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Vision, Leadership and Commitment:
The NJI at 20

To mark the 20th anniversary of the National Judicial Institute (NJI) – and to celebrate and recognize its achievements – the NJI has produced this collection of invited essays that you have in your hands to enjoy.

Taken together, they reflect the first 20 years of an organization acknowledged as a world leader in the design and delivery of innovative, judge-led judicial education. They also reflect a remarkable group of individuals who, in the words of Professor Rosalie Jukier (“Serving All of Canada’s Judges: Bilingualism and Bijuralism at the NJI”), have “…affirmed a strong commitment to strive continuously for ways to better serve the judiciary and, by implication, to improve the administration of justice in this country and beyond.”

Rather than having a single voice, the essays are very much the product of the different contributors, each of whom has played a key role in the development of the NJI. I thank them for their generous contribution to our history.

For the National Judicial Institute to have achieved international status in 20 short years requires visionary and dedicated leadership. On behalf of the Board of Governors, I am honoured to dedicate this collection of papers to the late Brian Dickson, P.C., C.C., former Chief Justice of Canada, and to The Honourable William A. Stevenson, retired justice of the Supreme Court of Canada, who are quite rightly considered to be the founders of the NJI. We are all deeply in their debt.

THE RIGHT HONOURABLE BEVERLEY MCLACHLIN, P.C.
CHIEF JUSTICE OF CANADA
CHAIR, BOARD OF GOVERNORS

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I RECOMMEND that a Canadian Judicial Centre, funded by both levels of government, available to serve all levels of the judiciary, be established in the form of a secretariat. The centre must be independently managed by the judiciary with the following mandate:

- The designing of judicial educational services to meet the requirements of the Canadian judiciary in skills training, continuing professional education and professional enrichment.
- Coordinating the educational activities of cooperating agencies now engaged in judicial education.
- Assisting courts and other agencies in the designing and delivery of judicial education and delivery of such services where others are unable or unwilling to do so.
- Acting as a repository for a means of distributing information relating to judicial education and to those aspects of judicial administration vested in the judiciary.
Excerpt from *Planning for the Future, National Judicial Institute Strategic Plan (2007)*

**Mission Statement**

The National Judicial Institute is an independent institution building better justice through leadership in the education of judges in Canada and elsewhere in the world.

**Statement of Values**

The National Judicial Institute will produce and deliver excellent judicial education programs and resources; will uphold *Charter* values, judicial independence and the rule of law; and will act with integrity, reliability and consistency in fulfilling its mandate.

**Organizational Goals**

1. NJI will strengthen its role as a leader in judicial education in Canada.
2. NJI’s programs and resources will be relevant to the work of the Canadian judiciary, incorporating law, judicial skills and social context, and reflecting the need for judges to be prepared to deal with emerging issues of public importance.
3. NJI will build on its position of leadership and innovation in judicial education pedagogy, delivery of program service and the use of educational technology.
4. NJI’s programs will serve all judges in all Canadian courts.
5. NJI will work to secure long-term financial stability for the organization as a whole.
6. NJI will support service excellence through effective and efficient operations.
“...those involved in the field of judicial education, including me, could not have dreamed of an operation of the size and sophistication of today’s NJI. I view what there is now with awe. I think, however, that the basics, now and then, are essentially the same.

While I have not been in touch with the judicial education scene for some time, I am inclined to say that NJI is probably one of the best, if not the best, national judicial education program in existence.” (January, 2009)

THE HONOURABLE WILLIAM A. STEVENSON, O.C.
RETIRED JUSTICE, SUPREME COURT OF CANADA
HONORARY MEMBER, NJI BOARD OF GOVERNORS
The history of judicial education in Canada is short. There were no national programmes until 1968, when the federal government first began to organize week-long summer seminars for federally appointed judges. Otherwise, judges had to turn to a poorly funded and highly variable patchwork of local court-based programmes. The Canadian Judicial Council (CJC), comprised of the Chief Justices of all federally appointed courts, was created in 1971. Its mandate included the establishment of seminars for the education of federally appointed judges. The CJC assumed responsibility for the summer seminars and approved funding for federally appointed judges to attend others, including the summer programmes offered at Queen's College, University of Cambridge, by the Canadian Institute for Advanced Legal Studies.

The large gap was partially filled when the Canadian Institute for the Administration of Justice (CIAJ) was created in 1974 at the initiative of Osgoode Professor (later Justice) Stephen Borins, who had organized the CJC summer sessions, and Professor (later Dean and President of York University) Harry Arthurs. The purpose of the CIAJ was to serve as an independent and university-based educational, planning and research arm for Canadian courts and administrative tribunals. The CIAJ played a pioneering role in developing programmes for provincially appointed judges in cooperation with the Canadian Association of Provincial Court Judges (CAPCJ). It was also responsible for a series of highly successful seminars for newly appointed judges starting in 1976, a course in judgment writing that began in 1981 and an ambitious series of seminars across the country on the new Canadian Charter of Rights and Freedoms. Western Canadian provincial court judges were served by the Western Judicial Education Centre, but its high-quality programmes were not national in their reach.

The concept of a national centre to plan and coordinate judicial education in Canada originated with the CIAJ in the late 1970s. A prescient report entitled Proposal for a National Judicial
Centre was written by Justice Willard Estey of the Supreme Court of Canada, Justice Roy Matas of the Manitoba Court of Appeal, and Professor Gerald Gall, then the CIAJ’s executive director at the University of Alberta. This report made the case for a national centre, operating under the auspices of the CIAJ, to improve judicial education programmes, encourage judges of all courts to meet together, coordinate programmes offered by various providers, and extend judicial education into neglected parts of the justice system, including court administration and administrative tribunals. The “dean” of the Institute was to be a superior court judge; a provincial court judge its “associate dean.” It was to continue existing programmes and to foster new ones where needed, such as a program on new Charter “and the litigation it promises.” The Institute’s courses were to be open to all judges, and it was to operate “under the leadership of the CIAJ.” The proposal was approved by the CIAJ’s board of directors in October 1981.

The CIAJ was not the only body to perceive the need for improvement in judicial education. In January 1980, Judge Albert Gobeil recommended the creation of a Canadian judicial college to CAPCJ. Three years later, Judge Guy Goulard suggested a similar centre but recommended that it be open to all judges, not just to those who were provincially appointed.

The case for sophisticated judicial education programmes available to all judges was made even more compelling with the enactment of the Charter. The Charter presented the judiciary with challenges well beyond the experience and education of most judges. Many in the profession, as well as many members of the bench (including its most senior members), feared that the judiciary was ill-prepared to meet these new challenges.2

It was obvious that, given the existing statutory mandate of the CJC over education for federally appointed judges, its control over the funding of programmes and the need to secure the approval and support of the chief justices and the federally appointed judiciary, the CIAJ could not bring the National Judicial Centre (NJC) into being on its own. Realizing that “the time had come”3 to test the proposal at the highest level, then-CIAJ president, Judge Sandra Oxner, and past-president Justice R.E. Holland met Chief Justice Bora Laskin in his chambers in late February 1982 to discuss the NJC proposal. Laskin, a former academic, was interested in improving judicial education, but he wanted to ensure that the CJC would play a leading role in the development of the proposed NJC. After determining through Deputy Attorney General Roger Tassé that the federal government would support the idea, provided it was approved by the CJC, Laskin asked Ontario Chief Justice William Howland to review the concept and report back.

3 Sandra Oxner to Laskin, March 1, 1982.
With remarkable dispatch over the summer of 1982, Howland prepared a detailed 35-page report, and delivered it to Laskin on August 20, 1982. Howland consulted widely. He met with CIAJ officers and various judges from both superior and provincial courts. He visited the U.S. National Judicial College in Reno, Nevada, and met with American judicial educators. Howland provided Laskin with a detailed catalogue of the hodgepodge of judicial education provided by the CJC itself, and by various courts and independent bodies, such as the CIAJ. He concluded that “the system of judicial education in Canada resembles in some respects a patchwork quilt” that compared unfavourably to the judicial education available in the United States and England, and that failed to meet the needs of the Canadian judiciary. Howland concluded that “there was a very real need for a comprehensive programme of judicial education in Canada.” He suggested that, to meet the differing needs of the various levels of courts, some differentiated programming might be required, but recommended that “[w]here the same subject matter permits, e.g. judicial writing programmes, both federally and provincially appointed judges should be encouraged to attend.” Howland recommended the immediate establishment of an NJC, limited to the education of the judiciary and not extending to court administrators or others. He suggested that the Centre should “foster and develop judicial education on a national basis for both federally and provincially appointed judges” through national seminars around the country, as well as assist the various courts to conduct their own programmes. The existing CJC and CIAJ seminars for various courts, newly appointed judges and judgment writing would be continued under the aegis of the NJC, and a seminar for new provincially appointed judges would also be established.

Howland knew that he was treading on delicate ground with respect to the CIAJ. He recognized that the proposal for the NJC had emanated from the CIAJ, which sought to operate the NJC under its own direction and which had a strong track record in judicial education. Despite that history, Howland felt that his recommendations had to be made “on the basis of what will best ensure the highest standard of judicial education in Canada on a long-term basis.” This led him to recommend the creation of a new organization, with its own staff, “concentrating on judicial education alone,” so as to “avoid a complex network of interrelated organizations.” The NJC would operate under the direction of the CJC initially, but Howland hoped that it would “rapidly reach the point where it [would] achieve independent status and have the respect of all the judiciary.”

Howland recommended that the NJC have a full-time executive director, preferably a superior court judge, an assistant director who had experience in judicial education as a provincially appointed judge, and a small administrative staff. The NJC would be jointly funded by the federal and provincial governments. He recommended an advisory board comprised of six federally and provincially appointed judges, with expertise in judicial education, nominated by the CJC, the CIAJ, and the CAPCJ to advise the executive director on matters of policy. The first task of the executive director and the advisory board would be “to design a blueprint for judicial education in Canada.”

The CJC took no immediate action on the Howland report, but the CIAJ continued to press...
its project. In January 1983, the CIAJ made a formal request to Minister of Justice Mark MacGuigan to grant a superior court judge leave “to head up the proposed National Judicial Centre (should it be started under their wing) or to allow them to proceed with an expansion of their own programs, which they see as blossoming.” MacGuigan was favourable to this request, but felt that he could not also do the same for the CJC, should it come forward with a different proposal. He pressed Laskin and the CJC for a decision: “It would be helpful to me if a decision by the Council could be made shortly on the proposed National Judicial Centre, so that I can respond one way or another to the Canadian Institute for the Administration of Justice.”

The CJC asked Associate Chief Justice James Hugessen to recommend how to implement the Howland report. He suggested that the CJC operate the NJC within its own structure, a proposal unlikely to inspire the support of non-federally appointed judges or outside agencies such as the CIAJ.

The CJC was still slow to react to MacGuigan’s apparent willingness to move the project forward. Some CJC members seemed to want to bury the idea, while others were supportive. As then-Saskatchewan Chief Justice Ed Bayda later explained, after years of effort “the whole issue became bogged down – ‘moribund.’” There were clearly conflicting views within the CJC. Some feared that creating a standalone institution might undermine the CJC’s mandate over education of judges and their own prerogatives as chief justices. There were also those who resisted educational initiatives that would include provincially appointed judges. Traditionalists strongly resisted any appearance of “training” or “instructing” judges as an unwarranted threat to judicial independence. However, many members strongly supported the initiative, including Chief Justice Brian Dickson, the CJC’s chair since his appointment as Chief Justice of Canada in April 1984.

The CJC’s Seminar Committee, chaired by Bayda, was asked to explore the idea further. Bayda saw that if the project was to get off the ground, the CIAJ and the provincial court judges had to be satisfied that the proposed centre did not involve a judicial education takeover by the CJC that would leave them both out in the cold. The CIAJ feared that it would be relegated to a secondary role or even face disbandment, while the provincial court judges had to be satisfied that “they would feel as comfortable as the federally appointed judges in calling the Centre ‘our Centre.’”

Bayda secured MacGuigan’s agreement to make a superior court judge available for one year to conduct a thorough review and make specific recommendations. The CJC committee con-

5 Mark MacGuigan to Laskin, March 25, 1983.
6 Ibid.
7 Bayda to Dickson, February 19, 1986.
8 Ibid.
xxxsulted widely and, after considering 13 names, settled on Justice William Stevenson. Stevenson was member of the Alberta Court of Appeal and the current President of the CIAJ. He had served as a trial judge for five years and had a long record of involvement in legal education as both a special lecturer at the University of Alberta and as director of the Alberta Bar Admissions Course. Stevenson would spend a year consulting with the judiciary (both federally and provincially appointed), governments and institutions currently involved with judicial education, and then report on the appropriate organizational structure of the NJC.

MacGuigan’s offer fell with the election of the Conservatives in September 1984. In October, Bayda and Howland met with John Crosbie, the new Minister of Justice, to sound him out on the idea of granting a leave for Stevenson to bring forward a concrete proposal for the NJC.9 They provided Crosbie with the reports by the CIAJ, Howland and Hugessen, and explained that the concept had been “thoroughly studied”. They argued that a national centre for judicial education made “eminently good sense…from the standpoint of both quality of education and just plain economics.” While much had been achieved “by judges stealing time from their regular duties and their private lives,” the haphazard approach to judicial education had reached its limit, and a more professional approach was needed to provide “new tools and better-educated judges” to cope with “the massive amount of new law” and increasing caseloads. They suggested that a national centre to plan and coordinate programmes and materials should produce significant cost savings. The NJC would start with a director and a small staff operating out of the CJC office, and would gradually grow over a decade to “function much like any one of the highly successful centres in the United States.”

Crosbie was asked to approve a leave of absence for Stevenson that would likely involve increasing the size of the Alberta Court of Appeal, and to provide a modest budget of $75,000 – described by Bayda as “miniscule” when compared with the money that would eventually be saved — to cover Stevenson’s administrative and travel costs. Crosbie agreed to give Stevenson a leave of absence — without promising to increase the size of the Alberta Court of Appeal — but refused to provide any financial assistance on the ground that “[a]ny additional funds available for the judiciary are being applied towards increases in judge’s salaries and allowances.”10

By this time, the idea of a national centre dedicated to judicial education had many prominent supporters. Dickson believed that a national centre was “absolutely necessary to provide continuing education to the Canadian judiciary.”11 Under his leadership, resistance to the concept among the chief justices melted away, and the CJC’s commitment picked up considerable steam. Another crucially important and supportive voice within the government was that of former law professor and future Supreme Court Justice, Frank Iacobucci, Crosbie’s Deputy Minister of Justice.

Despite this level of support and goodwill, coupled with the more or less universal agreement that some form of national body for judicial education was needed, there were many hurdles

10 Crosbie to Bayda, nd.
11 Dickson to Howland, November 6, 1985.
to overcome. As Crosbie made clear, the government was not about to write a blank cheque, and funding would be a major issue. Even Stevenson’s leave was not straightforward. Not surprisingly, Alberta’s newly appointed Chief Justice Herb Laycraft insisted on a replacement.

Stevenson knew that he had a delicate task to perform, and right from the start he was anxious to avoid stepping on sensitive toes. When accepting the assignment, he wisely made it clear that, while he was willing to take on the project, he was making only a one-year commitment, so that his proposed “design cannot be faulted on the grounds of personal ambition.”12 He also suggested abandoning the name “National Judicial Centre,” as it “conveys images of a physical school, and that impression already alienates some of those involved.”13 He suggested “Canadian Institute for Judicial Studies,” to imply a “secretariat or service rather than a facility,” and to get rid of any appearance of “bricks and mortar” or “centralism.”14

A solution was cobbled together to meet the expenses that the Department of Justice had refused to cover. The Commissioner for Federal Judicial Affairs agreed that Stevenson’s travel expenses could be funded under the Judges’ Act and between the CJC and the CIAJ, office space and secretarial support were provided. Stevenson wanted to do a proper needs survey, and so arranged for the secondment of Brian Grainger from Canadian Centre for Justice Statistics to act as research director.

The CJC formed a special ad hoc committee to work on the project, which was chaired by Howland. The committee met with Stevenson in October 1985 to iron out the details before the project was officially announced. Apparently less concerned than Stevenson about the appearance of bricks and mortar and centralism, the committee decided that, in the initial period at least, the project should be called the “Canadian Judicial Centre.” Stevenson was asked to report to the CJC’s April 1986 meeting so that the CJC could approve his “blueprint” before he proceeded with the organization and administration of actual programmes in cooperation with the appropriate sponsors at the second stage.15

In mid-November, Dickson and Crosbie jointly announced the initiation of the Canadian Judicial Centre project.16 The terms of reference indicated that Stevenson would consult with courts and judges at all levels, federal and provincial departments of the attorneys general, deans of law faculties, continuing legal education organizations, cooperating educational organizations and provincial law foundations, in order to properly assess the perceived needs of the project.

Stevenson’s task was not primarily to come up with ideas — the concept of the NJC had been studied over and over again. The project had to be fleshed out in concrete terms but, more

13 Ibid.
14 Ibid.
15 Minutes of a meeting of the Committee on the Judicial Centre, October 17, 1985.
importantly, it had to be sold to the myriad constituencies and interests currently involved in the field. This required assuring existing organizations like the CIAJ that they would not be eliminated; provincially appointed judges that they would be not be ignored; chief justices that their prerogatives would be respected; the CJC that its statutory mandate would be protected; and governments that their resources would not be drained. Stevenson travelled across the country and in nearly 100 consultations met with judges, chief justices, law professors and deans, attorneys general, and anyone else who was interested in judicial education and was willing to see him.

When Stevenson’s presentation to a meeting of federal and provincial attorneys general in mid-February and plea for financial support was received with stony silence, Crosbie saved the day by proclaiming that he took “silence as general agreement,” and that a budget and levels of contribution would be discussed at the next meeting.17

Stevenson reviewed the literature and practices in other jurisdictions and conducted an ambitious written survey of every judge in Canada. Dickson actively supported Stevenson’s work, writing letters to chief justices enlisting their efforts to encourage all judges to respond to the survey. When placing the issue on the agenda for a meeting of his own colleagues, Dickson explained that Stevenson’s “work has the full support of the Canadian Judicial Council, and I would like him to feel that he also has the support of the Supreme Court and its members.”18

Stevenson made his interim report on schedule in the form of a working paper. The key proposals, upon which views were solicited from all interested parties and constituencies, were:

- The establishment on January 1, 1987, of a centre in the form of a secretariat consisting of a full-time executive director, a program coordinator and requisite staff.
- The secretariat would be housed in a law school.
- The executive director should preferably be a judge with administrative and educational experience, and be willing to serve for three to five years to establish the centre.
- The Centre should be under the overall management of judges.
- Existing agencies should continue their judicial education endeavours, with planning and presentation assistance from the Centre. The Centre should offer its own programs, or those transferred to it by other agencies. “The CIAJ proposes that it might act as the operational arm.”
- Core funding should be provided by both levels of government and the Centre’s activities would be conducted on a fee-for-service basis.
- A steering committee representative of the entire judiciary should be established to ensure implementation.

The interim report included the results of the survey of all judges. The survey revealed overwhelming support for the idea of a single coordinating secretariat for nationally sponsored

17 Stevenson to Dickson, 14 February 1986.
18 Memorandum from Dickson, 2 December 1985.
education programs and the provision of written information in the form of bench books, manuals, newsletters and the like. There was considerably less enthusiasm for a permanent location for a residential facility and, in some quarters, outright hostility to locating the Centre in Ottawa. Some comments of the judges responding to the survey are revealing. There were the traditionalists who found the whole idea of judicial education offensive: they had been competent lawyers when appointed, did not cease to be capable of keeping “their intellects toned afterwards,” and were highly suspicious of a formal institution: “No judge should ever be trained.” But most judges welcomed the idea. Judges in small centres felt a Centre could help relieve their isolation. Newly appointed judges recognized that they could learn from the experience of others. Experienced judges thought that a national centre would promote needed information and the opportunity for exchange between those at various levels of the judicial hierarchy.

Dickson carefully managed consideration of the interim report by the CJC. He made his own views known. When writing to all CJC members to urge them to give the ad hoc committee their views, he stated: “I strongly desire that the work of Justice Stevenson on the Canadian Judicial Centre Project push forward to early resolution.” The interim report was reviewed by both the CJC’s ad hoc committee and Education Committee, then by its Executive Committee and, finally, by the full Council in September 1986.

Dickson personally endorsed Stevenson’s recommendations. He liked the idea of locating the Centre at a law school “in close proximity to top law professors, not to mention good young law students,” but carefully avoided endorsing any particular location. He agreed that a judge should be the executive director, but thought that a law professor or properly qualified lawyer could also do the job. Dickson thought that the management board should comprise judges, but that it should be independent of the CJC, which would nominate two of its six members. He noted that the CJC would approve or not approve of the Centre’s courses and, as he put it, “I do not think that we need be overly concerned about ‘our turf.’” He liked Stevenson’s gradualist approach, allowing existing programmes to continue to allow for an orderly transition that “would all depend on the good work of the Centre.” Dickson also agreed with joint federal-provincial funding, and strongly endorsed the inclusion of all judges.

The CJC essentially agreed with Stevenson’s recommendations. On the sensitive “turf” issues, the CJC endorsed the concept of a Centre for all judges but, while agreeing that the CIAJ could be involved in the Centre’s work “in some way,” nixed the CIAJ’s offer to be the operational arm of the Centre. Although the CIAJ had played a vital role in providing sophisticated judicial education and in promoting the concept of the NJC, it was not dedicated solely

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19 Dickson to all Chief Justices, April 23, 1986.
20 Dickson to Howland, June 3, 1986.
21 Dickson to Stevenson, September 15, 1986.
to judicial education, nor did it operate under the control of judges. To a certain extent the CIAJ had, in the words of its first president, become “a victim of its own success,” and while it would continue to provide its excellent newly appointed judges and judgement-writing programs, it would not assume the dominant role in Canadian judicial education.

Stevenson's final report was submitted to Chief Justice Dickson and Minister of Justice Ray Hnatyshyn, and made publicly available in October 1986. His assessment of the existing situation was unambiguously negative: “Existing Canadian programmes show uneven coverage, with significant gaps and deficiencies, duplication, and a lack of coordination, with a consequent waste of resources. There is also a shortage of substantial professional organization and presentation.” Although good work was being done, basic judicial needs were not being met.

Stevenson's final recommendations broadly corresponded with those made in his interim report. The report made a compelling case for a national organization devoted to the planning and coordination of educational programs for all judges. The Canadian Judicial Centre would be jointly funded by the federal and provincial governments, and would be available to serve the needs of all levels of the judiciary. It would be independently managed, and would not serve as the arm or agent of any existing body. It would be dedicated to the design and coordination of judicial education services and activities, to assisting courts and other agencies involved in judicial education, and to act as a repository for judicial education information and resources. Stevenson recommended an interim management board that represented the entire judiciary and that ensured respect for judicial independence. It would be chaired by the Chief Justice of Canada and include one nominee from each of the CJC, the chief judges of the provinces and territories of Canada, the CAPCJ and the Canadian Judges’ Conference (now the Canadian Superior Courts Judges Association). Its task would be to approve a budget, select an executive director and site for the Centre, decide upon the Centre’s formal constitutional or corporate structure, and develop an initial plan of operation in cooperation with the executive director. To allay the governments’ financial concerns, Stevenson proposed a modest initial annual budget in the $200,000 range, half of which was to be provided by the federal government, and half by the provincial governments. He used the term “Centre” reluctantly and, eager to allay concerns over centralization or regimentation of training, hinted that the terms “institute” or “secretariat” might be more apt.

Dickson and Hnatyshyn signed an agreement for the creation of the Canadian Judicial Centre in January 1988. Despite difficulties in securing solid commitments from all provincial attorneys general to back the Centre financially, the concept was about to become a reality. It would later change its name to the National Judicial Institute, and would expand well beyond anything that could have been imagined on that cold January day in Ottawa, when Dickson predicted confidently, and as it turns out, accurately, that the Centre would “provide an important service to judges at all levels and across the entire country,” and “enrich and expand the perspective we judges bring to bear on issues which affect the daily lives of all Canadians.”

