



CODE OF JUDICIAL CONDUCT

Adopted on May 26, 2020

Version 3

Preface

A judicial code of conduct must respond to the changing global environment in which the judiciary functions and the new challenges posed to its judges over time. It is a living document that requires periodic revision and updating. This is therefore, the third iteration of the Caribbean Court of Justice Code of Judicial Conduct. The initial Code was prepared in anticipation of the appointment of the first cohort of judges in 2005, and the first revision occurred in 2013.

The passage of time, the valuable work of the Global Judicial Integrity Network in identifying and promoting modern best practices and the fact that this year we celebrate the 15th Anniversary of the Court have all made this an appropriate time to take another look at the Code.

As with the first revision, a single judge was tasked with producing an updated draft which, over several weeks, was thoroughly discussed and refined by the plenary of judges. These discussions that result in refinements have always been the most fascinating and valuable aspect of the revision process as they best allow those to whom the Code is addressed to appreciate its content fully and to become personally invested in voluntarily undertaken commitments.

The provisions, set out in the pages that follow, reflect our individual and collective resolve to advance the rule of law, promote public trust and confidence and further the mission, vision and values of the Court. On the one hand, they provide guidance on the various ethical questions which may from time to time confront a judge. On the other, they also signal to the public that we are prepared to render ourselves accountable.



Preface

In closing, I must express my thanks to The Honourable Madame Justice Rajnauth-Lee who led this initiative ably assisted by one of the Court's Judicial Counsel, Ms Krystal Sukra. The diligence with which they approached this task is sincerely appreciated.

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Adrian Saunders
President
Caribbean Court of Justice
26 May 2020



Preamble

The judges of the Caribbean Court of Justice:

Pledged to serve the peoples and states of the Caribbean Community through the delivery of accessible, fair, efficient, and effective justice.

Dedicated to being a model of judicial excellence and to providing the highest quality of service.

Recognising that the independence of the judiciary is essential to upholding and promoting the rule of law and good governance.

Affirming that integrity and accountability are also essential to foster public trust and confidence in the judges, the Court and the entire judicial system.

Cognisant that the ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office.

Determined to uphold the integrity of the Court and to promote public acceptance and support for it.

Mindful of the importance of ensuring access to justice and substantive equality for all litigants, Court users and Court staff.

Resolved to eliminate individual and systemic bias, discrimination, and inequality.



Preamble

Having regard to the essentiality of diversity and inclusivity to the legitimacy of the Court and the importance of bringing a perspective to adjudication that respects human dignity and value.

Acknowledging that modern information and communication technologies and networks must be managed and utilised within an ethical framework that is consistent with the nature of the judicial office.

Aware of the need for judges individually and collectively to respect and honour judicial office as a public trust.

Affirming the standards and best practices relating to judicial conduct established by international law instruments and the United Nations Commentaries on the Bangalore Principles of Judicial Conduct.

Aware of the need for ongoing judicial education including behavioural change education.

Considering that judges are charged with making critical decisions affecting lives, freedoms, rights, duties and property.

Resolved both in their individual and collective capacities to uphold the principles of:

- (a) **Independence;**
- (b) **Propriety;**
- (c) **Integrity;**
- (d) **Impartiality;**
- (e) **Equality;**
- (f) **Competence and diligence; and**
- (g) **Accountability.**



HAVE AGREED
AS FOLLOWS:

Use of Terms



In this Code, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

Commission means the Regional Judicial and Legal Services Commission established by Article V of the Agreement Establishing the Caribbean Court of Justice.

Court means the Caribbean Court of Justice established by Article III of the Agreement establishing the Caribbean Court of Justice.

Court staff in this Code includes all staff employed with the Court or the Commission or otherwise performing duties for the Court.

