



The Advocates' Society

La Société des plaideurs

November 20, 2023

VIA EMAIL: Doug.Downey@ontario.ca

The Honourable Doug Downey, K.C., M.P.P.
Attorney General of Ontario
McMurtry-Scott Building, 11th Floor
720 Bay Street
Toronto, Ontario M7A 2S9

Dear Attorney General:

RE: King's Counsel Designation

Thank you for seeking The Advocates' Society's input on the criteria and process for awarding King's Counsel ("KC") designations to Ontario lawyers.

As you know, The Advocates' Society is a not-for-profit organization representing approximately 5,500 diverse lawyers and students across the country, including 4,500 in Ontario—unified in their calling as advocates. As the leading national association of litigation counsel in Canada, The Advocates' Society and its members are dedicated to promoting excellence in advocacy, a fair and accessible system of justice, and a strong, independent, and courageous bar. A core part of our mission is to provide policymakers with the views of legal advocates on matters that affect access to justice, the administration of justice, the independence of the bar and the judiciary, the practice of law by advocates, and equity, diversity, inclusion, and reconciliation with Indigenous peoples in the justice system and legal profession.

The Advocates' Society understands that your Government's intention is to continue to award KCs to Ontario lawyers, and that you are not seeking feedback from stakeholders on whether or not it is desirable to do so. As such, The Advocates' Society will not address the advisability of continuing to award KCs, except to note that our members across the country hold divergent views on this preliminary issue.

If Ontario's KC designation is to be meaningful and serve the public interest, then The Advocates' Society believes that principles of merit, rigor, fairness, and transparency must underlie its award. The Ontario Government previously stopped awarding KCs in 1985 (then known as "QCs" or "Queen's Counsel") because the award of the designation was no longer related to the achievement of excellence and was widely perceived as a patronage appointment. The Advocates' Society cautions that if the designation is permitted to fall into such disrepute again, public confidence in the legal profession will be undermined. We strongly urge the Government to be cautious to avoid any appearance of political partisanship if it moves forward with the award of KCs.

To that end, The Advocates' Society recommends that the Government establish and publish specific criteria for awarding a KC designation to an Ontario lawyer. In other Canadian provinces that award KCs,

it is common to have minimum eligibility criteria and then further, merit-based, selection criteria. We recommend that Ontario adopt both.

With respect to selection criteria, The Advocates' Society recommends that the primary criterion for the award of a KC to an Ontario lawyer be professional excellence. This focus on excellence is in keeping with the origins and history of the KC designation, which is granted to barristers and solicitors in England and Wales for excellence in advocacy in the higher courts.¹

We understand that your Government is considering making public service the primary criterion for the award of a KC in Ontario. While The Advocates' Society does not object to exemplary, long-standing public service being one avenue for a lawyer to demonstrate professional excellence and contribution to the community, we do not recommend that it be the primary factor in the award of a KC to an Ontario lawyer. No other province in Canada awards KCs where public service is the primary criterion, and we anticipate the designation having a different meaning in Ontario will confuse and mislead members of the public. The Advocates' Society understands from its members in other provinces that the existence of the KC designation affects the public's choice of counsel and provides a competitive advantage to those who hold it. A KC designation influences the public's perception of a lawyer's status as a leader of the Bar, and can add real commercial value to a lawyer's practice. As such, a key goal of the reinstatement of the KC designation in Ontario must be that the public – including the public residing outside of Ontario and Canada – readily and accurately understand its meaning and significance, and not be led astray by the designation.

We further recommend that the selection criteria explicitly state that a lawyer's political affiliation will not be considered nor play any role in the award of KCs and expressly recognize the desirability of reflecting the diversity of Ontario society in the award of KCs.

