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**DEVELOPMENT OF RULES ON
APPOINTMENT OF SENIOR LEGAL
COUNSEL IN KENYA.**

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INTRODUCTION.

The title of Senior Counsel is given to a senior advocate or advocate in some countries, especially in Commonwealth countries or jurisdictions in which the British monarch is no longer head of state, and it replaces the title Queen's Counsel. This is sometimes called "taking silk" because the senior counsel's gown was traditionally made of silk¹.

The designation of Senior Council provides a public identification of advocates 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 and the public, that they can provide outstanding services as advocates and advisers, to the good of the administration of justice. The position of Queen's Counsel is conferred upon a senior advocate who has distinguished himself in the profession. The practice in England is that the Queen's Counsel only appears at the Court of Appeal and the House of Lords whereas the other advocates may appear at the High Court the Queens counsel is not allowed. He is supposed to be instructed by the other advocates and does not take direct instructions from clients. He acts as a leader.

As an accolade awarded on the basis of the opinions of those best placed to judge advocates' qualities, the designation of Senior Counsel also provides a goal for the worthy ambition of junior counsel, and should encourage them to improve and maintain their professional qualities.

Appointment as Senior Counsel should be restricted to practicing advocates, with acknowledgment of the importance of the work performed by

¹ www.dca.gov.uk/judicial/appointments/silk2003/guideapp.htm < last accessed on 16th September, 2006 >

way of giving advice as well as appearances in courts and other tribunals. This position will definitely not be upheld by Nigerians, who among the 15 advocates appointed as senior counsel every year, 1 is an advocate out of practice but of impeccable cadre and integrity.

The system for the designation of Senior Counsel must be administered so as to restrict appointment to those counsel whose achievement of the qualities, displays and presages their ability to provide exceptional service as advocates and advisers in the administration of justice.

The designation as Senior Counsel of certain practicing advocates should be in accordance with the prescribed principles and under the set-out system, is intended to serve the public interest. The system of senior counsel or queens counsel has been praised and criticized for a number of reasons.

In Kenya, a rather narrow approach has been taken in regards to the senior counsel position in that, it is a statutory provision well-applauded by the Advocates Act, but a mysterious aura seems to eclipse it! This is because, despite the fact that it is a well known concept, very few lawyers would talk much about it. This is not because the idea is alien to them, but because, it is a concept that has been shrouded with a lot of uncertainty. We have had the provision for years, appointments have only been made once, there are no rules on the same, so their conduct is not subject to any special provisions save for the statutory provisions.

The purposeful approach would seem in my view to be more appropriate as it not only looks into the spirit of the law/provisions, but it as well considers the values being upheld and the objectives of the law.

Points In Favor Of Having Senior Counsel:

The need for the position of senior counsel is emphasized by a number of reasons, namely:

- It provides a body of advocates who are identified as leaders of their profession and so gives a clear mark of distinction as an advocate;
- That mark is internationally recognized, and as such is both an example to other systems,
- It assists advocates in selecting the quality of legal assistance their client needs, particularly in areas with which the advocates may be less familiar;
- it allows users to instruct with confidence advocates of whom they have little or no experience;
- it enhances competition in the interests of the consumer, by enabling advocates to shop around among a number of advocates who have been recognized by the award of Senior counsel; and
- it promotes and maintains the level of expertise amongst practitioners, which is important for the court system; and
- it provides a career structure for advocates.

