

Saskatchewan Provincial Court Judicial Council

2017 Annual Report

1. Introduction

The Judicial Council has two main responsibilities. First, it considers the applications of lawyers seeking appointment to the Provincial Court of Saskatchewan and makes recommendations to the Minister as to whether they are qualified and suitable for appointment. Second, it reviews and investigates complaints of alleged misconduct or incapacity that are made against Provincial Court judges. The Council is obliged to discharge these duties in the best interests of the people of Saskatchewan.

The Honourable Robert G. Richards
Chief Justice of Saskatchewan
Chairperson of the Judicial Council

2. Members of the Provincial Court Judicial Council

In 2017 the Council was composed of the following members:

- The Chief Justice of Saskatchewan, the Honourable Robert G. Richards (chairperson)
- The Chief Justice of the Court of Queen's Bench, the Honourable Martel Popescul
- The Chief Judge of the Provincial Court, the Honourable James Plemel
- The President of the Law Society of Saskatchewan, Ms. Erin Kleisinger, Q.C.
- Two members appointed by the Lieutenant Governor in Council, Mr. Ken Waschuk and Ms. Colleen Cameron
- Two judges elected by the judges at a meeting of the Provincial Court *en banc*, the Honourable Judge Hugh Harradence and the Honourable Judge Robert Lane

3. Work of the Council

3.1. Assessing Applicants for Appointment to the Provincial Court

The Provincial Court Act, 1998, SS 1998, c P-30.11, requires the Council to review applications for appointment to the Court and to make recommendations to the Minister of Justice. Section 54(a) says this:

54 The council shall:

- (a) consider and make recommendations to the minister regarding the proposed appointment of a judge

The Council conducts its reviews pursuant to the terms of the following policy:

A. General

1. Professional competence and overall merit are the primary qualifications for appointment to the Provincial Court.
2. The Provincial Court Judicial Council (“Council”) will assess lawyer candidates and places them into one of three categories:
 - not recommended
 - recommended
 - highly recommended
3. Upon receipt of a Judicial Candidate Information Form the Executive Officer will write to the candidate who submitted the Form acknowledging receipt.
4. Once the Law Society and other preliminary background checks are completed, the candidate’s information package will be referred to the Council for assessment.
5. Subject to Articles 8 and 9, assessments are valid and remain in effect for three (3) years.
6. Candidates will be notified by the Executive Officer of the date when they were assessed by Council and that their assessment will remain in effect for three (3) years. They will not be provided with the results of the assessment, which are confidential and solely for the use of the Minister of Justice.
7. In the event that a candidate continues to be interested in a judicial appointment after the three (3) year expiry date, a new Judicial Candidate Information Form must be submitted.
8. When a Judicial Candidate Information Form is submitted within 60 days of the three (3) year expiry date, the previous assessment remains valid until a new assessment is made by Council.
9. A re-assessment during the three (3) years since the candidate was last assessed by Council will not be undertaken, unless, exceptionally,
 - a) The Minister of Justice requests a re-assessment of the candidate after receiving information that is at variance with the assessment made by Council; or
 - b) Council initiates re-assessment after receiving important new information which is contrary to information on which Council’s previous assessment of the candidate was made.

B. Confidentiality

10. The evaluation process seeks to protect the reputations and privacy of candidates to the maximum extent possible while also providing accurate and thorough assessments to the Minister of Justice.
 - a) All Council discussions and proceedings must be treated as strictly confidential, and must not be disclosed to persons outside the Council.

- b) All documents and information submitted as part of the assessments process are to be treated as personal and strictly confidential. The contents of such documents are not to be disclosed except to the Minister of Justice, or, in part, and only where necessary, to those consulted by the Council. (Partial disclosure to references, or to others consulted, must only occur after receipt of a verbal undertaking to maintain confidentiality and must only be to the extent necessary to address matters raised by the application.)
- c) When no longer required for assessment purposes, all documents received in connection with the assessment process, other than those intended for public education on the process or to permit Council to maintain an ongoing historical record, must be shredded. Each member is responsible for ensuring that all documentation is shredded in a secure and confidential manner.
- d) The information obtained through the consultation of references and other sources is also personal and strictly confidential, and is subject to the same stringent confidentiality requirements as information contained in the Judicial Candidate Information Form itself.
- e) Applicants are not to be informed of the result of their assessments.
- f) The obligation of Council members to maintain the confidentiality of applications, discussions and assessments made during a Council's tenure does not end with service on the Council. The obligation of confidentiality is enduring.

