

Background¹

The Bangalore Principles of Judicial Conduct ('the Principles') were developed over the course of 2000–2002 in response to concerns in many countries that there was a loss of public confidence in the judiciary due to a perception of corruption or partiality. The aim was to develop a concept of judicial accountability that would complement the principles of judicial independence, and hence raise public confidence in the rule of law.²

In developing the Principles, the working group considered existing codes of judicial conduct of many jurisdictions, including the April 1997 Declaration of Principles of Judicial Independence by Australia's Chief Justices. The working group also drew on codes of conduct from Canada, India, Pakistan, South Africa, individual states in the United States of America, and other countries.³

The Principles are supported by an extensive "Commentary on the Bangalore Principles of Judicial Conduct" ('the Commentary'). The Commentary elaborates on and, in some instances seems to expand on, the general statements contained in the Principles.

In Australia, the culture of the legal profession and the judiciary means that many of the rules and principles outlined in the Principles are second-nature to Victorian judicial officers. Some of the conduct specifically addressed in the Principles or the Commentary seem implausible from a Victorian perspective, including accepting gifts, seeking bribes and secondary work. However, despite these more extreme instances of judicial misconduct, the Principles and the Commentary provide a valuable reference point for identifying the expected standards of judicial conduct, and so can complement Australian-specific resources like the "[Guide to Judicial Conduct](#)" by the Council of Chief Justices and former Justice Thomas' "[Judicial Ethics in Australia](#)".

The aim of this document is to provide a summary of key ideas from the Commentary to help Victorian judicial officers understand what the Principles contain. The structure of this document is to extract each value contained in the Principles, before providing a summary of how that value is explained and elaborated on in the Commentary.

Importantly, while the Principles and the Commentary speak of what a 'judge' must do, it is clear that in the Victorian context, the Principles are applicable to all judicial officers. For this reason, this document speaks of 'judicial officers' rather than 'judges'.

Value 1: INDEPENDENCE

Principle:

'Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects'.

Application:

- 1.1. A judge shall exercise the judicial function independently on the basis of the judge's 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. A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

¹ The College extends its thanks to The Honourable Murray Kellam AO KC for reviewing this paper.

² United Nations Office on Drugs and Crime, *Commentary on the Bangalore Principles of Judicial Conduct* (2007) 1 ('Commentary').

³ *Ibid* 2–3.

- 1.3. A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4. In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5. A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Commentary

The Commentary recognises that judicial independence covers both individual and institutional independence, and that judicial independence exists to facilitate the liberty of the judicial officer to hear and decide cases coming before the court. Individual independence concerns the individual judicial officer's state of mind. In contrast, institutional independence deals with the relationship between the judiciary as a whole and the other branches of government, including in their operational arrangements.⁴ Operational arrangements include matters such as assignment of judges, sittings of the court and court lists.⁵

The Commentary distinguishes independence and impartiality on the basis that independence covers both a state of mind or attitude in the exercise of judicial functions, and the nature of the relationship between the judiciary and other branches of government on the basis of objective conditions or guarantees.⁶

Independence is both a responsibility owed to the judiciary, and a responsibility of the judiciary to uphold. Judicial officers must reject attempts to influence their decision making other than when made by litigants in court, and must make their decisions only on the basis of the law and not on the basis of extraneous considerations. Despite this, judicial officers must accept that their decisions and conduct are open to public discussion and public criticism.⁷

While the Principles say that judicial officers should be 'independent in relation to society in general', the Commentary qualifies this statement and recognises that judicial officers should not be completely isolated. While exposure to the community inevitably means the judicial officer will be exposed to outside influences and may have opinions influenced by such factors, this is a desirable function of the judicial officer being able to apply community standards such as "the reasonable person".⁸

