

**NATIONAL JUDICIAL INSTITUTE, CANADA
THE SOCIAL CONTEXT EDUCATION PROJECT**

SUMMARY

The Social Context Education Project (SCEP) was a special project of the National Judicial Institute between 1996-2003. The program had two phases:

- Phase I concentrated on full-court education seminars in every province of Canada. These seminars were designed to create a common base of information and understanding of the relevance and applicability of social context among all judges in Canada. Over 20 programs were held involving over 1000 judges.
- Phase II focused on developed skilled judicial education leaders in this area through an intensive program of judicial faculty development. Curriculum development was another focus of Phase II.

Since 2003, social context has been integrated as a regular component of NJI work through adoption of the guiding principle that judicial education should always be ‘three dimensional’ (substantive law, skills development and social context awareness) and designation of a member of the senior management team responsible for social context integration.

The Social Context Education Program:

- Built on work initiated in Canada by the Western Judicial Education Centre
- Was mandated by the Canadian Judicial Council and supported by Chief Judges.
- Built from the premise that understanding social context and integrating it into judicial processes and judicial decision-making is mandated by law.
- Was developed in synergy with jurisprudential developments explicitly recognizing the legitimacy of contextual inquiry in judicial decision-making.
- Has proceeded on the basis that social context education is a long-term process not an inoculation. The long-term goal is integration of social context into all forms of judicial education as an automatic part of the landscape. .
- Has been enhanced by community input and involvement and fostered by the support of judicial leaders.
- Has taken a broad view of the meaning and scope of social context education.

The SCEP has worked to assist judges to:

- understand the nature of diversity, the impacts of disadvantage and the particular social, cultural and linguistic issues that shape the persons who appear before them;
- explore their own assumptions, biases and views of the world with a view to reflecting on how these may interact with judicial process;
- examine relevant research and community experience in order to enhance processes of judicial reasoning and
- to provide jurisprudential and analytical tools to enable judges to examine the underlying basis of legal rules and concepts to ensure that they correspond with social realities and conform to the constitutional guarantee of equality.

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OVERVIEW

Commencing in 1996, the National Judicial Institute (NJI) initiated the Social Context Education Project (SCEP). The SCEP was envisaged as a national program which would build on earlier work begun by the Western Judicial Education Centre (WJEC). This summary sets out the concept of social context education that animated our work, the mandate provided by the Canadian Judicial Council, and the activities of the SCEP. The report of the initial judicial needs assessment held in 1997 is appended along with the SCEP Principles of Operation.

Scope of Social Context Education and its Place in the Judicial Education Curriculum

A broad view of social context education:

Social context education is intended to improve the delivery of justice in the nation's courtrooms through bringing into focus the role of social context in judicial action. The word choice itself was a careful compromise designed to focus attention on the fact that judges become better judges when they are more knowledgeable. In Sheilah Martin's inimitable phrase, "I have never heard a compelling argument against more knowledge (1997).

In Canada, the SCEP has taken a broad approach to social context education. In our view, social context education must be seen as being a great deal more than 'sensitivity training' on 'diversity issues' for judges. Without doubt, judges can benefit from better understandings of the communities which they serve. However, building on the insight that determination of facts and law are both influenced by social context and as such, it plays an essential role in judicial decision-making, we have expanded our scope to address issues of fundamental legal analysis. SCEP has worked to i) assist judges to understand the nature of diversity, the impacts of disadvantage and the particular social, cultural and linguistic issues that shape the persons who appear before them; ii) encourage judges to explore their own assumptions, biases and views of the world with a view to reflecting on how these may interact with judicial process; iii) examine relevant research and community experience in order to enhance processes of judicial reasoning in the interpretation and application of evidence and legal principles, including credibility assessment and issue identification (iv) provide jurisprudential and analytical tools to enable judges to examine the underlying basis of legal rules and concepts to ensure that they correspond with social realities and conform to the constitutional guarantee of equality.

Mandated by law:

The SCEP has been assisted in its work by recognition that equality and contextual judicial inquiry are not optional but are mandated by law in Canada through our Constitution and accession to relevant international conventions. It is an explicit ethical

obligation of Canadian judges to “conduct themselves and proceedings before them so as to assure equality according to law” (*Ethical Principles*). Increased judicial awareness of social context, then, is not only essential to good judging, but is required by law. In the view of Justice Smith (as she now is), “all judges should be leaders in bringing about equality” and that it is necessary for judges to “have an understanding of the social context in which equality principles are being applied.”(Smith, 1996).

