

CLC 2023 GOA

COMMONWEALTH BAR LEADERS DECLARATION

ON

**PRESERVING AND STRENGTHENING THE INDEPENDENCE OF
THE JUDICIARY AND ON ENSURING THE INDEPENDENCE OF
THE LEGAL PROFESSION**

DECLARATION ON PRESERVING AND STRENGTHENING THE INDEPENDENCE OF THE JUDICIARY AND ON ENSURING THE INDEPENDENCE OF THE LEGAL PROFESSION

Preamble:

We, the undersigned, participants of the inaugural Bar Leaders Forum at the 23rd Commonwealth Law Conference in Goa, India (5th – 9th March 2023):

- *Recognize* that an independent, impartial, competent judiciary with integrity is essential to upholding the rule of law without fear or favour;
- *Iterate* that an independent judiciary is critical to dispensing fair and impartial justice and ensuring public confidence in the criminal and civil justice systems and the administration of justice;
- *Affirm* that an independent judiciary is a vital check and balance on executive or legislative overreach, for the protection against unlawful or arbitrary acts by State authorities, as well as for the protection of fundamental rights and freedoms of citizens;
- *Recognize* that the independence of the legal profession and the professional associations to which lawyers belong is equally fundamental to the preservation, promotion and safeguarding of the rule of law;
- *Iterate* that the Commonwealth (Latimer House) Principles on the Three Branches of Government, endorsed by the Commonwealth Heads of Government in Abuja in 2003, acknowledge that an independent and organised legal profession is essential to provide access to justice; and
- *Recognize* that any form of attack, threat, harassment or intimidation of lawyers and professional associations of lawyers, and any improper hindrance or interference with the undertaking by them of their professional activities, from any quarter, violates international standards on fair trial and restricts access to justice for those who they represent;
- *Affirm* that the international principles and standards of the independence of the legal profession, understood as the ability of lawyers to practise their profession freely, as contained in the United Nations Basic Principles on the Role of Lawyers, are applicable to all who practice law as well as their professional associations, and should be respected and guaranteed by State authorities;

Declarations:

Independent Judiciary.

1. The independence and impartiality of the judiciary must be upheld and protected by governments, including under domestic laws, regulations, and policies.
2. The appointment of judges must be performed in a manner that is transparent and which ensures only qualified individuals are selected, and the selection must be by a process that is free of any improper influence, discriminatory behaviour or inappropriate consideration.
3. The judiciary's role and function in the scheme of separation of powers in government must be protected, and no measures should be adopted to prevent the judiciary from carrying out its function effectively or interfere with that function.
4. Judicial decisions must be respected and complied with and must not be reversed or nullified, except in accordance with law and applicable domestic legal procedure in compliance with international legal standards.
5. Judges must have security of tenure, and removal from office must only be on grounds of incapacity or conduct unbefitting of the office. Any procedure for the removal of a judge must be free of political interference and in correspondence with applicable national and international standards.

Independent Legal Profession.

6. Lawyers must be free to perform all their professional duties without threats, intimidation, hindrance, harassment or improper interference or influence.
7. Lawyers must not suffer or be threatened with any criminal prosecution, civil action, or sanctions of administrative, economic, or other nature for the discharge of their professional functions in accordance with recognized professional and ethical standards.
8. Lawyers must not be identified with their clients and/ their clients' causes or interests, as a result of performing their professional duties and functions.
9. States should ensure that lawyers are at liberty to exercise their legitimate professional rights without fear of reprisals and free from any undue restrictions, including arbitrary legal or disciplinary proceedings being brought against them.
10. States must refrain from taking any action, including adopting legislation, that may interfere with the independence of lawyers and their professional associations.
11. Lawyers must have timely access to relevant documentation to effectively represent their clients in the interest of the administration of justice.

12. The sanctity of the legal professional privilege must be upheld for the communication between lawyers and their clients to be protected except where the communication is found to be contrary to law.
13. The importance of public education on the principles of the independence of the judiciary and the independence of the legal profession cannot be overemphasized.

Resolution:

As members of the legal profession play an integral role in protecting the sanctity of the legal system and judicial process, we hereby resolve that the above-stated declarations be adopted by the Commonwealth Lawyers Association to preserve and strengthen the independence of the judiciary and ensure the independence of the legal profession.

Dated: 5th March 2023

Execution:

Signed by Peter D. Maynard KC
For and on behalf of **The Commonwealth
Lawyers Association**

) Peter D. Maynard
) Signature of the President