



Module 2: Why Must Judges be Fair and Impartial?



➤ Case Study: Hotel sues youths who damaged room

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Overview: Why Must Judges be Fair and Impartial?

The desired outcome for Module 2 is encapsulated in the following paragraph:

“Well done. Now you know that it is not enough for a judge to be impartial. Judges must speak and act in ways that ensure no one will doubt their impartiality. Appearances are important and judges strive to appear impartial so citizens can have confidence in their decisions.”*

(*audio feedback to each student from the judge after the successful completion of the online task at www.tryjudging.ca)

NB: all lettered Sections identified in the overview are referenced within the body of each of the 5 modules, with each module being located directly after each suggested lesson plan(s), and will be found at www.tryjudging.ca.

Module Learning Outcomes: Module 2, Section (A)

Students will:

- Explore why it is vital that judges be impartial – and appear to be impartial;
- Explore how judges conduct themselves in ways that promote the appearance of impartiality;
- Understand civil law and how lawsuits proceed through the courts.

Provided Resources for Module 2

I. Resource Materials: Module 2, Section (B)

(Note: information on the first five sections below is in Module 2 (B) of the Teacher’s guide and can also be accessed at www.tryjudging.ca. Click on “Teacher Resources”.)

- I. The Need for Impartiality
2. Maintaining the Appearance of Impartiality
 - a) Grounds for Disqualification from Hearing a Case
 - b) Conduct Outside the Courtroom
 - c) Conduct Inside the Courtroom
 - d) Community Involvement and Other Activities
3. Understanding Civil Law
4. Procedure in Civil Cases
5. Video: Case Study #2
Hotel Sues Youths Who Damaged Room
(<3 minutes) available at www.tryjudging.ca
6. Video:
Background and Script available at www.tryjudging.ca
7. Try Judging Online
interactive program for students is available at www.tryjudging.ca

8. Quiz
(embedded within the online interactive student program)
9. Additional Exercises for Classroom Use and Assignments
(these are found in Module 2 (D) of the teacher's guide and at www.tryjudging.ca)
10. Internet Links to More Resources
(these are found in Module 2 (E) of the teacher's guide and at www.tryjudging.ca)

2. Case Study: Module 2, Section (C)

To be used in conjunction with the video and the online interactive site

Case Study: Hotel Sues Youths Who Damaged Room

The case study can be accessed at www.tryjudging.ca. It is designed as an interactive exercise that can be adapted for an in-class activity an/or a written assignment. The website, furthermore, provides all resource materials for teachers in PDF format.

3. Additional Exercises for Classroom Use and Assignments: Module 2, Section (D)

All the following are elaborated upon at www.tryjudging.ca

1. Understanding Judicial Impartiality:
A Class Exercise
2. A Trip to the Principal's Office: A Class Discussion
3. Being Impartial, Appearing Impartial:
A Class Discussion
4. Judicial Conduct and Impartiality: An Exercise
5. Suggested questions for class discussion and/or written assignments

4. Internet Links to More Resources: Module 2, Section (E)

These links, found at www.tryjudging.ca, provide information on the following: ethical principles for judges, qualifications and duties of superior court judges, etc.



Module 2: Why Must Judges be Fair and Impartial?

Suggested Lesson Plans

Teaching Objectives and Learning Outcomes

Students will:

- Explore why it is vital that judges be impartial — and appear to be impartial;
- Explore how judges conduct themselves in ways that promote the appearance of impartiality;
- Understand civil law and how lawsuits proceed through the courts.

Teacher and Student Learning Materials and Resources

(Note: information on the first four sections below is in Module 2 (B) of the teacher's guide and can also be accessed at www.tryjudging.ca. Click on "Teacher Resources".)

