



COUNCIL POLICY ON INTERNATIONAL JUDICIAL ACTIVITIES

PREAMBLE

From time to time, Canadian federally appointed judges are invited to participate in international judicial activities. Their participation in these activities engages special considerations whether it occurs on the judge's own time, such as vacation or sabbatical leave, or with any special leave approved by the judge's Chief Justice. This policy is intended to guide these judges in weighing these considerations.

DEFINITION

“International judicial activities” include any activity, whether within Canada or abroad, in person or online, of a Canadian federally appointed judge involving the education, support, advice, training of or information exchange with a foreign court or tribunal, its judicial officers, court administration, communication and security personnel, or members of other branches of government. Such activity includes the participation of a Canadian federally appointed judge as a speaker, presenter, leader, advisor, or another invited participant 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; and also includes hosting or helping to host foreign judges, dignitaries or officials in Canada. It does not include the mere attendance at a conference or other educational activity for the benefit of a Canadian judge, in which case consultation with their Chief Justice will suffice.

STATEMENT

While participation in international judicial activities may not be incompatible with the discharge of a judge's domestic judicial duties, judges must ensure that this participation is not incompatible with Canadian foreign policy or the *Ethical Principles for Judges* and would not otherwise bring the Canadian judiciary into disrepute.

PRINCIPLES

1. The primary obligation of judges is the discharge of judicial duties in the jurisdiction in which they are appointed.
2. Judges who propose to engage in an international judicial activity should seek appropriate education or training as necessary.

3. Before agreeing to participate in an international judicial activity, judges:
 - (a) inform themselves about the proposed activity, the body organizing the activity, including its sponsors, and the foreign jurisdiction;
 - (b) through the International Programs Division of the Office of the Commissioner for Federal Judicial Affairs (“FJA”), inform themselves about any relevant Canadian foreign policy; and
 - (c) consult with their Chief Justice.
4. So as not to compromise judicial independence or impartiality and their duty of diligence, and in keeping with the *Ethical Principles for Judges*, judges should refrain from:
 - (a) participating in any international judicial activity that would interfere with their duty to diligently fulfill their judicial obligations;
 - (b) participating in an international judicial activity that would compromise judicial independence and impartiality or otherwise bring the administration of justice into disrepute either in Canada or in the host country;
 - (c) participating in an international judicial activity that is, or that may reasonably appear to be, for a commercial purpose;
 - (d) allowing their name to be used in any competitive bidding process for an international activity; and
 - (e) participating in activities that would be incompatible with Canadian foreign policy.

COMMENTARY

International Judicial Activities

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*.

This 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

1. Section 55 of the *Judges Act* requires federally appointed judges to devote themselves exclusively to judicial duties. This is reinforced by subsection 54(1), which prohibits any judge from being granted a leave of absence from judicial duties for a period of six months or less without the approval of his or her Chief Justice, or for a period of more than six months without the approval of the Governor in Council.
2. 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

As the persons responsible for the judicial aspects of the administration of their respective courts, Chief Justices 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 above principles.

Seeking Information

1. Judges who contemplate 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, including gender identity and gender expression, sexual orientation, race, religious conviction, and culture and ethnic background, as well as vulnerable minorities; and
 - (c) the legal and political system and the cultural and social conditions in the foreign jurisdiction.
2. Judges should notify FJA of their intention to participate in an international judicial activity and obtain from the International Programs Division of FJA:
 - (a) advice on any applicable official foreign policy of the Government of Canada (FJA's sources will include Global Affairs Canada or any successor department);
 - (b) advice regarding domestic and foreign security considerations, potential political

sensitivities, and all applicable protocols; and

- (c) required logistical assistance for either international travel or for hosting a foreign delegation in Canada.

Considerations

1. In deciding whether it would be appropriate to participate in international judicial activities, judges consider whether, among other things:
 - (a) the project or host country in question is politically sensitive or controversial;
 - (b) travel to the host country is inconsistent with the Government of Canada's official foreign policy;
 - (c) the judge's role could reasonably be perceived as interfering in the sovereign affairs of the host country;
 - (d) 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;
 - (e) the nature of the expected participation is likely to create a reasonable apprehension of judicial bias among litigants in the judge's home jurisdiction;
 - (f) the judge's participation would impair the work of the court of which they are a member;
 - (g) whether the judge has any reserve judgments, as well as the number and duration they have been outstanding;
 - (h) the judge's participation would compromise the judicial independence, in either its individual or institutional aspects, of the judge or the court of which they are a member or of the courts in the host country;
 - (i) the judge's participation would be inconsistent with the *Ethical Principles for Judges*; and
 - (j) the judge's participation would undermine the reputation of the Canadian judiciary as a judicial institution that is committed to the support of human rights and the rule of law.

2. A judge should not agree to participate in an international judicial activity until the judge and their Chief Justice have had a sufficient opportunity to consider all the matters set out in this policy.

3. 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.

Training and Education

Judges who propose to engage in an international judicial activity should seek training and education regarding the activity. This includes making use of reference guides offered by FJA and receiving any briefing or other information regarding the proposed activity or the country in which it will take place.

Financial and Commercial Considerations

A judge:

- (a) should not accept any payment or benefit for participation in an international judicial activity, except reimbursement of reasonable expenses and a nominal gift as a speaker or presenter; and
- (b) should make inquiries to identify all 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

Judges should not allow their name to be used in any competitive bidding process for an international judicial activity.

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.

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