Principle 1.3 states that judicial independence is something that must exist in fact and must exist as a matter of public perception. This parallels classic statements about the importance of public perception to questions of impartiality (see, for example, Lord Chief Justice Hewart's oft-quoted statement that 'Justice should not only be done, but should manifestly and undoubtedly be seen to be done'⁹). The Commentary provides some examples of inappropriate conduct which could compromise the appearance of independence:

- a judge providing any response dealing with the substance of a request from a legislator on behalf of a constituent asking when a matter will be finalised
- a judge taking up, during a period of leave, a policy-making role in government
- a judge being seen to support a spouse who is a political candidate. This includes attending political or fundraising gatherings together, but does not prevent joint attendance at purely ceremonial events such as an opening of Parliament or a reception for a visiting head of State.¹⁰

⁴ Ibid 30.

⁵ Ibid 32.

⁶ Ibid 31.

⁷ Ibid 32.

⁸ Ibid 32.

⁹ *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256, 259.

¹⁰ *Commentary* 39–40.

Principle 1.4 acknowledges that judicial officers must also be independent of other judicial officers. While the Commentary acknowledges that judicial officers may ‘pick the brain’ of a colleague on a hypothetical basis, exercising judicial power is an individual responsibility at all times, regardless of any notions of rank and hierarchy within the judiciary.¹¹

Principle 1.5 concerns the importance of encouraging and upholding safeguards to maintain and enhance independence. There are three facets to this:

- resisting any attempts to undermine judicial independence
- taking care not to trivialise judicial independence by invoking it improperly, and
- supporting judicial independence through fostering public awareness of its importance.¹²

Value 2: IMPARTIALITY

Principle:

‘Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.’

Application:

- 2.1. A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3. A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:
 - 2.5.1. the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 2.5.2. the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 2.5.3. the judge, or a member of the judge’s family, has an economic interest in the outcome of the matter in controversy: Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Commentary

According to the Commentary, independence is a necessary precondition for impartiality. Without independence, a judicial officer cannot be impartial on an institutional basis.¹³

¹¹ Ibid 38.

¹² Ibid 39.

¹³ Ibid 43.

Much of the Commentary reflects principles relating to apprehension of bias which are very familiar to an Australian audience. This includes matters such as the standard of the reasonable observer, the need for disclosure, a recognition that both actual bias and apprehension of bias warrant recusal, a recognition of the effect of unconscious bias, and the doctrine of necessity.

The Commentary describes bias or prejudice as:

... a leaning, inclination, bent or predisposition towards one side or another of a particular argument. In its application to judicial proceedings, it represents a predisposition to decide an issue or cause in a way that does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind, an attitude or point of view, that sways or colours judgement and renders a judge unable to exercise his or her functions impartially in a particular case.¹⁴

The Commentary lists many different types and manifestations of bias, including:

- epithets, slurs, demeaning nicknames, negative stereotypes and attempted humour based on stereotypes
- threats, intimidation and hostile acts
- irrelevant references to personal characteristics
- physical demeanour which indicates disbelief
- abuse of contempt powers
- unjustified reprimands of advocates
- intemperate and impatient behaviour
- excessive interference in the running of the hearing
- private communications with a party or their representatives
- financial and other interests in the outcome of the case
- friendship, animosity or past dealings between the judicial officer and a party or a witness, and
- personal knowledge of disputed facts.¹⁵

However, the Commentary recognises that the nature of bias is important. A predisposition to uphold fundamental rights unless the law clearly and validly requires a different course is not a prohibited form of bias.¹⁶ Similarly, general opinions about legal and social matters, or about the evidence in a case, are not prohibited, unless they indicate the judicial officer has adopted a closed mind and is no longer open to persuasion.¹⁷ Further, judicial officers have a responsibility to ensure proceedings are conducted in an orderly and efficient manner. Some level of firmness is required to achieve this. A judicial officer must therefore strike a balance to ensure the orderly conduct of proceedings without giving rise to a perception of bias.¹⁸

