

*Remarks to Justices Attending the Dialogue:
Regional Perspectives on Gender Equality
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*The Process of Developing and Delivering
Judicial Education on Gender Equality Issues
by
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I am very pleased to provide these remarks to assist you in the important task of developing and delivering a judicial education initiative on gender equality issues in the South Asia region. In the following description of my experience with this same work in Canada, I hope you might find some helpful suggestions which you can adapt to your particular needs.

A. *Fairness and Equality in Justice Delivery*

Even though all Canadians enjoy Constitutional guarantees of fair and equal treatment, careful examination of the Canadian experience has produced irrefutable proof of systemic discrimination in the administration of justice. Commissions of Inquiry have found that there still exists unfair and unequal treatment by our justice system, in particular, to women, Aboriginal People, and members of ethnic minorities¹. As a result, there is a sharp call for reform in justice delivery. In the volatile political and social atmosphere which our failure has created, public officials, including judges, are being held accountable for their actions as never before.

1. *What reform demands are being made?*

Strong social currents within society are sweeping along legally focused aspects of the work of the justice system. The interpretation of rules of evidence and procedure, the results of the process of fact finding, the assessment of liability and awards in civil cases, the finding of guilt and

¹ The following credible and authoritative reports have produced findings establishing gender inequality in the law, in the delivery of justice and in the legal profession, including the judiciary: the Recommendations of the Department of Justice, Canada's National Symposium on Women, Law and the Administration of Justice (June 1991); the Report of the British Columbia Task Force on Family Violence (February 1992); the Report of the Federal/Provincial/Territorial Working Group of Attorneys General Officials on Gender Equality in the Canadian Justice System (April 1992); the Report of the Law Society of British Columbia Gender Bias Committee (July 1992); the Final Report of the Canadian Panel on Violence Against Women (July 1993); and the Canadian Bar Association's Report on Gender Equality in the Legal Profession (August 1993).

The following public inquiries have established that systemic discrimination exists in the administration of justice to Aboriginal People: the Report on the Royal Commission on the Donald Marshall, Jr. Prosecution (December 1989); the Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta (March 1991); the Report of the Aboriginal Justice Inquiry of Manitoba (August 1991); the Report of the Saskatchewan Indian Justice Review Committee (January 1992); the Report on the Cariboo-Chilcotin Justice Inquiry (September 1993); and the Report on Aboriginal People and Criminal Justice in Canada: "Bridging the Cultural Divide", Royal Commission on Aboriginal Peoples (February 1996).

The following reports have focussed on racism in the delivery of justice: the Report and Action Plan of the Four-Level Government / African Canadian Community Working Group: "Towards a New Beginning" (November 1992); the Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (December 1995).

sentencing in criminal cases are all strongly affected by the strength of the immediate demand for social change.

The impact on social behaviour of poverty, illiteracy, learning disabilities, alcohol and drug abuse, and the operation of the syndromes of the sexual and physical abuse of children and spousal violence produce the content of court lists. Government and community efforts to understand and impact on these features of Canadian life are crucial and of high priority. Justice professionals, including lawyers and judges, need a full knowledge of these subjects as much as they do the technical rules upon which the justice system operates. Education on the social context and the application of law are both important, but they are inextricably linked facets of the same thing, being the administration of a living and progressive entity: the delivery of justice.

In Canada today there is a dynamic political and social movement towards gender equality and zero tolerance of violence against women. Laws and social customs are being redesigned accordingly. Community safety, the characterization, detection and prosecution of crime, and methods to reduce violent conduct are very much in the front of the public mind, but so is the unprecedented rate of incarceration in the country and the social damage that this particular response causes. The legal and social needs of women with mental and physical disabilities are now being recognized as are the rights of both young women and frail seniors. All justice professionals need to understand the importance of this movement from the standpoint of the people directly involved; and all justice professionals need to progress with the changes under way. Maintaining the status quo is not possible, because the result of attempting to do so is to be left behind.

2. Who has responsibility to effect change?

Since most members of the public see "the justice system" as an entity, the performance of one element of the system impacts on the reputation of the system as a whole.

