

## **TO THE HONOURABLE THE LEGISLATIVE ASSEMBLY OF MANITOBA:**

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

### **Meetings:**

Your Committee met on the following occasions in the Legislative Building:

- January 29, 2013
- April 8, 2013

### **Matters under Consideration:**

- The Report and Recommendations of the Judicial Compensation Committee dated July 11, 2012

### **Committee Membership:**

Committee membership for the January 29, 2013 meeting:

- Mr. ALTEMEYER (*Chairperson*)
- Ms. BRAUN (*Vice-Chairperson*)
- Mr. CULLEN
- Mr. DEWAR
- Mr. HELWER
- Mr. MALOWAY
- Mr. MARCELINO
- Mrs. MITCHELSON
- Mrs. ROWAT
- Hon. Mr. STRUTHERS
- Hon. Mr. SWAN

Committee membership for the April 8, 2013 meeting:

- Mr. ALTEMEYER (*Chairperson*)
- Mr. ALLUM
- Ms. BRAUN (*Vice-Chairperson*)
- Mr. DEWAR
- Mr. GAUDREAU
- Mr. GOERTZEN
- Mr. HELWER
- Mrs. MITCHELSON
- Mrs. STEFANSON
- Hon. Mr. STRUTHERS
- Hon. Mr. SWAN

### **Public Presentation at the January 29, 2013 meeting:**

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

### **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, substitute as set out in Schedule C, provisions for certain of the provisions proposed by the rejected recommendations set out in Schedule B 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 effective April 1, 2012, salaries for the Provincial Court puisne Judge be increased by the cumulative adjustment equal to the annual percentage change in the average weekly earnings (AWE) for Manitoba, calculated on the percentage change in AWE in the preceding calendar year.

For calendar year 2011, the AWE percentage change was 2.8%. Therefore; effective April 1, 2012, salaries for the Provincial Court puisne Judge increase to \$224,104 per annum (\$8,590.64 bi-weekly);

and

that effective April 1, 2013, salaries for the Provincial Court puisne Judge be further increased by the cumulative adjustment equal to the annual percentage change in the average weekly earnings (AWE) for Manitoba, calculated on the percentage change in AWE in the preceding calendar year.

For calendar year 2012, the AWE percentage change was 2.7%. Therefore; effective April 1, 2013, salaries for the Provincial Court puisne Judge increase to \$230,155 per annum (\$8,822.59 bi-weekly)

2. That effective April 1, 2012 salaries for Associate Chief Judges be increased by a differential of 5% over the salary for the Provincial Court puisne Judge, to \$235,309 per annum (\$9,020.16 bi-weekly);

and

that effective April 1, 2013 salaries for Associate Chief Judges be increased by a differential of 5% more than the salary for the Provincial Court puisne Judge, to \$241,663 per annum (\$9,263.73 bi-weekly)

3. That effective April 1, 2012 the salary for the Chief Judge be increased by a differential of 8% over the salary for the Provincial Court puisne Judge, to \$242,032 per annum (\$9,277.88 bi-weekly);

and

that effective April 1, 2013 the salary for the Chief Judge be increased by a differential of 8% more than the salary for the Provincial Court puisne Judge, to \$248,567 per annum (\$9,528.39 bi-weekly).

4. For all judges who were either a Chief Judge or an Associate Chief Judge as at April 1, 2011, including those who retired or otherwise leave the Bench and those who were appointed a Chief Judge or an Associate Chief Judge prior to implementation shall be paid a 5% differential in salary between puisne Judge / Master and the Associate Chief Judge / Senior Master and an 8% differential in salary between puisne Judge / Master and the Chief Judge.

5. That effective April 1, 2011, establish a northern living allowance equal to 5% of the salary for the Provincial Court puisne Judge, for judges residing in Thompson or The Pas.

6. That effective April 1, 2011, increase the professional allowance available to each Judge to \$2,000.00 in each fiscal year.

7. That effective April 1, 2011, increase the educational allowance available to each Judge to \$3,000.00 in each fiscal year.

8. 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.

9. 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.

