

Copyright 2023. Toronto Star Newspapers Limited. Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission. All Rights Reserved. The present document and its usage are protected under international copyright laws and conventions.

PubliC Certificate issued on May 14, 2024 to English Account NG C3 for personal and temporary display.
news-20230718-TTA-20230718-68501400

Source name	Tuesday, July 18, 2023
Toronto Star (ON)	
Source type	Toronto Star (ON)
Press • Newspapers	• p. A7
Periodicity	• 1058 words
Daily	
Geographical coverage	
Provincial	
Origin	
Toronto, Ontario, Canada	



Experts caution against 'King's Counsel' titles

Designation may violate Ontario lawyers' rules on misleading marketing

Jacques Gallant Courts and Justice Reporter

The head of Ontario's legal regulator declined the government's offer of a King's Counsel designation due to the lack of selection criteria, she told the Star, as experts warn that using the title may violate professional conduct rules for lawyers.

Had Law Society of Ontario treasurer Jacqueline Horvat accepted the KC offer, she would have "risked giving credibility to a suspect government initiative," said University of Ottawa law professor Amy Salyzyn, who specializes in legal ethics.

The Ford government has been staring down a patronage scandal for reviving the special title for lawyers last month and handing it out to numerous Tory politicians, staffers and loyalists. No public call for nominations, selection criteria, or information about the appointment process was made public prior to the announcement that 91 lawyers had received the designation.

The title carries no special privileges aside from allowing lawyers to put the initials "KC" next to their name and wear silk robes to court.

However, questions have been raised about whether recent recipients would be in breach of the Law Society's rules of professional conduct around advertising, should they decide to market themselves as a KC.

Those rules caution against marketing awards, rankings and third-party endorsements that could be misleading to the public, including those that "do not genuinely reflect the performance of the lawyer and the quality of services provided by the lawyer but appear to do so," and "are not the result of a reasonable evaluative process."

Former Law Society treasurer Gavin MacKenzie told the Star that the recent batch of KC recipients, "with a few exceptions," could fail to meet that criteria. He said it is "evident" the list of recipients was largely based on party loyalty and not merit, and he also pointed to the lack of a public appointment process.

"I expect it would be difficult for most recipients of these KCs to demonstrate that advertising the honour is compliant with the Law Society rules," he wrote in an email.

Attorney General Doug Downey, left, revived the King's Counsel designation last month. Since then, Doug Ford and his government have been staring down a patronage scandal for handing it out to several Conservative politicians, staffers and loyalists. Chris Simon Torstar file photo

"The practice should just stop now," MacKenzie said. "It should remain dead and buried. It is misleading to the public."

The Ontario government stopped handing out the title in 1985 - when it was known as Queen's Counsel - under the newly formed Liberal government of David Peterson, who said the designation had become "corrupted."

Attorney General Doug Downey decided to revive the title last month to mark King Charles's coronation and recognize lawyers for legal excellence and service to their communities. His office said he heard "from many individuals and stakeholders in the Ontario legal community" about bringing the designation back, and that there will be a public application process going forward.

Several major legal organizations - including the Law Society - told the Star

they were not consulted.

"Having established criteria for honorariums and designations for professionals is a best practice that supports the public understanding of a credential," said Horvat, who serves as the elected head of the Law Society's board of directors, in a statement to the Star.

"I declined this designation based primarily on considerations around the lack of established criteria for the designation and the absence of a consultation process on the need to resurrect such a credential."

The Law Society is mandated to regulate the legal profession in the public interest. Its duties include managing the bar exam, issuing licences and disciplining lawyers and paralegals for professional misconduct.

Salyzyn said it was both understandable and "prudent" of Horvat not to accept the title.

Two of the Law Society's board members - Sidney Troister and Jennifer Gold - were included on last month's list of KC recipients.

Further controversy around the KC title erupted after the Star reported that Transportation Minister Caroline Mulroney was called to the Ontario bar just three days before the government announced she was getting a designation. Mulroney, who had only ever held a law licence from New York, was able to bypass all Law Society licensing requirements as a former attorney general of Ontario, thanks to an amendment made to the Barristers Act by the Ford government in 2021. The Star also found that more than a dozen KC recipients donated to Downey's campaign or riding as-

sociation.

Premier Doug Ford - whose longtime lawyer received a KC - has tried to distance himself from the controversy by telling reporters last week that he didn't see or approve the list of recipients.

The Law Society refused to answer the Star's questions as to whether it had any concerns that marketing the designation might violate the rules on misleading advertising.

"It is not clear to me whether lawyers can, when marketing themselves, refer to a KC awarded under this opaque and seemingly politicized process and always still be in compliance with these rules," Salyzyn said.

Another former treasurer, Thomas Conway, argued in an email to the Star that "it would be a real stretch" to say this would violate the rules.

"Given the controversial history of this tradition in Ontario, I am not the least bit surprised that the announcements have been controversial," he wrote. "It's too bad, it was an opportunity to bring some lustre back to an old tradition, but I'm afraid the government really blew this one."

Ford's office refused to say whether he was at the cabinet table when the order-in-council was approved, when he first learned the designation was being revived, whether he asked for anyone to be included on the list or was consulted about any recipients. A spokesperson simply reiterated "this isn't a priority for him."

NDP Leader Marit Stiles said in a statement Ford was passing the buck. "Either he doesn't know what's going on in his

own cabinet, or he's directly or indirectly given his blessing to this return to a patronage, pay-to-play culture at Queen's Park," she said.

Interim Liberal Leader John Fraser said nothing is approved by cabinet without the knowledge of the Premier's office.

"The Premier can't 'aww shucks folks I didn't know' out of this one," Fraser said in a statement.