22 McDonald, supra, at p. 477.
Some Reflections on the Launching of the National Judicial Institute

BY THE HONOURABLE FRANK IACOBUCCI, C.C., Q.C., LL.D., COUNSEL, TORYS
RETIRED JUSTICE, SUPREME COURT OF CANADA
FORMER VICE-CHAIR, NJI BOARD OF GOVERNORS; AND
HONORARY MEMBER, NJI BOARD OF GOVERNORS

It seems like 10 months, not 10 years, since we celebrated the 10th anniversary of the National Judicial Institute (NJI). I am honoured and delighted to offer some recollections about the founding and launching of the NJI in recognition of its 20th anniversary.

In 1985, while the Honourable William A. Stevenson was preparing his report, Towards the Creation of a National Judicial Education Service for Canada, I was Deputy Minister of Justice and Deputy Attorney General for Canada. As such, I met with Bill on several occasions and was an immediate supporter of his seminal report, arranging for him to present it to federal and provincial deputy ministers of justice and deputy attorneys general of Canada in October 1986.

In looking back, I must say that the thought of a judicial education centre or institution for Canada's judiciary was not universally embraced by all the provincial deputies. In fact, there were a few who were not comfortable with having Bill Stevenson present his report to our regular meeting of federal and provincial deputies. I believe the principal reason for this attitude was financial – that a centre would be costly for governments, especially if a building was to be part of the required infrastructure. Moreover, there was evidence of a certain cynicism about the real need for judicial education, and an expressed concern that the initiative could descend into paid trips for judges to exotic locations. Of course, none of that – buildings or exotic sites – has ever materialized.

Fortunately, the federal government, led by the two outstanding Ministers of Justice I served, the Honourable John C. Crosbie and the late Right Honourable Ramon J. Hnatyshyn, were most enthusiastic in their support of a national body for judicial education. Their support of the project was of fundamental importance; of course, of even greater importance was Bill Stevenson's founding report, which was not only extremely well crafted but also logically and realistically presented, without trying to create anything but a valuable resource to improve the judiciary of Canada without frills or extras.

The third factor in the founding of the Canadian Judicial Centre – which was the original name of the NJI – was the determination of the Canadian judiciary to get behind the project. Here, the leadership of the Right Honourable Brian Dickson was critical; as Chief Justice of

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Canada, he gave his unqualified endorsement of the initiative. The prestige of Chief Justice Dickson’s office and his own stellar reputation were central to the acceptance of the proposal by the federal and provincial governments.

It was a happy occasion for all involved when the letters patent of the Canadian Judicial Centre were issued in April 1988, and when Mr. Justice T. David Marshall became its first Executive Director.

The organization formerly known as the Canadian Judicial Centre has undergone many changes since its inception, including: the name change in 1991 to the National Judicial Institute, to distinguish it from the Canadian Judicial Council; the two changes of NJI premises to accommodate its growth and successes – from its original, cramped quarters at the University of Ottawa to its eventual headquarters on Albert Street; and the transitions that have occurred in the leadership of the NJI.

The NJI has been most fortunate to have had a most distinguished group of Executive Directors, beginning with Justice David Marshall, who had the most challenging task of getting the NJI started; he more than rose to the challenge, and did much to define the role. He was succeeded by Madam Justice Dolores M. Hansen, who led the NJI in periods of greater growth and development, and made outstanding contributions. George Thomson, Q.C., succeeded Justice Hansen and added great value and distinction to the expanded offerings and activities of the NJI. With a long association with judicial education, Madam Justice Lynn Smith succeeded George, and brought about significant progress for the institute. And now, with the Honourable Justice Brian W. Lennox at the helm, the NJI continues to be in good hands. With Brian’s leadership, the future of the NJI is bright. The Canadian judiciary and the Canadian public owe a great debt to the Executive Directors of the NJI for their dedication and commitment to the improvement of judicial education in Canada.

What is quite remarkable to me is that, through all the challenges and changes that have taken place in leadership, curriculum, funding, and many others, the constant has been the dedication of the NJI’s staff and the excellence of the courses and programmes that the NJI has developed.

Again in looking back, some core values associated with those decisions were important. First and foremost was the belief that the NJI should exist for both provincially and federally appointed judges, and that it must reflect the bilingual, bijural make-up of the Canadian judiciary. At times, living up to that foundational belief has not been easy. For example, funding for judicial education programmes for the federally appointed judiciary has been more available than that for provincially appointed judges; nonetheless, the NJI has always strongly stood for support for both provincially and federally appointed judges.

Second, the programmes have always been designed and developed with volunteers – namely, judges from across Canada – and this has greatly accounted for the tremendous success of the programmes.

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Third, the costs of the NJI and its programmes have been extremely well managed to ensure as much efficiency and economy as possible. In short, there have been no “boondoggles,” as some feared when the concept of the NJI was initially discussed.

Fourth, the transformation of the NJI from an organization with a domestic focus to one that includes an international focus has proved to be beneficial. The addition of the International Cooperation Group was done in a gradual and calculated way, so as not to impair the increasing demand for courses and programmes from all sectors of the Canadian judiciary. The rising demand for international involvement by the NJI is evidence of the respect for and reputation of the Canadian judicial system abroad, and of the outstanding caliber of the NJI’s courses and programmes.

At the risk of revealing some bias, I would like to mention the important role of the Chief Justices of Canada in the leadership of the NJI throughout its development: Chief Justice Dickson at the conception and birth of the organization; Chief Justice Lamer during its infancy and early development; and Chief Justice McLachlin at its adolescence and coming of age. All three Chiefs have played pivotal roles in the NJI’s history and evolution, and deserve our thanks and appreciation.

In addition, the members of the Supreme Court of Canada (Justice Stevenson, myself, Justice Michel Bastarache and Justice Ian Binnie) who have so far served as Vice Chairs of the NJI have helped to underscore the importance of judicial education in our country. All the many judges and colleagues who have served on the Board of Governors with great commitment and much effort also deserve to be recognized and thanked for their many contributions.

I conclude these reminiscences on a more personal note. Since its beginning in the mid-1980s up to my retirement from the Supreme Court in 2004, I have been associated with the NJI. I have had the privilege of working closely with Chief Justices Dickson, Lamer and McLachlin, with the Honourable Bill Stevenson, and with all of the talented Executive Directors of the NJI and members of the Board. I feel especially blessed by my association with the NJI over the 20 years of its existence, and am immensely proud of its glittering array of accomplishments and contributions. To think of how it all started, and the path that judicial education in Canada has taken in 20 years, is both nostalgic and deeply satisfying. So much is owed to so many for all this, and I congratulate everyone who has been involved with the noble mission of the NJI to make our judges and the administration of justice in Canada better for all Canadians.

Happy 20th, NJI.
Early Beginnings:
National Judicial Institute

BY THE HONOURABLE JUSTICE T. DAVID MARSHALL
FOUNDING EXECUTIVE DIRECTOR, NJI
SUPERIOR COURT OF JUSTICE (ONTARIO)

The National Judicial Institute had a humble but auspicious beginning. Metaphorically, the seed was small and sometimes sown on rough soil.

In the 1970s, and for the next two decades, there were, in the western world, stirrings and suggestions in the literature that perhaps common law judges were in need of some form of initial and continuing education. The idea was by no means popular everywhere.

A very early and prescient article on Canadian judicial education was written by The Honourable Edson Haines, who was at that time, a judge of the high court of Ontario. In his article, he foresaw much of what has actually transpired, as well as some things that may yet transpire, in judicial education in Canada. Justice Haines believed that judges are not born, but are rather a product of growth in office. There is much to be said for this opinion, and it is, of course, a strong argument for judicial education.

At the time Justice Haines wrote his seminal article, England had no system of judicial education at all. Justice Haines reasoned that since Canadian judges are appointed from various places, including the crown office, the government service, academia and specialty practice, there will be clear gaps in their experience. He set out other reasons for judicial training, such as the benefit of exchanging ideas and tactics. Seminars in Canada began to come about in response to these clear rationales for judicial education that were appearing at the time.

1 There are many examples. The Canadian Bar Association Gender Equality Task Force Report on “Gender Issues in the Legal Profession” (1994) is but one recent example. The trend toward educating common law judges was an international phenomenon. See, for example, "Judges Need Trade School” (13 April 1992) Nat’l L.J. 15. For a review of recent developments and growing interest in the Commonwealth, see Continuing Judicial Education: A Review of Practice & Potential in the Commonwealth, The Commonwealth of Learning, Box #10428, Vancouver, British Columbia, Canada V7Y 1K4. See also footnote 2.
3 Since that time a growing system of continuing education has been put in place. In 1979 the Judicial Studies Board was set up under the Lord Chancellor’s Department: see M. Zander, A Matter of Justice: The Legal System in Ferment (Oxford: Oxford University Press, 1989) at 123.

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With the advent of the first judicial council, which was implemented under the Judges Act in 1971, this new body began to consider and fund certain courses.

As well, by the 1970s, some of the provincial courts were already preparing and delivering their own seminars. At about the same time, the Canadian Institute for the Administration of Justice (CIAJ) was formed. This non-governmental body established an orientation course that was very successful.

The developments I have outlined, along with similar initiatives, set out in a very general way the state of judicial education in Canada prior to the creation of what became the National Judicial Institute in 1987.

Some of the reasons for the Canadian Judicial Council (CJC) wishing to establish the Institute are the general reasons for education I have referred to. As well, I believe it is fair to say that the council of chief justices was not satisfied with the CIAJ leading the delivery of judicial education programs. I am sure they were reluctant to entrust the education of Canadian judges to a voluntary society, made up of law professors, lawyers and many other non-judges. As well, the CIAJ had lost the participation of many provincial court judges very early on. Chief Justice Brian Dickson, who by this time was chairman of the CJC, and was in effect directing developments, always believed that the judicial education institution to be established should be for all judges. This generous and wise counsel in the 1980s was by no means shared by many federally appointed judges – nor by some of the provincial courts. Put politely, neither court was inclined to break bread – or take courses – with the other.

Overcoming this problem was indeed a major challenge for the early years of the Institute. Chief Justice Dickson, however, never wavered. He was a man who lived far above petty animosities or any idea that there were different classes of judges or people. He was the essence of egalitarianism. I would also like to say more about Justice Dickson.

He chaired the board of the Institute for most of the two three-year terms I was executive director. Mr. Justice Dickson was a singular leader. He had time and interest for every issue,

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6 As an example Chief Judge Hayes, later Justice Hayes, carried on an extensive program for Ontario Provincial Court judges for many years. As well, in 1974 the Canadian Association of Provincial Court Judges was established and Judge Sandra Oxner was the first Education Chair.
7 A successful judicial writing program was established early on by the CIAJ.
8 See McDonald supra at p. 477.
every person involved with the Institute, and certainly every judge. If a phone call was required to encourage a province, a functionary or court to join us, Justice Dickson was prepared to intercede. He was an immense force for the development of a truly national system of judicial education for Canada.

To return to my story, the National Judicial Institute was launched following three national studies of judicial education, some sponsored by the Canadian Judicial Council. Judicial surveys, as well as these reports, all repeated that there was a need and a desire on the part of judges for more judicial training. The courses that had been available up to this time were described as ad hoc, in time, place of delivery and subject matter. A large proportion of Canadian judges, it was found, were not taking part in judicial education at all, from the beginning to the end of their careers.

The Board for the new Institute was to have four members, representatives of various judicial constituencies: one from the Canadian Judicial Council; one from the judges’ conference, an association of federally appointed judges (precursor to the Canadian Superior Courts Judges Association); one from the Canadian Association of Provincial Court Judges; and one chosen by the chief judges of the provincial and territorial courts. The chairperson was to be the Chief Justice of the Supreme Court of Canada, also a member and chair of the judicial council. Chief Justice Brian Dickson, of the Supreme Court of Canada at that time, was the first chair.

Funding for the Institute was to be provided 50 per cent by the federal Department of Justice and 50 per cent by each of the provinces and territories. This had been agreed to before launching the Institute.

From the beginning, funding for the Institute was terribly inadequate and, as one would suspect, remained a serious problem. A small number of provinces were reluctant to pay for the service. Some preferred to fund education for their own provincial court judges, in their own province, rather than to support the national effort. Some of the judges preferred this local control and supported the provincial executive in funding education locally as opposed to financing a national institution. That having been said, the growing presence of the national body allowed the provinces to choose the content of programs and, in many cases, utilize courses already developed by the Institute, with little cost to themselves. Very soon all the provinces and territories did support the national effort. By the end of its first year, the Institute was the leading provider and coordinator of courses for all judges in all the courts.

On a more personal note, in 1986 I received a letter, sent to all federally appointed judges, seeking someone to act as the Institute’s first executive director. In my reply, I remember saying that I expected that two of my law teachers, whom I respected, and who were now

9 It was originally called the Canadian Judicial Centre. This was changed in 1990 to the National Judicial Institute.
10 The last of these was prepared by Mr. Justice Bill Stevenson, as he then was.
12 Three of the five members were then chief justices or chief judges.
judges, would be more qualified than I, and that I would be very glad to assist. One of my teachers had been Walter Tarnopolsky, another was Derek Mendes da Costa. Either would have been a superb director.

In any event, in due course I received a letter inviting me to the Chambers of the Supreme Court of Canada for an interview. As the day of the interview approached, I recall I was busy with a jury on a double murder trial on Baffin Island. It was late in the day when the trial ended. That same night, I flew to Ottawa, scheduled to arrive early for the interview. Unfortunately, there was fog in Ottawa and we had to land at Mirabel, near Montréal. I secured a cab and we set out for Ottawa. I expected to be, and was, late for my interview. I was the last person to be interviewed, but when they heard the trouble I had getting there, and that I came without sleep, a shave or change of clothing, perhaps their hearts were touched.

In due course, I was informed by Robert Sharpe, now Justice Sharpe of the Ontario Court of Appeal, that I was appointed. I was of course delighted and excited by the challenge that lay ahead of me.

My family and I moved to Ottawa as soon as I could be replaced in the north, and we immediately began to put together a staff and space for the Institute. In a short amount of time, I found wonderful staff and we began delivering programs.

There were two great challenges. I have mentioned the first one — to get funding. The second challenge was to secure the support of the provincially appointed judges. We began with just $150,000 from the federal government, and the rest had to be raised by solicitation from the provinces and territories, or on the basis of courses. Day after day I visited deputy ministers, attorneys general and judges across Canada. It was soon clear that the idea of the National Judicial Institute was an idea whose time had come. Everyone helped and soon the pieces came together.

Courses were developed one after another in areas of the law, including those that sensitized judges to evolving values, such as Aboriginal rights, women’s rights, and respect for Canada’s diverse cultures.

Before long, our Institute developed an international reputation. It was only the Americans who had established an earlier system of judicial education. We were soon visited by judges from many countries, and invited to discuss our Canadian initiative.

I remember Mr. Justice Mustill of the English Court of Appeal, and later the House of Lords, visiting our Institute. A most English thing happened when he spent a weekend at our home in Cayuga. I remember asking Justice Mustill if I could take him in the morning to see Niagara Falls. “No,” he replied. “I have seen that before.” He said he had noticed some weeds in our garden, and that what he would like to do was to get on his hands and knees and weed the garden — which he did!

In a short time, the NJI was invited to go to South America, Europe and Africa to assist in setting up courses for judges. Working at the Institute was a wonderful opportunity and a
chance to be of service not only to the judiciary, but also to all Canadians. All those involved sensed the work was important and the challenge immense.

I must say a word about the Board. Members included such people as Chief Justice Lorne Clark, Chief Justice William Howland and Chief Judge, as he was then, Fred Hayes. The Board members were mentors to us. At every hurdle we met, they supported us wisely and kindly. I have warm memories of the Board, the staff and, of course, the judges we served.

I would end by saying that the great architect of the National Judicial Institute was Chief Justice Dickson. More than a judge’s judge, he was a gentleman’s gentleman. He touched all of us who had the privilege of working with him at the NJI.
La Cour supérieure du Québec et l’Institut national de la magistrature

PAR L’HONORABLE FRANÇOIS ROLLAND, JUGE EN CHEF
COUR SUPÉRIEURE DU QUÉBEC

Bien que l’Institut national de la magistrature fête ses 20 ans et que des juges de la Cour supérieure du Québec participent à ses activités depuis sa création, ce n’est que vers la fin des années 1990 que notre Cour a eu recours aux services de l’Institut national de la magistrature pour qu’il fasse partie intégrante de la formation des juges.

C’est avec le programme de formation sur les réalités sociales, adapté à la Cour supérieure du Québec, que les juges ont réalisé l’importance d’un organisme spécialisé dans la formation des juges, par des juges.

Ainsi, dès 1996, des représentants de la Cour ont participé à un comité consultatif et à des groupes de travail pour mettre sur pied des programmes de sensibilisation aux réalités sociales.

C’est dans ce contexte que ces collègues se sont familiarisés avec les rudiments de la formation des formateurs et la nécessité d’offrir une formation qui répond aux besoins particuliers des juges.

En 1999, l’assemblée annuelle des 180 juges de la Cour avait pour thème : « Rendre justice dans une société diversifiée ». Ce programme, mis sur pied par l’INM et adapté à la réalité du Québec, a permis aux juges de constater la grande utilité – voire même le rôle essentiel que joue l’INM dans la formation des juges. Les juges n’avaient jusqu’alors été que peu sensibilisés aux réalités sociales et à leur importance dans un contexte judiciaire.

Ce programme, d’une durée d’un peu plus de deux jours, a démontré la nécessité de requérir les services de l’INM pour tous les programmes de formation dans le cadre des assemblées annuelles et semi-annuelles de la Cour.

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Lorsque la Cour supérieure a mis sur pied son système de Conférences de règlement à l’amiable, en 2001, elle a conçu, avec l’Institut national de la magistrature, un programme de formation adapté aux besoins des juges du Québec. Ce programme de formation a connu un tel succès qu’il est offert, depuis 2007, conjointement à la Cour supérieure et à la Cour du Québec.

En 2003-2004, la Cour supérieure, de concert avec l’INM, a organisé une formation intitulée : Rendre un jugement séance tenante. Cette formation est maintenant offerte deux fois par année et fait partie de la formation obligatoire.

Depuis 2005, la Cour supérieure a aussi offert des cours de gestion de l’instance élaborés avec l’INM. Ces formations sont offertes aux collègues deux fois l’an.

Les juges de la Cour supérieure du Québec qui participent à des activités de coopération internationale reçoivent également de l’INM quant à l’approche et au rôle des participants.

Les responsables de la formation à la Cour participent à des séances de formation sur les différentes techniques utilisées en enseignement pour la rendre pertinente et intéressante.

On constate, de ce qui précède, que la Cour supérieure du Québec a intégré l’INM à ses programmes de formation et a pu ainsi offrir aux collègues des programmes qui répondent à leurs besoins et attentes.

La Cour planifie un nouveau programme de formation sur les réalités sociales pour l’offrir aux collègues dans le cadre de la prochaine assemblée annuelle, puisque plus de la moitié de la Cour s’est renouvelée depuis 1999.

Je souhaite remercier l’Institut national de la magistrature de nous avoir fait réaliser, en raison de la qualité de ses services, l’importance des modèles de formation structurés répondant à des besoins précis.

Il s’agit là d’une ressource indispensable permettant à la Cour de réaliser sa mission, qui se lit comme suit :

« La Cour supérieure du Québec est une institution accessible à tous les justiciables. Ses juges sont compétents, empathiques, adaptés aux réalités d’aujourd’hui et fiers d’en faire partie. »

Bravo à l’INM qui célèbre ses 20 ans, et longue vie!

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L’INM et la Cour du Québec : quatre années de complicité

PAR L’HONORABLE JEAN-FRANÇOIS GOSSELIN
JUGE À LA COUR DU QUÉBEC
ASSOCIÉ JUDICIAIRE ET EXPERT-CONSEIL À L’INM

C’est en 1988 qu’est créée la Cour du Québec, issue de la fusion des quatre tribunaux qui regroupent jusque-là les juges de nomination provinciale : la Cour provinciale, la Cour des sessions de la paix, le Tribunal de la jeunesse et le Tribunal de l’expropriation.

Nait ainsi une nouvelle institution judiciaire polyvalente et très décentralisée comptant, à l’époque, 292 juges qui exercent dans 58 palais de justice, en plus de desservir une quarantaine de localités autochtones et/ou isolées par l’intermédiaire d’une Cour itinérante, dont celle dispensant la justice dans les circuits de la Baie-James, de la Baie d’Hudson, de la Baie d’Ungava et de la Basse-Côte-Nord du fleuve Saint-Laurent.

Pendant les années qui suivent, des efforts considérables sont déployés par les juges en chef Albert Gobeil et Huguette Saint-Louis pour que l’ensemble des juges de nomination provinciale aient accès, en français, à des programmes d’accueil, de formation et de perfectionnement, l’objectif étant d’une part d’assurer une harmonieuse intégration des nouveaux juges au sein de la Cour unifiée, et d’autre part de permettre à chacun de maintenir et de développer les connaissances et les aptitudes requises pour l’exercice d’une fonction judiciaire faisant désormais appel à la polyvalence des juges.

Est donc mis sur pied, d’abord par le Conseil de la magistrature du Québec, puis par la Cour du Québec elle-même, grâce aux budgets mis à sa disposition par le Conseil, un ambitieux programme d’accueil, de formation et de perfectionnement. Sont ainsi dispensés, année après année, une vingtaine de séminaires et d’activités de formation auxquels participent, bon an mal an, plus de 90 pour cent des juges de la Cour.

C’est par ailleurs dans ce contexte particulier qu’il faut situer l’adhésion tardive de la Cour du Québec à l’Institut national de la magistrature.

L’Institut, qui fête cette année ses 20 ans (tout juste un an après la célébration du vingtième anniversaire de la Cour du Québec), s’ouvre en effet rapidement aux juges canadiens de nomination provinciale, après avoir été initialement créé pour satisfaire en premier lieu les besoins en formation des juges de nomination fédérale. Mais, comme elle dispense déjà un
programme complet de formation en français, la Cour du Québec ne sent pas, avant 2003, le besoin d’adhérer formellement à l’INM. Il faut dire que l’ère est alors à la rationalisation budgétaire: ni le Conseil de la magistrature, ni le Ministère de la Justice du Québec n’envisagent d’un bon œil un potentiel dédoublement des services et des coûts.

Il faudra attendre l’entrée en fonction, en 2003, d’un nouveau juge en chef, l’honorable Guy Gagnon, pour que la Cour du Québec affirme son intention d’intégrer officiellement les rangs de l’Institut national de la magistrature, sans toutefois compromettre la pérennité du programme de formation qui, au fil des ans, en est venu à satisfaire totalement ses besoins primaires. Ce sera dès lors sous l’angle de la complémentarité, plutôt que de l’exclusivité, des services que l’adhésion sera finalisée.

Il est alors convenu, entre l’INM et la Cour, que la contribution de la Cour du Québec à la mission de l’INM prendrait la forme, en plus d’une cotisation, d’un prêt de services dans le cadre duquel un juge de la Cour serait dégagé à mi-temps auprès de l’INM.

C’est ainsi que, de 2005 à 2007, puis de 2007 à 2009, les juges Odette Perron et Jean-François Gosselin assument successivement, en marge de leurs fonctions judiciaires habituelles, la responsabilité d’associé judiciaire et d’expert-conseil auprès de l’INM. Ils peuvent ainsi participer non seulement à l’organisation et à la tenue de diverses activités de formation destinées à l’ensemble des juges canadiens, mais aussi à la planification, à l’élaboration et au développement de nouveaux programmes, ainsi qu’à la vie interne de l’INM et de ses nombreux comités et forums.

Cette collaboration unique produit par ailleurs des fruits dont les deux organisations peuvent concrètement bénéficier: tous les programmes de formation de l’INM qui sont complémentaires à ceux de la Cour peuvent désormais être fréquentés par les juges de la Cour du Québec, lesquels sont quant à eux davantage sollicités dans l’élaboration et la planification des activités de formation de l’Institut.

En outre, grâce à l’ouverture et au leadership de l’INM en matière de formation judiciaire, la Cour du Québec participe maintenant à des programmes conjoints avec d’autres Cours de justice qui, au Québec et au Canada, assument des compétences comparables.

