



JUDICIAL COMPLAINTS PROTOCOL FOR BERMUDA

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JUDICIAL COMPLAINTS PROTOCOL FOR BERMUDA

“Section 6 of the Bermuda Constitution entitles all civil and criminal litigants the right to a hearing before an “independent and impartial court”. Such independence and impartiality requires not only the adherence by Judges and Magistrates to supportive ethical principles, but also public awareness of and confidence in the relevant ethical rules.”

(‘Guidelines for Judicial Conduct of the Judges of the Supreme Court of Bermuda and the Magistracy’, Preface, paragraph 1)

INTRODUCTION

1. On July 21, 2006, Chief Justice Richard Ground published the Bermudian Judiciary’s ‘Guidelines for Judicial Conduct’ which were strongly influenced by New Zealand’s Guidelines. The Preface to the Guidelines emphasised that:

“...the guidance provided in these statements and comments is not intended to be a code of conduct. It does not identify judicial misconduct. It is advice. The advice is designed to assist judges to make their own choices informed by a checklist of general principles and illustrations drawn from experience...”

2. The Preface also pointed out that the only disciplinary regime which existed for the Judiciary in the Commonwealth legal world was that relating to removal from office for serious misconduct. The ground has shifted considerably since those words were written and the Preface to the Guidelines has been updated accordingly.
3. The current trend is clearly in the direction of creating a framework for members of the public to be able to make complaints about the conduct of judges which relates to the propriety of their ethical conduct in cases where no suggestion of serious misconduct calling for removal from office arises. A few examples illustrate this shift in the direction of increasing the accountability of the Judiciary to the public in a way which supports judicial independence:

- (a) in England and Wales a legislative scheme for judicial complaints was introduced in 2006, the same year our own Guidelines for Judicial Conduct were adopted;
 - (b) in Australia non-statutory judicial complaints procedures have been developed at the Federal and State level in recent years;
 - (c) the Cayman Islands 2009 Constitution obliges the Judicial and Legal Service Commission to both create a code of judicial conduct and a procedure for making complaints of judicial misconduct;
 - (d) the Isle of Man Judiciary introduced non-statutory '*Procedural Notes in Respect of Complaints of Personal Misconduct against Members of the Judiciary of the Isle of Man*' in October, 2012.
4. A unifying feature of all of these judicial complaints procedures is that complaints will not be entertained where in substance a litigant is dissatisfied with whether or not a decision made by a judicial officer is right or wrong. The remedy for such a complaint lies in the appeals process. This non-statutory Protocol is designed to provide members of the public who consider that a judge has acted in a way which is inconsistent with the standards set in the Guidelines for Judicial Conduct with a clear pathway for having their concerns heard. This not only makes the Judiciary accountable to the public. It also affords judges against whom unmeritorious complaints are made with a mechanism through which they can be vindicated. Consistent with international best practice, the Protocol is also designed to preserve judicial independence by ensuring that the Executive is not directly involved in imposing penalties on serving judicial officers.
5. It is important to emphasise that this complaint procedure cannot be used by disgruntled litigants to express their dissatisfaction with a decision made against them or to gain a tactical advantage in proceedings that are still ongoing. Such a complaint would be liable to be dismissed without full consideration on the grounds that it was vexatious. For example, where a party to legal proceedings believes a judge was biased against them, this complaint should be pursued by way of appeal¹. On the other hand, if a party or witness believes that a judge has dealt with them in a rude and disrespectful manner, this would be a complaint of judicial misconduct which could be pursued under this Protocol, assuming the relevant proceedings have concluded.

¹ Where a litigant considers a judge is biased based on information known to him before the start of the relevant hearing, the litigant should first raise the issue with the court and ask the judge to step down from the case.

6. Subject to the Bermuda Constitution, the Governor appoints judicial officers and exercises disciplinary control over them. On 1 November 2013, the Governor H.E. Mr. George Fergusson announced the formation of a standing Judicial and Legal Services Committee to advise him on, *inter alia*, judicial complaints. The present Protocol has been voluntarily adopted by the Judiciary of Bermuda with the concurrence of the Judicial and Legal Services Committee. It applies to complaints about matters occurring on or after January 1, 2014, the effective date of this Protocol.

HOW TO COMPLAIN

Contents and form of complaints

7. A complaint against a judicial officer shall be made in writing and sent to: His Excellency The Governor, Government House, Langton Hill, Pembroke, HM 13, Att'n : Executive Officer (Email: "executiveofficer@gov.bm"). All complaints shall be submitted using the form set out in the Schedule with such modifications as may be required. A flow chart illustrating the procedure described below is also set out in the Schedule.

