

The Eastern Caribbean Supreme Court

## **Queen's Counsel Appointment Protocol**

## **PREAMBLE**

The designation of "Queen's Counsel"<sup>1</sup> was first conferred at the end of the sixteenth century in the United Kingdom to advocates whose rank, seniority and legal acumen made them a valuable resource for her majesty's counsel. In the last century, it came to be seen as a bestowal of rank on an individual rather than as an engagement of assistance. Being a Queen's Counsel in the Caribbean constitutes a significant achievement. In the Eastern Caribbean the Chief Justice as head of the judiciary possesses an historic function of recommending the appointment of Her Majesty's Counsel to the Governor General, as the Queen's representative.

Although the profession of a legal practitioner is on the surface a private profession, it carries with it a number of public duties unlike those of any other profession. The legal practitioner is therefore an essential part of the system in the administration of justice.

The conferment of the status of Queens Counsel is not set out in a single document but has evolved over centuries through practice and convention. The status is relied upon in legal and public practices and by the judiciary, and has domestic and international recognition as a hall mark of integrity and quality.

This initiative of creating a transparent and consistent process for the conferment of the rank is therefore intended to capture the sentiments of all who have advocated for a more fair and visible procedure, and to bring some degree of standardization and certainty to the process. The Eastern Caribbean Supreme Court is embarking on consultations with members of the local Bars, as well as members of the OECS Bar Association, and with the Attorneys General to seek recommendations through a consultative process.

The protocol developed is meant to capture the sentiments so far, of persons who have commented on the process.

### **1. OVERALL OBJECTIVE**

- 1.1 The award of Queen's Counsel is for excellence made to experienced, senior practitioners who have demonstrated their competencies to a standard of excellence. The

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<sup>1</sup> In the jurisdictions where applicable "Queen's Counsel" shall mean "Senior Counsel"

designation as Queen's Counsel of a practitioner is intended to serve the public interest, by providing public identification of a practitioner whose standing and achievements justify an expectation, on the part of those who may need their services as well as on the part of the judiciary, that they can provide outstanding services as practitioners and advisers, to the good of the administration of justice.

- 1.2 The accolade is also designed to provide a goal for the worthy ambitions of junior counsel, and should encourage them to improve and maintain their professional qualities.
- 1.3 To ensure a process that give gives full effect to protocol 1.1, it became necessary to rationalise the requirements and procedure for the awarding of the accolade of Queen's Counsel. Consequently, the Chief Justice has resolved that appointment to the office of Queen's Counsel shall be by the Governor General, Governor or President where applicable, on the advice of the Chief Justice.
- 1.4 The Chief Justice has agreed to constitute and delegate to an Advisory Committee whose purpose will be to review applications, undertake consultation on the applications, and to submit to his office a report on the assessment of the applications.

## **2. ESSENTIAL CRITERIA**

- 2.1 The system for the designation of Queen's Counsel must be administered so as to restrict appointment to those practitioners whose achievement of the qualities set out below displays their ability to provide exceptional service as practitioners in the administration of justice. Legal practitioners whose contribution has been through public service shall not be excluded by reason only that their service has been public service.
- 2.2 The qualities required to a high degree before appointment as Queen's Counsel include:
  - (a) learning: Queen's Counsel must be learned in the law so as to provide sound guidance and to assist in judicial interpretation and development of the law.

- (b) Skill: Queen's Counsel must where necessary be skilled in the presentation and testing of litigants' cases; must display a sound appreciation of the jurisprudence of the region; and be analytical in the application of the law.
- (c) integrity and honesty: Queen's Counsel must be worthy of confidence and implicit trust by the judiciary, their colleagues and the public at all times, so as to advance the open, fair and efficient administration of justice.
- (d) Independence: Queen's Counsel must be committed to the discharge of a practitioner's duty to the court and to the legal system.
- (e) Disinterestedness: Queen's Counsel who are in private practice must honour the cab-rank rules; namely, the duty to accept briefs to appear for which they are competent and available, regardless of any personal opinions of the parties or the causes, and subject only to exceptions related to appropriate fees and conflicting obligations.
- (f) Diligence: Queen's Counsel must have the capacity and willingness to devote themselves to the vigorous advancement of the clients' interests where applicable and to the overall sound advancement of the administration of justice.
- (g) Experience: Queen's Counsel who are practitioners before the court, must have the perspective and knowledge of legal practice acquired over a considerable period. During this time it is expected (without being exhaustive) that the applicants' practice will demonstrate some or all of the following:
  - (i) experience in arguing cases on appeal
  - (ii) a position of leadership in a specialist jurisdiction
  - (iii) experience in conducting major cases in which the other party is represented by Queen's Counsel