C’est ainsi que, sous l’égide et la responsabilité de l’INM, se tiennent désormais à chaque année un séminaire conjoint Cour supérieure du Québec et Cour du Québec en matière de conférence de règlement à l’amiable, et à chaque deux ans un séminaire conjoint Cour de justice de l’Ontario et Cour du Québec en matière criminelle et en matière de jeunes contrevenants (en alternance). Et que, aussi, se profilent à l’horizon, pour 2010, deux autres séminaires conjoints, l’un avec la Cour supérieure du Québec en matière d’audiences complexes et difficiles,
et l’autre avec la Cour canadienne de l’impôt en matière fiscale. Car, peut-être l’ignore-t-on, la Cour du Québec exerce, en fiscalité québécoise, une compétence d’appel analogue à celle exercée par la Cour canadienne de l’impôt en matière de fiscalité fédérale.

Uniques et enrichissants à tous égards, ces partenariats entre Cours de justice constituent par ailleurs une éloquente illustration des immenses possibilités qu’offrent, à toutes les instances judiciaires du pays, l’INM et ses multiples ressources intellectuelles et matérielles.

C’est d’ailleurs ce sur quoi, devant les quelque 500 juges réunis dans le cadre du Congrès de la magistrature tenu l’automne dernier à Québec en marge du 400ième anniversaire de fondation de la Ville, insistait le juge en chef Gagnon, alors qu’il soulignait le 20ième anniversaire de l’INM, la richesse de ses accomplissements, le dynamisme de son équipe, ainsi que le leadership inspiré que lui insuffle son directeur général, l’honorable Brian Lennox.

Tout cela démontre bien que, avec un peu d’imagination et beaucoup d’ouverture d’esprit, ce qui était perçu à l’origine comme un obstacle s’est avéré, avec le temps, être une remarquable occasion de parfaire l’offre de services, en matière de formation judiciaire, destinée aux juges québécois de nomination provinciale.

La formule, de type gagnant-gagnant, profite ainsi non seulement aux juges de la Cour du Québec, mais aussi à la magistrature en général et, finalement, aux justiciables, qui sont les ultimes bénéficiaires des activités de formation judiciaire.
Avril 2005, Victoria :
un partenariat prend naissance

PAR L’HONORABLE JUGE ODETTE PERRON
COUR DU QUÉBEC
CO-ÉDITRICE DU « JOURNAL DES JUGES PROVINCIAUX DE L’ASSOCIATION CANADIENNE DES JUGES DE COURS PROVINCIALES » ET ANCIENNE ASSOCIÉE JUDICIAIRE DE L’INM

À l’occasion d’un séminaire de l’INM organisé conjointement avec l’Association canadienne des femmes juges, j’ai eu le plaisir de rencontrer George Thomson, alors directeur général de l’Institut. Entre deux tasses de café, des conférences enrichissantes, et des échanges soutenus, il me parle d’un projet qui lui tient profondément à cœur, l’entrée et la représentation de la Cour du Québec dans l’INM.

La discussion est alors très générale — comment accueillir cette Cour dans les girons de l’INM. Il faut comprendre que les juges de nomination provinciale du Québec, ayant eux-mêmes un programme de formation, ne participaient pas forcément aux programmes de l’INM.

Notre bon ami George a alors songé à élaborer un protocole avec la Cour du Québec en vue d’obtenir les services à demi-temps d’un juge afin de permettre à cette cour de joindre les rangs de l’Institut. C’était une première!


Les discussions se sont déroulées tout au cours de l’été et voilà qu’à partir du 1er septembre 2005, la Cour du Québec et l’INM ont signé un protocole offrant ma collaboration à l’Institut pour la préparation de séminaires avec l’équipe en place de l’INM, pour la présentation d’activités de formation et pour la participation aux réunions administratives en vue d’analyser les stratégies futures de l’organisation.

Quant à mon profil professionnel je continuais à siéger à mi-temps et l’autre portion de ma tâche était dévolue à l’INM.

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Je me souviendrai toujours de ma rencontre avec ma co-équipière du Québec, la Professeure Rosalie Jukier, prêtée tout comme moi par son institution, l’Université McGill. Toutes deux du Québec, habitant près de la région de Montréal, nous nous étions entendues pour nous rendre ensemble à Ottawa afin de rencontrer l’équipe au bureau alors situé sur la rue Laurier. Le voyage a été révélateur: que de bagage en commun, que de joie à entreprendre ces nouvelles fonctions, que d’inconnu mais ô combien de merveilleux défis à surmonter. C’est avec elle que j’ai partagé ces deux mémorables années. J’ai vraiment apprécié son énergie et son professionnalisme.

L’accueil au siège social de l’Institut dirigé alors par madame la juge Lynn Smith de la Cour Suprême de la Colombie-Britannique a été au-delà de mes espérances. Quelle structure, toutes ces adjointes, ces responsables d’activités, ces petits «bourdons» expérimentés, dynamiques et jovials.

En quelques secondes, je faisais partie du tourbillon. Par chance, mon premier séminaire portait sur le jugement rendu séance tenante orchestré pour les juges de la Cour supérieure du Québec. Il s’est tenu du 19 au 21 septembre 2005 dans la ville de Québec. Mon adjointe, Suzette Besner, a été une perle, douce, discrète et efficace. Elle m’a accompagnée pendant deux ans à cette activité. Je la regrette encore aujourd’hui et je songe à elle très très souvent.

Puis en novembre, j’ai assisté au séminaire offert pour les juges de nomination provinciale nommés au cours de l’année précédente. Cette activité chapeautée par l’INM était organisée de concert avec l’Association canadienne des juges de cours provinciales (l’ACJCP). Quelle belle cohorte de sang nouveau, de talents en développement et de candidats éveillés, humbles et prêts à apprendre. Au cours des deux années de mon mandat, j’ai apprécié ces moments particuliers avec les nouveaux juges. Il faut dire que le lieu de la formation à Niagara-on-the-Lake était enchanteur…même en novembre.

Bientôt mon rêve le plus fou allait enfin se réaliser: tenir un séminaire regroupant des juges du Québec et de l’Ontario, traitant d’un sujet commun les emprisonnements avec sursis, critères et modes d’application, tout ceci tantôt en français, tantôt en anglais, les participants devant comprendre les deux langues mais pouvant s’exprimer dans celle de leur choix.

Quelle joie de constater que le projet que Katherine L. McLeod et moi avions élaboré depuis deux ans prenait enfin forme et que nos deux juges en chef ont procédé à l’ouverture du séminaire dans la salle des mariages civils du palais de justice d’Ottawa. Une union était née. Je suis heureuse de constater qu’une autre activité sous cette bannière a eu lieu l’an dernier en matière jeunesse. De plus, elle s’est ouverte à des juges d’expression française des provinces du Nouveau-Brunswick, du Manitoba et de la Colombie-Britannique.

“Bientôt mon rêve le plus fou allait enfin se réaliser: tenir un séminaire regroupant des juges du Québec et de l’Ontario, traitant d’un sujet commun les emprisonnements avec sursis, critères et modes d’application, tout ceci tantôt en français, tantôt en anglais.”

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L’INM avait enfin atteint un nouvel objectif visé par l’Honorables Michel Bastarache, alors à la Cour Suprême : l’ouverture d’un volet de bilinguisme additionnel — sans traduction simultanée, des échanges totalement bilingues! Le Québec et toutes les autres provinces où des juges s’expriment en français se sont alors donné la main pour profiter pleinement de cette activité bilingue. Tous les participants ont apprécié cette façon ouverte d’échanger dans leur langue, et les discussions vives et enflammées en ont été la preuve.


Autant comme formatrice, animatrice, conceptrice, conférencière jusqu’en septembre 2007, j’ai le sentiment que je faisais partie d’une équipe chevronnée, crédible et toujours intéressée à s’améliorer.

De plus, dans le cadre de ces fonctions, j’ai fait la rencontre de juges chinois, slaves, de juges d’Haïti, de magistrats français, belges avec beaucoup de fierté car je sentais que j’avais le privilège de représenter, outre un organisme qualifié, aussi un pays reconnu à l’échelle mondiale pour son système de justice.

À l’automne 2006, a eu lieu le premier séminaire conjoint de la Cour du Québec et de la Cour supérieure du Québec portant sur les conférences de règlement à l’amiable des différends. J’ai convaincu nos deux instances de joindre leurs juges à cette activité qui a été supervisée par l’INM. Cette expérience a été reprise deux fois depuis et elle constitue une belle aventure conjointe pour les juges du Québec.

Si j’ai pu représenter la Cour du Québec à travers tout le Canada, j’en suis redevable à mon juge en chef et surtout à l’initiative habile de George Thomson, un visionnaire qui a intégré notre Cour à cette organisation qui lui est si chère.
Aujourd’hui sous la gouverne d’un juge d’une cour provinciale, le juge Brian Lennox, l’INM sait reconnaître tous ses partenaires et leur confier un rôle très important dans la réalisation de son mandat. À la fin de mon terme, mon collègue Jean-François Gosselin a pris la relève et agit comme associé judiciaire depuis 2007. Je suis maintenant co-éditrice du Journal des Juges de l’ACJCP et à chaque parution, je sollicite et reçois une contribution de l’INM. Son rayonnement est important pour tous les juges de nomination provinciale à travers notre pays.

Longue vie à l’INM et à toutes les cours provinciales du Canada.
The evolution of judicial education within the Ontario Court of Justice in recent times has in some ways paralleled that of the National Judicial Institute (NJI). The NJI was created in 1988; what is sometimes referred to as the “modern” Ontario Court of Justice1 came into being in 1990, when the newly constituted Court, then known as the Ontario Court (Provincial Division), brought together the formerly separate Provincial Court (Family Division) and the Provincial Court (Criminal Division). Until the merger in 1990, each of these Courts (created in 1968) had separate jurisdictions, their own chief judges, and distinct education programs, which had been largely developed during the early years of their existence. Education programming was, in significant measure, the responsibility of the respective family law and criminal law judges’ associations in each of the two courts. Programming within the Family Division consisted of: i) a fall family law meeting; ii) an intensive week-long program (created by Chief Judge Ted Andrews) known as “The Judicial Development Institute” in January; and iii) a third seminar in the spring. Within the Criminal Division, there were also three education programs: i) a series of virtually identical regional criminal law seminars held in the fall in each of four regions; ii) the annual spring meeting of the Court; and iii) a one-week intensive criminal law program created by Chief Judge Fred Hayes and presented each summer in a university setting.

The challenge at the time of creation of the Ontario Court (Provincial Division) was to preserve the benefits of the strong programming that had been provided both in criminal law and in family law within a reorganized and newly created Court. It was also important that the judges’ associations, both criminal and family, retain their preeminent role in the development and presentation of judicial education.

The new Provincial Division’s first experience with major, coordinated education programming came in cooperation not with the NJI, but with the Western Judicial Education Center, then headed by Judge Doug Campbell of the Provincial Court of British Columbia. The subject was gender equity, and the program, presented in 1991, was a collaborative effort involving the Western Judicial Education Center and its advisors (academics, judges and educators), the office of the chief judge, and the two Ontario judges’ associations. Extensive preparation, including first-time facilitator training, together with detailed documentation and video

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1 The Ontario Court (Provincial Division) became the Ontario Court of Justice on April 19, 1999.
vignettes, resulted in a program that was the first of its kind in Ontario and was presented to virtually every judge of the Court. About the same time, the Provincial Division tentatively began to involve the National Judicial Institute (then known as the Canadian Judicial Centre) in its education programming. Initially, the NJI was present in large part for logistical support in a number of Provincial Division seminars. Without having a formally defined role, it nevertheless also participated in general discussions about education programming. Gradually and over time, when the value of the National Judicial Institute as an education resource became increasingly evident, the Court became more interested in formalizing the relationship. In the interim, the Court had modified its own educational structure.

In the early 1990s, in an attempt to rationalize education within the Court, Chief Judge Sidney B. Linden created the Education Secretariat, a body that included representatives from both judges’ associations (family law and criminal law) and was first chaired by Acting Associate Chief Judge Mary Hogan. Initial discussions at the secretariat were related to the timing of judicial education programs and general curriculum issues, but quickly became more substantive. The chief judge allocated a significant budget to the secretariat, which it administered, and its structure became more defined. The secretariat was headed by the chief judge, but chaired by an associate chief judge, with its membership otherwise consisting of three judges chosen by the office of the chief judge and four judges selected by the judges’ associations. The mandate of the secretariat was to coordinate education policy and programming for the whole Court, and it became increasingly active in programming.

While the basic scheduling of education programming within the Ontario Court of Justice had remained largely the same, the separate judges’ associations merged in May 1999 to form the Ontario Conference of Judges. Education programming was further rationalized within the Court.

In 2000, the Ontario Court of Justice (the successor Court to the Ontario Court (Provincial Division)) signed a Memorandum of Understanding (MOU) with the National Judicial Institute by which the Court agreed to pay $50,000 a year to the NJI, a sum intended to approximate one-half of the salary of a full-time employee of the National Judicial Institute. George Thomson, then NJI Executive Director, undertook in exchange to provide a staff person with the responsibility of a Senior Advisor who would devote half of his or her time to the Court, and the other half to the provincial and territorial courts of Canada. It was also agreed that any and all of the work done by the NJI with respect to the Ontario Court of Justice or to the provincial and territorial courts would be available to all Canadian courts. The NJI representative assumed the title of Education Director of the Ontario Court of Justice, and the NJI provided critical substantive, pedagogic and logistical support. The key to the

“The NJI has been able to adopt or adapt education programming and modules, developed initially within the (Ontario Court of Justice), for presentation to larger provincial and national audiences.”

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involvement of the National Judicial Institute was that the Court and its judges retained control over education and programming, while the NJI served in a significant advisory capacity.

As a result of the MOU, for the past several years an NJI Senior Advisor and Program Manager have attended meetings of the education secretariat and all education programs of the Court. Their involvement in the conception, design, development and presentation of programs has been critical to the evolution of judicial education within the Court. In consequence, the Ontario Court of Justice has had full access to the educational expertise of the NJI while, at the same time, the judges of the Court continue to retain control over all programming.

The relationship between the Ontario Court of Justice and the National Judicial Institute has proved to be very fruitful. The NJI has been able to adopt or adapt education programming and modules, developed initially within the Court, for presentation to larger provincial and national audiences. To give but two examples: the Ontario Court of Justice has been a pioneer in the creation of specialized courts and autonomous judicial administration, and its programs in those areas have been widely adapted for presentation to other judicial audiences and in other courts; in another area, the NJI developed its pre-retirement program for federally appointed judges following an examination of the model that had been in place for several years for provincial judges within the Ontario Court of Justice. The NJI and the Court have also been able to jointly pilot programs for ultimate presentation to other judicial audiences. The Court and the NJI have together funded and presented a number of programs, including a child protection program and a communications skills workshop, both of which were attended not only by judges of the Court, but also by judges from across Canada. The latter program, Communication Skills in the Courtroom, has been presented at Stratford annually since 2003. In addition, in 2004 the NJI and the Court developed, funded and presented the Newly Appointed Provincial and Territorial Judges’ Skills Seminar. This week-long program has been presented annually since its inception. Finally, the Ontario Court of Justice has derived a considerable benefit from the programs and modules of education originally developed by the NJI for other judicial audiences and for other Courts.

The constantly evolving relationship between the National Judicial Institute and the Ontario Court of Justice has progressed over the past 20 years from a tentative and cautious beginning to a strong and productive partnership. It is a relationship that has produced all of the advantages originally envisaged, in addition to benefits that extend to other courts and judicial education programs not only in Canada, but also, on occasion, abroad. Significantly, it is both a relationship and a journey in education that hold continuing promise for the future.
L’Institut national de la magistrature : 20 ans au service de la justice

PAR L’HONORABLE MICHEL BASTARACHE, AVOCAT-CONSEIL, HEENAN BLAIKIE
ANCIEN JUGE À LA COUR SUPRÊME DU CANADA
ANCIEN VICE-PRÉSIDENT DU CONSEIL DES GOUVERNEURS DE L’INM

Il est assez singulier que l’on donne aux juges une série de cours de préparation à la retraite, mais qu’il n’y a pas de cours d’initiation à la carrière de magistrat pour celui et celle qui envisage de poser sa candidature. Aussi surprenant que cela puisse paraître, certains juges nouvellement nommés se trouvent souvent désemparés devant leurs nouvelles responsabilités. De fait, une fois nommés, une fois la nature du travail déterminée, plusieurs juges nouvellement nommés se poseront des questions sur le rôle même du juge, les exigences fondamentales du poste, les attentes des autres et les siennes. On croit souvent avoir bien réfléchi à ces choses lorsque l’on pratique le droit, ou savoir instinctivement à quoi s’en tenir, mais l’on réalise vite une fois nommé que la question est plus difficile que l’on a pu l’imaginer quand on doit se donner une ligne de conduite précise et faire face au devoir de maintenir l’intégrité du système de justice soi-même.

On attend du juge qu’il ait toutes les connaissances requises pour bien s’acquitter de son devoir de justice, et cela présente un défi dans un système comme le nôtre, où l’expérience acquise en matière de droit substantif ne correspond pas toujours au domaine de pratique comme magistrat. Mais on attend aussi du juge la sagesse, la lucidité, la vigilance, la sagacité, la rigueur. Devant cela, bien peu sont animés d’une certitude profonde. Les bonnes pratiques sont évidemment celles qui conditionnent le déroulement des procès et déterminent la place de la cour dans l’ensemble institutionnel. Mais qui peut avoir confiance de les bien maîtriser quand il entre en poste? L’éthique englobe tout ça; c’est très large comme concept. L’éthique a trait à la compétence, au rapport avec les justiciables et les avocats, les collègues, le grand public, les médias; c’est la façon d’assumer son rôle, ses obligations. C’est, comme le disait le Président de la Cour de Cassation de France lors de l’ouverture des tribunaux à l’occasion du 250e anniversaire de l’adoption du Code civil, « la pédagogie qui enseigne que disposer de la vie privée, de l’honneur, de la dignité, de la fortune, de la sécurité, de la liberté d’autrui est aussi une affaire de conscience. »

Lorsque j’ai été nommé à la Cour d’appel du Nouveau-Brunswick, en 1995, je n’avais aucune expérience en droit criminel, ni en droit de la famille, ces deux domaines représentant plus de 50 pour cent des affaires entendues par cette cour, chaque année. J’ai tout de suite entrepris de lire des livres de doctrine en droit criminel, procédure criminelle, preuve criminelle, droit
de la famille. Mais je savais que cela ne suffirait pas à me donner toute l’assurance dont j’avais besoin. Mes collègues m’ont suggéré de m’inscrire au cours pour juges nouvellement nommés de l’Institut national de la magistrature (INM) avec l’Institut canadien d’administration de la justice. J’ai beaucoup profité de ce cours et me suis immédiatement inscrit au cours intensif de l’INM en matière de droit criminel. La place de l’Institut dans le système judiciaire m’est apparue tout de suite comme essentielle.

Je vois dans l’exercice du rôle de juge l’application de compétences professionnelles, mais aussi de qualités de cœur et d’esprit. C’est en partie pour cela qu’il ne suffira jamais de s’instruire seul pour accomplir sa fonction de juge avec toute la compétence requise. Nous sommes tous conscients de nos limites. Nous savons que notre vision morale des choses influence notre jugement, que notre expérience de vie entre en jeu; nous savons aussi que la justice a une figure humaine et que toute personne raisonnable en est consciente. Personnellement, je crois que c’est assez difficile de juger autrui. Le grand poète Verlaine disait: « Qui peut juger sans frémir sur terre? » Il faut faire preuve d’humilité dans cette fonction, il faut s’attacher dur à la règle de droit, il faut être très prudent dans l’exercice de pouvoirs discrétionnaires, notamment parce qu’on se sentira responsable de ses décisions. Il faut être convaincu que l’on a fait justice dans tous les cas, sans doute raisonnable. Réellement, c’est une profession fascinante et unique que celle de juge.

C’est pour cela que les juges ont un devoir pressant de s’instruire encore et toujours, de faire l’apprentissage des nouveaux moyens de recherche, de participer aux grands débats sur le rôle du juge, l’éthique, l’indépendance judiciaire. Être juge c’est aussi être un acteur social très important, surtout à l’ère de la Charte canadienne des droits et libertés, mais les juges ne sont pas des grands prêtres et ne sont pas seuls à assumer la responsabilité pour rendre justice et faire respecter les droits fondamentaux. La place du législateur demeure le cœur de la démocratie. Pour réussir dans toute entreprise, il faut y croire. Pour faire justice, il faut croire en soi, en son rôle, il faut croire en la démocratie, la règle de droit, il faut défendre l’indépendance judiciaire, il faut être forts, généreux et engagés pour le droit.

Pour se bien préparer il faut de l’aide. Il faut compter notamment sur l’expérience des juges en place; je crois sincèrement que cela est essentiel et que seul un organisme dirigé des juges, tel que l’INM, saura créer les programmes nécessaires pour guider les juges et les préparer à affronter les défis qui se présentent à eux.

La démocratie moderne a besoin du judiciaire pour assurer le respect de la constitution, y compris la Charte. Partout dans le monde, le rôle des tribunaux a pris de l’importance, en particulier en raison de la culture des droits fondamentaux qui s’est installée et de l’accès facile aux instruments internationaux et à la jurisprudence des pays de tous les coins du monde en cette matière. Ceci a d’ailleurs donné lieu à un changement important dans les sources du droit qui sont utilisées par nos tribunaux. Au Canada, l’utilisation des instruments internationaux et le recours au droit comparé sont maintenant choses courantes. De fait, depuis 1982 la citation d’arrêts étrangers a doublé, malgré une diminution des références à la jurisprudence britannique qui était dominante jusqu’en 1974. Dans le domaine du droit civil, on se réfère de temps en temps à la jurisprudence de France et d’Allemagne; en common law, on se réfère à

De plus en plus le droit international des droits de la personne constitue une pierre d’assise pour l’évaluation de nos propres garanties constitutionnelles. J’ajouterai d’ailleurs que cette évaluation comprend non seulement l’évaluation de la portée des garanties elles-mêmes, mais aussi l’évaluation des mesures prises par le gouvernement limitant ces garanties sous le régime de l’article premier de la Charte canadienne, comme en témoigne l’affaire Dunmore c. Ontario [2001] 3 RCS 1016. Dans le domaine du droit des autochtones il y a aussi une approche nouvelle qui fait en sorte que les documents historiques et la preuve orale sont maintenant admis pour établir les droits ancestraux et interpréter les traités liant les autochtones et la Couronne (R. c. Van der Peet [1996] 2 RCS 507. Dans ce contexte, il semble clair que la magistrature doit renforcer ses mécanismes décisionnels pour maintenir sa légitimité et écarter toute impression d’arbitraire, surtout quand ses décisions sont impopulaires ou contraires à l’expression de l’opinion majoritaire du Parlement ou des législatures. Je crois donc qu’il est très important de tenir compte des caractéristiques du système judiciaire qui font en sorte que les décisions des juges ne sont pas entièrement subjectives en ce domaine mais guidées par des règles d’interprétation, des principes, des considérations institutionnelles qui ont une très grande importance.

Nos réalisations ont, je crois, donné lieu à la responsabilité morale de partager nos connaissances et surtout nos techniques pour la formation des juges au sens large avec les juges des démocraties nouvelles et des pays en voie de développement de façon générale. Ici encore il fallait un véhicule fiable pour le Canada, et ce véhicule c’est l’INM. Notre Institut s’est doté d’un service pour la formation de juges à l’étranger qui vise à mettre à leur disposition les cours et techniques développées pour les juges canadiens, cours et techniques qui seront adaptées en fonction des besoins du pays d’accueil. L’Institut est le meilleur organisme pour effectuer ce travail parce qu’il est le mieux placé pour donner une formation de base aux juges qui participeront aux missions de formation à l’étranger, une condition essentielle à la réussite de ces initiatives.

