.

Mr. Selinger: There is no representation made in that regard in the submissions put forward by the advocates for the judges. The member's point is completely ideological and political. There is nothing of a substantive nature in the report on that.

Mr. Loewen: Well, thank you. I am not surprised that the minister basically has no feeling on income

tax rates and take-home pay versus gross pay. It is obviously something that he has not been interested in since he took office. With regard to the total increase—and I hope the minister appreciates the reason for questioning these items is that, as he said numerous times publicly, we are heading into a very, very tough budget year, and, yet, we are at the same time, even before the budget, setting a precedent in terms of increases here. At the same time, we are running a deficit. We are going to increase the pension liability by \$5.4 million.

* (11:00)

I mean, it just seems to me that we should maybe take a little more time before we pass these along to the Legislature and see if there are any other ways to look at fair compensation for our judges without some of these very, very significant increases, particularly on the pension side. I mean, after 23.5 years to receive a full pension, most people work a lot longer than 23.5 years to achieve a full pension in the province of Manitoba. A judge, presumably, comes into the judgeship after some experience in a career, which, probably, should have allowed him or her the resources to build up some pension assets already. I just think it is, particularly, with regard to that \$5.4 million—I object to that. I do not see why, at this particular time, we should be increasing the accrual rate from 2.6 to 3.0, so I would recommend the minister take another look at that before we agree to pass that particular recommendation.

Mr. Selinger: It was my understanding that the opposition critic supported the recommendations of the Judicial Compensation Committee. The rationale for that is well explained in the report provided to us by the Judicial Compensation Committee.

On the basis of that previous undertaking and statements, and understanding that, under the previous government, there was litigation around the government deciding to take unilateral action with respect to judges' salaries. The jurisprudence that came out of that suggested that there had to be more of an arm's length relationship on how compensation was set without a direct control by government over that. I think we would be well advised to consider these recommendations as put forward here, and avoid unnecessary litigation and controversy with respect to keeping a well-qualified and independent judiciary in this province.

Mr. Chairperson: Mr. Hawranik, did you wish to yield to Mr. Loewen?

Mr. Hawranik: Yes.

Mr. Loewen: Thank you. In response to the minister's comment, I would hope that he is not setting a precedent. This came to the committee as recommendations from the Judicial Compensation Committee, not as a report that either had to be taken in total or rejected in total. I am merely suggesting to the minister that just because it came in a recommendation does not necessarily mean that it should all be accepted verbatim. Perhaps, given the economic times that he proclaims we are in, it would be wise, in particular, to look at that one item with regard to pension which, in my view, is certainly very generous.

Mr. Hawranik: I would like to have some clarification with respect to the minister's response to item 12 on Schedule A. I believe item 12 states that the judge's legal costs and legal fees are compensated to a maximum of \$30,000. I think what I heard from the minister was the fact that perhaps judges would be charging for their time dealing with this committee. I just wanted that clarified.

Mr. Selinger: No, that is not the case.

I just want to make clear to the members the legislation that we are operating under here, the provincial court and the Court of Queen's Bench legislation, section 11(1) sub 27. Our standing committee has the following options with respect to those recommendations of the compensation committee that have been referred to the standing committee. We can accept one or more of the recommendations, reject one or more of the recommendations, or reject one or more of the recommendations and set the salaries or benefits that are to be substituted for the salaries or benefits proposed by the rejected recommendations. If the standing committee rejects a recommendation, it must provide reasons for each recommendation rejected. That is subject to challenge in the courts.

Mr. Faurchou: I would like to clarify, it is not in schedule A, but has it previously been adopted that the pensionable benefits basis upon salary draw as an average of the last five years of service has been reduced to three years of service?

I do not see it in schedule A and I know it was an item that was previously discussed, so the status of that recommendation.

Mr. Selinger: In the previous JCC report, the pension calculation was changed from a best five-year to a best three-year average.

Mr. Kelvin Goertzen (Steinbach): I wonder if the minister could indicate for us, clearly there have been some concerns raised about my colleagues. I think the Member for Fort Whyte's (Mr. Loewen) comment is an astute one in terms of the difficulty the Province is currently having, we understand, with the budget and whether it is the perception of moving quickly or moving into a fairly, I think what by public standards would be a lucrative pension plan.