- (iv) experience in conducting cases with a junior
- (v) considerable practice in giving advice in specialist fields of law
- (h) Contribution:
  - to his country and community as a legal practitioner.
  - to the Bar Association of the jurisdiction in which the legal practitioner ordinarily practices.
  - To the legal profession in areas other than legal practice.
  - To the development of the law and jurisprudence through publication.

### **3. ELIGIBILITY REQUIREMENTS**

- 3.1 An applicant must have been called to the Bar of an OECS jurisdiction and hold a current practising certificate.
- 3.2 An applicant must have at least fifteen years experience at the Bar preceding their application. Applicants with less than this time in practice are unlikely to have sufficient experience to enable them to fulfil the criteria.

### **4. CONSIDERATION OF APPLICATIONS**

- 4.1 Applications will be considered biennially.
- 4.2 Those wishing to be considered or reconsidered for appointment must submit a duly completed application form together with curriculum vitae, to the Office of the Chief Justice Eastern Caribbean Supreme Court to be received in hard copy before or by 4:00 p.m on the 15<sup>th</sup> January in the year of appointment. Where the 15<sup>th</sup> of January falls on a weekend or public holiday, submissions are extended to 4:00 p.m of the working day immediately following the weekend or public holiday.
- 4.3 Application forms are available from the Eastern Caribbean Supreme Court.
- 4.4 All applications must be personally executed, and must be received with the requisite fee enclosed.

- 4.5 Applications must be typed on one side of the paper only, be lodged unbound, in hard copy, along with 5 further copies (6 in total).
- 4.6 All parts of the application form are to be fully completed. Applicants will not be allowed to add to or amend an application after the deadline.
- 4.7 Once the deadline for applications has passed, the secretary processes the applications received, prepares a table of applicants setting out their respective areas of practice, year of signing the roll and whether they have previously applied.
- 4.8 All documentation received will be tabled before the committee for their deliberation.

## **5. FEES**

- 5.1 A completed and signed application form must be accompanied by the application fee of \$6000. The application fee is not refundable for applications accepted for processing. Fees should be paid in the form of a cheque for the full amount made payable to the Eastern Caribbean Supreme Court. Application forms without the fee will be treated as invalid.
- 5.2 In the event that the application is successful, a further appointment fee of \$4,000 will become payable, in addition to the cost of Letters Patent.

## **6. THE SILK ADVISORY COMMITTEE**

- 6.1 The Chief Justice shall appoint an advisory committee styled the "*SILK Advisory Committee*" consisting of five members who are; a High Court Judge of the Eastern Caribbean Supreme Court, a sitting judge of the Eastern Caribbean Supreme Court of Appeal, a representative of the OECS Bar Association, and two additional members who shall be a senior barrister of the Eastern Caribbean Supreme Court and a lay member who shall be a person of proven high integrity and has held a senior position in

the public service or management level or equivalent position in the private sector within the OECS. The Chief Justice shall nominate the chairperson.