L’institut est un outil essentiel, merveilleux. J’ai eu le privilège de participer à sa direction et à ses travaux et ai été témoin du dévouement, de la compétence et de la réussite dont tous attestèrent aujourd’hui. Merci à tous les artisans de l’Institut depuis les débuts.
Embracing Change: How NJI Adapts to the Changing Role of the Judge

BY THE HONOURABLE JUSTICE C. ADÈLE KENT
COURT OF QUEEN’S BENCH OF ALBERTA
JUDICIAL ASSOCIATE, NJI

With the election of President Obama in the United States, everyone is talking about change in the future. The idea of change led me to think about the work of a trial judge in the 15 years that I have sat on the Court of Queen’s Bench of Alberta. When I was appointed, the work of a trial judge involved predominantly trials. When a decision had to be made, that is all the judge did. Reasons? Maybe. Other than trial work, from time to time, there was a week of motions court and, every so often, there were some pre-trial conferences – perfunctory meetings to make sure the lawyers were ready for trial. And, unlike today, there were almost always lawyers! On the darker side, judges could say almost anything they wanted to, regardless of whether it was relevant to the issue before them, or how it might affect the sensibilities of those involved in the case.

Today, trials make up a much smaller portion of my work – but how those trials have changed! Jury charges are more complex, and they happen not only at the end of trial, but throughout the trial. Sentencing has become a longer, more involved process. The extent of scientific evidence presented has expanded and requires a careful analysis of its quality. Although the cases we do are structured in the context of an adversarial system, the emphasis is more on settlement than trial. In fact, the demand for judicial dispute resolution is higher than for trials. And, as for lawyers, much of their work – particularly in the area of family law – is now done with self-represented litigants. Judging today occurs in a more diverse society—one that demands respect from those who judge, not just from those who are being judged.

That is the context within which I think of the National Judicial Institute (NJI). The NJI has not only changed dramatically over the past 15 years, but has, in my view, accepted that change is an important principle in creating worthwhile education programs for judges. There are good reasons for this. First, the leaders of the NJI have all been willing to experiment, to consult with judges, and to accept new ideas about the art and craft of judging. Naming names is always dangerous for fear of omitting someone, but the people who have embodied the idea of change include the Executive Directors who have been at the NJI during my judicial career – Dolores M. Hansen, George Thomson, Lynn Smith and Brian Lennox – the Academic and Education Directors, Brettel Dawson and Susan Lightstone, and the many senior advisors with whom I have worked.

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The second reason that the NJI has so effectively adapted over the years to the changing role of the judge is because the organization conducts its programs across Canada. Unlike in other countries, where judges are sent to the capital city for training at a judicial education institute, when the NJI was established, the model adopted was to take the seminars out to the judges. This allows judges to travel to different parts of the country for seminars, itself a valuable way to learn. It also allows the NJI and, therefore, the judges to make use of the valuable resources available all across the country. For example, as part of the science seminar, *Neuroscience in the Courtroom: What Judges Need to Know*, scheduled to take place in Halifax in 2010, we are organizing a visit to the Brain Repair Centre in Halifax, which studies the brain and recovery of brain function. So, for all the reasons that judges need to know about the brain – with respect to pain, end of life, memory and so on – leading experts in the field are available within the context of their work. For seminars where it is so important to have input from community leaders, whether it be from the native community, or those involved in addressing domestic violence or poverty, for example, being in the community itself makes the experience more real. I would suggest that having judicial education seminars move around the country – instead of having a static model – was a brilliant idea. That movement itself encourages change.

The third reason for the effectiveness of the NJI in both leading and embracing change also stems from the way in which programs are developed. I have been fortunate to work on a number of NJI programs, some of which have been a staple of judicial education for years, such as the *Civil Law Seminar*, and some of which are new and developing, like the science programs. One of the fundamental principles of NJI course design is the involvement of judges. Not only does it ensure that the courses are relevant to what the judges are doing, but it also means that judges from across the country and from all levels of court can discuss their work in the context of a particular course. Trends and changes can be more readily identified and incorporated into the courses.

The ability of the NJI to adapt to the changing role of the judge has meant that the array of courses available to judges continues to expand. Two courses come to mind as illustrating not only how broad the range of courses is, but how central they are to effective judging. *Emerging Issues: Judging in the Context of Diverse Faiths and Cultures* was the first in a series of seminars that addressed judging in a diverse society. In addition to featuring compelling lectures on religion and law in Canada by judges and academics, community members addressed the issues that arise as a result of the interface between our legal system and cultures.
that developed within the context of other legal and cultural systems. At the end of the seminar, it was not hard to see how what we learned would be useful in the courtroom.

As an aside, this seminar is part of the continuing commitment of the NJI to provide courses in contextual judging. When I was appointed, the process of developing judicial education on social context was just beginning. There was significant resistance at that time, in large part, I think, because judges did not understand what social context education entailed. Now, I believe that judges not only accept, but expect to understand the context in which they judge. From time to time, judges may not immediately see how useful this kind of education is, but they understand why it is there.

The second example was the NJI’s seminar on sentencing, *Criminal Law Seminar: The Ins and Outs of Sentencing*, which took place a few years ago. As with the course on *Emerging Issues: Judging in the Context of Diverse Faiths and Cultures*, substantive law was presented and applied through small group work. There was more, however. Judges saw the process through the eyes of a victim and through the work of a risk assessment expert.

I began this essay talking about the change that has occurred in the job of judging during my 15 years on the bench. Judging was perhaps simpler 15 years ago, when I was appointed to the bench, but the quality of justice was not of as high a quality as it is today. Despite the complexities that have been added to a judge’s role – owing to changing economics, demographics and attitudes about resolving disputes – the fact that Canadian judges are so well equipped to handle those changes is, in large part, due to the effectiveness of the NJI. As I mentioned, I have been involved in the planning process of several NJI courses, which has meant working with many people at the NJI. I note continually the generosity, willingness to volunteer and, quite plainly, the cheerfulness of everyone I work with. That says so much about the organization.
Canada’s National Judicial Institute (NJI) has earned an international reputation for its highly developed approach to judicial education – that is, judge-led, judging-focused and skills-based.

The NJI’s three-day seminar on Preventing Wrongful Convictions exemplifies the Institute’s innovative approach to program design and delivery. First presented to Canadian trial judges in 2001, Frailties in the Criminal Justice Process came about after several Commissions of Inquiry into wrongful convictions took place in Canada, and judges themselves began requesting education in this area. In response, the NJI developed an intensive, skills-based judicial education program on this important topic.

Steering clear of long lectures, the seminar employs the most up-to-date adult learning principles. With a focus on skills-based, experiential learning, the program features thought-provoking videos, problem-solving activities and facilitated small-group discussions. It deals with topics ranging from eyewitness identification and false confessions to overzealous prosecution and expert evidence, which enables participants to hone their courtroom skills and to learn from each other’s experiences.

Judging by the program evaluations, participants appreciate the skills and knowledge they gained over the three-day program, indicating that the sessions opened their eyes to new ideas and approaches. Echoing the sentiments of her fellow judges, one participant reflected that she came away with the need to be “constantly vigilant” in the courtroom, “to recognize and respond to the very critical issues presented at this seminar.”

The steps to success for this seminar are the focus of this essay.

THE APPROACH IN PRACTICE

As with all NJI courses, the design of Preventing Wrongful Convictions follows a multi-step process, which includes: forming a planning process, identifying learning needs, selecting the style of course (skills, substantive or social context), establishing learning objectives,
clarifying content, selecting and sequencing learning activities, and developing each session in detail with the faculty members involved. Following the program, participants fill out a detailed evaluation form, providing feedback that assists in developing future seminars.

PLANNING

All NJI seminars start with a planning committee with a diverse and representative membership. For an intensive, multifaceted, skills-focused program such as Preventing Wrongful Convictions, planning begins at least a year before the seminar is to take place. The committee brings together a group of judges, along with academics from related fields, and senior legal counsel. The NJI convenes the process, contributing a Senior Advisor, who is a lawyer, and an expert in judicial curriculum design, and a program logistics manager. An articling student provides research and materials development support to the team.

Criminal law expert Justice Marc Rosenberg, a judge with the Court of Appeal for Ontario and a Judicial Associate with the NJI, played a key role in leading the development of Preventing Wrongful Convictions. The balance of expertise from the judiciary, academia and the wider community is critical to program development, both in terms of acquiring the most up-to-date information and in presenting participants with a range of perspectives.

The committee meets regularly (either in person or through conference calls) to plan the substantive program. Each committee member is assigned to a sub-group that takes responsibility for a portion of the program, and reports regularly on progress to the full group.

IDENTIFYING LEARNING NEEDS

Applying the NJI’s “three-dimensional” learning philosophy to each iteration of the seminar, the planning committee’s scan of learning needs attends to: the core knowledge judges require (in terms of cases, statutes, inquiries, etc); the judicial skills and tasks involved; and how social context dimensions interact with judicial process. Methods of needs assessment used by the committee include discussions with judges, previous course evaluations, and examination of case law and developments in the legal environment.

When the NJI began planning the original Preventing Wrongful Convictions program, not only did the high-profile Commissions of Inquiry provide context and suggest priority content for the seminar, but trial judges highlighted issues they wanted addressed based on their experiences.

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When the NJI began planning the original Preventing Wrongful Convictions program, not only did the high-profile Commissions of Inquiry provide context and suggest priority content for the seminar, but trial judges highlighted issues they wanted addressed based on their experiences and reflection on the Inquiries’ findings. While much public attention focused on the impact of advances in forensic technology, such as DNA evidence, judges focused on perennial concerns, such as keeping out unreliable evidence. Specifically, these issues included suspect evidence, eyewitness identification – a factor in more than 80 per cent of wrongful
convictions – false confessions and jailhouse informants. Assessing credibility was another major concern, due to changes to Canadian law that have resulted in more cases where the evidence consists of the testimony of the complainant, without a broad range of other material (so-called “he-said, she-said” cases). Over the last few years, other issues have gained prominence, including flawed expert evidence, ineffective defence counsel and an increase in self-represented accused.

Clearly, there was no shortage of potential topics for the course. Given the NJI’s forum of judicial education, the planning committee decided to focus the seminar on areas of interest to judges, with particular attention to the judge’s role in helping to prevent miscarriages of justice. The topics for Preventing Wrongful Convictions reflected this choice: expert and eyewitness identification, use of suspect evidence in high-visibility cases, suspect witnesses (alibis, paid informants, co-accused), ineffective assistance of counsel, overzealous prosecutions, admissibility of confessions (false confessions and ‘noble-cause’ corruption of procedures), expert witnesses (including pathologist testimony and social science theories), and the judicial role.

LEARNING OBJECTIVES

What is it that the course should achieve? In addition to knowing more about the law and its social context, how can the program help judges to be better able to apply concepts to the tasks they face in fulfilling their roles? These are the questions that animate the next phase of the planning process. By defining learning objectives for the seminar as a whole and for each topic to be included, the shape of a course will begin to emerge. Planners will be able to define the kinds of learning activities that will achieve these objectives and develop a framework for meaningful evaluation of the program. Participants will also be able to see more clearly the knowledge, skills and attitudes they are expected to acquire or improve upon.

With respect to dealing with suspect witnesses, for example, the stated objective in Preventing Wrongful Convictions is that “participants will be able to identify problems in relying on stereotypes, unproven assumptions and demeanour contributing to incorrect or inadequate assessments of credibility and reliability of witnesses.”
This objective forms the starting point for the seminar’s segment on credibility assessment and recognizes that, while guided by principles of law, this task is a daily staple of a judge’s work and engages a range of skills. The learning activities, then, need to extend beyond lectures on the law. In the seminar, the topic is introduced from a judge’s point of view by Justice Rosenberg and from the point of view of a forensic psychologist, who discusses the psychology behind credibility assessment. With this legal and social science primer in mind, judges then view a video of simulated testimony in a robbery case. Evidence is given by a co-accused and by an alibi witness, and subjected to cross-examination, through which various inconsistencies emerge. The evidence is diametrically opposed. Judges are then asked to assess the witnesses’ credibility by completing a short questionnaire. The results of the questionnaire indicate that judges, like others who have watched the same demonstration, can come to very different conclusions about the credibility of the witnesses. Using this dilemma as a springboard, Justice Rosenberg and the psychologist then engage judges in a discussion about the various techniques and tools they can use to deal with suspect witnesses, to counteract variability in credibility assessment.

Objectives for other segments of the course reflect active learning goals, where knowledge is integrated with applications to the tasks judges perform and the social context in which the issues arise. With respect to eyewitness identification, the learning objective is to be able to identify problematic areas and develop tools to reduce the risk of improper convictions based on such evidence; for overzealous prosecutions, it is to be able to identify the flags or markers of such a situation, along with options and methods for appropriate judicial intervention; and for expert evidence, it is to correctly rule on admissibility.

SELECTING AND SEQUENCING LEARNING ACTIVITIES

In the judging-focused model of experiential learning, course design begins rather than ends once content and learning objectives are identified. Different methods of instruction yield different levels of engagement and retention. Judges, like all adults, have varied learning styles and preferences. Some prefer to brainstorm and view concrete situations from several viewpoints, others to use analytical models; some are problem solvers, while others prefer to use a hands-on, intuitive approach. This corresponds to the concept of differential learning styles or preferences. As NJI Senior Advisor Susan Doyle observes, the more involved the person is in the learning activity, the more information they retain. This concept is crystallized by the Chinese proverb that says, “I hear and I forget, I see and I remember, I do and I understand.”

Research indicates that material imparted by lecture alone results in limited retention – perhaps as little as five per cent after a short period has elapsed. That figure rises as learners are asked to read, discuss or apply the information. In fact, the best way to thoroughly learn a subject is to teach it. As such, Preventing Wrongful Convictions features a considerable amount of small group work, with NJI-trained facilitators (many of whom are judges) encouraging and guiding discussion.

"The learning model seeks to move around a cycle of learning activities, first connecting learners to their own experience or views on a topic and then creating an opportunity to reflect with others or to observe performance of a task."

In general, the learning model seeks to move around a cycle of learning activities, first connecting learners to their own experience or views on a topic and then creating an opportunity to reflect with others or to observe performance of a task. To capture participants’ attention right from the start, Preventing Wrongful Convictions’ segment on eyewitness identification begins with a video called What Jennifer Saw. This documentary, produced by the Public Broadcasting System in the U.S., highlights the numerous eyewitness identification errors that led to the wrongful conviction of Ronald Cotton, who spent 11 years in prison for a sexual assault he did not commit.

After the video, an eyewitness identification expert explains what went wrong. The expert has the judges do several exercises, including one where she asks them to look at a page of 26 composite photos and identify which one describes the accused. A debate inevitably ensues, with everyone voicing a different opinion. Ultimately, the participants learn that all 26 images are composites based on the same person, and that they are vastly different – bringing home the dangers inherent in using composite photos.

With these elements of experience, reflection and observation completed, the expert then moves to the next phase of the learning cycle: providing concepts and guiding principles based on research. From this foundation, she provides judges with the tools to deal with what may be going on in their own courtrooms, and alerts them to possible frailties in the eyewitness identification procedures adopted by the police in the case before them.

Participants then proceed to the next phase in the cycle, which is application. They break into small groups and examine a number of vignettes, from which they then attempt to identify problematic procedures or signs of mistaken identity. A similar pattern applies to the other topics in the course, with learning activities varying in order to keep up the energy level and interest of the participants.

DETAILED PLANNING WITH FACULTY

Intensive collaboration with faculty members and facilitators is a core feature of the NJI planning process in the months leading up to the seminar. Lecturers work with the committee to develop problems and scenarios, and produce the scripts for videos or demonstrations to ensure a close match between learning objectives, content and application.

Without this linking together of people and ideas, a seminar could easily meander away from the main learning focus. For small-group discussions, the committee and lecturers carefully shape the group tasks and the information the participants will need. They also prepare notes for the facilitators, to guide them in leading the discussion with respect to process and core
issues. Given how precious and short is judicial learning time, every effort is made to produce a tightly focused program.

Another crucial feature of the NJI process is the ‘pre-program’ faculty meeting, which brings together the planning committee, presenters or panellists and facilitators, along with the program manager. This may take place the day or evening before the program, as people assemble on-site. The meeting addresses substantive content, including issues, key knowledge points, the range of options, and preferred outcomes. The session reviews the planned activities, sets out goals for each particular session and gets everyone on the same page. Equipment can be pre-tested, facilitators can trial-run their sessions, and any final questions can be asked and answered.

“Preventing Wrongful Convictions is a signature course of the NJI. It adopts adult learning methods to create judging-focused education that provides judges with the knowledge, skills and contextual awareness that are the hallmark of effective judging.”

Collaboration continues throughout the seminar. At the end of every day, faculty, the planning committee, the Senior Advisor and the Program Manager meet to review progress and make any necessary adjustments.

**EVALUATION**

The final step in the NJI process is a thorough evaluation of the program by both participants and the planning committee. At the end of seminars, judges are requested to fill in a detailed form asking them to assess various elements (speakers, format, materials, organization, etc.) and whether course objectives were met. Suggestions for changes or improvements are also invited.

After the comments are compiled, the members of the planning committee meet to reflect on the feedback. They also ponder the extent to which the seminar has offered potential to enhance judicial practice.

The committee looks very carefully at participant evaluations, and uses them to evolve the program. For instance, the first two offerings of Preventing Wrongful Convictions included a segment on jailhouse informants, but following the recommendations of a public inquiry, jailhouse informants were rarely called, and then only when there was solid, independent confirmation of their testimony. Judges noted this development in their evaluations and, as a result, the committee took the opportunity to replace this segment with more current topics.

For the 2009 seminar, held in Victoria in March, expert evidence and incompetent defence counsel were two of the issues the planning committee identified as requiring special attention. This came in response to a series of high-profile disclosures of apparent professional incompetence or overzealousness on the part of health professionals. Judges are keen to discuss these challenging issues, which, unfortunately, will always present themselves. The NJI is likewise committed to addressing these challenges, with a focus on what judges can do to identify and respond to them.

**CONCLUSION**
While the full, three-day seminar on *Preventing Wrongful Convictions* takes place only in Canada, the NJI continues to present program elements, such as Credibility Assessment, to judges as far away as Ethiopia, Ukraine and Russia. In so doing, the Institute is sharing its cutting-edge approach to judicial education with its counterparts around the world. However, the organization neither wants nor intends to lecture others on their own legal systems. Rather, the NJI is keen to show other judicial education providers how we teach so that they can adapt and develop programs for their own contexts.

Judicial education serves as a core support to law reform and administration of justice – and *Preventing Wrongful Convictions* exemplifies this. The seminar aims to assist judges in their responsibility to prevent future miscarriages of justice – including highlighting, where appropriate, the need for better investigative practices. In the dialogue that the seminar fosters between judges, policy-makers, academics and lawyers, Justice Rosenberg has observed an interesting and promising back-and-forth dynamic. Many faculty members for the seminar regularly present their research to the police and other key participants in the criminal justice process, often taking what they gleaned from their discussion with judges to these settings. This can have a direct effect on procedures. Partnership with the NJI enhances understanding across the entire criminal justice system.

*Preventing Wrongful Convictions* is a signature course of the NJI. It adopts adult learning methods to create judging-focused education that provides judges with the knowledge, skills and contextual awareness that are the hallmark of effective judging. The seminar responds to a pressing need in the criminal justice process in our country and provides relevant and timely education. Though judge-led, it is the result of the efforts and collaboration of many experts. The program is evolving over time, and promises to continue to contribute to judicial excellence in Canada and elsewhere in the world.
Serving All of Canada’s Judges: Bilingualism and Bijuralism at the NJI

BY PROFESSOR ROSALIE JUKIER
FACULTY OF LAW, MCGILL UNIVERSITY, AND NJI SENIOR ADVISOR, 2005-2007

INTRODUCTION

The National Judicial Institute (NJI) is a remarkable organization in a number of ways. Led by dedicated and visionary professionals, its general philosophy affirms a strong commitment to strive continuously for ways to better serve the judiciary and, by implication, to improve the administration of justice in this country and beyond. Over its relatively short 20-year existence, the NJI has certainly risen to the challenges it set for itself. A true trailblazer in the field of judicial education, the NJI has never been complacent, but rather, constantly works to stay cutting-edge in order not only to ensure that the judicial education offered is of the highest possible standard, but that it also reflects the contemporary needs of all of Canada’s judges.

It is in this vein that the NJI introduced social context education to the Canadian judiciary, incorporated a variety of innovative learning techniques into the delivery of its educational programmes, and developed a wide array of electronic educational delivery tools, such as Electronic Bench Books and online courses.

Ensuring that judicial education speaks to all of Canada’s judges is undoubtedly an ambitious task. While teaching judges must always take into account the diversity of the judiciary, both in terms of its make-up, background and learning styles, in this enormous country this also means that the education offered must be relevant to judges sitting in large urban areas, as well as to those sitting in smaller population centres, to those sitting in provincial courts, and to those who are federally appointed.

But in Canada, serving all judges entails two additional layers of richness and complexity. Judicial education in Canada must also take into account the fact that judges are diverse linguistically, comprising anglophones and francophones, and diverse in terms of the legal traditions in which they operate, depending on whether they sit in civil law or common law jurisdictions. In 2005, George Thomson, then Executive Director of the NJI, stated the following in a report to the Board of Governors on behalf of the French Language Services Committee: “We accepted as a given that the NJI, as a national institute serving all of Canada’s judges, must be bilingual.”

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judiciary, has a responsibility to strive to become a bilingual organization that is able to serve judges well in both of Canada’s official languages.” In two follow-up reports that I prepared for the Board in March and October 2006, the goal of bijuralism was added to that of bilingualism. My report stated: “Canada is a bijural country, and the NJI is a pan-Canadian organization. As such, the NJI should, to the extent possible, make its training relevant to all Canadian judges.”

This essay, which I am honoured to have been asked to prepare, will outline the strides made by the NJI, and the rewards obtained, in the areas of bilingualism and bijuralism.

DEFINING BILINGUALISM AND BIJURALISM

While the issues of bilingualism and bijuralism are indeed interrelated, they seek to address distinct needs. Bilingualism, in online and paper documentation, as well as in oral presentations, seeks to ensure the ability of all Canadian judges to access NJI materials and to attend, participate in, and present at NJI conferences, whatever their language of preference. Bijuralism, on the other hand, seeks to ensure the relevance of materials taught and presented at NJI conferences to all Canadian judges, those who sit in common law provinces and territories, as well as those who sit in the civil law jurisdiction of Quebec.

In short, while bilingualism ensures the accessibility of NJI materials and courses to all Canadian judges, integrating a bijural perspective ensures the relevance of these materials and courses to all Canadian judges.

PROGRESS TOWARDS BILINGUALISM

The NJI’s commitment to bilingualism is significant and evidenced in a myriad of ways, ranging from the translation of documents and materials and simultaneous interpretation, to actively promoting the French language at NJI courses, developing judicial education in French for Quebec judges, and even moving towards passively bilingual courses.

It is remarkable the extent to which the NJI ensures that its written publications, both paper and online, including its Electronic Bench Books, are translated into French and English. Furthermore, at national conferences, all the materials included in the binders distributed to conference participants (and, increasingly, the CDs or memory sticks containing this information), whether they be papers or PowerPoints prepared by conference presenters are, to the extent they are received in a timely manner, translated so that both French and English versions are available. The NJI also ensures that oral presentations at national conferences are simultaneously translated, so that everyone is free and comfortable to speak in the language of their choice, whether as a conference presenter or a judge in the audience wishing to ask a question or make a point.

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Moreover, a concerted effort has been made over the last few years to ensure both French and English representation among presenters at national NJI conferences, and to increase the number of francophone presenters wherever it is feasible to do so. In addition, francophone presenters are encouraged to speak in French (even if they are at ease in English) in order to enhance the bilingual flavour of NJI courses, and to encourage judges from both linguistic groups to attend and participate in NJI programming. Anecdotal evidence suggests that the more we include francophone (and civil law) presenters on panels at NJI courses, the larger the contingent of judges from Quebec that will attend such a conference, and the more pan-Canadian the NJI national courses will be. \(^1\)

National courses are not the only type of educational programming offered by the NJI. At times, given the particularities of issues facing certain courts, or courts in certain provinces, the NJI also develops and delivers judicial education geared specifically towards those courts (such as the Ontario Court of Justice or the Federal Court) or towards the courts in particular provinces (such as Settlement Conferencing/Conférence de règlement à l’amiable in Quebec). In recent years, the NJI has shown a serious commitment to work with the Quebec courts, both the Cour supérieure du Québec and the Cour du Québec, in order to develop French-language judicial education for Quebec judges in areas deemed relevant by Quebec courts. Today, the NJI offers, in true partnership with the Quebec courts, courses on *Rendre un juge- ment séance tenante*, *Conférence de règlement à l’amiable* and *Gestion de l’instance*.