Gift means any gratuity, favour, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value but does not include:

- (a) social hospitality based on personal relationships;
- (b) modest items, such as food and refreshments, offered as a matter of social hospitality;
- (c) items with little intrinsic value, such as plaques, certificates, and trophies, which are presented solely to honour the judge;
- (d) loans from banks and other financial institutions on terms that are available based on factors other than judicial status;

HAVE AGREED
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Use of Terms

- (e) opportunities and benefits, including favourable rates and commercial discounts, that are available based on factors other than judicial status;
- (f) rewards and prizes given to competitors in contests or events, including random drawings, that are open to the public and that are available based on factors other than judicial status;
- (g) scholarships or fellowships awarded to judges by bodies generally accepted as motivated by public service or granted on the same terms and based on the same criteria as are applied to other recipients;
- (h) anything for which market value is paid by the judge; and
- (i) any compensation or reimbursement subject to principle 2.24 of this Code.

Judge/s shall be taken to mean a judge or judges of the Court in their individual and collective capacities as the context requires.

Family in the context of this Code shall be taken to mean a judge's spouse, son, daughter, son-in-law or daughter-in-law, partner, or any other close relative or person who is a companion or an employee of the judge and who lives in the judge's household.



HAVE AGREED
AS FOLLOWS:

Use of Terms

Information and Communication Technology (ICT) means all devices, networking components, applications and systems that when combined allow people and organisations (for example, businesses, non-profit agencies, governments and enterprises) to interact in the digital world.

Social media content includes comments, quotes, messages, photographs, infographics, blogs, vlogs, live streams, social campaigns, events, tweets, forums, podcasts, news releases, website content, video and any other type of information posted or shared on a social network.

Social network includes a website, application or programme that enables the development, deployment and management of social media. It includes but is not limited to applications such as Facebook, Twitter, YouTube, WhatsApp, Messenger, Instagram and LinkedIn.

Substantive equality refers to the right of every individual to an equal opportunity to make the most of their lives, talents and ambitions, and not to be unfairly disadvantaged or discriminated against in relation thereto. It recognises that rights, entitlements, opportunities, and access are not equally enjoyed throughout society and is aimed towards equitably redressing these inequalities so as to affirm the equal and inherent dignity and value of all persons.



Independence



Principle:

An independent judiciary is indispensable to impartial justice under law and the rule of law. Judges shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects and shall individually and collectively promote, protect, and defend that independence.

Code:

- 1.1 Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 Judges shall reject any attempt improperly to influence their decision in any matter before them.
- 1.3 Judges shall ensure that their conduct, official or private, does not undermine their institutional or individual independence.
- 1.4 Judges, although solely responsible for the decisions that they take in the performance of their judicial duties, may consult with colleagues when points of difficulty arise on matters of conduct or observance of the principles and provisions of this Code.
- 1.5 Judges should be mindful of the profound effect which their decisions are likely to have not only on the parties before the Court, but also upon the wider public whose concerns may forcibly be expressed in the media or otherwise. Judges must, however, guard against being unduly influenced by such publicity, whether favourable or unfavourable.



Independence



- 1.6 Judges, while accepting their responsibility to promote public understanding of the work and decisions of the Court, must show appropriate caution and restraint when explaining or commenting publicly upon decisions in individual cases.



Propriety

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all the activities of a judge.

Code:

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| <p>2.1 Judges shall avoid impropriety, and the appearance of impropriety in all of their activities.</p> <p>2.2 Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality, independence, and integrity of the judiciary.</p> <p>2.3 Judges, as subjects of constant public scrutiny, freely accept personal and professional restrictions even those that might generally be viewed as burdensome.</p> | <p>2.4 Judges in their personal relations with individual members of the legal profession who practise regularly in their Court shall avoid situations which might reasonably give rise to the suspicion or appearance of favouritism, partiality, or bias.</p> <p>2.5 In retirement, former judges shall not publicly express themselves in ways that might suggest that they have confidential or any special information about the Court or the deliberations of its judges or the likely judgment that might be given by the Court in a pending proceeding.</p> <p>2.6 Save in exceptional circumstances or out of necessity, judges shall not participate in the determination of a case in which any member of their family represents a litigant or is associated in any manner with the case.</p> |
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Propriety

