

First Session – Forty-Third Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mintu Sandhu
Constituency of The Maples

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MANITOBA LEGISLATIVE ASSEMBLY
Forty-Third Legislature

Member	Constituency	Political Affiliation
ALTOMARE, Nello, Hon.	Transcona	NDP
ASAGWARA, Uzoma, Hon.	Union Station	NDP
BALCAEN, Wayne	Brandon West	PC
BEREZA, Jeff	Portage la Prairie	PC
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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Thursday, April 4, 2024

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – MLA Mintu Sandhu
(The Maples)

VICE-CHAIRPERSON – Mrs. Rachelle Schott
(Kildonan-River East)

ATTENDANCE – 6 QUORUM – 4

Members of the committee present:

Hon. Mr. Wiebe

Messrs. Balcaen, Goertzen, MLAs Moroz,
Sandhu, Mrs. Schott

Substitutions:

MLA Moroz for MLA Maloway

PUBLIC PRESENTERS:

Kristen Worbanski, Provincial Judges Association
of Manitoba

MATTERS UNDER CONSIDERATION:

Report and Recommendations of the Judicial
Compensation Committee, dated November 21, 2023

* * *

Clerk Assistant (Ms. Katerina Tefft): Good morning. Will the Standing Committee on Legislative Affairs please come to order.

Your first item of business is the election of a Chairperson.

Are there any nominations?

Hon. Matt Wiebe (Minister of Justice and Attorney General): I'd like to nominate MLA Sandhu.

Clerk Assistant: MLA Sandhu has been nominated.

Are there any other nominations?

Hearing no other nominations, MLA Sandhu, will you please take the Chair.

The Chairperson: Good morning, everyone.

Committee Substitution

The Chairperson: I would like to inform the committee that, under rule 84(2), the following member substitution has been made for this committee, effective immediately: MLA Moroz for MLA Maloway.

* * *

The Chairperson: Is the committee ready?

Our next item of business is the election of a Vice-Chairperson.

Are there any nominations?

MLA Mike Moroz (River Heights): I'd like to nominate MLA Schott.

The Chairperson: Mr. Schott has—sorry. Ms. Schott has been nominated.

And—is there any other nominations?

Hearing no other nominations, Ms. Schott is elected Vice-Chairperson.

This meeting has been called to consider the Report and Recommendations of the Judicial Compensation Committee, dated November 21, 2023.

Before we begin, I would like to provide the committee with some background information on the process following in the past when dealing with the JCC report. At the previous meetings, a representative from the Provincial Judges Association of Manitoba have appeared by leave for the committee. Ms. Kristen Worbanski of the Provincial Judges Association of Manitoba has been asked—has asked permission to speak to the committee.

Is there agreement from the committee to hear a presentation from Ms. Worbanski? *[Agreed]*

I would like to remind members that, prior to concluding consideration of this report, pursuant to the provision of section 11.1(27) of The Provincial Court Act, a motion will be required in order to adopt or reject some or all of the recommendations in the JCC report.

Are there any suggestions as to how long the committee this morning sits?

Mr. Kelvin Goertzen (Steinbach): Until the work of the committee is complete.

The Chairperson: Can you repeat that again, please?

An Honourable Member: Until the work of the committee is complete.

The Chairperson: It has been suggested that—until the report of the committee is completed, we sit then. Agreed? [*Agreed*]

* (10:10)

I will now call on Ms. Worbanski to make her presentation. Ms. Worbanski, do you have any written material to be distributed?

Kristen Worbanski (Provincial Judges Association of Manitoba): Pardon me?

The Chairperson: Do you have any written material to be distributed?

K. Worbanski: I do. Yes. Thank you. Good morning, Mr. Chairperson and members of the committee.

I am Kris Worbanski, counsel for the Provincial Judges Association of Manitoba. You have before you for consideration the report and recommendations of the 2023 Judicial Compensation Committee. I'll refer to it as the 2023 JCC.

The 2023 JCC made recommendations about appropriate compensation for judges for the period of April 1, 2023 to March 31, 2026. This JCC process is required by our constitution.

It has been recognized that whenever the expenditure of public funds is involved, the decision is inherently political. The Supreme Court of Canada has determined that in order to ensure the independence of the judiciary, the setting of compensation for judges must be depoliticized.