1. The Need for Impartiality

2. Maintaining the Appearance of Impartiality

- a) Grounds for Disqualification from Hearing a Case
- b) Conduct Outside the Courtroom
- c) Conduct Inside the Courtroom
- d) Community Involvement and Other Activities

3. Understanding Civil Law

4. Procedure in Civil Cases

5. Video: Case Study #2: Hotel Sues Youths Who Damaged Room

(<3 minutes) available at
www.tryjudging.ca

6. Video:

background and script available at
www.tryjudging.ca

7. Try Judging

online interactive program for students is available at www.tryjudging.ca

8. Quiz

(embedded within the online interactive student program)

9. Additional Exercises for Classroom Use and Assignments

(these are found in Module 2 (D) of the teacher's guide) at www.tryjudging.ca)

10. Internet Links to More Resources

(these are found in Module 2 (E) of the teacher's guide at www.tryjudging.ca)

Teaching Plan and Strategy

I. Case Study: hotel suing group of students for damage caused to rooms

A. Pre-lesson Preparation:

- a. Divide the class into three (3) sections.
- b. Assign each section a role to play, based upon three opinions, and note that each group should not know what position the other groups have:
 - (i) teenagers: “Judges are a part of the establishment, man...”
 - (ii) hotel owners: “Teenagers these days are far too rowdy...”
 - (iii) John & Jane Citizen: “The owners of the hotel have plenty of money...”

B. The teacher will then show the scene from Video: Case Study #2, available at www.tryjudging.ca, showing just the youths trashing a hotel room during a party and the ensuing damage; refer to Learning Materials and Resources #5.

C. The teacher will then pose the question: “What is likely to happen when the claim for damages gets to trial?”

D. All the groups then prepare a list of reasons why they feel the way they do, and what their expectations of the judge are. Each student then writes a paragraph based on all of this, and come to class prepared to role play.

E. Set up the room so that there are three areas for the three groups to face each other.

F. Have each group explain their positions. After this initial phase, each group can challenge the positions of the other groups, keeping in mind of their expectations of a judge. Let this discussion/debate go on for 10 minutes.

G. Working backwards from the ‘research’ and ‘principles’, the teacher is to read each of the seven scenarios under evidence and ask each group: “Would the judge be in a position to hear the case if...”

Evidence:

- (i) a decade earlier, when practising law, the judge did some legal work for the large company that bought the hotel a year ago,
- (ii) the judge was recently seen dining with the hotel manager at a popular local restaurant,
- (iii) the judge lives in the same neighbourhood as the hotel manager, but they do not know each other,
- (iv) at a break in the trial, the judge invites the hotel manager to come to his office for a chat about some future consulting work,
- (v) the judge once stayed at the hotel while attending a legal conference,
- (vi) the week before, in a speech to a local service group that was reported in the media, the judge said harsh penalties were needed to battle a rash of vandalism by teenagers,
- (vii) the judge discovers that her daughter goes to the same school as the defendants and hangs out with them.

Having established a free form position based on their role play, introduce the Research Points. Ask each student to read over the research points and determine whether or not their position on judges has changed. Ask the student to explain his/her position.

Research Points:

- (i) Judges were originally prohibited from voting in federal or provincial elections because they were expected to remain totally independent from politics. Their job is to take the laws passed by Parliament and the Legislature and apply them to the facts of individual cases. Deciding on what laws should be passed, even indirectly through voting to select a party to govern, was viewed as conflicting with their job. While limits on voting have now been relaxed, many judges continue to choose not to vote for these reasons.
- (ii) “The judge is a pillar of our entire justice system, and the rights and freedoms which that system is designed to promote and protect”, the Supreme Court ruled in 2001 in the case of *Therrien (Re)*. “The public will therefore demand virtual irreproachable conduct from anyone performing a judicial function...(Judges) must be and must give the appearance of being an example of impartiality, independence, and integrity.”
- (iii) “No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to those judicial duties.” Source: Judges Act, s. 55
- (iv) Judges must conduct themselves, in and out of court, in a way that would not cause a reasonable person to conclude a judge cannot be objective and impartial in hearing a case. “A system of justice, if it is to have the respect and confidence of its society, must ensure that the trials are fair and that they appear to be fair to the informed and reasonable observer...If the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer, this will render the trial unfair.” (from the Supreme Court of Canada’s ruling in *R.D.S. v. The Queen*, 1997)
- (v) To be chosen to be a judge, an applicant must have been a lawyer for at least 10 years. In fact, most judges practice law for 20-25 years prior to becoming a judge. (red herring)
- (vi) “Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary...Judges must be and should appear to be impartial with respect to their decisions and decision-making.” Source: Ethical Principles for Judges, Canadian Judicial Council.

