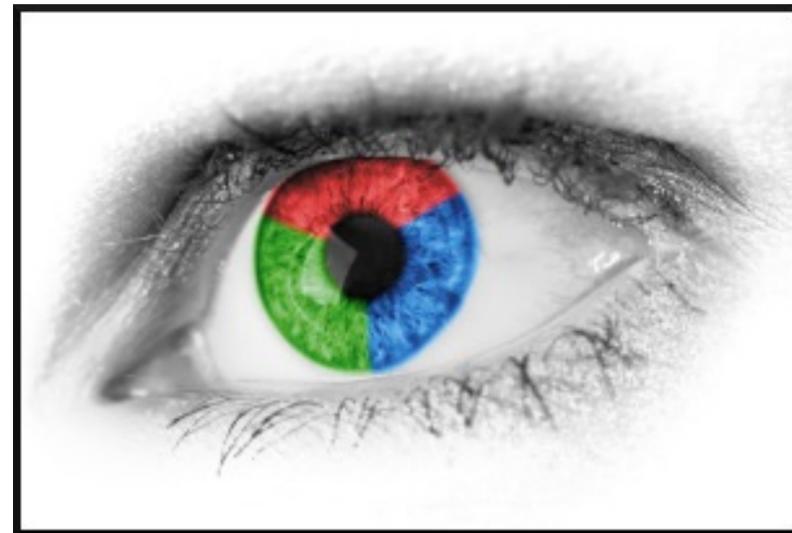




COMMONWEALTH JUDICIAL EDUCATION INSTITUTE (CJIE)

**BEHAVIOUR CHANGE EDUCATION
THROUGH
MACHINE LEARNING**



"We Don't See Things As They Are, We See Them As We Are"

Hypothetical Facts

- The accused was charged with aggravated sexual assault (rape) and tried before Judge A. He was acquitted. After a successful appeal the accused was retried and acquitted again.
- Independent observer groups complained to the judicial disciplinary authority that Judge A exhibited gender bias and made gender biased comments throughout the trial. He asked questions of the complainant during her testimony, reflecting reliance on discredited, stereotypical assumptions about how someone confronted with sexual assault would or would not behave and/or blaming the complainant for the alleged sexual assault by asking her,
 - “why didn’t [she] just sink [her] bottom down into the basin so he couldn’t penetrate [her]”.
 - “why couldn’t [she] just keep [her] knees together”. And
 - By suggesting, “if she skews her pelvis slightly she can avoid him”.
- In response to evidence that the assault caused the alleged victim pain, Judge A remarked that "sex and pain sometimes go together, that . . . that's not necessarily a bad thing".
- Further in the course of argument he expressed support for the doctrine of recent complaint and regretted the removal of corroboration as a need for conviction on a rape charge.

Legal test to be applied

Could the conduct reasonably cause the public to lose respect and confidence in the judge to carry out their duties in an impartial way?

[Bangalore Value 5 Equality; Canadian Jurisprudence - In the Matter of an Inquiry Pursuant to s. 63(1) of the Judges Act - Report and Recommendation of the Inquiry Committee to the Canadian Judicial Council 29 November 2016 and UK Jurisprudence - [2010] UKPC 24 Privy Council Appeal No 0092 of 2009, Therrien v Canada (Minister for Justice) [2001] 2 SCR 3.]

Factors to be considered in arriving at your decision

1. The public or private nature of the act and specifically whether it is contrary to a law that is actually enforced;
2. The extent to which the conduct is protected as an individual right;
3. The degree of discretion and prudence exercised by the judge;
4. Whether the conduct was specifically harmful to those most closely involved or reasonably offensive to others;
5. The degree of respect or lack of respect for the public or individual members of the public that the conduct demonstrates;
6. The degree to which the conduct is indicative of bias, prejudice, or improper influence.

[Commentary on the Bangalore Principles of Judicial Conduct, Paragraph 106]

Misconduct

Does this behaviour constitute “misconduct”?

No

Yes

Six Factors

Did you consider all six factors above in arriving at this decision ?

No

Yes

Sanctions

What is the sanction to be imposed ?

No sanction

Dismissal

Private reprimand

Public reprimand

Sanctions

***Congratulations. This is to affirm your successful response. Thank you for participating.**

You have an option to exit the test or may choose out of interest to continue taking the test. Please select an option below.

Yes - I want to continue

No - I would like to End the Test

Sanctions and six factors

Did you consider all six factors above in arriving at this decision ?

(click i for list of 6 factors)

No

Yes

NOT IN FAVOUR OF DISMISSAL

If you are not in favour of dismissing Judge A, do you think a woman would have confidence in the impartiality of this judge hearing a case involving her?

No

Yes

Self assessment

Have you ever been told you were biased against women or old fashioned in your view of women?

No

Yes

Unconscious bias

Were you ever tested for unconscious bias ?

No

Yes

Teaching Tools - Video Clips

- You are invited to take self assessing gender bias test at <https://implicit.harvard.edu/implicit/>
- Watch the inserted 10-minute film clip and indicate if you would acquit or convict (indigenous woman sexual assault case). Discuss vote and compare with that of others.
(Note: This film clip will be inserted after the meeting)
- Watch another short film clip taken from UNODC publication: <https://www.youtube.com/watch?v=oMoCfpbVels> (Note: This resource is only available in English.)

Teaching Tools - Discussion

Should the test be applicable in all jurisdictions?

No

Yes

In your view, does the answer change from one culture to another ?

Yes

No