

Saskatchewan Provincial Court Judicial Council 2023 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 W. Leurer
Chief Justice of Saskatchewan
Chairperson of the Judicial Council

2. Members of the Provincial Court Judicial Council

In 2023, the Council was composed of the following members:

- The Chief Justice of Saskatchewan, the Honourable Robert Richards (January 1–August 31), the Honourable Georgina Jackson (Acting Chief Justice, September 1–October 5, 2023), the Honourable Robert Leurer (October 6, 2023–) (chairperson);
- The Chief Justice of the Court of King’s Bench, the Honourable Martel Popescul;
- The Chief Judge of the Provincial Court, the Honourable Shannon Metivier;
- The Past-President of the Law Society of Saskatchewan, Mr. James Korpan, K.C.;
- Two members appointed by the Lieutenant Governor in Council, Ms. Tracy Arno and Mr. Jason Stonechild; and
- 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 shall be treated as strictly confidential, and must not be disclosed to persons outside the Council.
 - b) All documents submitted as part of the assessments process shall 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) All information obtained through the consultation of references and from other sources shall be treated as personal and strictly confidential and must not be disclosed to persons outside the Council.
 - 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 2023

Total Number of Applications Reviewed in 2023

	Female Lawyers*	Male Lawyers*	Total Reviewed
Reviewed	11	15	26
Not Recommended	5	9	14
Recommended or Highly Recommended	6	6	12
Deferred	0	0	0
% Recommended	54%	40%	46%
* Based on Driver’s Licence self-identification			

There were 19 recommended candidates on the Minister of Justice’s list as of December 31, 2023.

3.1.2. Appointments Made in 2023

Six judges were appointed to the Provincial Court in 2023:

- Judge Lisa Watson - April 10, 2023
- Judge Nathan Forester - June 15, 2023
- Judge Kim Armstrong - July 27, 2023
- Judge David Chow - July 27, 2023
- Judge Jennifer Claxton-Viczko - July 27, 2023
- Judge Darren Howarth - July 27, 2023

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 King’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 King’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 King’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 King’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 King’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 2023

- Total Number of Complaints Concluded in 2023:

Total Number of Complaints Concluded in 2023

	Complaints Concluded	Jurisdiction (no merit)	Jurisdiction (with merit)	No Jurisdiction
Total	20*	3	0	16

*One complaint was concluded after the judge resigned while the complaint was under investigation and the Council determined that it was not in the interests of the administration of justice to continue with the matter.

3.2.2. Complaints Concluded in 2023: Average Length of Time for Review and Completion

	Days
No Jurisdiction	7
Jurisdiction	92

3.3. Summary of Complaints Concluded in 2023

Of the 20 complaints concluded in 2023, 19 were determined to be without merit or to fall outside the Council's jurisdiction to review. In one case, the judge resigned while the complaint was under investigation and the Council determined that it was not in the interests of the administration of justice to continue with the matter. As the following summary reveals, the very large majority of the complaints raised concerns falling outside of the jurisdiction of the Council.

3.3.1. Complaint #1

This matter related to the funding of water on reserves. The Complainant was told that the Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.

3.3.2. Complaint #2

This matter related to a Small Claims Court case. The Complainant was told that the Council only has jurisdiction to review complaints of judicial misconduct or incapacity of Saskatchewan Provincial Court judges. The Complainant was also advised that the Council has no jurisdiction to review concerns related to a decision a judge reached. In addition, the Council advised that it was not able to review the aspects of the complaint about a person that is not a Provincial Court judge, and that any questions about how the claim should be dealt with going forward would involve engaging the services of a lawyer.

3.3.3. Complaint #3

This matter related to a decision made by the Attorney General of Saskatchewan. The Complainant was told that the Council had no jurisdiction to review the matter because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.

3.3.4. Complaint #4

This matter related to the manner in which a case before a Provincial Court judge had proceeded. The Council investigated the complaint and from its review, it was evident that none of the issues put forward constituted misconduct. With respect to the concerns raised about the delay in rendering the decision, Chief Judge Metivier took steps to address that issue. The Complainant then wrote to the Council a second time. After reviewing that complaint, the Council advised that the matters raised related to legal issues and, as such, the Council had no jurisdiction to review those concerns. The Complainant was advised that such issues can only be brought forward through an appeal.