C. Conflicts of Interest

- 11. Given the objectives of a neutral and fair process and the appearance of a neutral and fair process, the following guidelines should be followed to avoid a conflict of interest or the appearance of one:
 - a) Council members must not engage in activities outside the Council, which will result in a conflict of interest with their work on the Council, or in the appearance of one.
 - b) Council members must not participate in the appointments process other than through the exercise of their recognized responsibilities as members of the Council or in their capacities as Chief Justice or Chief Judge.
 - c) The role of the Council is to evaluate applications, not to solicit them. Council members who have previously agreed to act as references must abstain from participating in the candidate's assessment.
 - d) Council members must apprise Council of any real or apparent conflict of interest regarding the assessment of a particular candidate.
 - e) The proper course of action for a Council member who finds herself, or himself, in a position of conflict of interest, real or apprehended, is to withdraw from discussions, and abstain from voting on the assessment of any applicant where such a conflict exists, or where such a conflict might reasonably be perceived to exist.

- f) Abstentions are formally recorded.
- g) If there are questions on the desirability of abstaining in a given circumstance, the Chair of Council should be contacted. Alternatively, the issue can be put to the Council as a whole for its view.
- h) Council members shall not accept gifts or other consideration from candidates.
- i) Council members should try to avoid commenting on individual appointments made by the Minister of Justice and should be circumspect and cautious in what they say if they are not able to avoid commenting.

3.1.1. Overview of Applications Reviewed in 2017

Total Number of Applications Reviewed in 2017

	Female Lawyers	Male Lawyers	Total Reviewed	Private Practice	Public Practice	Other Legal
Reviewed	19	12	31	9	21	1
Not Recommended	7	6				
Recommended	7	3				
Highly Recommended	2	3				
Deferred	3	0				
% Recommended	48%	50%				

There were 21 recommended candidates on the Minister of Justice's list as of December 31, 2017.

3.1.2. Appointments Made in 2017

Five judges were appointed to the Provincial Court in 2017:

- Judge M. Penner - January 12, 2017
- Judge D. Taylor - March 8, 2017
- Judge M. Baldwin - June 8, 2017
- Judge R. Mackenzie - June 22, 2017
- Judge L. Stang - August 24, 2017

3.2. Reviewing Complaints Against Provincial Court Judges

The *Provincial Court Act, 1998* requires the Council to review, investigate and deal with complaints against Provincial Court judges with respect to alleged misconduct or incapacity.

Section 55(1) says this:

55(1) The council shall review and, where necessary, investigate the conduct of a judge where the council:

- (a) receives a complaint respecting the judge alleging misconduct or incapacity; or
- (b) otherwise becomes aware of possible misconduct by the judge or possible incapacity of the judge.

The Council conducts its reviews or investigations pursuant to the terms of the following policy:

- a) *Complaints which clearly do not engage the jurisdiction of the Council, i.e. complaints which clearly do not allege “misconduct” or “incapacity” as per s. 55(1) of The Provincial Court Act, 1998* – under the direction of the Chief Justice of the Court of Queen’s Bench, and with his or her approval, the Executive Officer of the Council will prepare and send a letter to the complainant stating that the Council has no jurisdiction to deal with the matter.
- b) *Complaints which are either within the jurisdiction of the Council or arguably within the jurisdiction of the Council but which are selfevidently without substance, i.e. complaints which allege, or arguably allege, “misconduct” or “incapacity” but which are devoid of merit. This includes complaints that are trivial, vexatious, manifestly lacking in merit or otherwise clearly not warranting further inquiry* – under the direction of the Chief Justice of the Court of Queen’s Bench, the Executive Officer of the Council will do necessary background work in relation to the complaint by way of requisitioning transcripts, etc. as the case might be. The background material and the complaint will then be considered by the Chief Justice of the Court of Queen’s Bench. If the Chief Justice concludes that the complaint should be dismissed, he or she will ask the Executive Officer to circulate a package of materials to all Council members. The package will include (i) an indication that the Chief Justice has looked into the matter, concluded that it is clearly without merit, and recommends that the complaint be dismissed, (ii) an explanation as to why the complaint is seen to be without merit, (iii) a complete file of relevant background information for Council members to consider when determining if they agree that the complaint is without merit, and (iv) a request that Council members indicate to the Executive Officer, by a date to be specified by the Executive Officer, whether they concur with the recommendation to dismiss the complaint. If the majority of Council members agree that the complaint should be dismissed, the Executive Officer will draft an appropriate letter, over his or her signature, for the Chief Justice of the Court of Queen’s Bench to approve. If approved, the letter will then be sent out. If the majority of Council members do not agree with the recommendation to dismiss the complaint, or if the chairperson of the Council otherwise considers it appropriate, the complaint will be dealt with at a face-to-face meeting of the Council.

