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## **JUDICIAL ORIENTATION**

### **SIX FACTORS INFLUENCING PROGRAMME DEVELOPMENT**

[G]ood judges are made rather than ordained by fate...however, they make themselves through learning rather than being taught  
(p 27, below).

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#### **Disclaimer**

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JUDICIAL ORIENTATION  
The Australian Approach

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## JUDICIAL ORIENTATION

### The Australian Approach

Lawyers don't become good judges by the wave of a magic wand.  
Not even the best lawyers ....|

Last week, overlooking the sparkling spectacle of Sydney Harbour during Spring, a faculty lead by Sir Anthony Mason, Chief Justice of the High Court of Australia conducted the inaugural judicial orientation programme. | This week-long residential course was conducted for new judicial officers with up to twelve months experience from courts around Australia and Papua New Guinea. |

Because any formalised process of judicial orientation is new both to Australia, and to the common law tradition at large, this paper will outline in Part 1 the nature of the programme, its content, format and faculty. In Part 2, the paper will examine six factors which have had particular influence on the development of the programme. These factors are recognition of need within the judiciary, the selection process, judges' reasons for participating in education, judges' characteristics as learners, policy considerations, and a study of experience gained to date throughout the common law world. Finally, in Part 3, some observations will be offered on evaluating this programme.

#### PART A THE NEW JUDGES' ORIENTATION PROGRAMME

##### Programme Development

Planning for a national judicial orientation programme was initiated by the Australian Institute of Judicial Administration in the early 1990's, following recognition of the need for a more formalised approach to judicial induction. At that time, New South Wales was the only state with the resources and experience to conduct programs of continuing education for judicial officers provided by the Judicial Commission of New South Wales. | Since 1987, the Judicial Commission has conducted a program of continuing education which has included an extensive judicial orientation program for the Local Court.

Consequently, the Australian Institute of Judicial Administration and the Judicial Commission of New South Wales agreed to collaborate in the development of a national orientation programme.

Special funding for the development of this orientation programme has been provided equally by the Australian Government and the Government of New South Wales. This funding became available in mid-1994.

##### Mission and Objectives

The mission of judicial education is to enhance judicial competence. Within this framework, the purpose of this orientation programme is to assist new appointees make a smooth transition to judicial office through the provision of education and training. This programme focuses on developing the particular knowledge, skills and attitudes required for judging.

Specifically, the goals of this programme are to build on existing levels of experience, and to:

- a Develop a judicial perspective through promoting knowledge and understanding of the role of judicial officers in the administration of justice;
- b Consolidate and develop the skills of judging, and techniques of problem solving;

- c Promote a judicial disposition relating to the attitudes, values, ethics and conduct appropriate to judicial office;
- d Encourage and provide an opportunity for participants to review and critically reflect on their judicial experience; and,
- e Provide a framework for collegial interaction and the exchange of experience.

#### Elements of the Programme

The judicial orientation programme consists of a number of elements. These include a 5-day residential course component; a self-paced introductory package of materials which include the production of two videos; and guidelines for a court-based mentor programme and a court observation programme. To this time, the joint steering committee has concentrated on the development of the course component of the programme in view of the recent availability of funding.

The course component of the programme is designed for new judicial appointees with between three and twelve months of experience. Owing to the prevailing practice of judicial appointment which usually involves an unpredictable process of invitation-acceptance-commencement within a matter of days, it is impossible to coordinate a pre-appointment course on a national basis. Accordingly, the course must be post-inductive rather than preparatory. It is for this reason, that the programme includes a self-paced/distance learning package, and court-based components which are not course dependent, in order to provide immediate and local support for judicial officers at the time of their appointment.

#### Outline of Content of Course

The orientation course element of the programme focuses primarily on the development of judicial skills and disposition. Owing to judicial appointees being selected on the basis of pre-existing professional merit as practising lawyers, the course does not aim to address substantive aspects of the law. Clearly, it is not intended that this course should teach judges the law.