Granted, in the way the administration of justice is structured, each professional participant has a set ambit of authority. But there are important shared responsibilities. Police, Crown prosecutors, defence lawyers, community and institutional corrections officials, parole officials, judges and governmental decision makers all have a shared responsibility to ensure that their conduct and decision making is fair and equal. In this way, all justice professionals are part of a community of interest and must share the burden and face the challenge of meeting the highest standard of conduct and service.

Since the degree to which the system succeeds in being fair and equal is fundamentally connected to each individual's success or failure to be fair and equal in the discharge of professional responsibility, it is up to each member of the justice community to carefully examine his or her own knowledge and understanding and to take action towards needed change.

In addition to cultivating professional responsiveness to changing societal needs, an important component of a movement to improve the quality of justice delivery is community understanding and acceptance of the need for change. Thus, professional education on social context issues should be coupled with complementary public legal education. Through the free flow of information and ideas that is possible with these two initiatives working together, there is no doubt that positive enduring improvements can be made.

3. What knowledge and understanding is needed?

How we relate to one another and how we relate to the people we serve is a reflection of who we are as people. We might like to think we can separate our professional conduct from our personal outlook towards life, but this is not realistic. Machines function according to plan; people do not. The design and operation of professional service is not programmed solely by professional education and the dictates of statutes or case law. Who we are and where we come from are primary contributors to how we respond.

In my view, the most important single element in professional education, and of course this applies to judicial education, is to understand that people looking at the same thing will see it differently. This is so because each of us has a unique perspective as a result of our different life experiences and what we have been taught.

4. What is the best way to learn about new perspectives?

It is important to understand the experience and teachings that other people possess. This can best be done by spending meaningful time with people who can provide insight into their perspective. Of course, within such an experience, it is important to have substantial opportunities for evaluation and discussion to test the new knowledge against existing understanding.

The personal contact is important because within this area of education programming, an intimate understanding is important. Superficiality in this is useless or, worse, misleading. The contact between people provides empathy for people very much unlike ourselves, which is a very important quality to possess when judging events within another person's life. Whether we really do have the capacity to absorb this kind of knowledge depends, not so much on our makeup, but on our commitment to learn.

The people with whom we deal as professionals may not fully understand the workings of the justice system, but they understand very well the results which the system produces. It is not surprising that they have trouble accepting the results if we do not recognize and appreciate a wide range of life experiences. In the face of any lack of respect for what we do, it does not help to be defensive and say that they don't appreciate all that binds us. It helps to listen to what they say and to choose to integrate these thoughts into what we do. It helps to accept that we are accountable in this process and to undertake to continue to evolve in our thinking as this accountability bears on us. The world is always changing, the question is whether we are changing with it?

B. The Process of Developing and Delivering Social Context Education

1. The Western Judicial Education Centre's social context initiative

Between 1989 and 1994, I acted as Director of the Western Judicial Education Centre (WJEC). During that period, the WJEC, as a project of the Canadian Association of Provincial Court Judges, worked with leaders in judicial education in each of the Provincial Courts of British Columbia, Alberta, Saskatchewan, Manitoba, and the Territorial Courts of Yukon and the Northwest Territories on an initiative to develop and deliver a full spectrum of judicial education programs to help judges understand not only the current law, but also the social context in which the law is applied.

Within its social context education initiative, the WJEC focused on providing education

relating to problems within the administration of justice of primary concern to the community. Thus, during the noted period, the WJEC designed, developed and delivered programs on the most difficult topics requiring urgent attention. In particular, modular and transportable judicial education programs, using specially written materials and video aids, were produced on the Delivery of Justice to Aboriginal People, Gender Equality in Judicial Decision Making, and Racial, Ethnic and Cultural Equity.

2. The WJEC concept of social context education

It is very important to adopt an appropriate model to carry out social context education. In this respect, I believe that judicial educators should adhere to a model which exhibits the principles being fostered. One of the primary objectives of judicial education on social context issues is to provide judges with a full understanding of what fairness and equality means to people experiencing very different life circumstances. Thus, being fair and equal in the structuring of this programming and in its delivery is very necessary.