10. That, effective the first pay period following implementation, judges participate in the same life insurance plan (CSSB Group Life Plan No. 330780) and coverage as that which the Government makes available to public servants, including the same Dependents' Life Insurance Policy (CSSB Dependent's Life Policy No. 330785). Any future changes to the Plan do not have to be referred to future JCCs.
11. That, effective April 1, 2011, judges pay the same premiums for life insurance as civil servants and that the difference in life insurance premiums paid by judges should be refunded to all judges, including those presently and formerly in office for any period between April 1, 2011 and the date of implementation.
12. That judges shall be charged for parking at the same rates and in the same manner as provincial employees and these rates may be adjusted from time to time without the necessity of prior recourse to a JCC.
13. Confirmation of JCC7's recommendation effective April 1, 2008, that a Judge away on a leave (whether paid or unpaid) is treated as an active Judge and is to make the same contributions as they normally would as an active judge for both pension plans and/or insurance benefits plans and the Province will continue to make payments based on what it normally pays for an active judge.
14. The Committee considered the JCC recommendation regarding a Judicial Indemnity Policy and do not accept, as submitted by Ms. Dawes, that the recommendation was to adopt the exact policy proposed by the Provincial Judges Association, and submitted to the Committee, but simply one that is based on the form and content ought to be implemented.

The Committee accepts that recommendation and, effective date of implementation, the Province will adopt a written Judicial Indemnity Policy based on the form and content proposed by the Judges' Association, excluding coverage for personal matters arising outside the courtroom and including a dispute resolution mechanism that includes disputes of the choice of legal counsel.

15. That unless otherwise stated, all changes shall be effective on the date of approval by the Legislative Assembly of Manitoba.
16. 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 interest is to be paid on any retroactive salary increases.
2. That interest is to be paid on any retroactive life insurance premium refund.
3. That the per diem rate for senior judges be set at 1/218<sup>th</sup> of the salary paid to a provincial court judge.
4. That a professional allowance fund of \$2,000 per senior judge be set up and distributed by the Chief Judge for each sitting senior judge based on the needs of the judge in question.
5. That an educational allowance of \$3,000 per senior judge be set up and distributed by the Chief Judge for each sitting senior judge based on the needs of the judge in question.
6. That effective upon implementation of this report, all judges who retire on or after April 1, 2011 shall be entitled to the same benefits as judges who are not retired.

### **Reasons**

In considering the Report and Recommendations 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 and 2:

- The Standing Committee does not accept the view of the Judicial Compensation Committee that it is open to interpret the Provincial Court Act in such a way as to allow the awarding of interest on retroactive salary adjustments.
- The Standing Committee does not accept that the Judicial Compensation Committee has the jurisdiction to award interest.
- The Provincial Court Act does not provide for the payment of interest and the Standing Committee does not accept that the concept of interest falls within the scope of benefits on which the Judicial Compensation Committee may make recommendations.
- The Standing Committee is of the view that there is no inherent right to interest and in the absence of clear legislative authority to provide for interest, it ought not be paid. The Standing Committee notes that the legislature in Manitoba has enacted specific legislation allowing for the payment of interest, but the Provincial Court Act in this case does not.
- If interest was intended, given the clear time lines within the legislation, the legislation would have expressly provided for it. Further, other than the previous Judicial Compensation Committee, whose recommendations are currently before the Courts, no such payments of interest have previously been recommended by any previous Judicial Compensation Committee.
- The Standing Committee recognizes that the Province has had the use of the money (and conversely the Judges have not) during the relevant period of time. However, that, in and of itself, does not provide the Judicial Compensation Committee with the jurisdiction to recommend interest as it has done so in this case.
- Moreover, as this very issue is currently the subject of an Application before the Manitoba Court of Appeal, the Standing Committee believes it is prudent to await the outcome of that Application.
- Pending the Court of Appeal's decision regarding Justice Oliphant's decision in support of JCC7's awarding of interest, the recommendation of interest payable, by JCC8 is rejected; however the Province will be guided by the decision of the Court of Appeal.
- Accordingly, after careful consideration of the recommendations made in this regard and for the reasons set out above, the Standing Committee rejects the Judicial Compensation Committee's recommendations as they relate to the right to interest.

