

**Second Session - Fortieth Legislature**  
**of the**  
**Legislative Assembly of Manitoba**  
**Standing Committee**  
**on**  
**Legislative Affairs**

*Chairperson*  
*Mr. Rob Altemeyer*  
*Constituency of Wolseley*

**Vol. LXV No. 2 - 1 p.m., Tuesday, January 29, 2013**

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**Fortieth Legislature**

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**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS**

**Tuesday, January 29, 2013**

**TIME – 1 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Rob Altemeyer (Wolseley)**

**VICE-CHAIRPERSON – Ms. Erna Braun (Rossmere)**

**ATTENDANCE – 11 QUORUM – 6**

*Members of the Committee present:*

*Hon. Messrs. Struthers, Swan*

*Mr. Altemeyer, Ms. Braun, Messrs. Cullen, Dewar, Helwer, Maloway, Marcelino, Mmes. Mitchelson, Rowat*

**APPEARING:**

*Hon. Jon Gerrard, MLA for River Heights*

**PUBLIC PRESENTERS:**

*Ms. Susan Dawes, Provincial Judges Association of Manitoba*

**MATTERS UNDER CONSIDERATION:**

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

\* \* \*

**Clerk Assistant (Ms. Monique Grenier):** Good afternoon. Will the Standing Committee on Legislative Affairs please come to order. Before the committee can proceed with the business before it, it must elect a new Chairperson. Are there any nominations for this position?

**Mr. Gregory Dewar (Selkirk):** I'd like to nominate Mr. Altemeyer.

**Clerk Assistant:** Mr. Altemeyer has been nominated. Are there any other nominations?

Hearing no other nominations, Mr. Altemeyer, will you please take the Chair.

**Mr. Chairperson:** Thanks for that.

Our next item of business is the election of a Vice-Chairperson. Are there any nominations?

**Mr. Dewar:** It's my pleasure to nominate Ms. Braun.

**Mr. Chairperson:** Ms. Braun has been nominated. Are there any other nominations?

Seeing none, Ms. Braun will be our Vice-Chairperson for this afternoon.

Now, just for background, this meeting has been called to consider the Report and Recommendations of the Judicial Compensation Committee, dated July 11, 2012.

Before we get started, I'd like to provide the committee with some background information on the process followed in the past when dealing with Judicial Compensation Committee reports. At previous meetings, representatives from the judges association and other groups have appeared by leave before the committee and the minister responsible has made an opening statement followed by a statement from the official opposition. Prior to concluding consideration of this report a motion will be required in order to adopt or reject some or all of the recommendations in the JCC report.

I would also like to inform the committee that Ms. Susan Dawes of the Provincial Judges Association of Manitoba has asked permission to speak to the committee today.

Is there agreement from the committee to hear Ms. Susan Dawes? *[Agreed]*

Now are there any suggestions as to how long we wish to sit this afternoon?

**Mr. Dewar:** I suggest we sit until the matters under consideration are complete.

**Mr. Chairperson:** Is that acceptable to the committee? *[Agreed]*

Very good. The committee will sit until matters pertinent have been dealt with.

I would now like to call on Ms. Dawes to come and make her presentation. If you have written material, our hardworking page will gladly distribute it.

**Ms. Susan Dawes (Provincial Judges Association of Manitoba):** Good afternoon. I've provided two handouts that I trust will be passed around shortly, and I'll be referring to those in a moment.

As was stated, you have before you for consideration the report and recommendations of the eighth Judicial Compensation Committee, the 2011 JCC, as I call it. The recommendations of the JCC affect the fiscal years 2011 through 2013.

As many of you'll be aware, the JCC process is required by our Constitution in order to ensure the independence of the judiciary. The jurisprudence has determined that the setting of compensation for judges must be depoliticized, and it's been recognized that whenever the expenditure of public funds is involved the decision is inherently political and, therefore, to remove the politics to the greatest extent possible. The Supreme Court of Canada has said that the Province must put in place this institutional sieve which we call the JCC.