It is also important to recognize inclusion, rather than exclusion, as the guiding concept. Accepting this means that all perspectives of a given problem must be canvassed and that the people best able to provide a given perspective should be directly involved in the education process. This also means the acceptance, rather than rejection, of new and unfamiliar faces, new and challenging ideas, and novel and engaging methods of learning. Equality education is, thus, open learning.

Therefore, with these principles in mind, the work of the WJEC in social context education was accomplished according to an approach refined over five years. The essential elements of what has been coined the "Pyramid of Support" model are as follows:

- (i) The model functions according to the motto "first support - then action". That is, to successfully complete a project which might be considered unusual or controversial, an intensive support building effort should first be undertaken before any steps towards execution are taken. Thus, a critical mass of support with the individuals which a program is designed to serve must be obtained before the program is placed into effect. In the case of judicial education on new themes, it is important to have the backing of key judicial leaders and judges before the design, development and delivery plans are created.
- (ii) The model relies on the building of relationships between people as a key element in maintaining commitment to achieving program goals. Acquiring new learning can be very difficult and sometimes threatening. The glue which holds the attention and support of those directly involved is well developed working and personal relationships.
- (iii) To maintain the openness that is so critically important in education, positive working relationships also need to be built with people outside the group which the program is intended to serve. Regarding education on improving the delivery of justice, it is critical that professional and non-professional community members be fundamentally involved in a fair and equal way in the process of program design, development and delivery. This step is essential to ensure that any education produced is credible in the eyes of the community as well as the judges.
- (iv) The relationship building that will naturally ensue from the development process will produce the essential trust and commitment between the individuals

involved which, in turn, will ensure successful delivery.

In applying this model, a number of key features must be introduced:

a. leadership and colleague support

We realized early on in the project that the judges who showed interest in participating in the program were very concerned about how they would be perceived by their leaders and colleagues if they did so. Thus, the leadership support of the Chief Judges was obtained as an essential element of the base of support upon which the project was based. In addition, in order for the project to have the necessary credibility to attract the attention of the judges it was designed to serve, sufficient judicial support from the beginning was identified as the other key ingredient of the base of support needed. The participation of key judicial supporters as members of a judicial faculty met this need.

Thus, a very important characteristic of successful social context education involves peer leadership. On the issue of gender equality, for example, we found it very effective to train a judicial faculty to help other judges to understand the content offered in the meetings which they might attend. The judicial faculty leads small group discussions on content, with or without the help of a resource person who is an authority on the topic. It is important to stress that, in this process, the judicial faculty member does not become a resource person but is a knowledgeable helper to the judges who are there to learn.

For the judicial faculty to be effective, it must be well informed, not only about the content of the program, but also about adult learning techniques which can be used in program delivery. Consequently, training of the trainers is an essential step in the development of the program and provides a more in-depth analysis of the content of the program to the judicial faculty than will likely be experienced by the judges attending the final delivery. The essential idea, here, is that judicial faculty members must know a good deal more than the attending judges in order to be able to identify issues when they arise in the discussion and to facilitate discussion that will promote further thought.

b. community participation

The idea that the judges take leadership responsibility to produce judicial education on social context issues must not be confused with the notion that only judges can teach judges. I do not think that this well used model gives sufficient recognition and respect to the idea that the community has a direct connection with and investment in the work that judges do. I believe that judges should provide this respect, and also recognize that they have a responsibility to the community they serve to be responsive to the problems experienced by people who have a very different life experience.

In the face of challenges by the community to decisions which fail to acknowledge the real life experiences of a large number of people, whether they be women, Aboriginal People, children, or racial, cultural or ethnic minority group members, we must be more creative and receptive, rather than adhere to a model that restricts access to judges by "outsiders" who are viewed at best as misguided critics, and at worst, as members of interest groups with an agenda to convert judges to their political line of thinking. Any approach that maintains this attitude acts to limit the flow of information and ideas simply by restricting the speakers the judges will hear from and the experiences they will have. The result is the maintenance of a "suitable" comfort level in judicial education programming, which, on the face of it, might address difficult issues, but in fact does little to move entrenched beliefs to catch up with the real life problems that many people experience. In developing the WJEC initiative, we functioned on the belief that it was necessary to remove artificial

barriers to supplying judges with the knowledge that they require.