Could the minister indicate whether or not there is a time frame by which these recommendations need to be acted upon?

Mr. Selinger: Yes. Under the legislation, within 20 days after the report of the compensation committee is tabled the recommendations of the compensation committee must be referred to a standing committee and the standing committee must complete its report to the Assembly within 120 days after the date of referral.

Mr. Goertzen: So, for clarification, am I correct? Are the 120 days, the clock starts ticking as of today's date?

Mr. Selinger: No. The 120 days started ticking after the report was tabled in, I believe, October, the fall session.

Mr. Goertzen: So can the minister give me a specific number of days that this committee has to deal with this matter?

Mr. Selinger: According to this, we would be technically past the 120 days for dealing with this. We are into overtime on this one.

Mr. Goertzen: I guess, using the hockey parlance, I understand what overtime means then there is if somebody scores the game is over. What does this mean now that we are already into overtime? Are we already in breach of the legislation?

Mr. Selinger: What it means, this is a directive part of the legislation. It means that we should get on with it.

There were some recent discussions between our administration and representation for the judges that

concluded on a small item that was outstanding. So they understood that there would be some more time taken to resolve that.

At this stage of the game everybody is comfortable with the time frame within which we are dealing with this report, but if we were to delay it unnecessarily beyond this it could start raising concerns on the part of the judges.

* (11:10)

Mr. Loewen: I just want to reiterate to the minister that in reviewing the Province's response to the judges' request for increased pensions I feel that that is something that would stand up to the test of a court. I would urge the minister to look very, very closely at the costs associated with the increase in the pension plan and the new provisions in the pension plan, particularly with regard to the accrual rate.

Mr. Chairperson: Any further comments or questions from members of the Legislature? Thank you. Is the committee ready for the question?

Mr. Loewen: Just on a point of order, just for clarification, Mr. Chairman.

Point of Order

Mr. Chairperson: Mr. Loewen, on a point of order.

Mr. Loewen: With regard to the recommendation and the motion and Schedule A, are we voting on each recommendation or just once on the motion to determine whether there is support or not for all 13 recommendations listed on Schedule A?

Mr. Chairperson: It is my understanding, Mr. Loewen, that it has been introduced as one motion. It is not a point of order. The committee is ready for the question?

Mr. Loewen: Well, again, on a point of order, I would be willing to propose an amendment to the motion. I am just asking for clarification on how that may be done in an orderly fashion.

Mr. Chairperson: My understanding, Mr. Loewen, is that we need to have that motion in writing to allow for members of the committee to give consideration. Is it the will of the committee to allow for a minute for that motion to come forward? *[Agreed]*

Mr. Loewen: I move that The Standing Committee on Legislative Affairs adopt proposals 1 through 3 and 5 through 13 as outlined in Schedule A and recommended to the Legislative Assembly of Manitoba and that recommendation 4 on schedule A be referred back to the Committee on Legislative Affairs to be dealt with at its next sitting.

Motion presented.

Mr. Chairperson: My understanding is that only Government House Leaders can refer matters back to legislative standing committees. In that regard, I have to rule that this amendment as proposed is out of order based on that information.

Mr. Selinger: I wonder if I can head this off. I am going to give this one shot, and, after that, whatever you want to do in terms of voting.

Earlier on, the member from Portage la Prairie asked us why the pensions would be lower than the comparable pensions in New Brunswick, Saskatchewan and Nova Scotia. We said that was the recommendation of the committee. Now you are proposing to turn down the recommendation which would make the pension payout lower than the other three provinces. If you think that will be sustained in court, I would advise you that I do not think it will. You turn this down, the judges decide to litigate. They are going to litigate that the pension that they have accepted in this report will be lower than those other three provinces. I suggest to you that you are following a path that will cost you more money in litigation. You will lose, it will be retroactive, and you will wind up paying out more.

