

## COUNCIL POLICY ON INTERNATIONAL JUDICIAL ACTIVITIES

**Statement:** *Participation by a judge in international judicial activities<sup>1</sup> is not incompatible with the judge's obligation to discharge his or her domestic judicial duties.*

### Principles:

1. The primary obligation of judges is the discharge of judicial duties in the jurisdiction in which they are appointed.
2. Judges should consult with their Chief Justice before agreeing to participate in an international judicial activity.
3. Before agreeing to participate in an international judicial activity, judges should seek to inform themselves about the proposed international judicial activity, the foreign jurisdiction, and relevant Canadian foreign policy.
4. Judges proposing to participate in an international judicial activity should seek appropriate education or training as necessary.
5. Judges should avoid participation in an international judicial activity that is, or that may reasonably appear to be, for a commercial purpose that would compromise judicial independence or impartiality.
6. A judge should not allow his or her name to be used in any competitive bidding process for an international judicial activity.

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<sup>1</sup> “International Judicial Activities” means any activity of a Canadian federally-appointed judge in a foreign country involving participation as speaker, presenter, leader, advisor or other invited participant (beyond that of mere attendee) in a legal or judicial reform, educational or information dissemination project, conference, seminar, meeting, trade mission, educational institution-sponsored event or program or other event, whether publicly or privately sponsored.

**Commentary:**

**International Judicial Activities:**

1. On March 31, 2006 the Canadian Judicial Council approved the following resolution:

*Participation of a federally appointed judge in international judicial activities is not necessarily incompatible with s. 55 of the Judges Act.*

*Such participation must:*

- i. not compromise judicial independence and impartiality or otherwise bring the administration of justice into disrepute; and*
- ii. not adversely impact a judge's ability to perform his or her judicial duties; and*
- iii. comply with any ethical principles or guidelines adopted by the Canadian Judicial Council.*

**Primary Obligations**

2. Section 55 of the *Judges Act* requires federally-appointed judges to devote themselves exclusively to judicial duties. This is reinforced by Section 54(1) which provides that no judge may be granted a leave of absence from judicial duties for a period of six months or less without approval of his or her Chief Justice, or for a period of more than six months without the approval of the Governor-in-Council.
3. The primary obligation of judges is to the performance of their domestic judicial duties in a diligent and competent manner. All else must give way to this prime imperative.

**Consultations with Chief Justices**

4. Chief Justices, as the persons responsible for the judicial aspects of the administration of their respective courts, are especially well-placed to assess the impact of the absence of a judge from his or her domestic judicial duties on the court's overall operation. This explains, in part, the importance placed on consultation with the chief justice, as set out in the second principle.

## Considerations

5. In deciding whether it would be appropriate to participate in international judicial activities, judges should consider whether, amongst other things:
  - (a) the project in question is politically sensitive or controversial;
  - (b) the judge's role could reasonably be perceived as interfering in the sovereign affairs of the host country;
  - (c) the judge's role could reasonably be perceived as affirming or supporting repression, corruption, the abuse of human rights or disregard for the rule of law in or by the host country;
  - (d) the nature of the expected participation as a whole is likely to create a reasonable perception of judicial bias among litigants in the judge's home jurisdiction;
  - (e) the judge's participation would unduly impair the work of the court of which he or she is a member;
  - (f) the judge's participation would compromise the judicial independence, in either its individual or institutional aspects, of the judge or the court of which he or she is a member;
  - (g) the judge's participation would be inconsistent with the *Ethical Principles for Judges*;
  - (h) the judge's participation would not adversely reflect on the reputation of the Canadian judiciary as a judicial institution committed to the support of human rights and the rule of law;
6. A judge should not agree to participate in an international judicial activity until the judge and the Chief Justice have had a sufficient opportunity to consider all these matters, and are, additionally, satisfied that such participation will not unduly impair either the work of the court or the judge's primary judicial duties.
7. Nothing in this statement of principles or these Commentaries should be construed as fettering the discretion of the judge's Chief Justice in the administration of the court of which they are members.

### **Seeking information**

8. Judges contemplating engaging in an international judicial activity should inform themselves about the environment in which the activity would take place, including:
  - (a) the nature of the proposed project or program and how their role is expected to fit into its delivery;
  - (b) differences between Canada and the foreign jurisdiction in matters of gender, race, religious conviction, culture and ethnic background; and
  - (c) the legal and political system and the cultural and social conditions in the foreign jurisdiction.
9. Judges should notify the Commissioner for Federal Judicial Affairs of their intention to participate in an international judicial activity. The Commissioner's office can provide valuable information on the availability of cultural and other education programs, and provide security and other valuable information about the host country.
10. In participating or agreeing to participate in international judicial activities, judges should be aware of the official foreign policy of the Government of Canada. The office of the Commissioner for Federal Judicial Affairs can be of assistance in helping to identify sources of information in this regard.

### **Training and Education**

11. Where programs offering training and education for participation in international judicial activities have been established by the National Judicial Institute or other educational body, judges who contemplate participation in an international judicial activity should, to the extent possible and necessary, and to the extent that their domestic judicial duties permit, avail themselves of such training in preparation for participation.
12. To facilitate the identification of judges who are interested and available to engage in international judicial activities, a national data base may be established or authorized by the Canadian Judicial Council. Judges contemplating engaging in such activities are encouraged to register with and provide information with respect to the nature of their interests and availability.

### **Commercial Purposes**

13. In deciding whether to accept an invitation to participate in international judicial activities a judge should take all reasonable steps to ensure that acceptance or participation do not compromise judicial independence in either its individual or institutional aspects, or reflect adversely on the impartiality of the judge or the reputation of the court of which he or she is a member. In particular, the judge:
  - (a) should not accept any payment or benefit for such participation except reimbursements of reasonable expenses and a nominal gift as speaker or presenter; and
  - (b) should inquire to determine all of the sponsors or promoters of the project, and consider whether the judge's participation would be consistent with the independent and impartial discharge of a judge's duties.

### **Bidding**

14. Judges should not allow their name to be used in any competitive bidding process for an international judicial activity.
15. Judges who are approached to participate in international judicial activities that may involve a competitive bidding process may signify their interest and availability but should make clear that their name may not be used in association with a particular proposal in the bidding process.