So the government must put its proposals to an independent, objective and effective tribunal at JCC, which must then make recommendations about what constitutes appropriate compensation for judges for the years at issue, and the Legislature must then consider the JCC's report and recommendations and may choose to implement or to vary them. If the decision is to vary the recommendations, the Legislature must provide legitimate reasons for doing so, which are based on a reasonable factual foundation.

The process is set out in The Provincial Court Act, and it requires a three-person panel: a nominee from the association, that was Mr. David Schrom; a nominee for the province, Mr. Vic Schroeder; and a chairperson—the 2011 JCC was chaired by Michael Werier, a very well-known and well-respected lawyer and decision maker who had previously chaired both the 2002 and the 2005 JCCs.

Now I can speak only for the association, but I'm confident my view on this point is shared by the Province. We agreed to Mr. Werier as a chairperson because we value his experience, his proven ability to pay careful attention to the relevant factors and to present recommendations that are eminently fair and reasonable, and I should note that the Legislature adopted in full his recommendations in both 2002 and 2005.

\*(13:10)

Mr. Werier was also tasked by this government recently with preparing the report on MLA compensation, and that report was released very

shortly after the JCC report in September of 2012. And as I've—since I've mentioned that report, I have to say I was most pleased to read in the Winnipeg Free Press the comments of the—attributed to the Leader of the Official Opposition, Mr. Pallister, on his first day in office. With regard to that report, he was reported to have told reporters that the process of asking an independent third party to determine the level of pay for politicians is much better than politicians deciding for themselves. And on that basis he was reported that he fully supported the recommendations made by Mr. Werier for MLA compensation. So it's our sincere hope that the same respect is afforded Mr. Werier's recommendations in respect of compensation for judges.

The 2011 JCC held hearings last summer. Prior to the hearings, the association and the Province provided extensive written submissions, hundreds of pages of documents to the JCC, and the committee then heard oral argument from both the Province's counsel and from the association. At the hearing the association called expert economic evidence from Dr. Fletcher Baragar, a professor of economics at the University of Manitoba. He testified about the economic conditions in the province and about the Province's fiscal circumstances and he was subjected to an extensive cross-examination by the Province's legal counsel.

It'll be apparent, if you've had a chance to read the report, that the Province's representatives, both its counsel and the civil servants who were tasked with preparing the Province's submissions, worked very hard in vigorously advancing the Province's position about what compensation was appropriate for judges during the years in question.

On salary, for instance, the Province took the position that the two-year wage pause that it had successfully negotiated with many public sector unions should also be applied to judges, and in this regard the Province argued the salary increases of zero, zero, 2.9 per cent should be applied to whatever the salaries turned out to be in 2010. And I say whatever they turned out to be from 2010, because we don't yet know—they're presently unknown. As many of you will be aware, the association challenged the validity of the Legislature's response to the 2008 JCC recommendations, the decision to reject certain of those recommendations, including the salary recommendations for 2009 and 2010. And we went first before Mr. Justice Oliphant who found that the Legislature's reasons were not legitimate and that they were lacking in a factual foundation and he

ordered that the rejected recommendations be implemented. The Province appealed that decision and—on the recommended salaries and certain of the other issues, and we argued the case in December before the Court of Appeal and await their decision.

So right now the salary for 2010 is uncertain, and while we await the court's decision your task is to consider the recommendations from the 2011 JCC, and those relate to different years.

The committee produced a very lengthy and detailed report which was submitted in July, and I believe you have it before you. It's a unanimous report—I think that's tremendously significant. The independent members of the panel have been involved, all of them, in past JCCs. Mr. Schroeder, for instance, involved in every one back to 2001. All three were be—able to agree on a set of recommendations that they considered based on the relevant factors to represent appropriate compensation.

I want to turn our attention to just a couple of those recommendations, the first being salary. The recommended salary effective April 1st, 2011 was for \$218,000. That figure is below the average of judicial salaries in New Brunswick, Nova Scotia and Saskatchewan, and that's significant because our Provincial Court Act provides that if the figure recommended is less than or equal to the three-province average, then it's binding. So the average was two nineteen, two fourteen—\$219,214, so the recommendation for \$218,000 is binding.