I would ask the member to consider withdrawing any proposed amendment at this time. Support this report. It was carefully arrived at through a judicial compensation committee process where all parties were represented with an independent chair. They recommended a pension scheme which is less than the three comparable provinces that they agreed to use as the standard. You want to turn that down? I would call that foolish.

Mr. Goertzen: I think that some response to the minister's comments needs to go on the record. What I understood my colleague to be saying was not that something would be turned down at this point but simply rather that there needed to be a bit more time to review it. I think that it is an astute point to bring

forward a suggestion that perhaps more time needs to be considered, that there could be a little more analysis.

I do not think we are talking about two different courts, whether it is the legal court or the court of public opinion. I do not think that the Manitobans who would look at this situation would think that this was an unwise motion or proposal to suggest that we might be able to move forward on the great majority, the substantive majority of the issues here, but that one in particular should get some sober second thought.

I know that the minister wanted to make a strong statement and try to admonish members on this side or perhaps members in particular, but I do not think that his admonishment would sit well with the majority of Manitobans, who expect their representatives to ensure that these types of weighty matters that deal with significant amounts of money have careful consideration.

Mr. Selinger: This report has been in process for over a year. It has been carefully considered by the representatives of all the parties involved in it. It has been before the Legislature since the fall. We are at a stage now where it does deserve careful consideration, and it has been given careful consideration. I am recommending that we proceed on the motion as tabled because we do not want to risk litigation which will cost the taxpayers more money and result in the same outcome.

* (11:20)

Mr. Loewen: In response, I would find it, first of all, hard to understand the minister's position given the Province's response to the initial request as outlined on page 47. As I mentioned earlier, certainly, the Province makes some valid points with regard to the existing pension plan. The fact that Manitoba fares favourably when comparing other aspects of the plan, the maximum pension has a marginally greater percentage.

Manitoba does not have a mandatory retirement age, so I would suggest to the minister that if he was willing to make, if the Government was willing to make its case during the report in such a fashion that they did not feel would stand up in court, I would ask the minister to explain why he would bother making the case to the committee in the first place. I would

also remind the minister that this report has been sent to the committee on Legislative Affairs for careful consideration, and that is what we are doing.

He can spend all the time he wants trying to browbeat members of the committee and threaten members of the committee, but all we are trying to do is give this report the careful consideration that it deserves. In light of the economic circumstances, and these circumstances, obviously, have changed since the report was initially received in October. I think at that time the minister was out touting how he was going to balance the Budget, and how the finances were in good shape, you know, where a week after, the minister has admitted he is going to have to run a \$75-million deficit in addition to taking over \$140 million out of the rainy day fund, and here he is asking this legislative committee in one fell swoop to add another \$5.4 million to the pension liability just because he would like to get this report off his desk. Well, I would suggest to the minister that there are some issues here that deserve some very, very careful consideration.

He himself and his department made the case when they went to the Judicial Compensation Committee on why the current pension plan is, in fact, viable. If his position has changed, that is fine, but it is hard for me to believe that he would admit in committee that the reasons that he put forward when going to the compensation committee for not agreeing to the demands of the judges are now not valid for some reason. If the minister did not believe they would stand up in court in the first place, why did he bother going back to the committee with this type of response? So, again, I am just saying, let us take a sober second look in light of the economic situation that the Province finds itself in these days. That is all my motion is for.

Having said that, I move that the Standing Committee on Legislative Affairs adopt proposals one through three, and five through thirteen as outlined in Schedule A and recommended to the Legislative Assembly of Manitoba.

Mr. Chairperson: It has been moved by Mr. Loewen that the Standing Committee on Legislative Affairs adopt proposals one through three and five through thirteen as outlined in Schedule A and recommended to the Legislative Assembly of Manitoba.

The amendment is in order. Any further debate on the amendment?

Mr. Faurischou: I would like to seek clarification as to procedure in regard to the passage of schedule A and it coming into force. Could you outline to the committee the procedure? Does the Chamber have opportunity to debate and amend? Is there further recourse to amendment of schedule A, other than at this committee?

