

**JUDICIAL POWER AND ACCOUNTABILITY**  
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**Introduction.**

During the course of preparing this paper, I have reflected on several occasions on the exact scope of the undertaking to which I committed myself. I have wondered if I have entered on holy ground. I have pondered whether the title of this address is likely to have caused apprehension among members of the judiciary. I have considered how easier it would be to speak on the subject 'Executive and Legislative Power and Accountability'. In that instance everyone would expect to hear something about the awesome power of the two branches of the Government that are directly concerned with the exercise of political power. Everybody would anticipate a discourse on how the Public at large and the law can circumscribe abuses of power and hold politicians and public servants accountable within the boundaries of democratic and constitutional governance. But Judicial Power and Accountability, what exactly are we talking about? How are we to hold robed and bewigged authority to account? Are we speaking about the same people for whom all stand when they enter a room to do their work? Yes indeed we are and though I cannot pray silence, I ask you to bear with me as I tiptoe through this unfamiliar terrain.

I shall not attempt to survey all the areas that this subject relates to but will be looking at the fact that in the execution of their duties members of the Judiciary have power to not merely interpret the Constitution and the law, they have power to make decisions that affect the human and property rights of individuals. The Judiciary, even more than the Executive and Legislative branches of Government, has the obligation to be fair in the conduct of its duties. It must also maintain the appearance of fairness.

**Independence of the Judiciary and Judicial accountability.**

Although I do not think that it should be necessary to do so, I start by making an unequivocal statement that judicial independence is the cornerstone on which our justice system is built and is the principal source of judicial impartiality. The concerns that many people in Jamaica and throughout the Caribbean region express today for guarantees for judicial independence do not arise simply from the concerns that are entertained with regard to the proposed Caribbean Court of Justice. These concerns are evidence that we are in tune with the global concerns that the course of human development can best be assured by democratic government, the rule of law and the respect for human rights.

In 1994 the United Nations Commission for Human Rights reported that it was “convinced that an independent and impartial judiciary and an independent legal profession are essential pre-requisites for the protection of human rights and ensuring that there is no discrimination in the administration of justice.”

Lord Bingham, the new Senior Law Lord in the United Kingdom, in a selection of Essays and speeches published this year addresses the role of the Judge in Society.

*In many countries judges have, over the centuries, tended to occupy a privileged position. In the past this owed much to their power, their wealth and, perhaps their social standing. In modern democratic societies judges continue to occupy a privileged position, but for quite different reasons. Now the privilege springs from public recognition that democratic government and society as a whole can only function fairly and properly within a framework of laws, justly and fairly administered by men and women who have no other obligation save to justice itself. Thus judges must not be liable to disciplinary sanctions, or premature retirement, because their decisions do not find favour with the powers that be, or with any powerful vested interest, or with prevailing public opinion. They must be truly independent.*

*This does not of course mean that judges are licenced to do exactly as they like. Quite the opposite. Because society grants the judges, for the greater good of the public, certain important privileges, it is entitled to, and does, expect of the judges very high standards of propriety, integrity assiduity and personal conduct<sup>1</sup>*

The difficulty that inheres in the question of the amenability of an independent judiciary to accountability was recognised by the distinguished Australian Jurist Mr. Justice Kirby in the following excerpt from an address on the Independence of the Judiciary delivered to the International Bar Association Conference on Human Rights Institute in Hong Kong in June 1998.

*Constitutional machinery for the removal of a judge who is proved guilty of serious misconduct or incapacity will often be inappropriate, and for that reason ineffective, in the case of the judge who is simply rude, repeatedly guilty of unjustifiable discrimination, keeping inappropriate company, sleeping on the bench, given to indulgence in alcohol, lateness and chronic delay in the provision of reasons.*

*The problem that the judiciary, and the community, face in such cases of judicial default is a difficult one. How can the independence of the institution be safeguarded without tolerating a performance of a highly skilled and important public function, which falls short of the appropriate standard? The danger of a too easy and intrusive system of discipline for judges is that judges will be made constant targets by*

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<sup>1</sup>The Business of Judging by Tom Bingham Oxford University Press 2000 at page 53.