- 2.7 Judges shall avoid the use of their residence by members of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of bias or impropriety on their part.
- 2.8 Judges shall refrain from conduct that, in the mind of a reasonable, fair-minded, and informed person, might give rise to the appearance that they are engaged in party or partisan political activity.
- 2.9 Judges shall refrain from:
 - 2.9.1 membership of any political party;
 - 2.9.2 raising funds for political parties;
 - 2.9.3 attendance at political party events;
 - 2.9.4 contributing to political parties or campaigns; and
 - 2.9.5 engaging in party or partisan political activity.
- 2.10 Judges shall not allow family, social or other relationships to improperly influence their judicial conduct and judgment as a judge and shall take all reasonable steps to avoid the appearance of same.
- 2.11 Judges shall not use or lend the prestige of the judicial office to advance their private interests, as a member of their family or of anyone else, nor shall they knowingly permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.
- 2.12 Judges shall not testify voluntarily as a character witness, except that a judge may testify as a witness in a criminal proceeding if the judge or a member of the judge's family is a victim of the offence or if the defendant is a member of the judge's family or in like exceptional circumstances.



Propriety

2.13 Subject to the proper performance of judicial duties, judges may engage in activities such as:

- 2.13.1 writing, researching, lecturing, teaching, educating and participating in activities concerning the law, the legal system, the administration of justice and related matters;
- 2.13.2 appearing at a public hearing before an official body concerned with matters relating to the law, the legal system and the administration of justice or related matters; or
- 2.13.3 serving as a member of an official body devoted to the improvement of the law, the legal system, the administration of justice or related matters.

2.14 Judges may speak publicly or write or research on non-legal subjects and engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with this Code.

2.15 Judges may participate in civic and charitable activities that do not reflect adversely on their impartiality or interfere with the performance of judicial duties. Great care should be taken in allowing their name, office, or the Court to be associated with an appeal for funds, even for a charitable organisation, lest it be seen as inappropriate use of judicial prestige in support of the organisation or creating a sense of obligation in donors.



Propriety

- 2.16 Judges shall not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person connected with a member of their family and then only if such service will not interfere with the proper performance of judicial duties.
- 2.17 Judges may hold or manage personal or family investments save that they shall refrain from being engaged in financial or business dealings which may interfere with the proper performance of judicial duties or reflect adversely on their impartiality.
- 2.18 Confidential information acquired by judges in their judicial capacity shall not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.
- 2.19 Judges shall not practise law whilst the holder of judicial office.
- 2.20 Judges may accept appointment to or serve on a commission, organisation or committee that is concerned with the improvement of the law, the legal system, the administration of justice or related matters. Judges may represent a state or international entity on ceremonial occasions or in connection with historical, educational, cultural, sporting, or other activities.
- 2.21 Judges may form or join associations or participate in other organisations promoting the interests of judges such as professional education, training, and the protection of judicial office.



Propriety



- 2.22 Judges shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by them in connection with the performance of judicial duties, and shall take all reasonable steps to avoid the appearance of same. Judges shall also endeavour to prevent any member of their family from soliciting or accepting such a gift, bequest, loan or favour.
- 2.23 Judges may receive a small token, gift, honorarium, award or benefit only in the following circumstances:
 - 2.23.1 the gift is made incidental to a public testimonial and is fairly commensurate with the occasion;
 - 2.23.2 the gift consists of resource materials supplied on a complimentary basis for official use;
 - 2.23.3 the gift consists of an invitation and travel expenses, including the cost of transportation, lodging, and meals for the judge and/or the judge's spouse, partner or companion to attend a bench or bar-related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice; or
 - 2.23.4 the gift is any other item which is not perceived by the reasonable observer as intended to influence the judge in the performance of judicial duties or which otherwise gives rise to an appearance of partiality.



Propriety

2.24 Judges may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if such payments do not give the appearance of influencing them in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

2.24.1 such compensation and reimbursement shall not exceed a reasonable amount, nor shall it exceed what a person who is not a judge would receive for the same activities; and

2.24.2 such reimbursement shall be limited to the actual cost of travel, accommodation, and incidentals reasonably incurred by them and, where appropriate to the occasion, by the spouse, partner or companion.

