



Launch of the Revised Code of Ethics for Judicial Officers

The Hon. Mr Justice Adrian Saunders
President of the Caribbean Court of Justice

**Launch of the Revised Code of Ethics for Judicial Officers by the
Judiciary of Guyana**

Virtual Event
5 October 2021

The Judicature of Guyana comprises the Supreme Court of the Judicature which consists of the Court of Appeal and the High Court (both of which are superior courts of record). The Court of Appeal, which came into operation in 1966, consists of the Chancellor, the Chief Justice, and such number of Justices of Appeal as may be prescribed by the National Assembly. The High Court of the Supreme Court consists of the Chief Justice as President of the Court and Puisne Judges. Its jurisdiction is both original and appellate. A magistrate has jurisdiction to determine claims where the amount involved does not exceed a certain sum of money, specified by law. Appeal lies to the Full Court.

REMARKS

by

The Honourable Mr Justice Adrian Saunders, President of the Caribbean Court of Justice,

on the occasion of

The Launch of the Revised Code of Ethics for Judicial Officers by the Judiciary of Guyana

5 October 2021

(Protocols)

I must first thank The Honourable Mme Justice Yonette Cummings-Edwards, Acting Chancellor of Guyana, for graciously inviting me to bring these remarks on this special occasion. To be here with you at this launch ceremony is not only a great honour but a distinct pleasure given my particular interest in judicial integrity. I extend hearty congratulations to the Honourable Chancellor, to the Chief Justice, to ‘Team Supreme’, all the judicial officers who participated in the revision process and to the judiciary as a whole for the production of this Code. Not only have you produced a formidable document, which is in and of itself a great achievement, but in so doing, you have demonstrated your steadfast commitment to the people of Guyana whom you serve and to the rule of law. Congratulations on a job well done!

We all appreciate that the office of judge carries with it a range of responsibilities that include restrictions on one’s conduct. Some of these restrictions might be viewed as burdensome by laypersons, but that’s what a judge signs up for when he/she takes the judicial Oath of Office. Increasing media pressure and public scrutiny further constrain judicial conduct on and off the bench. This level of attention to the conduct of judges is understandable. Even in our private

capacity, the behaviour of a judge can have serious effects on the public's perception of his /her impartiality. Public confidence in the administration of justice can only be achieved if we consistently conduct ourselves in an ethical manner in both our judicial and personal lives.

As the Chancellor pointed out, the judiciary first developed a Code of Conduct for Judges and Magistrates in 2003 under the direction of the then Chancellor, The Honourable Mme Justice Désirée Bernard. That Code embraced the Values espoused by the 2002 Bangalore Principles of Judicial Conduct¹, which is considered the world over as the gold standard of judicial ethics. Some 18 years have elapsed since that initial Code was developed and, again as Chancellor pointed out, change is inevitable with the passage of time. Guyanese society and its needs have changed; public perceptions and expectations today are different from what they were nearly two decades ago; and for sure, ethical standards for judicial officers have not remained static throughout that time. As if that were not enough, we are currently in the midst of a pandemic that has forced judiciaries worldwide to re-think and re-imagine the manner in which we deliver justice services. With *all* of this in mind, this was certainly an opportune time to have embarked upon this critical initiative.

It is obvious to me that the Judiciary of Guyana is committed to pursuing judicial excellence and to being a responsive institution. The indications are evident and have been noticed by us at the Caribbean Court of Justice (CCJ). I see them in the efficient disposition of cases, the elimination of backlogs, the embrace and deployment of technological innovations, the premium placed on judicial training programmes, the employment of court annexed alternative dispute resolution mechanisms, and one can go on and on. Guyana's judiciary, like the country itself, is on the move

¹ Judicial Integrity Group, 'The Bangalore Principles of Judicial Conduct' (2002) < https://www.un.org/ruleoflaw/files/Bangalore_principles.pdf> accessed 4 October 2001.

and the signs are there for all to see. Again, I commend Chancellor Cummings-Edwards and Chief Justice George. Their leadership has been exemplary and throughout the region and beyond, on-lookers can see the results for themselves.

The participatory manner in which this revision of the judicial code of conduct was developed, is yet another indication of this impressive leadership. Every judiciary worth its salt needs to develop and maintain a code of judicial ethics. A code is symbolic of the maturity and willingness of the judiciary to commit to a set of principles which helps to supplement and give force to their Oath of Office. It demonstrates the solemnity with which the judicial oath is regarded by those who hold judicial office. The code is actually a pact between the judiciary and society. It sets out the standards of behaviour that judicial officers voluntarily establish for themselves and to which they invite the public to hold them accountable. The code acts as a guidepost for judicial officers because, by and large, ethical infractions mostly occur through inadvertence or a lack of or insufficient awareness or appreciation of the relevant ethical principle.

