

Third Session - Thirty-Ninth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mr. Tom Nevakshonoff
Constituency of Interlake

Vol. LXI No. 9 - 6 p.m., Monday, October 26, 2009

ISSN 1708-668X

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Ninth Legislature

Member	Constituency	Political Affiliation
ALLAN, Nancy, Hon.	St. Vital	N.D.P.
ALTEMEYER, Rob	Wolseley	N.D.P.
ASHTON, Steve	Thompson	N.D.P.
BJORNSON, Peter, Hon.	Gimli	N.D.P.
BLADY, Sharon	Kirkfield Park	N.D.P.
BLAIKIE, Bill, Hon.	Elmwood	N.D.P.
BOROTSIK, Rick	Brandon West	P.C.
BRAUN, Erna	Rossmere	N.D.P.
BRICK, Marilyn	St. Norbert	N.D.P.
BRIESE, Stuart	Ste. Rose	P.C.
CALDWELL, Drew	Brandon East	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
CULLEN, Cliff	Turtle Mountain	P.C.
DERKACH, Leonard	Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
EICHLER, Ralph	Lakeside	P.C.
FAURSCHOU, David	Portage la Prairie	P.C.
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin	Steinbach	P.C.
GRAYDON, Cliff	Emerson	P.C.
HAWRANIK, Gerald	Lac du Bonnet	P.C.
HICKES, George, Hon.	Point Douglas	N.D.P.
HOWARD, Jennifer	Fort Rouge	N.D.P.
IRVIN-ROSS, Kerri, Hon.	Fort Garry	N.D.P.
JENNISSSEN, Gerard	Flin Flon	N.D.P.
JHA, Bidhu	Radisson	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LAMOUREUX, Kevin	Inkster	Lib.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
MACKINTOSH, Gord, Hon.	St. Johns	N.D.P.
MAGUIRE, Larry	Arthur-Virden	P.C.
MARCELINO, Flor	Wellington	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McFADYEN, Hugh	Fort Whyte	P.C.
McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
MELNICK, Christine, Hon.	Riel	N.D.P.
MITCHELSON, Bonnie	River East	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
OSWALD, Theresa, Hon.	Seine River	N.D.P.
PEDERSEN, Blaine	Carman	P.C.
REID, Daryl	Transcona	N.D.P.
ROBINSON, Eric, Hon.	Rupertsland	N.D.P.
RONDEAU, Jim, Hon.	Assiniboia	N.D.P.
ROWAT, Leanne	Minnedosa	P.C.
SARAN, Mohinder	The Maples	N.D.P.
SCHULER, Ron	Springfield	P.C.
SELBY, Erin	Southdale	N.D.P.
SELINGER, Greg, Hon.	St. Boniface	N.D.P.
STEFANSON, Heather	Tuxedo	P.C.
STRUTHERS, Stan, Hon.	Dauphin-Roblin	N.D.P.
SWAN, Andrew, Hon.	Minto	N.D.P.
TAILLIEU, Mavis	Morris	P.C.
WHITEHEAD, Frank	The Pas	N.D.P.
WOWCHUK, Rosann, Hon.	Swan River	N.D.P.
<i>Vacant</i>	Concordia	

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Monday, October 26, 2009

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Tom Nevakshonoff
(Interlake)

VICE-CHAIRPERSON – Ms. Bonnie Korzeniowski
(St. James)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Mr. Chomiak, Hon. Ms. Wowchuk

*Ms. Brick, Messrs. Dewar, Faurschou, Goertzen,
 Graydon, Ms. Korzeniowski, Messrs.
 Martindale, Nevakshonoff, Pedersen*

WITNESSES:

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

MATTERS UNDER CONSIDERATION:

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

* * *

Clerk Assistant (Ms. Monique Grenier): Good evening. 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?

Ms. Marilyn Brick (St. Norbert): I nominate Mr. Nevakshonoff.

Clerk Assistant: Mr. Nevakshonoff has been nominated. Are there any other nominations? Hearing no other nominations, Mr. Nevakshonoff, will you please take the Chair.

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

Ms. Brick: I nominate Ms. Korzeniowski.

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

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

This meeting has been called to consider the Report and Recommendations of the Judicial Compensation Committee, dated June 25th, 2009.

Before we get started, are there any suggestions as to how long we should sit this evening?

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

Mr. Chairperson: Agreed? *[Agreed]* We'll sit till the work of the committee is done.

I would like to remind the committee that a motion from a member of the committee will be required in order to adopt or reject some or all of the recommendations in the report.

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

Does the committee agree to hear this presentation? *[Agreed]*

Does the committee wish to hear the presentation before or after opening statements?

An Honourable Member: Before.

Mr. Chairperson: Before. Okay.

I will now call on Ms. Dawes to make her presentation. I see you have some written materials for the committee. Our staff will distribute them. You may begin when ready.

Ms. Susan Dawes (Provincial Judges' Association of Manitoba): Thank you very much and good evening. I am Susan Dawes of the law firm Myers Weinberg, and I am appearing here tonight in my capacity as counsel for the Manitoba Provincial Judges' Association.

You have before you for consideration the Report and Recommendations of the seventh Judicial Compensation Committee, or JCC, in Manitoba, and the recommendations of the tribunal affect the fiscal years 2008, 2009 and 2010.

As many of you may be aware, this 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.

It's been recognized that because public funds are involved, it's, to some extent, inherently a political exercise. The solution was, therefore, to create a sieve, a filter, which removes the politics, and, accordingly, an independent, effective and objective tribunal must make recommendations to this Legislature about what constitutes appropriate compensation for judges, and the Legislature must then consider the JCC's report and recommendations and may choose to implement or vary them, and if the decision is to vary them, the Legislature must provide legitimate reasons for so doing which are based upon a reasonable, factual foundation.

Now, The Provincial Court Act sets out the process in Manitoba. It requires a three-person tribunal, a nominee from each of the association and the Province, a chairperson agreed upon by the parties, or, in this case, appointed by the dean of the law school. Now, the committee heard extensive submissions. Both parties provided lengthy written briefs as well as oral submissions and a hearing before the committee. The Manitoba Bar Association also made a presentation to the committee. The hearings took place in August of 2008 and that had some significance, because, of course, the events of the fall of September—sorry, the fall of 2008 took us into a bit of economic turmoil, and, in light of those circumstances, the committee asked the parties to return and make submissions on how these changed economic events affected their previous submissions before the tribunal.

So the committee received further written briefs from each of the Province and the association in December 2008, and, as part of its brief, the association included a second expert report from the economist it had hired to assist with its submissions, and the committee produced a lengthy and detailed report which you have before you dated June 9th, 2009. Unfortunately, it's not a unanimous report, and the government's nominee, Mr. Schroeder, wrote a dissent. The association's nominee, Mr. Shrom, wrote an addendum which explained his reasons for agreeing with the chair of the committee, Mr. MacArthur.

The JCC's report, and by that I mean the majority report, made a number of recommendations

for improvements to compensation, and I wanna focus on a few, in particular, tonight. The first is salary. Now, the 2007 salary is 178,230 and the recommendations are for the salary to be 192,166 effective April 1, 2008; 201,774 on April 1st, 2009; and 211,862 on April 1st, 2010.

The committee provided lengthy reasons for each of its recommendations, including salary, and the report reviews in some detail each of the six factors that the committee is required to consider by virtue of The Provincial Court Act. Successive JCCs have, in fact, reviewed these factors and have concluded that compensation for Manitoba judges should be at or near the midpoint of compensation in other jurisdictions. The majority of this JCC agreed with those past tribunals and indicated that, but for the economic circumstances that began in September 2008, it would have recommended a figure which would have put compensation for Manitoba judges at or near the midpoint of compensation in other jurisdictions. Given the circumstances, though, it decided it could not make that recommendation. It wouldn't recommend a figure at or near the midpoint and instead it recommended a figure that was equal to the average of the salaries in New Brunswick, Nova Scotia and Saskatchewan, and 5 percent increases in each of the years following. So the first year is equal to this average, 5 percent increases thereafter.

In its report, the committee discusses the expert evidence it received about the economic situation faced by the Province and the broader world community and declared that notwithstanding that Manitoba was fairing relatively well, it said this is a time for prudence, provincial judges are part of the Manitoba community. The results are—and I'll get to why in a moment—but the results are that the legislation—under the legislation, The Provincial Court Act, the salary recommended for 2008 is binding, and, as I said, I'll get to that in a moment, but I want to note that only the salary recommendations for 2009 and 2010 are before you for consideration.