- 6.2 The Selection Committee shall be supported by a secretary appointed by the Chief Justice.
- 6.3 The Chief Justice shall ensure the appointment of the committee on or before the 15<sup>th</sup> of February in the year of appointment, and notification of the appointment shall be published in the Gazette, in a newspaper published in each member state or territory and on the website of the Eastern Caribbean Supreme Court.
- 6.4 The selection committee shall as soon as is reasonably practicable deliberate on the submitted applications.
- 6.5 Members of the committee are given, on a strictly confidential basis, a hard copy of each application.
- 6.6 The overall criteria sought by the Advisory Committee is identified at protocol 2.2 above.
- 6.7 To recommend appointment, the SILK Advisory Committee is looking for strong and consistent evidence of excellence in the demonstration of each of the criteria.
- 6.8 In making a determination as to the suitability of applicants the committee shall consult with the following persons or bodies namely;
  - (a) The Judiciary of the Court of Appeal and High Court
  - (b) The Magistracy
  - (c) Attorneys General
  - (d) The Director of Public Prosecutions
  - (e) Bar Associations and the OECS Bar
  - (f) Queen's Counsel of the jurisdiction where the applicant ordinarily practices
  - (g) Senior Counsel of the jurisdiction where the applicant ordinarily practices
  - (h) The Integrity Commission
  - (i) Disciplinary Committees and/or tribunals
  - (j) The Commissioner of Police
  - (k) The Registrars of the High Court
  - (l) Prior employers
  - (m) And any other person who in the opinion of the

committee is appropriate

- 6.9 The committee may only if it is necessary to clarify information on the application, interview the applicants to seek further evidence as to the competencies or to help the selection committee assess, the information already available.
- 6.10 If an applicant wishes to have a *member* of the Advisory Committee recuse him or herself from considering his or her application, he or she shall so request no later than 14 days after the publication of the Advisory Committee on the website of the Eastern Caribbean Supreme Court.
- 6.11 The request for recusal shall be in writing and directed to the office of the Chief Justice providing sound justification for the request. The final decision on the selection of the Advisory Committee is in the sole discretion of the Chief Justice.
- 6.12 The committee will subsist only to effect recommendations to the Chief Justice.

## **7. RECOMMENDATION**

- 7.1 Following its consideration of the applicants, the Advisory Committee will submit its report to the Chief Justice.
- 7.2 The Chief Justice shall, after consultation with the Justices of Appeal of the Eastern Caribbean Supreme, make a final determination whether to nominate an applicant for appointment as Queen's Counsel or Senior Counsel.
- 7.3 All applicants will be notified whether their application was successful or unsuccessful and successful applicants will be announced by the Chief Justice at a ceremonial sitting during the opening of the law year in the year of appointment.
- 7.4 The Chief Justice shall continue to be able to directly nominate for appointment exceptional legal practitioners who meet the eligibility criteria. It is expected that this power will normally be exercised in exceptional circumstances only.



7.5 Appointees shall be entitled to the appellation of Queen's Counsel or Senior Counsel where applicable and to the use of the abbreviation "QC" or "SC" where applicable, after their name.

8. **ROBES**

8.1 The robes to be worn in court by Queen's Counsel shall be the same as those which have been customarily worn by persons appointed as Queen's Counsel in the United Kingdom.

9. **CONFIDENTIALITY**

9.1 There will be no disclosure by the court or the committee that an application was made for appointment as Queen's Counsel without an applicant's agreement.

9.2 It is however necessary for the processing of the application for information provided by applicants to be submitted to relevant agencies and consultors.

9.3 To assist the processing of applications and recommendations the committee may disclose information from your application form to government agencies for due diligence, but this shall not include your self-assessment, and summary description of practice.

10. **REVOCATION AND RESIGNATION**

10.1 An appointment of Queen's Counsel may be revoked by the Governor General acting on the advice of the Chief Justice.

10.2 Prior to any revocation, the practitioner concerned shall be given an opportunity to show cause why his or her appointment or recognition should not be revoked.

10.3 Any Queen's Counsel may resign his or her appointment by writing, signed by the practitioner and delivered to the Chief Justice.

10.4 Without limiting the power to revoke under protocol 10.1, an appointment of Queen's Counsel shall be revoked if disciplinary proceedings before the Supreme Court or the disciplinary committee find the appointee guilty of conduct which, in the opinion of the Chief Justice, is incompatible with the office of Queen's Counsel.

This protocol was made this 26<sup>th</sup> day of November 2010



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The Hon. Hugh Rawlins,  
Chief Justice for the OECS  
Eastern Caribbean Supreme Court.