In order to remove the politics to the greatest extent possible, each province must put in place an institutional sieve, a filter, to depoliticize the setting of compensation for judges. The government must make its proposals to an independent, objective and effective tribunal, a JCC, which then makes recommendations about what constitutes appropriate compensation for judges.

In Manitoba, this standing committee, and ultimately the Legislature, then considers the JCC's report and recommendations and may choose to implement or vary them. If the decision is to vary the recommendations, the Legislature must justify its

decision by providing legitimate reasons for doing so, which are based upon a reasonable factual foundation.

The Provincial Court Act sets out the JCC process for Manitoba. It requires the appointment of a three-person panel with a nominee by each of the association and the Province, who then agree on a chairperson.

The 2023 JCC was chaired by Mr. Blair Graham, who is a very well-respected labour lawyer and arbitrator in Manitoba. This was the first JCC to be chaired by Mr. Graham. He had the benefit, however, of working with nominees of both the association and the Province, each of which have sat on multiple successive past committees.

The 2023 JCC held hearings in the summer of 2023 and the association and the Province each provided detailed written submissions to the JCC, and the committee then heard oral argument from both the Province and the association.

The association provided an expert report—expert economic report from Dr. Trevor Tombe, who is a professor in the department of economics at the University of Calgary.

Dr. Tombe attended the hearing and was cross-examined by the Province's counsel. The Province also provided the JCC with significant economic data as part of its own submission. The Province's representatives, both its counsel and the civil servants who were tasked with preparing the Province's submissions, worked diligently to advance the Province's position as to what compensation was appropriate for judges during the years in question.

Following its deliberations, the 2023 JCC provided a unanimous report as between the chairperson, the Province's nominee and the association's nominee. The JCC report makes it clear that all of the submissions it received were carefully considered by the committee in light of the factors that are identified in The Provincial Court Act for their consideration.

I'll focus on the most significant recommendation, which concerns judicial salaries for the three fiscal years beginning April 1, 2023.

The JCC recommended a salary of \$327,000 effective April 1, 2023, with increases based on the percentage increase in the average weekly earnings for Manitoba in each of 2024 and 2025 for the three years of the mandate period.

The JCC determined that the salary for 2023 was a fair, reasonable and appropriate increase based on

all of the objective evidence presented to it and in light of the six factors identified for its consideration in The Provincial Court Act.

One significant consideration in the act is the three-province or a designated average. The act provides that if the salary figure recommended by the JCC for a given year is less than or equal to the designated average certified by the chairperson of the JCC, then it is binding.

The designated average is the average of salaries paid to judges in the three provinces of Nova Scotia, New Brunswick and Saskatchewan. For 2023, the designated average was \$322,503.

I have provided you today with an updated chart which shows the most current information about judicial salaries across the country—that's the handout that was just circulated.

You will see that justices of the Court of King's Bench are paid \$396,700 for 2024, up from \$383,700 in 2023.

For 2023, Nova Scotia's judges are paid a salary equal to 80 per cent of the federal salary, and likewise for New Brunswick, judges there are paid 80 per cent of the federal salary.

Saskatchewan judges are paid 95 per cent of the prior year's federal salary, \$353,590, substantially more than what has been recommended for judges by the 2023 JCC in Manitoba.

The recommendation for \$327,000 means Manitoba's judicial salary would rank fifth among the 10 provinces, only very slightly ahead of PEI, which pays the national average, and below the judicial salaries in the Yukon and the Northwest Territories.

Notably, this recommendation is consistent with the government's own position before the JCC, that Manitoba judges should be paid a salary that ranks in fifth place among the salaries of judges in other provinces.

All indications are that the same will be true in 2024 and 2025, based on the JCC's recommendations for increases to Manitoba judicial salaries on the percentage increases in average weekly earnings.

Consistent with many successive JCCs, the committee also recommended the continuation of the percentage salary differential payable to the associate chief judges and the chief judge, as well as interest on retroactive salary recommendations.

And finally, the JCC recommended a freeze in the amount of the Province's contribution to the association's costs for the process. In other words, the same amount as had been recommended by the 2020 JCC, which was the prior committee.

