**PARLIAMENTARY SUPREMACY**

**JUDICIAL INDEPENDENCE**

**LATIMER HOUSE GUIDELINES FOR THE COMMONWEALTH**

***Adopted on 19 June 1998 at a meeting of the representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates and Judges Association, the Commonwealth Lawyers’ Association and the Commonwealth Legal Education Association***

(…)

**II) PRESERVING JUDICIAL INDEPENDENCE**

1. Judicial appointments

Jurisdictions should have an appropriate independent process in place for judicial appointments. Where no independent system already exists, appointments should be made by a judicial services commission (established by the Constitution or by statute) or by an appropriate officer of state acting on the recommendation of such a commission.[[1]](#footnote-1)

The appointment process, whether or not involving an appropriately constituted and representative judicial services commission, should be designed to guarantee the quality and independence of mind of those selected for appointment at all levels of the judiciary.

Judicial appointments to all levels of the judiciary should be made on merit with appropriate provision for the progressive removal of gender imbalance and of other historic factors of discrimination.

Judicial appointments should normally be permanent; whilst in some jurisdictions, contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure.[[2]](#footnote-2)

Judicial vacancies should be advertised.

2. Funding

Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary.[[3]](#footnote-3)

Appropriate salaries and benefits, supporting staff, resources and equipment are essential to the proper functioning of the judiciary.

As a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained.

3. Training[[4]](#footnote-4)

A culture of judicial education should be developed. Training should be organised, systematic and ongoing and under the control of an adequately funded judicial body.

Judicial training should include the teaching of the law, judicial skills and the social context including ethnic and gender issues.

The curriculum should be controlled by judicial officers who should have the assistance of lay specialists.

For jurisdictions without adequate training facilities, access to facilities in other jurisdictions should be provided.

Courses in judicial education should be offered to practising lawyers as part of their ongoing professional development training.[[5]](#footnote-5)

(…)

**V) JUDICIAL AND PARLIAMENTARY ETHICS**

1. Judicial Ethics

(a) A Code of Ethics and Conduct should be developed and adopted by each judiciary as a means of ensuring the accountability of judges;

(b) the Commonwealth Magistrates’ and Judges’ Association should be encouraged to complete its Model Code of Judicial Conduct now in development[[6]](#footnote-6);

(c) the Association should also serve as a repository of codes of judicial conduct developed by Commonwealth judiciaries, which will serve as a resource for other jurisdictions.

(…)

**VI) ACCOUNTABILITY MECHANISMS**

1. Judicial Accountability

(a) Discipline:

(i) In cases where a judge is at risk of removal, the judge must have the right to be fully informed of the charges, to be represented at a hearing, to make a full defence and to be judged by an independent and impartial tribunal.

Grounds for removal of a judge should be limited to:

(A) inability to perform judicial duties and

(B) serious misconduct.

(ii) In all other matters, the process should be conducted by the chief judge of the courts;

(iii) Disciplinary procedures should not include the public admonition of judges.

Any admonitions should be delivered in private, by the chief judge.

(…)

**VIII) THE ROLE OF NON-JUDICIAL AND NON-PARLIAMENTARY INSTITUTIONS**

1. The Commonwealth Statement on Freedom of Expression[[7]](#footnote-7) provides essential guarantees to which all Commonwealth countries should subscribe.

2. The Executive must refrain from all measures directed at inhibiting the freedom of the press, including indirect methods such as the misuse of official advertising.

3. An independent, organised legal profession is an essential component in the protection of the rule of law.

4. Adequate legal aid schemes should be provided for poor and disadvantaged litigants, including public interest advocates.

5. Legal professional organisations should assist in the provision, through pro bono schemes, of access to justice for the impecunious.

6. The executive must refrain from obstructing the functioning of an independent legal profession by such means as withholding licensing of professional bodies.

7. Human Rights Commissions, Offices of the Ombudsman and Access to Information Commissioners can play a key role in enhancing public awareness of good governance and rule of law issues, and adequate funding and resources should be made available to enable them to discharge these functions. Parliament should accept responsibility in this regard.

Such institutions should be empowered to provide access to alternative dispute resolution mechanisms.

1. The Guidelines clearly recognise that, in certain jurisdictions, appropriate mechanisms for judicial appointments not involving a judicial service commission are in place. However, such commissions exist in many jurisdictions, though their composition differs.There are arguments for and against a majority of senior judges and in favour of strong representation of other branches of the legal profession, members of parliament and of civil society in general [↑](#footnote-ref-1)
2. The making of non-permanent judicial appointments by the executive without security of tenure remains controversial in a number of jurisdictions. [↑](#footnote-ref-2)
3. The provision of adequate funding for the judiciary must be a very high priority in order to uphold the rule of law, to ensure that good governance

   and democracy are sustained and to provide for the effective and efficient administration of justice. However, it is acknowledged that a shortfall in

   anticipated national income might lead to budgetary constraints. Finance ministries are urged to engage in appropriate consultations in order to set

   realistic and sustainable budgets which parliaments should approve to ensure adequate funds are available. [↑](#footnote-ref-3)
4. .This is an area where the sponsoring associations can play a cost-effective role in co-operation with the Commonwealth Secretariat. Resources need to be provided in order to support the judiciary in the promotion of the rule of law and good governance. [↑](#footnote-ref-4)
5. The drafters of the Guidelines did not wish by this provision to impinge on either the independence of the judiciary or the independence of the legal profession. However, in many jurisdictions throughout the Commonwealth, magistrates and judges are given no formal training on commencement of their duties. It was felt that appointees to the bench would benefit from some training prior to appointment in order to make them more aware of the duties and obligations of judicial officers and aid their passage to the bench [↑](#footnote-ref-5)
6. Following discussion of the Guidelines, it has been accepted by the Working Group that a "uniform" Model Code of Judicial Conduct is inappropriate. Judicial Officers in each country should develop, adopt and periodically review codes of ethics and conduct appropriate to their jurisdiction.The CMJA will promote that process in its programmes and will serve as a repository for such codes when adopted [↑](#footnote-ref-6)
7. Since the Guidelines were drafted, the draft Statement on Freedom of Expression has been subject to further consideration and the reference should take account of the new developments.The Commonwealth Heads of Government, in the Coolum Declaration of 5 March 2002, included a commitment to freedom of expression: "We stand united in: our commitment to democracy, the rule of law, good governance, freedom of expression and the protection of human rights…." [↑](#footnote-ref-7)