* (18:10)

The committee expressed a number of reasons for taking the approach that it did, that is, this lower recommendation that it would've otherwise given in the first year and 5 percent thereafter. The committee was concerned about Manitoba judges falling behind their counterparts in other jurisdictions. It recognized that figures for 2008 were yet to be determined in

New Brunswick and that significant increases would be given in 2009 and 2010 in both Nova Scotia and Saskatchewan, and the committee very specifically addressed the fact that increases it was recommending were likely to be greater than that—than those received by many Manitobans over the next three years. And despite that knowledge, and after considering all of the factors that are specifically required to be considered by virtue of the legislation, the committee made the recommendations it did for April 1, '09, and April 1, 2010.

It's apparent from reading the report that the recommendations were tempered very significantly in light of the economic situation and the recommendations can fairly be said to be extremely modest and revealing of the unique circumstances under which this committee was deliberating.

A review of the salaries across the country puts the salaries for Manitoba judges into context, and there's some new information since the report was issued, so I want to draw that to your attention. I have provided you with a two-page handout which shows where Manitoba judges fall in relation to their counterparts in other jurisdictions, and it also shows where the JCC recommendations that you are considering would place Manitoba judges relative to other judges.

For 2007, you can see—on the first page of my handout you can see that Manitoba judges received a salary which is second to lowest across the country. Only Newfoundland provides a salary which is lower than that provided in Manitoba. The Manitoba salary in 2007 was almost \$8,000 behind what was paid in New Brunswick.

Now, at the time that the JCC report was submitted, this New Brunswick salary was subject to litigation before that province's Court of Appeal and the association had challenged the government's refusal to implement the recommendations of the tribunal in that province. The government had, in fact, implemented the recommendations of its nominee on the panel, the minority report, instead of the majority recommendation which was for this 186,000. And the Court of Appeal issued its decision in September of '09 and ordered that the recommendations in the majority report be implemented and, thus, the figure of 186,000, effective April 1st, 2007. The New Brunswick government has advised it will not appeal that decision and a new JCC is under way there to make recommendations for 2008 and following.

So moving now to 2008, the binding recommendation of this—of the JCC for that year will put Manitoba judges, again, second lowest in the country compared with jurisdictions for which a figure has been determined. And, again, New Brunswick has not yet determined a figure for 2008.

For 2009, the recommended figure of 201,774 would put Manitoba judges about \$20,000 behind most of their counterparts for which a figure has been established, with the exception of Nova Scotia which is roughly a comparable figure.

The figure recommended for 2010 continues to put Manitoba judges far behind their counterparts.

I want to talk for a moment about the concept of designated average because I've referred to the fact that the 2008 salary is binding, and this term comes from The Provincial Court Act. The act requires that the committee calculate and certify what is the average of the salaries in New Brunswick, Nova Scotia and Saskatchewan in the first year of the committee's mandate. So they look at what's being paid April 1st, '08, and certify the designated average. A separate average is calculated for puisne judges, for associate chief judges and for chief judges.

It's apparent from the act that these are the provinces that the Legislature views as being the most appropriate comparative provinces for Manitoba, and past JCCs have certainly agreed with that as well. And, in fact, as early as the first JCC report in the 1990s, the Baizley committee referred to the three-province average as the minimum of what would be an appropriate salary for Manitoba judges.

The designated average has significance, though, in the act because if the salary recommended by the tribunal is equal to or less than that salary, then it's binding and it needn't be considered or referred to this committee. In our case, given the particular economic circumstances under which the committee was deliberating, the committee chose to recommend a figure for April 1st, '08, which is equal to that designated average.

Now, I said, was equal to the designated average, for a good reason, and at the time the report was issued, of course, the designated average was the figure they recommended, 192,166. This was based on using the outdated figure, the unconstitutional figure from New Brunswick, the 174,000 figure rather than that which was ordered to be

implemented by virtue of the court of appeal decision. Thus, the three-province average has risen for 2008 to 195,851. So, accordingly, the recommendation made for 2008 is about \$3,600 less than the three-province average.

I would note also that once New Brunswick establishes a figure for 2008 through its current JCC process which will do that, this three-province average for that year will rise again and we will be further behind. So the committee was quite rightly concerned about Manitoba judges falling behind with respect to their counterparts, and even if the recommendations are implemented in their entirety, Manitoba judges would fall behind significantly from where successive JCCs have found that their compensation should be.

Indeed, even if you consider that these three provinces, New Brunswick, Nova Scotia and Saskatchewan form the most relevant comparators, a position which the Province and its nominee traditionally take before the JCC, the second page of my handout shows where the recommendations put Manitoba judges, and they'll be falling significantly behind.

I've been advised that there's consideration being given to varying the recommendations in this report for 2009 and 2010 quite significantly, and just before the meeting commenced, I was advised of the numbers that are being considered. We do not know the rationale for the variance. We can't assess at this point if and how that rationale relates to the reasons given by the committee in making its recommendation, but I want to just refer again to page 2 of this handout.

Given the structure of the legislation and the repeated reference by each JCC and the province again and again that these three provinces are the most relevant comparator provinces, it seems to me that any variance which puts Manitoba judges below what is the actual average in these three provinces is unreasonable. I look forward to reviewing the rationale that is offered for departing from the recommendations of the JCC.

It's clear when we're talking about 40 or 41 judges, if the vacancy that exists right now is filled, that any variance is going to have virtually no impact on the Province's bottom line. Accordingly, a decision to vary these recommendations is largely symbolic. Well, I say to you, there's two types of symbolism at play here. There's—the first is the independence of the judiciary and the significance of

this constitutionally mandated process. The second is the desire of a government to protect its position with groups with whom it's engaging or about to engage in collective bargaining. The latter part is illusory. JCCs have repeatedly said that civil service salaries are not appropriate comparators for judicial salaries, and the facts are that compensation for judges has never affected what has been agreed to by government in collective bargaining. So the link is simply not there.

If this committee wishes and intends to vary these recommendations and thereby risk the integrity of the process, I think it should tread very carefully in so doing. As I said at the outset, the very *raison d'être* of this judicial compensation committee is to depoliticize the process of setting judicial compensation. The committee took its task very, very seriously and has given the Legislature a substantial, well-reasoned report to consider. We hope that the committee respects the report and the process by very carefully considering the recommendations contained therein.

* (18:20)

I want to briefly refer to one other recommendation, and that's the recommendation concerning interest. I understand there's consideration being given to not implementing this recommendation. I want to point out today that we are halfway through the mandate that was considered by this committee. We're in October of 2009; the three-year mandate started in April of '08. Accordingly, by the time any increases are actually effective and implemented, it's likely to be about two-thirds of the way through the mandate, and so a large portion of it is dealt with retroactively.

Provincial judges have no option at all but to participate in this constitutionally mandated process. They continue to work every day for the citizens of this province for compensation considered appropriate in 2007 while they await implementation of the report—and this Legislature has chosen to craft into its act one of the longest processes for implementing a JCC report of anywhere in the country.

So the recommendation for interest is simply a recognition of the unfairness of this degree of retroactivity. Quite simply, judges don't have the use of this money in the two years they have to wait for the compensation to be determined, and in the circumstances the committee had good reasons and

expressed those in its report for making the recommendation it did about the payment of interest.

I want to conclude by reiterating the grave concern of the association about the fact that the work and the recommendations of this JCC should be respected. As some of you will know, the history of this process in Manitoba has been a difficult one. There was litigation that ended up before the Supreme Court of Canada in 1997. There was another case in 2001 that went to the Court of Queen's Bench. Following that, the association was encouraged by the implementation, without variance, of three successive JCC reports. It was cautiously optimistic that we had moved away from this acrimonious history.

One must appreciate that it's not always the case that the association agrees with the recommendations that are made by a JCC. Regardless of that though, the association has repeatedly sought to ensure that the process is respected. It firmly believes that the depoliticizing—depoliticizing the setting of judicial compensation is essential to the proper functioning of the relationship between the judiciary and the other branches of government. In this particular case, the recommendations have to be viewed as very modest and reflective of the unique circumstances confronting this JCC. And, quite apart from the specifics of the recommendations, it's absolutely critical that the process be respected.

So that concludes my presentation. I am more than happy to answer any questions that you may have, and I thank you for the opportunity to speak here this evening about this important issue.

Mr. Chairperson: Thank you, Ms. Dawes.

Are there any questions?

Mr. Goertzen: Thank you, Ms. Dawes, for your presentation, for coming tonight, and for your work in preparation of the report. I have a few questions.

One is in relation to a comment that Mr. Schroeder made in his dissenting report. Early on in his dissenting report, page 2, he speaks to the issue of, the act outlined six factors that need to be considered by the JCC, and yet he's concerned that this JCC and previous ones have moved to a more rigid, formulaic approach of simply pegging the compensation at the average—the national average of judges and then placing it in the middle—which in his mind, I don't want to put words in his mouth, but I think he outlines that that is in variance with what

the act suggests, where these six factors have to be put into play.