### Recommendation 3:

- The Standing Committee does not accept that the per diem rate should be set at 1/218<sup>th</sup> of the salary paid to a Provincial Court Judge.
- The recommendation to set the per diem rate at 1/218<sup>th</sup> of the salary paid to a Provincial Court Judge contravenes The Provincial Court Act (Section 6.5 – Senior Judges) and is a contravention of the number of sitting days determined by Senior Judges Regulation 126/2011, wherein the number of sitting days of the court is 248 for purposes of subsection 6.5(8) of the Provincial Court Act.
- The Standing Committee is guided by the purpose and intent of The Provincial Court Act. The Provincial Court Act allows retired judges to return to the bench to serve on an as needed basis. Their services are to be called upon to address a variety of circumstances including times when a sitting judge is absent for an extended period such as maternity or sick leave. The Provincial Court could also use these resources to support the addition of weekend bail sittings with judges. Senior Judges are to be used under the authority of the Chief Judge of the Provincial Court and have the same powers and jurisdiction as any other judge of that Court when and only when they are called upon to sit. However, these Senior Judges, who advise the Chief Judge of their availability may not be called upon at all or may be called upon for only a day or two a year. At all other times, they are an individual retired from the public service.
- The Standing Committee is of the view that such retired Judges, who may elect to be available and are in fact called to perform judicial duties ought to be paid a per diem which reflects the reality of the frequency of their service and not be paid at a rate which is significantly greater than the existing full time Provincial Court Judges.
- The Standing Committee is of the view that fairness dictates that the per diem rate be set in a manner that creates a reasonable equality with the pay being earned by the existing Provincial Court Judges for each day such judges perform judicial duties.
- In the Standing Committee's view, the per diem rate as set out in the Regulation of The Provincial Court Act accomplishes this objective.
- The Regulation outlines that the per diem rate be set at the annual salary of a full time judge divided by 248 days per year. The Standing Committee understands that the annual number of sitting days of the Court is 248. The intent of the Government in setting out 248 days as the divisor to compensate Senior Judges in the Regulation was to align such compensation in close proximity to the actual costs of replacing a current sitting judge for any sitting day of the Court. The Standing Committee is of the view that the staffing of Court services, including the determination of the number of judges and the creation of a Senior Judges designation has been

and remains within the sole discretion of the Government. The Standing Committee understands that the existing Provincial Court Judges are paid on the basis of 260 days per year. Twelve of those 260 days are paid in the form of Statutory Holiday pay for a divisor of 248 days. Accordingly, it is the view of the Standing Committee that the use of 248 days which is based on the number of sitting days of the Court, is reasonable and consistent with the authority of the Government to set days of Court service.

- The Standing Committee is of the view that the per diem rate be set in a manner that maximizes the number of sitting days based on the funding that the Senior Judge Program receives. Setting the per diem at 1/218<sup>th</sup> reduces the number of sitting days by 30 days, or 12% fewer sitting days than what the intended funding of the Senior Judges Program was to provide for.
- Given the nature and frequency of the service intended to be provided by the Senior Judges, the Standing Committee does not believe that it is equitable to include 30 days of vacation entitlement in the calculation of the denominator which was done by the Judicial Compensation Committee.
- The Standing Committee is of the view that the purpose and intent of Senior Judges Program suggests that the denominator be based on the number of sitting days of the Court.
- If the Judicial Compensation Committee's recommendation were to be accepted, the Senior Judges would effectively be paid significantly more per day than existing full time Judges and such a result is not equitable.
- Accordingly, the Standing Committee rejects the recommendation of the Judicial Compensation Committee that the per diem rate should be set at 1/218 of the salary of a Provincial Court Judge and the per diem as set out in the Regulation shall remain.

