

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

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

### **Meetings:**

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

- June 9, 2015 (4<sup>th</sup> Session – 40<sup>th</sup> Legislature)
- October 6, 2015 (4<sup>th</sup> Session – 40<sup>th</sup> Legislature)

### **Matters under Consideration:**

- Report and Recommendations of the Judicial Compensation Committee dated November 20, 2014
- Process for hiring a new Conflict of Interest Commissioner, Lobbyist Registrar and Information and Privacy Adjudicator

### **Committee Membership:**

Committee membership for the June 9, 2015 meeting:

- Mr. BJORNSON
- Hon. Mr. CHOMIAK
- Mr. EICHLER
- Mr. FRIESEN
- Mr. GAUDREAU (*Chairperson*)
- Mr. GOERTZEN
- Hon. Mr. MACKINTOSH
- Hon. Ms. MARCELINO
- Mr. PEDERSEN
- Mr. STRUTHERS (*Vice-Chairperson*)
- Mr. SWAN

Committee membership for the October 6, 2015 meeting:

- Ms. ALLAN (*Chairperson*)
- Mr. BRIESE
- Hon. Mr. CHOMIAK
- Mr. EWASKO
- Mr. GOERTZEN
- Mr. HELWER
- Hon. Mr. MACKINTOSH
- Mr. MARCELINO (*Vice-Chairperson*)
- Mr. SWAN
- Mr. WIEBE

### **Public Presentation at the June 9, 2015 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 motions at the October 6, 2015 meeting:

- *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,*

*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 annual salaries for puisne judges shall be:
  - (i) April 1, 2014 to March 31, 2015 - \$239,000;
  - (ii) April 1, 2015 to March 31, 2016 - cumulative adjustment equal to the annual percentage change in the average weekly earnings for Manitoba on April 1, 2015;
  - (iii) April 1, 2016 to March 31, 2017 - cumulative adjustment equal to the annual percentage change in the average weekly earnings for Manitoba on April 1, 2016.

The percentage change in the average weekly earnings should be calculated based on the percentage change over the preceding calendar year.

The recommendation should apply to all who were judges as of April 1, 2014, including those who retire or otherwise leave the Bench prior to implementation.

2. That the salary differentials for the Chief Judge and Associate Chief Judge remain in place as of April 1, 2014. This will mean a salary of \$258,120 for the Chief Judge and \$250,950 for the Associate Chief Judges.

This recommendation shall apply to all judges who were either a Chief Judge or an Associate Chief Judge as of April 1, 2014, including those who retire or otherwise leave the Bench prior to implementation.

3. Simple interest shall be paid, from April 1, 2014 to the date of retroactive payment of salary increase(s) including the differentials for the administrative judges and related per diems for senior judges, in accordance with the relevant prejudgment and post-judgment interest rates as set out in *The Court of Queen's Bench Act*.

4. Prejudgment interest shall be payable from April 1, 2014 to the date the salary and per diem recommendations are implemented (whether by vote of the Legislature or by virtue of s. 11.1(29) of the Act), and post-judgment interest should be payable from that date to the date that judges are paid the retroactive adjustments.

5. That as it relates to Senior Judges:

- the per diem rate for senior judges shall be set at 1/218 of the annual salary of a full-time judge;
- Interest shall be paid on the retroactive per diem rate;
- Each senior judge shall be afforded an educational allowance of \$3,000 and a professional allowance of \$2,000;
- A fund shall be set up for each allowance based on the number of judges (including a pro rata share for senior judges who come into the program partway through a fiscal year). The fund shall be distributed by the Chief Judge based on the needs of the judges in question; and
- These recommendations shall be effective April 1, 2014, and shall apply to all who were judges as of April 1, 2014, including those who retire or otherwise leave the Bench prior to implementation.

6. That as it relates to the Limited Pooling Of Education Resources:

- Effective April 1, 2014, each judge's annual education allowance should remain at the current level of \$3,000 per annum per judge;

- The combined amount of the education allowances (\$3,000 per judge x 41 judges) shall be provided to the court in a fund to be administered by the Chief Judge in accordance with the principles set out below;
  - Individual judges shall have access to their educational allowance in order to fund their attendance at conferences and seminars, and/or for other educational purposes, as approved by the Chief Judge in accordance with court policy. With the consent of each individual judge, unused portions of each judge's education allowance may be used to the benefit of the court as a whole. All uses of the allowances are subject to approval by the Chief Judge in accordance with court policy.
  - This recommendation shall be effective April 1, 2014, and shall apply to all who were judges as of April 1, 2014, including those who retire or otherwise leave the Bench prior to implementation.
7. 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 \$45,000.00.
  8. 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 \$22,500.00.
  9. That unless otherwise stated, all changes shall be effective on the date of approval by the Legislative Assembly of Manitoba.
  10. 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 contribution rates to be paid by judges into the Civil Service Superannuation Fund are those currently set out in the *Employee Contribution Rates Regulation, 178/2011*. To the extent the Regulation is amended in the future, the recommendation of a JCC must first be sought.
2. That at the time of their appointment, all judges should be enrolled for life insurance coverage worth five times their salary (up to the policy maximum), unless they elect a lower level of coverage at that time, or following their appointment.