- c) *All other complaints, i.e. complaints which are either clearly or arguably within the jurisdiction of the Council and which have some merit* – complaints falling within this category will be presented to Council for its consideration at a face-to-face meeting. In advance of the meeting, and at the direction of the Chief Justice of the Court of Queen’s Bench, the Executive Officer of the Council will do such background work as might be appropriate by way of requisitioning transcripts and so forth.

At the conclusion of the review and any investigation of a complaint, the chairperson of the Council will notify the Minister, the complainant and the judge whose conduct or capacity was in issue of the Council’s decision, all as per s. 55(3) of *The Provincial Court Act, 1998*.

3.2.1. Overview of Complaints for 2017

- Total Number of Complaints Concluded in 2017: 20

Total Number of Complaints Concluded in 2017

	Complaints Concluded	Jurisdiction (no merit)	Jurisdiction (with merit)	No Jurisdiction
Total	20	2	1	17

3.2.2. Complaints Concluded in 2017: Average Length of Time for Review and Completion

	Days
No Jurisdiction	7
Jurisdiction	90

3.3. Summary of Complaints Concluded in 2017

With the exception of one matter falling within s. 62(5)(d)(ii) of *The Provincial Court Act, 1998*, all of the complaints concluded in 2017 were determined to be without merit or not within the jurisdiction of Council to review. As the following summary reveals, the very large majority of them raised concerns falling outside of the jurisdiction of Council.

3.3.1. Complaint #1

The Complainant alleged that the judge openly criticized the complainant during the course of a trial and that the judge’s remarks were “derogatory, callous and demeaning”. The Complainant also alleged that certain release conditions referred to by the judge were not in place and questioned certain facts relied upon by the judge. Council reviewed the relevant transcript and found the complaint had no merit. The release condition at issue was in fact in place and the Agreed Statement of Facts resolved the factual issue raised by the Complainant. Council advised that given those facts, the judge’s comments were justified.

3.3.2. Complaint #2

The Complainant wrote to a number of authorities regarding concerns of the treatment of sexual assault cases in the criminal justice system. The Complainant was told that a request to address the handling of sexual assault cases in the criminal justice system generally does not fall within the mandate of the Saskatchewan Provincial Court Judicial Council. The Complainant was advised that in order to make a complaint regarding the conduct of an individual Provincial Court judge, particulars would need to be provided.

3.3.3. Complaint #3

The Complainant wrote to Council regarding concerns the Complainant had as a result of participating in a domestic violence trial. The Complainant was advised that Council had no jurisdiction to review the concerns raised as it appeared that the trial took place outside of Saskatchewan.

3.3.4. Complaint #4

The Complainant wrote to Council and enquired about a decision reserved by a judge of the Saskatchewan Court of Queen's Bench with respect to an estate matter. The Complainant was told that the complaint was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review. The Complainant was advised that in order to pursue the complaint further, the complainant could write to the Registrar of the Court of Queen's Bench. Additionally or alternatively, the Complainant was advised that complaints against the conduct of a judge of the Court of Queen's Bench should be directed to the Canadian Judicial Council.

3.3.5. Complaint #5

The Complainant made a complaint against a Justice of the Peace. The Complainant was told that the complaint was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review. The Complainant was directed to the Office of the Supervising Justice of the Peace.

3.3.6. Complaint #6

The Complainant wrote to Council regarding general concerns relating to the justice system. The Complainant was advised that, as the complaint did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge, it was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council.

3.3.7. Complaint #7

The Complainant made a complaint against a Provincial Court judge. The complaint raised issues with the decision the judge reached and alleged misconduct on behalf of the judge. With respect to the first issue, the Complainant was advised to appeal the ruling of the judge if not satisfied with it. With respect to the second issue, the Complainant alleged, among other things, that the judge was biased, neglected to allocate the time and effort required, and was incapable or incompetent in performing his professional duties. The Complainant was advised that Council was unable to assess that aspect of the complaint without knowing the basis upon which it was founded. The Complainant was asked to provide specific information to Council in order to pursue the complaint. Nothing further was provided from the Complainant.