I gave a speech in Jamaica some years ago where I publicly challenged any notion that in the Caribbean, we have a serious problem of rogue judges. When I say “judges” I include *all* judicial officers. I’ve spent the last 40 years in and around the courtroom: appearing before judges, assessing judges, working alongside judges, supervising judges, training and being trained by judges, and observing judges interact with lawyers, witnesses, litigants and the public. I believe that I am well placed to give the firm opinion that a decent level of integrity exists among the vast majority of Caribbean judges.

And so, it frustrates and upsets me that one still hears unproven allegations of widespread corruption among Caribbean judges. Strangely, when you engage in conversation with those who peddle this view, when you confront them and seek particulars, details or any information to support such a damning indictment, you get little of substance. If you press hard and are fortunate, you might even get a grudging retraction. My experience is that in the Caribbean, after a trial, the successful litigant praises to the hilt the qualities of the trial judge. Some losing litigants, on the other hand, persuade themselves, and others, that they lost because of some nefarious ‘hanky-panky’.

A friend of mine flippantly said to me some years ago, of the judges of a particular English-speaking Caribbean country, “Well, Adrian you know they’re all crooked.” I was shocked. I knew personally some of the judges in question. I was silent for a while. I couldn’t let that slander pass. I quietly said to my friend, let’s talk about these crooked judges. What about X (I began to name the judges individually), do you really think she’s crooked? When I got a negative response, I went right on down the list like that until, after 4 or 5 names, my friend retreated under the shelter of “Well, I never encountered any crookedness myself but, Adrian, sometimes you hear all kinds of things”. And I retorted, “Yes. And you’re so gullible that you simply accept malicious talk lock, stock and barrel. I shudder to think what you have heard about me!” It was my friend’s turn to be silent.

It is typically straightforward to recognise conduct that is outrightly inimical to the judicial office, but it is the grey areas that are usually fraught. A code, especially one that contains commentary, helps to illuminate these grey areas and to give a judge welcome guidance not only on general

principles of ethical behaviour but also in fleshing out how those principles might apply in concrete circumstances.

Suppose, for example, my faithful helper at home, who has worked with me for several years, wants to move on, with my full blessings. She asks me for a letter of reference. Do I give it? And, if I do, do I write it on judicial stationery? Or do I otherwise indicate in the letter that I am a Judge? A code of conduct helps a judge to navigate tricky issues such as these. But if the code doesn't, then whenever we are presented with ethical dilemmas, rather than take matters for granted, we should seek counsel and discuss the matter with one or more colleagues. And, of course, we can dive into the UN Commentary on the Bangalore Principles of Judicial Conduct². The Commentary is online, but I have two hard copies readily at hand for just this purpose. One is on my desk at my Chambers and another on my desk at home.

A code of conduct indicates to prospective and existing holders of judicial office what is and what is not to be expected of a judge. And, most significantly, the code serves as a means of judicial accountability. We hear a lot about judicial independence. The concept, if not the phrase itself, is enshrined in the Constitution. What we don't hear enough about is judicial accountability. And sometimes, when we do, what is said is cast in a frame as to suggest, quite correctly, that judges are not accountable to the Executive. That is true, but it is also true that judges are accountable to the public whom they serve and a code of conduct is an important accountability tool. It provides

² United Nations Office on Drugs and Crime, 'Commentary on the Bangalore Principles of Judicial Conduct' (2007) <https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf> accessed 4 October 2001.

a mechanism through which it is possible to test the conduct of each and every judicial officer against a single, accepted and published standard.

A code of conduct paves the way for unbecoming behaviour to be identified and suitably addressed. An effective code, however, must be supplemented with effective processes and procedures to accomplish two different objectives. Firstly, to render the relevant institutional support to judicial officers to help to secure their compliance with the principles and standards set out in the code, and secondly, to enable the public to call errant judges to account.

Every code should be treated as a living document; one requiring introspection and retrospection; an ability, continually, to look at what the needs of the community are, what are the international best practices and to make adjustments as and when necessary. Last year at the CCJ we completed the third iteration of our own Code of Judicial Conduct.

The Code being launched today is faithful to the ideals and principles I have just mentioned and more. So, for example, I have noticed that you have expanded the definition of ‘judicial officer’. It is certainly the case that the delivery of justice services involves a wide range of personnel within the judiciary, not just judges and magistrates. In many instances, long before a court user interfaces with a judge or magistrate, she would have interacted with one or several other persons within the judicial system. The conduct of these personnel also impacts upon the public’s perception of the judiciary and the administration of justice. Additionally, the existence of various officers who discharge quasi-judicial functions, such as Commissioners of Title and Court Registrars, by necessity requires a more comprehensive contemplation of who is a judicial officer.

