

**Remarks of the Right Honourable Beverley McLachlin, P.C.
Chief Justice of Canada**

On the Occasion of the 2nd International Conference
on the Training of the Judiciary
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Fellow Judges, Ladies and Gentlemen.

Today, somewhere in Canada, a new judge is putting on the judicial robe for the first time. Soon, she will step up to the Bench to hear a case for the first time. This is a moment of great pride for her. A few weeks ago, when her appointment was announced, she received letters and telephone calls from friends, family and colleagues. Everyone wanted to congratulate her, and to wish her well in this new phase of her life. But today, as she climbs the steps leading up to the Bench, she may feel a little overwhelmed. Suddenly, her many years as a lawyer, her expertise, all her legal skills may not seem sufficient to carry her through, for she is now called to be a judge, to pass judgment on others, and that, simply put, is the hardest thing to do.

To be sure, deciding the fate of others is not inherently difficult. Thousands live quite happily with decisions based on prejudice and untested beliefs, and decisions of whim and arbitrary will are quickly made. Decisions that take no account of rules, or principles, or the true condition of those whose fate is decided, can be made by any fool.

But such decisions have nothing to do with judging. They are not judgments, as judges use the word. Judging, passing judgment on others, carries a special significance for us. It is not as easy as making a decision. Judging is a significant act that requires careful attention, and respect for legal rules and principles. It is an act that requires qualities of humanity and compassion. Judging requires an effort to shed prejudice and untested beliefs. Aware as she is of this awesome responsibility, the new judge cannot help but pause and wonder whether she can meet the expectations of others in this respect. .

Being a judge also means being a part of something larger, something which carries enormous significance to the freedom and well-being of others. Judges, individually, and Courts, as institutions, are central figures in public life. Strong and independent judicial institutions ensure that governmental power is exercised in accordance with the law. Healthy judicial institutions are a symbol of the neutrality of the state, and of its ability to deliver justice regardless of race, creed, or beliefs. Wise judicial institutions constitute a common space accessible to all, a place where people can peacefully resolve their conflicts, a place where words, rules and ideas replace fists, weapons and violence. A true system of justice is measured against these standards, and every new judge cannot help but pause and wonder whether she can contribute to this most fundamental purpose of the judiciary.

The new judge in my story, the woman now sitting on the bench somewhere in Canada, has brothers and sisters, not only in the judicial institutions of her own country,

but around the world – new judges like her, who share her pride and her apprehensions. Some of these judges face challenges far greater than the Canadian judge ever will. Some may not have much by way of legal knowledge. Others may not have proper access to books and other sources of learning. Still others may lack sufficient resources to operate an effective courtroom, or struggle in environments of oppression and under governments that seek to control their decisions, or challenge their authority. But these judges, wherever they may work, and whatever their circumstances, share something with the new Canadian judge: all judges, wherever they are, can only survive with a lifelong project of learning. All the members of this community of judges, wherever they are in the world, share this craving to learn. Every judge recognizes the need to base his or her career on a genuine learning program. Judicial education is an essential feature of strong judicial institutions, anywhere in the world.

This morning, I would like relate judicial education to some of the major challenges of governance we collectively face as human beings. I do not suggest that better judicial education can bring an end to world conflicts, eradicate poverty, stop the spreading of deadly diseases, or reverse the devastation of our environment. Here is what I suggest it can do: judicial education can promote and uphold respect for the rule of law, and sustain mutual understanding as we encounter each other in an increasingly diverse world.

These are the key challenges of governance today. Let me say a few words about each, before I ask how judicial education can help to meet them.

The first challenge is the need to promote and uphold respect for the rule of law, in our respective countries and around the world. The rule of law is a polymorphous notion, and it is defined in many ways. Here in Canada, it has been defined as “a sense of orderliness, of subjection to known legal rules and of executive accountability to legal authority”.¹ It signifies that there is one law for all, and that all public power must find its ultimate source in a legal rule. It means that all government action must comply with the law, including the Constitution. It means, finally, that the exercise of public power must be accountable to the authority of an independent and impartial judiciary. Effective, responsive and independent judicial institutions controlling the exercise of state power, as well as state authorities who are complying with judicial rulings, are key components of a country ruled by law.

Whatever the shape of our respective systems of government, respect for the rule of law and for the authority of strong and independent judges is a necessary feature of legitimate governance. It cannot be compromised, and must be continually sustained. In countries where it is under threat, the rule of law must be pursued. In countries where it is established, it must be fiercely guarded. Whatever the situation, judges are the principal defenders of the rule of law, and judicial education is the best resource we have to sustain each other in this role.