*disgruntled litigants, professional rivals, media editorialists who thirst for simple (and generally more punitive) solutions to every problem, and politicians or others on the make?*

### **What is Judicial Power?**

Judges have the power and the duty to make choices. Much of this power is discretionary. Judicial discretion is the power to decide those matters that call for the exercise of personal judgment rather than the application of strict rules. If the judge commits "mere legal error"--a mistaken exercise of judicial discretion--the mistake can be corrected on appeal. But judicial power can be abused. Basically, if a judge's misuse of power is flagrant enough, serious enough, or frequent enough to raise concern about the judge's good faith or fitness to hold office, the judge risks being sanctioned for ethical violations.

The Judiciary exercises State Power over individuals and also over other arms of Government. It does so to ensure that the State does not use its dominant position to deny fair treatment to its citizens and to guarantee that we live in a society of laws in which the exercise of Executive power is subject to judicial review. In countries like Jamaica with written constitutions, judicial power is also exercised when the superior courts examine legislation to determine whether it has enacted within the limitations imposed by the Constitution. Dr. Mark Elliott, a distinguished academic, has pointed out that it is *'broadly accepted that any claim of judicial power must be scrutinized and evaluated against delimitation of governmental functions prescribed by constitutional order. Nowhere is this more important than in relation to judicial review since, in the exercise of their supervisory jurisdiction the judges risk usurpation both of legislative functions and executive functions.'*<sup>2</sup>

Judicial power also relates to the ability of the judge to influence the conduct of all persons who are present in the court over which he or she presides. This may seem obvious but when it is appreciated that, for the vast majority of the population, the occurrence of going to court is a once in a lifetime experience, whether this is in the capacity of witness, complainant, defendant, accused, juror or accompanist of another terrified first timer. In any event we must be mindful that for each of these categories and for the regulars and hardy annuals, the conduct of the judge represents justice in action.

It is important to recognise that there are significant constraints on judicial power by the tenets of our legal system that require judges, (a) to function in public, (b) to hear both sides of any question that is before them for decision, (c) provide reasons for their decisions and (d) to be subject to their decisions being reviewed by an appellate court. In addition judges should, as professionals, feel themselves accountable to their brethren to uphold the highest standards of their offices.

The impression of justice at work is in a more limited way gathered from the conduct of lawyers and other persons associated with court proceedings. But the judge is in charge and holds centre stage in all judicial proceedings and in spite of the caution sounded by Mr. Justice Paul Harrison

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<sup>2</sup> 'The Ultra Vires Doctrine in a Constitutional Setting', **Judicial Review and the Constitution**, a collection of essays presented at an experts conference in Cambridge University on Judicial Review, May 1999. Hart Publishing 2000.

*Any elevation of counsel above the level of importance of the parties is misguided. I dare say, such elevation of the Judge, despite the increased level of his seating, is unwise. There should be no stars in this system. It is the duty of the Judge to oversee the process. He has a duty to preserve the climate of a fast, fair compassionate but firm court*

At the end of the day the misuse of judicial power has a devastating effect on the image of justice.

Judicial power also relates to the social influence that the office of Judge has in our society. It is true that the judiciary does not occupy the pride of place that it enjoyed in colonial times or in the early days of our Independence. This perhaps has more to do with the polarization in the society that has been associated with a general lack of deference for authority and the general breakdown in the machinery of the State. Whatever is the cause we are still a society in which judges are able to exert significant social influence. There is still the opportunity for the power and influence of judicial office to affect issues affecting the personal lives of these office holders. Can there be circumstances in which this influence can amount to an abuse of power?

### **The Judicial Oath**

Judges of the Supreme Court and the Court of Appeal take Judicial Oath under the Constitution to '*do right to all manner of people after the laws and usages of Jamaica without fear or favour, affection or ill will.*'<sup>3</sup> Resident Magistrates take a similar oath, but it is not prescribed by statute. Is the obligation to uphold the usages of Jamaica wide enough to include the maintenance of the highest traditions of the Judiciary? And if it is should we strengthen it by establishing a Judicial Code of Conduct?