Complemented by judicial commitment to contextual inquiry:

Senior judges, including members of the Supreme Court of Canada, have expressed their view that social context is a legitimate and necessary part of judicial decisionmaking and judicial education. In *RDS*, members of the court commented that “A conscious, contextual inquiry has become an accepted step towards judicial impartiality” (*RDS*). Justice Michel Bastarache has commented that “Our understanding of rules or laws is necessarily filtered through the context of our historical, legal and social cultures” (2002). Justice Iacobucci has argued that “understanding the Canadian social context and incorporating this into the process of adjudication requires that we always bear in mind the moral underpinnings of our Constitution and in particular the fundamental principle of equality” (2001). Justice L’Heureux-Dube, has pointed to “the importance of ensuring that courts remain attentive to historical patterns of discrimination in determining whether a particular rule, inference, or presumption is based on myth or stereotype and therefore violates constitutional guarantees of equality”(2001, *Social*). In her view, “contextual inquiry is an attempt to “‘to attack the problem of privilege and to understand the diversity of people’s experiences.’ When issues are examined in context, it becomes clear that some so-called ‘objective truths’ may only be the reality of a select group in society and may, in fact, be completely inadequate to deal with the reality of other groups (2001, *Queens*).

Judicial education on social context is a response to the challenge these insights pose. Chief Justice of Alberta, Catherine Fraser framed the challenge facing judges: “...to understand one’s own as well as those of the litigant before making a decision. [if one does not] as Patrick Devlin has suggested, a judge’s biases may lead him or her to “mould” the facts of a case and thereby arrive at a decision based on an understanding that does not correspond entirely to reality... To understand context..., judges must understand people and powerlessness: in particular the protected class or group, their values, the reality of their lives and the relationship of that group to other groups in our society”(1995). Supreme Court Justice Bastarache echoed this when he said in 1999, “Ever since cases decided by the Supreme Court concerning the Canadian Charter of Rights and Freedoms began to dominate the legal scene in Canada, the importance of conducting a contextual analysis and taking an interdisciplinary approach has been stressed. ... This definitely means that we have to address a wider range of knowledge and skills in our training programs. We have to realize that what we are doing is restructuring our environment and that the legal context, in its modern sense, is very broad.”

Based on the premise that this is a long-term process that has integration of social context as the long-range goal:

Throughout, we have regarded social context as an area in which all judges can benefit from specialized education (to provide ‘touchstones for deeper knowledge’) and as one which informs the scope of all good education. As now Justice Swinton pointed out in 1996, ‘Credible and comprehensive’ social context education must be an ongoing part of judicial education, in the same way that there is ongoing education about substantive law or criminal justice issues. Thus, social context education should not be regarded as ‘an inoculation’ to be received through stand-alone or ‘one off’ conferences. Rather it is a long term and continuing process, the long term goal of which is to make social context factors “automatically part of the landscape, in the same way that discussion of tax implications would automatically form part of any program on estate planning.” (Smith, 1996). Smith pointed out that this would require efforts to reach all judges “to create a common base of information and understanding” and to develop a cohort of judicial education leaders. Our work has followed this process: in Phase I, introducing the social context approach in court-based programming across Canada; and in Phase II, working with judicial leaders in a process of social context judicial faculty development.

Enhanced by community involvement.

An important principle of judicial education pioneered by SCEP was outreach to the community and efforts to foster a two-way dialogue between judges and communities outside the adversarial setting of the courtroom. This took three forms in our work. First, it involved using non-judges as faculty members. This included drawing on non-lawyer community members as faculty members and in some cases, as members of planning committees. This began a long-term shift at NJI away from a model of judicial education as “J³” (judges talking to other judges about judgments) and foreshadowed acceptance at NJI of the ‘three pillars’ principle of judicial education (involvement of judges, academics, community practitioners). Having a broadly representative planning group and faculty members helps to ensure appropriate understanding of issues, high quality content and widespread credibility of programming. Secondly, this work was specifically complemented by efforts at community consultation. Two formal community consultations were undertaken to enhance two-day dialogue between judges and communities. This initiative has been piloted further in Phase II of the Project with Nova Scotia initiating a permanent community-judicial liaison process. Finally, the SCEP worked closely with a National Advisory Committee comprised of judicial leaders, academics and community members throughout its activities.

Fostered by judicial leadership:

In our experience, successful social context education for judges requires the commitment of Chief Justices and Chief Judges, the involvement of respected judicial leaders in each court in program planning and delivery, and close coordination with judicial education committees. In Canada, Chief Justices supported the social context initiative through resolutions of the Canadian Judicial Council (see below), through constituting Education Committees in their Courts to plan and deliver social context seminars, and through dedicating court-based education meetings to the subject of social

context. This high level of judicial leadership sent a strong message that this work was considered to be credible and of a high priority for all judges.

Genesis of the Social Context Education Project: Canadian Judicial Council Resolutions

The Canadian Judicial Council, the governing body for approval of judicial education in Canada, passed the following resolutions in support of social context education.