Mr. Chairperson: Thank you, Mr. Faurischou, for the question. My understanding is at the conclusion of the business of this committee this report would be referred back to the Assembly and that there would be a motion to concur in the report from this committee introduced into the Chamber. My understanding is the motion would be debatable at that point. That is my understanding at this point in time.

Mr. Faurischou: Being that it is a debatable motion, does that then allow opportunity for amendment to a certain portion within the report, which schedule A would be, or is there not?

Mr. Chairperson: Because there is some uncertainty, Mr. Faurischou, with respect to the absolute process that will occur inside the Chamber, with the indulgence of this committee, if you would give us a few moments that we may check on the procedures regarding that and then we can report back to this committee while we are still sitting here this morning.

If we can recess for a few moments, then we will double-check our information and bring that information back to this committee. Is that the agreement of the committee? *[Agreed]*

So we will recess for some five minutes.

The committee recessed at 11:26 a.m.

The committee resumed at 11:49 a.m.

Mr. Chairperson: I call the standing committee back to order. I would like to thank the members of the committee for their indulgence while we researched the procedural matters relating to this issue. This is a rare and unusual matter that we are dealing with here, so we had to be fairly certain of the information that I am going to present here to committee members.

We have a motion that has been presented to this committee for some consideration. I would like to

explain the process that we must follow as legislators. It is my understanding, as a result of the work of this committee here this morning, that the Chair or Vice-Chair of this committee would report back to the House on the proceedings of these committee meetings. Then, of course, that report would be received by the House. It is my understanding that report is non-debatable. The motion to receive the report is non-debatable, to be clear.

There is also a separate stage, from my understanding. This is apparently unique to the Judicial Compensation Committee process that we are engaged in here in that the Government House Leader would move a motion to concur in the report that would be received from this committee. That point is debatable.

Now I would like to refer, for the information of members of this committee, to the rules of the Manitoba Legislature:

"Debatable Motions

46(1) The following motions are debatable, that is to say, every motion:

- (a) standing on the Orders of the Day;
- (b) for the concurrence in a report of a Standing or Special Committee;"

* (11:50)

That would be the item that would require or allow for debate to occur under the rules of the Manitoba Legislature.

We also have, for the information of committee members here, further information. I will refer, this is a report from the *House of Commons Procedure and Practice*, and I refer to page 8(6), chapter 20: When a motion to concur in a report is before the House it is the concurrence in the report as a whole which the House is considering. No amendment may be presented to the text of the report. A motion may be presented to recommit the report to the committee so that the report may be re-examined.

So it is under that provision that would allow for the entire body of the report that the chair or vice-chair of this committee would report to the House through the Government House Leader's motion would then be debatable, and it would be allowable

at that time under the existing rules, my understanding of them, to have the report referred in its entirety back to this committee, and it would require a motion to recommend that referral back to this committee. That is my understanding of the procedures and practices that we have in place and the options available to members of this committee.

I now open the floor if there are any comments or questions.

Mr. Faurshou: Thank you very much, Mr. Chair. So, for clarification in debating the concurrence motion, all points within the report that being the inclusion of the three bills as presented here this morning and the report and recommendations from the Judicial Compensation Committee—can you clarify that point?

Mr. Chairperson: It is my understanding that the only item that we will be talking about in the Government House Leader's motion will be the Judicial Compensation Committee report. It will not involve the other pieces of legislation for which this committee has already passed.

Mr. Faurshou: I thank the Chairperson for clarifying that point. Further to your commentary, there is no opportunity by the Legislative Assembly or members thereof to effectively amend the Schedule A at that juncture; it can only be voted upon as far as a motion to return the report for further study to committee.

Mr. Chairperson: It is my understanding, Mr. Faurshou, that while the motion of the Government House Leader would be debatable it would require either acceptance or non-acceptance of the Government House Leader's motion, but it would be possible to have any member of the Legislative Assembly, through motion, request that this matter be referred back to a committee of the Legislature in its entirety.

We are still at this point. For the attention of members of the committee, we are still debating the motion that is on the floor, which is Mr. Loewen's amendment.