The outline to this course is attached as a schedule to this paper. In essence, the course comprises three aspects: it is primarily designed to consolidate the experience of appointees in a number of fundamental judging skills. These include court craft, judicial management, decision-making, sentencing, jury directions and the assessment of damages. Additionally, the course focuses on developing judicial disposition relating to equality before the law, specifically gender, race and cultural awareness, and conduct and ethics. Finally, the course addresses a number of specialist substantive issues including DNA and selected forensic aspects of criminal justice, and dilemmas in evidence law and practice.

#### Format

The orientation programme is based on adult educational theory modified appropriately to meet the learning needs of judges. The design of both the programme as a whole, and of individual sessions, promotes active, participatory involvement, calling for the application and exchange of participants' experience, and encouraging reflection and self-critique. Information is imparted primarily through preliminary reading in order to allow sessions to focus on the application of theory to practice, skills development, problem-solving and reflection. The instructional design of sessions varies from informal lectures, problem-solving case-studies, video vignettes, and a range of individual and small-group exercise models.

#### Faculty and Faculty Development

The orientation programme is conducted by a faculty of experienced judges and a range of other experts and educators selected for their expertise and communication skills who present and facilitate respective sessions. These sessional presenters are assisted by a "core faculty" of judges who provide continuity between sessions and are available to assist participants throughout the course. Faculty development and facilitation skills training is offered to all faculty to ensure the educational effectiveness of proceedings.

## PART B SIX FACTORS INFLUENCING PROGRAMME DEVELOPMENT

### 1 Recognition of Need

The first and most important factor influencing the introduction of judicial orientation, has been the recognition of need within the judiciary itself. Recognition of the need for judicial orientation - and the benefits which it can offer - has been very recent in Australia, as it has been throughout the common law world.

The practice of Australian and indeed British courts has, in the words of one senior judge, relied until now almost exclusively upon the selection of the "gifted amateur," the self-education of judges and the acquisition of the necessary knowledge by informal consultation with colleagues. | This derived from a confident belief that there is no better training for judicial work than active practice as an advocate. | Recognition of the need It was first proposed in the United States by Chief Justice Warren Berger in 1964, | and by Justice Michael Kirby in Australia almost twenty years later:

It is assumed that years of practice as a barrister is the necessary and sufficient qualification for judicial office. So it has been for hundreds of years. I believe we could do better ... we need a national (judicial training) institute. |

In 1987 Kennedy, a member of the Supreme Court of Western Australia, joined Kirby to advocate a more formalized approach to judicial education. He argued that the transition from advocacy to adjudication is as substantial as it is abrupt.

There does appear to be a special need for assistance to be made available for newly appointed magistrates and trial judges ... The purpose of that assistance would not be, of course, to improve the general level of knowledge of substantive law on the part of new appointees, but to inform them of possible solutions to particular problems which they might encounter and of which they might not have had previous experience. |

This approach was endorsed in 1991 by Sir Ivor Richardson of the New Zealand Court of Appeal, who argued that judges can no longer depend almost entirely on self education: a more systematic and professional approach is needed. | Richardson argued that the reservoir of knowledge and social experience of judges needs to be supplemented by a formalized educational program:

[F]ormal judicial education programmes are, I believe, the most effective means of gaining information and insights; of stimulating awareness of changing social and economic perspectives and values; and generally of enabling us to keep abreast of all those facets of our work in changing times. |

Most recently in a seminal review of the need for judicial training in Australia in 1992 Justice Wood, of the Supreme Court of New South Wales, argued that benefit rather than need should be the criteria for justifying the introduction of judicial training:

The justification for judicial orientation should not depend upon proof that it has become necessary. It would be almost impossible to prove whether that was the case or not. The more relevant consideration is whether such a system would be desirable and beneficial for judicial officers in this country. |

Wood justified judicial education - specifically orientation - in terms of the prevention of error:

Avoidable errors in the conduct of trials, whether civil or criminal, involve considerable wastage of direct costs to the parties and the community. They are measurable; the indirect costs in terms of delayed lists, wasted demands on hard pressed prison and support services and the social services system, and the social and emotional harm to prisoners and civil litigants are not so easily measurable but they are nonetheless real. |

Similarly, Justice Nicholson, also of the Supreme Court of Western Australia, has now explicitly articulated the importance of continuing education to the judiciary as a profession:

Judicial education is now an accepted part of judicial life in many countries ... Judicial independence requires that the judicial branch is accountable for its competency and the proposition is now accepted as beyond debate. |

Most recently in 1994, the Chief Justice of the High Court of Australia, Sir Anthony Mason, has indicated that he was in favour of judicial orientation training on the basis that it would "ease the path" of newly appointed judges. |

Second, judicial selection - and specifically the criteria and process of appointment to judicial office - has direct and major implications in defining the need for judicial education. Judicial selection determines the standards of entry to the judiciary. It also defines the threshold of judicial competence and, thereby, determines the point of departure for any program to meet the need for continuing judicial education.

While there is universal agreement that judicial selection should be based on merit, there is however limited agreement on what constitutes merit. At a minimum, merit imports fundamental qualities of competence, integrity and temperament. There are, however, divergent views on what constitutes merit beyond this point.

The International Bar Association Code provides in Standard 26, for example, that "[s]election of judges shall be based on merit." | Few would now dissent from the proposition put by Sir Harry Gibbs, Chief Justice of the High Court of Australia between 1981 and 1987, that merit - once comprehensively defined - ought to be a condition precedent to the appointment of a judge:-

The selection of judges is of critical importance in the administration of justice and for the welfare of society as a whole. The work of a judge is too important to entrust it to a person of doubtful competence. |

The importance of the process of judicial appointment - and the qualities which it uses as the criteria for selection to judicial office is underscored by Gibbs:

Confidence in the laws, and in the judges who administer them, is an essential condition of an ordered, stable and civilized society. The confidence of the public in the judiciary can be maintained only if the judges are seen to be not only fully competent to perform their functions, but also independent, impartial and of complete integrity. |

On the broad issue of merit, Shetreet agrees:

If [judges] are professionally qualified and personally men of integrity and good character, the justice they administer will undoubtedly be of superior quality. Likewise, if they are independent, courageous and maintain high moral standards, the people will be judged fairly and justly and will enjoy adequate protection under laws of the society in which they live. |

At a systemic level, therefore, a consensus exists among jurists and commentators alike on the importance of merit appointment to the quality of justice. This consensus recognizes a close relationship between the concepts of merit and competence. It also recognizes certain common elements of merit appointment, including competence, independence, integrity, high moral standards, impartiality and fair treatment.

In practice, however, an analysis of the criteria adopted to ascertain merit tends to vary between the American and British approaches, as does the process of selection arising from elective and appointive selection. These various considerations have major implication on the threshold qualities of those appointed to judicial office under different systems, their educational needs on appointment, and thereby the purpose and priorities of any program of judicial orientation.

In the United States, the ABA's Standing Committee on Federal Judiciary evaluates the qualifications of persons considered for appointment to the US Supreme Court, Circuit Courts of Appeal and federal District Courts. The Committee applies "predetermined and objective" evaluation criteria to evaluate the professional qualifications of the nominee, but not his/her ideology or philosophy. Assessments are made using three criteria: integrity, professional competence and judicial temperament. Following rigorous formalized investigations, nominees are rated as "well qualified" ("at the top of the legal profession" and "of outstanding ability"; or, in the case of candidates for the US Supreme Court, "of exceptional professional qualifications"), "Qualified" (meeting the Committee's "very high standards"), and "not qualified". | Integrity is regarded by the Committee as being "self-defining". The prospective nominee's character and general reputation in the legal community are investigated, as are his or her industry and diligence. | The Committee defines professional competence as encompassing such qualities as intellectual capacity, judgment, writing and analytical ability, knowledge of the law and breadth of professional experience. Substantial court-room and trial experience is important; additional experience which is similar to court trial work such as serving on administrative agencies or teaching trial advocacy is considered, as is significant evidence of distinguished accomplishment in the field of law. | The Committee also makes explicit reference to principles of equal opportunity by recognizing the status of "women and members of certain minority groups" who may have had limited opportunities for advancement in recent years. | Although trial experience is recognized as important, the Committee recognizes the lesser importance of trial experience as a qualification for appointments to appellate courts. |

The British approach to merit appointment, on the other hand, is hallmarked by its informality and lack of codification. This should not, however, imply any necessary inconsistency of practice in approaching merit selection.