2.25 Judges shall make such financial disclosures and pay all such taxes as are required by law.

2.26 In the use of social network sites, judges shall maintain the moral authority, integrity, decorum and dignity of their judicial office. Judges:

2.26.1 may use their real names and disclose their judicial status on social networks. The use of pseudonyms is neither prohibited nor is it recommended, but judges may never use pseudonyms to enable or conceal unethical behaviour;

2.26.2 shall avoid expressing views or sharing personal information on social networks that in the opinion of a reasonable, fair-minded, and informed person are likely to undermine judicial independence, integrity, propriety, impartiality or public confidence in the judiciary;



Propriety



- 2.26.3 shall not foster social networking interactions which may convey the impression that any person is in a position to influence judges in the discharge of their duties;
- 2.26.4 shall remove any social media content antedating their ascension to the bench which to the standard of the reasonable observer is damaging to public trust and confidence, and integrity of the Court;
- 2.26.5 may use social networks to establish an online connection with a person and keep abreast with people, groups, organisations or topics of interest but shall refrain from any online association which to the standard of the reasonable observer is damaging to their impartiality or the impartiality and integrity of the Court;
- 2.26.6 shall not use social media accounts for the purpose of advancing their own or a third party's financial, commercial or political interest;
- 2.26.7 shall become acquainted with the security and privacy policies, rules and settings of the social media platforms they use, periodically review them, and exercise caution, with a view to ensuring personal, professional, and institutional integrity and protection;
- 2.26.8 shall exercise awareness of the privacy and security risks associated with revealing their location through social media content;
- 2.26.9 shall in principle refrain from responding directly to online criticism and negative comments about themselves individually or the work of the Court in general; and



Propriety

- 2.26.10 shall not post any social media content which is defamatory, racist, sexist, discriminatory, stereotypical or otherwise degrading or invidious.
- 2.27 In their interactions with Court staff and the general public, judges should always display courtesy, understanding and respect, thereby contributing to a harmonious and productive environment.



Integrity



Principle:

Integrity is vital to the proper discharge of the judicial office and to maintaining public trust and confidence in the judiciary. It demands ongoing re-evaluation and reform of inner values and outer behaviours; especially, to ensure that these values and behaviours correspond appropriately to evolving notions of justice, equality, fairness, competence, and respect for human dignity.

Code:

- 3.1 Judges shall ensure that their conduct is above reproach in the view of reasonable, fair-minded and informed persons.
- 3.2 The behaviour and conduct of judges must reaffirm trust and confidence in the integrity of the judiciary. Justice must not only be done but must also be seen to be done.
- 3.3 Judges must ensure that, individually and collectively, their behaviour aligns with core institutional values, principles, and standards. Integrity, therefore, includes taking responsibility for both one's personal integrity as well as institutional integrity.
- 3.4 Judges shall adhere to the values and statements of principle contained in this Code and shall encourage and support their observance by all judges and Court staff.



Impartiality



Principle:

Impartiality is indispensable to the proper discharge of the judicial office. It applies not only to the making of a decision itself but also to the process by which the decision is made.

Code:

- 4.1 Judges shall perform their judicial duties without favour, bias, or prejudice.
- 4.2 Judges shall continually educate themselves about implicit bias and take meaningful steps to address such bias.
- 4.3 Judges shall ensure that their conduct, both in and out of Court, maintains and enhances the confidence of the public, the legal profession, and litigants in the impartiality of judges and of the judiciary.
- 4.4 Judges shall, so far as is reasonable, conduct themselves as to minimise the occasions on which it will be necessary for them to be disqualified from hearing, ruling, or adjudicating in a cause or matter.
- 4.5 Judges shall not knowingly, while a proceeding is before, or could come before them, make any comment that might reasonably be viewed as likely to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall they make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 4.6 Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might conclude that they are unable to decide the matter impartially.



Impartiality



- 4.7 Judges shall disqualify themselves in any proceedings in which there might be a reasonable perception of a lack of impartiality including, but not limited to, instances where:
 - 4.7.1 the judge has actual or apparent bias or prejudice concerning a party, situation, or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 4.7.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 4.7.3 the judge, or a member of the judge's family, has an economic or other substantial interest in the outcome of the matter in controversy.
- 4.8 Judges shall inform themselves about their personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of their family.
- 4.9 Judges who would otherwise be disqualified on the foregoing ground may, instead of withdrawing from the proceedings, disclose on the record the basis of such disqualification. If, based on such disclosure, the parties, independently of the judge's participation, agree on the record that the judge may participate or continue to participate in the proceedings, the judge may do so.
- 4.10 Save for the foregoing, judges have a duty to perform the functions of the judicial office and litigants do not have a right to choose a judge.