Mr. Loewen: I just want to put a few words on the record with regards to the motion, and, in particular, the logic and the reasoning behind the motion. I find it, well, not incredible given the nature of this

Government, but, certainly, in terms of mismanagement and arrogance, this Government is reaching, and this minister has certainly reached new heights with his handling of the report and recommendations of the Judicial Compensation Committee.

I mean, we received notice of this committee on the 31st of March. The notice indicated that we would be dealing with three bills. The Legislative Affairs Committee sat yesterday. It was notified that it would be dealing with reports from Elections Manitoba. So in the two opportunities that the Government had to call this committee and to organize agendas for this committee neither agenda included this report.

Then we find out this morning that the Government has decided that it needed to revise the agenda for today's meeting. We find out 10 or 15 minutes before the committee is supposed to meet that we are, all of a sudden, going to have to deal with the report. Then we find out in committee that the report is being dealt with at a date later than it was originally intended. That, to me, just speaks of how badly this whole process has been managed. If the committee had been given proper notification that the Government intended to deal with this report on the committee, everybody on the committee would have been better prepared. Having said that, for the minister giving that scenario to try to browbeat this committee into passing the report verbatim as according to his motion under the threat that, somehow, if we do not pass it we risk a lawsuit is the height of arrogance.

What information does he have from the judges that he is unwilling to share with the committee that they will, in fact, sue? Maybe the judges would be very happy with all the other recommendations being accepted and the pension plan remaining the way it is. If the minister has information on that, perhaps he could share that with us. Again, it is just the height of arrogance to presume that (a) we are going to face a lawsuit and (b) all of a sudden, he has enacted upon himself the power of a judge and that, somehow, the province would lose the lawsuit.

I would refer him to page 47, which is the province's response regarding pension plans. To quote: The province's position was summarized in the written submission, which stated "The judges presently enjoy a pension plan that is better than most participants in Manitoba public and private-

sector pension plans. Manitoba's position is that it appears that the present level of salary and benefits is sufficient to attract qualified and competent candidates. For these reasons, Manitoba does not believe that the further enhancements to judges' pensions are required."

If, for some reason, the minister did not think that would stand up in court, I would ask him why he bothered to include it in the province's response in the first place. If he did not think it would stand up in court, what would be the point? To me this is not only mismanagement at its worst, the committee should have been given ample notification that the Government intended to deal with this report so that we could have all come here better prepared to deal with the issue.

For the ministers to suggest that, somehow, any member of this committee should be hampered in their ability to either reject or accept any particular recommendation, goes contrary to the statements he made regarding the role of the committee. The responsibility of this committee is to review the report, either to accept all of the recommendations, to accept some of the recommendations or to reject some of the recommendations. That is quite clear in our mandate.

So, again, the motion stands before the committee. I would hope that the committee would take a sober second look at this situation and that the House leaders would agree (a) that the committee would vote for this motion and, secondly, that they would agree at their earliest convenience to reconvene the committee so that we can have a more thorough and comprehensive discussion on this issue of the judges' pensions.

I can understand why the minister is a little testy. Obviously, he is preoccupied with a budget. He is faced with a situation where he has just had to admit that he is going to run a \$75-million deficit in addition to taking \$140 million out of the rainy day fund despite his assurances for the entire year that he was going to be able to balance the budget. He is probably lacking a little sleep, but I do think it is irresponsible of him to try and browbeat this committee into accepting his motion on the threat of a lawsuit which he is not a party to at this present time and, presumably, has no knowledge of whether the judges would even proceed with a lawsuit. Based on that, I would ask that the motion be brought to a vote.

* (12:00)

Mr. Chairperson: Mr. Loewen, as previously agreed, this committee indicated that it would review the sitting time for this morning when we reached the hour of 12 noon. It is now a couple of minutes past noon. What is the will of the committee? Continue? *[Agreed]*

Mr. Selinger: Just to set the record straight, the report was tabled and referred on October 10, 2003. The first committee meeting of the Standing Committee on Legislative Affairs was held on Thursday, November 13, where this report was put in front of the committee. The member who just spoke from Fort Whyte was not a member of that committee at that time, but his caucus was fully represented at that meeting and his caucus supported the Judicial Compensation Committee report at that time. They have had since October to consider the report. This committee has had it in its possession since November. There is no late notice. There is no untoward rushing of this being brought forward. We have had from November until today, which is April 6, to consider this report as a committee. It has been several months for that to occur, so I think the member is just wrong simply on the facts, and I hope he would correct them at his earliest convenience instead of continuing to perpetuate inaccurate information.

