Rules for ethical conduct of judges, their application and observance

A. General Aspects

1. Are there any ethical rules/rules of conduct for judges/magistrates explicitly expressed in the law?
   O Yes         X No

   If your answer is positive, are these rules made in the shape of
   O a catalogue       O a general wording       O both

   Quote some examples:
   ........................................................................................................
   ........................................................................................................
   ........................................................................................................

2. Are there ethical rules for judges/magistrates outside the law (e.g. in a code of ethics, code of conduct etc.)?
   X Yes         O No

   How is this “code” called? ......Ethical Principles for Judges
   ........................................................................................................
   ........................................................................................................

3. Who did elaborate and enact/make the “code”?

   The Association of Judges?
   The High Council of Justice?
   The Supreme Court?
   Parliament?
   Government?
   Others?
   ..................The Canadian Judicial Council, which is composed of all Chief Justices and Associate
   Chief Justices of each court composed of federally appointed judges in Canada.
   ........................................................................................................
   ........................................................................................................

4. If you have both a code of ethics and legally fixed ethical rules for judges/magistrates in what way do they complement one another?
   ........................................................................................................

5. If you don’t have any code of ethics, are there plans in your country to introduce one?
   O Yes         O No.
B. Contents

6. Does your code of ethics include the following principles/aspects:

<table>
<thead>
<tr>
<th>a) Independence</th>
<th>X</th>
<th>Yes</th>
<th>O</th>
<th>No</th>
<th>O</th>
<th>No, but should</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) Impartiality in general</td>
<td>X</td>
<td>Yes</td>
<td>O</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>c) Impartiality and conduct of judges in the exercise of their judicial functions</td>
<td>X</td>
<td>Yes</td>
<td>O</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>d) Impartiality and extra-judicial conduct of judges</td>
<td>X</td>
<td>Yes</td>
<td>O</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>e) Impartiality and other professional activities of judges</td>
<td>X</td>
<td>Yes</td>
<td>O</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>f) Impartiality and the media</td>
<td>O</td>
<td>Yes</td>
<td>X</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>g) Party politics and judges</td>
<td>X</td>
<td>Yes</td>
<td>O</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>h) Prowess</td>
<td>X</td>
<td>Yes</td>
<td>O</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>i) Equality</td>
<td>X</td>
<td>Yes</td>
<td>O</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>k) Competence</td>
<td>O</td>
<td>Yes</td>
<td>X</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
<tr>
<td>l) Diligence</td>
<td>X</td>
<td>Yes</td>
<td>O</td>
<td>No</td>
<td>O</td>
<td>No, but should</td>
</tr>
</tbody>
</table>

m) Others:

In case your answer is “yes”, please give some examples. a) “Judges must exercise their judicial functions independently and free of extraneous influence.

b) “The appearance of impartiality is to be assessed from the perspective of a reasonable, fair minded and informed person”

c)”Judges should not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.”

C. Violation of the Code of Ethics

7. What happens if a judge/magistrate violates a duty explicitly stated in a provision of law?

n/a.

8. What happens if a judge violates a duty stated in the Code of Ethics?

If a complaint is made by another judge, a member of the public or a member of the government, the Canadian Judicial Council considers the complaint, may order an investigation where it considers warranted, may hold a hearing if the investigation provides evidence supporting a hearing and may recommend that a judge be removed from office at the conclusion of the hearing, if appropriate. If the conduct is found to be unethical but falls short of being so serious that removal from office should result, the Canadian Judicial Council may issue a reprimand.

9. Is there any influence of the Code of Ethics on a disciplinary procedure?

...yes, a judge may be disciplined for a breach of the Code of Ethics or other unethical conduct ie. the Ethical Principles do not constitute a code of all possible offences which may lead to discipline.

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10. Are violations of the Code of Ethics made public? X Yes O No

......While acts of judicial discipline are not always made public to the press, the complainants are
made aware of the results of their complaint which often results in them providing full details to the
press.

D. Judicial Ethics

11. Is judicial ethics an issue among the judiciary? Why? Why not?

......Yes. Judicial ethics is the subject of lively and ongoing discussion among the judiciary. There is a
Committee made up of judges from across the country. Judges may put questions to this committee in
relation to anticipated conduct, in order to obtain an advance ruling on the acceptability of proposed
conduct or activities. Obtaining a positive opinion in advance of such conduct may offer a defence to
any subsequent judicial discipline
investigation.

12. Is judicial ethics an issue in the public? Why? Why not?

......Yes. The Canadian Judicial Council has publicized the Ethical Principles to the public at large.
Whenever news is published of judge being investigated or disciplined a number of media articles
result.

E. Analysis

13. Do you consider a code of ethics an useful institution for the judiciary? Why? Why no?

......Yes It assists judges in defining the limits of unacceptable conduct and provides the public with a
method of voicing dissatisfaction. While the vast majority of complaints are dismissed without an
investigation as relating to matters which are properly the subject of appeal (ie. the complainant didn’t
like a decision in a lawsuit to which he was a party) or are frivolous, the existence of a mechanism to
deal with the rare cases of judicial impropriety provides a desirable transparency to the process in the
eyes of the Canadian
public.

14. Should the IAJ elaborate and adopt a code of ethics which could serve the national
associations as a model? Why? Why not?
15. If you have a code of ethics, give some practical hints to those who are willing to introduce one (what should they take care of etc.).

Please see www.cje-ccm.gc.ca/english/publications/ethic.pdf on which you will find the Ethical Principles for Judges.

16. Other remarks on the topic:

The introduction of a code of conduct was very controversial among the judiciary. Problems remain in the discipline process in the eyes of many judges, surrounding the failure of the Canadian Judicial Council to provide full access to details of the complaint and investigation to the judge in question in advance of his/her hearing.

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Please send the answers to this questionnaire by E-Mail to the presidency of the First Study Commission and to the Secretariat of the IAJ not later than by 30-06-2004.

Mind the timetable sent to you on 02nd February 2004.