List of Principles:

Explain what a principle is. Ask the students what principles do they think are involved with the judicial system. Read over the following list of principles and ask the students to reflect on their own positions as the list is read

(i) Public Confidence in Court Decisions:

Citizens must have confidence that justice will be administered in a fair and impartial manner and the courts will respect the rule of law when making decisions. If judges do not act fairly, or leave an impression that their minds are made up before the case is heard, members of the public will lose faith in the ability of the justice system to resolve disputes. This can lead to citizens ‘taking the law into their own hands’, which at its worst can lead to open violence, fear, and inability to work and support oneself.

(ii) Equal Access to Justice:

While lawyers can be expensive, and it may appear that the person with the most money can hire the ‘best’ lawyer, judges must ensure that the same rules (laws) apply to all parties in a dispute no matter who represents them, or even if they do not have a lawyer.

(iii) The Appearance of Impartiality:

Judges make every effort to avoid conduct and situations that could undermine public confidence in their impartiality. They must not, by their words or actions, appear to have pre-judged a case or to favour one of the parties involved in the cases that come before them.

(iv) Problems Can be Solved Without a Lawsuit:

Everyone who has been a victim of a crime or suffered a financial loss as a result of the broken promises or negligence of another may sue. However, many situations are settled by parties coming to an agreement without suing, or before a trial starts. Other times people decide that a problem is simply too small to worry about.

(v) The Separation of Powers:

In order to fulfill their roles properly and ensure public confidence in their actions, judges should not engage in conduct which might form the substance of lawsuits they later decide. Judges also must step back and allow another judge to hear a lawsuit where they are related to one of the parties or had been the lawyer for one of the parties before they became a judge.

(vi) Limits on Public Comments by Judges:

Judges should, as a rule, reserve their public comments and opinions for the courtroom. While judges can make public appearances and speeches, they must take great care not to express opinions that could be seen as pre-judging conduct or issues that they may be called upon to decide upon in future cases.

To end the lesson, ask each student to reflect on the ‘judges and impartiality’ theme of the lesson. Each student must write a second paragraph explaining to what degree they have changed their position on the topic.

2. Critical learning materials and resources 5, 6, and 7

will enable students to fully analyse Module 2's Section (C) Case Study: Hotel Sues Youths Who Damaged Room.

The online video (approximately 3 minutes in length), subsequent online interactive programme, and associated online quiz (all found at www.tryjudging.ca), provide an excellent student-centred learning activity for teachers to use.

3. Using the Supreme Court of Canada website,

www.scc-csc.gc.ca, students can complete the assignment found in Appendix E. Students are to identify the nine supreme court justices, and then choose one judge in order to write a biography. As a concluding task, the student is to list and describe three necessary attributes of a supreme court justice.

4. Follow up activities

such as those outlined in Module 2 guide's Section (D), using the Internet links listed in Section (E) of the Module guide, can be considered for further study.

Evaluation/ Assessment

1. From 1. (above), either 1 (d) or 1 (j), or both, could be assessed
2. Quiz for online interactive programme (see Materials and Resources #8 above)
3. Exercises or assignments associated with Module 2, Section (D) and Section (E) (see Materials and Resources #9 and #10 above)



Module 2: Why Must Judges be Fair and Impartial?



Case Study:
Hotel Sues Youths Who Damaged Room

Contents

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B. Resource Materials

1. The Need for Impartiality
2. Maintaining the Appearance of Impartiality
 - a) Grounds for Disqualification from Hearing a Case
 - b) Conduct Outside the Courtroom
 - c) Conduct Inside the Courtroom
 - d) Community Involvement and Other Activities
3. Understanding Civil Law
4. Procedure in Civil Cases

C. Case Study: Hotel Sues Youths Who Damaged Room

D. Additional Exercises for Classroom Use and Assignments

E. Internet Links to More Resources



A. Learning Outcomes

Students will:

- ⊕ Explore why it is vital that judges be impartial – and appear to be impartial;
- ⊕ Explore how judges conduct themselves in ways that promote the appearance of impartiality;
- ⊕ Understand civil law and how lawsuits proceed through the courts.