The NJI has on occasion had considerable success in presenting programs in both official languages without the need for translation. \(^2\) At the Faculty of Law of McGill University, itself a bilingual faculty, this is termed “passive bilingualism.” \(^3\) The results of a Bilingualism Survey sent to all Canadian judges in May 2007 concluded that “…there is likely a clear market for passively bilingual courses.” What is required is that everyone attending have the requisite comprehension of the other language, while being able to participate in French or in English, according to their preference, without translation. One obvious advantage of such programs is the possibility of avoiding the costs associated with simultaneous interpretation and translation of documents.

**PROGRESS TOWARDS BIJURALISM**

As already alluded to, it is not sufficient to render NJI courses and materials accessible to all judges through translation, but rather it is important to render NJI material and courses relevant to all judges, whether they work in common law or civil law jurisdictions. Incorporating a bijural perspective into NJI programming is, however, more ambitious than simply

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1 This is certainly the case with respect to the Civil Law Seminar: Contract Law taking place in Newfoundland in May 2009.
2 For example, the Joint Education Programme on Sentencing for the Ontario Court of Justice and the Cour du Québec that took place in Jan-Feb of 2006.
3 65.7 per cent of the 486 respondents stated that they are or may be interested in non-simultaneously translated (passively bilingual) courses.
translating documents or presentations, no matter how time-consuming or expensive the translation enterprise might be.

For the purposes of injecting bijuralism into national NJI courses, it is too easy to fall into the trap of including a civil law presenter as an “add-on” to a common law panel, or creating separate breakout sessions for Quebec judges where they can discuss independently the civil law reactions and solutions to problematic fact patterns without disrupting the breakout sessions of their common law counterparts. This “silo” method of incorporating bijuralism is not only short-sighted, but deprives everyone of the incredible value of learning from the other. The Honourable Mr. Justice William Stevenson stated the following in a Supreme Court judgment in 1992:

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[T]his Court has the benefit of being the final court of appeal in a country that has two legal traditions: the English common law and the French civil law. Our two legal traditions are independent and should not be confused. Concepts and solutions found in one tradition should not be imposed on the other tradition. But this does not mean that there is no place for comparative law on this Court.
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It strikes me as particularly apt that this comment was made by Justice Stevenson as he was, after all, the author of the report that paved the way for the creation of the NJI. But the benefits of an integrated bijural approach have been echoed by many others. As the Honourable Mr. Justice Yves-Marie Morissette of the Quebec Court of Appeal stated, “a great deal can be gained…from a sustained and humble dialogue with otherness.” At the time of this quote, he was the Dean of the Faculty of Law at McGill University, and he was seeking to explain the newly launched integrated transsystemic law programme in civil and common law. Having myself taught in this integrated transsystemic programme, I can affirm confidently that the McGill experience demonstrates the beauty of viewing the civil and the common law in dialogue with each other, and not in isolation, however splendid. The most rewarding aspect of such dialogue lies in learning from the other.

Taking one NJI national course as a case in point will illustrate the benefits and rewards of such an integrated bijural approach. In the Civil Law Seminar on contracts offered in Halifax in May 2006, civil and common law approaches were interwoven throughout the conference. The reaction from the participating judges was extremely positive, and many of the sessions (such as the one dealing with the extent parties are required to act in good faith in contractual situations) were particularly animated, given the interventions from judges hailing from both of Canada’s legal traditions. The evaluations are worth noting in this regard. In answering the question of what was the most useful aspect of the programme, three participants said the following: “Learning more about the intersection and tensions between the civil law and common law”; “The perspective from the civil law on good faith”; and “The group exercises, as we had great input from the Quebec participants on the Civil Code.”

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5 W.A. Stevenson, Brian Grainger, Towards the Creation of a National Judicial Education Service for Canada, October 1986
The NJI has always eschewed the concept of the “cours magistral” or the “sage on a stage” as the method of teaching judges, and rightly so. The NJI has long appreciated the value of peer learning and has actively promoted the importance of experiential and interactive learning techniques. Viewed in this light, an integrated bijural approach to judicial education is simply part and parcel of the NJI philosophy.

It is only by integrating civil and common law perspectives into NJI programming that bijuralism will truly be achieved. From earlier quoted comments, it is not hard to imagine that the rewards of such bijuralism are immense, since the cross-fertilization of ideas and legal developments can only be perceived as a benefit to all judges.

CONCLUSION

As the Domestic Report to the Board of Governors presented in November 2008 stated, the NJI is committed to offering a “judging-focused, judge-led education based on the experiential learning model.” In an environment where the judges involved in this educational enterprise are both anglophone and francophone, and where these judging-focused activities take place in both civil and common law jurisdictions, it is easy to see how natural it is for bilingualism and bijuralism to fit within that NJI commitment.

The purpose of this collection of essays on the 20th anniversary of the NJI is to mark an important milestone in the life of an extraordinary organization, and to celebrate and recognize its many achievements. A serious commitment to enabling judges to access the NJI’s enormous resources and educational programs both in French and English is one such remarkable achievement. A policy of incorporating both civil law and common law perspectives in its national courses so that Canadian judges can all learn from each other is another such achievement. Both these achievements deserve celebration and recognition, but they also deserve a commitment to further bolstering and improvement, a commitment the NJI has surely demonstrated.
was lucky enough to be asked in 1996 to co-chair the initial phase of the NJI’s national Social Context Education Project (SCEP) with Justice John F. McGarry of the Superior Court of Justice (Ontario). Although I have been a judge of the Supreme Court of British Columbia since 1998, at the time I was a judge of the Provincial Court of British Columbia, and had been involved extensively with judicial education programming on equality issues with that Court and with the Western Judicial Education Centre.

The NJI’s SCEP represented a bold and major shift in the approach to national judges’ education in two key ways. The first was a recognition that all judges, whether provincially or federally appointed, do equally important, often very similar work, and can benefit from the joint development and presentation of educational programming. The second was a move away from the traditional approach to teaching judges, which involved judges teaching other judges about legal doctrine, often using the large-group, lecture style. Until that time, many courts did not have education committees or an institutional approach to education for judges.

The importance of the NJI’s view, supported by the Canadian Judicial Council, that “a judge is a judge is a judge” cannot be overstated. There was at the time a deep-seated feeling among at least some judges that provincial court judges are not as well qualified as federally appointed judges, that their work is easier, and that most are Supreme Court “wannabes.” Nothing could be further from the truth. Very well qualified people choose to do work in provincial courts that is complex and challenging, and that touches people’s lives in very significant ways on a daily basis.

When the SCEP began, the Executive Director of the NJI was a provincially appointed judge, Judge Dolores Hansen, now a justice of the Federal Court. She was very supportive of the project and endorsed my appointment as co-chair. Justice McGarry also had considerable experience working on educational programming with provincial courts, and was equally supportive of the work that provincial court judges do.
Early on, the NJI invited judges from all courts across the country — provincially appointed judges, and federally appointed trial judges and appeal court judges — to a social context education National Judicial Consultation. Those in attendance provided important information about issues involving persistent disadvantage or inequality, or their consequences, that arose most frequently in their courts, as well as information about what forms of education would be most effective for judges. This consultation was an unprecedented and highly successful step; judges of the different courts had never met together at the national level. It was the start of a process that has led to joint programming in provinces where this had never happened before. This cooperative approach has ensured that all judges, not just federally appointed judges, have the benefit of social context education programming. And the people of Canada benefit from this bold approach.

Another innovation led by the SCEP was to expand the approach to judicial education. The traditional approach was very narrow, in that it limited the sources of information to that provided by judges. One reason for the narrow approach was that many judges considered that they were successful lawyers who were appointed judges because of their expertise and life experience. New judges, they reasoned, could benefit from the advice of their more senior colleagues, who could focus on substantive law issues or procedural issues; nothing more was required to be a good judge. Another reason for expanding the approach to judicial education was a concern that having non-judges, even legal academics, speak to judges would provide an audience to special interest groups, which could jeopardize judicial independence.

There were exceptions to the traditional approach. In my experience, provincial court judges were generally more willing to try new approaches and, in particular, to involve members of the community in the planning and presentation of educational programs, though of course there were exceptions. A prime example of the work done by provincial court judges was that of the Western Judicial Education Centre, led by then-Judge Douglas R. Campbell, now a justice of the Federal Court.

From 1988 to 1994 the Centre presented comprehensive programming on, among other subjects, gender equality, improving the delivery of justice to Aboriginal Peoples and racial, ethnic and cultural equality. The program development and delivery, though founded on the concept of judicial leadership, was collaborative, involving not only legal academics, adult educators and other professionals, but community members affected by judicial decision making. Many innovative adult education techniques were used. Justice Campbell has since successfully taken the WJEC approach to the international stage.
At the national level the NJI, to its great credit, and under the direction of and with the full support of the Canadian Judicial Council, met head-on the concerns expressed about special interest groups and judicial independence. The message it sent was that credible, in-depth, comprehensive equality and contextual judicial analysis is not optional, but mandated by law through Canada’s Constitution and our obligations under relevant international conventions.

In the first phase, we were very lucky to have as the project’s full-time coordinator Professor Rosemary Cairns Way of the Faculty of Law, University of Ottawa. She, along with her successor, Professor Brettel Dawson, Academic Director, NJI, have observed that this “institutionalized recognition of the importance of judicial education addressing diversity, equality, and social context is grounded in the acknowledgement that judges’ identities matter, that their experiences and worldviews are significant to the act of judging, and that impartial judgment is impossible in the absence of contextualized analysis.” (Taking a Stand on Equality: Bertha Wilson and the Evolution of Judicial Education in Canada).

The NJI also recognized that, when only judges teach judges, there is a real danger that, as others have put it, “we don’t know what we don’t know.” The SCEP embraced the concept of judicial leadership, but at the same time recognized the importance of a collaborative approach. All programming involved the joint effort of judges and non-judges alike, and benefited from community consultations. Legal educators assisted in the development of a variety of adult education teaching approaches.

There were certainly challenges involved in the initial SCEP phase, many of which are addressed by Justice McGarry in his essay. The end result, with the continuing support of the Canadian Judicial Council, has been the development by the NJI of sophisticated, in-depth programming that has received world-wide recognition. I feel very honoured to have been part of the process.
The Social Context Initiative: “Comprehensive, In-depth and Credible”
A Template for Judicial Acceptance

BY THE HONOURABLE JUSTICE JOHN F. MCGARRY
SUPERIOR COURT OF JUSTICE (ONTARIO)

In the summer of 1995, I received a call from Justice Frank Iacobucci, who was then Vice-Chair of the National Judicial Institute’s Board of Governors, asking me to co-chair the newly formed Social Context Education Project (SCEP) in the capacity of special director. When I hesitated, he reminded me that the request came from Chief Justice Antonio Lamer. With some trepidation, I accepted the responsibility. In this short essay, I will focus on those trepidations and how the SCEP addressed some of the concerns and difficulties it faced in its first phase.

Mr. Justice Iacobucci suggested that the notion of “social context” was fully developed in a paper written by Professor Katherine Swinton (now Justice Swinton of the Superior Court of Justice (Ontario)) at the request of the Canadian Judicial Council (CJC). [The CJC had passed a resolution in 1994 calling for social context education for Canadian judges that would be “comprehensive, in-depth, and credible,” and would include both race and gender.] Professor Swinton’s paper, which I read with dispatch, provided a clear conception of the SCEP and its rationale. The NJI later commissioned a report from Professor Lynn Smith (now Justice Smith of the Supreme Court of British Columbia) and, together with the Swinton paper, offered guidance for implementation.

Having agreed to act as co-chair, I was concerned that the concept of social context education might not resonate with judges for a number of reasons. Most would not have heard of the expression, and there would also be concerns with respect to the issue of judicial training. Furthermore, there had already been a number of very limited attempts to develop this concept, resulting in early comments of “been there, done that.” These concerns were reiterated on numerous occasions by members of education committees, which often consisted of new judges who felt they lacked the experience required to convince more senior judges of the need for social context education.

I was delighted when Judge Donna Martinson (now Justice Martinson of the Supreme Court of British Columbia) agreed to join me as co-chair of the SCEP. Our first responsibility was to convince our respective chief judges to allow us to work half-time on this project. We received their endorsement, which, in my case, came with a word of caution concerning the tortured history of earlier attempts to initiate similar programs. Judge Martinson, as a former professor
and provincial court judge, took the lead on judicial education. My responsibility, as I saw it, was to assist in moulding the program to convince chief justices, senior judges and the rest of the judiciary that the program would be worthwhile.

In order to develop the academic and pedagogical aspects of the program, we were most fortunate in hiring Professor Rosemary Cairns Way of the Faculty of Law, University of Ottawa, who provided academic leadership, a sense of humour, and a cheerful outlook throughout our endeavours. As I understand it, this was the first of many innovations that the NJI pioneered through the SCEP – retaining a legal educator and curriculum development expert to complement the leadership role of judges in judicial education.

In the fall of 1996, Professor Swinton spoke in support of the SCEP at a meeting of the Canadian Institute for the Administration of Justice. She addressed the need for context education that would increase the social awareness of the judiciary, and stated that justice demands “a legal system and judiciary not only sensitive to the divisive character and needs of groups who come before them, but also willing to apply or change the law to promote greater equality for them.”

The CJC resolution envisaged programming with a number of superior courts. We determined that we would approach Nova Scotia, British Columbia, and Ontario to get Phase I rolling. Each had well-established education programs, and Nova Scotia was already working closely with the NJI for its court education. As co-chairs, Judge Martinson and I also had strong links to B.C. and Ontario. We began the process with meetings with the relevant education committees. Professor Cairns Way and I addressed the education committee for the Superior Court of Nova Scotia in a meeting held after court, with pneumatic jackhammers thumping away in the background. We were early in our planning and asked the education committee to trust us to fulfill the requirements in the Resolution. Thankfully, Justices Elizabeth Roscoe and William Kelly reserved their decision until they had an opportunity to fully understand our concepts and, having done so, endorsed the approach. They have since remained loyal to the program.

Our next step was to convince the Supreme Court of British Columbia’s education committee that we could provide the necessary program to fill one-and-a-half days. An education committee was created, and we met with the then Chief Justice. After an extensive review of our plans, he agreed to support the initiative. He also commented, however, “that it was similar to going to the dentist — not exactly a pleasant experience, but a good tune-up was required every once in a while.” I made it very clear that I hoped this was not the message he would provide to his bench.

“This was the first of many innovations that the NJI pioneered through the Social Context Education Project – retaining a legal educator and curriculum development expert to complement the leadership role of judges in judicial education.”
Prior to receiving the support of the Court, I was asked to join a senior member on a Friday afternoon, who pointed out that a similar course had been attempted and had been an abject failure. He then asked why we felt that our program would end with a different result. After reviewing our proposal in depth, he invited me to join the members of his bench in a fellow judge’s office. He thereafter announced to approximately 25 judges that he was looking forward to the NJI social context seminar being brought to British Columbia. I am pleased to report that, when the program was presented, it received high praise from the audience.

“In my view, the first phase of the SCEP was most successfully mounted in Ontario. By then, we had some experience in shaping a full-court program, and the ideas that would become the principles outlined by Justice Hackett in her essay (see pp. xx) were coming into focus. These included ensuring a practical and relevant focus on judicial tasks, strong judicial leadership and peer education. The large number of judges in the court who volunteered to learn how to be facilitators for small-group work formed the nucleus to support many later programs in the courts’ regular education schedule. A highlight in Ontario was the participation of the visionary, courageous and inspiring Justice Albie Sachs, a judge of the Constitutional Court of South Africa and pre-eminent jurist in the struggle against apartheid. His opening speech created the foundation and energy for an ambitious program of 14 workshops addressing social context issues. Prior to starting the program, the court education co-chair warned me that there were many who did not support this initiative. Undaunted, and confident that judges would respond well to the leadership of their colleagues, we pressed on. The overwhelmingly positive responses on the evaluations showed that judges appreciated the initiative.

With the initial three programs under our belts, our big breakthrough came after we arranged to present a half-day program to the Canadian Judicial Council at one of its semi-annual meetings. After the presentation, there was a line-up of chief justices and associate chief justices, all requesting that the NJI work with their court to develop a similar program. By the time the final program in Phase I was completed in May 2000, we had worked with courts across the country to develop and deliver some 20 programs to more than 1,000 judges. Many of these programs were joint programs with superior trial courts and provincial courts. The opportunity to share perspectives across benches was often remarked upon as a particularly useful feature of these programs.

The secrets to the success of Phase I of the SCEP, I think, lie in the strongly collaborative approach taken. At NJI, the co-chairs and the coordinators worked as a close team. The SCEP included a Social Context Advisory Committee, with members drawn from across the country, from the judiciary, the academy and the community. At all times, the SCEP worked
as a partner to the courts and court education committees, who themselves shaped the programs to the particular experience of their jurisdiction. We were able to draw on the collective wisdom, good counsel and knowledge of the whole. Writing this and recalling those early days and trepidations has made me recall that it was the success of overcoming many hurdles that allowed the NJI to proceed with Phase II of the program, and to its eventual integration into the ongoing work of the NJI. As a result, I think that judges in Canada have created an expanded and rich resource for good judging. I am now a supernumerary judge and look back at this period in the life of the NJI and my own career as particularly valuable.
The Evolution of the National Judicial Institute’s Instructor-Led Online Courses

BY THE HONOURABLE JEAN R. LYTWYN
SENIOR JUDGE, PROVINCIAL COURT OF BRITISH COLUMBIA

INTRODUCTION

Technology is transforming the delivery of education. Those who wish to can receive an online degree from any number of universities, and most post-secondary institutions offer at least some of their courses through the internet. The power of technology is that it allows people who are geographically dispersed and from a wide range of backgrounds to learn from the comfort of their home or workplace. This possibility resonates for the Canadian judiciary.

In recent years, technology – including the use of the internet – has transformed the ability of the National Judicial Institute (NJI) to reach judges across Canada, an audience dispersed over 10 provinces, three territories and five time zones. One of the NJI’s many initiatives has been instructor-led online courses. The goal of these courses has never been to eliminate or reduce the NJI’s face-to-face programs, but to provide an alternative delivery method of education for judges.

The NJI has been offering instructor-led online courses for almost 10 years and is a world leader in online judicial education. The initial course, a joint project with the Canadian Association of Provincial Court Judges (CAPJC), was offered in the fall of 1999. The course, Selected Topics in Criminal Law and Evidence, lasted 11 weeks and covered a range of topics within the law of evidence. Since 2000, the NJI has offered more than 25 online courses, often four a year, with each lasting approximately five weeks. The courses have covered a wide range of substantive law issues, including Similar Fact, Confessions and the Right to Silence, Reasons and Fact Finding, Conditional Sentences, Judgment Writing, Spousal Support Guidelines, Child Support Guidelines, and the Problems with the Under and Self-represented in the Criminal Trial. The faculty has included some of the most well-known law professors in Canada, including Nick Bala, Ron Delisle, Allan Manson and Don Stuart of Queen’s University, Rollie Thompson of Dalhousie University, Dale Ives of The University of Western Ontario, Hamish Stewart of the University of Toronto, Lee Stuesser of the University of Manitoba, as well as Christine Boyle and Marilyn MacCrimmon of the University of British Columbia.

Recently, the NJI has extended its reach beyond Canada, working collaboratively with the New Zealand Institute of Judicial Studies and the Judicial College of Victoria in Australia to
offer courses for judges and magistrates from the three jurisdictions. These international courses take a comparative look at law and practice in the various jurisdictions. We have much in common and can learn from each other. Professor Ives taught the first program, *Problems with the Under and Self-represented in the Criminal Trial*, which was offered in 2007. In 2008, we offered a second program, *Aboriginal Courts: A Comparative Perspective*, co-authored by a group of judges and academics from the three countries.

**HOW DO JUDGES ACCESS THE PROGRAMS?**

The courses have always been accessed through the World Wide Web, and are now available through the NJI Judicial Library, using a software package that contains web pages for posting materials, an online chat system (blog) for discussion among the participants, and a participant tracking system. All courses are password-protected, limiting access only to the participants. Though primarily text-based, courses have occasionally used video clips to encourage discussion.

One of the major benefits of online learning is that judges can access the courses at any time, whenever and wherever it is convenient to them. Although the NJI has occasionally scheduled webcasts – real-time presentations using the computer and telephone – the courses are “asynchronous,” that is, designed so that judges do not have to be online at the same time. Scheduling real-time programming is virtually impossible, given judges’ schedules and the many time zones in Canada.

Finding the appropriate duration for online courses has been a major concern due to the many demands on judges’ time. Since the initial pilot project, the courses have lasted approximately five weeks. Any shorter makes it difficult for judges to review the course content and to engage in the discussion, and any longer makes it difficult for judges to remain committed.

**COURSE STRUCTURE**

Each course website has four major sections. This course structure has remained much the same since the beginning, although the web interface and look of the courses have changed over time. The *Introduction* sets out how the course will work, with links to web pages on *Course Objectives*, *How the Course Will Work*, *Discussion Guidelines* and *Course Schedule*. The *Law Simply Stated* provides an up-to-the-moment summary of the law. Related Readings contains a list of readings with links to cases and articles so that participants can explore the content matter in greater detail if they wish.

The central sections of each course are the *Problems or Questions* and the associated *Discussion Rooms*, which use an online chat system for interaction among the participants and the professor. There are always a number of problems, based on plausible legal scenarios, for the
participants to exchange views on. The courses are problem-based on the theory that good judicial education is not simply about knowledge transmission but, more importantly, about assisting judges in thinking and problem-solving in a manner that reflects their real-world work situation.

COURSE SCHEDULE

To accommodate the different course sections and to facilitate learning, the course schedule is divided into different segments. Just as the overall course duration is important, given the demands on a judge's time, so is the duration of the segments within the course.

The first segment, the Introduction, lasts between seven and 10 days, depending on the course. Participants are expected to log on to the course site, review the materials and questions, and post an Introduction in the Judges' Lounge. We ask the participants to post their introduction for a variety of reasons. Online learning does not have the tangible presence, the social aspect, of face-to-face learning, so an effort must be made to try to replace the social component by creating a community of learning. As with any course, the introduction is the "ice-breaker" that plays a pivotal role in the learning. Posting the introduction also lets the course organizers know that the participant can access the website, navigate through it and use the chat software. During this first segment, the participants get a chance to review The Law Simply Stated, the Related Readings, and the Problems.

The second segment is the Discussion, when the participants are asked to interact with each other and the professor using the online chat system (which many might describe as a blog). This segment lasts approximately four weeks. The participants are encouraged to work through the problems and to engage in a facilitated discussion with their fellow participants and the course moderator. As variety is important to ensure learner interest, there are always a number of problems, often structured under major themes. Participants are encouraged to choose the problems of greatest interest to them.

The interaction, however, needs to be more than a serial listing of messages without feedback, as learning comes from feedback or reflection in practice. There is always a course moderator, usually the professor, whose task is to provide feedback by commenting on the posted messages and engaging the participants by asking additional questions. This interaction is an essential part of the course design.

The last segment is Final Thoughts, when the moderator summarizes the discussion, connecting the common threads, highlighting the divergence, and (hopefully) identifying ways of resolving any divergence. Final Thoughts offers a synthesis of the course content and the commentary of the participants offered in their messages. Now that the course sites are accessed through the NJI Judicial Library, the Final Thoughts are available for viewing at any time by participants.
“The internet is now firmly entrenched in our world, and the NJI will, and should, continue to use this technology to reach out to the Canadian judiciary and beyond to assist judges with the complex and demanding task of judging.”

DO THE PROGRAMS WORK FOR JUDGES?: LESSONS FROM EVALUATIONS AND EXPERIENCE

Each program is evaluated through a detailed form distributed by email to the participants. Initially, the evaluations were compiled by an independent researcher, but are now distributed and compiled by the course organizer. Unfortunately, the return rate of completed evaluations has been relatively low, although consistent, at between 25 per cent and 35 per cent. In addition, in 2002, we asked Dr. David Kirby of the Centre for Higher Education Research and Development at the University of Manitoba to complete an independent qualitative evaluation.

