

## Saskatchewan Provincial Court Judicial Council 2019 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 of Justice 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

In 2019, the Council was composed of the following members:

- The Chief Justice of Saskatchewan, the Honourable Robert 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. Leslie Belloc-Pinder, Q.C.;
- Two members appointed by the Lieutenant Governor in Council, Ms. Tracy Arno and Mr. Jason Stonechild (March 28–December 31). One position was vacant from January 1 to March 27;
- Two judges elected by the judges at a meeting of the Provincial Court *en banc*: the Honourable Judge Hugh Harradence (January 1–May 30); the Honourable Judge Robert Lane (January 1–October 31); the Honourable Judge Morris Baniak (May 31–December 31); and the Honourable Judge Marilyn Penner (November 1–December 31).

### 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 2019

#### Total Number of Applications Reviewed in 2019

	Female Lawyers	Male Lawyers	Total Reviewed	Private Practice	Public Practice	Other Legal
Reviewed	15	9	24	11	12	1
Not Recommended	4	5				
Recommended	7	3				
Highly Recommended	0	0				
Deferred	4	1				
% Recommended	47%	33%				

There were 23 recommended candidates on the Minister of Justice's list as of December 31, 2019.

### ***3.1.2. Appointments Made in 2019***

Four judges were appointed to the Provincial Court in 2019:

- Judge N. Evanchuk – June 24, 2019
- Judge M. Pelletier – June 24, 2019
- Judge T. Healey – August 1, 2019
- Judge M. Segu – November 27, 2019

### **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 2019**

- Total Number of Complaints Concluded in 2019: 27

**Total Number of Complaints Concluded in 2019**

	Complaints Concluded	Jurisdiction (no merit)	Jurisdiction (with merit)	No Jurisdiction
Total	27	3.5	1	22.5

\*One complaint contained two separate issues

**3.2.2. Complaints Concluded in 2019: Average Length of Time for Review and Completion**

	Days
No Jurisdiction	10
Jurisdiction	120

**3.3. Summary of Complaints Concluded in 2019**

All but one of the complaints concluded in 2019 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 a complaint against a Provincial Court judge regarding a tweet that the judge had posted shortly after the jury's verdict was delivered in the case of *R v Stanley*. The judge provided an explanation for the tweet that was unrelated to the trial verdict and indicated that the tweet had been deleted and the Twitter account deactivated immediately upon being made aware that the post had been re-tweeted by numerous people in connection with *R v Stanley*. The judge acknowledged that, regardless of the intention in posting the tweet, it was inappropriate for someone in the position of a Provincial Court judge. The judge consented to a finding of misconduct and Council concluded that the matter could appropriately be resolved pursuant to s. 55(2)(b) of *The Provincial Court Act, 1998* and by way of a remedial order requiring a letter of apology.

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

The Complainant made a complaint against a Provincial Court judge. The Complainant was asked to elaborate on the alleged misconduct. The Complainant was also told that if the R.C.M.P. are the target of his concern, his complaint is more properly directed to them.

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

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.

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

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

### ***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 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 any applicable appeal process.

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

The Complainant wrote to Council regarding a matter that was not in relation to a Provincial Court judge. 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. The Complainant was also advised that, as she appeared to be seeking legal advice, she may wish to consult a lawyer and that Council could not provide such advice. In the alternative, the Complainant was told that if she was alleging something criminal had occurred, she may wish to report it to the appropriate policing agency.

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

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.

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

The Complainant made a complaint against three judges of the Provincial Court. Council reviewed the relevant audio recordings of the Complainant's appearances before the judges and found nothing that could be considered judicial misconduct or judicial incapacity. The Complainant had failed to identify himself after a judge had patiently explained that he needed to do so. On another occasion, the Complainant was asked how he would like to plead to his charges and he refused to answer. In such a scenario, a second judge was justified in entering a "not guilty" plea. Finally, when the Complainant appeared before a third judge, he was repeatedly asked to pick a date for his trial. Given the exchange that took place between the Complainant and the judge, the judge's assertiveness was appropriate. The judge did not utter the words attributed to him by the Complainant.

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

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 his 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.

### ***3.3.11. 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. The Complainant was told that concerns about court processes, representation by legal counsel, and decisions reached by judges are outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council. The Complainant was also told that the aspect of her complaint relating to a judge, who is now a judge of the Court of Queen's Bench, must be directed to the Canadian Judicial Council.

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

The Complainant wrote to Council a number of times. On the first occasion, the Complainant was told that further information was required in order to assess his complaint. On the second occasion, the Complainant was not forthcoming with additional information and was again told what was required in order for Council to look into his complaint. The Complainant wrote to Council a number of other times. He was again told that Council can only review complaints of judicial misconduct or judicial incapacity of Saskatchewan Provincial Court judges. Second, Council advised that it remained unable to process his complaint because it was not able to determine what he considered to be judicial misconduct. The Complainant wrote again to Council and was again told that Council only has the jurisdiction to review complaints of judicial misconduct or judicial incapacity of Saskatchewan Provincial Court judges. It cannot review complaints about anything or anyone else. As the Complainant had failed to identify what behaviour he believed to have been misconduct on the part of a Provincial Court judge, he was advised that Council had dealt with his complaint to the extent that it could and was not prepared to reopen his file.