### **Judges of the Court of Appeal and the Supreme Court.**

The ultimate accountability of judges is established under the Constitution of Jamaica. Section 100 (4) establishes the machinery for the removal from office of a Judge of the Supreme Court for *inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause or for misbehaviour.* (My emphasis) Section 106(4) makes identical provisions for judges of the Court of Appeal. At both levels the process requires the Prime Minister to represent to the Governor-General that the question of removing a Judge from office for inability as aforesaid or for misbehaviour ought to be investigated. The Prime Minister is obliged to first consult with the Chief Justice and the President of the Court of Appeal in the case of judges of the Supreme Court and Court of Appeal respectively, but act on his sole initiative in the case of either any alleged inability to discharge function or misbehaviour by the Chief Justice or President of the Court of Appeal.

The Governor-General is then obliged to appoint a tribunal, consisting of a Chairman and not

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<sup>3</sup> First Schedule Constitution of Jamaica.

less than two other members, selected by the Governor-General on the advice of the Prime Minister (in the case of the President of the Court of Appeal) or of the President of the Court of Appeal (in the case of any other Judge) from among persons who hold or have held office as a Judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court.

The tribunal enquires into the matter and reports on the facts to the Governor-General and recommends to the Governor-General whether he should request that the question of the removal of that Judge should be referred by Her Majesty to the Judicial Committee of the Privy Council.<sup>4</sup>

### **Resident Magistrates.**

Power to make appointments to the offices Resident Magistrate, Judge of the Traffic Court and Registrars of the Supreme Court and Court of Appeal, are given by section 112 of the Constitution of Jamaica to the Governor General acting on the advice of the Judicial Service Commission. The power to remove and to exercise disciplinary control over the holders of these offices also rests with the Governor-General acting on the advice of the Judicial Service Commission. This power is not restricted to *misbehaviour* as is the case with judges of the higher judiciary, but it is submitted that the same standards should apply at all levels.

### **Discipline for Cause or for Misbehaviour.**

The term *any other cause or for misbehaviour* begs several questions. For what range of matters may disciplinary control be exercised? Who may complain? What is the procedure for complaining? Is a distinction to be drawn between the constitutions of Jamaica and other Caribbean states where the term *misbehaviour* is used and other Commonwealth states like Canada where the term that is used is *misconduct*?

Is there is a real difference between *misconduct* and *misbehaviour*? Both concepts involve elements of impropriety and whereas it is possible to include the concept of bad management in *misconduct*, I doubt whether any jurisprudential distinction should be drawn between them. It is however of interest to note that the Heads of Government of CARICOM currently have before them, as part of the proposals for the Caribbean Court of Justice a proposed Code of Judicial Conduct in the context of legislation that proposes that judges of that court may be dismissed for '*inability to discharge the functions of his office, whether arising from infirmity*

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<sup>4</sup>Sections 100 (6) and 106(6) Constitution of Jamaica.

*of body or mind or any other cause or for misbehaviour.*

One of the problems that we face is that the Constitution only provides machinery for removal from office of a Judge for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause or for misbehaviour. It does not provide machinery for discipline at a lesser level. There is no machinery for airing complaints against members of the magistracy. This problem exists in Trinidad and Tobago and was addressed by the Mackay Commission of Enquiry. The Commission recognised that discipline short of dismissal was a delicate task and advised that *'The Judicial and Legal Services Commission should set up a system of receiving complaints against judicial officers by nominating a particular person or persons to receive these complaints to be considered by the Chief Justice in respect of the Judiciary or the Chief Magistrate in respect of the Magistracy.'*<sup>1</sup> Perhaps similar machinery could be contemplated in Jamaica.

So we see that the issue that we are examining has engaged other jurisdictions. As we shall see, ways have been found to meet the challenges. But before we look at some other approaches let us look at some practical examples.

#### **Court Room Control.**

The Times of September 14, 2000 reported that a woman who went to court over a motor vehicle accident claim found herself extensively cross-examined about a rape that took place 17 years ago. The woman did not report the rape at the time. The rape became an issue at the claim for damages from the motor vehicle accident as a means of determining whether the woman was a truthful witness about the effects of the accident on her. The judge said that if she lied about the rape she could have lied about anything. A lobby organisation called Women Against Rape reported the judge to the Lord Chancellor, and contended that he was "not fit to determine other people's lives." The Times stated that The Lord Chancellor's Department confirmed that it received a complaint, but that it understood that, after investigations, no action would be taken. At the hearing of her appeal against the award for damages from the motor vehicle accident Lord Justice Thorpe apologised to her for the rape questioning.

