



EQUAL ACCESS TO JUSTICE FOR ALL: PETITION TO AMEND BERMUDA'S LEGAL AID ACT 1980 TO EXPRESSLY ENABLE FUNDING OF OVERSEAS KING'S COUNSEL FOR APPROPRIATE CASES

To: The Government of Bermuda

We, the undersigned, stand united in our call for justice and equality by urging the Government of Bermuda to pass legislative amendments that expressly enable the Legal Aid Committee ('the Committee') to appoint and fund overseas King's Counsel for legally aided defendants charged with offences punishable by life imprisonment.

Background

For at least the better part of the last two decades, the Committee routinely appointed overseas King's Counsel to represent legally aided defendants charged with serious offences like murder and pre-meditated murder.

This practice led to Bermuda gaining the invaluable expertise of overseas King's Counsel like the late John Perry KC, Dr. Courtenay Griffiths KC, and Jerome Lynch KC and others, all of whom influenced many members of the Bermuda Bar with their profound knowledge of the law imparted through their natural talent to teach young lawyers and to make compelling, complicated legal submissions to the Courts.

However, the Committee now says that when it was funding overseas King's Counsel to represent legally aided defendants, it was doing so without legal authority.

As a result, the Committee now holds the view that it must, as a matter of law, refuse to fund overseas King's Counsel even in circumstances where The Bermuda Bar and the Supreme Court have determined that the case warrants the special admission of overseas counsel to conduct the case.



In our view, the Committee's drastic change of position is having and will continue to have a profoundly negative impact on the fairness of trials in Bermuda, particularly because there is only one (1) King's Counsel who is engaged in active private practice listed on the Roster of Counsel that defendants are able to select from.

The unfortunate result is that legally aided defendants must wait until their cases are appealed to Bermuda's final appellate court, the Judicial Committee of The Privy Council (JCPC), to benefit from the expertise of overseas King's Counsel.

In the past two years alone, two Bermudian men convicted of premeditated murder and firearm use have had their convictions quashed by the JCPC. These appeals involved important legal questions regarding the admissibility of gun-shot residue and DNA evidence, as well as the duties that expert witnesses owe to the Courts.

The Problem

The Committee now holds the view that there is no statutory provision enabling it to appoint overseas King's Counsel to conduct a defendant's case, even when the Bermuda Bar Association and the Supreme Court of Bermuda have deemed it necessary.

This legislative gap means that even in the most serious, novel, or complex cases, legally aided defendants are deprived of the high level of expertise that could potentially affect the outcome of their trials.

The Call to Action

We humbly and respectfully petition the Government of Bermuda to amend the Legal Aid Act 1980 to:

1. **Empower the Legal Aid Committee** to fund overseas King's Counsel when the Bermuda Bar Association and the Supreme Court of Bermuda determine that a case warrants such expertise.



2. **Acknowledge the increasing difficulty** of maintaining a robust and skilled Criminal Bar in a small jurisdiction like Bermuda, where only circa 6 Counsel are deemed capable of conducting serious criminal cases. With most of those 6 Counsel either approaching or already past the retirement age of 65, the question must be asked what will be the state of the Bermuda Criminal Bar in the next decade if less experienced Counsel are deprived of the experience of working with overseas experts. The question remains whether this will have a profoundly negative impact on legally aided defendants' constitutional right to a fair trial.
3. **Protect defendants' constitutional right** to a fair hearing, which is currently jeopardized due to the lack of funding for necessary legal expertise provided by overseas King's Counsel.

Addressing Misconceptions

Funding overseas King's Counsel for life imprisonment cases will not significantly increase the legal aid budget. The cost of rectifying trial errors on appeal far exceeds the expense of providing appropriate legal assistance from the outset. Moreover, the legislative amendments can require overseas King's Counsel to adhere to the same fee rates as local counsel, with applicable disbursements being made for travel and accommodation.

Benefits

Allowing overseas King's Counsel in appropriate cases will:

- Enhance the skill and experience of local counsel by enabling them to work under the guidance of highly specialized experts.
- Ensure fair and constitutionally compliant trials, thereby reducing the likelihood of costly appeals.
- Strengthen the overall competency and longevity of Bermuda's Criminal Bar.



Conclusion

We call upon the Government of Bermuda to act swiftly and justly by amending the Legal Aid Act 1980. This change is crucial for upholding the constitutional rights of defendants and maintaining the integrity of Bermuda's legal system.

By signing this petition, you are supporting the request for the Government of Bermuda to make the legislative amendments that enable the Legal Aid Committee to fund overseas King's Counsel for cases that require their expertise.

The Petition

<https://chng.it/J7Pp7js7cF>

The Bermuda Equal Justice Initiative Team