Points Against The Position Of Senior Counsel:

A number of criticisms exist as militating against the desirability of having the position of Senior Counsel. Most of these shortcomings are derived from the position of Queens Counsel in the United Kingdom. They include:

- The rank of QC is not a reliable guarantee of quality or - in an increasingly specialist market - expertise (particularly if the current system does not include a stage for review and possible removal, or indicate the area of any specialism);

- The rank restricts competition and does not allow market forces freely to determine the allocation of resources. For example, it is suggested that choice is reduced because the system discourages the use of highly competent junior counsel;
- The division of the advocates' profession into only two ranks does not constitute a sufficient career structure, and the emphasis on the attainment of QC places a disproportionate premium on that step;
- The current focus on oral advocacy in court puts at a disadvantage any advocate who specializes in areas of the law where the majority of his or her work is on paper or is directed towards achieving resolution out of court. This is more so disadvantageous to advocates in the corporate sector, who are dignified and their contribution to the practice deserves to be meritoriously crowned with such distinctions as senior counsel.

THE POSITION OF SENIOR COUNSEL UNDER KENYAN LAW.

The position of Senior Counsel is provided for under **Section 17** of the Advocates Act. It is a new development which was introduced in 1989 and the senior counsel is supposed to be the equivalent of the Queen's Counsel.

A senior counsel in Kenya refers to a leader, which term (when it shall be applied) should be used in the legal profession to refer to an advocate who leads a team in prosecuting a matter, a lead counsel put in another way.

In Kenya this position is conferred upon an advocate by the President for exemplary service to the legal and public service in Kenya.

Although this position was created in 1989 the first lot of senior counsel was appointed in the year 2003 when NARC Government came into power. Within the law society there was an argument that there should be developed a criteria to be used in appointing senior counsel. The President Kibaki only conferred on persons who had previously been elected as chairman of the Law Society of Kenya to avoid controversy.

Section 18 of the Act provides for the Roll of Senior Counsel i.e. the register where the names of those conferred with the title senior counsel should be entered. This roll was opened in 2003.

In common parlance the title of senior counsel has been used in relation to precedents or seniority in the bar. Some members of the Judiciary are very fussy about this but seniority in the bar is considered to be a fairly important thing particularly when it comes to dealing between members of the bar.

The Attorney General is a nominal member of the Law Society since he cannot be very active in the Law Society being a government official. He is also the head of the Bar or the Legal Profession in Kenya and therefore he is the senior most

advocate in Kenya. Seniority in the Kenyan Bar is dependent on precedents i.e. with regard to the date an advocate signed the roll of advocates. The Attorney General followed by the Solicitor General, Senior Counsel according to the date of appointment, Queens counsel and chairman of law society are the senior most advocates in that order and they take precedents over all other advocates. The rest are ranked according to the date when they signed the roll.

One is expected to know their seniors and their juniors. When it comes to litigation it is good manners to let senior counsel to introduce junior counsel and, therefore, when one appears in court they should take the trouble to find out if the other counsel is senior or junior.

STATUTORY PROVISIONS: KENYAN LAW.

The position of Senior Counsel is provided for under Section 17 of the Advocates Act.

Section 18 of the Act provides for the Roll of Senior Counsel i.e. the register where the names of those conferred with the title senior counsel should be entered. This roll was opened in 2003.

The Constitution mentions the position of senior counsel as well. Section 62(5) of the Constitution of Kenya provides that the President shall appoint the tribunal consisting of a chairman and four other members that have held judicial office, who are qualified to hold judicial office, or upon whom the President has conferred the rank of senior counsel. The members of the tribunal are selected by the President. The President can suspend a judge, upon the recommendation of the Chief Justice, where a question of removal has been referred to a tribunal.

Section 3 (1)(h) of the Council of Legal Education Act, Cap 16 A, provides that there shall be a senior counsel as appointed by the Attorney General.

SENIOR COUNSELS IN KENYA.