Equality



Principle:

Ensuring equality of treatment to all before the courts is an indispensable precept that governs the due discharge of the duties of judicial office. Achieving substantive equality is an overarching aim of equality.

Code:

- 5.1 Judges shall strive to be aware of and to understand diversity in society and differences that are based on various grounds and arise from various sources, including but not limited to race, colour, gender, gender identity, religion, national or geographic origin, indigeneity, culture, language, disability, age, marital status, sexual orientation, social and economic status, and other like grounds and sources (“irrelevant considerations”).
- 5.2 Judges shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on any irrelevant considerations.
- 5.3 Judges shall carry out their duties with appropriate consideration for all persons, such as lawyers, parties, witnesses, Court staff or judicial colleagues, while upholding the paramountcy of adjudication according to law.
- 5.4 Judges shall not knowingly permit Court staff or others subject to their influence, direction or control, to differentiate invidiously between persons concerned in a matter which is before them, on any irrelevant consideration.
- 5.5 Judges shall require lawyers in proceedings before the Court to refrain from manifesting by words or conduct, bias or prejudice based on irrelevant considerations. This requirement does not preclude legitimate advocacy where an issue in the proceedings involves irrelevant considerations.



Equality



- 5.6 Judges shall not be a member of, nor associate with, any society or organisation which practises, or may reasonably be perceived as practising, invidious discrimination on the basis of any irrelevant consideration.
- 5.7 Judges must be aware that discrimination on irrelevant considerations could be perpetuated in subtle and unintentional ways. A judge must, therefore, be astute to take proactive measures to promote substantive equality and to proscribe such discrimination whether perpetuated by lawyers, litigants or Court staff.



Competence & Diligence

Principle:

Competence and diligence are prerequisites to the due performance of the functions of the judicial office.

Code:

- 6.1 The judicial duties of judges take precedence over all other activities.
- 6.2 Judges shall devote their professional activities to judicial duties. Such duties are broadly defined and include not only the performance of judicial duties in Court and the making of decisions, but such other tasks that are related to the judicial function or the operations of the Court.
- 6.3 Judges shall take reasonable steps to maintain and enhance their knowledge, skills, and personal qualities necessary for the proper performance of judicial duties.
- 6.4 Judges shall keep themselves informed about all relevant developments in the law both regionally and internationally and which may assist in the performance of judicial duties.
- 6.5 Judges have a responsibility to perform all judicial duties efficiently and fairly and this extends to the delivery of reserved decisions with reasonable promptness.
- 6.6 Judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.
- 6.7 Judges shall maintain order and decorum in all proceedings in which they are involved. They shall be patient, dignified and courteous in relation to lawyers, litigants, witnesses and others with whom they are called upon to deal in an official capacity. Judges shall require similar conduct of legal representatives, Court staff and others subject to their influence, direction or control.



Accountability

Principle:

Compliance by judges with the principles and provisions of this Code is essential to the effective achievement of its objectives.

Code:

- 7.1 Judges accept that institutions and procedures for the implementation of this Code as prescribed and published by the Commission are intended to provide a publicly credible means for considering and determining complaints against them.
- 7.2 By the very nature of their judicial office, judges shall not be, except in accordance with the law, accountable for their decisions to any organ or entity within the jurisdiction of the Court or elsewhere, but shall be accountable for their ethical conduct to the Commission.
- 7.3 Judges are entitled to expect that any complaint against them shall be considered in a manner that takes into account the universally recognised and hallowed principle of judicial independence, the need for judges to be afforded protection against vexatious and unsubstantiated accusations and due process of law.
- 7.4 Judges shall endeavour to educate their family on the importance of the principles of this Code with a view to preserving the institutional integrity of the Court.
- 7.5 Judges shall promote awareness of the principles and provisions of this Code.





15TH ANNIVERSARY
2005-2020
Champions for Caribbean Jurisprudence

The Caribbean Court of Justice
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