

TO THE HONOURABLE THE LEGISLATIVE ASSEMBLY OF MANITOBA:

Your Standing Committee on Legislative Affairs presents the following as its Eighth Report.

Meetings:

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

Matters under Consideration:

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

Committee Membership:

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

Your Committee elected Mr. NEVAKSHONOFF as the Chairperson.

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

Motions:

Your Committee agreed to the following motion:

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

SCHEDULE A

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

1. That the Province pay 75% of the Judges' legal costs and fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$40,000.00.
2. That the Province pay 100% of Judges' disbursement costs and fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$20,000.00.
3. That, effective the date of approval by the Legislative Assembly, up to 17 weeks of paid Maternity Leave be available, subject to at least a six-month return-to-service commitment.
4. That, effective the date of approval by the Legislative Assembly, up to 37 continuous weeks of Parental Leave be available, with up to 17 weeks of it being paid leave if Maternity Leave is not taken and such paid leave being subject to at least a six-month return-to-service commitment.

5. That, effective the date of implementation of the Standing Committee's report, the Extended Health Benefits Plan be amended to provide
 - coverage to a maximum of \$1,000 in each calendar year for massage therapy, chiropractic care, clinical psychology, physiotherapy;
 - a maximum hearing aid coverage of \$10,000 per person per 5-year period; and
 - premiums for these coverages to be paid by the participating judges.
6. That, unless otherwise stated, all changes be effective on the date of approval by the Legislative Assembly of Manitoba.
7. In these recommendations, "date of approval by the Legislative Assembly" means
 - (a) the date that the vote of concurrence referred to in subsection 11.1(28) of *The Provincial Court Act* takes place with respect to these recommendations; or
 - (b) if the recommendations must be implemented because of subsection 11.1(29) of *The Provincial Court Act*, the first day after the end of the 21-day period referred to in that subsection.

SCHEDULE B

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

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

Reasons

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

Recommendations 1 to 6:

- The recommended salary increases for 2009 and 2010 fail to properly take into account, or to properly balance, the six factors that the Judicial Compensation Committee is required to take into account in making its recommendations.
- The recommended increases go beyond what is considered appropriate and necessary for maintaining judicial independence.
- The Judicial Compensation Committee majority did not adequately address the Government's position that the existing salary level, together with the value of pension and other benefits, has been more than adequate to attract and retain an acknowledged pool of highly qualified candidates.

- The April 1, 2008 salary increases, which the Standing Committee acknowledges are binding on the government, already involve a significant increase in cost to Manitobans.
 - The recommendations for the introduction of maternity and parental benefits, which the Standing Committee accepts, also add to the cost to Manitobans.
- The Judicial Compensation Committee majority has not fairly and reasonably recognized the total compensation for Judges in Manitoba.
 - In addition to a significant benefit package, the Judges pension arrangements are significantly better than those of other provincial employees and are currently among the most generous in Manitoba.
- The Judicial Compensation Committee process is valuable and serves the public interest for the most part; however the Government must consider the recommended salary increases for 2009 and 2010, compared with public servants or the private sector. The recommended salary increases for those years would be unfair and unreasonable to the Government in relation to other public service salary increases in order to maintain what it regards as the greater good of the public service. The recommendations are also inconsistent with the current policy of negotiated wage restraint in the public service, absent special circumstances. The recommended increases will foster a perception that Judges are not shouldering their fair share of the burden in difficult economic times.
- The substituted salary increases for 2009 and 2010 (set out in Schedule C)
 - would provide fair and reasonable compensation in light of prevailing economic conditions in Manitoba and the government's current financial position while still preserving judicial independence and the ability of the judiciary to attract and retain candidates for the judiciary; and
 - would be more consistent with the provincial approach for public servants in the majority of the service for groups that have recently concluded agreements and for groups that are in the final years of agreements reached before the global economic downturn.
- The April 1, 2008 binding salaries were determined by the Judicial Compensation Committee in deference to the legislation regarding the designated three Province average, and the Committee accepted that a three Province average (Saskatchewan, Nova Scotia and New Brunswick) was the appropriate comparator. The Judicial Compensation Committee erred in later rejecting the government's position that the three province average should be preferred. The 2009 and 2010 recommended salary increases were arrived at in error as they are based on the wrong assumption that previous JCCs supported that salary should follow a national average, however that average is calculated, and is inconsistent with what the JCC accepted as the appropriate comparator for 2008.
- The government has a responsibility to review the recommended salary increases within the context of the current provincial and global economy. This Judicial Compensation Committee's recommendations are weighted more in favour of trying to achieve a mid-point or national average rather than on the economic conditions of the province and is a failure to properly balance the six factors outlined in the legislation. The Judicial Compensation Committee correctly stated that the recommendations must consider the economic conditions of the Province, that this was a time for prudence and Provincial Court Judges were part of the Manitoba community. The Judicial Compensation Committee then erred in that, while recognizing the recommended increases were greater than those received by many Manitobans over three years, stated that the strength of the economy and the necessity to provide fair and reasonable salaries were the reasons for the differential; both justifications are inconsistent with the Committee's own findings.

Recommendation 7:

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

SCHEDULE C

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

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

Public Presentations:

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

Susan Dawes

Provincial Judges Association of Manitoba

Reports Considered:

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

Submitted by,

Mr. Tom NEVAKSHONOFF, Chairperson
October 26, 2009