I want to point out that in making that recommendation, the 2011 JCC departed from the pattern of what has been recommended by past JCCs about how Manitoba judges ought to be paid compared with their colleagues in other jurisdictions. And—want to be very clear, there was a very good reason for them to depart in these particular instances. The JCC explains—and this is on page 75 of the report, they say: Overall we believe that the Manitoba economy is performing well. However, we accept that the Province is dealing with a deficit that they wish to bring under control. They are committed to a policy of wage restraint and reducing the deficit.

And here's the key: "We have taken this into account in arriving at our recommendations."

When you review the report as a whole, you will see reference to the extensive arguments mounted by the Province about the fiscal difficulties it faces as a result of the 2011 flood, various other circumstances,

and it's also clear that the JCC carefully considered and, in fact, accepted those arguments in making its recommendations.

So, as I said, the 2011 figure recommended by the JCC is binding, but you must consider as part of the consideration today whether to accept the recommendations for the fiscal years 2012 and 2013. And for those years, the JCC recommended an increase equal to the increase in the average weekly earnings in the province of Manitoba over the preceding calendar year. According to Statistics Canada data, which I have reviewed, this means an increase of 2.77 per cent, effective April 1, 2012. The Stats Can figure for 2012 calendar year is not available yet, so we don't know precisely what increase would be effective April 1 of 2013.

In deciding to base the increase on average weekly earnings, of the percentage change in average weekly earnings, the JCC stated: We believe the proposal to adjust salaries based on increases in average weekly earnings is appropriate because it will protect against changes in the cost of living and reflect salary increases made by other Manitobans. It brings Manitoba into line with Nova Scotia, which is a close comparator.

That seems to me to be very consistent with this Legislature's stated concerns in the past that judges should be treated in a manner similar to other Manitobans, and its concern that particularly close attention should be paid to the—to judges in the three provinces, the three comparative provinces, which I've mentioned: Nova Scotia, New Brunswick and Saskatchewan.

A review of judges' salaries across the country puts the recommendations for Manitoba judges into perspective. There is some new information that's available since the report was issued, and so I want to draw that to your attention today—it's very important to consider that in coming to your decision—and that is contained in the handout, which I've provided, which is the spreadsheet showing each of the jurisdictions.

As you'll see there, the salaries payable to judges at this particular point in time are shown in red, the 2012 salaries, in most cases. But going back a year for a minute, to 2011, Manitoba judges are 10th out of the 13 jurisdictions across Canada. Only judges in Nova Scotia, New Brunswick and Newfoundland would be paid less than judges in Manitoba. That is very modest, and I think must be considered to reflect that Manitoba's economy is stronger than the

economies in Nova Scotia and New Brunswick and is more stable than the more comparatively volatile Newfoundland and Labrador.

In 2012, when you look across the jurisdictions, you'll see the same ranking is maintained. I've calculated at the bottom of the chart various averages, which are just helpful in terms of interpreting all of the information on this chart, and I'd note that the figure of 224 and 39 dollars, which is the increase that would be effective April 1st, 2012, is considerably lower than the provincial average, which we can say right now is \$234,739. It's also very close to what we know right now to be the three-province average, and that's the average again of Saskatchewan, Nova Scotia and New Brunswick. That average, right now, is \$222,964, and you'll see a note at the bottom of the chart that that is based on an outdated figure for New Brunswick, which hasn't yet had their JCC make recommendations for 2012.

So I trust that puts the salary recommendations into context, and the key thing, I think, to understand is that the JCC clearly accepted the Province's arguments about its fiscal realities and made its recommendations accordingly.

\*(13:20)

I'll turn briefly to a couple of the other recommendations. The first is improved benefits for retired judges. This is an issue that's been raised more than once and we were very pleased to see that there's now a recommendation from the JCC. Since April 1st, 2011, there have been five judges who have retired or will soon retire. This is of great significance to them and to the bench as a whole.