We also understand that the Government intends to run a public application process whereby lawyers can apply for the KC designation. We recommend that the Government establish an independent, non-partisan advisory committee to review the applications and make recommendations to the Attorney General regarding the award of KCs. Similar advisory committees across Canada are composed of a combination of leading members of the judiciary, the Bar, the government, and sometimes the public. The Government should seek to reflect the diversity of Ontario society in the composition of the committee, and to ensure representation of equity-seeking groups in the legal profession among the committee's members, which we recommend be incorporated into terms of reference for the advisory committee.

The Advocates' Society recommends that the Government consult the legislation and practices in other Canadian provinces to develop its own rigorous eligibility criteria, selection criteria, and appointment process for KCs. We attach to this letter information about the robust processes for the award of KCs in Alberta and British Columbia, which may prove particularly instructive. We would be pleased to consult further with your Government and provide additional input once draft criteria and processes for Ontario have been developed.

Finally, The Advocates' Society must observe that given our country's history of colonialism and the KC designation's close ties with the British Crown, many Indigenous lawyers and lawyers impacted by colonialism at home and abroad may elect not to seek or accept a KC designation. The Advocates' Society

¹ See the King's Counsel webpage for England and Wales for more information: <<https://kcappointments.org/>>.

recommends that the Government consult with equity-seeking groups in the legal profession, including Indigenous lawyers and lawyers' groups, to receive feedback on whether to continue with the designation and if so, the criteria for appointment and how to ensure that the KC designation is meaningful and culturally sensitive to their communities.

Thank you for the opportunity to provide you with these submissions. I invite you to contact me should you have any questions about The Advocates' Society's recommendations.

Yours sincerely,



Dominique T. Hussey
President

Attachments:

1. Alberta *King's Counsel Act*, R.S.A. 2000, c. K-1
2. Alberta Justice, King's Counsel
3. British Columbia *King's Counsel Act*, R.S.B.C. 1996, c. 393
4. British Columbia, King's Counsel Nomination Process

CC: Anthony Galea, Director of Legal Affairs, Office of the Attorney General of Ontario
Vicki White, Chief Executive Officer, The Advocates' Society

The Advocates Society's King's Counsel Task Force

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This statute replaces RSA 2000, c Q-1.

Current version: in force since Nov 16, 2022

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version : <https://canlii.ca/t/bm44>

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printer](#)

KING'S COUNSEL ACT

Chapter K-1

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts
as follows:

Creation

1 The Lieutenant Governor in Council may authorize the issue of letters patent under the Great Seal of the Province for the appointment during pleasure of members of the Bar of Alberta as provincial officers under the name of “His Majesty’s Counsel, learned in the law, for the Province of Alberta”.

RSA 2000 cQ-1 s1;AR 217/2022

Qualifications

2 No person shall be appointed pursuant to [section 1](#) unless the person

(a) has been entitled during 10 years to practise in the superior courts of one or more provinces or territories of Canada, or

(b) has been entitled during 10 years to practise in the superior courts of one or more of

- (i) the United Kingdom of Great Britain and Northern Ireland, and
- (ii) any other jurisdiction within the Commonwealth that incorporates or uses the common law as the basis, in whole or part, for the jurisdiction's legal system

and has been entitled during 5 of those years to practise in the superior courts of Alberta.

RSA 2000 cQ-1 s2;2020 c37 s4

Attorney General

3 Notwithstanding [section 2](#), on the appointment of a person who is a member of the Bar of Alberta to the office of Minister of Justice of Alberta, if the member of the Bar so appointed as Minister of Justice is not one of His Majesty's Counsel, learned in the law, for the Province of Alberta, the Lieutenant Governor in Council shall, as provided in [section 1](#), by letters patent under the Great Seal of the Province appoint that person as one of His Majesty's Counsel, learned in the law, for the Province of Alberta.

