

## Saskatchewan Provincial Court Judicial Council 2021 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 2021, 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 (January 1–February 28), the Honourable Shannon Metivier (March 1–);
- The President of the Law Society of Saskatchewan, Ms. Foluke Laosebikan;
- Two members appointed by the Lieutenant Governor in Council, Ms. Tracy Arno (January 1–August 1; December 8–) and Mr. Jason Stonechild.
- Two judges elected by the judges at a meeting of the Provincial Court *en banc*: the Honourable Judge Morris Baniak and the Honourable Judge Marilyn Penner.

### 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 2021**

**Total Number of Applications Reviewed in 2021**

	Female Lawyers*	Male Lawyers*	Total Reviewed	Private Practice	Public Practice	Other Legal
Reviewed	15	10	25	6	13	6
Not Recommended	7	6	13	4	6	3
Recommended	6	4	10	2	6	2
Highly Recommended	2	0	2	0	1	1
Deferred	0	0	0	0	0	0
% Recommended	53%	40%	48%	33%	54%	50%

\* Based on Driver’s Licence self-identification

There were 25 recommended candidates on the Minister of Justice’s list as of December 31, 2021.

### ***3.1.2. Appointments Made in 2021***

Six judges were appointed to the Provincial Court in 2021:

- Judge Jeffrey Lubyk – February 3, 2021
- Judge Michael Tomka – April 14, 2021
- Judge Lynn Hintz – September 9, 2021
- Judge Jane Wootten – October 28, 2021
- Judge Dorinda Stahl – November 3, 2021
- Judge Bradley Mitchell – November 3, 2021

### **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 2021**

- Total Number of Complaints Concluded in 2021: 19

**Total Number of Complaints Concluded in 2021**

	Complaints Concluded	Jurisdiction (no merit)	Jurisdiction (with merit)	No Jurisdiction
Total	19	2	0	17

**3.2.2. Complaints Concluded in 2021: Average Length of Time for Review and Completion**

	Days
No Jurisdiction	7
Jurisdiction	36

### **3.3. Summary of Complaints Concluded in 2021**

All of the complaints concluded in 2021 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 wrote to Council regarding a court proceeding. The Complainant was told that Council was not able to assess the complaint without further information. The Complainant wrote again to Council, but the additional information provided did not relate to an allegation of misconduct of a Provincial Court judge. Accordingly, the Complainant was advised that Council's file would remain closed until such time as it is provided with further specifics.

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

The Complainant wrote to Council regarding a court case. The Complainant was told that Council had no jurisdiction to review the complaint as it involved a decision that had been made by the prosecution. The Complainant was provided with certain information from the court file.

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

The Complainant made a complaint regarding a decision of the Office of Residential Tenancies. 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 decisions made under *The Residential Tenancies Act, 2006* may be appealed to the Court of Queen's Bench and was told to contact the Court of Queen's Bench for further information on the appeals process.

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

Council received correspondence regarding a judge of the Saskatchewan Court of Queen's Bench. Council advised that matters involving the conduct of 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 matter.

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

The Complainant made a complaint against a Provincial Court judge in relation to comments he made during a bail hearing. Council proceeded by reviewing the relevant transcript and by giving the judge an opportunity to respond to the complaint. Upon completion of that review, Council determined that, while the comments made by the judge were not well expressed, they did not, as the complaint suggested, support systemic racism. The Complainant was advised that the comments did not constitute misconduct.

***3.3.6. Complaint #6***

The Complainant wrote to Council regarding concerns about a court proceeding. The Complainant was told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge. Council invited the Complainant to seek guidance from a lawyer and advised that it cannot provide legal advice.

***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 told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.

***3.3.8. Complaint #8***

The Complainant wrote to Council a number of times. On the first occasion, the Complainant made a complaint against a Provincial Court judge about the way in which the judge had conducted certain court proceedings. In accordance with Council's complaints procedure, Chief Justice Popescul reviewed the relevant transcript and determined that there was nothing revealed in it that would suggest that the judge had acted inappropriately in any way. Additional correspondence from the Complainant did not raise a complaint within the jurisdiction of Council.

***3.3.9. Complaint #9***

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.

***3.3.10. Complaint #10***

The Complainant wrote to Council regarding a land titles issue. The Complainant was told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.

***3.3.11. Complaint #11***

The Complainant wrote to Council regarding a number of matters that were not in relation to the actions of a Provincial Court judge. The Complainant was told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.



***3.3.12. Complaint #12***

The Complainant wrote to Council regarding concerns about the North Battleford Provincial Court Office. The Complainant was told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge. The Complainant was provided with the contact information for the responsible court manager.

***3.3.13. Complaint #13***

The Complainant wrote to Council regarding a number of matters that were not in relation to the actions of a Provincial Court judge. The Complainant was told that Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.

***3.3.14. Complaint #14***

The Complainant made a complaint against two judges 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.

***3.3.15. Complaint #15***

The Complainant wrote to Council a number of times regarding a court proceeding. On the first occasion, the Complainant was told that Council only has jurisdiction to review complaints of judicial misconduct or judicial incapacity of Saskatchewan Provincial Court judges. The Complainant was also advised 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. Finally, Council advised that it cannot review complaints against anyone other than a Provincial Court judge. The Complainant was invited to provide further information to Council. The Complainant wrote to Council again several times but did not provide additional information relating to an allegation of misconduct or incapacity of a Provincial Court judge.

***3.3.16. Complaint #16***

The Complainant wrote to Council regarding a court proceeding. The Complainant was told that Council could not determine the nature of the complaint based on the information received. Council advised that, in order to pursue the complaint, further information must be provided. No additional information was received from the Complainant.

***3.3.17. Complaint #17***

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. The Complainant wrote to Council again and Council reiterated what was said in its initial response.

***3.3.18. Complaint #18***

The Complainant wrote to Council regarding a court proceeding. The Complainant was told that Council could not determine the nature of the complaint based on the information received. Council advised that, in order to pursue the complaint, further information must be provided. No additional information about the complaint was received from the Complainant.

***3.3.19. Complaint #19***

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.

Questions regarding the Provincial Court Judicial Council should be directed to:

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