3.3.5. Complaint #5

This matter related to the conduct of registry staff of the Court of King's Bench. The Complainant was told that the Saskatchewan Provincial Court Judicial Council had no jurisdiction to review the complaint.

3.3.6. Complaint #6

This matter related to a complaint against a Justice of the Peace. The Complainant was advised that the complaint was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review.

3.3.7. Complaint #7

This matter related to the treatment of cases involving Aboriginal people within the criminal justice system. The Complainant was advised that, if the complaint was intended to address the conduct of a particular Provincial Court judge, further information would be needed, including the name of the judge, the date and the circumstances of the conduct. The Complainant was also advised that if the complaint was simply a request to address the handling of cases involving Aboriginal people in the criminal justice system generally, that concern would not fall within the mandate of the Council.

3.3.8. Complaint #8

This matter related to a Provincial Court judge's interactions with a person who was before the Provincial Court. While the Council was actively investigating the matter, the judge chose to formally retire. Since the judge was no longer a judge, the Council resolved that it was not in the interests of the administration of justice to continue to investigate the complaint.

3.3.9. Complaint #9

This matter related to the way in which a Provincial Court judge had conducted certain court proceedings. The Complainant alleged, among other things, that the judge made rude comments during the proceedings. A review of the transcript allowed the Council to determine that the accusations were not borne out.

3.3.10. Complaint #10

This matter related to the conduct and decision of a Provincial Court judge. The Council investigated the complaint and found that, with respect to the allegation that the judge had met with a lawyer involved in the matter prior to the commencement of the hearing, there was no evidence to support such a conclusion. The Complainants were also told that the judge's dismissal of the case involved a legal determination and, as such, that the Council had no jurisdiction to review any concerns related to that decision.

3.3.11. Complaint #11

This matter related to a case that had been before two judges of the Saskatchewan Court of King's Bench. The Complainant was told that complaints respecting judges of the Court of King'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

This matter related to the conduct of court staff at the Moose Jaw Provincial Court House. The Complainant was told that the Saskatchewan Provincial Court Judicial 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 Council provided the Complainant the contact information for the Director of Provincial Court Operations.

3.3.13. Complaint #13

This matter related to a request to appeal a child support decision. The Complainant was told that the Council had no jurisdiction to review the matter because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.

3.3.14. Complaint #14

This matter related to a case that had been before a judge of the Saskatchewan Court of King's Bench. The Complainant was told that complaints respecting judges of the Court of King'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

This matter related to a complaint that had been made to the Canadian Judicial Council about a Saskatchewan Provincial Court judge. The Council advised that in order to assess that complaint, it would require a copy of it. The Complainant did not respond to the Council's request.

3.3.16. Complaint #16

This matter related to a case that had been before a judge of a superior court in Ontario. The Complainant was told that complaints against federally appointed judges must be directed to the Canadian Judicial Council and that the Saskatchewan Provincial Court Judicial Council had no jurisdiction to review the complaint.

3.3.17. Complaint #17

This matter related to concerns not pertaining to a Provincial Court judge. The Complainant was told that the Council had no jurisdiction to review the complaint because it did not relate to judicial misconduct or incapacity of a Saskatchewan Provincial Court judge.

3.3.18. Complaint #18

This matter related to a case that had been before a judge of the Saskatchewan Court of King's Bench. The Complainant was advised that complaints against decisions that have been made by a judge can only be resolved through any applicable appeal process. The Complainant was also told that complaints respecting the conduct of judges of the Court of King'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.

3.3.19. Complaint #19

This matter related to a court case. The Complainant was advised that the concerns raised were about the conduct of the prosecutor and defence counsel, not judicial conduct, and that the

complaint was therefore outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review.

3.3.20. Complaint #20

This matter related to a parking ticket. The Complainant was told that the complaint was outside the jurisdiction of the Saskatchewan Provincial Court Judicial Council to review. With respect to the concerns about the conduct of the Justice of the Peace, the Complainant was provided the contact information of the Chief Judge's Office of the Provincial Court. The Complainant was also provided a link to information about City of Saskatoon parking tickets.

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

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