RSA 2000 cQ-1 s3;2013 c10 s27;AR 217/2022;
2022 c21 s48

Exceptions from s2

4 Notwithstanding [section 2](#), the following may be appointed pursuant to [section 1](#):

- (a) a Member of the Legislative Assembly or of the Parliament of Canada;
- (b) a deputy appointed for the Minister of Justice under [section 4](#) of the *Government Organization Act*;
- (b.1) a Deputy Attorney General appointed under section 1(3) of Schedule 9 of the *Government Organization Act*;
- (c) a Bencher of The Law Society of Alberta.

RSA 2000 cQ-1 s4;2013 c10 s27;2014 c8 s3;
2022 c21 s48

Precedence

5 The following members of the Bar of Alberta have precedence in the courts of Alberta in the following order:

- (a) the Minister of Justice of Canada for the time being;
- (b) the Solicitor General of Canada for the time being;
- (c) the Minister of Justice of Alberta for the time being;
- (c.1) the Solicitor General of Alberta for the time being;

(d) the members of the Bar of Alberta who have filled the office of Minister of Justice of Canada, Solicitor General of Canada, Attorney General of Alberta, Minister of Justice and Attorney General of Alberta or Solicitor General of Alberta, according to seniority of appointment as such.

RSA 2000 cQ-1 s5;2002 c30 s26;2013 c10 s27;
2022 c21 s48

Precedence among KCs

6 Members of the Bar of Alberta appointed by the Lieutenant Governor in Council to be His Majesty's Counsel, learned in the law, for the Province, or to whom from time to time patents of precedence are granted, severally have such precedence in the Courts of Alberta as is assigned to them by letters patent issued by the Lieutenant Governor in Council under the Great Seal.

RSA 2000 cQ-1 s6;AR 217/2022

Precedence among barristers

7 The remaining members of the Bar of Alberta, as between themselves, have precedence in the courts of Alberta in the order of their call to the Bar of Alberta.

RSA 1980 cQ-2 s6

Saving clause

8 Nothing in this Act in any way affects or alters any rights of precedence that might appertain to a member of the Bar of Alberta when acting as counsel for His Majesty or an Attorney General of His Majesty in a matter depending in the name of His Majesty or the Attorney General before the courts, but those rights and precedence remain as if this Act had not been passed.

RSA 2000 cQ-1 s8;AR 217/2022

Patent of precedence

9 The Lieutenant Governor in Council may, by letters patent under the Great Seal of the Province, grant to any member of the Bar of Alberta a patent of precedence in the Courts of Alberta.

RSA 1980 cQ-2 s8

Revocation of appointment

10 The appointment of a member made pursuant to [section 1](#) is deemed to be revoked if the member is disbarred or is deemed to have been disbarred by virtue of a resignation by the member in the face of discipline pursuant to [section 61](#) of the *Legal Profession Act*.

2004 c11 s7;2020 c37 s4

King's Counsel

Eligible lawyers can apply online for a King's Counsel appointment.

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King's Counsel appointments

It is tradition to appoint lawyers as King's Counsel (KC) who have made particular contributions to:

- the legal profession, or
- public life

The Lieutenant Governor in Council makes KC appointments under authority of the [King's Counsel Act](#).

Submission deadline for KC appointment applications

- **4:30 pm MT, Friday, November 10, 2023**
- no exceptions
- online applications only – see [How to apply](#)

Selection criteria

Legal leadership

The Minister of Justice will consider certain criteria when considering an application for King's Counsel (His Majesty's Counsel, learned in the law, for the Province of Alberta) and will award the appointments of King's Counsel to those lawyers who, in accordance with the *King's Counsel Act* (Alberta), have been called to the bar for at least ten years, with a minimum of five years practicing in the province of Alberta, and have demonstrated the following attributes to the extent that they make the applicant a leader in the legal profession.

