

# Saskatchewan Provincial Court Judicial Council

## 2018 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 discharges 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

The Council is 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 former President of the Law Society of Saskatchewan, Ms. Erin Kleisinger, Q.C.
- Two members appointed by the Lieutenant Governor in Council, Mr. Ken Waschuk (January 1 - April 15), Ms. Colleen Cameron (January 1 - April 15), and Ms. Tracy Arno (August 1 - December 31). One of these positions is presently vacant.
- 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 2018

#### Total Number of Applications Reviewed in 2018

	Female Lawyers	Male Lawyers	Total Reviewed	Private Practice	Public Practice	Other Legal
Reviewed	10	9	19	7	9	3
Not Recommended	3	4				
Recommended	3	5				
Highly Recommended	0	0				
Deferred	3	0				
Withdrawn	2*	0				
% Recommended of Reviewed Applications	50%	56%				

\*One candidate withdrew her application following review and one candidate withdrew her application prior to review

There were 24 recommended candidates on the Minister of Justice's list as of December 31, 2018.

### 3.1.2. Appointments Made in 2018

Five judges were appointed to the Provincial Court in 2018:

- Judge N. Crooks – March 23, 2018
- Judge M. McAuley – March 23, 2018
- Judge E. Layton – November 2, 2018
- Judge B. Hendrickson – November 23, 2018
- Judge M. Brass – November 23, 2018

### 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 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 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 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 2018***

- Total Number of Complaints Concluded in 2018: 20

#### **Total Number of Complaints Concluded in 2018**

	Complaints Concluded	Jurisdiction (no merit)	Jurisdiction (with merit)	No Jurisdiction
Total	16	2.5*	0	13.5*

\*One complaint contained two separate issues

### ***3.2.2. Complaints Concluded in 2018: Average Length of Time for Review and Completion***

	Days
No Jurisdiction	10
Jurisdiction	35

### **3.3. Summary of Complaints Concluded in 2018**

All of the complaints concluded in 2018 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 made allegations regarding concerns about the decisions of a Saskatchewan Provincial Court judge. The Complainant was told that Council had no jurisdiction to review concerns related to decisions because such issues can only be resolved through the applicable appeal process.

#### ***3.3.2. Complaint #2***

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.

### ***3.3.3. Complaint #3***

The Complainant wrote to Council regarding residential schools. The Complainant was told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity.

### ***3.3.4. Complaint #4***

The Complainants 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 Complainants were advised to appeal the ruling of the judge if not satisfied with it. With respect to the second issue, the Complainants alleged that the judge was hostile and condescending, appeared visibly angry and glared at people in the gallery. The Complainants were advised that Council was unable to assess that aspect of the complaint without knowing the basis upon which it was founded. The Complainants were asked to provide specific information to Council in order to allow it to pursue the complaint. The Complainants later responded to Council's letter and stated their previous letter was sufficient to form a complaint. Council advised the Complainants that without the requested particulars, Council remained unable to assess their complaint.

### ***3.3.5. Complaint #5***

The Complainant made a complaint against a Court of Queen's Bench judge. Council advised that complaints regarding the conduct of judges of the Court of Queen's Bench must be directed to the Canadian Judicial Council and that the complaint was outside of Council's jurisdiction.

### ***3.3.6. Complaint #6***

The Complainant made a complaint regarding the decision of a Provincial Court judge. The Complainant was advised that the complaint raised issues with the decision, as opposed to identifying misconduct or incapacity, and that the issues raised about the decision involved alleged legal error. The Complainant was advised that the proper course would be to follow the appeals process.

### ***3.3.7. Complaint #7***

The Complainant wrote to Council regarding a Court of Queen's Bench judge. The Complainant was advised that because the complaint related to a Court of Queen's Bench judge, it was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review and that such complaints must be directed to the Canadian Judicial Council.

### ***3.3.8. Complaint #8***

The Complainant made a number of allegations against individuals, the police and the judicial system, as well as against a Provincial Court judge. The Complainant was advised that his complaints respecting the individuals, the police and the judicial system were outside the jurisdiction of the Council. With respect to his complaint against the Provincial Court judge, the Complainant was told that Council had no jurisdiction as it did not contain allegations of misconduct or incapacity.

### ***3.3.9. Complaint #9***

The Complainant made a complaint regarding a Provincial Court judge. The complaint made allegations concerning the decision because, upon judicial review, it had been found to be erroneous. The Complainant was advised that such an error, while significant in the judicial review context, did not amount to misconduct or incapacity in the circumstances.

### ***3.3.10. Complaint #10***

The Complainant made a complaint against a Provincial Court judge. The complaint raised three concerns, namely, bias, lack of respect evidenced by not reading the decision in open court and misunderstanding of the law. Council reviewed the relevant transcripts and decisions and advised the Complainant that the complaint was without merit. The Complainant was told there was no evidence the judge acted inappropriately or in a biased way, that not reading a decision is an option available to a judge, and that the judge's legal errors did not amount to misconduct or incapacity.

### ***3.3.11. Complaint #11***

The Complainant made a complaint against Legal Aid. The Complainant was told that this complaint was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review. The Complainant was advised to direct the complaint to the Chief Executive Officer of Legal Aid or to the Law Society of Saskatchewan.

### ***3.3.12. Complaint #12***

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

### ***3.3.13. Complaint #13***

The Complainant made a complaint against a judge of the Saskatchewan Court of Queen's Bench. Council told the Complainant that as the complaint did not relate to a Provincial Court 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.



***3.3.14. Complaint #14***

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.

***3.3.15. Complaint #15***

The Complainant raised allegations against a Provincial Court judge, the R.C.M.P. and certain individuals. The Complainant was advised that Council had previously dealt with one of these complaints and that Council still did not have jurisdiction over the R.C.M.P. or the individuals and that the complaint against the Provincial Court judge was dealt with at that time. The Complainant was further told that the complaints against the R.C.M.P. and the individuals concerned matters outside Council's jurisdiction. With respect to the additional allegations contained in the complaint, the Complainant was told that the complaint raised issues with the judge's decisions, rather than identifying misconduct or incapacity, and that Council had no jurisdiction to review these concerns as such issues can only be resolved through the applicable appeals process.

***3.3.16. Complaint #16***

The Complainant sought a copy of a document. The Complainant was advised that because no judicial misconduct or incapacity was alleged, it was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to provide the document.