Perceptions of bias can also arise from out of court activity. Associations, business interests, public remarks, and engagement in partisan political controversy all have the potential to give rise to reasonable perceptions of bias.¹⁹

Principle 2.3 recognises that while a judicial officer cannot sit on a matter where they lack impartiality or may be perceived to lack impartiality, there is a corresponding duty on the judicial officer to conduct themselves so as to make themselves available to hear and decide cases. This includes a duty to avoid conduct which gives rise to a lack of, or perceived lack of, impartiality, and to only recuse themselves on a proper basis. This may include divesting stock or other financial interests in companies that regularly appear in the judicial officer's court. It may also include discouraging family members from engaging in conduct which appears to exploit the judicial officer's position.²⁰

¹⁴ Ibid 45.

¹⁵ Ibid 46–48, 57–60.

¹⁶ Ibid 45.

¹⁷ Ibid 46.

¹⁸ Ibid 47.

¹⁹ Ibid 48.

²⁰ Ibid 49–50.

In the case of financial interests, the law will consider the nature of the interest. A small parcel of shares in a publicly listed company will be treated differently to a case where the judicial officer holds substantial shares in a party to the litigation.²¹ However, even a small parcel of shares may be a disqualifying interest if the litigation may affect the survival or viability of the company. Merely being a customer of a financial institution is not seen as a disqualifying interest, provided there are no pending disputes or special transactions involving the judicial officer.²²

Judicial officers must not be unduly sensitive when faced with applications for recusal. Where a party alleges a reasonable apprehension of bias, the judicial officer must focus on the need to maintain the fairness of proceedings, and not allow a response to the allegation to itself demonstrate an apprehension of bias.²³

The Commentary considers how perceptions of bias might arise from the judicial officer's pre-appointment work. A judicial officer is expected to put aside any past activity advocating for particular positions when taking up judicial office. This includes any past political activity.²⁴ However, where an appointee is drawn from private practice as a barrister, they are not responsible for and generally don't have knowledge of, the work of other members of the same chambers.²⁵ In contrast, where the judicial officer was previously a solicitor, they are assumed to owe duties to clients of the firm. The judicial officer therefore cannot sit on cases in which their former firm is directly involved, unless the firm's involvement post-dates the judicial officer's appointment, or where sufficient time has passed that the judicial officer is reasonably perceived not to have any knowledge of the matter.²⁶ Where the judicial officer previously worked in a Government department or legal aid office, the nature of the legal practice within that body must be taken into account, along with the nature of the judicial officer's previous role.²⁷

Value 3: INTEGRITY

Principle:

'Integrity is essential to the proper discharge of the judicial office.'

Application:

- 3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Commentary

The Commentary provides a good description of the concept of integrity and its breadth:

*Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, act honourably and in a manner befitting the judicial office; be free from fraud, deceit and falsehood; and be good and virtuous in behaviour and in character. There are no degrees of integrity. Integrity is absolute. In the judiciary, integrity is more than a virtue, it is a necessity.*²⁸

²¹ *Ebner v The Official Trustee in Bankruptcy* (2000) 205 CLR 337.

²² *Ibid* 60–61.

²³ *Ibid* 56.

²⁴ *Ibid* 56–57.

²⁵ *Ibid* 59.

²⁶ *Ibid* 59.

²⁷ *Ibid* 60.

²⁸ *Ibid* 63.