Competence, including:

- sound intellectual ability with a thorough, comprehensive, and current knowledge of law and practice in the applicant's field
- distinguished legal service with demanding and challenging legal work that contributes to the development of the law and practice
- a recognized expertise in a particular area of law and practice (which may include the general practice of law)
- an outstanding ability as a lawyer in the applicant's field, to a standard to be expected of King's Counsel

Professional qualities, including:

- a history of honesty, integrity, discretion, and candid dealings in professional and personal matters including dealings with professional colleagues, clients, lay people, and the courts and in the execution of duties as an officer of the court
- the trust and confidence of others
- the respect of fellow lawyers
- the respect of the Bench and administrative tribunals before which the applicant may appear
- demonstrated mentorship of junior members of the Bar

Contributions

The Minister of Justice may also consider the following in awarding a King's Counsel:

Contribution to the administration of justice, including:

- a demonstrated commitment to make legal services available to all who require them, regardless of the ability to pay
- a superior commitment to access to justice

Contribution to the community, including:

- a superior contribution to the life of the community including leadership on community, cultural, and philanthropic organizations
- contributions to the community in order to further the well-being of the community
- providing service and support to communities and community organizations in ways that encourage initiative, self-help, cooperation, and partnership building

Contribution to the legal profession, including:

- a superior contribution to the legal profession through leadership in governance of the profession or Bar-related activities
- a superior contribution to legal scholarship through teaching or legal writing and research
- a recognition of superior contribution in a variety of legal practices, including service to government, business corporations, non-profit organizations, administrative tribunals, academic institutions, Crown Prosecutor's office, and the Law Society

Equality

The Minister of Justice is committed to consider each application on the established merits of the individual alone without regard to law firm affiliation, and will consider each application on an equal basis regardless of gender, age, race, ethnic or national origin, religion, sexual orientation, marital or family status, disability, or political affiliation.

Review process

Applications will be reviewed by the King's Counsel Screening Committee. The committee advises the Minister of Justice whether each applicant is:

- recommended
- not recommended at this time

King's Counsel Screening Committee

The committee is comprised of:

- President, Law Society of Alberta
- President-Elect, Law Society of Alberta
- President, Canadian Bar Association - Alberta branch
- Chief Justice of Alberta, or nominee
- Chief Justice, Court of King's Bench, or nominee
- Associate Chief Justice, Court of King's Bench, or nominee
- Chief Justice, Court of Justice, or nominee

- an Assistant Chief Justice
- the Minister of Justice, or nominee
- a Lay Bencher
- a representative from each of the North, Central, and Southern Districts
- the Deputy Attorney General, or nominee

How to apply

Notes about applying

- Nominations will not be accepted.
- Physical submissions will not be accepted – online applications only.
- Submission deadline for KC appointment applications:
 - **4:30 pm MT, Friday, November 10, 2023**
 - **no exceptions**

Tips for avoiding possible problems

- do not wait until the last day to apply
- applications cannot be amended after submission
- the application form has no SAVE function
 - give yourself up to 2 hours to complete the online form
- read the whole application form before you begin
 - it has instructions about how to cut and paste text into the form
- have your required documents ready
 - the files **must** be in Portable Document Format (PDF)
 - other file types are not accepted
 - we cannot help you convert your documents to PDF files

Required documents

Required documents format and size

- Each document must be a Portable Document Format (PDF) file – no other file types are accepted.
- The maximum size of each file is 5 MB.

You will upload 4 separate files through the application form:

- a PDF of your resume
 - name the file "Current Resume"
 - Do not include a cover letter – it will not be reviewed and has no relevance to your application.
- 3 separate PDFs of letters of reference named:
 - "Letter of Reference 1"
 - "Letter of Reference 2"
 - "Letter of Reference 3"

Each letter of reference:

- must be a maximum of 2 pages
- must include this statement, "This letter may be disclosed to Alberta Justice, the Law Society of Alberta, the King's Counsel Screening Committee, and as otherwise required for use in the King's Counsel selection process."
- does not need to be addressed to anyone specifically, but if preferred, may be addressed to the "KC Screening Committee"

Web application form

Lawyers must be eligible under the [King's Counsel Act](#) and must submit an application to be considered for a KC appointment.