The clearest statement of this approach was provided by Lord Hailsham in 1985, when he outlined the policy which he followed as Lord Chancellor in selecting candidates for the bench in England and Wales:-

My first and fundamental policy is to appoint solely on merit the best potential candidate ready and willing to accept the post. No consideration of party politics, sex, religion, or race must enter into my calculations and they do not. Personality, integrity, professional ability, experience, standing and capacity are the only criteria ... My overriding consideration is always the public interest in maintaining the quality of the bench and confidence in its competence and independence. |

This informal approach to the selection of judges concentrates on the outcome of the selection process, rather than attempting to codify its process. This emphasis has been described by Sir Robert Megarry, in similar terms to Lord Hailsham, as being,

A cautious, informed, concentrated, professional, non-political search for the best person for the job, based on first-hand professional knowledge of each candidate's status as an advocate and a person, and conducted among a relatively small field of well-seasoned and carefully selected advocates who have already had considerable judicial experience. |

These statements have been frequently quoted and endorsed by subsequent jurists in both Britain and Australia as distilling the principle of merit selection.

While the American and British approaches to the assessment of merit are, respectively, more or less formalized, this assessment is ultimately dependent on the confidence of the judicial and practising profession in the competence of the appointee. As such, it is concluded that the process of peer review is an integral and inescapable aspect of the assessment of judicial competence.

In Australia, merit is similarly the basis for appointment to judicial office, at both the federal and state levels. The Australian approach to judicial selection is informal and is based on the British rather than the American approach. This process lacks explicit criteria, and is not prescribed or codified in any formal way other than by customary protocol; and, to this extent, the process of judicial selection can be observed to change from attorney-general to attorney-general. |

Despite the lack of any formal, explicit or codified process in Australia, there has been an extensive discussion of merit appointment within both the judicial and executive domains. This discussion casts considerable light on defining the criteria of merit. An analysis of this discussion establishes a clear and essential relationship between the concepts of merit and professional competence; however, there are two diverging schools of thought on what professional competence comprises, which can be alternatively described as the forensic and the humanistic concepts of merit.

Merit is a concept with two divergent meanings: the traditional and prevailing concept of merit is relatively narrow and focuses on a forensic, technically-based assessment of professional competence (relating to knowledge of substantive law and evidence, procedure and skills in court-craft); the alternative approach to merit is based on an assessment of broader humanistic considerations (relating to the capacity for fairness, attentiveness, analysis, and good communication). While it is acknowledged that these two approaches to the interpretation of merit are arguably gradations along a shared scale, the respective points of focus have important implications in determining from where candidates should be selected.

## 2.1 Forensic Concept of Merit

The forensic view of merit has in recent years become the dominant, traditional and prevailing approach to judicial selection in Australia. Advocates of the forensic interpretation of merit assess the qualities of candidates to judicial office within a narrow framework of technical competences which emphasises juristic knowledge and skills of court craft.

Many jurists in Australia place paramount importance on qualities gained through experience as trial advocates at the bar. Chief Justice Gleeson of the Supreme Court of New South Wales, prior to assuming office, argued that a judge ought to have:

[A] close working knowledge of the rules of procedure and evidence, as well as the substantive rules of law that call for application in the jurisdiction in which he is sitting, and he ought also to be well versed, from personal experience, in the ways of advocates, litigants and witnesses (and, if he sits on an appellate court, of judges).|

## 2.2 Humanistic Concept of Merit

Advocates of the humanistic interpretation of merit assess the qualities of candidates to judicial office within a broader framework of human competences and the qualities which the judge, as a person, needs to provide in serving the community.