I recognize that judicial education programming must be sensitive to existing levels of acceptance, but leadership is most definitely required for progress in thinking to be made. The independence of judges from political interference is a concept with which everyone agrees. Judicial education which challenges, such as the model we adopted, should not be viewed as an affront to this very important principle. In my opinion, the independence of judges is not threatened by encouraging them to learn from people who can tell them how the real world looks through their eyes.

c. inclusion

In this process, it is important to accept people the way they are and to include them for the valuable views they can present. As I have suggested, the planning of how to gain a new understanding must include people who have the knowledge to be communicated. Within our judicial education social context initiative, which most assuredly judges in Western and Northern Canada controlled and operated, we attempted to show every flexibility in meeting this need. Thus, our planning process incorporated the views of leaders in legal education, including judges, academics, professional educators, and, most importantly, members of the legal and wider community. From this mix came forth a richness of ideas and energy which we could not, as judges, give ourselves. This approach also made the education which we delivered credible in the eyes of those who feel we have much to learn. That is, the people who would most like us to have a glimpse of how the world looks through their very unfamiliar eyes, appreciated our honest efforts.

d. openness

Through open discussion comes knowledge, understanding, and an appreciation of another person's views which allows a process of reconciliation to occur; that is, reconciling competing visions of the world. Within an atmosphere of support to do so, it should be possible for people to talk to one another about almost anything. Obviously, the discussion cannot be about particular cases in court but can be about a wide range of related subjects. There is no harm in listening. Objectivity cannot be impaired but, indeed, can be enhanced by greater knowledge and understanding.

An emotional description of the impact of discrimination, by a person who has suffered, should be respected and included. When dealing with areas as sensitive as sexism and racism, the challenge of judicial educators has to be the production of programs that will stimulate and thus provoke thought on issues which have been left unaddressed. To have attitudes challenged can be a disturbing experience. Accordingly, great care must be taken to ensure that support is provided to both the presenter and the student, but the experience of including a range of voices is, nevertheless, essential. Programming which does honestly challenge might very well be uncomfortable, irritating, and emotionally troubling, but, as the evaluations of our programming have shown, it is accordingly effective in stimulating progressive thought and action.

e. recognition of barriers to learning

As I have already mentioned, the model to be followed in judicial education should not itself present a barrier to learning new ideas; and, as emphasized, it must be open and inclusive to be effective. It should be presented with full acceptance that there are serious problems with the delivery of justice which need to be rectified, and one way to accomplish this is through frank, positive education.

Judicial education on social context issues should not be the litigation for the acceptance of ideas. Each judge is free to decide what to do with the information presented, but because the information might be new and difficult to fully appreciate, the listener should begin with the assumption that what is being said is true for the person presenting the information. Thus, a judge hearing, for the first time, why women do not leave abusive relationships should accept that what is being said is true from the perspective of the victim of abuse, even though, from the judge's perspective, the account might be hard to believe.

Equality education should not be what we experience every day. That is, there is no need to repeat and reinforce what we already understand to provide some form of balance to the new ideas being presented. Equality education should be presented as an exposure to new ideas which offer a challenge to existing thoughts, and which are welcomed with a willingness to further investigate.

For judges, the exposure to new ideas on a full spectrum of contemporary topics presented by a wide range of people from the professions, the community and government, should not be seen as dabbling in politics or as a threat to judicial independence. Our opinions are impacted daily by a number of sources of information including family members, television and newspapers, and the local grocer. All this incoming information reaches us outside of our professional lives and most certainly outside of the four corners of the courtrooms in which we serve. There is no organization to it. There is no way to hide from it even if we think we should. In fact, the stimulation it provides is essential to be current, relevant and effective in our decision making. For all of us, our personal interpretation of the world is the most powerful thing in operation in the exercise of our professional judgment. Thus, we must ensure that it is a very well informed interpretation.

f. listening as well as hearing

I believe that within judicial education on equality issues we should endeavour to ensure that we have the benefit of vigorous programming filled with fresh voices. The voices have always been there for us to hear. Interestingly, we have only now begun to listen.

In meeting the important challenges which lie ahead, please accept my very best wishes.