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## Province silent on reform of 'King's Counsel' honour

One year after patronage scandal, future of legal title remains in doubt

Jacques Gallant Courts and Justice Reporter

**I**s the King's Counsel designation for lawyers - revived by the provincial government last year, only to spark a patronage scandal - once again dead?

It's been just over a year since Premier Doug Ford promised to "fix" a secretive process that saw the awarding of the K.C. title to dozens of Tory cabinet ministers, MPPs, political staff, donors and other party loyalists.

Amid public outcry, Attorney General Doug Downey's office said last July that, going forward, there would be a public application process to receive the designation, which does little else but grant lawyers the privilege of adding the letters K.C. next to their names.

Despite legal organizations providing Downey with suggestions, there is still no sign of a new process, or even any public indication that the government remains interested in handing out the designation.

Downey's office did not return the Star's repeated requests for comment this month.

"It would be nice if the government for once could admit that they made a mistake and acted without all the information," said Ottawa criminal defence lawyer Michael Spratt.

"Or, if you think that the K.C. program is such a vital and important core function that you need to be involved in," Spratt said of the government, "maybe follow through with what you're going to do and tell the truth about what your intentions are."

In 1985, the Liberal government of David Peterson stopped handing out the designation - then known as Queen's Counsel during the reign of Elizabeth II - because it had become "corrupted" and "lost all meaning," Peterson told the Star last year. (Peterson, a K.C. himself, is the chair of Torstar, the Star's parent company.)

The backlash was swift after the Ford government announced the first 91 recipients last year on the Friday afternoon of the Canada Day long weekend. While many individuals were closely linked to the Tories - including Downey himself and his predecessor, Caroline Mulroney - new K.C.'s also included se-

nior bureaucrats and the head of the Ontario Human Rights Commission.

Further controversy followed after the Star revealed that Mulroney, who was transportation minister at the time, was called to the Ontario bar just three days before the government's announcement, in order to qualify for her K.C. Until that point, Mulroney had only ever been licensed to practise in New York, even during her time as Ontario's attorney general.

She was called to the bar thanks to an amendment the Tories made to the Barristers Act that allowed for former provincial attorneys general to bypass the usual licensing requirements of the legal regulator, the Law Society of Ontario, including examinations.

The elected head of the law society at the time, Jacqueline Horvat, told the Star that she declined the government's offer of a K.C. due to the lack of selection criteria. (Several law society board members did, however, accept the offer.)

The issue dogged Ford for days, as he tried to distance himself and declare that

he did not see a list of recipients. He finally stated that the government would "fix" the process.

"I still think there are legitimate questions to be asked about the whole idea of the government being involved in designating a class of 'super-lawyers,'" said University of Ottawa law professor Amy Salyzyn, who specializes in legal ethics.

"But, if the government decides that it must go down this road, having public and non-partisan criteria and processes are clearly in the public interest."

There has been no shortage of suggestions on how to improve the process.

The Advocates' Society, the national organization representing lawyers who appear in court, told Downey in a letter last November that the primary criterion for the designation should be professional excellence, and that the government should explicitly state that a lawyer's political affiliation will play no role in whether they get a K.C.

A public nomination process should involve an independent, non-partisan advisory committee to screen applications, the society said, noting that similar committees in other provinces include judges, lawyers and sometimes members of the public.

The society referred in its letter to the patronage concerns that led to the Liberals' decision to stop handing out the title in the 1980s.

"If the designation is permitted to fall into such disrepute again, public confidence in the legal profession will be undermined," wrote then president Dominique Hussey.

The Federation of Ontario Law Associations also pushed for a depoliticized process, and suggested to Downey that priority should be given to lawyers "who have applied their skills in the course of reputable civic engagement," with a special emphasis on volunteer work.

The federation also proposed that lawyers in certain positions automatically receive the title, including MPPs, MPs, heads of tribunals and senior judges.

The federation's chair told the Star that he's surprised at the lack of clarity from the government one year later, having heard nothing aside from an acknowledgment that the federation's proposals were received.

"Maybe they looked at everything they received and said, 'There isn't really support in the legal community for this, and maybe we should move on,'" federation chair Douglas Judson told the Star.

"But I'd be surprised they wouldn't just come out and say that."