So how do you square the concern that it's moving simply to a formulaic approach of let's find out what the national average is and take the middle ground as apposed to the act which says it should be an interplay of six various factors?

Ms. Dawes: I think that's a very interesting question you've asked, and I would begin by a comment—begin to respond to it by a comment on the dissent itself.

While Mr. Schroeder criticizes the majority for relying on simply a formulaic approach, which I'll rebut in a moment, I think he does so himself by looking at where the economic situation of the Province is relative to other provinces, and pegging the compensation for Manitoba judges accordingly. And so I think he commits the same error he's alleging of the majority. Now, that said, I don't think that the majority has taken a formulaic approach whatsoever. It went through a very, very detailed review of the various factors, and I'll just take a moment to go through those, perhaps.

The first is judicial independence and the importance of maintaining the independence of the judiciary, and I just wanna deal with them in order so I'll just turn to the index here to assist me. The second is the need to attract and retain excellent applicants to the judiciary and the statistics with respect to recruitment retention, resignation and the retirement of provincial judges.

Now, there was evidence before the committee about the numbers of applicants, the numbers of people leaving the bench. We had noted the fact that in over the last several years there had been 10 judges leaving the bench for various reasons, and I think the committee engaged in a very critical and careful analysis of that factor and concluded that, well, while there was an issue about retention in its view, the evidence was not sufficient at this time to indicate there was a problem attracting candidates. It went on to hear extensive evidence—the most extensive that has ever been submitted to a JCC before—on the state of the economy, and that, of course, was warranted given the circumstances we faced in the fall of '08 and hence we brought forward these additional submissions.

There was expert evidence on where Manitoba fell in relation to the other provinces. The expert for the association testified at length about how he felt

that New Brunswick, Nova Scotia and Saskatchewan were the most appropriate comparator bundle for Manitoba. He sort of reiterated what obviously the legislators have felt in crafting this legislation, and he said, well, you know, I think the—based on his analysis of the relative economies, Manitoba's economy fell somewhere behind Saskatchewan and definitely ahead of New Brunswick. That's sort of the overall economic evidence.

There's also a principle that has to be considered by virtue of the act, which is that public resources must be managed efficiently and effectively in the context of the Province's current financial position. I think the majority gave great weight to that in this report. They said, you know, gotta be a member—provincial judges are a member of the Manitoba community and notwithstanding these other factors, we have to consider the position of Manitobans and the importance of the government managing its budget, et cetera. It also considers cost of living and it considers the manner in which the compensation package paid to provincial judges in Manitoba compares to judicial compensation packages in other jurisdictions in Canada, having regard to the differences between the jurisdictions. That's what the factor says in the legislation.

So, much evidence was before the tribunal about the salaries in the various jurisdictions, and, indeed, other aspects of compensation as well. So having considered very carefully all of those—all of those factors, none is determinative of where provincial judges should stand. The economy, when we look at all the various aspects, different factors, you know, housing prices, cost of living, all these different—GDP—various factors that economists use to look at the health of an economy, Manitoba fell somewhere in the middle. Some factors—in respect of some factors, Manitoba leads the pack; in respect of other factors, it's closer to the end of the pack—overall, somewhere in the middle.

* (18:30)

So, in reviewing all of the factors, successive JCCs, including this majority report, has said Manitoba judges should fall somewhere in the mix of their counterparts, near or at the midpoint of their counterparts, because the economy warrants that, the various factors warrant that and the recognition of judicial independence warrants that.

So to say that they took a purely formulaic approach, I think, is simply wrong, because the

recommendation they made is actually nowhere near that formulaic midpoint. The association had made a proposal that—of 205,000 for April 1st, 2008, which was slightly lower than the actual provincial average at that time, based on the information we had at that time, knowing that that average might, in fact, become higher, based on newer information and, as I've put before you today, it in fact has risen. In the end, the committee said, in light of all of these various factors, the economy being a big one this time, we're gonna recommend much lower than that, and that's what they did, and I think there's simply no basis to say that it took a formulaic approach.

Mr. Goertzen: Thank you for that response. You touched, in that answer, about the issue of the loss of judges from the Provincial Court. And I know in the report, it indicated that there wasn't sort of conclusive evidence as to the reason why some of the judges were leaving. I can't remember the statistics—I could probably try to fish them out—but the majority, I think, were getting appointed to a federal court. And so maybe some of that was a salary issue because of the disparity there. Maybe some of it was just a natural progression in one's occupation.

But in terms of consequences, I mean, the argument, that the salaries should go up in line with either the three provinces or the national average, can be rooted, I guess, simply in equity and in just having it equal across—or close to equal—across the country, but what consequences are there to not doing so? 'Cause it seemed to me that there was statistics given that there was an ample amount of applications or those who wanted their name considered for a judgeship appointment, even though knowing that the salary might be lower than what would be obtained in other provinces or maybe lower than what would be obtained in a private practice. So, I mean I think it's a question of what consequences come from not being pegged—wouldn't be the word you'd use, I know from your previous explanation—but not being at the national average.

Ms. Dawes: I just want to respond, Mr. Goertzen, to one of the comments you made in passing in asking your question. You said perhaps it's a natural career progression or some such words that you are—I take it from what you were saying, you're suggesting it's sort of a promotion to go to the Court of Queen's Bench from the Provincial Court, and I would just say that—and I don't know that—if you intended to make that inference, but we reject that categorically, and I just want to emphasize that.

The—one of the papers that I relied on as part of my submission before this Judicial Compensation Committee talked about the fact that this concept, that there is a hierarchy of courts, is a very outdated concept, and that in fact the Provincial Court has a unique role to play in our judicial system, as does the Court of Queen's Bench and the Court of Appeal, and that it's not that it's a promotion to go from one court to another.

That said, you're quite right, that the vast majority of people that were lost from the provincial bench were appointed to the Court of Queen's Bench, and let me tell you, while I couldn't find someone who would come forth and testify that, yes, it was the money that made me apply, I can't imagine that an \$80,000 raise wouldn't attract people to the other bench, even if you're going to be dealing with different subject matter.

So, I think—and one of the arguments we make, simply, and you've hit on it with your point about equity, is that it's difficult for there to be equal dignity between the two courts, which are exercising different, but, in my view, equal jurisdiction, if the salary differential is so great. And there's comment in the report about some of the reasons why Court of Queen's Bench's judges have their salaries set in the way that it is set, but I think that too great a difference simply presents an unfairness.

So you've said, what are the consequences of not going with a salary which is at or near the midpoint? Well, I—you know, I think you're gonna see that the court becomes less attractive. We have difficulty demonstrating the attractiveness of the court because of the fact that the applications for appointment are secret, and the deliberations of the committee that appoints judges are secret. We don't know the identity of the applicants, and the statistics that we get are grouped by application process. We know that, anecdotally, some people apply year after year after year for appointment. I suspect, and have pointed out to the committee in the past, that of course, many of the numbers that they're seeing are fairly large or, in fact, repeat applicants, which may well have been considered unsuitable for the bench and hence haven't been appointed to date.

So I think you're gonna see it become a less attractive thing. I think you're going to see decrease in morale on the bench. I think you're gonna see more people leaving the bench, and I think—I think it's a matter of dignity. And I think the fact is that the entire purpose of setting up this process to have an

independent tribunal review these various factors—this tribunal has done an excellent job in so doing—they've decided—they've determined what, in their view, is appropriate compensation. So, to simply set a figure that's less than that for reasons which I don't think—well, I have yet to review the reasons, but I think that there's some difficulty in establishing what the basis for failing to implement these recommendations might be.

Mr. Goertzen: I have a question and a comment regarding sort of a hierarchy, not a hierarchy of courts, but a natural progression, perhaps, for those who either assume the bench or look to assume the bench. I think you've probably done some good work in demonstrating the importance of the Provincial Court and dealing with the vast majority of criminal cases—in particular, it's been referred to as the people's court—and many other good reasons why the Provincial Court is important.

I do think, among those who aspire to maybe take the bench, that there still is some of that feeling. In talking to some who are much closer to that position than I would be, that perception still exists, is they might look at their own sort of path. So, I know it's difficult to analyze and study why people might leave the Provincial Court and go to another Court of Queen's Bench or a Court of Appeal appointment, just by nature of the occupation, but it is something that that perception, to some extent, whether it's valid or not, I think still has some resonance.

You made the point about the integrity of the process, and I just wanted to get you to clarify that a bit. I understand from the JCC's perspective that the majority, apart from the dissenting report, has a certain perspective or a certain view of how this should proceed, but the process is outlined in The Provincial Court Act, and it does allow this committee to take portions of the report and to reject others. And, in reading the case law through the report, it was Chief Justice Lamer, and I can't remember if it was regarding the work reduction court case, but he specifically indicated that, you know, yes, there was—this was a valid process, but there were some shortcomings, and one of the things that needed to be done was an explanation by the government as to why it would be rejecting reports and that that would fill some of the gap.

