



POLICY

CRITERIA AND PROCEDURES IN RESPECT OF THE CONFERMENT OF SILK

A. THE PURPOSE OF THE CONFERMENT OF SILK

1. The status of *senior consultus*, or silk as it has become to be known, is a high honour conferred on an individual legal practitioner enrolled as an advocate by the President of the Republic of South Africa (“the President”). The Legal Practice Act recognises the conferment of silk.
2. PABASA recognises the importance of the status of silk in the profession.
3. PABASA discharges a responsibility, in accordance with tradition of recommending to the President as Head of State, an advocate who is its member known to it, for the conferment of silk. PABASA views the conferment of this high honour as a critical responsibility in ensuring quality and recognizing legal and leadership qualities of its members.
4. PABASA, after a rigorous selection process carried out by its Silk Committee, makes recommendations to the President and the relevant the Judge President of the Division where the advocate practices. The relevant Judge Presidents, through whose intermediation the recommendation is conveyed to the President, are entitled to have unreserved confidence in the recommendations made by the Silk Committee of PABASA

B. CRITERIA BY WHICH CANDIDATES FOR THE CONFERMENT OF SILK ARE JUDGED

5. PABASA is mindful of the history of discrimination in the profession and the historical complaints that have accompanied the conferment of silk. As a result, the criteria in this policy are designed to be a departure from how other Bars have dealt with the



conferment of silk. They are designed to ensure that the process does not allow itself to be arbitrary and unconstitutionally discriminatory.

6. The criteria as set out below are designed to operate as guidelines in respect of the nomination of members of the Bar as persons appropriate to recommend for the conferment of senior consultus status. The guidelines are not to be regarded as definitive or exhaustive and the weight to be attached to individual criteria may vary. It will be apparent that these criteria seek to guide the Silk Committee in either inviting advocates to accept a recommendation or in considering applications made by its members for consideration in the conferment of silk in any given year.

7. **General criteria**

- 7.1. The echelon of silks within the body of members of PABASA is reserved for those with recognised leadership qualities, unquestioned integrity and practise law at the highest level and with great skill.
- 7.2. In order to ensure absolute quality, this level of practice will necessarily comprise advocates that have displayed rare skill in the craft of advocacy and leadership in the profession.
- 7.3. As a result, only the most meritorious candidates will be recommended for silk in any given year. However, no deserving candidate will be prejudiced simply because a few must be recommended.
- 7.4. If a candidate is not amongst the most meritorious candidates in a particular year, no recommendation in respect of that candidate will be made. A candidate who has not been recommended in any particular year will not enjoy preference in any subsequent year in which the candidate may be nominated, by reason of the fact that the candidate had previously been nominated. However, if the candidate is invited by the Silk Committee, he/she, in all likelihood will be recommended to the President.



7.5. In deciding on the recommendations that may prudently be made for the conferment of silk in any given year, due regard shall be had to the racial and gender composition of the body of silks within PABASA. In addition, regard may be had to the specialised fields of practice by such candidate.

8. The criterion of the nature of practice

8.1 The practice should be a large one consisting of good quality work, having regard, inter alia, to the complexity of the work subject to clauses 2.2.2 and 2.2.3 below. Although preference will be accorded to practices which embody the whole spectrum of senior work available in the practice of law, due regard will be accorded to the expertise of a candidate in a specialised field of practice.

8.2 No particular area or type of practice (for example a so-called commercial practice) will be accorded any more or less weight than any other.

8.3 Consideration must be given to the reality of race-based and gender-based bias or skewing of briefing patterns which may tend to result in the exclusion of an otherwise worthy candidate from strong representation in certain areas of practice.

8.4 The criterion of integrity and honourable conduct

9 The criterion of seniority

9.1 Seniority is but one of the factors which are taken into account. However, PABASA recognizes that the conferment of silk is no reward for long service, but a high honour given to advocates with a rare skill in the practice of law. Therefore, subject to the caveat that seniority is not a determinative factor but is to be considered and weighed together with other criteria, candidates who have less than twelve years seniority will have to demonstrate exceptional qualities, recognised widely for them to be invited or recommended for the conferment of silk.