The lessons from these evaluations have been consistent over time. First, the evaluations that are returned rate the programs and the instructors highly. They almost always state that the program was “very good” or “good” and met the course objectives. The relatively low response rate reflects the fact that the number of judges who remain engaged drops as the program progresses – a so-called lack of persistence. Second, the number of judges who participate in the first place is relatively low. We have tried different strategies to address these problems – which occur consistently – but, unfortunately, they have not always been successful.

Time constraints are almost always referred to as the fundamental barrier to online programming. Judges participate in instructor-led online courses without dedicated time, off the corner of their already busy desks. When they attend face-to-face programming, they have dedicated time away from the demands of their schedules. Judges do not receive any formal or informal recognition for their participation in online courses. Given these realities, it is not surprising that when judges find their work or personal commitments pressing, they cannot find the time to complete a course.

DO JUDGES LEARN?

Ultimately, a course and a delivery method must be evaluated by the learning they provide. For other audiences, studies have consistently shown that online learning, if properly prepared and organized, gives similar learning results as face-to-face programming. Given the nature of the judicial audience, formal assessment is not appropriate, so test results cannot provide a definitive answer. Informal assessment by looking at the sophistication of the interactions suggests that participants not only bring a great deal of knowledge with them, but also increase it throughout the courses. The professors often comment that the level of discussion has led them to look differently at certain problems.

The participants themselves, through their thank-you messages, reveal an appreciation of the knowledge and skills learned. Some comments from recent courses include:
“I would like to thank everyone for the informative and lively discussion. Your efforts to share your knowledge and experience have been tremendous. Thank you all.”

“What a marvellous course. I enjoyed every minute of it, as it was mentally stimulating, gave profound food for thought, and had me re-examining many of my previous ideas around section 7 and what life, liberty and security mean in the context of the Charter. Hamish’s comments were succinct and to the point. How he could have made this dry topic so interesting is quite a feat! . . . Finally, I really love the exchange with colleagues across our country, and it never ceases to amaze me how much intellectual talent is out there. This is a great forum for learning and I hope it will continue.”

“Thank you, professor, for all your input and this most informative course. The commentary from the participants should be useful to all of us in shaping our independent, objective and non-emotional views.”

“Thanks, Dale, to you and the other participants. I’ve really enjoyed thinking about and discussing these problems. The course has also reminded me how complex evidentiary issues can be, and how often we must decide on admissibility with very limited arguments and very little time in order to avoid delaying the trial we’re hearing and the ones waiting. Having practice analysing issues and articulating reasons no doubt helps us rise to the occasion.”

THE FUTURE OF NJI’S ONLINE LEARNING FOR THE JUDICIARY

Developing online courses for the Canadian judiciary has been a collaborative task, requiring commitment and effort from many of the NJI staff over the years. Since 1999, each of the Executive Directors has demonstrated this commitment to develop online courses. The Honourable Justice Dolores M. Hansen took on the challenge with great interest, and Mr. George Thomson, The Honourable Justice Lynn Smith and The Honourable Justice Brian W. Lennox have encouraged the continuation of the project. Other NJI staff have helped immensely with the courses. Professor Ben Gianni and Ms. Susan Lightstone have provided their insight and steady commitment to online courses. Mr. Slaven Vlacic has always been there (no matter the time) to build the course sites, sort through technical problems and offer helpful suggestions for improvement.

Online instructor-led courses provide an effective learning format for some, but certainly not all, judges. These courses are not meant to, nor will they ever, replace face-to-face programming, as the social aspect of learning is far too important for judges. They do, however, provide another way of reaching the Canadian judiciary. The internet is now firmly entrenched in our world, and the NJI will, and should, continue to use this technology to reach out to the Canadian judiciary and beyond to assist judges with the complex and demanding task of judging. The question is not whether we should use technology, but how we can most effectively use technology to assist our judges.
Reflections on International Judicial Education

BY THE HONOURABLE JUSTICE MARC ROSENBERG
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INTRODUCTION

The National Judicial Institute (NJI), through its International Cooperation Group (ICG), is a world leader in international judicial education. ICG was developed in 2003 to respond in a formal and cohesive manner to the numerous requests for presentations that the NJI received from judicial institutions, courts, governments and NGOs. In this article, we discuss some of the recent projects that involve international judicial education and providing advice on legal-judicial system reform. We will also highlight some of the challenges and rewards of this work.

For many years, Canadian judges have assisted with judicial education and legal reform by making presentations on an ad hoc basis in other countries, often on subjects relating to human rights or substantive law. The NJI through the ICG attempts to move away from one-off presentations towards building capacity in judicial institutions, particularly in developing countries and in countries that currently have socialist justice systems, but are struggling to move beyond such systems. With the assistance of donors, especially the Canadian International Development Agency (CIDA), the NJI has collaborated with partners in Latin America and countries such as Ghana, Ethiopia, China, Rwanda, Ukraine, Russia, Pakistan and the Philippines.

Developing countries and countries with a Soviet-era judicial system among others face similar challenges. The judiciary may be perceived as incompetent, corrupt and unable to effectively serve the needs of the litigants. The judicial system, in transitioning to more openness and transparency, often attempts to incorporate adversarial elements with which the judges are unfamiliar. The judicial training institutes may be under-resourced and may have little experience with any form of judicial education beyond the traditional lecture method. What the institutions and the judges want is access to a method of education that can provide the basic skills to support the transition to a system in which the citizenry and government can have confidence.
SKILLS-BASED EDUCATION

Over the past 10 years, the instructional methods used by the NJI in domestic programming have changed dramatically from a lecture-based style to a more hands-on, skills-based one. Information is now presented through a variety of methods, including keynote speakers, debates, panels, videos, live demonstrations, role plays and facilitated, small-group discussions. The current teaching uses experiential learning techniques and is centred on the principle that judicial education will be most engaging and effective when it uses a skills-based approach. Recognizing that judges are adult learners, and that learning is enhanced when participants are actively involved, judges are given an opportunity to not only acquire the knowledge but also to apply the skills in an immediate and relevant setting.

Social context, the theory that judges must be aware of the social reality and environment of the people who appear before them, has also been incorporated into all NJI programs. The substantive and skills-based elements of the programming refer to issues such as gender, race, and disability. For example, fact scenarios that include aspects of domestic violence or sexual assault recognize the judge’s need to be sensitive to the power imbalance implicit in these gender-based crimes in order to properly understand the testimony.

These changes in methodology have proved very successful in the NJI’s domestic judicial education. The experiential approach not only fosters skills-based development and social context understanding, but also enhances retention levels of learning.

During ICG’s relatively short existence, it has matured considerably and been able to take advantage of the growth and development of the NJI’s domestic experience. As with all NJI education, the international instruction uses social context and experiential techniques. As a direct result, the countries where ICG works have also benefited from the years of trial and error, knowledge, and expertise of both ICG and the NJI as a whole. Judicial programming must be attuned to the legal culture of the countries in which it operates. While transplants do not work, experiential methods have travelled well to the countries with which the ICG has been involved.

Thus, in Ukraine, the new judicial academy asked for assistance in developing a skills-based curriculum for training newly appointed judges, as it was anxious to move away from the lecture format of judicial education in order to equip the new judges with the tools to perform their duties. Working with their judicial faculty over a two-year period, the NJI helped to develop modules of education dealing with evidence and courtroom management. Those modules, which incorporated virtually all of the elements of skills-based education, including short lectures, videos, small-group discussion, role play and feedback, will be used as models for further curriculum development.
“There are significant cultural and historical events that have shaped their lives and legal systems...
We cannot begin to work effectively and credibly with our partners without first understanding who they are and from where they have come. For example, when working in Rwanda, it was imperative to appreciate the profound impact the genocide had on the country and its people.”

CITIZEN ENGAGEMENT

Accountability of courts to the public is a key issue in both developed and developing countries. Many emerging nations are in the formative stages of creating democratic institutions to support this accountability. Press freedom may, for example, be a recent development. The judiciary may not welcome criticism and be unsure of how to handle it. The public may not be skilled in providing effective comment. NGOs may be weak. Judicial decisions may not be easily accessible.

A key element of our programming is to build citizen engagement. Transparency of judicial process and decision-making is particularly important. Many developing justice systems suffer from an opaque process that exacerbates suspicion of the courts. Public trust is the bedrock of healthy rule-of-law regimes. Negative public opinion can overwhelm advances made in improving judicial competence or reducing corruption. Thus, the NJI supports public legal education, importing social context principles into judicial education, and the publishing of court decisions, and also provides ideas for direct outreach by chief judges, and assistance to courts and the media so that they can better understand each other.

At the invitation of the Federal Supreme Court of Ethiopia, the NJI provided an assessment of the independence, transparency and accountability of the judiciary in Ethiopia. The assessment report was presented at a public meeting attended by the media, NGOs, members of the legal profession, the government and the judiciary. Then, in a series of workshops, the judiciary developed an action plan to implement the recommendations from the report. Due to the very open process, there is reason to hope that the reform will proceed, despite the many other challenges facing that country.

ELEMENTS OF EFFECTIVE INTERNATIONAL JUDICIAL EDUCATION

The NJI has learned much about international judicial education and justice system development through our engagement with other countries; our lessons, not surprisingly, reflect what has been learned over many years by those involved in other areas of international development.

1. Honesty and candour

The NJI has been welcomed to other countries not simply because of the perceived effectiveness of skills-based learning, but because we are honest about the frailties and limitations of our own systems. In the past, judicial education from other donors has often come with a hidden or not-so-hidden message that there is but one way of implementing change. Candour in identifying the difficulties and shortcomings of the adversary system is welcomed by the...
judges, and is essential for effective training and education. The NJI was asked to assist the Supreme People’s Court (SPC) in China with introducing elements of the adversary system to enhance public confidence in the courts. The seminars conducted in Canada and China not only dealt with the advantages of the adversary process, but also devoted significant time to exposing systemic frailties that have led to wrongful convictions, delays, reliance on plea-bargaining, and increasing costs. In this way, the SPC judges, who are sophisticated students of other legal systems, could make rational and informed decisions about the direction to take with the proposed reforms.

We are always careful to note the great differences between Canada and the countries we assist. This approach has led to growing levels of trust with our partners, which, in turn, facilitates information exchanges at a more fundamental level and allows for better understanding of the real motivations, concerns and aspirations of our partners. The NJI can then provide much more valuable and targeted input to reform plans. At the behest of other western donors, for example, one particular developing country in Southeast Asia was considering the adoption of robust adversarial principles into its historic inquisitorial system; however, no provision was made for the education of judges, lawyers and prosecutors. The country also had twice as many judges as it had lawyers. There was little doubt that the time was not right for a transition to adversarial process. This “experiment” was bound to fail – leaving reform even further behind. Candid advice from Canadians about the drawbacks to the proposed reforms – drawbacks that had not been identified by any other donors – was deeply appreciated by the host country.

2. Respect for culture and history

When engaging in international judicial education, it is very important to be both cognizant and respectful of the history and culture of the host country. In the countries with which we have worked, there are significant cultural and historical events that have shaped their lives and legal systems. We must be apprised of, and realize, the significance of this history. We cannot begin to work effectively and credibly with our partners without first understanding who they are and from where they have come. For example, when working in Rwanda, it was imperative to appreciate the profound impact the genocide had on the country and its people. We could not truly collaborate with the educators and trainers to develop and deliver curriculum for their judiciary without this insight.

3. Local ownership

The NJI has extensive knowledge and educational resources that have been developed and enhanced over the years. We are keen to share this information, but are mindful that it must be used only as a guide. The education we develop with our international partners cannot be a Canadian program adapted slightly for the host country. It is essential that our partners take ownership of their program, and that it be created by them, and for them. The curriculum must be developed with localized material based upon their expertise, legislation, experiences and relevant fact situations. For example, in Russia and Ukraine, we demonstrated how we use videos as a teaching tool to their judicial faculties, who then, with our assistance, developed videos rooted in their own legal culture.
“Effective international work depends on flexibility and adaptability. No matter how much planning one does ahead of time, and no matter the attempts to foresee the problems and anticipate the issues, there will always be changes, new demands and logistical gaps.”

4. Sustainability and capacity building

For skills-based education or policy development to succeed, it must be sustainable. The partners must be able to carry on after we leave. This can be difficult when the mission or project is of a short duration. Nevertheless, we must leave the judiciary or the training institute with the tools to continue to develop the curriculum or policy. Sustainability should be the touchstone of program design, and should be kept in mind at every stage. Successful programs that survive over the long run are those that meet the real needs of the recipient judicial system and that reflect local values. The goal is a judicial skills-based curriculum that can be constantly improved to adjust to the requirements of the judiciary in the host country. One way to make the programming sustainable is to focus on training the trainers—those members of the judiciary or the institute faculty who will be able to train other faculty and continue to develop the skills-based curriculum. This method leverages the funds and human resources involved, both of the NJI and its partner countries. It leaves recipient countries with the ability to replicate what they have learned.

5. Flexibility and adaptability

Finally, effective international work depends on flexibility and adaptability. No matter how much planning one does ahead of time, and no matter the attempts to foresee the problems and anticipate the issues, there will always be changes, new demands and logistical gaps. Agendas will need to be reworked on the fly; new arrangements for presentations and teaching will be required; the whole curriculum may need restructuring. There may be profound misunderstandings about the expectations of the Canadians and the hosts; cultural differences may magnify the impact of apparently minor matters. Nothing is simple once one goes overseas, but by being ready to adapt to rapidly changing circumstances, one can provide effective advice and training.

THE CHALLENGES

At the same time that the institutions in the host countries face daunting challenges, it is important to recognize the challenges Canadian educators and judges face in these countries.

Language

The barrier that language presents to providing effective education, especially skills-based education, cannot be underestimated. While English is becoming more pervasive, in most of the countries in which we have worked, neither English nor French is the working language of the judiciary or of the people. This means working with interpreters for many hours every
day. The simple interaction that takes place at coffee breaks, and that is often taken for granted, can be stilted and awkward. We have found that effective judicial education depends on making connections with individuals, and yet these connections are often difficult to make because of the language barrier.

Language can also be a challenge in more subtle ways. Terms that we take for granted and that are fundamental to understanding the training may not translate exactly, or at all. This can lead to misunderstandings and confusion until the difficulty is identified. For example, using the term “Crown” to refer to the prosecutor is confusing in non-Commonwealth countries. In Vietnamese, “adversarial” translates as “fighting.” And, of course, language is a fundamental part of culture; not having a grasp of the local language can be a barrier to understanding the judicial culture as well as the culture in the greater population.

**Context**

The host countries are rarely based on an adversarial, precedent-driven system of law. Rather, they use a European civil law or Soviet-era system, often with elements of traditional law. Effective advice or training requires an understanding of the current structure, and of the legal and social context; yet obtaining accurate information about how the current arrangements work in theory and in practice can be daunting. Engaging in international judicial education involves a significant and continuing investment in time and energy to understand the partner’s legal system and culture.

**Resources**

In developing and post-Soviet era countries, the competition for resources can be acute, as these nations try to build or rebuild a country that is struggling to meet the need for adequate housing, health and nutrition. Improving the judicial system may not be seen with the same urgency. However, donors and recipient countries agree that development of the judicial system should have priority, given that the stable, predictable application of law, which is accessible to citizens, forms a platform upon which human rights can be enforced and economic relations can grow. As well, foreign confidence in the judicial system can be a gateway to foreign investment, trade and aid. Nevertheless, the government may have little capacity to provide adequate court facilities, and may not always see effective judicial education as a priority. Even where it is perceived to be a priority, the scarce resources may be allocated to the judiciary at the expense of training for private lawyers and prosecutors. Even modest attempts at introducing elements of an adversarial system will collapse if the other players in the system are unable to effectively participate. Lack of resources may limit the ability of the judiciary or the judicial training institute to effectively implement skills-based education. Thus, low cost and innovative ways have to be found to implement the reforms.
THE REWARDS

While always challenging, international judicial education provides tremendous rewards in terms of insight into other systems and our own. Working internationally also involves a commitment in terms of time, planning, imagination and understanding, but results in significant personal growth and development.

One example of a rewarding experience was meeting with a first instance judge in a remote, underdeveloped African village. Though he was not expecting the visit, the judge stopped his work to provide candid and invaluable information about the challenges he faced in attempting to adjudicate hundreds of civil and criminal cases in a courthouse with limited electricity, let alone computers, and with little access to the laws he was expected to apply. And yet, like his colleagues throughout the world, he was eager for training to upgrade his skills to better serve his fellow citizens.

Yet another compelling experience was speaking to a lawmaker in a Southeast Asian nation. She explained, through a poignant story, the need for government oversight of the courts due to the endemic corruption and incompetence in the judicial system. As the lawmaker said, had she not been able to intervene, a real injustice would never have been corrected. Stories such as these put in perspective both the challenges of judicial independence and the need for effective judicial education.

Perhaps the greatest reward is witnessing the success of those with whom you have worked. A moment to cherish was observing the true pride and satisfaction of a Rwandan educator presenting an agenda of his institute’s very first module of judicial education. This, after he and his colleagues had insisted only 10 days earlier that they lacked any such capacity and expertise.

CONCLUSION

Judges worldwide, no matter the system, do similar work and enjoy a special status in society. This provides an instant entrée to the judiciary in foreign countries. Trust and friendship can be built quickly. This unique collegial relationship is a tremendous advantage, compared with other overseas assistance programs that often require years to build the same level of trust.

As the world shrinks and international rules impact on us at a domestic level, it becomes increasingly important to understand other cultures and, in particular, justice systems. We learn more about our own system when we try to explain it to others, and other countries have important lessons for us. By building on its special advantage in innovative experiential learning and its reputation for offering balanced and candid advice, the NJI, through the ICG, has made, and will continue to make, a real contribution to international judicial education and law reform.
Engaging Canadian Judges in International Cooperation Activities

BY THE HONOURABLE JUSTICE THEA P. HERMAN
SUPERIOR COURT OF JUSTICE (ONTARIO)

PROFESSOR T. BRETTLE DAWSON
ACADEMIC DIRECTOR, NJI

INTRODUCTION

Canadian judges and legal professionals have made a major contribution to international judicial training and reform for more than 25 years. Judges in Canada have consistently shown a willingness to commit their time and energy to support their judicial colleagues around the world. The National Judicial Institute first became involved in international judicial reform when it worked with Justice College in South Africa as part of the Canada-South Africa Justice Linkages program following the end of apartheid. As Justice T. David Marshall has recounted in his essay (Early Beginnings: National Judicial Institute, p. xx), the NJI has had a long tradition of sharing experience with other countries.

In recent years, attention given to the reform of judicial systems in developing and transition countries has been increasing at an unprecedented level. Several factors have been driving this process, including recognition that transparent, rules-based legal systems and an independent, impartial judiciary enhance the public interest as a whole, and advance human rights and social justice in countries where these are at serious risk. Governments have also recognized that a sound judicial system is essential to permit markets to work effectively and to encourage investment.¹ Fair and efficient legal and judicial systems play an important role in attracting foreign direct investment, generating employment, and facilitating functioning markets. This, in turn, fosters economic growth, which leads to significant poverty reduction over the long term and is a major focus of the United Nations Millennium Development Goals. It is not surprising, then, that the demand for Canadian judges to contribute to this work has been increasing (although it remains uneven and unpredictable).

Given this increasing demand and the complexity of the issues involved, the NJI felt it was important to find ways to make the involvement of Canadian judges sustainable over the longer term by building the skills of judges and judicial organizations to undertake the work effectively. Towards this end, the NJI formed its International Cooperation Group (ICG) in 2003. The mandate of the ICG includes:

- Coordinating international judicial education cooperation activities
- Facilitating informed access to Canadian judges

¹ That this is true for Canada as well was remarked upon by Chief Justice Warren Winkler in his opinion piece in the Globe and Mail (April 06, 2009), “In hard times, our justice system gives us a competitive edge.”

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ENGAGING CANADIAN JUDGES IN INTERNATIONAL COOPERATION ACTIVITIES
THE HONOURABLE JUSTICE THEA P. HERMAN AND T. BRETEL DAWSON

- Developing Canadian judicial capacity to engage in international judicial reform/education activities
- Building partnerships with judicial education institutions in other countries
- Contributing to the quality of judicial education in judicial reform work
- Implementing judicial education projects internationally

In the first years of its operation, a number of development experts have been involved in the work of the ICG, including Kathleen Lauder, Marilyn Collette, Richard Sunstrum and Brenda Cupper. Working closely with them, George Thomson and Brettel Dawson have contributed legal and judicial education expertise in guiding the ICG. The role of Judicial Associates such as myself, The Honourable Justice Marc Rosenberg and The Honourable Justice C. Adèle Kent has been of great importance in ensuring that the work of the ICG has been judge-led. We have also been delighted to receive the energy and expertise of NJI Education Director, Susan Lightstone, Senior Advisors such as Susan Doyle, Project Directors such as Donald Chiasson, and judges who have participated extensively in international project activities.

The ICG has lived a double life in its first years. Without doubt, a major focus has been on judicial education as part of bilateral projects in Philippines, Ghana, China, Russia and Ukraine. It has also undertaken work with Rwanda, Pakistan and Ethiopia. The focus of these efforts has been varied widely: judicial dispute resolution, reform to criminal and civil evidence and procedure; strengthening of judicial institutes; and curriculum development. Through these projects, the NJI has developed warm partnerships with a variety of judicial education institutions, including the Philippine Judicial Academy (PHILJA), the Centro de Estudios de Justicia de las Americas (CEJA), the Supreme Peoples’ Court of China, the Judicial Service of Ghana, the Russian Judicial Academy and the Ukraine Academy of Judges, among others. In their essay in this collection, Reflections On International Judicial Education (p. xx), Justice Rosenberg, Susan Doyle and Donald Chiasson recount experiences in several of those projects.

At the same time, the ICG has also been “staying at home,” focusing on ways to enhance coordination among organizations, facilitate participation in this work by Canadian judges, and share judicial education resources with other judicial education bodies. While the expansion of demand for Canadian judicial expertise has been welcomed, it has also created challenges that the ICG has attempted to address in ongoing conversations with other judicial organizations and with the Canadian International Development Agency. These challenges include: how are judges with appropriate expertise to be identified and involved in international efforts? Is it possible to move beyond ad hoc and uncoordinated processes towards more systematic and collaborative processes among organizations that work with the Canadian judiciary? How can training and resources be made available to support the participation of

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Canadian judges in a wide range of activities? How are the ethical questions concerning the participation of judges to be resolved? Still very much ongoing in our discussions is the question of whether the unique position of judges can be accommodated within the business models of funding agencies and executing organizations that favour competitive bidding, assess projects on the basis of listed personnel, and value “development management” over facilitating judge-to-judge connections. The insistence by the NJI and other Canadian judicial organizations on judicial leadership and a peer education model has been unfamiliar to funding agencies and non-judicial implementing organizations.

The formation of the Canadian Judicial Faculty Roster under the aegis of the Judicial Educators Network (JEDNET) has been a significant initiative to facilitate informed access to Canadian judges. Until the NJI’s efforts to achieve a more coordinated approach and offer a central reference point for judicial expertise, obtaining information on either side (judges/organizations) was done in an ad hoc manner. In practice, there would be calls to multiple offices and courts or searches of in-house lists of judges or judicial members. For judges, involvement would come through people they knew, organizations to which they belonged that might come to implement a project, or simply luck and opportunity in finding out about international activities and needs. Obviously there are limitations to this approach, not the least of which is lack of equality of access and happenstance in finding the person with the right mix of skills and experience.

This is where the Canadian Judicial Faculty Roster comes in, by matching judges to requests by organizations and projects seeking judicial expertise. The Roster is open to all judges who register online (or in hard copy), completing a detailed skills profile through which they specify relevant experience and expertise. The “skills profile” was shaped after analysis of the kinds of requests being made for judicial expertise. The Roster is already becoming a very useful way to tap into (and assist in the mobilization of) the extraordinarily wide and varied array of expertise housed in the Canadian judiciary. Many requests come with quite particular needs (recent examples have sought an expert on organized crime and plea bargaining; civil law expertise for work related to gender and access to justice in Peru; and environmental law expertise with Spanish language capacity). The international roster is currently being migrated into a general Judicial Faculty Roster to be a resource for all education programming needs.

