Copy to all Crown Counsels & others — Crown Law

IN THE SUPREME COURT OF TONGA

PRACTICE DIRECTION 3/2009

(FRAMEWORK FOR APPOINTMENT OF "SENIOR COUNSEL")

This Practice Direction shall come into effect on the first day of January 2010.

SECTION A. Criteria for Appointment

1. Experience

The criteria for recommendation of a candidate for Senior Counsel reflect the position of the office as the top echelon of advocates in the Kingdom of Tonga. Appointment requires in depth legal knowledge and ability as a litigator as well as personal qualities including maturity of judgment and integrity. The position is open to qualified law practitioners with more than 10 years practice at the bar in Tonga or any other common-law jurisdiction.

A nominee should give serious consideration to all the criteria listed in this Section when considering whether to accept nomination.

2. Learning:

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.

3. Skill:

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

4. Integrity and honesty:

Senior Counsel must be worthy of confidence and implicit trust by the judiciary at all times so as to advance the open, fair and efficient administration of justice.

Rec'd: 10/12/09.

5. **Commitment to duty to the courts:**

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

6. **Independence:**

Senior Counsel must have the independence, capacity and willingness to devote him or herself to the vigorous advancement of the client's interests, without taking account of other interests.

7. **Experience and excellence:**

Senior Counsel must have the perspective and knowledge of legal practice acquired over a considerable period and represent standards of excellence. It is expected (without being exhaustive) that the applicant's practice will demonstrate some or all of the following:

(a) experience in arguing cases on appeal;
(b) experience in conducting major cases;
(c) making a significant contribution to the development of the law in Tonga;
(d) making a significant contribution to the training of others in the law of Tonga;
(d) making a significant contribution to the mentoring of law practitioners in Tonga;
(f) having appeared in all courts and jurisdictions in Tonga.

8. **Leadership:**

Senior Counsel will have demonstrated leadership in advancing the ideals of the profession and in setting and maintaining the standards of the profession.

SECTION B. PROCEDURE

1. **Objective:**

The procedure prescribed in this Section for the appointment of Senior Counsel is aimed at ensuring transparency, confidentiality and independence.

2. **Invitations for nominations:**

The President of the Tonga Law Society shall issue a general invitation for submission of nominations for Senior Counsel in July of every year.

3. **Nominations:**

A law practitioner shall be considered if nominated to the Tonga Law Society by at least two other law practitioners at least one of whom should be an existing Senior Counsel. Nominations shall be lodged with the President of the Tonga Law Society by the end of September in any year.

4. **Nomination requirements:**

Each nomination shall be accompanied with a non-refundable fee payable to the Tonga Law Society of TOP300.00 together with a brief written synopsis provided by the nominee addressing each of the criteria listed in Section A.

5. **Honorary Titles Panel**

The President shall refer the application to the Tonga Law Society Honorary Titles Panel consisting of appointed members of the Executive Counsel of the Tonga Law Society. The Panel shall have the power to co-opt others to assist. Nominations shall be kept strictly confidential by the Panel.

6. **Referrals**

The Panel shall refer the nomination to the following persons to ascertain whether or not they support the nomination:

(a) the Chief Justice on behalf of the Judiciary, who shall then consult with the Justices of the Court of Appeal and the Supreme Court, the Chief Magistrate and the Magistrates;
(b) Senior Counsel;
(c) long-term members of the Tonga Law Society;
(d) the Attorney General;
(e) the Solicitor General;
(f) the Secretary of the Tonga Law Society, and
(g) any other person the Panel deems appropriate.

7. **Outcome of nomination**

If the nomination is unsuccessful the President shall advise the nominee in writing, and in strict confidence, that the nomination has been unsuccessful. If the nomination is successful, the President shall recommend to the Chief Justice that the applicant be appointed as Senior Counsel.

8. **Announcements**

The successful nominee(s) will be announced at the end of January or at any other time the Chief Justice and the President agree upon, but prior to the commencement of the Court of Appeal Session (and if more than one, the first such Session) for that year.

9. **Appointment ceremony**

An appointment ceremony may be held before the Judiciary on the first day of the Court of Appeal session.



Anthony D. Ford
Chief Justice
8 December 2009.