And so it seems to me that, as this has evolved, and it's changed over the years, but combined with the legislation and the case law, that this is seen as a

valid process. So I'm not sure why a potential—and I don't want to—you may know more about what's coming than I do, but a potential rejection of the recommendation by the committee or by government, why that would invalidate the process when the process specifically allows for that to happen.

* (18:40)

Ms. Dawes: I agree with you that the process allows that to happen, but it allows it to happen in the specific circumstance. According to that case, like running to the Supreme Court of Canada in a case that was—came out in 2005, referred to as *Bodner*, a government which wishes to refuse to implement the recommendations of a JCC must provide legitimate reasons for departing from the recommendations. Those reasons must be based on a reasonable, factual foundation. You can't say simply, for instance, I don't feel like it today. You gotta respond to the report, right, and so while it's very much part of the process that these are recommendations to be considered and ultimately voted on in the Legislature, my point about the integrity of the process is that the report of the JCC must be respected.

As I've said in my presentation, there was extensive work and evidence and such put before the committee, and, you know, the government routinely makes arguments about, you know, the impact on its bargaining position with the civil service on the various sort of ripple-effect arguments it makes routinely, and those have been rejected by the JCC, by successive JCCs, and the evidence is, simply, there hasn't been an effect on the bargaining with other groups and hence, my point is, if the decision is to vary the recommendations, I'm highlighting the necessity of responding to the rationale in the report, to the reasoning of the report and providing legitimate reasons for departing.

Mr. David Faurshou (Portage la Prairie): Ms. Dawes, I appreciate your presentation this evening. It's obvious to the committee and to myself especially that there is extensive background research into a number of different areas.

One that you mentioned was that the actual process of the Judicial Compensation Committee here in Manitoba is one that is the most cumbersome and time consuming. Could you perhaps enlighten the committee with your knowledge? What would be the model that this Province should perhaps consider to address those concerns which you mentioned?

Ms. Dawes: In terms of the model I'd like to see adopted, of course, I'd like to see the recommendations be binding and immediately implemented upon issuance of the report. That would be my preferred model above all. That model exists, in fact, in a number of jurisdictions, including Nova Scotia, and I'm trying to think off the top of my head of the other jurisdictions, but I can tell you that the process in Manitoba, which, very briefly, of course, is: the report is issued, then it's got to be tabled within—in the Legislature. There's a certain time period associated with that. If the Legislature's in session, great, if it's not, it's a longer time period. It then gets referred to this committee which then has a hearing. It has—it issues its report which gets tabled in the Legislature. The Legislature then votes. There's time periods associated with each step. It can last a year from the date of issuing the report, and, certainly, the past experiences we've had have shown that.

Now, in other jurisdictions, and I take Saskatchewan as an example, I believe the time frame from report to implementation is about a month. So it's dramatically different. Obviously, it's dramatically different in Nova Scotia. It's much shorter in other provinces, and, indeed, other provinces, I don't think, have this standing committee process, so there isn't that step to the process in itself, but, you know, obviously, the delay, which, of course, is one of the reasons why the interest recommendation was made, a recognition of the unfairness of that for the judiciary, obviously, the delay has an impact on the morale of the bench. There's people who wait to make retirement decisions because they want to see whether the pension improvement requested by the association is going to be implemented because they want to know and be able to plan for their retirement. There's all sorts of decisions which are put off routinely, and, you know, while we don't have a pension recommendation in this particular case, we certainly have a salary recommendation which is, of course, important to the calculation of pension.

Mr. Faurshou: Thank you very much for the response and I appreciate your observations. I know we all have our own ideas as to the engagement of public elected officials, but I'm certainly supportive of the—of the continuation of the opportunity for those of us that have the responsibility of representing Manitobans' best interests be engaged somewhere in the process.

Now, the other point that you've made reference to is the turnover of those serving on the bench, and in comparative terms how do we fare in regards to other jurisdictions where you have referenced have greater compensation packages?

Ms. Dawes: That's an interesting point and I'm not aware specifically of the rates of turnover in the other jurisdictions. I can tell you that this bench, the provincial bench of Manitoba, has undergone a significant demographic shift in recent years, and part of that was that for many years, throughout the 1990s in particular, when much of the litigation was happening and the case that the association launched was making its way out of the Supreme Court of Canada, many judges were waiting to make retirement decisions because they wanted to know if the various improvements would be coming, and so I think that for some period of time it was perhaps an older bench demographically than you see in other jurisdictions.

Because a number of pension improvements were made, there was a slew of retirements a number of years ago, and hence there has been an appointment of what certainly can be said to be a much younger bench overall these days, and that was one of the reasons that the association made the decision of seeking new and improved maternity and parental leave policy. While we don't expect it necessarily to be used, it certainly—it was a symbolic point to recognize this changed demographic, both in terms of gender, but age as well. So I'm not aware of how the rate of turnover compares with other jurisdictions, but—so I simply can't, I can't comment on the statistics.

Mr. Faurchow: The reason I asked the question is obvious insofar as the relationship of wages, of remuneration, full compensation package if you will, as it pertains to those persons serving on the bench and the longevity of that service is obvious to have some relationship because if persons are unhappy with that particular compensation they'll be obviously looking for a change to it.

But I do appreciate the opportunity to hear your presentation this evening and having been part of the committee that adopted the original recommendations which legislation was sprung from. I thank you this evening for your presentation.

Mr. Goertzen: I said that I had asked my last question and I regret that I was less than truthful, but I have one more question.

In the report, it references a Supreme Court decision and indicates that the Supreme Court itself has said that public perception is a factor that should be weighed when either looking at the increase or decrease and that's also a possibility. I don't think that's a possibility tonight, but it's a possibility of a decreased wage for judges, that public perception should be weighed is a factor, and certainly, you know, on the—as elected members that's something we deal with all the time, public perception, not just in terms of our salary but in a lot of different things. That was referenced in the report I think is part of the decision to go to the three-province average, about a 7 or 8 percent increase. But then, in terms of the subsequent 5 percent increases for year 2009 and 2010, in your work in the committee, what do you think the public perception would be of those subsequent increases of 5 percent, given the current economic challenges that many of our own constituents would face?

*(18:50)

Ms. Dawes: I think you've raised an interesting point again. I just want to respond to part of the question before I get to the answer.

You've said, well, the committee appears to have considered the public perception in year one, but not in years two and three, and I don't think that's the case at all. And, when you read—when you read the report the references made—and I made reference to this in my initial presentation—that the committee was well aware that the recommendations it was making would be in excess of what many Manitobans would receive over the period of the three years. It did—it made those recommendations knowingly and it, I think, in this report, took great pains to address the reality faced by many Manitobans. And, of course, as I've pointed out, we heard extensive economic evidence which demonstrated on the one hand that Manitoba was faring relatively well, but on the other hand recognized that many Manitobans are suffering in this economy. And the decision to go with the much, much lower figure in 2008, and the increases in the second and third year which would still maintain some relativity between Manitoba judges and their counterparts, I think, very, very much took into account the public perception of what, you know, of how—the public perception, I'm sorry—of how these increases would be viewed.

So you've asked, what would be the public perception of a 5 percent increase for judges, and I

think when the public understands the context in which this is decided, the process by which it's decided, the lengthy submissions that are made, the factors in the act that are necessary to be considered, I think Manitobans would accept this. And I think Manitobans would have difficulty accepting that Manitoba judges should be paid among the lowest of judges across the country. Manitobans would say, hey, wait a minute. The government is constantly saying that we're leading the country in economic growth, we're—this province is doing well, relatively speaking, and I don't think Manitobans see themselves as close to the bottom. So I think the public perception would be that this is problematic.

Mr. Goertzen: No further questions other than to thank you for your responses. They were very articulate. I may not agree with every position put forward, but you expressed them very well and the—your association has chosen their counsel very wisely.

Hon. Rosann Wowchuk (Minister of Finance): Ms. Dawes, I don't have questions either, but I want to thank you for your presentation, and I want to thank you for your recognition of the changes that have taken place on the bench, that we now have a younger bench, just about 50 percent women, and that we have the highest number of judges, at 42 judges—that's the highest number we've had, and we're very pleased. And, as you've said, there—we will review the report and I will be making a motion as to—a little later on as well. Thank you.

Mr. Chairperson: I see no further questions. Ms. Dawes, I thank you for your presentation.

Ms. Dawes: Thank you. Good evening.

Mr. Chairperson: Does the honourable minister wish to make an opening statement?

Ms. Wowchuk: Yes, I do, thank you.

I'm pleased to provide some introductory comments on the Judicial Compensation Committee.