Another initiative has been development of the International Judicial Faculty Development Seminar. We believe that the NJI is the only judicial education body to offer a systematic program of preparation for participation in international work. First offered in 2006, the program allows judges to learn more about the policy and practices underlying development projects, and to examine the kind of work involved for judges. Translating judicial education skills honed in Canada into other learning cultures is a focus of the program, with emphasis on intercultural effectiveness. One of the sobering lessons in this work is that being an expert in Canada will not be enough for success internationally. Working in another culture requires particular skills and attributes, including flexibility, adaptability, openness and resilience.
"...the NJI has steadily become an outward-looking judicial education body. Increasingly, programs and resources developed for Canadian judges and Canadian courts are being drawn upon for international cooperation initiatives. Canadian judges are also becoming involved in these initiatives..."

CONCLUSION

This essay began with an overview of the high-level goals of international judicial cooperation. We conclude by bringing the matter back to earth in the voices of Canadian judges whom we consulted as we began our efforts to better understand and facilitate the involvement of Canadian judges in international work. They reported that such activities benefit their court by providing a learning experience, whether it be learning about other legal systems, concepts of judicial independence, or relating to diverse cultural groups. Several judges also spoke about the motivational benefits of international work in helping judges to "recharge their batteries" and assisting judicial colleagues in other countries on a "judge to judge basis":

“When you teach someone else you always learn… Any time you learn, you are improving as a judge.”

“If you explain to others how you do something, you learn a lot yourself, about things you take for granted or are not conscious of, for example aspects of judicial independence.”

“Any time we have an opportunity to expand our own horizons, it enhances our capacity to do our work back home.”

“It is an enriching experience that would have great benefits in making that judge a better judge. It is refreshing for judges to do something different; it puts a fresh perspective on what we do.”

“It is a wonderful, broadening experience that provides judges with a change of pace and makes you appreciate what you have in Canada.”

“A break from the routine helps you to come back revitalized and to appreciate what you have and to better contribute to the administration of justice in the quality of work that you do.”

At the end of the day, we find ourselves in agreement with Anne-Marie Slaughter, former Harvard Law School faculty member, who has argued that judges are “globalizing” and have a “deep sense of participation in a global enterprise of judging, an awareness that provides a foundation for a global community of law.” Canada's particularly influential role has been noted in an emerging “global conversation” that provides “an important source of inspiration, one that enriches legal thinking, makes law more creative and strengthens democratic ties and foundations of different legal systems.”

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Thus, it is also clear that, despite the challenges of being involved in this field, there is as much to be gained as there is to be given by the National Judicial Institute itself. As we take the occasion of this 20th anniversary to reflect on the evolution of the Institute and judicial education, what becomes apparent is that the NJI has steadily become an outward-looking judicial education body. Increasingly, programs and resources developed for Canadian judges and Canadian courts are being drawn upon for international cooperation initiatives. Canadian judges are also becoming involved in these initiatives, translating the knowledge, experience and skills developed in Canada to international contexts. The NJI has undertaken a leadership role in a wider community of judicial education bodies and, through its involvement in this community, is continually developing itself as an institution through sharing and receiving knowledge and experience. Our contacts with developing country partners and with the Judicial Studies Board of the UK, the Federal Judicial Centre of the U.S. and the Judicial College of Victoria, and others, have given the NJI access to new resources and approaches and stimulated much new thinking. This outward-looking view sees the NJI as rooted in its Canadian work and engaged in an “international judicial conversation” in much the same way as the Canadian judiciary itself.
The NJI Multiplier Effect – Or, How We Work: The Practical, as Opposed to Pedagogical, Side of the Story

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INTRODUCTION: THE NJI MULTIPLIER EFFECT

It was Chief Judge Hugh Stansfield of the British Columbia Provincial Court who coined the expression, the “NJI Multiplier Effect.” It aptly describes the practical methods we use to deliver our programs and resources to judges across Canada. Simply put, we rely extensively on volunteers — mostly judges — to design, develop and deliver our programs and to contribute to our ever-growing collection of resources. In addition, over the years, we’ve become expert at re-using, recycling, repackaging and redelivering programs. Volunteers augment the work of our staff and nothing goes to waste. This is how we extend the abilities of the NJI staff — currently standing at some 50 full- and part-time employees.

In this collection of essays, you’ll read about our pedagogical commitment to experiential, skills-based education: our trademark. You’ll also read how we are continually working to define and refine our curriculum. Professor Brettel Dawson has explained the workings of NJI’s approach to “judge-led, judging-focused judicial education” in her Judicial Education Guides. But how do we put legs on the NJI’s approach to education, and annually deliver more than 80 in-person programs and many important resources and supports across Canada? This is the practical side of the story — how concepts are translated into programs and resources.

So, how does an idea for a judicial education program evolve from a concept, to a program listed on the NJI’s Schedule of Judicial Education, to a conference involving dozens of judges, delivered in a hotel meeting room somewhere in Canada?
CONCEPT TO NJI SCHEDULE: THE PROCESS

Ideas, suggestions and requests for in-person courses arrive in various ways. Our current collection of courses is detailed in the NJI course calendar. That collection is not static, however. We regularly review and revise that collection, which constitutes our curriculum of programs. Suggestions and ideas for programming come from a variety of sources, including the NJI’s Board of Governors and the NJI Curriculum Advisory Committee (a sub-committee of our Board), judicial associates, the courts with which we work, and other judicial education bodies. Often, however, program ideas come in ways that are either unexpected or unanticipated. For example, a public inquiry may be called on a certain subject, with the result that judicial education is recommended in a certain area. The report following the Inquiry into Pediatric Forensic Pathology in Ontario (the Goudge Report) recommended judicial education into how judges work with scientific evidence. As another example, we might be approached by a legal academic who has just completed extensive research into a specific area of the law that has pertinence to other elements of our curriculum. One more example; NJI staff, in their discussions with individual judges, might identify an area or topic with which judges are struggling. A key role of the NJI staff is to collect all of these suggestions and ideas — from all of these sources — make sense of them, weigh them, figure out what we can realistically produce given staffing, funding and time limitations, and, then, translate them into a curriculum that is meaningful for judges. This, in turn, means our collection of programming, while stable, is far from static, but always current.

Programs fall into two basic categories: NJI national programs and court-requested programs.

The majority of the in-person programs we work on are not “our” programs. They are what we call “court-requested” programs. Courts contact the NJI and ask for help in the design and delivery of programs their courts plan to deliver. In 2009, 40 programs on the Schedule of Judicial Education are court-requested. Typically, each court has a judge or judges who act as education chair(s). Often, an education chair will come to the NJI with not only a date for the court’s program but also a clutch of ideas for topics to be presented at that program (most programs tend to be between two and three days in duration). This is where the complementarity of the relationships among the courts and the NJI comes to the fore. The courts often bring the NJI new ideas for programming, which results in the design of new modules of education — which are then shared, that is, disseminated by the NJI to other courts. And, often, a court will “shop” in the NJI inventory of previously presented modules and courses, working together with an NJI senior advisor, to determine if something already in existence might be “tweaked” for redelivery. Here’s an example: in 2002, the NJI approached Dean Philip Bryden, University of New Brunswick, to assist with the design and delivery of a program on recusal and disqualification for the NJI Appellate Courts Seminar. This session became a popular module of education. Dean Bryden produced a paper on the subject and, together with assistance of judges, a collection of fact situations, which participants work through as part of the session. To date, it has been delivered six times at six different programs, with the fact situations always being adjusted to reflect the jurisdiction in which the session is presented.
NJ national programs accounted for 37 programs in 2009. Our national programs fall into a couple of different categories:

All of our national programs are supported by a “resolution” from the Canadian Judicial Council — and the bulk of our funding derives from the CJC passing a resolution, authorizing the attendance of federally appointed judges at our programs. This, in turn, provides the NJI with the financial ability to design, develop and deliver programming. Specifically, our request for a resolution will outline the number of federally appointed judges we hope will attend the program, the area of the country in which the program will be delivered, and the season and year in which the program will be offered. The resolution guides the general parameters of the program — the where, the how, the number of attendees, the general subject matter.

Twice a year, NJI staff present the Education Committee of the CJC with several letters, each letter requesting a resolution for specific programming and providing a short explanation for why the program fits within the NJI’s curriculum and what the program might look like. There is definite uncertainty in information contained in these letters. Often, we’re asking for funding for programs three or four years from the date of the letter requesting the resolution. So, the letter might be requesting support for four years’ worth of criminal law programs — we might know the general topics for each of the four programs proposed, and we probably will have a very good idea of the topics for the earliest two programs, but the program that’s four years out is probably uncharted territory. And, we’d argue, that’s as it should be. Many things can happen in four years, and our programming tends to be both topical and current. If something occurs that affects the law and judging, we work diligently at keeping the judges informed of those changes and events. Here’s an example: the 2009 Criminal Law Seminar, which focused on the Charter, contained a session presented by The Honourable Justice Stephen Goudge speaking about expert evidence and miscarriage of justice issues. His presentation was based upon his work as Commissioner of the Inquiry into Pediatric Forensic Pathology in Ontario. When the resolution was requested, Justice Goudge’s report was not yet in existence.

So, how do we decide which programs will be requested at our meetings with the CJC Education Committee? Some of our resolution letters are routine. We’re requesting renewals of authorization for programs we consider core to our curriculum — our family, criminal and civil law programs, for example. But we also add new programming, reflecting additions to our curriculum.

THE BUILDING OF THE SCHEDULE OF JUDICIAL EDUCATION

Requests for programs come at us from many places. Individual courts come to us asking for our assistance — in 2009, we supported nearly 30 courts with their programs. Some courts come in combination, asking us to work with them as a group. We partner with various organizations to deliver programs, including the Canadian Institute for the Administration of Justice and the Canadian Association of Provincial Court Judges. And, of course, we have our own national programs. All need to be scheduled, all need to be staffed, all need to be supported along the path to delivery. It results in a serious juggling act.
Four years ago, we formed the scheduling committee, composed of the education director, program advisor and education coordinator, to tackle the creation and maintenance of the domestic schedule. Together, our positions are responsible for managing all the domestic training staff positions, with the exception of the computer trainers. We meet every other week, reviewing new requests, which can come in at any time of the year. Some courts provide us with their schedules up to three years in advance, others ask for our help a few months before their programs. All function slightly differently from one another. It’s our responsibility to ensure we know how each functions, and not to miss a planned program. (It’s both our standing joke and our worst nightmare — we wake up one morning to discover we have dozens of judges sitting in a hotel room somewhere in Canada, waiting for us to arrive and deliver a program that we’d forgotten to mark on our schedule. To date, this nightmare has not become a reality and we can still laugh about it.)

What factors do we take into consideration as we sit around the scheduling table? In many situations, we are informed of the date of a program by a court. That goes directly into the calendar. Then, we try to schedule NJI programs and any other programs with a bit of flexibility around those set dates. This is a challenge. Of the 52 weeks in a year, only about 35 are available for programming. We try to keep summer fairly open (but for a couple of NJI intensive programs, including the Evidence Workshop and Hearing and Deciding Charter Issues) and avoid holidays throughout the year. Our schedule ends up looking fairly uneven, with most programs scheduled for the fall and spring months. As the number of programs we work on has grown, we’ve had the dilemma of overlapping programs. We work diligently to ensure that overlapping programs do not draw from the same participant base — though it’s become impossible to be completely successful at this, and sometimes judges are faced with choosing between programs.

Dates are only one factor we consider. Complexity of the program is another key issue. We have devised a weighting system, in which we rate the design and development process on a scale of 1 to 10, with the most complex programs scoring 10. We consider a variety of design elements: is it a brand-new program, or a repeat of a module? How long is the program? Will there be a new faculty? Will we be making videos? What might the materials look like? Is there small-group work? Simultaneous interpretation? These are just some of the questions we consider, and the final tally for a program will determine how we staff it and how much time we allocate for its development. As previously mentioned, this weighting process is challenging, given we often don’t have a clear vision of the extent of the program, because those responsible for its design can’t yet give us that information. So, we rely extensively on our past experiences with similar programs to figure out the weight we’ll assign to an upcoming seminar.

In addition to deciding upon the number of staff to assign to a program, we also decide which individuals will be assigned. This means we need to keep close tabs on, among other things, who’s doing what, who’s interested in what topics, who’s developed a strength in a specific area, who’s developed a relationship with a specific court.
Typically, we come out of a scheduling meeting with a list of potential assignments for senior advisors, program managers and program assistants. Note the word “potential.” What we decide in the scheduling meeting is not finalized until it has been discussed with the assignee. Oftentimes, we’re not fully aware of what each staff member has on his or her own plate: how is their work level developing as they work on programs? When have they scheduled vacation time? So, we spend a bit of time negotiating the assignments. Once finalized, the key details of the upcoming program (date, place, name of program, names of NJI staff working on the program) are entered in our internal database for all to see — a look at that schedule gives a complete overview of all domestic programming in the planning stages. In sum, the process — though quite time-intensive — gives us a very good handle on the entire domestic schedule of the NJI and the workload of each member of the team — for several years. In the end, no programs missed to date!

NJII STAFF: THE DIVISION OF LABOUR

A team of three is assigned to nearly every program: a senior advisor, a program manager and a program assistant. It’s this team that, in turn, supports and works with judges — either education chairs, planning committees, judicial associates, or some combination of the above — to design, develop and deliver the program.

First, a bit of history. When the NJI opened its doors in 1988, it was anticipated the organization would support programs primarily delivered by judges. Support was provided by NJI staff working primarily as event planners — what we call program managers now. We now have five program manager positions, which tend primarily to the logistical end of programs. Each program manager is supported by a program assistant, who provides administrative assistance.

In 1995, the Canadian Judicial Council endorsed social context education for judges, and a lawyer joined the NJI staff as coordinator for social context programming. That position transformed into the role of senior advisor by 2001. Currently, five lawyers are on staff as senior advisors. They are supported by an articling student. Further, several other positions within the NJI, including the executive director, academic director, education director and senior director (ICG), work as senior advisors, in addition to their other duties. Judicial associates sometimes take on the role resembling that of a senior advisor for certain programs. For others, we recruit individuals, usually academics, who have some specialized expertise regarding the area of programming we’re working on. For example, Rosemary Cairns Way, a law professor at the University of Ottawa and former NJI staff member, regularly works on programs focusing on social context issues; Nicholas Bala, a law professor at Queen’s University, has acted in a senior advisor capacity on an intensive family law program, his area of expertise.

So, what does each of these team members do when assembling a program? Short answer: it depends.

First, it’s important to understand the skill set that each of these team members offers. Most of the program managers come from a background involving events management. This means that they know how to provide all the logistical support necessary for a program, from establishing a budget for the program, to contracting with a venue for the program, arrang-
ing audiovisual support, publication and translation of materials, onsite support during the
delivery of the program — right down to the menus for the meals served at the program. Pro-
gram assistants work under the guidance of the program manager to make all this happen;
they organize conference calls, create name tags, help assemble and prepare materials. Many
of our program assistants also have experience or formal education in the realm of events
planning.

All of the senior advisors come from a legal background, being either lawyers, law professors
or judges. Similarities among this group end with this key qualification. They come from a
wide variety of backgrounds — from academia, the judiciary, private practice, public legal education, administrative tribunals, journalism, or government agencies. Taken together, all the
skills and experiences they bring are complementary. In terms of work assignments, care is taken to match skills with appropriate programs and courts. For example, a senior advisor who formerly
taught constitutional law is assigned to our Charter course. Another senior advisor who has practice experience in the family law area works on family law programs.

All senior advisors come to the position with some pedagogical skills, though there is significant variation in the sources and level of their experience. Legal academics who join the
NJI come well-versed in pedagogical theories and practices. Other senior advisors have acquired their teaching skills “on the job” — they’ve lectured for lawyers’ associations or developed
educational programming in their former positions, for example. Although there is no formal
program to train senior advisors, newcomers work closely with more experienced senior advi-
sors and judges, learning the methodology and processes we employ. In addition, all senior
advisors work together on the delivery of programming to judges (including programs for
education chairs and faculty development programs).

Typically, we pair senior advisors with courts. A senior advisor will work with a court on an
ongoing basis to not only design and deliver courses, but often to work on a longer-term
plan for educational programming for that court. Usually, this means that the senior advisor
will develop an ongoing relationship with the education chair or members of the planning
committee for that court, and become the person that court will “go to” within the NJI. Our
pairings here tend to be quite practically oriented. Senior advisors are paired with provinces
with which they have some familiarity. For example, a senior advisor who practiced in New
Brunswick works with the New Brunswick courts.

While senior advisors combine both legal and pedagogical skills in their work, they must also
bring a healthy dose of creativity and problem-solving skills to the job. Senior advisors are often
called upon to design the method in which education is delivered. To keep programming
both pedagogically effective and interesting, we’re always working on new approaches to
program delivery, in the context of our commitment to the experiential learning model (for
more information, see the NJI’s Judicial Education Guides.) As for the problem-solving skills,
the work we do is chock full of people, materials and details — all of which must be delivered with precise timing — on deadline. There's no fooling with our deadlines. If a course is scheduled for April 23, we know that 80 judges will be sitting in a room, ready to be educated. We must be there with faculty, materials and a substantive, challenging, interesting program. A lot can go off the rails on the march toward that program — materials are submitted late, faculty members become ill, hotels realize they’re overbooked — the possibilities are endless. Working with the program managers and program assistants, it’s the job of the senior advisor to keep all these issues behind the scenes, solved before the program is delivered, so that the judges participating in the program see a seamless educational program that is timely, stimulating and adds to their knowledge and experience.

JUDGES TEACHING JUDGES: VOLUNTEERS

Here is where the multiplier effect kicks in, in full force. So far, we’ve focused on the NJI staff and their responsibilities and strengths, yet we describe our educational methodology as judge-led and judging-focused. So how does that work?

We calculate that more than 400 judges are involved with the NJI in some sort of teaching capacity in a given year – that’s nearly 20 per cent of the judiciary in Canada. That significant number gives an idea of the many ways that judges work together with the NJI. Some, of course, are much more involved than others. Some, in fact, function in nearly all respects as senior advisors. Others still are not directly involved with the delivery of education, but rather work behind the scenes with the NJI, sitting on committees and planning groups, or contributing to publications, advising on and identifying the educational needs of judges, for example.

Let’s look at some examples. Currently, we have 12 judges who are NJI Judicial Associates. This role evolved out of the “associate director” role that existed when the NJI first opened its doors. It reflects the fact that certain judges are exceptionally involved in certain aspects of judicial education. Just as there are real differences between the skills of the senior advisors, the judicial associates are a varied group in terms of their skills and contributions – though all are “super” volunteers – we could not function without them. They are key to the magnitude of the multiplier effect. Some act as the chair of a planning committee, designing and developing a program. Others contribute to publications, organize our online programs, design specific modules of education, contribute to the International Cooperation Group, or train other judges as trainers. And, they stand at the ready when we need to consult on various points of law, pedagogy, judging skills – whatever we need to know. It would not be possible to function at the level we do without this group.

In 2006, the Board of Governors named a group of individuals, including 10 judges, as a Curriculum Advisory Committee (CAC), with the mandate of providing ongoing, regular guidance and advice on the development and review of the NJI’s curriculum of programs. Specifically, the terms of reference of the committee instruct that it advise the Board and the management of the NJI on the development of the curriculum within the context of emerging legal, professional and social issues; the needs of judges at different stages of their careers, the needs of specific regions and specific courts – all within the context of cost-effectiveness.
The meetings of the CAC provide an opportunity for reporting, reflection, feedback and input – within the context of discussion of curriculum issues. Topics that have been considered include needs assessment, computer training, partnership arrangements, social context at the court level and within the NJI curriculum, and course trends. While still settling into its role in our curriculum planning cycle, the CAC promises to be a very constructive, hands-on contributor, offering guidance on individual courses, the curriculum as a whole, and projects.

There is purposely some overlap among the names on the list of judicial advisors and members of the Curriculum Advisory Committee. We have also associated a meeting of judicial associates and senior advisors with every second meeting of the CAC. This workshop provides a good opportunity to bring together the people who plan our courses and curriculum, and to talk with one another about: what we do and how we do it; how our work on programs fits into the larger NJI picture; problems and issues we are encountering; strategies to respond; and experiences and updates on current NJI plans, resources and innovations.

The NJI’s Computer-based Education and Skills Training Committee (CBEST), comprised of 13 judges and representatives from the NJI and Federal Judicial Affairs, advises the NJI on the work of the Computer Training Program (CTP), now housed at the NJI, and the creation and maintenance of NJI’s computer-based resources, including the Judicial Library.

Nearly every court in Canada has a judge or judges who function as an “education chair.” Some courts not only have an education chair, but also a committee of judges responsible for specific programs – such as annual conferences. While the NJI does not work with all courts to design their programming, we work closely with some 16 courts in Canada to design and deliver their education. Judges tend to rotate through the educational roles on their courts. Typically, a judge works as an education chair for three to five years, and we offer training for this role. We currently offer a seminar for education chairs and leaders every year – alternating between a program for provincial and territorial chairs one year, and one for federal chairs the next. The objectives of this programming tend to be focused on: sharing lessons learned and innovations; considering how to implement principles for experiential learning, adult education and skills-based learning into judicial education; and identifying common approaches to education. This all translates into two days of meeting, talking, learning and practicing some very practical skills – ranging from how to employ the NJI’s electronic resources in a program, to what to look for when selecting speakers, to working with small groups. In keeping with our general approach to education, these programs tend to be very hands-on.

In addition to judges who formally serve as the education chair of a court, there are many more who participate in some way in the delivery of education, either within their court or on the national stage. Many judges come to the bench with years of educational experience, either within the academic world or from delivering continuing legal education programs to members of the bench, for example. They volunteer their time in a variety of capacities – as
facilitators at programs, as members of planning committees, as lecturers, panelists and moderators of sessions, and as authors of materials or fact situations. Some of these judges attend NJI seminars for education leaders. In addition, we offer more informal sessions to train facilitators – often in conjunction with an NJI or court-requested program in which facilitators will be required.

We also deliver substantive programming that is designed to serve the purpose of “training trainers.” Two recent programs served this dual purpose: Managing the Domestic Violence Trial (December 2008) and Judging Effectively Under the Youth Criminal Justice Act (February 2009). The domestic violence trial program provided a good example of how we integrate substantive legal content with information on trial management and social context issues. The program functioned as a teaching tool for participants, preparing them to redeliver elements in their courts. Similarly, the YCJA program was designed to train faculty, build programs and develop teaching materials for future delivery.

To conclude, our teaching methodology is based on judges teaching judges – that is the essence of our philosophical approach to judicial education. From a purely practical perspective, however, we could not function the way we do, nor deliver the number of courses we do, without the judicial volunteers who somehow find many days and hours of their time to support judicial education. And, once involved, judicial educators tend to stay involved – many have worked together, delivering judicial education, for decades.

PROCESS FOR WORKING TOGETHER TO PLAN PROGRAMS: IT’S ALL IN THE DETAILS

The planning process in terms of the substance of our programs is well documented in NJI Academic Director T. Brettel Dawson’s Judicial Education Guides and in the essay in this collection, authored by Professor Dawson and Natalie Salat, “Innovations in Judicial Education: NJI’s Program, Preventing Wrongful Convictions.”

There can be a difference between the planning process for court-requested and for NJI programs. With the former, while we bring our approaches, we follow the court’s lead in planning programs – and there is variety among the approaches. The process for working on NJI national programs is consistent, however.

All NJI seminars start with a planning committee. A planning committee typically consists of judges, legal academics, possibly lawyers, often community members, a senior advisor, a program manager, and a program assistant. There may be slight variation in the composition, depending on the program, but judges and NJI staff are always present.