¹ *Reference re Secession of Quebec* [1998] 2 S.C.R. 217, at para. 67.

The second challenge of governance relevant to judges is the challenge of pluralism. As we enter the 21st Century, many nations have experienced fundamental demographic transformations. Canada, for instance, has now become a pluralistic and multi-ethnic society. One in every five Canadians was born in another country. Nearly half of the population of urban centres such as Toronto and Vancouver came to Canada as immigrants. The percentage of visible minorities in Canada has tripled over the past twenty years.

Statistics like these are not peculiar to Canada. Once, not so long ago, the vast majority of people finished their lives where they were born. No longer. Everywhere in our globalized world, people are on the move. And as the pace of demographic change accelerates, so people find themselves living in countries and communities quite different from those to which they were born. As a result, many of us now belong to culturally diverse communities.

In many countries, ethnic diversity is a feature of history. On the African continent, different tribes co-exist within geographical boundaries drawn over time, sometimes without regard for the demographic realities. In Asia, the presence of multiple ethnic groups within the same country is a common feature. Everywhere, from North America and South America to Australia and New Zealand, first nations and aboriginal populations share the land with settlers of European origin. To further complicate the mix, the ease of

communications around the globe has facilitated the dissemination of ideas, overlaying indigenous and ethnic diversity with global religious and cultural values.

This is a world in which difference is encountered on a daily basis, in which we are constantly confronted with the other, those who differ from us in race, gender, creed or beliefs. In the words of Kofi Annan, Secretary General of the United Nations, “Each of us has the right to take pride in our particular faith or heritage. But the notion that what is ours is necessarily in conflict with what is [different] is false and dangerous. It has resulted in endless enmity and conflict, leading men to commit the greatest crimes in the name of a higher power”. Kofi Annan then highlights what I see as the solution to this second challenge of governance, the challenge of pluralism and diversity. He says:

“Today, however, even amidst continuing ethnic conflict around the world, there is a growing understanding that human diversity is both the reality that makes dialogue necessary, and the very basis for that dialogue. We understand, as never before, that each of us is fully worthy of the respect and dignity essential to our common humanity. We recognize that we are the products of many cultures, traditions and memories; that mutual respect allows us to study and learn from other cultures; and that we gain strength by combining the foreign with the familiar.”²

² Kofi Annan, Nobel Peace Prize Laureate 2001, Nobel Lecture, December 10, 2001

I have been speaking of two great challenges of governance that we face as human beings, that is, promoting and sustaining the rule of law, and embracing diversity. I would now like to tie this back to our judicial role, to the act of judging, and to the purpose of judicial education.

I began by telling the story of this new judge somewhere in Canada, and pointed out that her new role takes her to two different, but connected planes. Being a judge has both a personal and an institutional dimension. By engaging both of these dimensions, the personal and the institutional, judicial learning can support the rule of law and peaceful cultural diversity.

Let me turn first to the personal dimension of judicial education.

The most obvious aspect of education is the transmission of knowledge and information. Judges are expected to know the law. In fact, they must be experts in the law. For many judges of general jurisdiction, that means that they must become experts in every single field. Many years ago, in countries such as Canada, it was believed that new judges did not need to be trained. Most were appointed from the practising Bar. Most, if not all, believed that their experience as lawyers was sufficient to guide them in their new task as judges. They also believed that the required skills and wisdom would come without effort.

We no longer believe that one can become a judge, and continue to be a judge, without proper training. We have learned how difficult it can be to decide cases under newly enacted laws without a proper understanding of their purpose and design. We have learned that judges can be called upon to play new roles, roles such as mediation and dispute resolution, and that those rest on mastery of complex processes and skills. We have learned that judges can write more effectively, and be more responsive to the needs of litigants in the delivery of reasons for judgment. We have learned that the judge must be attuned to the psychological dimensions of being a witness, or a litigant, or a lawyer in the very special atmosphere of a courtroom. In short, we have learned that in terms of knowledge and skills, being a judge is not the same as being a lawyer.

In that sense, judicial education is about keeping up-to-date with changes in the law, from the perspective of one who must give shape and meaning to those changes. In countries with lay judges, judicial education is about providing basic legal training to magistrates who administer justice in remote areas. Judicial education is about the transmission of distinctive legal knowledge and the transmission of unique skills. The product of judicial education, the trained judge, the judge who decides according to the law, is a judge in the service of the rule of law. The trained judge, the judge who delivers prompt and effective justice, is a judge in the service of the rule of law.