#### Recommendation 4 and 5:

- The Standing Committee does not accept the Judicial Compensation Committee's recommendation that:
  - A professional allowance of \$2,000 per Judge and an education allowance of \$3,000 per Judge be provided; or that
  - A fund be set up for each allowance based on the number of Judges sitting
- The Standing Committee has considered the Judicial Compensation Committee's expression of support that Senior Judges should have access to a professional and educational allowance. The Standing Committee has also considered its view and that of the Judges Association that the needs of Senior Judges in this regard do not cease if they are sitting on a part time basis.
- However, although the Standing Committee understands and accepts that all Judges may have needs in this regard, it does not believe it appropriate or necessary to provide an additional allowance for Senior Judges.
- The intention of the program is for the Chief Judge to have access to experienced former members of the judiciary to assist in certain circumstances. It is the expectation that the Chief Judge will select the appropriate and available Judge based on the experience and expertise they can bring to the Bench at the time.
- There is no expectation or need for Senior Judges to seek out additional educational opportunities or to purchase any items required to discharge their duties.
- In the event a Senior Judge is selected, they will be provided with the necessary supports which will allow them to perform their work.
- The Standing Committee has considered the recommendation, but given the uncertainty as to the amount of work that might exist, if any, for Senior Judges it is not a practical or judicious use of resources to fund these allowances as recommended. It is entirely possible that a Senior Judge may not be called upon to sit as a judge in a given year or may only sit for a few days. It would be unfair and inappropriate to provide Senior Judges a professional allowance and an educational allowance, potentially for the rest of their lives, whether or not they actually sit as a judge.
- In all of the circumstances, the Standing Committee rejects the recommendations in this regard.

#### Recommendation 6:

- The Standing Committee understands that the Province's insurer, Manitoba Blue Cross (MBC) is not prepared to underwrite a benefit plan for retired judges where the benefits are the same benefits as are currently available to judges who are not retired.
- The Standing Committee is of the view that the Province ought not participate in the provision of retirement benefits as a policy holder or on a self-insurance basis for retired or former employees or persons formerly employed from the public purse. As a level of government, the Standing Committee is of the view that judges ought not be treated differently from any other level of government. Elected officials, including Ministers and senior executives of the government are not afforded retirement benefits, where the government is a policy holder in any circumstance. The Standing Committee is of the view that Judges, as a recognized third level of government, should not be treated differently than any other level of government.

- The Standing Committee understands further that the Province's insurer is not prepared to underwrite a policy that provides retired judges with the same benefits as active judges or to include retired judges in the active judges group benefit plan with benefits that are the same as those afforded to judges who are not retired, without additional cost being imposed on the Province.
- The Standing Committee has considered the recommendation as outlined above and substitutes the recommendation as outlined in Schedule C.

## SCHEDULE C

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

- The Judicial Compensation Committee recommended that effective upon implementation of its report, all judges who retire on or after April 1, 2011 shall be entitled to the same benefits as judges who are retired. The retired judges shall pay the cost of premiums determined to be payable by the Province's insurer, Manitoba Blue Cross (MBC), for such coverage, or the cost of the premiums reasonably determined to be payable to the Province, if the Province chooses to self-insure for these benefits. The recommendation was premised on the principle that this recommendation did not involve a cost to the Province.
- MBC has declined to underwrite a benefit plan for retired judges where the benefits are the same benefits as are currently available to judges who are not retired, and;
- The Province chooses to not self-insure any of the benefits that are currently available to current active judges, for retired judges;
- The Standing Committee understands that in order to attempt to address the recommendation, MBC has determined that the only manner in which this can be accommodated is with a separate Retired Judges Group Benefit Plan. The Standing Committee understands that, although MBC is not prepared to underwrite a plan with the same benefits, it is prepared to underwrite a plan that provides very similar benefits to retired judges as are provided to active judges.
- The Standing Committee has considered the recommendation as outlined above and substitutes the recommendation as outlined below.
- Accordingly, to the extent that the MBC is prepared to underwrite benefits that are the same as those afforded to judges who are not retired, with no cost to the Province, the Standing Committee is prepared to recommend that such a Retired Judges Group Benefit Plan be arranged.
- The Standing Committee recognizes that the Provincial Judges' Association of Manitoba has requested that its members who have retired be afforded the same benefits as judges who are not retired. Provided that facilitating benefits for retired judges does not involve a cost to the Province and the MBC is prepared to underwrite benefits that are the same as, or as determined by MBC, close to the same benefits as judges who are not retired, the Standing Committee is prepared to recommend that a Retired Judges Group Benefit Plan be created to facilitate such benefit coverage.
- In the circumstances, the Standing Committee is prepared to recommend that a separate and distinct Retired Judges Group Benefit Plan be arranged which is acceptable to the MBC and consistent with the recommendation of the JCC, does not involve a cost to the Province.
- In the Standing Committee's view, in order to ensure the creation of a Retired Judges Group Benefit Plan does not involve a cost to the Province, the Province ought not be a policy holder or plan administrator for a Retired Judges Group Benefit Plan, in the same way the Province/government is not a policy holder or plan administrator in the current retired government employees benefit plan. Moreover, if the Province is not the policy holder or plan administrator, this would satisfy the Standing Committee's concern that the retired judges be treated in a manner that is consistent with other levels of government.
- Accordingly, for all of the reasons outlined below, the Standing Committee is recommending that:
  - MBC create a Retired Judges Group Benefit Plan with benefits which are the same as or where MBC is not prepared to underwrite a benefit, benefits which are close to the

benefits provided to sitting judges, and where possible the same as, subject to certain terms and conditions prescribed by MBC and as outlined below.