Time for making complaints

8. Complaints shall be made as a soon as possible but no later than three months after the conduct complained of occurred. The Committee may extend the time for making the complaint in exceptional circumstances upon receipt of a request for an extension of time setting out the reasons for the delay.

Withdrawal of complaints

9. Without prejudice to paragraph 10, a complaint will be considered by the Committee to be withdrawn where:
 - 9.1 the complainant makes a written request to withdraw the complaint;
 - 9.2 the complainant indicates that he does not wish the complaint or any supporting materials to be forwarded to the judge complained against; or

9.3 the complainant fails within a reasonable time to supply any information requested by the Committee.

Reference of Information by Heads of Division

10. Where the President of the Court of Appeal, the Chief Justice or Senior Magistrate consider (either on the basis of a complaint that is withdrawn under paragraph 9 or on the basis of other information received in the absence of any formal complaint) that judicial misconduct may have occurred, they may refer that matter to the Committee to be dealt with as a complaint.

CONSIDERATION OF COMPLAINTS

Summary dismissal of complaints

11. A preliminary assessment of the merits of complaints will be carried out by a Complaints (Filtering) Sub-Committee comprising the President (or such other member of the Committee as he may designate) and a lay member of the Committee (i.e. a member of the Committee who is not legally qualified).

12. Complaints may be dismissed without any full investigation where they are unmeritorious on their face. Complaints will be summarily dismissed where:

- (a) it does not adequately particularise the matter complained of;
- (b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
- (c) the action complained of was not done or caused to be done by a judicial office-holder;
- (d) it is vexatious;

- (e) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
- (f) it is untrue, mistaken or misconceived;
- (g) it raises a matter which has already been dealt with and does not present any material new evidence;
- (h) it is about a person who no longer holds any judicial office;
- (i) it is about the private life of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office;
- (j) it is about the professional conduct in a non-judicial capacity of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office; or
- (k) for any other reason it does not relate to misconduct by a judicial office-holder.

14. The Committee will not entertain any complaint which is anonymous and/or where the complainant provides no, or insufficient, contact information.

Investigation of complaints which appear valid on their face

15. The Committee will consider all complaints which have been filed in time and which appear to raise a case to answer of judicial misconduct. Receipt of the complaint will be acknowledged and the judge complained of will be given a reasonable time to respond to the complaint and given an opportunity to be heard.

16. Where the judge complained about is a member of the Committee, that judge shall have no involvement in the Committee's handling of the complaint.

17. Where it appears that a complaint may be valid and the judge complained against admits the complaint is valid, the provisions of paragraphs 20 to 22 below shall apply.

18. Where it appears that a complaint may be valid but the misconduct alleged is disputed by the judge complained against, the Committee shall appoint a Sub-Committee to adjudicate the

complaint (“the Sub-Committee”). The Sub-Committee shall consist of such non-conflicted members of the Committee and other persons as the Committee deems appropriate.

Adjudication of complaints

19. The Sub-Committee may in its discretion afford both the complainant and the judge complained against an opportunity to be heard in person before the Sub-Committee arrives at a final decision on the merits of the complaint. However, the Sub-Committee may decide complaints solely on the basis of documentary material received by it in electronic or hard copy form.

20. Where the Sub-Committee finds that a complaint of judicial misconduct has been substantiated, it shall report this finding to the Committee which may recommend to the Governor that the judge complained against should be admonished, either publicly or privately. The Committee may also in its discretion recommend such other remedial measures as appear appropriate in all the circumstances of any particular case or may recommend that no further action be taken. The Governor upon receipt of such a recommendation may either:

(a) accept the recommendation;

(b) decide that no action be taken; or

(c) decide that some other action should be taken,

and, in either case, shall as soon as practicable recommend his preferred course of action to the Chief Justice or (where the respondent to the complaint is the Chief Justice or a member of the Court of Appeal) to the President of the Court of Appeal.

21. As soon as possible after receiving the Governor’s recommendation pursuant to paragraph 20, the Chief Justice or the President of the Court of Appeal, as the case may be, shall decide what action, if any, should be taken in respect of the proven complaint and shall communicate his proposed decision to the judge complained against and afford the judge an opportunity to be heard before finally deciding what action, if any, should be taken.

22. After informing the judge complained about of the action to be taken in respect of a proven complaint, the Chief Justice or the President of the Court of Appeal, as the case may be, shall immediately inform the Governor and the Committee. The Committee shall forthwith notify the complainant of the action taken.