B. Resource Materials

I. The Need for Impartiality

The *Charter* enshrines the right of persons accused of crimes to have their cases heard “by an independent and impartial tribunal.” This right would be meaningless if citizens did not have confidence that judges approach a case with an open mind and free of ties to those involved in a case. “The rule of law, interpreted and applied by impartial judges, is the guarantee of everyone’s rights and freedoms,” Antonio Lamer, a former chief justice of the Supreme Court of Canada, has said. “Judicial independence,” he added, “is, at its root, concerned with impartiality, in appearance and in fact.” To this end, judges must conduct themselves—both on the bench and when outside the courtroom—in a way that enhances the appearance of impartiality. The legal test that our courts apply is whether a reasonable person could conclude that the judge would be unable to be fair, objective and impartial when hearing a particular case.

2. Maintaining the Appearance of Impartiality

a) Grounds for Disqualification from Hearing a Case

Judges seek to avoid placing themselves in a conflict-of-interest situation, one where their impartiality might be questioned. Consequently they would decline to preside over cases involving relatives or close friends, or companies and organizations to which they have ties. For example, a judge with knowledge of (or owning shares in) a company involved in a lawsuit would likely declare that fact to the parties and, depend-

ing on their views, might decide to disqualify himself or herself from hearing the case—also known as “recusing.” In that same way judges would seek to avoid potential conflicts by declining to preside, for some period of time, in

cases arising from their former work as a lawyer or involving lawyers from the judge’s former law firm or place of business. After a judge is appointed, a “cooling off” period of two or more years is often recommended before the judge agrees to hear cases involving former clients, business associates or members of the judge’s old law firm. Resolving such matters is most often a matter of propriety, proximity and common sense. For example, there may be no dispute about a judge presiding over a case where his nephew works in the mail room of one of the law firms involved; whereas more difficult questions arise where the judge’s husband is a partner in that law firm.

“The rule of law, interpreted and applied by impartial judges, is the guarantee of everyone’s rights and freedoms,”

b) Conduct Outside the Courtroom

Judges must make every effort to avoid conduct that could undermine public confidence in their impartiality. The judge is “the pillar of our entire justice system,” the Supreme Court of Canada has said, and the public has a right to demand “virtually irreproachable conduct from anyone performing a judicial function.” A judge must show respect for the law in his or her private life. As well, a judge must behave in public in a manner that fosters respect for the judiciary. Judges are not expected to be hermits and are entitled to enjoy life with their friends and families. But by the same token, they

Judges must not, by their words or actions, appear to have prejudged a case or to favour one of the parties involved in a case.

must be wary of socializing or associating with anyone connected with the cases that come before them.

This is not a matter of questioning a judge's integrity, but of avoiding the *appearance* of favouritism.

Judges must not, by their words or actions, appear to have prejudged a case or to favour one of the parties involved in a case. For this reason, judges exercise caution in granting interviews to the media and in accepting invitations to speak in public. Judges are not barred from speaking in public and, indeed, it is recognized that judges can make an important contribution to public debate about the role of the courts and the importance of judicial independence. But judges must be wary of commenting on political, legal or social issues that could become the subject of a court case. If, for instance, a judge makes a public statement advocating a particular approach to the rights of a minority or youth crime, the judge might be expected to withdraw from future cases involving such issues. Such restraint is not so much to avoid embarrassment or public controversy; rather it is seen as a way to guarantee a fair trial, both in fact and in appearance.

“A system of justice, if it is to have the respect and confidence of its society, must ensure that trials are fair and that they appear to be fair to the informed and reasonable observer,” the Supreme Court of Canada noted in its 1997 ruling in the case of *R. D. S. v. The Queen*. “If the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer, this will render the trial unfair.”

c) Conduct Inside the Courtroom

Judges must maintain control over proceedings, ensuring trials and hearings are conducted smoothly and efficiently, while affording each party an opportunity to present their case as they see fit. Judges must strive to treat each party and witness with courtesy and civility. It is the judge's job to

make tough decisions, and this may lead the judge to criticize the conduct of a party or lawyer or to question the credibility or motives of a witness. It is proper for the judge to make such findings if they are reasoned and supported by the law and the evidence. In the words of the Canadian Judicial Council's *Ethical Principles for Judges*: “Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary Judges must be and should appear to be impartial with respect to their decisions and decision making.”

d) Community Involvement and Other Activities

Outside the courtroom, judges must approach community or charitable work with caution. In general, a judge may be able to serve as an officer, director, trustee or advisor to an educational, religious, charitable or civic organization, as long as the judge is not involved in legal issues, does not provide legal or investment advice, and does not participate in soliciting donations (unless otherwise approved by the judge's ethical advisory body). Since the judge would be disqualified from presiding over any case involving the organization, judges should avoid taking part in organizations that are routinely involved in legal actions.