- At its March meetings in 1994, the Canadian Judicial Council supported: judicial education programs on “social context issues” including “gender and race (aboriginal peoples, blacks, and other visible minorities)”, which are “comprehensive, in-depth, and credible”.
- In September 1997, the Council further resolved that, “the Chief Justices commit to providing opportunities for the judges in each of their courts to attend the NJI’s social context programs in at least each of the three areas of gender equity, racial equity and aboriginal justice.”
- In September 2000, the Council passed further resolutions in which the Council “affirmed the importance of pervasive treatment of relevant ‘social context’ issues including gender, aboriginal peoples, race, age and disability, in all contexts in which judicial education occurs; and *endorsed* the National Judicial Institute’s ...initiative to build capacity in this area through a second, more advanced program of judicial faculty development, modeling social context integration and community involvement in judicial education and creating enhanced and accessible resources.”

Activities of the Social Context Education Project

As noted, there have been two formal Phases of the SCEP in Canada. We secured special project funding for each phase from the federal Department of Justice. The planning process for each Phase including the various conferences and programs was lengthy and comprehensive. This reflective and critical approach to the project itself became educative for judges and also helped to make links with the community.

Phase I of the Social Context Education Project 1996- 2001:

This Phase focused on delivering intensive full-court social context programs to all federal and many provincial courts in Canada. By the time the final program in the first phase was completed in May 2000, the Project had worked with courts across the country to develop and deliver some 20 programs to over 1000 judges.

A key feature of the planning process was to work directly with court-based education committees in each province and provide members of these committees with in-depth ‘judicial faculty development’ on social context education to assist them in shaping the Phase I programs for their colleagues.

The Phase I, full-court programs lasted from 2-3 days and combined:

- plenary addresses on broad themes (judicial independence, judicial role, equality); with
- workshops on specific areas of law or social reality (e.g. aboriginal justice, poverty, language and communication; domestic violence; credibility assessment, disability issues; expert evidence; judicial notice, sentencing); and
- discussion groups for judges only with trained judicial facilitators (to allow judges to explore their reactions to the material and apply it to problems they face in their daily work e.g., a discussion problem might include recusal issues, bail etc as a basis to focus discussion).

Phase II of the Social Context Education Project: 2001-2003:

NJI undertook a second phase of the SCEP in which there was a dramatic shift in focus from working with full courts to working with judicial leaders across Canada who would acquire the advanced skills needed to effectively plan, prepare, and deliver effective integrated social context education programs for their colleagues. The key component in this work in Phase II of the Social Context Project was the Faculty Development and Curriculum Design Program (FCD) which worked with 100 judges. The FCD program was offered four times, with each offering attended by 25 judges. The FCD program had three parts: a 3-day course addressing judicial program design and adult education principles, a period of ‘inter-session work’ during which judges developed an education program idea using these principles and a 2-day course at which they presented their outlines and received feedback and participated in additional substantive discussion of social context. Judges who participated in the FCD developed 54 social context education projects, of which 44 have been or will be offered in areas as diverse as expert evidence, judge as problem solver, judicial notice, civil law developments in light of the equality law, enhancing multi-cultural awareness, disability and law; poverty issues, self-represented litigants; and aboriginal youth justice.

Ongoing activities:

As our work has progressed through Phase I and Phase II of SCEP, we have had continually in mind the need to achieve sustainable, ongoing integration of social context in Canadian judicial education. In our view, integration requires more than adding one body or one topic to a committee, program or panel once in awhile. Social context integration can only be accomplished when appropriate social context perspectives and issues are regularly sought out, identified and included in a systematic way at all stages of the planning and delivery of all judicial education. To achieve integration requires attention to organizational structure and support, who plans, how topics are chosen and conceptualized, what learning objectives are identified, the process by which programs are developed and the faculty and resources chosen in support of program development and delivery. We are working to adopt a ‘Social Context Integration Protocol’ at the NJI. Elements are already in place, including adoption as a guiding principle that judicial education should always be ‘three dimensional’ in its planning, design and delivery phases, (integrating together substantive law, skills development and social context awareness), allocation of a senior staff member to be responsible for social context

integration; and significant curriculum advances to integrate social context across programming.

Special Directors of SCEP	National Coordinators of SCEP
<ul style="list-style-type: none"> ▪ The Honourable Justice John McGarry, Superior Court of Justice (Ontario); ▪ The Honourable Judge Donna Martinson, Provincial Court of British Columbia (now Justice of Supreme Court of British Columbia); ▪ The Honourable Justice Donna Hackett, Ontario Court of Justice 	<ul style="list-style-type: none"> ▪ Professor Rosemary Cairns Way, Faculty of Law, University of Ottawa 1997-1999; ▪ Professor T. Brettel Dawson, Department of Law, Carleton University, 1999-2003
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