Now, my comments were not intended to be browbeating or to be threatening. It was simply to put on the record past experience, the factors that have to be considered. The compensation committee has to consider the nature of the judge's role which is unique in the province and in every jurisdiction where judges are empowered in the way we do under our constitution; the need to attract and retain excellent applicants to the judiciary; the statistics with respect to recruitment, retention, resignation and retirement of judges; and the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions. I think that is one of the points that the member is speaking to, and I will come back to that.

Mr. Chairperson, the principle of public resources must be managed efficiently and effectively in the context of the Government's financial position. The member was speaking to that as well. The cost of living, of the growth, were to climb in real per-capita income in Manitoba, and the manner

in which the compensation package paid to judges in Manitoba compares to judicial compensation packages in other jurisdictions in Canada. We have set ourselves up to compare ourselves to the provinces of New Brunswick, Saskatchewan and Nova Scotia, where, as I indicated, the report received the representations from the Government of Manitoba. The arguments put forward by the Government of Manitoba were the best arguments they could put forward at the time. The JCC deliberated on that representation and found it not completely one they could agree with. They made their recommendations.

We are not debating our original representation now. We are debating the recommendations of the JCC. That is what the job of this committee is, not to go back and replay the role of the JCC, which is what the member seems to be trying to do by referring back to the previous government's arguments. Our responsibility now is to debate the recommendations here and the rationale put forward by the JCC. The rationale put forward by the JCC is that they are recommending a pension plan which is the issue at point here, which is lower than the three provinces we compare ourselves to. The member thinks that there is an issue there.

Well, when a previous government dealt with the JCC report, the second report, the Green report in '97 and '98, the Government rejected a supplemental pension. The judges applied for judicial review and they won. They won on the issue of the pension, which is exactly the issue in front of us today. We have sought a legal opinion as to whether or not the rejection of these recommendations would be sustained in light of the previous court decisions that were made in Manitoba and in other jurisdictions. Our legal opinion is that our rejection of these recommendations would not be sustained by the courts.

I am putting that information in front of the members so that we can avoid costly potential future litigation. I have no insider information about what the intentions of the judges are. I am just telling you on past experience in this jurisdiction, on the very point that the member wishes to raise, that it was not a successful experience dealing with it through the courts. So I am trying to avoid excessive legal costs going forward based on past experience, particularly in view of the fact that the recommendation is one that pegs the pension plan at a lower rate of payout than in the three provinces that we were considering.

It is with regard to all of that information, tabling of the report in October, consideration by this committee, first of all, in November and—at that time, the members of the Opposition caucus were very clear in their support of this. We have Hansard to support that. I will quote it as follows: That I believe the changes were reasonable and were quite modest. That is from the Member for Lac du Bonnet (Mr. Hawranik). He goes on to say, I think it is important that we compensate our judges adequately.

That is why we brought forward a recommendation to deal with this in a timely manner based on the fact that the committee had possession of this report in November. Members indicated their support for the report.

Now, if the member is saying that the financial circumstances of the Government might overrule the ability to improve the pension plan, which is where the previous court decision gives us guidance here. They rejected that argument in '97-98. I am trying to avoid us going into those expensive legal costs in the future.

I hope the member would take that information into consideration when deciding whether or not we should support the amendment. I would recommend voting against the amendment for all the reasons I have just stated and we move this forward to the House where the House Leader will bring forward a motion of concurrence. We will have a chance to debate that motion and refer back to the committee if we need to. At this stage of the game, I think we have to be expeditious in moving this forward.

Mr. Mackintosh: As House Leader, I wanted to put on the record a correction. The member may not be aware but the Government had no intention of unilaterally proceeding with this JCC report today. I contacted the opposition Justice critic this morning and asked if there was a difficulty in doing that, and if he had said no, we would not have been dealing with it today. It was convenient in light of the context that there was full agreement by the committee that the report should be referred to the House with the committee's support.