If a judge was politically active as a lawyer, such activities must end when the person is appointed to the bench. Judges cannot belong to a political party and they cannot attend political meetings or fundraising events. As well, they must not raise money for a political party or make donations to a party. Members of a judge's immediate family may have to curtail their political activities, to ensure such activities do not undermine the appearance that the judge is impartial. Judges must refrain from signing petitions, but they are allowed to vote in elections should they be so inclined.

Judges cannot take on paying work outside of their judicial duties. The *Judges' Act* stipulates that no superior court judge “shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties,

but every judge shall devote himself exclusively to those judicial duties.” This does not prevent judges from accepting a government request to conduct a royal commission, public inquiry or other official investigation into a disaster, the misuse of public funds or other controversy. Indeed, the selection of judges to take on such roles is a measure of their independence from government and the public’s respect for their impartiality.

The Judges’ Act stipulates that no superior court judge “shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to those judicial duties.”

3. Understanding Civil Law

The civil courts settle a wide range of legal disputes that arise between citizens of a complex modern society. A person or a corporation can sue the party responsible for injuries or losses resulting from an accident, a business deal gone sour or a malicious act that falls short of a crime. For example, a dispute may arise over the sale of a home or where the survey line runs between adjoining properties. A company or inventor may claim that a rival has stolen ideas and infringed on a patent. An employee demoted or fired may sue his employer, claiming wrongful dismissal. Shareholders may sue the directors of a corporation for breaching their duty to run the company in a way that protects the interests of investors. When married couples separate, they turn to the courts to grant a divorce and to settle disputes over support payments, which parent will have legal custody of the children and the terms of parental access to the children.

Many civil actions involve claims for money to compensate for the harm that someone suffers due to the actions or failings of someone else. These are known as torts and most are based on acts of negligence that cause personal injury, such as traffic accidents and medical malpractice. To determine

whether such claims are valid, a judge or jury will compare the defendant’s conduct to the standard of care that is reasonable in the circumstances. A nuisance claim can be made against someone who interferes with a person’s right to enjoy their property—people living near a factory that produces a stench could sue for damages or for an injunction to suppress the odour. Battery is the tort of assault, and the victim of an assault or beating can sue for damages as well as file a complaint asking the police to consider filing criminal charges.

The law of contracts is concerned with the promises and duties that have been agreed to between parties. For instance, if a person agrees to buy a car from a dealership at a specific price, and the car dealer refuses to complete the transaction, the would-be buyer may have the right to sue for breach of contract. Most contracts are set out in writing but a court will enforce the terms of a valid verbal contract.

4. Procedure in Civil Cases

Civil actions start with a written application to the court or documents known as pleadings, depending on the nature of the legal action or lawsuit. The document in which a plaintiff launches a lawsuit, and pleads his or her case, is known as an originating notice and statement of claim. It names the plaintiff or plaintiffs, identifies the defendants, recites the facts and allegations that form the basis for the claim, and indicates the damages or other remedies sought. If defendants plan to fight the lawsuit, they must file a statement of defence that denies some or all of the allegations. Failure to file a defence by a certain deadline (usually within a few weeks) may cause a judge to grant a default judgment—an order requiring the defendants to pay damages to the plaintiff. A defendant may launch a lawsuit known as counterclaim, seeking damages from the plaintiff for alleged wrongdoing related to the initial claim. A defendant who contends others are fully or partly to blame for the plaintiff’s losses can file a third-party action that draws those parties into the lawsuit and adds them as defendants.

Most lawsuits are settled out of court before trial, and courts in some provinces require litigants to take part in pre-trial conferences, chaired by a judge, to explore the possibility of a settlement.