As you've heard, the committee was established on May 7th, 2008, by Order-in-Council 153/2008, pursuant to the provisions of The Provincial Court Act. The committee members were: Colin MacArthur, Chair; Mr. Vic Schroeder, government appointee; and David Shrom, appointee of the Provincial Judges Association.

The hearings took place in August of 2008 and the JCC report was provided to the Minister of Justice (Mr. Chomiak) on June the 9th, 2009,

following a request for clarification of the 2009–June 9th, 2009 report—the JCC provided clarification on June 26th, 2009. On September 29th, 2009, the report was tabled in the Legislature and then referred to the Standing Committee of Legislative Affairs for review.

The report made recommendations and recommends salary increases for judges and masters as follows: 7.82 percent increase effective April 1st, 2008, to \$192,166; 5 percent increase effective April 1st, 2009, to \$201,774; and 5 percent effective April 1st, 2010, to \$211,862.

The report recommends salary increases for associate chief judges and the senior masters as follows: 8.85 percent increase—8.85 percent increase effective April 1st, 2008, to \$199,448; 6.2 percent increase effective April 1st, 2009, to \$211,862; and 5 percent increase effective April 1st, 2010, to \$222,455.

The report recommends salary increases for the Chief Judge as follows: 9.15 percent effective April 1st, 2008, to \$205,418; 6.1, 10 percent effective April 1st, 2009, to \$217,916; and 5 percent increase effective April 1st, 2010, to \$228,811.

The additional remuneration for the associate chief judges and the senior master, as of April 1st, 2009, and April 1st, 2010, represent a 5 percent differential. That is more than the recommended salary for judges and masters in each of the respective years 2009 and 2010.

The recommendation is that this differential is to be maintained in each year. The additional remuneration for the Chief Judge as of April 1st, 2009, and April 1st, 2010, represent 10 percent differential. That is more than the recommended salary for judges and masters in each of the respective years 2009 and 2010. The recommendation is that this differential is to be maintained in each year.

The Provincial Court Act provides if salaries recommended by the JCC are equal to or less than the designated three provincial—the three-province average, that is the average of New Brunswick, Nova Scotia and Saskatchewan, the recommendations are automatically binding on the government and on 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.

If I could make a correction—I said a wrong number. If I could go back—I'll read the paragraph:

The additional remuneration for the chief judges as of April 1st, 2009, and April 1st, 2010, represents 8 percent differential. I believe I said 10 percent differential. You could check that. And I will provide a written copy of these comments, if that's okay.

The April 1st, 2008, salaries recommended by the JCC are equal to the designated average and as such are binding on the government and the judges. The subsequent April 1st, 2009, and April 1st, 2010, salaries recommended by the JCC exceed the designated average and are therefore not binding on the government and the judges.

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

Interest recommendation: The report recommends interest be paid retroactive to April 1st, 2008, on any salary increase that is implemented.

Legal and other fee remuneration recommendation: The JCC recommends the Province pay 75 percent of the judges' Judicial Compensation Committee costs to a maximum of \$40,000, currently 75 percent to a maximum of 35,000, and the JCC recommends that the Province pay, in addition to the judges' legal costs, 100 percent of the judges' disbursement costs and fees to a maximum of \$20,000. This is a new provision.

* (19:00)

Maternal and paternal leave recommendations: The JCC recommends the establishment of maternal and paternal leave provisions for judges, up to 17 weeks paid maternity leave—maternal; it said maternity. Sorry, I'm reading this wrong—up to 17 weeks paid maternity leave and up to an additional 35-week unpaid parental leave, including up to 17 weeks parental leave paid if the maternity leave is not taken.

Benefits recommended: Changes have been proposed to the following benefits, effective as of the date the committee report is implemented. Increase per person and per year limit from \$350 to \$1,000 for the following benefits: massage therapy, chiropractic care, clinical psychology and physiotherapy, and an increase per person five-year limit from \$3,000 to \$10,000 for hearing aids. All additional premiums and costs are paid by the external health benefit participants within the judges' group.

Mr. Chairman, this includes my opening statement to the standing committee and I will have a motion to bring to the committee.

Mr. Chairperson: Thank you, Ms. Wowchuk.

Does the official opposition critic wish to make any opening remarks?

Mr. Goertzen: I do have some opening remarks. I also want to thank the committee that was struck and put together, as it is every two or three years, to go through the salaries for Provincial Court judges.

I did take the time, as I know many committee members did, to read the report, and it's—there's extensive work that was clearly put into it, and that's to be appreciated regardless of the conclusions—or the agreement or disagreement with the conclusions of it. There was a lot of hard work and effort that went into it, and that is appreciated. Also, to the respective counsels: I've already mentioned Ms. Dawes, her presentation, well-thought-out, tonight and responded well to questions on behalf of the association; Mr. Olson, Bill Olson wasn't here tonight, but I know Mr. Olson and he also is a very worthy counsel, and I'm sure he provided that counsel to the government of Manitoba.

It is important to recognize that, I think, all committee members and all members of the Legislature recognize the important work that our Provincial Court judges do. They very much are on some of the front lines of justice in terms of dealing with the vast majority of criminal cases that come before the court of Manitoba, and most of them never go beyond the Provincial Court. And, so, they really mete out the final justice for many people who appear before that court, and I think that we all recognize the important role that they play.

One of the reasons in the past that I've talked about my desire to see cameras in courts at a variety of different levels—sometimes I think that there is an impression that the reason that I might suggest that would be in a negative way, to be—to shine a critical light on what happens in the court. Quite the opposite: I think that there is a real disconnect between what happens in our court process and what the public believes happens in that court process, and I think if that comes to fruition, having cameras in some of our courts, they'll be—I think a bit of a better understanding from the public of the work that judges do, because I think that there's a common perception and that might not always be in harmony with what's really happening in the courts. And, so, I

do want to, you know, put on the record that I think that there is some good work happening in the judiciary.

Having said that, we are still given the responsibility, as a committee, of determining what those salary levels will be, recognizing, on the one hand, we have important work that happens within the court system, but also that we as legislators have a responsibility to the public purse. And there's been a back and forth over the years, and when you read the various JCCs and court decisions, you know, the government looking to put more weight on the role of a deputy minister in determining—or the wage of a deputy minister in determining what the remuneration should be for a Provincial Court judge and the association saying it should be quite apart from the civil service and should move more to a national average.

And I'm still concerned that the movement is towards a more formulistic approach. I listened carefully and appreciate the point Ms. Dawes made about the fact that the committee didn't actually take the—take the average. It did—it might have been its will to take the middle point of the Canadian average, but it did end up doing the average of the three provinces, and so it clearly isn't a rigid formulistic approach at this point. But, I do still, in reading the various JCCs, get the sense that that boat is moving downstream in that direction, and that concerns me because I do think that the act and the six factors that are set out in the act I think strike a reasonable balance and a proper balance in determining where we should land in terms of the salaries.

In terms of consequences for not necessarily matching up with the overall average, I have some persuasion to the issue of equity, but I'm also mindful of the fact that I still think it is—we are at the point we were getting high-quality candidates still looking to assume the role of the bench for a variety of different reasons. It wouldn't all be economic reasons. Many simply see that as sort of the movement within their—within their career, and so we get—and I think, if we look at the people that have been appointed, many of the people that have been appointed in the last number of years, we could— we could find quality people, and so there could be some disagreements on some that were appointed. But, having said that, I mean, there still are quality people who are applying, obviously, for the positions.

The 2008 salary recommendation obviously is in dispute, because the legislation dictates that, because it falls into the average of the three provinces, that it is thereby mandated. Obviously, the concern comes with the subsequent two years and the 5 percent recommendation in years 2009 and 2010. I have sympathy for what the committee must have gone through in trying to determine that in the sense that, you know, ability to pay always seems to, in news reports, be a critical point, both for the association and for the government, and that's where the majority of time is spent and where the resources are spent in determining the economic situation and the ability to pay for government at any given time.

And, on the one hand, you know, we have government, through its budgetary documents and perhaps press releases and in other forms, talking about the strength of the Manitoba economy. I think it was, my colleagues will correct me if I'm wrong, but I think it was three or four weeks ago that the outgoing premier said that Manitoba was the economic engine of the country in the Legislature. And so you have, you know, some of those messages that the economy is not only doing very well, but, according to the former premier, is the engine of the country.

And then you have other reports that come in, I know to Mr. Schroeder's dissent, he points out some of those—some of the challenges that the economy is having in relation to Manitoba. On page 7 of his dissent he says: To put it another way, assuming we're in a race, even if we're moving faster than the others, when we are further back running fast doesn't mean that we're in the lead or even in the middle—indicating that, you know, we have started from such a position of weakness. He also says that the Province established for 2007, we were last in dwelling starts; only two provinces had a lower average weekly earnings; three had lower per capita retail sales and capital investments. And, in none of the categories, were we above average.

