



# The Real Senior Counsel Selection Criteria

It's that time of year when aspiring junior counsel start considering whether to apply for the honour and recognition of appointment as senior counsel, and for the ability to clothe oneself in a gown of silk and the warmth of a long bottom wig.

The NSW Bar Association has published formal guidelines for the appointment of senior counsel. However, all senior counsel, regardless of practice area, share qualities that do not appear in these guidelines. The existence of these universal characteristics demonstrates that there are other, undisclosed, attributes that are given greater weight by the Selection Committee than the advertised qualities of 'learning, skill, integrity and honesty, independence and disinterestedness, diligence, experience and leadership.'

*Bar News* has determined to publish the 'Real Senior Counsel Selection Criteria' for the assistance of all aspiring silks.

## THE REAL SENIOR COUNSEL SELECTION CRITERIA

The principles governing the selection and appointment of those to be designated as Senior Counsel are as follows:

### ESSENTIAL CRITERIA

The qualities required to a high degree before appointment as Silk are:

- a. **Document management:** a constitutionally entrenched inability to retain any document – paper, native electronic file, thumb drive or cloud-stored – given to you by junior counsel and/or your instructing solicitor.
- b. **Internal inconsistency:** demonstrated ability to make all of the following requests of junior counsel in relation to a single set of submissions:
  - i. insert additional detail into the facts, explain the underlying principles in greater depth, address the dissenting judgment of Justice X, and provide a comprehensive response to anticipated arguments on grounds (1)(a)-(e), 2(a)-(c) and 3-5;
  - ii. 'lift' the overall persuasiveness of the submissions; and
  - iii. Simultaneously with the above, make the submissions 'punchier' and ensure that the submissions are five pages shorter than their current length.
- c. **Time management:** demonstrated tendency to:
  - i. mis-align conference and court times, such that if junior counsel is available at any time except 12pm on Tuesday, the Silk-designate must only schedule the conference for 12pm on Tuesday;
  - ii. forget conference times for all conferences with difficult solicitors/ clients, so that in the absence of the Silk-designate the junior counsel is required to explain to the solicitor why the cross-claim/ eighth ground of appeal (as suggested by the solicitor) will not be pursued;
  - iii. make unbreakable commitments to attend events at the Opera House, fashionable restaurants or a holiday, which will necessarily coincide with the occurrence of critical events in the case requiring overnight or weekend work, such as receipt of unexpected new and damaging evidence, receipt of your opponent's submissions or a request from the court for a complex note.



- d. **Communication skills:** demonstrated ability in misdirecting your junior counsel. For example:
- i. informing your junior counsel that they should meet you at 9am on the day of the hearing outside the court-room, when in fact you require your junior counsel to meet you at 7am on the day of the hearing in your chambers;
  - ii. on acceptance of the brief, promising the junior counsel that you can give them 'any time they need' to help prepare the case; when in fact you only have 20 minutes available between the date that you accept the brief and the date that the case is listed for hearing;
  - iii. assuring junior counsel that the case will only involve an hour (or two) of research, when in fact, the junior counsel will be required to draft all originating process, consider the interaction of three pieces of obscure and lengthy Commonwealth legislation, draft all affidavits, chronologies and written submissions and appear unled in no less than five interlocutory applications at short notice; and
  - iv. requiring junior counsel to book a restaurant for dinner the night before a regional hearing. Insisting that 'any restaurant' will be 'fine' when only a particular Italian restaurant (which only takes bookings six months in advance) will be satisfactory.
- e. **Work-life balance:** demonstrated ability to promote the Silk-designate's domestic and other demands above the professional and personal commitments of junior counsel.
- This criteria would be met if, for instance, the Silk-designate cancels a conference at short notice because the Silk-designate has a new puppy which woke the Silk-designate repeatedly overnight. (Suitability is met to a high standard if the conference is cancelled when junior counsel is already in your reception, and junior counsel has left an infant or several toddlers in the care of a highly paid nanny to attend the conference.)
- f. **The Royal 'we':** ability to deploy the Royal 'we' (to refer exclusively to your junior counsel) in a variety of circumstances. The following guidance is provided as satisfactory for the purposes of this criteria:
- i. 'Your Honour, it may be helpful to the court if we provide a note that outlines the comparative jurisprudence both within Australia, and internationally. We are happy to provide that note before 9am tomorrow.'
  - ii. To your instructing solicitor: 'We can provide the advice sought (a complete review of the interaction between the Family Law Act, Superannuation legislation, and various domestic and international tax rulings) within 24 hours.'
- This criteria will also be met where the Silk-designate demonstrates an ability to discern circumstances where the use of the Royal 'we' is not appropriate. Specifically, the Royal 'we' should not be used when referring to the submissions/ advice/ note after its completion by the junior.
- This latter criteria will be met to a high standard if, months or years later, the Silk-designate regales the junior counsel with an anecdote relating to the case, without recalling the junior counsel's involvement in the case at all.
- g. **Research 'guidance':** the Silk-designate should have demonstrated experience in decisively misdirecting junior counsel in locating relevant authority. For instance, 'There is a case called Connor or maybe Connelly and it is from 1983 and it is about fiduciary duty; can you turn it up for me?', meaning 'The case is called Parker and it is from 1997 and it is about trusts.'
- h. **General high maintenance needs:** This may be demonstrated, for example, in orders for coffee and/ or food. In particular, the Silk-designate will be ineligible for appointment if their coffee order is a flat white (with no instructions regarding cup size, milk choice or temperature); or if they order a sandwich straight from the menu with no complicated variation (as to toasting, bread or condiments).

*Bar News* wishes all applicants for Silk in 2021 all the best, and hopes that the publication of this hitherto confidential document is of assistance to all.

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