

## ASSESSMENTS POLICY OF THE PROVINCIAL COURT JUDICIAL COUNCIL

*The Provincial Court Act, 1998*, S.S. 1998, c. P-30.11, states:

54 The council shall:

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

### **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 place 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.

Approved June 3, 2014