### ***3.3.14. Complaint #14***

The Complainant made a complaint regarding the way in which his hearing impairment was handled by a Provincial Court judge during a case management conference. Council began investigating the complaint by contacting the judge in question, who disputed the Complainant's version of events. As such, in order to determine which version of the events should be accepted, Council also contacted two people who were in the courtroom during the case management conference. From Council's review of the accounts given, it was evident that the judge had done nothing that amounted to misconduct. His comments were appropriate and intended to help restore the discourse to a normal level. He did not treat the Complainant unfairly, inappropriately or with a lack of respect.

### ***3.3.15. Complaint #15***

The Complainant wrote to Council regarding court processes, representation by legal counsel, and decisions reached by judges. The Complainant was told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity. The Complainant was also told that the aspect of the complaint relating to a judge who is now a judge of the Court of Queen's Bench must be directed to the Canadian Judicial Council.

### ***3.3.16. Complaint #16***

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

### ***3.3.17. Complaint #17***

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.

### ***3.3.18. Complaint #18***

The Complainant wrote to Council regarding the R.C.M.P., the justice system and a Crown prosecutor. The Complainant was told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity.

### ***3.3.19. Complaint #19***

The Complainant wrote to Council twice regarding a number of matters that were not in relation to Provincial Court judges. The Complainant was advised each time that, as his complaints did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge, they were outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review.

### ***3.3.20. Complaint #20***

The Complainant wrote to Council a number of times. The first correspondence from the Complainant indicated that he had a complaint against a member of Council but did not wish to pursue it. Council advised the Complainant that if he chose to pursue his complaint, the judge would not take part in the consideration of it or its determination. Council also advised that it takes all complaints seriously and they are not "preordained". Finally, the Complainant was told that Council has no jurisdiction to review concerns related to decisions a judge reached as such issues can only be resolved through any applicable appeal process. The Complainant wrote to Council a second time and was told that further information was required in order to assess the complaint. The Complainant wrote to Council a third time and provided further information. The Complainant was told that most of the concerns raised were regarding decisions the judge had reached and that Council has no jurisdiction to review those concerns. With respect to an allegation of misconduct, the Complainant was asked to provide a description of what the judge said or did in relation to that allegation. The Complainant wrote to Council again. The Complainant was told that the concerns raised fell outside the jurisdiction of Council as they were regarding decisions reached by a judge. The Complainant again wrote to Council. The Complainant was told that he had been given several opportunities to clarify his complaint and give Council the necessary details

but, as he had neglected or refused to do so, Council would be closing its file and would not be providing any further responses.

### ***3.3.21. Complaint #21***

The Complainant made a complaint against the Saskatchewan Public Complaints Commission. 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 Deputy Minister of Justice.

### ***3.3.22. Complaint #22***

The Complainant wrote to Council regarding his wish to file a complaint. The Complainant was advised that further information was needed in order to assess his complaint. The Complainant again wrote to Council about the matter and advised that he did not know the name of the judge that he had appeared before or the date that he appeared in court. Council advised that, unfortunately, it is unable to look into a complaint without knowing the court date and court location. Council asked the Complainant to provide any more information he may obtain in the future so that it can move forward with the complaint.

### ***3.3.23. Complaint #23***

The Complainant made a complaint against two judges of the Provincial Court. With respect to the complaint against the first judge, the Complainant was advised that they were the same concerns that had been raised by the Complainant and disposed of by Council in 2014. Similarly, with respect to the complaint against the second judge, many of the concerns raised had already been addressed by Council in 2014. Council advised that the new allegations of misconduct about the second judge were considered by reviewing the relevant trial transcript and were found to be without merit. The judge took control of the proceedings in an appropriate manner when he was required to do so. The judge also provided guidance to the Complainant as a self-represented individual throughout the trial.

### ***3.3.24. Complaint #24***

The Complainant made a complaint against a judge of the Provincial Court and judges of the Saskatchewan Court of Queen's Bench and Court of Appeal. With respect to the complaint against the Provincial Court judge, a review of the transcript from the Complainant's Small Claims Hearing revealed that the complaint was without merit. In addition, the Complainant was advised that Council had no jurisdiction to address concerns regarding the judge's decisions on legal matters. Finally, the Complainant was told that complaints regarding judges of the Court of Queen's Bench and Court of Appeal are not within the jurisdiction of Council and must be directed to the Canadian Judicial Council.

***3.3.25. Complaint #25***

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.

***3.3.26. Complaint #26***

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.

***3.3.27. Complaint #27***

The Complainant wrote to Council regarding a judge. The Complainant was told that it was not possible to assess from her email whether the complaint was regarding a Provincial Court judge or a judge of the Court of Queen's Bench. The Complainant was advised that complaints regarding the conduct of judges of the Court of Queen's Bench must be directed to the Canadian Judicial Council. The Complainant was also told that if the complaint was in relation to the conduct of a Provincial Court judge, further particulars were needed. Finally, Council advised that to the extent that the complaint relates to decisions reached by a judge and a request for a review of those decisions, such matters are outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review. These are issues to be dealt with by way of the appeal process.