23. Where the Sub-Committee decides that a complaint has no merit and should be dismissed, it shall report this finding to the Committee which shall communicate its decision to the complainant and the judge complained against, and shall give brief reasons for its decision.

Complaints bringing a judicial officer's fitness for office into question

24. If a complaint appears to be sufficiently serious that, if proved, removal from office might be required, the Committee may recommend to the Governor:

(a) that the judge complained against should be suspended pending the determination of the complaint; and

(b) in the case of complaints against judges of the Supreme Court or Court of Appeal, that a tribunal be established pursuant to the provisions of section 73(4) or 78(4) of the Bermuda Constitution, as the case be.

25. In cases where removal might be required to which paragraph 24(b) does not apply, the Committee shall recommend to the Governor that a disciplinary tribunal should be established with a view to affording the judge complained against, as far as possible, the same fair hearing rights as are accorded to judges protected by sections 73 and 78 of the Constitution.

Dated this 1st day of January, 2014

Edward Zacca, President of the Court of Appeal/Ian Kawaley, Chief Justice

(on behalf of the Judiciary of Bermuda and with the concurrence of the Judicial and Legal Services Committee for Bermuda)

SCHEDULE: COMPLAINT FORM

PLEASE READ BEFORE PROCEEDING FURTHER:

1. Unless there are reasons why it believes that a complaint should be investigated, the Complaints (Filtering) Committee of the Judicial and Legal Services Committee (the JLSC) will dismiss a complaint, or part of a complaint, if it falls into any of the following categories –

- (a) it does not adequately particularise the matter complained of;
- (b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
- (c) the action complained of was not done or caused to be done by a judicial office-holder;
- (d) it is vexatious;
- (e) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
- (f) it is untrue, mistaken or misconceived;
- (g) it raises a matter which has already been dealt with and does not present any material new evidence;
- (h) it is about a person who no longer holds any judicial office;
- (i) it is about the private life of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office;
- (j) it is about the professional conduct in a non-judicial capacity of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office; or
- (k) for any other reason it does not relate to misconduct by a judicial office-holder.

2. The JLSC will not entertain any complaint which is anonymous and/or where the complainant provides no, or insufficient, contact information.

Part A – About you (the complainant)

1. Name: Mr/Mrs/Miss/Ms

2. Physical Address:

3. Mailing Address: _____ **Postal Code:** _____

4. Contact Numbers: Home: _____ **Work:** _____ **Cell:** _____

5. Email: _____

ONLY FILL OUT THIS SECTION IF SOMEONE IS ASSISTING YOU WITH THE COMPLAINT – FOR EXAMPLE A LAWYER

Name of representative: _____

Organisation: _____

Physical Address: _____

Mailing Address: _____ **Postal Code:** _____

Contact numbers

Work: _____ **Cell:** _____ **Email:** _____

Part B – Your complaint

About whom are you complaining (the judicial office-holder)?:

What happened?

Please describe the events that you want to complain about. We need to know what you say happened and where and when it happened. Please give us all the dates and as many specific details as you can remember regarding the behaviour complained of.

Part C – Further information

Supporting evidence

Please attach copies of any documents that may help us investigate your complaint (for example, letters). If you cannot do this, please tell us about such documents or other evidence and how it or they can be obtained.

Have you made a complaint about this to anyone else? (For example, the office of the Ombudsman) _____

If so, please provide details of the complaint, to whom it was made and the outcome. Please also attach copies of any correspondence relating to the complaint.

I hereby declare that the above information is accurate to the best of my knowledge.

Signature: _____ **Date:** _____

Consent to Release Information: I understand that the Governor's office and the JLSC may have to work with various individuals and agencies to investigate my complaint. Therefore I give my consent to the use and release of my complaint, any or all of its subject-matter and any additional information that the Governor's office, the JLSC or any person investigating my complaint feels is necessary to complete that investigation. I also understand that they will have to be released to the person who is the subject of my complaint.

Signature: _____ **Date:** _____

Remember: to sign and date this document; and to attach copies of any relevant documents.

FAILURE TO PROVIDE ALL INFORMATION AND DOCUMENTS REQUESTED WILL DELAY CONSIDERATION OF YOUR COMPLAINT.

Send your completed form to:

His Excellency the Governor-Attention: Executive Officer

Government House,

Langton Hill

Pembroke HM13

Or by email to: executiveofficer@gov.bm

COMPLAINTS PROCEDURE FLOW CHART