Complete the application form's fields, carefully:

- the data you enter will be used on official documents

Web application form notes

- **Allow up to 2 hours to complete this application.**
- There is no SAVE function.
- No IT support is provided.

[Apply now](#)

After you apply

An email will be sent to the address listed in your application form if you are selected to receive a KC appointment.

No updates will be provided regarding the:

- KC process
- timing of announcements

Use of the King's Counsel designation

In accordance with s. 1 of the [King's Counsel Act](#), a person is not allowed to use the King's Counsel (KC) designation until the Letters Patent have been signed by the Lieutenant Governor and have been issued to the recipients.

Contact

If you have other questions unrelated to the status of your appointment application, connect with:

Office of the Deputy Minister

Alberta Justice

Hours: 8:15 am to 4:00 pm (Monday to Friday, closed statutory holidays)

Phone: [780-427-5032](tel:780-427-5032)

Toll free: [310-0000](tel:310-0000) before the phone number (in Alberta)

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This Act is current to November 16, 2022

KING'S COUNSEL ACT
[RSBC 1996] CHAPTER 393

Attorney General to be appointed King's Counsel

- 1 On the appointment of a person to the office of the Attorney General of British Columbia, a commission must be issued appointing the person one of His Majesty's Counsel learned in the law.

Power of Lieutenant Governor in Council to appoint King's Counsel

- 2 (1) On the recommendation of the Attorney General, the Lieutenant Governor in Council, by letters patent under the Great Seal, may appoint, from among the members of the Bar of British Columbia, Provincial officers under the names of His Majesty's Counsel learned in the law for the Province of British Columbia.
- (2) Before making a recommendation under subsection (1), the Attorney General must consult with

- (a) the Chief Justice of British Columbia,
- (b) the Chief Justice of the Supreme Court,
- (b.1) the Chief Judge of the Provincial Court, and
- (c) 2 members of the Law Society of British Columbia appointed by the benchers for that purpose.

Quota

- 3 The maximum number of persons who may be appointed as His Majesty's Counsel learned in the law is 7% of the number of barristers and solicitors in British Columbia at the time the appointment is made.

Eligibility for appointment

- 4 A person is not eligible to be appointed unless the person has at least 5 years' standing at the Bar of British Columbia.

When appointments may be made

- 5 The quota for the year or the quota as increased under section 3 may be made at any time during the year.

Precedence of certain members of Bar

- 6 (1) The following members of the Bar of British Columbia have precedence in the courts of British Columbia in the following order:
 - (a) the Attorney General of Canada;
 - (b) the Attorney General of British Columbia;
 - (c) the members of the Bar who have filled the offices of Attorney General of Canada while a member of the Bar of British Columbia, or Attorney General of British Columbia, according to seniority of appointment as Attorney General;
 - (d) the members of the Bar who have filled the office of Solicitor General for Canada according to seniority of appointment as Solicitor General;
 - (e) the members of the Bar of British Columbia appointed by the Lieutenant Governor in Council Her or His Majesty's Counsel learned in the law for British Columbia.
- (2) All persons mentioned in subsection (1)(e) have precedence among themselves in the order established in the letters patent issued under section 2.
- (3) Any precedence established in letters patents issued before the date this subsection comes into force in relation to persons mentioned in subsection (1)(e) continues to apply.

Precedence of other members of Bar

- 7 The remaining members of the Bar have, as between themselves, precedence in the courts in the order of their call to the Bar.

Precedence of counsel acting for the government not affected by this Act

- 8 This Act does not affect rights or precedence of a member of the Bar when acting as counsel for the government, or an Attorney General, in a matter in the name of the government or of the Attorney General before the courts, and the right and precedence remains as if this Act had not been passed.