I'd like to talk now about the judicial indemnity policy. The parties worked very hard on this. Counsel for the Province and I, as counsel for the association, met, worked with our respective clients on discussing the concerns that each of us had about the policy that the association had proposed at the JCC. We were able to very substantially narrow the issues and only put a few of them to the JCC for recommendation, and it ultimately recommended the adoption of the policy proposed by the association that was appended to my letter of November 21st, 2011. That's referenced in the report and I just wanted to—because they hadn't actually appended the policy, that's the second handout that I've provided to you this afternoon.

The JCC recommended adoption of that policy with two very specific changes. The first being that a

clause be inserted that says explicitly that coverage wouldn't be available for personal matters. So, in other words, if it's a private personal matter for a judge, there'd be no obligation for the Province to fund a judge's legal fees. We don't take issue with that in any respect and, in fact, believe that was implicit in the draft I had prepared. The JCC also recommended that the dispute resolution mechanism should be extended to any dispute about choice of legal counsel, and we agree with that as well.

Since the parties worked together on this issue, I—we take the position that it's appropriate that those efforts and the specific additions recommended by the JCC be respected.

The other recommendations I want to discuss relate to the senior judge program and are very, very important and significant to the association. As you may be aware, the association and the chief judge have been working towards the establishment of a senior judge program for this court since at least 1999, allowing judges to—retired judges to sit as so-called senior judges gives the court much-needed flexibility. It also allows the court—generally, at the end of the day, the public as well—to continue to benefit from the expertise of long-serving judges who have accumulated invaluable experience during their time on the bench.

Throughout its efforts to establish and create such a program, the association consistently took the position that it's a constitutional requirement for the JCC—a JCC to consider what compensation is appropriate for judges who serve as senior judges. And, accordingly, when the program was instituted in September of 2011, the association approached this JCC and asked it to make recommendations of an appropriate compensation, which it has now done.

It has—I want to highlight the three significant points. The first is the per diem rate. The parties had disagreed about what senior judges should be paid for a day's work, the per diem. The independent panel found that the per diem rate of one over 218th, the salary of a full-time judge, was logical, fair and reasonable. The JCC determined that it properly took into account the number of working days for active judges by properly excluding weekends, statutory holidays and vacations. And, the JCC also noted that this method was used in six—at least six other jurisdictions that had considered the issue. We urge you to respect the JCC's recommendation on this point. The parties advanced their positions to the

JCC. They made their arguments and the recommendations should be respected.

The JCC also made recommendations with respect to making available, to senior judges, both professional allowance and educational allowance. The association did not make this request lightly and, in fact, has maintained for many years that these supports are necessary in order to have a successful program. This is about maintaining the high standard of excellence that exists within the Provincial Court, a standard for which all Manitobans, I think, should be proud. And this is about ensuring that senior judges have the resources to stay current in the law and that they have available to them the professional and educational resources that they require to do the job to the standard that the public properly expects. It's in the public interest and it's essential to the success of the program.

Because much of the detail development of the senior judges program is appropriately being done within the judicial branch of government, I want to be sure it is clear that I'm—that I communicate how I am advised that the court anticipates the program will operate, because I think this is important to the consideration of the recommendations on allowances. According to section 6.5 (1) of The Provincial Court Act, a judge may be designated a senior judge by the chief upon indicating his or her availability for the work. To date, there's been two judges who have been designated as senior judges.

I was told yesterday by the chief judge that, in light of the internal policy that's been developed by the court, the commitment that he is hoping to make to each senior judge is that he or she will sit at least 50 days a year. That's the minimum number of days, and, in fact, the court would like to be able to make a greater commitment to each senior judge, but the reality is that the number of days are restricted based on the funding that the program receives. It's also limited, of course, by the number of judges who are interested in participating, and that requires a number of people coming to that point of retirement. So based on the two judges who have been designated to date, the recommendation would mean a professional allowance fund right now of \$4,000–\$2,000 per judge—and an educational allowance fund of \$6,000 per judge—or \$6,000–\$3,000 per judge—excuse me. Those funds would be administered by the chief judge in consultation with the association, consistent with the policies that have been and will be created by the association and by the court as a whole.