In closing, I would like to make just some general comments about the importance of the judicial compensation process. As I said at the outset, both parties put forward extensive written and oral submissions to the JCC. It is critical that these recommendations are respected or all that work is for naught.

I will reiterate something counsel says each time counsel for the association speaks to these JCC reports. There are 43 judges. If you implement something other than what was recommended, it's not going to impact the Province's bottom line in any meaningful way.

As such, whatever you decide, your decision is symbolic more than anything else, and there are two types of symbolism to choose from, we would submit. The first is respect for the independence of the judiciary and the significance of the constitutionally mandated Judicial Compensation Committee process. The second is the desire of government to send a message to groups with which the Province is engaged in collective bargaining.

The very purpose of the committee process is depoliticize the process of setting judicial compensation. Now is not the time to look at this politically. The Province's position was carefully considered by the JCC, and all of its arguments were taken into account in issuing the JCC's recommendations. The JCC report is unanimous, well reasoned and takes into account the reasoning of past JCCs in Manitoba, as well as the position advanced by the Province.

We urge you to respect the process and the need to protect judicial independence and to depoliticize the setting of judicial remuneration. You can do that by accepting in full the recommendations of this very experienced, independent and objective panel.

On behalf of the association, I want to thank the committee for granting us leave to speak on this important matter, and if there are questions, I would do my best to answer them.

Thank you.

The Chairperson: Thank you for your presentation.

Are there any questions from the committee? No questions.

Thank you, Ms. Worbanski, for your presentation.

We will now consider the report and recommendations of the JCC.

Does the honourable minister have any opening statement?

Mr. Wiebe: I want to acknowledge first that we are meeting today on Treaty 1 territory, the ancestral lands of the Anishinaabe, the Inuit, the Dakota and the national homeland of the Red River Métis people.

* (10:20)

Today and every day, we are committed to working in partnership with Indigenous peoples in the spirit of truth and reconciliation.

I'm pleased to offer these short introductory comments on the Judicial Compensation Committee report. Let me start by thanking Ms. Worbanski for making herself available to present to the committee and offering to answer any questions that folks might have. It's truly appreciated by members of the committee and all members of the Legislature.

The 12th Judicial Compensation Committee was formed pursuant to The Provincial Court Act in the spring of '23. It consisted of Mr. Blair Graham, Mr. Robert Simpson and Mr. David Shrom.

Briefs were exchanged in June and July of '23 and oral submissions were completed on July 18 and 19, 2023. The report was tabled intersessionally with the Clerk of the Legislative Assembly on December 21, 2023, and it is now being placed before the Standing Committee on Legislative Affairs.

The Judicial Compensation Committee follows the rules set out in The Provincial Court Act. The committee is designated to—sorry, the committee is designed to ensure the protection of judicial independence, prevents governments from negotiating directly with judges and creates an independent body to make recommendations to the Legislature.

Courts have ruled that legislation that affects judges' compensation affects judicial independence. As a very serious matter, we respect the principle of an independent judiciary, and therefore support the work of the committee. This—do I do the motion now? *[interjection]* No. Okay.

Thank you very much to the committee.

The Chairperson: We thank the honourable minister.

Does the official opposition critic have an opening statement?

Mr. Goertzen: I'm not the official opposition critic; that role is being filled very well by my friend from Brandon West, but he is—offered to cede the floor to me briefly for some—from comments on this before we move forward.

So I welcome my friend from Concordia to the long list of ministers of Justice who have now dealt with this process, which is sometimes unusual and sometimes a little awkward. Because it can be awkward when we're setting salaries for those who are officials who can't in other ways advocate for their own salaries or strike or have other sort of labour rights that are often inherent to workers.

In some ways it's analogous—although not perfectly—to the process by which MLAs go through for their own salaries. I think that in Manitoba we've found the right place for MLA salaries in that it's independent and it's hands-off from MLAs determining their own salaries, and I think, by and large, people appreciate and support that up until the point that there's a recommendation for an increase of MLA salaries, and they want us to interfere and to change it.

But, generally, I think that the process is well respected and regarded. In a similar light, there's been lots of jurisprudence and decisions around judicial compensation.