As mentioned herein above the title of senior counsel in Kenya was only accorded to some advocates in 2003 for the first time. The following are names of senior counsel in Kenya today:

- | | |
|--------------------------------------|--|
| 1. Ramnik Shah Raishi, Advocate | 11. Fred Oliver N'Cruba Ojiambo, |
| 2. Nzamba Kitonga, Advocate | 12. Hon. Paul K. Muite, Advocate |
| 3. Gibson Kamau Kuria, Advocate | 13. Paul Matheri Wamae, Advocate |
| 4. Lee G. Muthoga, Advocate | 14. George Benedict M. Kariuki, Advocate |
| 5. Hon. Mutula Kilonzo, Advocate | 15. Willy Mutunga, Advocate |
| 6. Peter Le Pelley, Advocate | 16. Satish Gautama, Advocate |
| 7. Stewart M. C. Thompson, Advocate | 17. Hon. Amos S. Wako, Advocate |
| 8. Samuel Njoroge Waruhiu, Advocate | 18. Achroo R. Kapila, Advocate |
| 9. Mohammed Z. U. A. Malik, Advocate | 19. Simani Sangale, Advocate |
| 10. Joe Wandago Okwach, Advocate | |

3.0 A COMPARATIVE ANALYSIS OF SENIOR COUNSEL POSITION IN OTHER COUNTRIES.

The position of senior counsel, though having the same spirit wherever it's applied, its mode of application and criteria for appointment varies across the globe. This thus makes it necessary for us to look at a few systems and see how this esteemed position is carried on. This would be especially important for Kenya since it is about to embark on the process.

The following is a brief analysis of the position in other jurisdictions. There is also included among the annexures a detailed analysis (including both mode of appointment and criteria of appointment) of the position in England, Scotland and Northern Ireland.

The choice of these countries was not random, but was based on countries that had slightly different procedures from each other, given that most countries follow more or less the same criteria.

(see annex 1 and 2)

Nigeria

In Nigeria the legal system is based on English common law, Islamic Shariah law (only in some northern states) and traditional law. I have picked this country since the system is not purely the English one which(the English Law System) I have provided for in detail herein under.

The position of senior counsel is provided for under section 5 of the Legal Practitioners Act 1975, Nigeria.

In Nigeria there is currently the SAN (Senior Advocate in Nigeria), which was the successive titular position following the conventional Queens Counsel.

Before independence, The Queen appointed qualified legal practitioners to the rank of Queen's Counsel. The rank was abolished in 1964 after Nigeria became a

republic, but a replacement was considered necessary, and the grade of Senior Advocate of Nigeria was established by the Legal Practitioners Act 1975.

The Legal Practitioners Privileges Committee selects Senior Advocates of Nigeria. It consists of the Chief Justice of the Federation, who is the chairman, the Attorney General of the Federation, one Justice of the Supreme Court, the President of the Court of Appeal, five Chief Judges of the states, the Chief Judge of the Federal High Court and five legal practitioners who are themselves Senior Advocates of Nigeria.

1. Nigeria operates a fused legal profession. Every one called to the Nigerian Bar is entitled to practice as a barrister and a solicitor.
2. Nigeria has a system of Senior Counsel. A Senior Counsel is called Senior Advocate of Nigeria ("SAN").
3. A legal practitioner with a minimum of 10 years experience at the Bar and who has achieved distinction in the legal profession as determined by the Legal Practitioners Privileges Committee ("the Committee") can apply to the Committee to have the rank of SAN conferred on him or her.²
4. The Members of the Committee are: (i) the Chief Justice of Nigeria (as Chairman), (ii) the Attorney-General of the Federation, (iii) one Justice of the Supreme Court, (iv) President of the Court of Appeal, (v) five Chief Judges of State High Courts, (vi) the Chief Judge of the Federal High Court, and (vii) five SANs. The Members under (iii), (v) and (vii) are appointed by the Chief Justice of Nigeria in consultation with the

² Section 5(1)(2) of the Legal Practitioners Act 1975 (as amended).

5. There are no rigid criteria for the determination of whether a legal practitioner has "achieved distinction". In practice, 15 lawyers are appointed SAN each year. One of these is usually reserved for a distinguished academic, the other 14 for practitioners each of whom, within the 3 years preceding the date of application to the Committee, has argued at least (a) 6 cases in the Supreme Court, or (b) 2 cases in the Supreme Court and 4 Court of Appeal cases, or (c) 1 case in the Supreme Court, and 4 cases in the Court of Appeal and 6 cases at first instance.