Justice Samuels, a judge of appeal of the Supreme Court of NSW, argues that the description of the ideal judge is similar to that of the ideal legal practitioner, with a few changes of emphasis and the express recognition that a little sound knowledge of legal principle is desirable:

The ideal [judge] would have good powers of recall and of analysis, and an imaginative understanding of human nature ... he would be a good listener with an instinctive capacity for understanding the significance of facts and for ordering, in a systematic way, a wealth of factual information; he would have a feeling for ordered, concise presentation and good powers of communication; last but not least, he would have a sense of fairness and justice ... Very few judges possess all these characteristics. |

Kirby, emphasizes the personal qualities of common sense, courteousness, courage, honesty, and independence as essential for a judicial appointee. |

This view of the importance of broader characteristics of candidates for judicial office is endorsed by Kennan, a former attorney-general for Victoria, when he argued that while the fundamental purpose of a judge is to be able to run a court, the judicial appointee needs to:

show courtesy towards litigants, humility rather than arrogance, a good mind and a sense of compassion ... and some interest in the technique of judicial administration." |

## 2.3 Election or appointment?

In addition to selection criteria, it is argued that radical and far-reaching implications emerge for judicial educators from the difference in the elective and appointive selection processes, in terms of the need for judicial education.

The process of judicial selection is determined by two main models within the common law tradition of justice. These are appointment, election and various combinations of each. The appointive method vests selection in the realm of the executive, whether that be the head of state, a minister of state, or an agency of the executive such as a selection commission. Such appointments are subject to at least nominal confirmation by congress or cabinet. The elective method, on the other hand, involves some form of popular election. According to Shetreet, most countries employ the appointive method of judicial selection, and the general trend has been to move away from election. | In Australia for example, selection is appointive, as it is in Britain, while in the United States both methods operate of judicial selection operate.

The process of appointive selection which operates in Britain, Australia and Canada tends to focus on forensic criteria of merit. These criteria render it reasonable to assume certain levels of technical legal competence in appointees to judicial office but, as a corollary, appointees may bring with them a specialized but professionally narrow background.

On the other hand, the process of elective selection which operates in certain courts throughout the United States allow appointees to join the bench with a broader range of backgrounds. Here, a broader humanistic approach to merit selection permits the appointment of academic and other non-practising lawyers, usually as the result of an elective process. Popular election is arguably better suited to applying broader humanistic selection criteria but, equally, may be an inappropriate mechanism for dealing with the narrower forensic criteria of professional competence which are best discerned through peer review.

Important relationships exist for judicial educators between the selection process, the threshold of judicial competence, and the need for judicial education. This threshold of competence serves as a foundation for any program of continuing judicial education. Elective selection places greater importance on judicial accountability, reflection of communal values, and humanistic selection criteria rather than the paramountcy



of forensic competence. Conversely, the appointive approach tends to focus on selecting candidates on the basis of a range of technical competencies for judicial office.

The threshold of the need for judicial education is determined by certain assumptions of merit which can be discerned from the selection process. This threshold varies from one system of justice to another. This distinction has fundamental implications for judicial educators, in terms of defining the threshold of need for judicial education, and gives rise to the major differences in the role of judicial education in the Australia, Britain and the United States.

The needs for judicial education vary. In the United States, for example, it is argued that the need for judicial education is to provide judicial competencies pertaining to knowledge of substantive law and procedure, and trial-based judicial skills for appointees lacking extensive practical experience and expertise. In Australia or Britain, on the other hand, it is argued that the need for judicial education is to develop the art of judging which lies beyond the domain of technical competence, and to look outward in terms of the broader role and relationship of the judge in society. |

In Australia, it is concluded from the application of eligibility and selection criteria that appointees to judicial office are forensically competent lawyers with a mastery of substantive law and advocacy skills. They may not, however, possess a range of broader humanistic qualities. These assumptions are of fundamental importance to judicial educators in defining the need for judicial education, and in laying the foundations for any program of continuing judicial education.

It follows that the needs for judicial orientation may be different in the United States to Australia or Britain. Consequently, approaches adopted in one jurisdiction should not necessarily be seen as a model which is applicable to others, depending on a range of factors relating to appointment processes, needs and local conditions.

### 3 Judges' Reasons for Participating in Judicial Education

The third factor influencing the judicial orientation is what is known of judges' motivation for participation in continuing learning. Judges have distinctive reasons for participating in continuing judicial education. These reasons, when taken in conjunction with other factors such as the impact of the selection process on the threshold of competence, and judges' characteristics as learners, are distinguishing features which have significant implications for educators in terms of both the content and the process of any program of continuing judicial education.