I seem to recall in the 1990s a case out of the Maritimes, that the province might have been an intervener in—regarding judicial compensation, and a lot of the result of that case—I think it was a reference case to the Supreme Court—resulted in how we're dealing with judicial compensation now.

Now this committee does—or the government does, I suppose—have the ability to challenge the recommendations; past governments have. I believe Minister Chomiak was the minister when there was a challenge; I don't think that landed well in terms of the ultimate outcome, but a challenge was undertaken.

I think one—there might be a challenge right now under—out of British Columbia, where they're challenging a J-J-C report in BC currently. Ultimately, it becomes a decision of whether or not the government feels that the recommendation is so far out of balance that it's worth undertaking that judicial process.

I listened—and my colleagues did—to the submission that was made, an articulate submission about

how there was a reasoned discussion and ultimately a unanimous decision by this JCC.

I assume that the minister has received—with his hat as the Attorney General—advice about whether or not it would be worth a challenge, or whether or not this was a well and balanced decision, and I suppose on that basis he's proposing that we move forward in recommending this recommendation go to the Legislature for approval, and we are prepared to see that happen exactly in that way.

The Chairperson: We thank the member.

Are there any questions on the report?

Seeing no further questions, does the honourable minister have a motion?

Mr. Wiebe: I move

THAT the Standing Committee on Legislative Affairs:
accept the recommendations in Schedule A; 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 of the Provincial Court of Manitoba are:
 - (a) April 1, 2023 to March 31, 2024 is \$327,000;
 - (b) April 1, 2024 to March 31, 2025 – a cumulative adjustment equal to the annual percentage change in the average weekly earnings for Manitoba on April 1, 2024;
 - (c) April 1, 2025 to March 31, 2026 – a cumulative adjustment equal to the annual percentage change in the average weekly earnings for Manitoba on April 1, 2025.

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

This recommendation should apply to all who were judges as of April 1, 2023, including those who retire or otherwise leave the bench prior to implementation.

2. That the salary differentials for the chief judge and associate chief judges remain in place as of April 1, 2023. This will mean a salary of

\$353,160 for the chief judge and \$343,350 for the associate chief judges for the 2023 fiscal year.

This recommendation shall apply to all judges who were either a chief judge or an associate chief judge as of April 1, 2023, including those who retire or otherwise leave the bench prior to implementation.

3. Simple interest shall be paid from April 1, 2023, to the date of retroactive payment of salary increases including the differentials for the administrative judges and related per diems for senior judges, in accordance with the relevant pre-judgment and post-judgment interest rates as set out in The Court of King's Bench Act;
4. Pre-judgment interest shall be payable from April 1, 2023, to the date the recommendations are implemented, whether by vote of the Legislature or by virtue of section 11.1(29) of the act, and post-judgment interest should be payable from that date to the date that the judges are paid the resulting retroactive adjustments.
5. Interest shall be paid within 60 days of the date that judges are paid the resulting retroactive adjustments.
6. The Province shall pay 75 per cent of the association's reasonable legal costs to a maximum aggregate of \$55,000.
7. The Province shall pay 100 per cent of the association's disbursements, including the costs of experts, to a maximum of \$30,000.

The Chairperson: It has been moved by Honourable Mr. Wiebe

THAT the Standing Committee on Legislative Affairs:
accept the recommendation in Schedule A; and
recommendation—recommend the same to the Legislative Assembly.

An Honourable Member: Dispense.

The Chairperson: Dispense.

Is the committee ready for the—[interjection]

The motion is in order.

* (10:30)

The floor is open for the question. Is there any question?

Seeing no questions, is the committee ready for the question?

An Honourable Member: Question.

The Chairperson: Shall the motion pass?

Some Honourable Members: Pass.

The Chairperson: The motion is accordingly passed.

If there are no further questions or comments, is it the will of the committee to report to the House that it has completed its consideration of the Report

and Recommendations of the Judicial Compensation Committee, dated November 21, 2023? *[Agreed]*

The hour being 10:30, what is the will of the committee?

Some Honourable Members: Rise.

The Chairperson: Committee rise.

COMMITTEE ROSE AT: 10:30 a.m.

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are also available on the Internet at the following address:

<http://www.manitoba.ca/legislature/hansard/hansard.html>