10 The criterion that the PABASA is willing to sponsor the candidate

- 10.1 There is more than the specific criteria listed above in determining a candidate's suitability and the evaluation exercise is not mechanical.
- 10.2 A suitable candidate must be a person of real and perceived ability, utmost integrity, leadership qualities and maturity of judgment. He or she must have a proven track record in this regard.
- 10.3 In determining whether a candidate has the requisite leadership qualities, the Silk Committee will give due weight to the candidate's demonstrable commitment to law in society, transformation of the profession and society in general. In this regard, account will be taken of all relevant factors, including but not limited to:
- 10.3.1 the extent to which the candidate has actively played a mentoring role to black and/or women junior members throughout his/her practice as an advocate;
 - 10.3.2 the degree to which the candidate has generally participated in the enhancement of transformation through the structures of PABASA or his/her previous Bar;
 - 10.3.3 the extent to which the candidate has involved black and/or women junior members in his/her practice;
- 10.4 In determining a candidate's commitment to transformation under this criterion, the input of junior members who may have interacted with the candidate in the above respects (both in the candidate's group and otherwise) garnered by the group leaders in the application process, will be taken into account.



- 10.5 The Silks Committee will take due cognisance of the fact that a demonstrable commitment to transformation as a material aspect of the criterion of leadership has only been introduced as being part of these criteria in February 2010.
- 10.6 Experience as a legal practitioner prior to joining PABASA may, in appropriate circumstances, be taken into account.
- 10.7 Recognising that the best interest of PABASA is served by a diverse leadership, consideration of race and gender must be taken into account in the selection of candidates for recommendation.

C. PROCEDURE TO BE FOLLOWED IN REGARD TO NOMINATIONS FOR THE CONFERMENT OF SILK

- 11 The Executive of PABASA, shall, annually, invite suitable candidates and/or publish a notice to the membership inviting applications for silk to be lodged with the National Chair of PABASA. Any specific factor that may affect the process in the given year should be stated in the notice.
- 12 The Silk Committee shall comprise silks in the National Executive and three additional silks invited by the Chairperson. Two retired judges and another external advocate shall also be invited as members of the Silk Committee.
- 13 A period of not less than four weeks must be granted for the receipt of applications and the closing date for the applications shall be stated in the notice.
- 14 An application shall consist of a memorandum by the applicant, stating the reasons why silk should be conferred on him or her. Attached to the memorandum shall be a completed application form. Application forms will be made available by the Executive at the offices of PABASA.



- 15 A candidate invited by the Silk Committee must still prepare a memorandum of acceptance of the invitation.
- 16 On the day after the closing date for the stated receipt of applications, the Chair shall compile a list of all the applicants in order of seniority, and the Chair shall cause the list to be published to the membership.
- 17 The completed application forms must be made available by the Chair for inspection by the membership in the national office of PABASA.
- 18 Any member, other than an applicant for silk, may, within seven days of the publication of the list, comment on any application. All such comments must be in writing, addressed to the National Chairperson of PABASA
- 19 Any adverse comment on any application shall be referred by the Chairperson to the concerned applicant and such applicant may within seven days after the period for comments closed, respond thereto in writing.
- 20 Within the period referred to in paragraph 7 above, each group must circulate the names of all the applicants for silk to each member of the group and request junior members to express their views, such as they may be, on each applicant to the group leader. Each group leader must ensure that there is a system in place in his or her group to collate the views of the junior members of the group.
- 21 The Silks Committee, comprising silks invited by the Chairperson, shall, within a reasonable time of the closing date on which applicants may respond to adverse comments, meet, deliberate and identify the applicants who are to be nominated for silk.
- 22 The Silks Committee shall, in the course of its deliberations:
 - 22.1 interview all group leaders or, if a given group leader is not a silk, a silk representing such group in respect of all applicants, and the group leader or silk shall convey the views of the silks and juniors of his group and hand it to the Silks Committee the schedule referred to in paragraph 7.2 and speak to it;



- 22.2 receive any comments from the relevant Deputy Judge President in respect of all applications;
- 22.3 require each applicant to appear in person before the Silks Committee to be questioned on his or her application during which interview any adverse comments must be put to him or her. The Silks Committee may appoint a silk or silks to question the applicants but must ensure that each applicant is given the opportunity fully to deal with all adverse comments and to answer all questions put to him or her;
- 22.4 not take into account any adverse comment which the candidate has not had an adequate opportunity to address.
- 23 Save as aforesaid, the deliberations of the Silks Committee will be private.
- 24 The Silks Committee must publish the names of successful applicants not later than fourteen days after the closing date on which applicants may respond to adverse comments.
- 25 Each unsuccessful applicant may within seven days after the date of publication of the names of the successful applicants, request the Chairperson to give reasons why the application was unsuccessful and the Chair shall be obliged to furnish such reasons, in writing, within a further fourteen days.

CONCLUSION

- 26 We will endeavour, at all times, to maintain the process as fair as possible. It must ensure that our promise to improve the standard of advocacy is fulfilled.



EFFECTIVE DATE

27 This Policy was approved by the national executive committee and is effective September 2019.