India

The following articulates the appointment of senior advocates in India.

There are 2 classes of advocate in India, senior advocate and advocate.⁴ There has been a unified bar in India since the commencement of the Advocates Act 1961. This Act provided for:

- (1) the establishment of an All India Bar Council, a common roll of advocates listing those who could appear in Court and the Supreme Court,
- (2) the integration of the Bar into a single class of legal practitioners known as advocates,
- (3) a uniform qualification for admission as advocates,

³ Ibid, section 5(3).

⁴ Section 16(1) of the Advocates Act 1961

(4) the division of advocates into senior advocates and other advocates based on merit.

A person who has a law degree recognized by the Bar Council of India and who is enrolled with any state Bar Council is an advocate.⁵ An advocate who has his name on the roll of advocates for 10 years has a right to practice in all Courts including the Supreme Court.⁶ An advocate has certain peripheral benefits in Court: a litigant in person can expect to sit further away from the Bench.

The status of senior advocate can be conferred on any advocate pursuant to section 16(2) of the Advocates Act 1961 which states:

"An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of the opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law he is deserving of such distinction."

The way in which this rank is perceived is evident from this statement:

"By virtue of the pre-eminence which senior counsel enjoy in the profession they not only carry greater responsibility but they also act as a model to junior members of the profession. A senior counsel occupies a position akin to the Queen's Counsel in England, next after the Attorney General and Solicitor General. It is

⁵ The old rule that a person over the age of 45 years could not be enrolled as an advocate was struck down in 1995 as violating the principle of equality, *Indian Council of Legal Aid and Advice v Bar Council of India* [1995] A.I.R. S.C. 691

⁶ Section 30(i) of the Advocates Act 1961.

an honour and privilege conferred on advocates of standing and experience by the Judges of the relevant court"⁷

On becoming a senior advocate, certain restrictions apply to his practice, which are thought "necessary in the interests of the profession":

- (5) senior advocates are not permitted to file in Court pleadings or applications (*vakalatnamas*),
- (6) it is not permissible for a senior advocate to appear in a Supreme Court without an advocate-on-record (a junior), unless he was briefed in that case before his appointment,
- (7) senior advocates cannot accept instructions to draft pleadings or affidavits, advice on evidence or any similar drafting work on his own without "consultation with an advocate on the state rolls",
- (8) a senior advocate cannot accept any brief or instructions to appear before any Court or tribunal directly from the client.

Canada

The legal system in Canada is as well based on English common law. Briefly, in all provinces, a committee reviews eligibility of QC candidates and determines a list of recommended appointments. In most provinces the committees comprise representation from the government, the judiciary and the Law Society. The

⁷ Halsbury's Laws of India, Vol. 10 paragraph 10.004

Minister of Justice is not bound by the committee's recommendations and can appoint whomever he/she wants.

Australia

Australia also employs legal system based on English common law. The regulation of Queen's Counsel or Senior Counsel is handled at state and territory level within Australia.

In the Northern Territory, South Australia, Tasmania, Victoria and Western Australia, appointments are made as Queen's Counsel or as Senior Counsel. In the Northern Territory, Queen's Counsel are appointed by the Administrator of the Northern Territory of Australia, on recommendations from the Chief Justice and the Attorney General. In South Australia, Queen's Counsel are appointed by the Governor in Council on the recommendation of the Chief Justice. In Tasmania, Senior Counsel are appointed by the Chief Justice of the Supreme Court of Tasmania. In Victoria, Senior Counsel are appointed by the Governor in Council on the recommendation of the Attorney General. In Western Australia, Senior Counsel are appointed by the Chief Justice of Western Australia, having the support of the Supreme Court. In both the Australian Capital Territory and New South Wales (NSW), although the state government retains the right to appoint Queen's Counsel, it has decided to make no further use of it. Legislation has been passed to allow the Law Society and Bar Association to appoint Senior Counsel in the way they see fit. In NSW, appointments to Senior Counsel are made by the President of the NSW Bar Association.

