

# ETHICS

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## 5. ACCESS TO JUSTICE – SOCIAL AND CULTURAL ISSUES

### People with disabilities:

- Generally rely on legal aid and CLCs, but usually located in urban areas.
- Court houses can be difficult to physically navigate (stairs, high magistrates' benches)
- systematic lack of identification of mental illnesses

### People from a non-English speaking background

- Adversarial system places a strong focus on communication
- Should have the right to an interpreter
- Asylum seekers face political barrier
- No right to legal representation
- Face detention (criminalisation of immigration when it is a UDHR recognised right)
- Lack of trust in authority

### The judiciary:

- Judicial independence essential in ensuring impartiality and objectivity in the administration of law.
- Judicial independence:  
That it is improper for any person to seek to influence a judge in the exercise of their jurisdiction (criminal offence) - That judges' salaries are fixed independently of government - That judicial pronouncements are privileged against defamation action, with the corollary that public comment or actions which assault the preservation of the dignity and functioning of the judicial system are punishable as 'contempt of court' - The adoption of court dress in courts of record (all courts other than courts of summary jurisdiction and in Chambers matters) which serve to provide a measure of anonymity and thus of apparent impartiality
- Separation of powers

- **Judicial tenure:**

It is difficult to remove a judge and the removal process is governed under section 72 of the Constitution which states:

The Justices of the High Court and of the other courts created by the Parliament:

(i) shall be appointed by the Governor-General in Council;

(ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;

## **6. ACCESS TO JUSTICE – ECONOMIC ISSUES**

**Relevant Legislation:** see wk 8 pls

**Overall justice issues:**

- The cost of legal services restricts access for those who cannot afford them
- Inability to prosecute/defend civil claim
- Inability to defend criminal charge – innocent being convicted
- A trial without access to adequate legal services is not a fair trial

**Time Billing:**

When a lawyer charges fees based on time eg by the hour.

Pros: more efficient- time is easily calculated.

Cons: a client may wish to rush things to avoid extra fees – decreases quality of service, not a fair trial

Potential for overcharging as a lawyer could waste time with a client for extra money.

**‘No Win No Fee’:**

20.2.3 must not continue to act if the client insists on giving evidence denying guilt or requires the making of a statement asserting the client’s innocence.

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