Mr. Loewen: Well, again, Mr. Chair, to be fair to all members of the Legislature, all members of the Legislature have the opportunity to come to committee and ask questions. For the minister to put this on the agenda 10 or 15 minutes before this

committee sat is disrespectful to the other members of the Legislature that are not here who may have wanted to be here, but were unaware that this issue was going to be dealt with. Again, I just think it is disrespectful to all the members of the Legislature not to have included this in the original agenda, particularly when we know this report has been outstanding. If the minister had wanted to deal with it properly, he should have issued a revised agenda in ample time that all members of the Legislature could have had the opportunity to come here and voice their concerns about the report.

Just for clarification, I would like to table the two notifications that I did receive, one dated March 31 and the other one dated April 6, the revised agenda. I will table that for the committee. I would ask the minister—I am glad that he took the time to share with us, finally, that he did have a legal opinion—I wonder if he would be willing to table that as well.

Mr. Selinger: Not at this time. I have given the member the information of the previous experience that the Government had when they rejected a report pertinent to the pension issues relating to judges. I think that information should be instructive.

Mr. Chairperson: Is the committee ready for the question?

Does the committee wish the amendment read out?

Some Honourable Members: No. Dispense.

Mr. Chairperson: Dispense.

Voice Vote

We are voting on the amendment as introduced by Mr. Loewen. All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it.

Does the committee wish the main motion read out?

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

The question before the committee is the motion to adopt the proposal outlined in Schedule A and recommend the same to the Legislative Assembly of Manitoba. All those in favour of the motion, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Yeas have it.

* * *

Mr. Chairperson: Is it the will of the committee to report to the House that we have completed our consideration of this matter? *[Agreed]*

*(12:10)

We have one last piece of administrative business for this committee. The Chair has received the resignation of the Vice-Chair of the Standing Committee on Legislative Affairs but would like to remain as a member of the committee itself. Are there any nominations for the position of Vice-Chair of this committee?

Mr. Gregory Dewar (Selkirk): I nominate Ms. Brick.

Mr. Chairperson: Ms. Brick has been nominated. Is there agreement of the committee? *[Agreed]*

Thank you to members of the committee. I believe that concludes the business of this committee. Thank you very much for your participation here this morning.

Committee rise.

COMMITTEE ROSE AT: 12:10 p.m.

**WRITTEN SUBMISSIONS PRESENTED
BUT NOT READ**

March 30, 2004

Dear Committee Members:

Re: Bill 18 – The Improved Enforcement of Support Payments (Various Acts Amended) Act

Thank you for giving the Canadian Bankers Association (CBA), on behalf of its members, the opportunity to express our concerns with respect to certain provisions in Bill 18, the proposed *Improved Enforcement of Support Payments (Various Acts Amended) Act*.

Previously, Bill 35, *The Improved Enforcement of Support Payment (Various Acts Amended) Act*, received Royal Assent in July, 2001. This bill provided that a financing statement may be filed in the Personal Property Registry if a person required to pay maintenance is in default. It also provided that the security interest is deemed to be perfected on the day the maintenance was due and that this interest has priority over any claim that exists after the lien and charge was perfected. Therefore, although the registration statement may be filed much later, the support claim has a super priority as of the day the maintenance was due over all previously perfected security interests with the exception of a purchase money security interest. As noted in our submission on Bill 35, which is attached, this makes it difficult to ensure certainty for a lender as a search under the *Personal Property Security Act* (PPSA) would be unable to confirm the existence of a prior interest and undermines the fundamental principles of the PPSA system.

This new bill could exacerbate these difficulties. The proposed new subsection 61.2(1) allows for a penalty to be assessed against a person who fails to make a payment under a maintenance order or fails to make such payment by the date required. The proposed new subsection 61.3(1) states that enforcement costs can be charged against the person required to pay maintenance. Lastly, new subsections 61.2(3) and 61.3(2) provide that these amounts can be enforced in the same manner as an order, which

includes the filing of a financing statement. It would appear that penalties, which are payable to the person entitled to receive maintenance, and that costs, which are payable to the government, could have priority over a secured party's interest even though the secured party registered first, since the perfection date appears to be the date the maintenance is due.