Integrity issues can arise in a range of ways, including:

- the extent to which it is appropriate to correct transcripts and revise oral decisions
- the way in which a judicial officer communicates with an appellate court where their decision is under appeal, and
- whether it is appropriate to employ relatives or family members as support staff.²⁹

The requirement of integrity applies to both the judicial officer's public and private life. Public confidence in the judiciary will not tolerate a judicial officer who is a hypocrite, condemning conduct in a judicial capacity which the judicial officer practices in a private capacity. A judicial officer who breaches community standards in their private life may diminish their capacity to judge such conduct in their judicial function.³⁰

However, the Commentary recognises that community standards are not uniform, especially in view of cultural diversity and changing community values. The Commentary cautions against treating integrity as a test of morality, or compliance with community standards, and suggests an alternative test is how the conduct reflects on the judicial officer's ability to do their job and public perception of their fitness for judicial office. Six factors are relevant to this question:

(a) the public or private nature of the act and specifically whether it is contrary to a law that is actually enforced;

(b) the extent to which the conduct is protected as an individual right;

(c) the degree of discretion and prudence exercised by the judge;

(d) whether the conduct was either harmful to those most closely involved or reasonably offensive to others;

(e) the degree of respect or lack of respect for the public or individual members of the public that the conduct demonstrates;

(f) the degree to which the conduct is indicative of bias, prejudice or improper influence.³¹

Integrity also covers the requirement that a judicial officer uphold the law in their private life.³² This reflects the need for the judicial officer to have credibility and moral authority to exercise judicial power. According to the Commentary:

The public demands of the judge conduct that is far above that which is demanded of fellow citizens, standards of conduct that are much higher than those demanded of society as a whole. In fact, the public expects virtually irreproachable conduct from a judge.³³

This expectation of irreproachable conduct operates at both a level of perception and reality. A judicial officer must not only have integrity, but also appear to have integrity, and so must not be even suspected of wrongdoing. As with the values of independence and impartiality, this is necessary for there to be public confidence in the judicial officer individually, and in the courts as a whole.

Value 4: PROPRIETY

Principle:

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

²⁹ Ibid 66.

³⁰ Ibid 64.

³¹ Ibid 65.

³² Ibid 66.

³³ Ibid 67.

Application:

- 4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4. A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5. A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9. A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11. Subject to the proper performance of judicial duties, a judge may:
 - 4.11.1. write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2. appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - 4.11.3. serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - 4.11.4. engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12. A judge shall not practise law whilst the holder of judicial office.
- 4.13. A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14. A judge and members of the judge's family, 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 the judge in connection with the performance of judicial duties.
- 4.15. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16. Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Commentary

This value also deals with both reality and perception. A helpful question to ask when considering questions of propriety is “How might this look in the eyes of the public?”³⁴

To give practical effect to the obligation of maintaining, and appearing to maintain, propriety, Principle 4.7 requires a judicial officer to inform themselves about their personal and fiduciary interests and make reasonable efforts to be informed about the financial interests of their family members. Without this knowledge, the judicial officer will be unable to know when to recuse themselves. However, the Commentary provides that an interest in a mutual or common investment fund does not give rise to an interest in the securities held by the fund and being an officeholder in charitable and civic organisations does not provide a financial interest in securities held by the organisation. Similarly, ownership of government securities, or being a depositor in a mutual savings association only provides a financial interest in the government or organisation if the litigation could substantially affect the value of the judicial officer’s interest.³⁵

In considering issues of propriety, judicial officers will consider whether the conduct gives the appearance that a person has special relationship or access to the court and its decision-making processes. The Commentary draws the distinction, as an example, of offering special seating during a hearing to a school group, which would be acceptable, compared to a government official, which would not.³⁶

Judicial officers must accept potentially burdensome restrictions on their personal life.³⁷ While the Commentary does not suggest there are absolute bans on particular activities, a perception of impropriety may arise from interactions with potential litigants or witnesses (such as for venues frequented by police, or run by illegal organisations), or from the nature of the activity itself (such as excessive gambling).³⁸

It is widely accepted for judicial officers to mix on a social basis with members of the legal profession. As the Commentary notes, such activity can help reduce feelings of isolation and reduce tensions between the judiciary and the profession. However, any such mixing must not occur in a way that gives rise to a perception or reality of bias, or the need for frequent recusals.³⁹