Just as for active judges, any reimbursement of an expense incurred by a senior judge would be subject to approval of the chief judge. All requests are considered by the chief judge in consultation with those policies, so there's no entitlement to the allowances without approval, and I can assure you that the chief judge takes very seriously his responsibility to ensure that there's an appropriate expenditure of public funds. He takes it just as seriously as do the executive in the legislative branches of government.

I would say this also. The senior judge program is in its infancy, and it'll take some time to get all of the necessary supports in place to ensure a successful program. These recommendations are a critical part of that process, and, accordingly, it is important that they're implemented.

It's also critical that the senior judge program be the subject of continuous discussion between the judiciary and the other branches of government to ensure that the program achieves its purposes. An open dialogue between the judiciary and the other branches of government is not only constitutionally permissible, in my view, but is essential to ensure an effective program, and I emphasize the judiciary is absolutely prepared to engage in that and to work together to make sure that the program succeeds.

I don't propose to refer to any of the other recommendations unless there are specific questions about them, and in closing, I'd just like to make some general comments about the importance of the process. Any of you who had an opportunity to read Mr. Justice Oliphant's decision will be aware of his strong views about how important it is that the process be respected. Part of the case before Mr. Justice Oliphant related to the extent of the arguments and material advanced by the Province to the 2008 JCC itself, as compared with the material that was considered at this stage of the process. Clearly, the Province's representatives had read Justice Oliphant's words very carefully, because, in many respects, there was a different approach taken at the 2011 JCC. As I said at the outset, both parties put forward extensive submissions, and it's critical that the recommendations be respected, or all of that work is for naught. And I want to reiterate something I said when I appeared in 2009 when we were talking about the 2008 JCC.

\* (13:30)

At the end of the day, we're talking about 40 or 41 judges. Any variants to these recommendations is not going to impact the Province's bottom line. As such, there's a certain amount of symbolism at play here, and there's two types of symbolism that arise in this process. The first type is the independence of the judiciary and the significance of a constitutently mandated process. The second symbolism at play is the desire of government to send a message to groups with whom the Province engages in collective bargaining.

The very *raison d'être* of this committee, of the JCC process, is to depoliticize the process of setting judicial compensation. Now is not the time to look at the recommendations politically—that was done before the JCC itself. The government's position about the need for a two-year wage pause was advanced—vigorously advanced—and was considered by the JCC. The government's position about the fiscal realities was accepted by the JCC and is reflected in the recommendations. As such, we urge you to implement the recommendations in full. We need to see an effective process.

To the extent you have any questions or concerns about the process generally, or the recommendations themselves, I'd be pleased to try to deal with those. But, otherwise, on behalf of the association, I would like to thank the committee for the opportunity to speak here this afternoon on this important matter.

**Mr. Chairperson:** On behalf of the committee, thank you very much for your presentation, Ms. Dawes.

Are there any questions?

**Hon. Jon Gerrard (River Heights):** First of all, thank you for your report. Obviously—you've written a book here and you've obviously spent a lot of time in this.

Just one question in terms of the judicial requirements for ongoing education. Are there requirements that judges have continued education on an ongoing basis every year, and what are they?

**Ms. Dawes:** Absolutely there are, and the court, as a—as an entity, meets and establishes, as I understand it, essentially, an individualized education plan for each judge. Of course, when judges are newly appointed to the bench there is all kinds of education in terms of getting them up to speed on all that they need to know to perform their duties effectively. There's a training program in Québec that each new

judge attends. There are all sorts of educational opportunities available through the National Judicial Institute in which the Provincial Court judges participate. That's a federal–federally organized entity out of Ottawa that is essentially run by the federally appointed judges, but is available also as a resource to Provincial Court judges.