JAMBAR News of July 1995 carried a report of an undefended Divorce petition hearing at which the judge called the Respondent to join the wife Petitioner in the witness box. The judge had the Respondent sworn and then questioned both of them in the witness box. When he was satisfied he granted the Petitioner the decree she prayed.

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<sup>1</sup> Pages 39 to 40 Report of the Commission appointed to enquire into and report and make recommendations on the machinery for the Administration of Justice in the Republic of Trinidad & Tobago.

There are several other examples, and rather than list them I wish to deal with the misuse of the judges right and power to control the court over which he presides.

*'Courtroom control centrally refers to the judge's ability literally to exert command from a distance over the action of the physical bodies of those in his court room without recourse to physical coercion. The command is carried out through speech and largely involves control over the speech of others.'*<sup>2</sup> This definition is taken although derived from an anthropological study certainly accords with our experience as advocates and jurists.

An important dimension of a judge's ability to sustain cooperation of those in the courtroom is the litigant's submission to and the cooperation in the legal procedural framework imposed by the courts. The author points out that loss of control also destroys the validity of the legal process, can affect the ability of judges to give the public a sense of satisfaction, involvement in and comfortable use of the legal system.<sup>3</sup> Most importantly she makes the point that *"it is the lawyer's duty, as an officer of the court, to do what he perceives necessary to make the procedure good."*

### **Counsel's Duty**

And this conveniently, brings me to what must an advocate do when confronted with a judge who has lost control of the courtroom or has asserted control of the courtroom in manner that jeopardises the interests of his client, a witness or a member of the public? We often forget that as officers of the courts we have a responsibility in the administration of justice that goes beyond the obligations of our briefs. This does not imply that we should do or say anything that could expose our client to risk. It does assert that we cannot pass by on the other side with the disinterest and lack of engagement of the Levite or High Priest. It also means that in moments of crisis seniors must not abandon juniors and that we should remember that courage is the hallmark of all successful advocacy.

These are times when the advocate has to indulge in role reversal with the judge and may well recall Lord Devlin's list of the virtues required for the disinterested application of the law, balance, patience, courtesy, and detachment.<sup>4</sup> This is also the description of the Judge in court given by our own Mr. Justice Paul Harrison at our Continuing Legal Education seminar in January 1997, *'he must be the neutral arbiter, understood in cricketing terms like the umpire,*

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<sup>2</sup>*Ideology in the Language of Judges* by Susan U, Philips, page 89; Oxford Studies on Anthropological Linguistics, Oxford University Press 1998.

<sup>3</sup>Ibid. P.92

<sup>4</sup>Page 5, *The Judge* by Patrick Devlin; Oxford University Press 1981.

*unbiased, fair, unflappable and firm.*<sup>5</sup>

So what does Counsel do when the trial judge does not display balance, patience, courtesy, and detachment or when he loses control and appears to be biased and unfair? The first thing that should be remembered is that we are officers of the Court and that any unseemly conduct, any activity that is disorderly or disrespectful of anybody in court demeans our profession. It also demeans the institutional structure that is established under the Constitution to uphold the law and resolve disputes in a fair and just manner. If we maintain our composure and remember these things we are likely to respond to any potentially turbulent events with calm, dignity and composure.

It is a counsel of perfection to advise that we should respond in a way that saves the judge's face. For one thing this may not be possible or might even be resented. It certainly is a challenge for younger counsel who may not have the stature at the Bar to be able to have influence on the way the judge responds to an effort to cool the atmosphere. It is always the duty of senior Counsel to intervene and assist in circumstances of this kind.

But saving the judge's face cannot be the only objective. After all Counsel has a duty to her client, to her profession and to herself. That duty includes the duty to fearlessly and courteously advance the interests of her client. There are obvious dangers and difficulties that are involved when the ire of the judge is directed at one's own client. There are even greater ones when counsel intervenes as an officer of the Court in discharge of his obligation to uphold the law and ensure that justice is not denied to a person who is not her client. There really is no rule of thumb. There is no formula that can be relied on for all occasions. Situations like these test our judgement.