The result is that a judicial officer can participate in occasional social gatherings but must avoid direct social contact with those who are currently appearing before them and avoid accepting gifts or offers of hospitality which gives rise to an appearance of impropriety.⁴⁰

The Principles give special attention to the question of gifts and benefits to the judiciary. While token gifts are permissible, excessive benefits are not. Whether a gift or benefit is token or excessive depends on the circumstances, including local customs and culture. Prizes, hospitality and favourable conditions that could be obtained by any person and are not a function of the judicial officer’s office are more likely to be appropriate. Judicial officers are expected to politely decline excessive gifts. They may, however, receive appropriate fees for non-judicial work, such as speaking or writing, providing the source of the payment does not give rise to the possibility of undue influence, the fee is commensurate with the time spent, and the time spent on the non-judicial work does not detract from court duties.⁴¹

While a judicial officer may attend their former workplace or attend an event as a guest of a law firm, they must consider whether their attendance could give rise to a perception of favouritism. This perception might arise, for

³⁴ Ibid 69.

³⁵ Ibid 133.

³⁶ Ibid 70.

³⁷ *Strengthening Basic Principles of Judicial Conduct*, ESC Res 2006/23, UN Doc E/RES/2006/23 (27 July 2006) annex 4.2 (*‘Bangalore Principles’*).

³⁸ *Commentary* 70–72.

³⁹ Ibid 72–73.

⁴⁰ Ibid 73–74.

⁴¹ Ibid 74, 95–96.

example, where the former workplace seeks to exploit the judicial officer's attendance for commercial gain, such as where the event is also intended as an occasion to market the firm to clients and potential clients.⁴²

The requirement in Principle 4.4 that a judicial officer not participate in a case where a member of the judicial officer's family 'is associated in any manner with the case' is qualified by the Commentary. The mere fact that a family member is affiliated with a law firm that represents a client appearing before the judicial officer is not enough. As with all matters of propriety, the judicial officer must consider whether the circumstances give rise to an appearance of impropriety. This will depend on the position of the family member in the firm, the extent of the family member's economic, professional or other interest in the matter and how the situation would appear to the general public, other lawyers and judicial officers. The administrative burden that arises if the judicial officer recuses must also be considered. Similar issues arise for family members employed as government lawyers, both due to the concern that the judicial officer may inadvertently receive information about the case, or where there might be an appearance of conscious or subconscious bias towards the professional success of the family member's workplace.⁴³

Principle 4.6 recognises that judicial officers, like all citizens, have certain core freedoms, including expression, belief, association and assembly. But the Principles also establish that judicial office comes with a responsibility to exercise those freedoms in a way that preserves the dignity of the judicial officer and the independence and impartiality of the judiciary. Threats to perceived independence or impartiality can arise in a variety of ways, including where:

- a public figure or government department who the judicial officer has publicly criticised becomes a litigant before the judicial officer, or
- the judicial officer may make themselves a target for political attacks by engaging in public debate.⁴⁴

Principle 4.9 concerns the obligation not to misuse the prestige of judicial office. The Commentary provides several examples of permissible and impermissible conduct in this regard. The fundamental principle when engaging with third parties in a non-judicial capacity is that while a judicial officer is not required to conceal their role, they must not give the impression that they are seeking preferential treatment. For example:

- a judicial officer may provide support for a family member who is experiencing legal difficulties, but not to take actions that would not be available to a member of the public
- judicial officers should not use judicial stationery in seeking preferential treatment, such as when making customer complaints
- judicial officers should generally avoid volunteering to provide character evidence for a person in proceedings and, if asked, should seek to be excused unless it would be manifestly unfair to refuse. A judicial officer must, however, comply with a witness subpoena
- a judicial officer may write a professional reference of the kind that is ordinarily provided by employers, based on the judicial officer's personal knowledge of the person in question. Similarly, a judicial officer may write a personal reference if it is the kind that a person would normally provide based on the relationship between the judicial officer and the other person
- a judicial officer may appear on commercial radio or television, provided the subject-matter of the appearance is appropriate
- a judicial officer may participate in legal and community education, including lectures, writing and judging student training, provided they make clear that their statements are not advisory opinions or commitments to particular outcomes
- a judicial officer may appear before Government bodies to give evidence or submissions as a private citizen, on matters that affect them as an individual (such as local zoning laws), provided they do not seek to take advantage of the prestige of judicial office

⁴² Ibid 74.