In expanding the definition of ‘judicial officers’ to include these and other officers, the Code has fully confronted these realities.

I have also noticed that the scope of applicability of the Code also has generous appreciation for the role that retired judicial officers play in fostering public trust and confidence in the judiciary. This is commendable because the behaviour of a recently retired judge can have serious consequences for the judiciary.

Another notable aspect of the Code, which I believe cannot be overstated, is the recognition of the duty of judicial officers to be aware of, to understand and to be responsive to the diversity which exists in society. As judicial officers, we must do all in our power to ensure equal access to justice for *all* persons. Diversity and inclusion are critical lenses through which we must view our role in justice delivery. This requires scrupulous adherence to the Constitution and affording, especially to vulnerable groups and those at the margins of society, the full measure of the constitutional safeguards that are promised to all free from any form of discrimination. I am particularly concerned with gender as a source of discrimination because gender, gender expression and gender identity are areas that I think are often not well understood. We must promote equality of rights and encourage the adoption of a substantive approach to equality. Ensuring substantive equality might require equal treatment for those equally circumstanced, different treatment for those who are differently situated, and special treatment for those who merit special treatment.³ A substantive approach requires us to examine not just the words of a statute but the impact or effect of the statute.

³ See, for example, Judgment C-862/08 (Luz Marina Jaramillo Botero and others) (Constitutional Court of Colombia, 3 September 2008) as available at <<https://www.corteconstitucional.gov.co/relatoria/2008/C-862-08.htm>> accessed 4 October 2021.

An admirable feature about the revised Code is that there is an explicit recognition of the importance of judicial wellness and the importance of a healthy work-life balance. Not a lot of attention is usually paid to this, but naturally, judicial officers too need time to rest, to regroup and to spend quality time with our families. These are matters that directly affect a judicial officer's ability to competently and diligently discharge the duties of office.

Technology has become a ubiquitous part of our lives. From smartphones to smart homes, we are somehow always connected. Social media has done much to heighten that level of connectivity and to exponentially expand reach. Liking or sharing a tweet – an action that takes less than a second - can have incalculable consequences. The Global Judicial Integrity Network (GJIN) has expended much effort in developing guidelines on the use of social media by judicial officers⁴. It is pleasing to see these principles reflected in Guyana's new code. While we have to be mindful of the potentially negative impacts of improper social media use, it is also the case that prudent use of social media platforms affords a formidable tool to judiciaries that can be used to reach court users and other stakeholders, enhance transparency and demystify the court process. What is therefore required is that we continue to interrogate how we can effectively use these platforms to better serve our constituents. In this regard, judicial officers have a responsibility to keep abreast of relevant technology and here too, the Code has wisely recognised and alluded to this.

So, after today's launch, one might ask, 'what's next?' Again, it seems that you have taken this into consideration. The last value that the revised code embraces is 'Implementation and

⁴ United Nations Office on Drugs and Crime/Global Judicial Integrity Network, 'Non-Binding Guidelines on the Use of Social Media By Judges' (2019) <https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/Social_Media_2020.pdf> accessed 4 October 2021.

Accountability’. This effectively infuses the Code with life transforming it from a nice coffee table document into an articulated framework for securing the ethical conduct of judicial officers.

As you proceed along the path of implementation, I offer the assurance that the Caribbean Court of Justice, the Caribbean Association of Judicial Officers (CAJO) and the Global Judicial Integrity Network stand ready to provide any support we can to the judiciary of Guyana.

For the sake of completeness, I wish to return to the hypothetical I posed earlier. How many of you would think it ethical to provide the faithful helper with a job reference? Are you interested in the guidance from the Bangalore Principles on that question?

This is what the Bangalore Principles state at [148]:

There is no objection to a judge providing a letter of reference, but caution should be exercised, for a person may seek such a letter not because he or she is well known to the judge but solely to benefit from the judge’s status. In relation to letters of reference, judicial stationery should generally only be used when the judge has gained personal knowledge of the individual in the course of judicial work.

Honourable Chancellor, Ladies and Gentlemen, I can safely say on behalf of the CCJ that we are extremely honoured to have been afforded the honour of performing the functions of the final appellate court of the Co-operative Republic of Guyana. We wholeheartedly commend the leadership and members of the judiciary of Guyana in developing this revised Code of Ethics for Judicial Officers. The Code offers contemporary guidance, grounded in well-established

principles, on both traditional and novel issues. I know that it would be of tremendous value to judicial officers and the public alike.

Thank you.