South Africa

In South Africa the legal system is based on a combination of roman-Dutch law and English common law. Screening and selection for Silks is done by the Bar Council. In 1992 the Council

published Criteria and procedures in regard to granting of Silk. The application process is:

The Secretary notifies members that applications are to be received by the Chairman by 15 April of the year in question.

Members are obliged to notify Chairman of their intentions.

The Chairman may, after consulting senior members of the Bar Council (the Committee of Silks), invite members to submit an application.

The Chairman invites applicants to substantiate their application in writing and if they wish to do so to nominate a Silk to whom the Chairman can refer in confidence regarding the application.

The Chairman may refuse an application at this stage and not allow an application to go forward for further consideration.

The Chairman may, if s/he deems appropriate, grant an applicant the opportunity to deal with any adverse matters.

The Chairman discloses in confidence the list of applicants to the Bar Council.

Juniors can notify the Chairman (for information to the Committee for Silks) of relevant facts regarding the applicants.

The Committee for Silks considers if the application should be recommended.

The Chairman writes to unsuccessful candidates.

The Chairman alone advises those who request it the reason why they were unsuccessful.

The names of successful candidates are conveyed by the Chairman to the Judge-President of the High Court.

The Judge-President adds his or her endorsement to the Bar Council's recommendations, but may withhold endorsement if s/he disapproves.

The Judge-President sends the name of successful candidates to the Ministry of Justice.

The Ministry of Justice adds its endorsement and puts the list before the Cabinet for formal approval. Silk is then formally conferred by the State President.

4.0 THE PROPOSED SYSTEM FOR KENYA.

APPOINTMENT AND CONSULTATION PROCESS

The proposed process for the appointment of Senior Counsel in Kenya is as follows:

1. At the meeting of the Law Society in each year, the Senior Counsel Consultation Group ("SCCG") shall be appointed, whose members should have been earlier on chosen by the Council. The SCCG shall consist of:
 - ↓ the Chairperson of the Law Society,
 - ↓ the Vice-Chairperson of the Law Society, and
 - ↓ three senior counsel nominated by the Chairperson of the Law Society. and approved by the Council, not more than one of whom may be a member of the Council, and
 - ↓ any other two (junior) advocates of not less than five (5) years in active practice, deemed or voted as necessary in the Annual General Meeting, who have not applied for appointment as senior counsel but are of good standing in the profession and have not been found guilty of any professional misconduct in their careers .
2. Any advocate wishing to apply for appointment must make application by completing the approved form and sending it to the Secretary of the Law Society so that it is received no later than six months before the next AGM. The Chairperson of the Law Society may, in exceptional circumstances, accept a late application, provided that it is received latest three weeks after the deadline and with good cause for the delay.

3. A full list of all those who have sought appointment will be made available to any member who wishes to see it.
4. The basic ground rules are, but not limited to the following:
 - The Law Society Council is to ensure that the SCCG is provided with all administrative, clerical and other assistance reasonably necessary for the discharge of their responsibilities for the selection and appointment of Senior Counsel.
 - Every year, applications may be made in writing to the Chairperson of the Society by junior counsel with full practising certificates who wish to be considered for appointment as Senior Counsel.
 - Applicants may submit with their applications particulars of such matters as they wish to be taken into account by the SCCG.
 - Applicants are to be made aware that their applications will be the subject of distribution during the selection process and it will therefore be impossible to keep confidential the fact that an application has been made.
 - No late applications will be considered except in cases of accident or other special circumstances, and then at the discretion of the Chairperson of the Law Society.
5. On the first working day after the final date on which late applications may be accepted by the Chairperson of the Law Society, the Secretary shall provide to each member of the SCCG a complete copy of all applications which were made in accordance with these provisions.
6. The members of the SCCG shall consider the applications and, by reference to the information contained in them and the Criteria for Appointment, seek comments from people who would have knowledge of a particular applicant or applicants, in the following categories :
 - a. Senior counsel in actual practice,