Most civil cases are bound for trial in the superior court, where there is no limit on the amount or type of damages that can be awarded to a successful plaintiff. (Small claims courts hear disputes involving smaller amounts of

money and modest claims for damages—in most provinces, these courts can deal with disputes involving no more than \$15,000.) After the pleadings stage, the two sides exchange letters, memos, experts' reports and other documents relevant to the claim. Then lawyers for each party have the right to question the opposing side's witnesses at private sessions known as examinations for discovery. At these hearings, witnesses take an oath to tell the truth but their testimony remains private unless it is produced at the trial or as part of a pre-trial hearing. This is the fact-finding stage of a lawsuit, enabling each side to assess the strengths and weaknesses of its case and to decide whether it makes sense to seek a settlement or to proceed to trial. Most lawsuits are settled out of court before trial, and courts in some provinces require litigants to take part in pre-trial conferences, chaired by a judge, to explore the possibility of a settlement. If there is no settlement, the lawsuit proceeds to a trial. [How a civil trial unfolds is discussed in the Teacher's Guide for Unit 3.]

Sometimes a party is applying for quick action, such as an injunction to stop a building from being demolished, or to have a law interpreted or struck down as unconstitutional. Since such applications focus on legal issues, the procedure is streamlined—legal arguments are filed with the court in writing and most evidence is presented in written declarations known as affidavits.



C. Case Study: Hotel Sues Youths Who Damaged Room

The following case study will be created at www.tryjudging.ca as an interactive exercise that can be adapted for an in-class activity or a written assignment. The website will provide teachers with all resource materials in PDF format as well as worksheets that can be downloaded and distributed to students. These worksheets will list the questions posed below and ask students to supply the answers based on their exploration of the website.

Scenario

A group of young persons causes extensive damage to a room in the hotel where they are staying. The hotel files a lawsuit against each guest, seeking compensation for the damage and the disruption to other guests and its business.

The goal of this exercise is to explore the need for objective decision-making and how judges conduct themselves to ensure they act—and are seen to act, by the parties involved in a case as well as the general public—with fairness and impartiality

Would the judge be in a position to hear the case if:

- 1) A decade earlier, when practicing law, the judge did some legal work for the large company that bought the hotel a year ago [Yes]
- 2) The judge was recently seen dining with the hotel manager at a popular local restaurant [No]
- 3) The judge lives in the same neighbourhood as the hotel manager, but they do not know each other [Yes]

- 4) At a break in the trial, the judge invites the hotel manager to come to his office for a chat [No]
- 5) The judge once stayed at the hotel while attending a legal conference [Yes]
- 6) The week before, when sentencing two youths convicted of criminal charges for damaging property, the judge said harsh penalties were needed to battle a rash of vandalism by teenagers [No]
- 7) The judge discovers that her daughter goes to the same school as the defendants and hangs out with them [No]

This exercise is designed to challenge students to think about what is considered proper conduct for a judge, and how a judge's relationships and activities outside the courtroom may affect his or her ability to act fairly and impartially. Just as importantly, students are challenged to consider the limits on conduct that are necessary to ensure a judge appears to others to be able to act fairly and impartially.



D. Additional Exercises for Classroom Use and Assignments

I. Understanding Judicial Impartiality: A Class Exercise

Ask five students to volunteer to be judges (or select students, if there are not enough volunteers). Ask these students to assemble behind a table or desk facing the class. The remainder of the class is to take on the role of people coming before the court in a dispute over a traffic accident, either as plaintiffs or defendants. Ask the judges to discuss why it would be difficult for them to preside over a case that involves their friends and classmates. Could they be impartial? Would they favour one person over another? Would it be possible for them to put their friendships aside and hear the case objectively? Who should be hearing this case? Pose similar questions to the rest of the class—how would they feel if their friends/classmates were sitting in judgment over them? Would they feel they have had a fair hearing if they lose their case? Would it appear that they had been given a fair chance? What would they think of the outcome of a court case if they knew that the judge was friends with those involved in the case? Who would they want to see passing judgment on whether they had broken the law or should pay damages?

2. A Trip to the Principal's Office: A Class Discussion

Ask the students to consider the following scenario: Two students are summoned to the principal's office for fighting on the school playground. Under the school's policy, fighting on school property can be punished with a suspension or expulsion.

