

PRESENTATION ON THE APPOINTMENT OF JUDGES



Organisation of Eastern Caribbean States (OECS)



St. Kitts and Nevis is a member of the Organisation of Eastern Caribbean States commonly referred to as the OECS. The OECS was established in 1981 and consists of Antigua and Barbuda, The Commonwealth of Dominica Grenada, Montserrat, St. Kitts and Nevis, Saint Lucia, St Vincent and The Grenadines and associate members, Anguilla, The British Virgin Islands and Martinique.

Eastern Caribbean Supreme Court



The Eastern Caribbean Supreme Court (referred to as the Supreme Court) is a superior court of record established in 1967 by the Supreme Court Order (Statutory Instrument 223 of 1967) and incorporated into the laws of St. Kitts and Nevis as the 5th Schedule to the West Indies Act Cap 1.01. The Supreme Court consists of the Court of Appeal and High Court of Justice. The Court of Appeal is comprised of the Chief Justice and the Justices of Appeal; and the High Court is comprised of the Chief Justice and such number of Puisne Judges as provided for by law. (Section 4 of the Supreme Court Order)

The Supreme Court serves the OECS territories. The Court of Appeal is an itinerant court, and moves from island to island throughout the year in scheduled sittings. It usually sits three times per year in each territory. Each territory has a fixed High Court that remains active in the particular territory throughout the year. In the case of St. Kitts and Nevis there are two Circuits of the High Court, one in St. Kitts and one in Nevis.

Appointment of Judges

Section 5 of the Order provides for the appointment of

(i) The Chief Justice by Her Majesty the Queen by Letters Patent

(ii) The Justices of Appeal and the Puisne Judges are appointed by the Judicial and Legal Services Commission on behalf of Her Majesty

Qualifications for Appointment

Section 5(2) of the Order sets out the qualifications for appointment.

Chief Justice and Justices of Appeal

5(2) A person shall not be qualified to be appointed

(a) as Chief Justice or a Justice of Appeal unless

(i) he or she has been for a period or periods amounting in the aggregate to not less than five years a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or

(ii) he or she is qualified to practise as an advocate in such a court, and has so practised, for a period of, or periods amounting in the aggregate to, not less than fifteen years;

Puisne Judges

5(2)(b) provides a person shall not be qualified to be appointed as a Puisne Judge unless

- (i) he or she is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or
- (ii) he or she is qualified to practise as an advocate in such a court, and has so practised, for a period of or periods amounting in the aggregate to not less than ten years.

5(3) defines practice as an advocate to include:

- (a) service in the office of judge of a court of unlimited jurisdiction in civil or criminal matter in any part of the Commonwealth; or
- (b) Service in a public office in some part of the Commonwealth the functions of which include appearing as an advocate in any such court or in the office of magistrate, or registrar of a court, in some part of the Commonwealth.

Types of Appointment

(i) Appointment for such period determined by when the judicial officer attains the prescribed age

section 8 of the Order provides that a judge of the Court of Appeal shall hold office until he or she attains the age of sixty-five years and a Puisne Judge shall hold office until he or she attains the age of sixty-two years.

The Judicial and Legal Services Commission acting with the concurrence of the Prime Ministers of all the States may permit a judge to continue in his or her office after attaining the prescribed age for a period or periods not exceeding in aggregate three years.

(ii) Acting Appointments

Section 6 of the Order provides for Acting Appointments.

Chief Justice

(a) The Judicial and Legal Services Commission may designate one of the Judges of the Court of Appeal to act as Chief Justice if the office of the Chief Justice is vacant or the Chief Justice is for any reason unable to perform the functions of his or her office.

A person appointed to act as Chief Justice shall continue to act in the office for the period of appointment or until a person has been appointed to and assumed, or has resumed, the functions of that office, as the case may be.

Puisne Judges

(b) The Judicial and Legal Services Commission may appoint a person qualified for appointment as a Justice of Appeal or Puisne Judge to act as a Justice of Appeal or Puisne Judge if one of the Justices of Appeal is acting as Chief Justice or if the office of a Justice of Appeal or a Puisne Judge is vacant or if a Justice of Appeal or a Puisne Judge is for any reason unable to perform the functions of his or her office.

Magistrates

Magistrates are appointed by the Governor General acting on the advice of the Public Service Commission after consultation with the Judicial and Legal Services Commission. (Section 83 of the Constitution and section 5 of the Magistrates Code of Procedure Act Cap 3.17.)

The procedure for appointment of Magistrates and the conditions of their service is determined by the Public Service Regulations having regard to the relevant laws and rules of the Public Service.

The Judicial and Legal Services Commission

Section 18 of the Order establishes the Judicial and Legal Services Commission which consists of the following persons:

- (a) The Chief Justice, who serves as the Chairperson;
- (b) A Justice of Appeal or Puisne Judge designated by the Chief Justice;
- (c) A former Judge (who is not a practising advocate before the Supreme Court) appointed by the Chief Justice with the concurrence of at least four Prime Ministers.

(d) Two ex- officio members being persons discharging the functions of the Chairperson of the Public Service Commissions of two States, being States for the time being designated in that behalf by the Chief Justice. The State whose Public Service Commission will be represented by on the Judicial and Legal Services Commission is determined on rotation basis as set out in section 18(2) as follows:

- (i) Antigua and Dominica
- (ii) Grenada and Saint Christopher and Nevis
- (iii) Saint Lucia and Saint Vincent

Appointed members serve for a period of three years. Decisions made by the Commission may be challenged by way of an application for Judicial Review before the Court.

18 (3) The office of the appointed member of the Commission shall become vacant

- (a) at the expiration of three years from the date of his or her appointment;
- (b) if he or she practises as an advocate before the Supreme Court; or
- (c) if the question of his or her ceasing to be a member of the Commission has been referred by the Chief Justice, acting on the recommendation of the Premiers of not less than four of the States, to a tribunal consisting of a Chairperson and two other persons appointed by the Chief Justice, and that tribunal has recommended that such person should cease to be a member of the Commission.

Principles for Appointment

Schedule 6 to the Court Order - Judicial & Legal Services Commission Regulations, Regulation 8 provides that when exercising its functions in relation to appointments the JLSC shall in addition to interviewing candidates consider the following:

- (a) his or her qualifications;
- (b) his or her general fitness;
- (c) any previous employment of the candidate in the public service or in private practice;
- (d) previous public service or private practice in territories other than those to which the Courts Order applies.

Procedure

Chief Justice

Recommendations identifying suitable candidates are made by members States of the OECS. One person is chosen by the Heads of Government by unanimous vote and then a recommendation is made to Her Majesty to have the person appointed as Chief Justice.

Puisne Judges and Justices of Appeal

1. Vacancies are normally advertised by the JLSC. An application form is attached to the advertisement.
2. Interviews are conducted and candidates selected.

Challenging decisions of the Commission

Decisions of the Judicial and Legal Services Commission may be challenged by way of Judicial Review. This is the procedure by which the Court can review the actions of administrative bodies and is provided for under Part 56 of the Civil Procedure Rules.

Two examples of cases in which decisions of the Judicial and Legal Services Commission have been challenged are:

- (i) Fraser v Judicial and Legal Services Commission and Another - [2009] 2 LRC 26
- (ii) Hugh Wildman v JLSC of the Eastern Caribbean Supreme Court Civil Appeal No.9 of 2006.