⁴³ Ibid 75–76.

⁴⁴ Ibid 77–78.

- a judicial officer should exercise caution if asked to lead a commission of enquiry. They should give particular attention to the terms of reference, the time required, the risk of being involved in political controversy, whether they have any special skills on the issue compared to other possible commissioners, and whether involvement in the commission would compromise, or appear to compromise, the principle of judicial independence
- a judicial officer may be a member of a non-profit organisation, or its governing board, provided the membership will not make excessive demands on the judicial officer's time, involve the judicial officer in political controversy, or require the judicial officer to provide legal advice. Further, the judicial officer should not hold membership in an organisation which discriminates on the basis of race, sex, religion, national origin or other irrelevant causes, or regularly attend clubs that practice discrimination. A judicial officer may, however, be a member of an organisation dedicated to the preservation of religious, ethnic or legitimate cultural values that are of common interest to its members
- while a judicial officer can be involved in closely held family businesses (provided the business is not likely to come before a court, does not seek to improperly leverage the prestige of judicial office, and does not take up too much time), the judicial officer should not serve on the board of directors for a commercial enterprise
- a judicial officer who writes for a commercial publication should maintain sufficient control to ensure that any advertising for the publication does not exploit the judicial officer's status.⁴⁵

Value 5: EQUALITY

Principle:

'Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.'

Application:

- 5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3. A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Commentary

This principle reflects the judicial officer's obligation to provide equality before the law, and non-discrimination.

⁴⁵ Ibid 81–91.

Judicial officers set the tone of their courtroom. They must treat lawyers, witnesses and litigants with dignity and respect for their fundamental human rights.⁴⁶ Judicial officers must also ensure that court staff treat lawyers, witnesses and litigants with dignity and respect for human rights.⁴⁷ Further, a judicial officer has a responsibility to intervene where lawyers engage in racist, sexist or other improper language or conduct in court, unless such matters are legally relevant to an issue in the proceedings and are part of legitimate advocacy.⁴⁸

Judicial officers must be aware of diversity in society and avoid discrimination on irrelevant grounds. This requires the judicial officer to take steps to remain informed about changing attitudes and values in society.⁴⁹ Principle 5.1 identifies the following as irrelevant grounds: 'race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes'.⁵⁰

Judicial officers must avoid stereotyping and gender discrimination. Condescending language towards women is not appropriate. One metric which the Commentary identifies for whether conduct is a form of gender discrimination is whether the judicial officer would say the same thing (for example, using informal language, or commenting on appearance) in relation to a male counterpart. As part of the prohibition on gender discrimination, the Commentary notes that sexual harassment 'is often illegal as well as unethical'.⁵¹ Similarly, disparaging comments which draw on racial, cultural, sexual or other stereotypes are discourteous and undignified, even when they are about the judicial officer themselves.⁵²

The act of sentencing an offender requires particular care. The judicial officer has a responsibility to convey the denunciation of the community of the offender's acts. But this must be done with 'caution, restraint and courtesy', and not as an act of the judicial officer's personal emotions.⁵³

Value 6: COMPETENCE AND DILIGENCE

Principle:

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

Application:

- 6.1. The judicial duties of a judge take precedence over all other activities.
- 6.2. A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3. A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

⁴⁶ Ibid 100. Another aspect of this obligation is discussed under Value 6 – Competence and Diligence, in relation to the obligation to maintain order and decorum.

⁴⁷ Ibid 101.

⁴⁸ Ibid 101.

