

Saskatchewan Provincial Court Judicial Council 2015 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 in that regard. 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.

This is the first ever annual report prepared by the Council. My colleagues and I hope that it will make our work more transparent by providing the public with additional information about both what we do and how we do it.

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

2. Members of the Provincial Court Judicial Council

The Council is composed of the following members:

- The Chief Justice of Saskatchewan, the Honourable Robert G. Richards (chair)
- 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. Brenda Hildebrandt, 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) assesses 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 candidates are advised their Form has been received.
4. Once the Law Society and other preliminary background checks are completed, the candidate's information package is referred to Council for assessment.
5. Subject to Articles 8 and 9, assessments are valid and remain in effect for three (3) years.
6. Candidates are notified of the date they were assessed by Council and that their assessment remains in effect for three (3) years. The candidates are not 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 expiration of their three (3) year assessment, 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 a 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 Council.
 - b) All documents and information submitted as part of the assessment 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 Council members. (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 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 appointment 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 for 2015*

Total Number of Applications Received and Reviewed in 2015

	Female Lawyers	Male Lawyers	Total Applications	Private Practice	Public Practice	Other Legal
Received	4	9	13	5	5	3
Recommended	1	2				
Deferred	2	2				
% Recommended	25%	22%				

There were 22 recommended candidates on the Minister of Justice's list as of December 31, 2015.

3.1.2. *Appointments Made in 2015*

Two judges were appointed to the Provincial Court in 2015:

- Judge Vanessa M. Enweani – July 24, 2015
- Judge Steven Schiefner – November 13, 2015

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 self-evidently 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 obtain the necessary background material, such as transcripts, etc. 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, a package of materials will be distributed 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 drafts an appropriate letter 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 necessary background materials are obtained and provided to Council.

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 2015

Total Number of Complaints Received in 2015

	Complaints Received†	With Jurisdiction (no merit)	With Jurisdiction (with merit)	No Jurisdiction*
Total	3	1.5	0	0.5

† one complaint was received at the end of 2015 and will be reviewed in 2016

* one complaint involved two distinct issues: one over which Council had no jurisdiction and one over which Council had jurisdiction, but the complaint had no merit

3.2.2. Length of Time to Deal With a Complaint

	Days
Without Jurisdiction	30
With Jurisdiction	90

3.3. Summary of Complaints reviewed in 2015

3.3.1. Complaint #1

The complainant made two complaints to Council. First he alleged that the victims of an offence had been further victimized through the trial process and should have legal counsel to have their voices heard. Second, he alleged there was a conflict of interest because the Judge had previously taught at the same reserve that the offender and his lawyer were from. Council advised the complainant that it does not have authority to deal with the place of victims in the criminal justice system. With respect to the alleged conflict of interest, Council advised the complainant that in a small province like Saskatchewan it was not uncommon for participants in the justice system to have some common history and that the circumstances at hand did not reveal a conflict of interest.

3.3.2. Complaint #2

The complainant said the judge preconceived the outcome of his case and used inappropriate language when talking to him. The Council reviewed the transcript and found the complaint to be without merit. Council advised the complainant that there was no foundation to the allegation the Judge had preconceived the outcome of his matter and while the exchange between him and the Judge may have been somewhat terse, it did not amount to judicial misconduct.