#### **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:

#### Recommendation 1:

- The Standing Committee does not accept the view of the Judicial Compensation Committee that changes to pension contributions require a Judicial Compensation Committee recommendation or that it is a constitutional requirement.
- While the Standing Committee fully respects and understands that the Judicial Compensation Committee process is required by the Constitution in order to ensure the independence of the judiciary, the Standing Committee has considered this very carefully and disagrees that the manner in which pension contributions are currently set out in the *Employee Contribution Rates and Regulation, 178/2011* are a threat to such independence.
- The Standing Committee notes that any changes to contribution rates for all members of the Civil Service Superannuation Fund are made through a Joint Stakeholders Committee and apply equally to all members of the Fund plan.

- The Standing Committee understands and accepts that any changes in pension contributions have an impact on the remuneration of judges, but these contemplated changes which were the subject of the recommendation, apply to all members of the Fund plan and are similar to the changes that are made from time to time to other benefit plans, such as Blue Cross, which have never required a Judicial Compensation Committee recommendation prior to implementation.
- Moreover, the Standing Committee is concerned that if changes to the contribution rates to be paid by judges into the Fund required a recommendation from a Judicial Compensation Committee, then judges would be treated differently than other members of the Fund plan. This, in and of itself, may well impact judicial independence as the perception may be that judges are being treated differently than other members of the Fund plan.
- The Standing Committee is of the view that as members of multi unit pension plan, judges ought not to be treated differently from any other Members of that plan. The Civil Service Superannuation Fund covers nearly 34,000 active employees and over 53,000 total members. If additional contributions are necessary to ensure the stability of the plan, all stakeholders are consulted, including the Judges. Giving any group a veto power could jeopardize the plan.
- The Standing Committee notes that the Judicial Compensation Committee has recognized that the timing of the Judicial Compensation Committee Process may have an impact on how the recommendation would be implemented. However, the Standing Committee disagrees that adjustments can be made in the ordinary course, as suggested, given the statutory requirements for any change.
- In the event any issues arise as they relate to the contribution rates paid by judges into the Fund plan, such issues could be addressed by a subsequent Judicial Compensation Committee to ensure the judicial independence of the judiciary is always maintained.
- It should be noted that the Judges also have a supplementary plan where it is reasonable for future changes to be subject to the recommendations of a subsequent Judicial Compensation Committee.
- 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 pension contributions.

#### Recommendation 2:

- The Standing Committee does not accept that special provisions ought to or even can be established for judges, as recommended by the Judicial Compensation Committee.
- The Standing Committee understands the principle that all judges be treated in the same way at the time of appointment, but does not accept that the proposed recommendation achieves that result. While it would provide all judges with the same amount of insurance coverage, it would treat judges differently than all other members of the life insurance plan.
- The Standing Committee previously accepted the recommendation of a prior Judicial Compensation Committee to have the judges participate in the same insurance plan and coverage as that which the Government makes available to public servants, including the same Dependents' Life Insurance Policy. Moreover, the Standing Committee accepted that same Judicial Compensation Committee's recommendation that judges pay the same premiums for life insurance as civil servants.
- Consistent with those recommendations, the Standing Committee is of the view that judges ought not be treated differently from those who are members of that plan.
- This evidence of insurability is a current requirement for all plan members and is designed to prevent "adverse selection" in an insurance plan. It is a principle of virtually all life insurance plans.
- The Standing Committee has considered the matter very carefully and the change may not even be possible with a third party insurer, it is a matter of equities and fairness. If it is possible it is not clear that it would be an insubstantial cost. The Standing Committee does not accept that it is simply a housekeeping matter, for the reasons outlined above.
- The only feasible compromise solution would be for the Government to arrange for a separate insurance plan for Judges only with the likelihood of significantly higher premiums for Judges and Government. In effect reversing the decision of the previous Judicial Compensation Committee's recommendations.
- Accordingly, the Standing Committee rejects the recommendation that at the time of their appointment, all judges should be enrolled for life insurance coverage worth five times their salary (up to the policy maximum), unless they elect a lower level of coverage at that time, or following their appointment.

- *THAT a sub-committee of the Standing Committee on Legislative Affairs be struck to manage the process of hiring a new Conflict of Interest Commissioner and Information and Privacy Adjudicator for the Province of Manitoba, under the terms and conditions as follows:*

*(a) the subcommittee consist of four government members, two official opposition members and one independent member;*

*(b) the subcommittee have the authority to call their own meetings, the ability to meet in camera, and be able to undertake duties it deems necessary in order to fulfil its responsibilities in the hiring process;*

*(c) the subcommittee may only report back to the Standing Committee on Legislative Affairs with a recommendation that has been agreed to by all members; and*

*(d) the Committees Branch staff as well as the Legislative Assembly Human Resource Services staff be authorize to attend all meetings of the subcommittee.*

**Item Considered and Not Concluded:**

Your Committee has not completed consideration of the process for hiring a new Conflict of Interest Commissioner, Lobbyist Registrar and Information and Privacy Adjudicator.

**Report Considered and Concluded:**

Your Committee has completed consideration of the Report and Recommendations of the Judicial Compensation Committee dated November 20, 2015.

Submitted by,

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Ms. Nancy ALLAN, Chairperson  
October 6, 2015