As I said, each judge has an educational program and it'll depend a lot—and I say it's individualized, because it'll depend a lot of what area of practice a judge was involved in prior to appointment on the bench and what they feel are their needs. But I can tell you each of them take that very, very seriously and engage in substantial judicial education throughout the year, whether it's through the National Judicial Institute or whether it's through the Federation of Law Societies. There are specific conferences related to criminal law that are run through that which have specific judge-related components to them as well.

**Mr. Gerrard:** Yes, you know, you mentioned the concern about the symbolism, all right, in terms of increasing compensation for judges relative to others. And, in that context, what's being proposed here, as I see it, is something like a 33 per cent increase in the professional allowance and a 40 per cent increase in the educational allowance. And I—you know, obviously there's probably some justification for this. There wasn't much detail in here and perhaps you could provide the rationale for, you know, these kinds of increases at a time when, you know, budgets are tight.

**Ms. Dawes:** I absolutely can, and I can assure you there are—there is a very solid rationale for the increases that were recommended.

In terms of professional allowance, the current amount of \$1,500 per annum, was recommended by the 2002 JCC, so it's been in place for over a decade and costs have increased since that time. And in the submissions that I compiled on behalf of the association, we provided specific examples of costs then and costs now on various of the items. Textbooks, for instance, copies of the Criminal Code, which are obviously essential tools for a Provincial Court judge. The costs have gone up substantially on all items over the last decade. This is very much a matter of a cost-of-living adjustment, almost, to this allowance.

Similarly, on the education allowance front, we looked at the cost of attending conferences. Many of the conferences are—take place in other cities in



Canada because they're attracting judges and lawyers from all over Canada in order to make it a good conference and hence rotate where they're held. The costs of travel, as we all know, have increased substantially since the educational allowance was created. We showed that through evidence at the JCC and that was the basis for the recommendation.

**Mr. Gerrard:** Just for people who are in the income category of the judges who we're talking about, for educational conferences, for some that may be a tax-deductible expense. Is that the case for judges or not?

**Ms. Dawes:** I don't believe it to be. I don't believe it to be a tax-deductible expense, and I—I'm virtually certain on that point, let me say. That was part of the thinking in seeking the allowance in the first place, but I could certainly confirm that and advise you.

**Mr. Gerrard:** Just in terms of the professional allowance that certain elements of that which are the professional association fees, would, I believe, be tax deductible. Is that correct?

**Ms. Dawes:** I'm not a tax expert by any means, but I—so I can't answer that. Certainly, I can tell you the bulk of the professional allowance is spent on things like textbooks, necessary resources for the workplace, including things like electronic, you know, computers or what have you that aren't provided through the general resources. *[interjection]* You're welcome.

**Mr. Chairperson:** Seeing no further questions, the committee once again thanks Ms. Dawes for her time with us this afternoon.

Now, moving forward with our agenda this afternoon, does the honourable minister wish to make any opening remarks today?

**Hon. Stan Struthers (Minister of Finance):** Yes, thank you, Mr. Chairperson.

**Mr. Chairperson:** Please proceed.

**Mr. Struthers:** First of all, I wish to thank Ms. Dawes for her presentation on behalf of the Provincial Judges Association. I also want to thank her for mentioning our hard-working civil servants who are here today. I'm even going to maybe embarrass them a little bit by introducing them to you: Lloyd Schreyer is the secretary of the compensation committee; Rick Stevenson, assistant deputy minister for labour relations; Cathy Schneider, compensation services officer; and Doug Cieszynski, director for negotiation services. I want to thank those individuals and the association, the

provincial judges association, for all the work they've done on the process to get us here today.

I'm pleased to provide some introductory comments on the Judicial Compensation Committee, the JCC report and recommendations. The JCC was established March 23rd, 2011, by Order-in-Council 92/2011, pursuant to the provisions of The Provincial Court Act. The JCC members were: Michael Werier, chair; Victor H. Schroeder, government appointee; and David Schrom, appointee of the Provincial Judges Association.