Power of Lieutenant Governor in Council to revoke King's Counsel appointment

- 9 (1) On the recommendation of the Attorney General, the Lieutenant Governor in Council, by letters patent under the Great Seal, may revoke an appointment made under section 2.
- (2) Before making a recommendation referred to in subsection (1), the Attorney General must consult with
- (a) the Chief Justice of British Columbia,
 - (b) the Chief Justice of the Supreme Court,
 - (c) the Chief Judge of the Provincial Court, and
 - (d) 2 members of the Law Society of British Columbia appointed by the benchers for that purpose.
- (3) This section applies in relation to an appointment whether
- (a) the appointment is made before or after the date this section comes into force, or
 - (b) the reason for the revocation occurs before or after the date this section comes into force.

Automatic revocation of King's Counsel appointment on disbarment

- 10 (1) If a person who is appointed under section 2 is disbarred under the *Legal Profession Act* on or after the date this section comes into force, the person's appointment is revoked on the date of the disbarment.
- (2) Subsection (1) applies in relation to an appointment whether the appointment is made before or after the date this section comes into force.
- (3) If a person who is appointed under section 2 is disbarred under the *Legal Profession Act* before the date this section comes into force, the person's appointment is revoked on the date this section comes into force.

King's Counsel nomination process

i The 2023 King's Counsel nomination process is now closed and will resume in 2024

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History

Under the King's Counsel Act, the Lieutenant-Governor in Council, on the recommendation of the Attorney General, may bestow on lawyers in British Columbia the honorary title of King's Counsel (KC) to recognize exceptional merit and contribution to the legal profession.

To make the King's Counsel appointment process more transparent and accessible, the Ministry of Attorney General has a formal system for nominating candidates.

Call for nominations

Every year, the Attorney General sends a call for nominations letter to the judiciary, the Law Society of British Columbia, the Canadian Bar Association, B.C. Branch and the Trial Lawyers Association.

Make a nomination

You can recommend anyone but an immediate family member or yourself.

To make a nomination:

1. Check if the person you're nominating meets the [criteria for candidates](#).
2. Complete the [King's Counsel Nomination form](#).
 - The information you provide will be kept confidential and never made public.
 - We may contact you to clarify any information you provided.
3. Invite the nominee to complete and manually sign the [King's Counsel Consent form \(PDF 196KB\)](#).
 - The nominee consent form authorizes the Law Society of British Columbia to disclose nominee information to the [Advisory Committee](#).
4. Send the signed consent form to the Office of the Deputy Attorney General: MAGDeputyKCAppt@gov.bc.ca.

The nominee consent form authorizes the [Law Society of British Columbia](#) to disclose nominee information to the [Advisory Committee](#).

King's Counsel appointments are announced at the end of each year. If a nominee is unsuccessful, you can nominate them again by completing a new nomination form.

Criteria for candidates

Candidates must:

1. Belong to the B.C. bar and have been member for at least five years.
2. Demonstrate professional integrity, good character and excellence in the practice of law. Such excellence could be determined by any of the following conditions:
 - They have done outstanding work in the fields of legal education or legal scholarship.
 - They have demonstrated exceptional qualities of leadership in the profession, including in the conduct of the affairs of the Canadian Bar Association, the Law Society of British Columbia and other legal organizations.
 - They are acknowledged by their peers as leading counsel or exceptionally gifted practitioners.

Advisory committee

All applications will be reviewed by an Advisory Committee, which will also recommend deserving candidates to the Attorney General.

The committee includes:

- The Chief Justice of British Columbia
- The Chief Justice of the Supreme Court of British Columbia
- The Chief Judge of the Provincial Court
- Two members of the Law Society appointed by the Benchers
- The President of the Canadian Bar Association, B.C. Branch
- The Deputy Attorney General

The Attorney General continues to be able to directly appoint exceptional lawyers who meet the eligibility criteria. It is expected that this power will normally be exercised in exceptional circumstances only.

For more information

Contact the Office of the Deputy Attorney General

Phone: [250-356-0149](tel:250-356-0149)

Email: MAGDeputyKCAppt@gov.bc.ca