Ask students to discuss whether it would appear that the principal acted fairly and impartially in imposing punishment if:

One of the students is the principal's nephew [No]

Both students have been previously punished for using a key to scratch the principal's car [No]

The father of one of the students plays golf with the principal on a regular basis [No]

The principal spoke briefly with the parents of both students during the school's orientation activities in September [Yes]

The parents of one of the students are active in the school's PTA and often deal with school administrators [Yes]

The principal has been overheard saying he considers both students to be troublemakers and the school would be better off they were expelled [No]

The principal rents a flat from the parents of one of the students [No]

In this exercise the principal, like a judge, must be seen to act fairly and without favouring one side or the other. This discussion can be used to stress how the appearance of partiality is just as important as the ability of a principal or judge to act fairly and impartially.

3. Being Impartial, Appearing Impartial: A Class Discussion

Use the following scenarios as the basis for a class discussion of judicial impartiality.

Scenario

A bitter legal dispute between two companies, involving millions of dollars in potential damages, reaches trial. Based on the information that follows, ask students whether the judge can or cannot hear the case, and to explain why or why not.

Should the judge slated to preside at trial hear the case if:

The judge owns shares in one of the companies? [No]

The judge's wife is the lawyer for one of the companies? [No]

The judge has been on the bench for 10 years, and members of his former law firm are the lawyers for one of the companies? [Yes]

The judge is on the board of governors of a university that has no connection with either company? [Yes]

The judge recently spoke to the local Rotary Club denouncing the kinds of business practices involved in the lawsuit? [No]

The judge was employed as an in-house lawyer for one of the companies before being appointed to the bench a year ago? [No]

The judge is an acknowledged expert in business law and has no connection with either company? [Yes]

One of the companies makes cars, and the judge drives one of its models? [Yes]

One of the companies has made large donations to a political party that the judge supported before being appointed? [Yes]

Use all or some of the circumstances set out above as the basis for a written assignment. Ask students whether, in each situation, the judge could be impartial—and would appear to be impartial—if he or she presided over the trial, and to explain why or why not.

4. Judicial Conduct and Impartiality: An Exercise

As a class discussion or written assignment, ask students whether they think the following conduct would be proper for a judge, and to explain why or why not:

A judge asks a lawyer to repeat part of his legal argument, saying she is not sure the lawyer's description of the law is correct. [Proper]

A judge attends a \$100-a-plate fundraising dinner for a political party. [Improper]

A judge notes that a trial is taking far longer than expected, and asks the lawyers to try to speed up their questioning if they can. [Proper]

A judge joins a committee set up to improve the relationship between the media and the courts. [Proper]

A judge accepts a government appointment to head the inquiry into the collapse of an unfinished bridge, which killed four workers. [Proper]

A judge agrees to be a guest speaker at a political party's annual convention. [Improper]

A judge accepts an offer to speak to a high school class about the judge's role in the justice system. [Proper]

The chief justice of a court gives a media interview to comment on whether a government plan to freeze judges' salaries is a threat to judicial independence. [Proper]

The judge hearing a criminal case does not reveal that the man on trial is her daughter's boyfriend. [Improper]

A judge criticizes the government's handling of welfare reform in a ruling that strikes down new welfare regulations because they discriminate against single mothers. [Proper]

A judge rules that a plaintiff's lawsuit is frivolous and without merit and should be dismissed. [Proper]

A judge displeased with the way a lawyer is conducting a case secretly phones the managing partner of the lawyer's firm and demands that the lawyer be replaced. [Improper]

A judge accepts a company's offer to do consulting work on legal issues. [Improper]

A judge rules that she accepts the plaintiff's testimony as true and rejects the defendant's version of events as unreliable. [Proper]

5. Suggested questions for class discussion and/or written assignments

- a) List five types of conduct that a judge must avoid in order to appear impartial.
- b) What is the legal test for deciding whether a judge appears to be impartial and can hear a case?

- c) Identify five types of legal disputes that would be classified as civil actions.
- d) What are the differences between the trial route and the application route in civil cases?
- e) What forms of political activity are off limits for judges?



E. Internet Links to More Resources

Ethical Principles for Judges. Available online, in PDF format, through the website of the Canadian Judicial Council:

http://www.cjc-ccm.gc.ca/english/publications/ethic_e.pdf

A Compendium of Law and Judges: Chapter 4: The Qualities Expected of a Judge.

http://www.courts.gov.bc.ca/legal_compendium/

The *Judges Act* sets out the qualifications and duties of superior court judges. An electronic version is available online:

<http://laws.justice.gc.ca/en/C-46/index.html>)