And so, that's, you know, you have the representative of the government painting a very bleak picture of the Manitoba economy, and then, on the other hand, you have the government itself saying that we're the economic engine. And then you throw into this mix, into this milieu, the committee which has to decide which is it. Are we steaming ahead as the leader in the country, or are we so far behind that it doesn't matter how fast we run? According to Mr. Schroeder, we might not catch up.

I mean those are—that's a different environment to try to put forward a recommendation for salaries, and so I have sympathy for what the committee had to do.

* (19:10)

Having said that, we, as legislators, have our own experiences within our own constituencies and talking to individuals about the state of the economy, and, in some cases, some would say that they're weathering through, but there certainly is a lot of concern and many are suffering. I know you point to industries in my own riding where people have been laid off, many have been laid off as a result of the weakening, or the weak economy in the United States and challenges here in Canada as well, so we have to be mindful of that, and I appreciate, you know, that even the Supreme Court, and I don't say even in a derogatory way, the Supreme Court has recognized that perception is an important factor, and so ability to pay, perception, all have to be looked at when we're trying to determine what the proper salary should be.

I also think that the process was set out with some thought. There might be some dispute about how long the process takes, and I take Ms. Dawes's comments to heart in terms of the length, the time it takes to get to this particular committee, but I also think that my colleague for Portage, who had some input into how this process evolved, did so wisely, and there is a bit of a balance. It might not happen as quickly as maybe it should, but there is a balance in looking at various factors, and ultimately it is the government who is going to pay the bill, who has the final say but not without restrictions. There has to be, if they're going to vary from the recommendations, there has to be thought-out reasons and stated reasons for that variation. So I think that there is a good balance. We also have to strike that balance as well in determining what's appropriate given the economic times and that's where I have—I simply can't clear the hurdle of the—

Mr. Chairperson: Mr. Goertzen, there's a 10-minute time limit to your opening statement, and you're now at that point. Leave of the committee to continue on for a few minutes?

An Honourable Member: Leave.

Mr. Chairperson: Leave has been granted.

Mr. Goertzen: Thank you, Mr. Chairperson. I simply can't clear the hurdle of the 5 percent recommendation in year 2009 and 2010. I think it's

difficult in the real economic times that we have. I think it's difficult in the expected economic times that we're going to have to suggest that, whether it be tied to GDP, so that would be an ability to pay, or whether it be tied to CPI, the consumer price index so it measures not a loss of the value of the dollar for judges. That might be more acceptable. I think it's difficult to set a percentage increase that the vast majority of Manitobans won't be fortunate enough to see in the next couple of years, and so I'm more persuaded, I suppose, by Mr. Schroeder's assertion that the Manitoba economy is doing much more poorly than Mr. Doer's assertion that we're the economic engine, but quite apart from either of those two gentlemen, I take my cue from the people that I speak to on the street who, I think, are feeling real economic pressure and concern and who, if I had to justify the recommendations on the subsequent two-year salary, I simply couldn't make that justification, so we'll be proceeding accordingly and look forward to hearing what the government's motion is on the report.

Mr. Chairperson: Thank you, Mr. Goertzen.

Are there questions on the report?

Mr. Faurchou: Not so much a question on the report, but I believe it would be in keeping with past practice to introduce the individuals that are here in support of committee this evening.

Ms. Wowchuk: I apologize for not knowing the names of staff. I know them by their first names, but I wasn't quite sure of all the titles, and I wanted to have it correct.

We have Mr. Lloyd Schreyer who is the secretary at the Compensation Committee of Cabinet, Mr. Rick Stevenson, who is the Assistant Deputy Minister of Labour Relations, and Mr. Doug Cieszynski, who is director of Labour Relations. Thank you for your help.

Mr. Faurchou: Before we get into the committee, there seems to be a discrepancy between the opening statements of the minister and the statements made by Ms. Dawes, the presenter this evening, in the number of judicial positions to which the report is applicable. I believe the presentation stated 40; the minister's remarks stated 42, if the minister could clarify for the committee.

Ms. Wowchuk: Yes, Mr. Chairman, I said that we had the highest level of judges. We have one more judge in Manitoba, and that brings us to 42.

Mr. Faurschou: We have—just for clarification—we have 42 positions at the present time. How many of those are considered vacant?

Ms. Wowchuk: My understanding is that none of them are vacant. *[interjection]*

Thank you, I correct that. Yes, there is—there is a vacancy in The Pas that I forgot to mention. So we have increased the number of judges to 42, but one position in The Pas is vacant.

Mr. Faurschou: Thank you very much for that clarification, and, for those persons spending time reading *Hansard*, it may have been a confusing point.

Further to the number of persons that are engaged on the bench here in the province of Manitoba, when we considered the compensation package almost 10 years ago, there was a program called the senior judges' program, whereby individuals that wanted to step back from full time on the bench or those that wanted to particularly take a greater length of time to evaluate particular case laws and do, shall I say, a more in-depth investigation and—that particular program was dispensed by the current administration.

I would like to ask the minister as to whether or not the government would consider reinstating this particular program, because we're all aware of the number of very complex cases that are before the bench and, also, too, the significant backlog which we all know exists within our judicial system, that potentially the senior judges' program could be a significant asset in enhancement to the judicial process here in the province, and I'd invite the minister to respond.

Ms. Wowchuk: Mr. Chair, as I had said, we recognize the importance of the role that judges play. That's why we've had—increased the number of judges, and we are looking at our options on the program the member refers to.

Mr. Goertzen: I—just to pick up a little bit on the point of my colleague from Portage. I know that over—actually, it was—I was reading back—this will frighten members, but I was reading back to the last JCC—*Hansard*—committee and the same question came up about, I think it was referred to as supernumerary judges, and sometimes that term is interchangeable: supernumerary judges or senior judges. But the point is right, in that that flexibility is necessary on the—on the bench, and other provinces have that program, and three years ago it was stated

by the government that it was being looked at. And so I understand sometimes things move slowly in government, but, you know, once patience runs thin after three or four years, so, hopefully, in three years at the next JCC we won't be having that discussion or, perhaps, it'll be—being held with different individuals. But the point is right, from my friend from Portage.

The other question that's come up numerous times, and I referenced it in my opening statement, is the issue of cameras in courts, and it ties into the committee in terms of the work that judges do. I note that the Chief Justice was undertaking and had a committee that was looking at it. That was at least a year ago, and that also seems to be one of those things that just doesn't seem to hit the finish line.

Does the minister have any update in terms of where that process of review is?

* (19:20)

Ms. Wowchuk: Mr. Chairman, the member is correct, the Chief Justice is reviewing that situation, and we have not—there's been no decision made on it. However, on the—I would say, you know, the member has talked about the importance of senior judges and those kind of programs, I think it's important that we recognize that there are more judges in Manitoba. We've increased the number of judges, and I want to also recognize that I'm very proud of the work that this government has done in bringing more women to the bench. When women are more than 50 percent of the population, we want to see that balance and we're close to that 50 percent mark.

Mr. Goertzen: I don't disagree with the final statement that the minister made. In fact, you know, adding some supernumerary judges might move it even past that point, so we might find accord on that yet.

If there are no further questions of the committee, I'd be interested in hearing the minister's motion.

An Honourable Member: Mr. Chairman, I have a motion here.

Mr. Chairperson: Does the honourable minister have a motion?

Ms. Wowchuk: Thank you, Mr. Chairman. Yes, I have a motion, and I have copies that can be

distributed, and this is a lengthy motion, so I ask for the committee's indulgence.

I move that the Standing Committee on Legislative Affairs accept the recommendations in Schedule A; reject the recommendations in Schedule B for the reasons set out in that schedule and, in substitution for the 2009 and 2000 salaries proposed by those recommendations, set the 2009 and 2010 salaries according to the recommendations in Schedule C; and recommend the same to the Legislature.

SCHEDULE A

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

1. That the Province pay 75 percent of the judges' legal costs and the fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$40,000.
2. That the Province pay 100 percent of the judges' disbursement costs and fees for the Judicial Compensation Committee process, up to a maximum aggregate payment by the Province of \$20,000.
3. That, effective—that, effective the date of approval by the legislator—Legislative Assembly, up to 17 weeks of paid maternity leave be available, subject to at least a six-month return-to-service commitment.
4. That, effective the date of approval by the Legislative Assembly, up to 37 continuous weeks of parental leave be available, with up to 17 weeks of it being paid leave if maternity leave is not taken and such leave—paid leave being subject to at least a six-month return-to-service commitment.
5. That, effective the date of the implementation of the standing committee report, the extended health benefit plans be implemented to provide
 - coverage, to a maximum of a thousand dollars in each calendar year, for massage therapy, chiropractic care, clinical psychology and physiotherapy;
 - a maximum hearing aid coverage of \$10,000 per person per five-year period; and
 - premiums for these coverages to be paid by the participating judges.