⁴⁹ Ibid 99.

⁵⁰ *Bangalore Principles* 5.1.

⁵¹ *Commentary* 98.

⁵² Ibid 99–100.

⁵³ Ibid 100.

- 6.6. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Commentary

The Commentary describes competence as a function of legal knowledge, skill, thoroughness and preparation. Diligence, on the other hand, involves sober consideration, impartial decision making and expeditious action, along with preventing abuses of process.⁵⁴ The Commentary also recognises that competence and diligence require that the judicial officer care for their wellbeing. This includes appropriate rest, relaxation, and family life, so as to promote physical and mental wellbeing.⁵⁵

The Principles reflect the modern understanding of the judicial role, where judicial officers have responsibility for case management, staff management and judicial administration. These are all parts of the efficient administration of justice.⁵⁶ Judicial officers must have regard to the right of parties to have their matters heard and resolved without unnecessary cost or delay. As part of this, judicial officers should be punctual and insist that litigants observe court hours. They must also deliver reserved decisions as soon as reasonably possible.⁵⁷

Judicial officers have a responsibility to maintain and enhance their knowledge and skills by undertaking appropriate training. Training must cover not only technical, substantive and procedural law, but also the personal skills required to effectively manage cases, and an understanding of areas of social concern. Training is required both on appointment, and continuously throughout the judicial role, at all levels of the judiciary. The Commentary notes that, where possible, training should be conducted in a cross-jurisdictional manner so that participants can exchange views, and so the experience can reduce excessive hierarchy and allow all levels of the judiciary to be informed of the problems and concerns of one another.⁵⁸

The Commentary also discusses the governance of judicial training. It notes that training must be controlled by the judiciary, and not the legislature or executive. It must be a different body from that which appoints and disciplines judicial officers. Trainers for the judiciary must be carefully selected from the best in their profession, taking into account their knowledge of the subject being taught and their teaching skills.⁵⁹

Principle 6.6 requires judicial officers to maintain order and decorum in the court. The Commentary describes order as 'the level of regularity and civility required to guarantee that the business of the court will be accomplished in conformity with the rules governing the proceeding'.⁶⁰ Decorum is described as 'the atmosphere of attentiveness and earnest endeavour which communicates, both to the participants and to the public, that the matter before the court is receiving serious and fair consideration'.⁶¹ In giving effect to the requirements of order and decorum, the Commentary recognises that there will be a range of acceptable behaviours, and that there will be variations both between judicial officers, and between different proceedings before a single judicial officer. For this reason, there is no uniform standard. However, the Commentary recognises that 'patience, dignity and courtesy are essential attributes', as these will enhance perceptions of impartiality.⁶² Patience, dignity and courtesy does not, however, require a judicial officer to allow lawyers to engage in an abuse of the court's processes, waste time with arguments manifestly lacking merit, or to abuse the judicial officer, other lawyers, parties or witnesses. Instead, the

⁵⁴ Ibid 103–104.

⁵⁵ Ibid 104.

⁵⁶ Ibid 105.

⁵⁷ Ibid 110–111.

⁵⁸ Ibid 107–108.

⁵⁹ Ibid 108–109.

⁶⁰ Ibid 112.

⁶¹ Ibid 112.

⁶² Ibid 113.

judicial officer must respond judiciously, taking steps to control proceedings without retaliating. This may require the judicial officer to reprimand the lawyer separately from the immediate proceedings.⁶³

Conclusion

The Principles and the Commentary have two prevailing themes:

- First, that judicial officers must both uphold the required values, and must be perceived to uphold the required values.
- Second, many of the values are interconnected and come back to impartiality. As explained earlier, impartiality cannot exist without independence. And propriety and equality both act to support the reality and perception of impartiality.

The result is that for many questions of judicial ethics, a central touchstone is 'How will this appear to a reasonable member of the community?'

⁶³ Ibid 112–113.