We have no difficulty with initiatives aimed at improving the enforcement of maintenance orders; however, we believe that establishing any super priority impairs the ability of creditors to accurately ascertain the financial position of a borrower, forces creditors to adopt stricter lending practice, limits the availability of credit and increases borrowing costs. The government in passing Bill 35, clearly believed that the policy goals of improved maintenance enforcement were more important than the integrity of the PPSA system. We do not believe that these same policy considerations apply to penalties and enforcement costs. Therefore, we recommend that this super priority not extend to penalties payable to the maintenance recipient or costs of enforcement payable to the government.

We agree that the legislation should allow for the filing of a financing statement in the Personal Property Registry to provide for a deemed security interest for penalties and enforcement costs. However, the rules for perfection and priority as outlined in the PPSA should govern this security interest. Therefore, we ask that the bill be amended to clarify that security interests to support amounts related to penalties and costs of enforcement are only perfected as of the day of the filing of the financing statement and not from the date that maintenance was due.

We would ask the committee to take into consideration the concerns raised above and we would be pleased to discuss with you amendments or alterations to the bill which would address our concerns.

Yours truly,
Paul Griffin

PG/SS
Attachment

* * *

June 28, 2001

Dear Committee Members:

Re: Bill 35 – The Improved Enforcement of Support Payments (Various Acts Amended) Act

Thank you for giving the Canadian Bankers Association, on behalf of its members, the opportunity to express our concerns with respect to certain provisions in Bill 35, the proposed Improved Enforcement of Support Payments (Various Acts Amended) Act.

While we have no difficulty with initiatives aimed at improving the enforcement of maintenance orders, we object strongly to section 13 of the bill as it relates to security interests; specifically, the addition of the proposed new sections 59.4(3) and 59.4(5) to The Family Maintenance Act. The new section 59.4(3) provides that a security interest relating to arrears of maintenance "is deemed to have been perfected on the day the maintenance was due." The new section 59.4(5) would give a claim for arrears in maintenance a super priority claim over all previously perfected security interests with the exception of a purchase money security interest (PMSI).

The existence of a super priority for maintenance payments impairs the ability of creditors to accurately ascertain the financial position of a borrower. Creditors would be forced to adopt stricter lending practices in the face of this uncertainty, thereby limiting the availability of credit and increasing borrowing costs. Allowing for perfection retroactively and allowing for a super priority is in opposition to one of the purposes of The Personal Property Security Act (the PPSA) which is to provide a notice system so that lenders and purchasers can be aware of prior security interests. There is no mechanism by which a lender can track the family status of an individual debtor and then determine, on an ongoing basis, the likelihood of the existence of unperfected, unpaid maintenance claims which could take priority over the lender's security. The exception in relation

to PMSIs in the bill is not a complete solution, since there are many security interests, such as those arising out of personal guarantees of business indebtedness, which do not qualify as PMSIs.

These provisions undermine the fundamental principles of the PPSA system by giving a super priority to a claim that was registered after the claims of other creditors. As a result, the assets of the debtor available to these previously registered creditors will be reduced, without compensation, even though they clearly had no opportunity to obtain notice of this claim on the assets of the debtor by performing a search of the Personal Property Registry. Indeed, the proceedings which lead to the establishment of support obligations, and the potential debts covered by this legislation, are such that other creditors would not have an opportunity to be aware of these potential claims, or be heard by the court before it makes its order. The retroactive nature of the legislation increases these concerns.

We agree that a person entitled to maintenance arrears should be allowed to file a financing statement in the Personal Property Registry and have a deemed security interest. However, the rules for perfection and priority as outlined in the PPSA should govern this security interest. This is fundamental to the systems of secured lending in place for both consumer and business credit.

We would ask the committee to take into consideration the concerns raised above and we would be pleased to discuss with you amendments or alterations to the bill which would address our concerns.

Yours truly,

WL/SS/sh