6. That, unless otherwise stated, all charges be effective on the date of approval by the Legislative Assembly of Manitoba.
7. That these recommendations, "date of approval"—"date of approval by the Legislative Assembly" means
 - a) the date that the vote of concurrence referred to in subsection 11.1(22) 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 for the Judicial Compensation Committee rejected by the Standing Committee on Legislative Affairs

1. That the April 1st, 2009, salaries for judges and masters increase by 5 percent to \$201,774.
2. That the April 1st, 2009, salaries for the associate chief judge and senior master increase to a differential of 5 percent greater than the salary set out for judges/masters, to a salary of \$211,862.
3. That the April 1st, 2009, salaries for chief judge increase at a differential of 8 percent greater than the salary set out for judge/masters, to a salary of \$217,916.
4. That the April 1st, 2010, salaries for judges and masters increase by 5 percent to \$211,862.
5. That the April 1st, 2010, salaries for associate chief judge and senior masters increase at a differential of 5 percent greater than the salary set for judges and masters, to a salary of \$222,455.
6. That the April 1st, 2010, salaries for chief judge increase at a differential of 8 percent greater than the salary set for judge/master, to a salary of \$228,811.
7. That the interest is to be paid on a retro—on any retroactive salary increase, fixed at a rate equal to the prejudgment rate fixed by the Court of Queen's Bench.

The reasons: In reviewing the report of the Judicial Compensation Committee, the standing committee

has examined each of the recommendations individually and collectively. The reasons for rejecting these recommendations are as follows:

* (19:30)

Recommendation 1 to 6:

- The recommended salary increase for 2009 and 2010 fail to properly take into account, or to properly balance the six factors that the Judicial Compensation Committee is required to take into account in making its recommendations.
 - The recommended increase go beyond what is considered appropriate and necessary for maintaining judicial independence.
 - The Judicial Compensation Committee majority did not adequately address the government's position, that existing salary levels, together with the value of pension and other benefits, have been more than adequate to attract and retain an acknowledge—an acknowledged pool of highly qualified candidates.
 - The April 1st, 2008, salary increase, which the standing committee acknowledges are binding on the government, already involves a significant increased cost to Manitobans.
 - The recommendations for the introduction of maternity and paternal benefits, which the standing committee accepts, also add to the costs to the—adds to the cost to Manitobans.
 - The Judicial Compensation Committee majority has not fairly and reasonably recognized the total compensation for judges in Manitoba.
 - In addition to a significant benefit package, the judges' pension arrangements are significantly better than those of other provincial employees and are currently among the most generous in Manitoba.
 - The Judicial Compensation Committee process is valuable and serves the public interest for the most part; however the government must consider the recommended salary increase for 2009 and 2010, compared with public servants and the private sector. The recommended salary increases for those years would be unfair and unreasonable to the government in relation to other public service salaries increases in order to main what is regarded as the greater good of the public service. The recommendations are also inconsistent with current policy of negotiated wages restraint in the—the recommendations are also inconsistent with the current policy of negotiated wage restraint in the public sector, absent special circumstances. The recommended increase will foster a perception that judges are not shouldering their fair share of the burden in difficult economic times.
- The substituted salary increases for 2009 and 2010, set out in Schedule C
 - would provide fair and reasonable compensation in light of prevailing economic conditions in Manitoba and the government's current physical position—financial position while still preserving judicial independence and the ability of the judiciary to attract and retain candidates for the judiciary; and
 - would be more consistent with the provincial approach for public servants in the majority of the service groups that have been recently concluding agreements and for groups that are in the final years of agreements reached before the global turndown—global economic turndown.
 - The April 1st, 2008, binding salaries were determined by the Judicial Compensation Committee in deference to the legislation regarding—deference to the legislation regarding the designation of three-provincial average, and the committee accepts that the three-provincial average of Saskatchewan, Nova Scotia and New Brunswick was the appropriate comparator. The Judicial Compensation Committee erred in later rejecting the government's position that the three-province average would be preferred. The 2009 and 2010 recommended salary increase—salary increases were arrived at in error, as they are based on the wrong assumption that previous JCCs—previous JCCs supported that salary should follow a national average. However, that average is calculated, and is inconsistent with what the JCC accepted as an appropriate comparator in 2008.
 - The government has a responsibility to review the recommended salary increase within the context of the current provincial and global economy. This Judicial Compensation Committee recommendations are weighed more in favour of trying to achieve a midpoint or a national average, rather than on the economic

conditions of the province and is a fail—and is a failure—and is a failure to properly balance the six factors outlined in the legislation. The Judicial Compensation Committee correctly stated that the recommendations must consider the economic conditions of the Province and this was a time for prudence and the Provincial Court judges were part of the Manitoba community. The Judicial Compensation Committee then erred in that, while recognizing the recommended increases were greater than those received by many Manitobans over the three years, stated that the strength of the economy and the necessity to provide fair and reasonable salaries were the reason for the differential; both justifications were in consistence with the committee's own finding.

Recommendation 7:

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

SCHEDULE C

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

1. That effective April 1st, 2009, salaries for judges/masters be increased by 2.9 percent to \$197,736 per annum (that is \$7,579.88 bi-weekly); and that effective March 31st, 2011, salaries for judges/masters be increased by 1 percent to \$199,722 per annum (or \$7,656 bi-weekly).
2. That effective April 1st, 2009, salaries for associate chief judges/senior masters will be increased by 2.9 percent to \$205,245 per annum (or \$7,867.70 bi-weekly); and that effective March 31st, 2011, salaries for associate chief

judges and senior masters will be increased by 1 percent to \$207,306 per annum (or \$7,946.73 bi-weekly).

3. That effective April 1st, 2009, that the salary for chief judge be increased by 2.9 percent to \$211,373 per annum (or \$8,102.60 bi-weekly); and that effective March 31st, 2011, the salary of the chief judge be increased by 1 percent to \$213,491 per annum (or \$8,183.80 bi-weekly).

Mr. Chairperson: Thank you, Ms. Wowchuk. That was a lengthy read.

Is it agreed that the motion moved is as written?
[Agreed]

I move that the Standing Committee on Legislative Affairs

accept the recommendations in Schedule A;

reject the recommendations in Schedule B for the reasons set out in that Schedule and, in substitution for the 2009 and 2010 salaries proposed by those recommendations, set the 2009 and 2010 salaries according to the recommendations in Schedule C; and

recommend the same to the Legislative Assembly.

SCHEDULE A

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

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

5. That, effective the date of implementation of the Standing Committee's report, the Extended Health Benefits Plan be amended to provide
 - coverage to a maximum of \$1,000 in each calendar year for massage therapy, chiropractic care, clinical psychology, physiotherapy;
 - a maximum hearing aid coverage of \$10,000 per person per 5-year period; and
 - premiums for these coverages to be paid by the participating judges.
6. That, unless otherwise stated, all changes be effective on the date of approval by the Legislative Assembly of Manitoba.
7. In these recommendations, "date of approval by the Legislative Assembly" means
 - a) the date that the vote of concurrence referred to in subsection 11.1(28) of The Provincial Court Act takes place with respect to these recommendations; or
 - b) if the recommendations must be implemented because of subsection 11.1(29) of The Provincial Court Act, the first day after the end of the 21-day period referred to in that subsection.
6. That the April 1, 2010 salaries for Chief Judge increase at a differential of 8% greater than the salary set for Judge/Master, to a salary of \$228,811.
7. That interest is to be paid on any retroactive salary increases, fixed at the rate equal to the prejudgement rate fixed by the Court of Queen's Bench.

Reasons

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

Recommendations 1 to 6:

- The recommended salary increases for 2009 and 2010 fail to properly take into account, or to properly balance, the six factors that the Judicial Compensation Committee is required to take into account in making its recommendations.
- The recommended increases go beyond what is considered appropriate and necessary for maintaining judicial independence.
- The Judicial Compensation Committee majority did not adequately address the Government's position that the existing salary level, together with the value of pension and other benefits, has been more than adequate to attract and retain an acknowledged pool of highly qualified candidates.
- The April 1, 2008 salary increases, which the Standing Committee acknowledges are binding on the government, already involve a significant increase in cost to Manitobans.
 - The recommendations for the introduction of maternity and parental benefits, which the Standing Committee accepts, also add to the cost to Manitobans.
- The Judicial Compensation Committee majority has not fairly and reasonably recognized the total compensation for Judges in Manitoba.
 - In addition to a significant benefit package, the Judges pension arrangements are significantly better than those of other provincial employees and are currently among the most generous in Manitoba.