There is really only one bit of advice that I can offer. Try and remember that good manners, tact, courage and respect for ones' self, the profession and the judiciary are of utmost importance in the life of a successful advocate.

### **Codes of Judicial Conduct.**

In the United States of America, the American Bar Association has taken the initiative. Some years ago it established a Model Code for Judicial Conduct. Several states have their own codes and there are separate Codes of Conduct for United States Federal Judges and Magistrates. Canada has Ethical Principles for Judges that have been established by the Canadian Judicial Council under the Judges Act. Principles for the conduct of European judges have been laid down in the Judges' Charter in Europe prepared by the European

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<sup>5</sup> *Confrontation in Court* by Mr. Justice Paul Harrison January 1997.



## Association of Judges.

In Britain the Lord Chancellor has the power to dismiss circuit judges, district judges, magistrates and justices of peace. Judges of the superior courts are irremovable except on address by both Houses of Parliament. Lord Bingham writing on the topic Judicial Ethics<sup>6</sup> observes that no English High Court judge has ever been removed in the nearly three centuries since the enactment of the Act of Settlement and continues, *'the practice of appointing judges from a small pool of candidates, sharing a common professional background, and known personally or by professional repute to those making and advising on appointments has enabled much to be taken for granted.'*

While there is no Judicial Code of Conduct and no direct form of accountability for judges in Britain as Lord Bingham asserts

*'The modern judiciary would regard itself as the servant of the public, not its master; would recognize that the dignity of judicial office is enhanced and not reduced by the display of ordinary good manners; and would recognize that the appearance of justice is almost as important as its substance, if indeed the two are separable. There is much force in Sir Robert Megarry's observation that the most important person in court is not the judge or the advocate or the witness but the litigant who is going to lose.'*<sup>7</sup>

He makes special mention of a number of situations some of which are of particular relevance to us. These include the duty;

- i. to stand down where the judge has previously decided a case against a particular party or rejected evidence of a particular material witness,
- ii. not to make disparaging comments about parties while trying a case,
- iii. to deliver reserved judgments expeditiously and
- iv. to do nothing to obstruct an arguable appeal, whether by making findings of fact more conclusive than the evidence warrants in the expectation that the appellate court will be unable to interfere or by passing an unduly lenient sentence in the hope of deterring an appeal.

Perhaps the most important observation that he makes is that it is plainly improper for a judge to court publicity or seek acclaim of newspaper headlines. In support of this he quotes from passages from Chief Justice Hale's personal guidance devised for himself in the 1660s:

*11. Popular or court applause or distaste, have no influence into anything I do in point of distribution of justice.*

*12. Nor to be solicitous what men say or think, so long as I keep myself exactly according to the rule of justice.*<sup>8</sup>

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<sup>6</sup> Page 69 **The Business of Judging**

<sup>7</sup> Ibid page 81.

<sup>8</sup> Ibid page 82.

In Canada section 59 of the Judges Act provides for the appointment of Judicial Council. It provides for a body consisting of a chairman who is the Chief Justice of Canada, the Chief Justice and any senior associate chief justice and associate chief justice of each superior court or branch or division, and a number of other senior judges. The objects of the Council are to promote efficiency and uniformity, and to improve the quality of judicial service, in superior and county courts and in the Tax Court of Canada.

In furtherance of its objects it may

- (a) Establish conferences of chief justices, associate chief justices, chief judges and associate chief judges;
- (b) establish seminars for the continuing education of judges;
- (c) make the inquiries and the investigation of complaints or allegations

The Council shall, at the request of the Minister or the Attorney General of a province, commence an inquiry as to whether a judge of a superior court or of the Tax Court of Canada should be removed from office for any of the reasons set out in paragraphs 65(2)(a) to (d).

(1) After an inquiry or investigation under section 63 has been completed, the Council shall report its conclusions and submit the record of the inquiry or investigation to the Minister.

(2) Where, in the opinion of the Council, the judge in respect of whom an inquiry or investigation has been made has become incapacitated or disabled from the due execution of the office of judge by reason of

- (a) age or infirmity,
- (b) having been guilty of misconduct,
- (c) having failed in the due execution of that office, or
- (d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of that office, the Council, in its report to the Minister under subsection (1), may recommend that the judge be removed from office.