Hearings took place in August, 2011, and the JCC report and recommendations was provided to the Minister of Justice (Mr. Swan) on July 11th, 2012. Following a request for clarification of the July 11, 2012, report, the JCC provided clarification on July 31st, 2012, and reissued and amended July 11, 2012, report and recommendations.

\* (13:40)

On December 4th, 2012, the report and recommendations was tabled in the Legislature and then referred to the Standing Committee on Legislative Affairs for consideration. The report contains recommendations regarding compensation and benefits for Provincial Court judges. The report has been shared with each member of the standing committee. Ms. Susan Dawes, legal counsel and representative of the Provincial Judges Association, registered with the office of the Clerk for the purpose of expressing the opinion and observations of the Provincial Judges Association as they relate to the JCC report and recommendations. Our purpose for today's meeting is to hear the presentation from the Provincial Judges Association and to seek input from the members of the standing committee on the report and recommendations of the JCC.

The report recommends salary increases for judges and masters as follows: 2.9 per cent increase, effective April 1, 2011, to \$218,000. Effective April 1, 2012, a per cent increase based on the annual percentage change in the average weekly earnings—the AWE—for Manitoba in the preceding calendar year, i.e., calendar year 2011. As an update to this recommendation, the AWE for calendar year 2011 was 2.8 per cent, which would result in an increase effective April 1, 2012, to \$224,104.

Effective April 1, 2013, a per cent increase based on the annual per cent change in the AWE for

Manitoba in the preceding calendar year, i.e., calendar year 2012. Note the AWE for calendar 2012 in Manitoba is not known to the standing committee.

The report recommends salary increases for associate chief judges and the senior master to be based on maintaining a 5 per cent differential between the associate chief judge and the senior master salary and the recommended salary of a puisne judge. The effect of this recommendation is a 2.9 per cent increase effective April 1, 2011, to \$228,900; a 2.8 per cent increase effective April 1, 2012, to \$235,309. Effective April 1, 2013, a do-be-to-be-determined per cent increase based on maintaining a 5 per cent differential between the associate chief judge and the senior master salary and the recommended salary of a puisne judge as determined by the AWE in 2012.

The report recommends salary increases for the chief judge to be based on maintaining an 8 per cent differential between the chief judge salary and the recommended salary of a puisne judge. The effect of this recommendation is a 2.9 per cent increase effective April 1, 2011, to \$235,440; a 2.8 per cent increase effective April 1, 2012, to \$242,032; effective April 1, 2013, a to-be-determined per cent increase based on maintaining an 8 per cent differential between the chief judge salary and the recommended salary of a puisne judge.

The Provincial Court Act provides if salaries recommended by the JCC are equal or to or less than the designated three-province average, i.e., the average of New Brunswick, Nova Scotia and Saskatchewan, the recommendations are automatically binding on the government and the judges. However, if the salaries recommended are above the three-province average, the recommended salaries can be considered by the standing committee or the Legislative Assembly.

The April 1, 2011 salaries recommended by this JCC are less than the designated average and as such are binding on the government and the judges and are in the process of being implemented. The subsequent April 1, 2012 and April 1, 2013 salaries recommended by this JCC exceed the April 1, 2011 designated average and are therefore not binding on the government and judges.

The JCC report also recommends enhancements to judges' compensation and benefits in the following areas:

Northern living allowance, effective April 1, 2011: a 5 per cent northern living allowance for judges living in Thompson and The Pas.

Professional allowances, effective April 1, 2011: increase the annual professional allowance from \$1,500 to \$2,000.

Educational allowance: Effective April 1, 2011 increase the annual education allowance from \$2,500 to \$3,000.

Judicial indemnity policy: Effective the date of implementation create a judicial indemnity policy.