SCHEDULE B

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

1. That the April 1, 2009 salaries for Judge/Master increase by 5% to \$201,774.
2. That the April 1, 2009 salaries for Associate Chief Judge/Senior Master increase at a differential of 5% greater than the salary set for Judge/Master, to a salary of \$211,862.
3. That the April 1, 2009 salaries for Chief Judge increase at a differential of 8% greater than the salary set for Judge/Master, to a salary of \$217,916.
4. That the April 1, 2010 salaries for Judge/Master increase by 5% to \$211,862.
5. That the April 1, 2010 salaries for Associate Chief Judge/Senior Master increase at a differential of 5% greater than the salary set for Judge/Master, to a salary of \$222,455.

- *The Judicial Compensation Committee process is valuable and serves the public interest for the most part; however the Government must consider the recommended salary increases for 2009 and 2010, compared with public servants or the private sector. The recommended salary increases for those years would be unfair and unreasonable to the Government in relation to other public service salary increases in order to maintain what it regards as the greater good of the public service. The recommendations are also inconsistent with the current policy of negotiated wage restraint in the public service, absent special circumstances. The recommended increases will foster a perception that Judges are not shouldering their fair share of the burden in difficult economic times.*
 - *The substituted salary increases for 2009 and 2010 (set out in Schedule C)*
 - *would provide fair and reasonable compensation in light of prevailing economic conditions in Manitoba and the government's current financial position while still preserving judicial independence and the ability of the judiciary to attract and retain candidates for the judiciary; and*
 - *would be more consistent with the provincial approach for public servants in the majority of the service for groups that have recently concluded agreements and for groups that are in the final years of agreements reached before the global economic downturn.*
 - *The April 1, 2008 binding salaries were determined by the Judicial Compensation Committee in deference to the legislation regarding the designated three Province average, and the Committee accepted that a three Province average (Saskatchewan, Nova Scotia and New Brunswick) was the appropriate comparator. The Judicial Compensation Committee erred in later rejecting the government's position that the three province average should be preferred. The 2009 and 2010 recommended salary increases were arrived at in error as they are based on the wrong assumption that previous JCCs supported that salary should follow a national average, however that average is calculated, and is inconsistent with what the JCC accepted as the appropriate comparator for 2008.*
 - *The government has a responsibility to review the recommended salary increases within the context of the current provincial and global economy. This Judicial Compensation Committee's recommendations are weighted more in favour of trying to achieve a mid-point or national average rather than on the economic conditions of the province and is a failure to properly balance the six factors outlined in the legislation. The Judicial Compensation Committee correctly stated that the recommendations must consider the economic conditions of the Province, that this was a time for prudence and Provincial Court Judges were part of the Manitoba community. The Judicial Compensation Committee then erred in that, while recognizing the recommended increases were greater than those received by many Manitobans over three years, stated that the strength of the economy and the necessity to provide fair and reasonable salaries were the reasons for the differential; both justifications are inconsistent with the Committee's own findings.*
- Recommendation 7:*
- *The Standing Committee does not accept the view that awarding interest on retroactive salary increases is within the scope of benefits on which the Judicial Compensation Committee may make recommendations. Further, no such payments of interest have been recommended by any previous Judicial Compensation Committee.*
 - *The Standing Committee does not accept the characterization by the chair that interest falls within the scope of 'benefits' as contemplated by The Provincial Court Act. If interest was intended, given the clear time lines within the legislation, interest would be clearly spelled out.*
- SCHEDULE C**
- Recommendations of the Standing Committee on Legislative Affairs substituted for recommendations of the Judicial Compensation Committee*
1. *That effective April 1, 2009, salaries for Judges/Masters be increased by 2.9% to \$197,736 per annum (\$7,579.88 bi-weekly); and that effective March 31, 2011, salaries for Judges/Masters be increased by 1% to \$199,722 per annum (\$7,656.00 bi-weekly).*
 2. *That effective April 1, 2009 salaries for Associate Chief Judge/Senior Master be*

increased by 2.9% to \$205,245 per annum (\$7,867.70 bi-weekly); and that effective March 31, 2011 salaries for Associate Chief Judge/Senior Master be increased by 1% to \$207,306 per annum (\$7,946.73 bi-weekly).

3. *That effective April 1, 2009 that the salary for Chief Judge be increased by 2.9% to \$211,373 per annum (\$8,102.60 bi-weekly); and that effective March 31, 2011 that the salary for the Chief Judge be increased by 1% to \$213,491 per annum (\$8,183.80 bi-weekly).*

Are there any further questions or comments?
Mr. Goertzen—one moment.

The motion is in order. The floor is open for questions.

Mr. Goertzen: Thank you, Madam Minister, for reading into the record, as our rules require, the motion. Certainly, a lot of the reasons that the government lays out and that they are required to lay out in rejecting the recommendations, some of the recommendations of the JCC, touch upon the points that I've made earlier in this evening, that others have made earlier in this evening as well and seem to target specifically the issue of the interest paid on retroactive salary and also on the increases, the percentage increases in 2009 and 2010 and, for some of the same rationale that I had raised concerns about, don't usually see this sort of accord in discussions on issues at committee. But I wonder if the minister could tell us where the 2.9 and 1 percent was derived at. I think I'd referred in my discussion about possibly tying those two years to some economic indicator like GDP, presuming it wouldn't be negative, or something along that line. I'm not sure if that was done in terms of the estimate of GDP growth or where the numbers were derived from.

Mr. Chairperson: Okay. Before we get a response, we kind of jumped ahead of ourselves.

It has been moved by Ms. Wowchuk that—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. Thank you.

The motion is in order. The floor is open for questions. Mr. Goertzen put a question, and Ms. Wowchuk will give us her response.

Ms. Wowchuk: These numbers were derived on, based on government's dealing with all parts of the public sector and where we are—given the economic

times, where we feel settlements can go, and that's where we came to that number.

* (19:40)

Mr. Goertzen: On the issue of interest and the back pay, or the payment of interest on back pay, was the reason for the government—just for clarity—was the reason for the government looking to reject that recommendation simply because it falls outside of the mandate of the JCC?

Ms. Wowchuk: There's two things. It's outside the mandate, but also there is no precedents for this kind of a payment of interest. If you look at previous JCC reports and recommendations, this is not—this is beyond their scope and not a previous precedent.

Mr. Faurschou: Just to clarify insofar as the recent resolution I tabled in the House pertaining to acupuncture, some physiotherapists do consider acupuncture as a—as a inclusive treatment. Could maybe the minister clarify as to whether the physiotherapy referenced in the motion includes acupuncture?

Ms. Wowchuk: The recommendation is in—from the standing committee on extending health-care benefits, includes—offered an increase and it's for massage therapy, chiropractic, clinical psychology and physiotherapy. Those are the ones that are covered off.

Mr. Faurschou: There are some physiotherapists that do involve acupuncture as part of the procedure of physiotherapy. I'm just asking for clarification. Is that a practice which is included within that designation?

Ms. Wowchuk: I'm not aware of that designation being in there. I'm aware of the ones that I have spelt out for—in—but there is not—I'm not aware of acupuncture being covered off there.

Mr. Goertzen: On page—well, I'm not sure if according to what's in the records, but on page 4 of the motion, at the top, the—it reads that the recommendations are also inconsistent with the current policy of negotiated wage restraint in the public service absent special circumstances. Could the minister just expand upon that particular policy of negotiated wage restraint?

Ms. Wowchuk: As you know, as I said earlier, there are financial restraints that are in the Province right now. We've been—we've been well aware of that and as you're negotiation—in negotiating, you have to

consider those restraints, but we also recognize that in special circumstances there may have to be exceptions made.

Mr. Goertzen: Just for more clarity, I mean it refers to a particular policy, and I guess, you know, when you hear the word "policy," you tend to think that there's more specifics around that and that there's some direction that's been given internally to departments or through government. So, is the minister just saying that it's a general term used that we're gonna be more careful with negotiations maybe than we've been in the past or is there some sort of specific policy this is built around?

Ms. Wowchuk: Mr. Chairman, we have a very strong negotiation–negotiating team. The member knows that there are many negotiations that are—that are going on right now and our staff—people have to work in the best interest of Manitobans and ensure that they negotiate with prudence, and that's what we're talking about. But we also know that there are special circumstances like recruitment and retention that we have to deal with as well.

An Honourable Member: Question.

Mr. Chairperson: Is the committee ready for the question?

Some Honourable Members: Question.

Mr. Chairperson: The question before the committee is as follows: that the Standing Committee on Legislative Affairs—

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense? Thank you.

Shall the motion pass?

Some Honourable Members: Pass.

Mr. Chairperson: 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 we have completed our consideration of this matter? *[Agreed]*

The hour being 8:45–7:45, what is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 7:45 p.m.

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:

<http://www.gov.mb.ca/legislature/hansard/index.html>