In its report to Parliament in 1996 the Canadian Judicial Council made this observation.

*The line between the judge's decisions and the judge's conduct is a strict one. Decisions are subject to review by appellate courts; only these courts have the power to confirm or reverse a decision. Conduct alone is for the Council to examine and consider, and ultimately for Parliament to decide as to whether it breaches the requirement of good behaviour.*

*This distinction is not always clear to those who complain about a judge. But it is the essence of the Council's role in maintaining the balance between judicial independence and judicial accountability that has been maintained in our system.*

*This said, the process can be a painful one, especially for a judge who feels unfairly criticized or complainants whose deeply felt sense of having been wronged may be found to be without merit or without sufficient merit to represent a breach of the constitutional requirement of good behaviour.*

*The stresses and disappointments of the process notwithstanding, it is vital that those who feel aggrieved by a judge's conduct have an avenue of recourse. Equally, it is vital that a judge whose conduct is in question know that the matter will be resolved in as timely and fair a fashion as possible.*

A statement made by the leaders of the South African Judiciary in March 2000 following the adoption of Judicial Ethics standards by that judiciary. The following extract indicates the thinking that led to the adoption of the code.

*To fulfil that constitutional role the judiciary needs public acceptance of its moral authority and integrity, the real source of its power. Accordingly, the Constitution commands all organs of state to assist and protect the independence, impartiality, dignity, accessibility and effectiveness of the judiciary. But it is even more important that judges at all times seek to maintain, protect and enhance the status of the judiciary. To that end they should be sensitive to the ethical rules, which govern their activities and behaviour both on and off the bench.*

*The guidelines, which follow, are intended to assist judges in dealing with ethical and professional issues, which may confront them during their judicial careers. They are also intended to inform the public about the judicial ethos in this country. Much of what follows may seem straightforward and obvious to most lawyers. However the rules are often difficult to apply in practice and may require fine judgment.*

*In the preparation of these guidelines regard was had to the Constitution, our common law, case law, and international standards. Although the principles applied in comparable foreign countries are not necessarily applicable to South Africa, they are a useful source of reference. The views of the judiciary were also canvassed. It should be emphasized that professional ethical rules derive much of their binding nature from their general acceptance by members of the profession.*

*Ethical rules differ from legal rules in that they are seldom absolute. These guidelines are likewise not absolute but describe the high standards to which all judges should aspire. They are not to be interpreted as impinging on the constitutionally guaranteed independence of the judiciary or any judge. Nor does a breach of any particular rule or guideline necessarily warrant censure.*

*The independence of the judiciary is for the protection of the freedom of individuals and the integrity of the Constitution and not for the benefit of judges. The underlying assumption is that judges act lawfully and ethically and the Constitution protects them by providing that a judge may be removed from office or suspended only if the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct.*

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*by providing that a judge may be removed from office or suspended only if the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct.*

*Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons. Mr Dato' Param Cumaraswamy, the UN 's Special Rapporteur on the Independence of the Judiciary, in a submission during 1998 to the TRC explained the matter in these words:*

*" judicial accountability is not the same as the accountability of the executive or the legislature or any public institution. This is because of the independence and impartiality expected of the judicial organ... though judges are accountable, their accountability does not extend to their having to account to another institution for their judgments. "<sup>9</sup>*

The judges of Trinidad and Tobago have been considering a Code of Ethics for Judges. The Mackay Commission of Enquiry on the machinery for the Administration of justice in the republic of Trinidad and Tobago has strongly commended the creation of a Code of Ethics and has recommended that when the judges are satisfied with the terms of the proposed code they publish it. The Commission appended the South African Code of Judicial Ethics to their report.

#### **The proposed Code of Judicial Conduct for the Caribbean Court of Justice.**

The debate over the establishment of a final court of appeal has stimulated discussion on whether the proposed Caribbean Court of Justice is exposed to the influences of the Executive branches of governments that could compromise its judicial independence. Article VII (4) makes provision for a Judge to be removed only for inability to perform the functions of his office, whether from illness or any other cause or for misconduct.