Legal and other fee reimbursement recommendation: The JCC recommends the Province pay 75 per cent of the judges' judicial compensation committee costs to a maximum of \$40,000. And the JCC recommends the Province pay in addition to the judges' legal costs 100 per cent of the judges' disbursement costs and fees to a maximum of \$20,000. These reimbursement recommendations are consistent with the cost recommendations of the previous JCC, JCC No. 7.

Parking: The JCC recommends that judges be charged for parking at the same rates in the same manner as provincial employees, including adjustments from time to time without being subject to any requirement to refer future parking adjustments to subsequent JCCs.

Life insurance: The JCC recommends that effective the first pay period following the date of implementation of this recommendation judges should participate in the same life insurance plan and coverage available to public servants, including access to the same dependents' life policy. Judges are to pay the same premium for life insurance as civil servants effective April 1, 2011 and receive any overpayment in premiums retroactive to April 1, 2011 plus interest. Any future changes to the plan do not have to be referred to future JCCs.

Maternity and parental leave recommendation: The JCC recommends that a judge taking maternity and/or parental leave, whether paid or unpaid, is to make the same contributions as they normally would as an active judge, and the Province will continue to make payments based on what it normally pays for an active judge. This recommendation is confirmation of the recommendation made by JCC No. 7 with an effective date of April 1, 2008. The JCC report also recommends enhancements to the senior judges' program, including compensation

and the creation of benefits for all judges who retire on or after April 1, 2011 in the following areas:

**Retired judges benefit recommendation:** This recommendation does not involve any cost to the Province. All judges who retire on or after April 1, 2011 shall be entitled to the same benefits as judges who are not retired. The retired judges shall pay the cost of premiums determined to be payable by the Province's insurer 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 Provincial Court Act dictates that section 11.1(16), the factors to be considered by the JCC in making its report and recommendations: this standing committee must also consider the report and recommendations in recognition of those factors.

Referring back to the section where I talked about northern living allowance and professional allowances, education allowance, judicial indemnity and others, I inadvertently skipped over the interest recommendation. The report recommends interest be paid retroactive to April 1, 2011 on any salary increase that is implemented.

Mr. Chairperson, this concludes my opening statements to the standing committee and I invite members of the standing committee for their input into the JCC report and recommendations, and, again, I thank Ms. Dawes for her presentation on behalf of the Provincial Judges Association.

\* (13:50)

**Mr. Chairperson:** We thank the honourable minister for those opening remarks.

Does the official opposition critic have an opening statement?

Seeing none—I've been made aware that the committee may choose at this point in time, to rise for the day. Here's our other key participant, just to—honourable minister. *[interjection]* Would the official opposition critic like to say a few words? Please, feel free.

**Mr. Reg Helwer (Brandon West):** Thank you to the committee and to Ms. Dawes for her presentation, very detailed.

And I understand that—her feelings that the recommendations of the JCC are not to be taken lightly, and I'm sure the concern of taking the government to court was not taken lightly either. So if the JCC does indeed have value and we need to use it, then we should proceed with it. If there's no value in the process, I don't believe that either party sees that there is no value, so don't waste the JCC's time and talent if there's no value. But certainly there is probably value in the process there.

So thank you to Ms. Dawes for her presentation.

**Mr. Chairperson:** We thank the official opposition critic for those remarks.

**Mr. Struthers:** I would request that the standing committee adjourn to further consider the report and recommendations of the JCC and today's presentation from the Provincial Judges Association and consider the input of members opposite on this standing committee as well.

**Mr. Chairperson:** Just a quick clarification. Is that a formal motion, minister, or is that just requesting of the committee that we proceed in that manner?

**Mr. Struthers:** If you need a motion, I can certainly provide that.

**Mr. Chairperson:** If the committee is comfortable with just moving forward in the absence of a formal motion, that is fine as well. I was just asking which way we wanted to go.

Okay, so it is the will of the committee that, at the call of the House leaders, this committee will re-adjourn to consider the matters that have been raised here today. That's agreed? *[Agreed]* Very good. Thank you very much.

The hour being 1:52 in the afternoon, committee rise.

**COMMITTEE ROSE AT: 1:52 p.m.**

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