- b. Junior counsel in actual practice who have not made application for senior counsel during the year in question, and
 - c. Members of courts and tribunals
7. After all comments have been received the SCCG may, if it thinks appropriate, seek further information from any applicant or any person who, in its opinion, would be able to assist it in its deliberations. The SCCG may determine that any application which it is satisfied does not warrant further consideration, should be rejected in a preliminary selection.
8. After three months, by no later than the fourth month, the SCCG shall provide the Chairperson of the Law Society with a list of those applicants who are considered by it to satisfy sufficient of the Criteria for Appointment to be suitable for consideration for appointment.
- a) The SCCG may, in its discretion, consult with any of the persons from whom comments have already been received, for the purposes of further discussion, clarification or other assistance in its consideration of the applications.
 - b). The SCCG shall, after taking into account all comments received, make its final selection of the proposed appointees.
 - c). The Chairperson of the Law Society shall not appoint any applicant included in the Selection Committee's final selection whose appointment the Chief Justice opposes.
 - d). The SCCG should use its best endeavours to ensure that the process of selection is completed so as to permit public announcements of the successful applications.
9. On the first working day after receipt of the list from the SCCG the Chairperson of the Law Society shall provide the Chief Justice with:
- a) A list of all applicants (together with their applications)

b) The list provided by the SCCG

8.1 . Upon receipt of that information the Chief Justice shall consider:

- a. whether any additional Senior Counsel should be appointed in that year, and
- b. if any such appointments are to be made, who should be appointed.
- c. Before making either of the decisions referred to above, the Chief Justice shall consult with the judges of the Supreme Court, judges of the High Court and the chairperson of the Law Society of Kenya

The Chief Justice may also consult with any other person who in his or her opinion would assist in the process of appointment.

10. In making a decision to appoint an applicant as Senior Counsel the Chief Justice shall take into account the Criteria for Appointment.

11. One month to the next AGM the Chief Justice shall cause the names of those to be appointed as Senior Counsel to be availed to the Law Society and all its members.

12. The chief Justice shall make no appointment if all applicants are not qualified and a maximum of two applicants every year.

13. The list of successful applicants shall be available for inspection in the office of The Law Society Of Kenya and published in such manner as the Chairperson of the Law Society directs.

14. After publication of the list of successful applicants, any unsuccessful applicant may discuss his or her application with the Chairperson of the Law Society.

ATTIRE AND POST NOMINALS

Subject to the approval of the Chief Justice of Kenya, and subject to the requirements and permission of particular courts, tribunals and other jurisdictions, appointees as Senior Counsel shall wear the court dress worn by Queen's Counsel, or as decided by the Council of the Law Society.

Appointees as Senior Counsel shall be entitled to describe themselves as 'Senior Counsel', to be abbreviated 'SC'.

UNDERTAKING

Senior Counsel, by seeking and achieving appointment, undertake to use the designation only while they remain practising advocates in private practice or retained under statute by the State, or during temporary appointments in a legal capacity to a court, tribunal or statutory body, or in retirement from legal practice.

CESSATION OF APPOINTMENT

Appointment as Senior Counsel is restricted to advocates who hold a practising certificate.

An appointee as Senior Counsel whose name is struck off the roll of senior advocates or whose practising certificate has been cancelled or suspended, ceases thereby to hold appointment as Senior Counsel, and is not permitted to retain the title of Senior Counsel.

Reinstatement of a practising certificate does not automatically result in reinstatement of an appointment as Senior Counsel. A advocate will not however be prevented from re-applying for appointment as Senior Counsel.

