

## **Judicial Ethics**

**Judicial Skills Course** 

1.

Shortly after the next General Election, Parliament passes the Medico-Legal Dilemmas Act 2010, enabling assisted suicide in certain circumstances provided an order is obtained from a court. Some months later an application calls before you for hearing at the instance of a terminally ill man seeking an order which would permit his wife to assist him to commit suicide. Neither the rest of the family nor the medical authorities oppose the application, and all the conditions are met which entitle you to grant the order. There is a decision from the Inner House in an earlier case to the clear effect that where the conditions are met, the court should grant the order. You hold strong beliefs that it is absolutely wrong to allow a human being's death to be brought about as proposed. How would you deal with the application?

# The Bangalore Principles of Judicial Conduct 2002

#### **Value 1 – INDEPENDENCE**

Judicial independence is a prerequisite 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.

- 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.

# In Locabail (UK) Ltd v Bayfield Properties Ltd [2000] QB 451, 379 - a passage from the judgment of the Constitutional Court of South Africa was adopted:

"The reasonableness of the apprehension [of bias] must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial." (RSA v SA Rugby Football Union [1999] (7) BCLR (CC) 725, 753)

You have recently finished a long and difficult case involving a party litigant. He has submitted a series of complaints against your handling of the case, none of which have "passed the sift" in the Lord President's Judicial Office. You have however been very upset by the personal nature of these attacks. In order to alert judicial colleagues to the dangers posed by this man you have sent a series of emails to "All Judges" giving a disparaging and some say highly entertaining account of his antics in your court. Another Sheriff now contacts you asking for specific tips on how to handle this individual who is due to appear before her in a debate later this week. How best can you help her?

#### Value 1 – INDEPENDENCE

- 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.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

#### Value 2 – IMPARTIALITY

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

- 2.1 A judge shall perform his duties without favour, bias or prejudice
- 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.

#### Value 3 – INTEGRITY

# Integrity is essential to the proper discharge of judicial office

- 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.

#### Value 4 – PROPRIETY

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

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.

#### **Value 5 – EQUALITY**

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

- 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.

3.

A famous footballer appears before one of your colleagues charged with the latest in a series of fairly insignificant alcohol-related breaches of the peace interspersed with the odd minor assault. A SER is obtained and your colleague imposes a probation order. Because your colleague knows that your niece has been going out with the footballer, she tells you some troubling details of his background which she says were mentioned in the SER. You are in no doubt that your niece should be told the truth about her "bad boy" boyfriend. What should you do?

### Value 3 – INTEGRITY

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer

### Value 4 – PROPRIETY

4.10 Confidential information acquired by a judge in a 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.

You are aware that your colleague Sheriff X is struggling with work. In fact you are essentially covering for his frequent absences from work. You think he may have a health problem and have reason to believe that he is drinking too much. He tells you that he has applied to JABS for an appointment to a superior court and has an interview. Your Sheriff Principal seems to think he is a shoo-in. What should you do?

## Value 3 – INTEGRITY

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary.

## Value 6 – COMPETENCE AND DILIGENCE

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

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.