A practical word about the members of planning committees. Although this may not be the case in other countries, in Canada we often invite academics and lawyers to be members of planning committees and faculty at our programs. Legal academics are particularly important to the process. They tend to bring what Professor Nicholas Bala, Queen’s Law School, calls an “anticipatory” approach to the law, together with a holistic approach to a subject. Translation: they can take a lot of case law, synthesize it, analyze it, anticipate future directions of the law and, then communicate it all. Plus, they have expertise in teaching and preparing fact situations, which can help immensely with the organization of a program. When selecting
academics and lawyers to become involved with our programming, we are careful to select experts who bring knowledge, but can also present the information in a neutral, non-prescriptive and balanced fashion.

The committee is armed with a checklist, itemizing the details that must be attended to in order to transform an idea into a deliverable program. That checklist, which is reproduced in the Judicial Education Guides, takes the planners (and it is the NJI staff members who keep an eye on this list to ensure that all the items have been checked off) from the creation of a budget, to the creation of marketing materials, to the selection of faculty, to preparation of materials, to the set up of the conference room, to the distribution of “thank you” gifts. The devil is in the details – we sweat them so that the judges see an effortless, professionally run program.

A couple of other points about organizing NJI programs.

Over the past few years, we've made great strides with our materials. Many fact situations are now presented in video format. We work with professional videographers, and even though we tend not to use professional actors (thank you to all the judges and NJI staff who have agreed to act as lawyers, judges and criminals), the product tends to be good. We have learned that the most successful video is extremely short, presenting only the essence of the problem, and no more. Most fact situations are accompanied by facilitator notes, which makes for prepared facilitators and good small-group discussion.

We have worked diligently over the past couple of years to “green” our programs. In the past, the NJI had the reputation for producing massive binders of materials. We now present the same amount of material, but electronically. And, all of our course materials are accessible to all judges...via the NJI’s electronic Judicial Library.”

We have also worked closely with the NJI staff who provide computer training to the judges. This group has added a new focus to our in-person programming since they joined the NJI in 2005. We often ask them to demonstrate our electronic resources, including the Judicial Library and our collection of Electronic Bench Books (EBBs), at our in-person courses, integrating these demonstrations into the substance of our programs. For example, we might ask them to demonstrate our Evidence EBB, authored by Justice Louise Charron, to illustrate how a judge might use the EBB to work through a fact situation.
Timing is a prime focus for our planners. We spend a lot of time thinking about the timing of sessions. Typically, we are criticized for presenting too much material in too limited a time period. It’s a constant struggle to balance presenting challenging material in adequate detail to an audience that can vary extensively in its needs and skill and experience level. Particularly at large national programs, we can have an audience comprised of experienced judges, together with recent appointees, from many different jurisdictions. It’s often difficult to get the pitch and timing just right. One thing we are definite on, however, is that our programs start on time and finish on time – what we call the “NJI contract.”

Nearly all the elements discussed above tend to be repeated in court-requested programs. Depending on the needs and wants of individual courts, we can and do alter our checklist. Some courts, for example, will organize conference sites on their own. Others will ask us to work with them to design part of their education, but not all. A successful relationship with a court depends on NJI staff becoming acquainted with its special needs and requests. This is why we tend to assign program teams of a senior advisor, program manager and program assistant to work – long-term – with particular courts, so that we’re not reinventing the relationship with each program.

RESOURCES AND MODULES

Our inventory consists of only a couple of things: institutional memory (stored in the memories of staff, our database, and now in this collection of essays) and our collection of materials (which is now more-or-less housed on our electronic Judicial Library).

Our materials are extremely valuable not only to us, but to judges across Canada. As mentioned, the Judicial Library has given immediate access to all materials presented at our conferences to all judges across the country. For us, collected materials in one location has meant it is now possible to develop a library of “modules.” We can keep all the materials pertaining to courses in one place (including agendas, videos, facilitator notes, research papers, faculty lists, and evaluations) which allows us to redeliver the program. Plus, we can share all this information internally and externally – with all of the education chairs across the country, for example – allowing us to build upon and share our successes among all courts in Canada.
The Evolution of the NJI:
20th Anniversary Reflections

BY KEITH JEACLE
CHIEF FINANCIAL OFFICER, NJI

As I reflect on the first 20 years of the National Judicial Institute, I think back to my start at the Institute some 16 years ago. I had just been hired as Director, Administration and Finance, and was anxious to begin ‘number crunching’ to assess the financial situation of the organization. However, when I reported for work that first month I was told to read — no general ledger, no charts of accounts, not even a calculator — just read, read and read some more. (Now, that’s pretty tough for a numbers person). I think what they were really saying was read now, because when the work starts, there will be no time for “just reading,” such is the pace of the NJI.

In all of that reading — and in hindsight, it was a valuable exercise — two documents stick out in my mind. The first was a book by Peter James McCormick and Ian Greene entitled Judges and Judging: Inside the Canadian Judicial System. This was my reference book for those early questions on why some judges are called “Justice” and others “Judge”; or what the difference is between a federally appointed judge and a provincially appointed judge; or, what a supernumerary, a Master or a prothonotary is.

The second was Toward the Creation of a National Judicial Education Service for Canada, or The Stevenson Report, as it has become known. This, too, was a document that I referred to a lot. And while it minimizes the report greatly, for which I apologize to Mr. Stevenson, one line has resonated with me since those early days. The line refers to the state of judicial education in Canada at the time as like a “patchwork quilt.” I had attributed the quote all these years to The Honourable William Stevenson, but in further research I find that he was actually quoting former Ontario Chief Justice William Howland, who penned the words in a 1982 report on judicial education.

Why these words have stayed with me I’m not entirely sure. Perhaps it might have something to do with my grandmother being a quilter. I remember her having a container where she would put the leftover scraps of fabric from some other sewing projects, all shapes and sizes, various colours and patterns. At some point these pieces of fabric would be randomly assembled and sewn together to form a design resulting in a quilt that would be practical and warm. It is just such a visual analogy to the situation in judicial education at the time, where there was much good work and practical programming being undertaken, yet very little coordination, and serious gaps.

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The Honourable William Stevenson writes in his 1986 report, Toward the Creation of a National Judicial Education Service for Canada:

“At an early stage, the Institute began to take on a more substantial role in program delivery, responding to the underestimated demand from Courts and judges."  

“Existing Canadian programmes show uneven coverage with significant gaps and deficiencies, duplication, and a lack of coordination with a consequent waste of resources. There is also a shortage of substantial professional organization and presentation.

What is lacking in Canada is any national coordination of resources, any effective means of exchanging information, and any adequately funded long-range planning capacity. There is no national body with permanent staff developing effective teaching techniques. There does not exist an agency with the ability and capacity to respond to national needs…. There is little coordination, significant duplication of effort and large parts of the judiciary left unaided.”

It seems appropriate that any reflection on the 20th anniversary should start with The Stevenson Report, since it was this report that identified the need for, and recommended the creation of a “permanent, professionally operated, bilingual resource facility for judicial education in Canada.” As a result, on April 18, 1988, the National Judicial Institute — formerly the Canadian Judicial Centre— was established.

The name change occurred in May of 1991, in large part because of problems encountered through the similarity of names with the Canadian Judicial Council (CJC). With the way we use acronyms today, it would have been even more interesting. To minimize confusion or inconvenience, the use of the new name was phased in gradually, so when I came aboard in 1992 it seemed that our official name was the “National Judicial Institute (formerly Canadian Judicial Centre).” On every document we prepared, the bracketed name was to be included.

Initially the Institute took space in the offices of the Canadian Judicial Council, but soon moved to the University of Ottawa, which had been chosen from among eight other competing universities as the home of the Institute. The bilingual nature of the university, the excellence of both its common and civil law programs, and the proximity to the Supreme Court and the Federal Courts of Canada all played a part in the decision.

By the time I started in 1992, the Institute had grown and was in two separate locations on the University of Ottawa campus. Most of the program team was located in part of an old house on Cumberland Street, while the remainder of the staff was in the new Brooks Building, adjacent to the Faculty of Law. By 1994 this separation was becoming more problematic, and since the University could not provide us with sufficient space to house the full staff, the decision was made to move off campus to a downtown location (100 Metcalfe Street).

When the landlords decided to retrofit the entire building the NJI moved around the corner to offices at 161 Laurier Avenue (in 2000), and once again as a result of growth and the desire for staff to be in one location, we moved to our current location — 250 Albert Street — in 2008.

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“In 1989, the National Judicial Institute offered 11 courses (22 days of education): five computer courses, two on criminal procedure and evidence, and four early orientation seminars for new judges. Today, we offer more than 80 courses and more than 200 days of judicial education, with a greater use of technology and breadth of curriculum.”

The original concept for the Institute was that of a small secretariat engaged in the development and coordination of educational programs. However, at an early stage, the Institute began to take on a more substantial role in program delivery, responding to the underestimated demand from Courts and judges.

The first course offered by the National Judicial Institute was a **Computers for Judges** course, held in Ottawa on March 15-16, 1989. The course was designed to provide judges with a basic introduction to computer technology, and included segments such as “Introduction to the Computer Keyboard: the Control Keys, the Function Keys, the Cursor Keys,” and “Introduction to Word Processing,” including use of the search, replace, spell check, underline, and even the print functions.

Today that same course is known as **Foundations of Computing for Judges Seminar**, an extensive three-day program providing hands-on training and individualized coaching on a wide range of subjects. By the end of the seminar participants are able to create and manage personal electronic filing systems, customize their computing environments, and access judicial electronic tools such as the NJI Judicial Library.

Oh, how far we have come.

In 1989, the National Judicial Institute offered 11 courses (22 days of education): five computer courses, two on criminal procedure and evidence, and four early orientation seminars for new judges. Today, we offer more than 80 courses and more than 200 days of judicial education, with a greater use of technology and breadth of curriculum.

Most educational efforts in the early years were classically didactic. The lecture format — or “talking head” — was used extensively, and variations consisted of panel discussions, and question-and-answer sessions. Now we see greater improvement in pedagogical techniques, including video vignettes, small-group workshops, role playing, etc.

At that time, distance education meant a Newfoundland judge attending a seminar in Vancouver. Today we have a rich menu of distance education options and resources, including online courses, Electronic Bench Books, e-Letters and the electronic Judicial Library.

Much has changed since those early days, yet it is the strong framework established by our founders which has allowed for the continuing success of the NJI. It is interesting to note that the initial objectives or plans for the Institute have largely been met, but still form the basis of our activities today.

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In its formative stages, it was envisioned that the new Institute would offer or make available:

- Workshops and seminars
- Extensive use of self-study techniques
- Teleconferencing and the use of computerized materials
- A newsletter covering, among other things, new legislation, cases under reserve, unreported judgments, new appointments, news on judges, book reviews, and an events billboard announcing courses offered by various judicial organizations
- Early orientation programs for all new judges, as soon after such appointments as possible
- Establishment of a mentor system
- Development of checklists and Bench Books
- Needs analysis
- Cataloguing of resources
- Coordination of study leaves or educational sabbaticals and exchanges for judges

This initial vision almost serves as a checklist of the accomplishments of the NJI over these first 20 years.

I would like to highlight three significant milestones in the life of the NJI.

**INTENSIVE STUDY PROGRAM, MAY 1994**

This was a two-week, intensive study program in criminal law and evidence, held at the Transport Canada Training Institute in Cornwall, Ontario. It was a first for the NJI in a lot of ways: most of the previous courses offered had been one to three days in length; this one was held outside of a big urban centre, and the accommodations were dorm-style — not the usual hotel. (I think once the participants got over the bright orange curtains and matching bath towels, this last point was less of an issue). But what was more significant was that for the first time an equal number of federally appointed and provincially appointed judges were involved in the same program, and it was a unique opportunity for judges from all levels of court to discuss with their colleagues procedures and practices employed in other provincial and superior courts, and to consider substantive issues of common interest.

The program was divided into a number of broad themes. The format of the program varied according to the topic under discussion, so as to maximize the opportunity to learn not only from experts in the field, but from one another. The program included a mixture of lectures, large and small group discussions, panel presentations, and a tour of correctional institutions in the Kingston area.
The Honourable Allan Rock, then Minister of Justice and Attorney General of Canada, who opened the program, commented “The occasion of the Institute's first Intensive Study Program marks a significant milestone in the progression of judicial education and training in Canada, and it is indeed an honour to participate in this important event.”

The Intensive Study Program was a long time in the making, and involved the efforts of the entire staff; however, the judges in attendance ranked this program as a “first-rate educational experience.” The enthusiasm and energy exhibited by both faculty members and participants shows the extent to which members of the judiciary were committed to continuing judicial education.

SOCIAL CONTEXT EDUCATION

The Social Context Education Project was developed in response to a resolution from the Canadian Judicial Council (CJC) that there be judicial education programs on social context issues including gender and race, which are “comprehensive, in-depth and credible.”

Social awareness was not a new aspect of judicial education. The Institute had previously held courses on racial diversity and gender equality, and had strived to recognize the need for balance in programming. The NJI had also produced videos on Spousal Assault and Child Sexual Abuse as early as 1992, and premiered a new video on Race, Culture and the Courts at programs in 1994.

What was new, however, was the extent to which resources and efforts were dedicated to this new initiative. With funding from the Department of Justice, the Institute commissioned Professor Katherine Swinton (September 1995) to develop an operational blueprint to meet the challenge. In January of 1997, two judges were brought on board as special directors, and a full-time coordinator was hired to implement the project.

The Institute, through this project, aimed to increase judges’ awareness of equality issues that arise in the legal context and therefore better enable them to discharge their roles as impartial adjudicators. Social context education is now a key element of the NJI’s curriculum, and the Institute works to ensure that social context training is integrated into all of its programs.

THE CANADIAN CONFERENCE: JUDICIAL EDUCATION IN A WORLD OF CHALLENGE AND CHANGE, 2ND INTERNATIONAL CONFERENCE ON THE TRAINING OF THE JUDICIARY

This five-day conference, held in Ottawa in late 2004, brought together more than 330 delegates from 85 countries to share experiences, knowledge and skills related to judicial education and the role of social context in judicial education. It was an unparalleled gathering of judges and judicial educators, with broad representation from all levels of judicial training and expertise. Countries with no or little judicial training systems were given the opportunity to learn from countries with established and comprehensive judicial training systems.
The immediacy of the issues engaged by judicial education was exemplified by a representative from Zambia, who asked, upon hearing a South African presenter describe the development of a teaching manual to assist judges dealing with cases where HIV/AIDS was a factor, “We are neighbours to South Africa. We have a desperate problem in our country with HIV/AIDS. There are so many challenges and so few resources. Is there any way that you can help us?” This moment characterized the value of having judges from around the world in the same room for international dialogue and sharing of experiences.

The relationships developed in the network of judicial educators at this conference will have a long-term impact on the quality of judicial education around the world. There is no doubt that the NJI has set the bar for future conferences.

As well, the conference helped to increase Canada’s visibility as a significant force in judicial education, and as an acknowledged world leader in the design and delivery of innovative, judge-led judicial education.

These are but three highlights of the extensive work of the National Judicial Institute that make the first 20 years a cause for celebration. I believe each exemplifies the three key elements that have led to the success of the NJI: vision, leadership and commitment.

It all started with former Chief Justice Brian Dickson, also first Chair of the Board of Governors of the Institute, whose breadth of vision and concern for all Canadian judges led to the realization of his dream of a national institute devoted to judicial education.

The foundation has been laid, and a strong framework is in place, for the continued excellence of the National Judicial Institute.

If judicial education were to be described using the analogy of a “patchwork quilt” today, it is a masterpiece — an artistic beauty, each piece of material selected for a specific design; each stitch carefully woven, tying together the individual pieces.
Learning from the NJI:  
A Non-Lawyer’s View

BY EDWARD BERRY, PROFESSOR EMERITUS  
UNIVERSITY OF VICTORIA

As a non-lawyer, not to mention non-judge, I was surprised and somewhat unsettled to be asked to contribute to this celebration of the 20th anniversary of the National Judicial Institute. What could an outsider like me possibly say? I am happy to make the effort, however, in hopes that my rather atypical experience might shed some light on why the NJI has been so successful, both nationally and internationally, with judges.

When I first met George Thomson, then Executive Director of the NJI — I believe it was 2001 — I was a professor at the University of Victoria, a Shakespeare scholar, with a sideline in teaching judicial writing. Seven years later, my sideline has expanded into nearly full-time work in teaching judicial communications. Like the judges I work with, I have had the good fortune to encounter an institution dedicated to professional enrichment.

As a lay person, I cannot comment on the impact of the NJI on the judicial and legal community, although I’m sure it has been far-reaching. As a former university professor, committee member and senior administrator, however, I have a longstanding interest in educational institutions and have been intrigued and exhilarated by the development of the NJI. In my work with the Institute, I have participated in many different programs, but in the interest of being concise I shall restrict myself to one as emblematic: the program in oral judgments. As such, of the three prongs of the NJI’s mandate — substantive law, skills training and social context issues — I shall deal primarily with skills training, with some attention to its relation to social context.

In 2001, I was approached by the NJI to give a lecture on oral judgments. Until then, I had devoted myself exclusively to judicial writing. It had become clear to me, however, that many judges, especially provincial court judges, spent most of their time delivering oral rather than written judgments. I had a bias against such judgments; to my mind, they were inevitably poor substitutes for the written word, justifiable only because the courts were overcrowded. Nonetheless, I struggled to adapt my usual remarks on writing strategies to the oral situation, and gave my lecture.
Before I knew it, I was immersed in the development of a full-scale oral judgment program, directly involving at least a dozen members of the NJI and judges throughout the country. As an outsider, I was ignorant of much of the action behind the scenes, but I marveled at the collaborative energy that produced so many emails and conference calls. The outcome was a pilot program. There were risks in this endeavour. Some judges shared my initial skepticism about the medium itself; all judges who participated in the program were initially apprehensive and uncertain about its value. A program that began anxiously as an experiment, however, is now given routinely to all new federally and provincially appointed judges.

Although the education of English professors is not part of the NJI’s mandate, the program erased my bias against oral judgments and taught me to appreciate their distinctive and powerful virtues as a medium of communication. Having been asked to draft a sample oral judgment myself, I also learned some humility.

What does it take to invent and develop a program of this kind successfully?

Above all, it takes special people. A necessarily partial list of names gives some idea of the breadth of energy and talent involved: NJI Executive Director, the Honourable Justice Brian W. Lennox, George Thomson, Pat Lindsay, Susan Lightstone, and Nancy Bradshaw, all from the NJI; Justices John Laskin and Marc Rosenberg from the Ontario Court of Appeal; Justices Anne Mactavish and Karen Sharlow from the Federal Court; Justices Don Fraser, Bruce Thomas, Peter Griffith and Howard Chisvin from the Ontario Court of Justice; Judge Nancy Orr from the Provincial Court of Prince Edward Island; Greig Henderson from the English Department at the University of Toronto; Kate Trotter, an actress and communications consultant from Toronto. In addition, a valiant NJI staff continues to manage the complex logistics of the program, while a host of workshop leaders from courts throughout the country keep the program in touch with changing needs.

Special people of this sort bring creativity and entrepreneurial energy. Someone in the NJI sensed the national need for an oral judgment program, and was prepared to take the risks to develop it. As an outsider, I didn’t know who conceived the idea, but my very ignorance is instructive. In my experience with the NJI, creativity of this kind might come from any number of sources: the executive director, senior advisors, a consultant, or even a judge working alone in, say, northern Manitoba or Yellowknife. As a former university administrator, I find this creative risk-taking especially impressive. And it is by no means unique to the oral judgment program.

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I am also impressed by the collaborative approach to judicial education that characterizes the NJI. Collaboration shows itself in the relations among staff, advisors, and directors of the Institute, in the NJI’s relations with the legal community throughout Canada, and in its relations with external consultants, when necessary. This talent for collaboration also extends to the international community. For example, a judge from New Zealand was invited to participate in the oral judgment program in 2006, and one year later, New Zealand’s Institute of Judicial Studies adapted the program, with materials and expertise generously made available by the NJI. In 2008, the Judicial College of Victoria in Melbourne followed suit. Both programs now contribute insights and refinements that improve the work of the NJI. A Scottish judge told me recently of his discovery, while engaged in international research into judicial education, that “all roads lead not to Rome but to the NJI in Ottawa.”

The NJI’s strong international impact comes not only from its collaborative approach to education, but from its distinctive commitment to skills training. Transplanting the content of judicial education abroad is sometimes possible, but foreign content often fails to meet local interests, needs and conditions. In New Zealand and Australia, for example, the basic methodology of the oral judgment program remains the same as that developed by the NJI. However, the legal tests, court dynamics, sense of audience, and pressing social issues have been adapted to reflect the local context. The versatility of this educational model gives it a wide international appeal, making it possible, for example, to contribute to the education of judges far outside the common law tradition, as is the case with the NJI’s Canada-China Judicial Linkages Project, funded by the Canadian International Development Agency.

The oral judgment program provides a textbook illustration of skills training. Although the nature of the program varies depending upon local needs and resources, its core is the delivery and critique of an oral judgment. In the most intensive form of the program, participants first attend presentations on the topic: one aimed at verbal communication, another aimed at non-verbal communication, and a third on sufficiency of reasons. The participants are divided into small groups and asked to organize an oral judgment based on a common scenario; they then compare and discuss the results. Finally, the participants are given a scenario to develop into a full-scale oral judgment, which they videotape for small-group critique. Throughout the program, the participants are assumed to know the law, and the various scenarios have no “right” or “wrong” outcome. The goal lies in the effective deployment of verbal and non-verbal skills.
For a Shakespeare professor, this model of education required some adjustment. Although teaching Shakespeare involves skills training, it does so far less directly. Students learn how to analyze Shakespearean texts and productions, write about them, and discuss them—all of which develop skills. Given the present size of university courses, however, much of this training is thrust upon the students themselves. They listen to lectures and write papers and exams, imitating the analytic and expository methods of the instructor.

The question of resources aside, Shakespeare courses are unlikely to become skills courses. In most university courses, content must be the core; students are expected to master a given subject area. In the oral judgment program, as in other NJI programs of this kind, skills are the core; judges are asked not to demonstrate knowledge of the law, which is assumed, but to think about and practice the skills necessary to its effective application.

Because the NJI can assume a common content, audience and purpose in designing its programs, its skills courses overcome the difficulties that plague many university skills courses, such as those aimed at teaching students expository writing. Students in such courses must usually invent their content, audience and purpose each time they write. For many, the artificiality of this process drains away their incentive to communicate. Judges, in contrast, work to perfect skills that can be immediately translated into the daily reality of court. In doing so, they almost invariably acquire a richer understanding of the legal system as a whole.

Whether by design or natural evolution, the development of the oral judgment program has taken the NJI into the broad field of judicial communications. Having begun my judicial education career exclusively concerned with the written text, and with reasons for judgment, I find myself more and more involved not only in oral judgments, but in oral communications throughout the trial process. This development is hardly surprising. Verbal and non-verbal communication skills determine the effectiveness of a judge at many stages of a trial. What does one say, and how does one act, when opposing counsel attack each other in the midst of a trial? Or when two self-represented parents squabble over the custody of their child? Or when a member of the Saanich First Nation says he might as well plead guilty, simply because “the whole system is biased against me.” Trial management, in short, imposes daily and difficult tests of effective communication. These tests make not only practical demands but raise ethical questions: what obligations does a judge have towards a particular use of language, how far do those obligations extend, and how can they be implemented? The NJI’s Judicial Ethics program explores these and other questions.

The NJI’s developing concern over effective communication in the trial process has inevitably led to greater attention to the variety of audiences served by contemporary judges. When I first started teaching judgment writing, I urged judges to write for lay, rather than legal, audiences. For contemporary judges, however, the general term “lay audience” helps very little.
when, for example, the audience in question is a self-represented recent immigrant with little formal education and a poor command of English or French. The annual NJI Communication Skills in the Courtroom Seminar deals with the particular verbal and non-verbal skills needed to communicate with such disadvantaged litigants.

The oral judgment program is thus part of a web of programs, some very recent, that the NJI has developed to enable judges to hone their communication skills. That the web continues to expand is perhaps predictable: the law is nothing but words, after all, and the gestures that inform them. The web would not grow at all, however, without the qualities that I have described: a sensitivity to social needs, a willingness to take creative risks, a talent for collaboration, a sophisticated conception of skills training, and an eagerness to develop successful ideas in new directions.