CRITERIA FOR APPOINTMENT

The designation of Senior Counsel provides a public identification of advocates 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 and the public, that they can provide outstanding services as advocates and advisers, to the good of the administration of justice.

As a recognition based on the opinions of those best placed to judge advocates' qualities, the designation of Senior Counsel also provides a goal for the worthy ambition of junior counsel, and should encourage them to improve and maintain their professional qualities.

The appointed Senior Counsel will as well be subject to some rules which are to be enforced and can be amended by the council, which rules include:

- I. Applicants are normally expected to have at least twelve years experience at the Bar before they apply, which experience should be outside a corporation.
- II. Unless there are exceptional circumstances, appointment as Senior Counsel will be restricted to practising advocates.
- III. To only practice in the superior courts of record.
- IV. To only appear in a matter with a junior advocate and not alone.
- V. Must not have been guilty of any professional misconduct during the 12 years.
- VI. Must not be a sitting member of the L.S.K council.
- VII. The qualities required to a high degree before appointment as Senior Counsel are skill and learning, integrity and honesty, independence, diligence and experience.

a. LEARNED.

Senior Counsel must be learned in the law so as to provide sound guidance to their clients and to assist in the judicial interpretation and development of the law.

b. SKILL.

Senior Counsel must be skilled in the presentation and testing of litigants' cases, so as to enhance the likelihood of just outcomes in adversarial proceedings.

c. DILLIGENCE.

Senior Counsel must be accomplished in the giving of advice: both as to the most appropriate way to conduct litigation, and as to the most appropriate way in which problems might be resolved outside the traditional system, such as through mediation and other non-judicial means of achieving resolution of conflict.

d. COMPETENCE.

Senior Counsel must be worthy of confidence and implicit trust by the judiciary and their colleagues at all times, so as to advance the open, fair and efficient administration of justice. Senior Counsel must have a history of honesty, discretion and plain dealing with professional colleagues, lay and professional clients and the courts.

e. COMMITMENT.

Senior Counsel must be committed to the discharge of counsel's duty to the court, especially in cases where that duty may conflict with clients' interests.

f. INTEGRITY.

Senior Counsel who are in private practice must honor 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.

g. ABILITY.

Senior Counsel must have the capacity and willingness to devote themselves to the vigorous advancement of their clients' interests and to have demonstrated an independence of mind and moral courage in so doing.

h. KNOWLEDGE.

Senior Counsel must have the perspective and knowledge of legal practice acquired over a considerable period.

i. ASSISTANCE.

Senior Counsel must have demonstrated a commitment to the advancement of justice and the profession, for example, through the provision of assistance and service to the Law Society, or through participating in pro bono schemes, or in such other ways designed to achieve a similar outcome.

j. EXPERIENCE.

In order for the foregoing qualities to have been properly developed and tested, it is expected that applicants for appointment as Senior Counsel should have practised for a considerable time. During this

time it is expected (without being exhaustive) that the applicants' practices will demonstrate some or all of the following:

1. experience in arguing cases on appeal;
2. a position of leadership in a specialist jurisdiction;
3. experience in conducting major cases in which the other party is represented by senior counsel;
4. considerable practice in giving advice in specialist fields of law; and experience in conducting cases with a junior.

Formal Privileges Of The Senior Counsel Position.

Appointment as a Senior Counsel brings a number of formal privileges. First, they are to be accorded the S.C title, which honorary title should bestow on them powers, which powers shall be suggested by the L.S.K Council and endorsed by the Chief Justice.

Secondly, the judiciary has traditionally given senior counsels, a formal right to address the court before any other advocates (although it is doubtful whether this right has any longer any practical significance).

Thirdly, senior counsels sit in a particular part of the court. They are entitled to sit in the front row (also known as sitting "within the Bar in the Supreme Court"). This tradition is a matter of professional etiquette, rather than part of the practical process of discharging business.