But judicial education, as a personal project, is much more than this. Deciding in accordance with the law, within reasonable time, and in accordance with the processes

mandated by law, is only one part of the judicial task. Justice must also be delivered in a responsive manner, one that takes account of the social context, and the different perspectives of those who seek it. Justice must also be delivered in an impartial manner, one which is free from prejudice or false assumptions about cultural difference. In a world marked by pluralism, in communities where diversity is so prevalent, the judge must become the interpreter of difference. The judge must become the one who understands every voice.

Getting there and staying there requires a constant effort of the judge. We each come to the Bench with a past, a parcel of assumptions and beliefs, and a unique life experience. These roots, experiences, and assumptions must be accounted for, and held in check. The judge must learn to separate her self as a citizen from her self as a judge. She must learn to recognize her own biases, and struggle to keep them out of the act of judging. Conversely, the judge must also learn to recognize the biases of others, their cultural commitments and assumptions, their particular voice and perspective. These, and other aspects of social context, now constitute an important part of judicial education in many countries. And the product of this education, the trained judge who is aware of social context, the trained judge who is responsive to difference, is a judge in the service of our project to embrace diversity.

From the personal dimension of judicial education, let me turn now to the institutional dimensions of judicial education.

I said earlier that being a judge is also being a part of something larger. In my view, judicial education should also serve this connection with the judiciary in the broad sense, and with its social role. It should do this in two ways.

First, judicial education should sustain an ethic of independence from political powers, and provide judges with the courage and resources to exercise the authority that is theirs under the rule of law. It should provide them with a clear sense of their distinctive role as guardians of the rule of law, and impartial and objective decision makers, wielding an authority that is different from that of other branches of government. And for this reason, judicial education should be under the control of the judiciary, and funded independently.

Second, judicial education should instill an ethic of cultural neutrality. Courts should be neutral places, visible symbols of peaceful interaction. Courts should be places where the dignity of each human being is respected and enforced, regardless of race, gender or creed. Courts should represent a space held in common, where one can encounter difference without risk of losing his or her distinctive identity. For courts to play this symbolic role, each judge must learn how best to embrace diversity, and social context education must be a part of any program of judicial education. For this reason, judicial education itself should be attuned to social diversity, and the judiciary itself should be broadly reflective of the community's diversity.

To achieve these goals we require vital judicial education programs in our respective countries. Here in Canada, we have been very fortunate to get the support of various levels of government for judicial education initiatives. Over the past 18 years, the organization that I chair, the National Judicial Institute, has become the primary source of coordination, development and delivery of educational programs for all judges in Canada. It has gained a remarkable expertise in the development and delivery of judicial education in substantive law, judicial skills and social context, and is now pursuing innovative ideas for long-distance and computer education. Canadian judges have enthusiastically embraced the benefits of this judicial education, and each judge now receives an average of 10 days of training every year.

Judicial education programmes are growing everywhere in the world, and the presence here of representatives of 90 countries, almost half of the nations on this planet, is a strong indication that judicial education is a worthy goal. Over the past few years, I have travelled to many countries in my capacity as Chief Justice of Canada. Everywhere I go, effective professional education for judges is a priority in legal reform projects. Everywhere I go, judges reiterate the urgency of establishing proper structures for the delivery of judicial education. Everywhere I go, I am impressed by the innovative solutions and original ideas that emerge in countries with limited resources. In those countries, despite the obstacles, judges continue to display an extraordinary will to effect transformations of their justice system through judicial education.

This growing commitment to judicial education must be sustained. Your presence here, and your participation must not be lost. The learning and insight that will emerge from this conference must not be lost. My experience of judicial education programs around the world is that we have much to learn from one another. This conference is a unique occasion to share, and to forge links. There will rarely be such an extraordinary gathering of the key players in judicial education around the world. I urge you to seize this opportunity over the next five days, and to establish partnerships, to forge links between courts, links between organizations, and links between countries.

Above all, I urge you to forge links and friendships with your fellow judges, those who are assembled here. I return to the story with which I began, the story of this new judge who is now sitting on the bench, hearing witnesses and counsel on this very meaningful first day on the job. She may feel proud. She may feel apprehensive. But she should never feel lonely. We are fellow judges, wherever we may come from. We have all felt the weight of the judicial office, and the sense of privilege and responsibility in serving the public good. Let us learn from each other how to turn our collective knowledge into better judges for the next generation.