

March 14, 2019

The Honourable Chief Justice Popescul
The Honourable Associate Chief Justice Smith
c/o Norman Sabourin
Canadian Judicial Council
Via email: norman.sabourin@cjccm.ca

Dear Chief Justice Popescul and Associate Chief Justice Smith:

The Canadian Association for Legal Ethics/Association canadienne pour l'éthique juridique (CALE/ACEJ) is very pleased to respond to your invitation in Mr. Sabourin's letter dated February 1, 2019, to provide feedback on the Background Paper *Modernizing Ethical Principles for Judges*. In this response we wish to address two broad issues: substance and process.

Substance

CALE/ACEJ agrees that the current framework of the five guiding principles of Integrity, Independence, Equality, Diligence and Impartiality is sufficient. It also agrees that the format of a general Statement followed by Principles and Commentaries is appropriate. It also agrees that the language should be modernized and harmonized.

In CALE/ACEJ's view, five of the six major themes you have identified – self-represented litigants, case management/settlement consequences/judicial mediation, public engagement, professional development and post-retirement – are all deserving of inclusion in the revised *Ethical Principles*. However, we would suggest that “social media” be expanded to “technology” as a broader theme.

In addition, CALE/ACEJ urges you to consider several other issues: (i) that the *Ethical Principles* be reconstituted as a binding Code, drawing more on the directive language in the French version; (ii) that there be an explicit duty of judicial confidentiality; (iii) that there be explicit reference to reconciliation with Indigenous peoples; and (iv) that there be greater discussion of judges' obligations to promote access to justice.

Each of these suggestions requires further explanation and elaboration. However, given the generic nature of the Background Paper, and our concerns about the process, it strikes us that it would be most meaningful to provide more detailed feedback at a later date, in response to a more detailed draft, and after the CJC has received broader feedback from other organizations and individuals.

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We also note some references to “streamlining” aspects of the *Ethical Principles for Judges*. While streamlining can be desirable, it is important not to end up with a document that does not provide sufficiently specific guidance.

Process

We are concerned that the consultation process might not be sufficiently interactive. While we appreciate the current exercise is an “opportunity to provide ... views on any issue that has not yet been identified but which may merit consideration by Council,” we would encourage you to have a more open, in-person forum for a discussion of the proposed revisions. More particularly, given the generic description of the six themes in the Background Paper, such a forum would a) indicate the proposed direction the CJC is considering for each of the six identified themes and b) allow opportunity for the presentation and discussion of other proposed revisions. Ideally, such a forum would involve active engagement with a variety of stakeholders in the justice system.

We suggest that after this stage of consultation, the CJC invite further written submissions. Once these have been submitted, the CJC could then redraft the *Ethical Principles* and distribute them to the public via its website in order to provide the opportunity for feedback on the more specific proposals. In our view, it is vital that there be an opportunity to comment not only at a general level but in respect of the specific language being proposed. As with any set of ethical and professional guidelines, the particular wording used and the examples chosen as illustrations are critical choices.

We recognize that our suggestions for a revised process will both lengthen the timeframe and be more labour intensive. However, revisions to the *Ethical Principles* is a generational event. It is therefore incumbent on the CJC to ensure that the process is as inclusive and responsive as possible to ensure continued public confidence in the Canadian judiciary.

Thank you again for the invitation to provide feedback and we look forward to further collaborative discussions.

Yours sincerely,



Amy Salzyn
President, Canadian Association for Legal Ethics/Association canadienne pour l'éthique juridique (CALE/ACEJ)