The documents before the heads of Government include a Judicial Code of Conduct. It provides that a Judge of the Caribbean Court of Justice shall:

- (a) Be a person of sound moral character and integrity; observe high standards of conduct and uphold the integrity and independence of the judiciary; he should also contribute to the establishment, maintenance and enforcement of such standards of conduct so that the integrity and independence of the judiciary are preserved.

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<sup>9</sup> I have added the principles contained in **Judicial Ethics in South Africa** as an appendix to this paper. The original document has commentary following each of the 34 principles. I have omitted the commentary in the interest of space. The full document was appended to the Mackay Commission of Enquiry report or may be obtained from the Librarian Supreme Court of Appeal, P.O. Box 258, Bloemfontein 9300. Email [suprrappeallibbfn@intekom.co.za](mailto:suprrappeallibbfn@intekom.co.za).

(b) Avoid impropriety or the appearance of impropriety in all his activities and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

(c) Respect and faithfully uphold the law and shall perform the duties of his office impartially and diligently;

(d) Regulate his extra-judicial activities to minimise the risk of conflict with his judicial duties and shall not allow his family, social, or other relationships to influence his judicial conduct or judgment. He shall not lend the prestige of his office to advance the private interests of others;

(e) Not participate in any political activity nor any other activity that is inappropriate to his judicial office;

(f) Refrain from financial, business or other dealings that tend to reflect adversely on his impartiality, compromise or interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in transactions with persons likely to come before the Court over which he presides;

(g) Not serve as an officer, director, manager, adviser, or employee of any business or engage in any other activity that is likely to prejudice the discharge of his judicial duties;

(h) Disqualify himself from hearing any matter where any conflict of interest arises or may reasonably be perceived to arise between private interest and judicial duty;

(i) Ensure that judgments and the written reasons therefore are given in an expeditious manner.

### **Accounting for the use of Judicial Time.**

Taxpayers pay for the infrastructure of the justice system. They are entitled to know whether they are getting value for money. The problems are more acute in the criminal than they are in the civil courts. Delay in the trial of cases before the courts is a matter of concern in most jurisdictions. Case management has been developed as a tool to increase the administration of justice in civil courts. In the United Kingdom the Woolf Reports of 1996 on Access to Justice can be seen not merely as proposals for reducing the cost of proceedings, but also as measures that ensure the public gets better value for the money that is spent on the courts and that better

account is given for judicial time. Jamaica has begun the process of streamlining its civil procedures but we have a long way to go to achieve an efficient use of judicial time and courtroom facilities.

The Mackay Report supports the idea that there should be a Practice Direction to regulate the time between the end of a trial and the delivery of judgement. It also recommended that from 2001 onwards. ' *The report of the judiciary at the opening of the law term should contain a list of cases in which judgment has been reserved for more than six months with a note of the explanations given by the judge when the case has been called. The general public cannot be expected to make a fair assessment of the quality of judgments, but they certainly can of their promptitude.*'<sup>10</sup>

### **Should Jamaica have a Code of Judicial Conduct?**

The simple question I ask is, if the heads of Government are considering such a code for the final court of appeal, should we also have one for our other courts?

We could consider whether, as a part of the constitutional changes that are inevitable as we contemplate new arrangements for our judiciary, a new Council of Judges, with disciplinary powers, ought to be established along the lines of the Canadian or South African models? Is this an appropriate time for the establishment of a Code of Judicial Conduct for all levels of our judiciary?

Do I hear someone say how dare you? Or is it my imagination? One of the concerns that I had when preparing this paper is that the legal profession is so divided between the private bar and the public bar. This has deteriorated during the time that I have been a member of this profession. It has brought several undesirable consequences including (a) qualified commitment to upholding law and order and (b) equivocation, particularly in respect to the protection of the rights of the individual where the interests of the State are concerned. Having said this I make bold to say that the time is ripe for the legal profession to take stock of itself as a whole and to play a more active role in moulding and leading public opinion about the administration of justice. It must do so because we are uniquely placed to influence the development of our country. We are the only profession whose ranks exclusively provide the personnel for one of the three arms of government under our Constitution. Many of us do not like to look to the United States of America for guidance for the development of our jurisprudence and standards of governance. Nevertheless I wish to remind you that the Code of Ethics for the Judiciary in the United States of America has been developed through the initiative and leadership of the American Bar Association.

<sup>10</sup> Ibid pages 57 to 58.