- o The Retired Judges Group Benefit Plan is to be held by the Civil Service Superannuation Board.

The Standing Committee understands that MBC is prepared to create a Retired Judges Group Benefit Plan as recommended above, subject to the specific terms and conditions prescribed by MBC, as follows:

1. MBC will create a separate and distinct Retired Judges Group Benefit Plan for retired judges who have retired from the Bench on or after April 1, 2011. The retired judges shall pay the costs of premiums determined to be payable by MBC by authorized deductions from pension payments through the CSSF;

The benefits and terms and conditions of the Retired Judges Group Benefit Plan are determined exclusively by MBC, including the following (MBC specific Retired Judges Group Benefit Plan provisions shall prevail where they differ);

- The newly created Retired Judges Group Benefit Plan is effective April 1, 2011 with mandatory enrolment for all judges who were members of the Provincial Judges Group Benefit Plan, including elective (voluntary) benefits of that plan, and who retired on or after April 1, 2011. The effective date of coverage for eligible plan members will be on a current date basis, subject to eligible plan members enrolling within 30 days of the date the plan is launched.
  - Each retired judge, from their date of retirement is required to pay retroactive premiums as determined by MBC.
  - Mandatory participation where retired judge participated in the Provincial Court Judges Group Benefit Plan, including elective (voluntary) benefits of that plan, prior to retirement.
  - Where a retired judge did not participate in the elective (voluntary) benefits of the Provincial Court Judges Group Benefit Plan, i.e. only had coverage through the Province's self insured dental and visions benefits, prior to retirement, that retired judge is not entitled to participate in the new Retired Judges Group Benefit Plan.
  - MBC will not underwrite any of these benefits on a select basis, retired judges must enrol for all benefits.
  - 100% Ambulance/Hospital coverage equal to active judges - Insured
  - 80% Extended Health Benefit coverage – Insured. (Excluding Travel Protection and Provincially paid drug coverage to a maximum of \$650 as contained in the Provincial Court Judges Group Benefit Plan).
  - 80% Drug coverage – Insured
  - 80% Vision coverage – Insured
  - 80%/60%/50% Dental coverage – Insured
  - 100% Unlimited travel health, 30 day trip duration limitation; “no top” up allowed – Pooled.
  - Future renewal rates will be based on the group's own claims experience for the insured benefits and will be 100% credible, with the exception of the Unlimited travel health, which is a fully pooled insured benefit.
  - Due to the anticipated small size of this group, renewal rate volatility should be expected.
  - MBC reserves the right to cancel the Retired Judges Group Benefit Plan at any time, with one months notice, in the event of any judge who retires and that judge refuses to participate in the Retired Judges Group Benefit Plan, when the judge was an active participant in the current Provincial Court Judges Group Benefit Plan, including elective (voluntary) benefits of that plan, prior to retirement.
2. The Civil Service Superannuation Board shall determine, from time to time, an administration fee in response to their responsibilities as plan administrator. This administration fee is the responsibility of the retired judges and shall be in addition to the premiums determined by MBC.
  3. The Province's facilitation of a Retired Judges Group Benefit Plan with its current benefit provider, MBC and retired judges is without prejudice to any jurisdictional or other positions taken in response to the 2011 JCC report and recommendations.
  4. The Province assumes no responsibility and does not accept any continuing responsibility in the creation of, and terms and conditions of, the Retired Judges Group Benefit Plan, should such a plan be created.

**Report Considered:**

Your Committee has completed consideration of the Report and Recommendations of the Judicial Compensation Committee dated July 11, 2012.

Submitted by,

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Mr. Rob ALTEMEYER, Chairperson  
April 8, 2013