3.3.8. Complaint #8

The Complainant made a complaint regarding a matter before a Provincial Court judge. The complaint alleged that the judge did not allow the Complainant to conduct an examination in chief and provide rebuttal, allowed the Crown the opportunity to conduct an examination in chief and provide rebuttal, restricted the admission of certain evidence, and shifted the onus and burden of proof in certain instances. The Complainant was advised that Council had no authority to deal with those issues as they did not raise questions of misconduct or incapacity but that they could be pursued during the hearing itself or through a potential appeal.

3.3.9. Complaint #9

The Complainant made a complaint against a Provincial Court judge in relation to a traffic safety matter. The Complainant was advised that the question of whether or not a judge decides to grant an adjournment or recuse himself/herself is a legal matter for that judge to decide. The Complainant was told that such a decision does not raise issues of misconduct or incapacity and is outside the jurisdiction of the Council. The Complainant was further advised that any dissatisfaction regarding a decision of a judge on a legal matter can only be resolved through an applicable appeal process.

3.3.10. Complaint #10

The Complainant made a complaint against a Provincial Court judge, the Saskatoon police and the health region. The Complainant was told that the complaint against the Saskatoon police and the health region was outside the jurisdiction of the Council. With respect to the complaint against the judge, the Complainant was told that it was also outside Council's jurisdiction as it did not raise occurrences of misconduct or incapacity.

3.3.11. Complaint #11

The Complainant made a complaint against a judge of the Saskatchewan Court of Queen's Bench. The Complainant was told that complaints respecting judges of the Court of Queen's Bench must be directed to the Canadian Judicial Council and that the Saskatchewan Provincial Court Judicial Council had no jurisdiction to review the complaint.

3.3.12. Complaint #12

The Complainant wrote to Council regarding a number of matters that were not in relation to Provincial Court judges. The Complainant was advised that as the complaint did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge it was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review.

3.3.13. Complaint #13

The Complainant made a complaint against a number of Provincial Court judges. With respect to the complaint against the first named judge, Council reviewed the relevant transcripts from the Complainant's appearances before the judge and determined there was nothing that the judge said or did that could be considered judicial misconduct or that would reveal judicial incapacity. The Complainant was advised that the complaints against the remaining judges were clearly outside the jurisdiction of Council because they did not relate to judicial misconduct or judicial incapacity.

3.3.14. Complaint #14

The Complainant made allegations regarding concerns with the decisions that a Saskatchewan Provincial Court judge reached. The Complainant was told that Council had no jurisdiction to review concerns related to decisions as such issues can only be resolved through an applicable appeal process.

3.3.15. Complaint #15

The Complainant wrote to a number of authorities regarding a complaint about the Saskatchewan Human Rights Commission and a number of provincial Ministries. The Complainant was advised that the complaint was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review as it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.

3.3.16. Complaint #16

The Complainant made a complaint against a judge of the Saskatchewan Court of Queen's Bench. Council told the Complainant that as the complaint related to a Queen's Bench judge it was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review. Council advised that complaints regarding the conduct of judges of the Court of Queen's Bench must be directed to the Canadian Judicial Council.

3.3.17. Complaint #17

The Complainant wrote to Council regarding a number of concerns that were not in relation to Provincial Court judges. The Complainant was advised that as the complaint did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge it was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council.

3.3.18. Complaint #18

The Complainant made a complaint against a Provincial Court judge and a probation officer. The Complainant was told that the complaint against the Provincial Court judge primarily raised issues with the decisions that judge reached. Council advised that it has no jurisdiction to review concerns related to decisions as such issues can only be resolved through any applicable appeal process. The Complainant was also told that the complaint regarding the probation officer was not within Council's jurisdiction to review. Finally, with respect to the portion of the complaint relating to what the Provincial Court judge allegedly said or did in court, the Complainant was invited to provide further information identifying the specific concern with respect to the conduct or capacity of the judge. Nothing further was provided from the Complainant.

3.3.19. Complaint #19

The Complainant made allegations regarding concerns with the decisions that a Saskatchewan Provincial Court judge had reached. The Complainant was told that Council had no jurisdiction to review concerns related to decisions as such issues can only be resolved through an applicable appeal process.