#### 3.1 Catlin's Underlying Factors

The foundation of any empirical analysis of judges' reasons for participating in judicial education has been laid by Catlin who identified significant differences between judges and other professionals in their motivations and perceived needs for continuing education. He found that appointment to judicial office and the environment surrounding judicial tenure created educational needs distinct from other professionals or adult learners generally. |

These distinctive features related in particular to the motivational factors in continuing learning where personal benefits, professional advancement and job security were ranked significantly lower by judges, than by other professionals such as physicians and veterinarians. | This is consistent with judges perceiving themselves as public officials, now behaving differently from professionals in the private sector. | Catlin observes that "the difference appears most dramatic when the reward system is examined." | Judges may participate to develop new skills in order to be more competent, but not to increase their income; thus, the development of competence, in the case of the judge, must be a reward itself. The lack of importance of job security, professional advancement and personal benefits have "serious implications" for purposes of planning education programs; comparison between groups suggests that for judges the concept of judicial competence is a factor much broader than professional service; in addition, judges operate in an environment where there is a lack of any distinctly identifiable patient or client relationship. |

Empirical data obtained in the course of this experience is outlined below. It is argued that the findings contained in this data confirm Catlin's observations of underlying factors influencing participation (being pursuit of judicial competence, collegial interaction and professional perspective), and certain recognized characteristics influencing participation (specifically, level of court and duration on bench). Additionally, this empirical data supports the identification of new underlying characteristics influencing educational need and participation, which include factors such as past education, position in court and geographic situation.

These findings have been validated and built upon by more recent research conducted by the writer in Australia. |

### 3.2 Judicial Officers in New South Wales (1988)

At the outset of the Commission's operations, Riches reported that the Judicial Commission conducted a survey of reasons for participation by judicial officers in the state. The findings of this survey disclosed that reasons relating to judicial competence were the strongest motivators. The most important reasons were to:

- 1 keep abreast of current developments
- 2 maintain quality of my judicial service
- 3 help me be more competent in my judicial work
- 4 maintain my current abilities
- 5 help me improve the quality of service being rendered to the public
- 6 mutually exchange thoughts with other judicial officers. |

Riches noted that the reasons for participation appeared to fall within the three factor groupings consistent with those identified by Catlin, being professional perspective, judicial competence and collegiate interaction. |

### 3.3 New Magistrates in New South Wales (1991)

Specific analysis of the needs of new appointees, assessed at about the time of appointment, is also directly indicative of the perceived needs, concerns and expectations of those confronting the transition to the judiciary. As it is generally acknowledged that the need for judicial education is at a most acute phase at induction, analysis of these perceptions is of particular significance for educational planners. While analysis and observation of the needs of new appointees tends to indicate that many of these concerns involve a "crisis of confidence" as distinct from any substantive deficiencies in knowledge or skills, this itself gives rise to a pressing need to provide educational support to these new judicial officers at the time, in order to facilitate access to professional assistance, overcome fears of the unknown, and expedite their transition to the new judicial role.

In 1991 the Judicial Commission conducted an analysis of the specific needs of new magistrates which combined survey and 'brain-storming' technique, in order to identify the perceptions of appointees of their needs for induction, and to obtain an appraisal of perceived usefulness of the existing program. |

New magistrates ranked their perceived needs in the following order: collegiate networking and experience-sharing; skills development in the practice of court management and administration, court-craft and the 'art of judging'; information on substantive law; and, information on court procedure. Respondents ranked the usefulness of existing educational services. | Calls were also made for the development of an orientation handbook, more update seminars/bulletins, and bench observation and mentor programs. |

A number of other analyses have been undertaken of the judiciary which have bearing on the needs of newly appointed judicial officers.

### 3.4 Judicial Officers in New South Wales (1991)

A more extensive needs analysis was undertaken on completion of the pilot phase of the Commission's education program which provided an opportunity both to refine insights into the need for judicial education and to undertake a preliminary evaluation of the formative program. The findings of this analysis revealed many of the complexities in judicial perceptions and reasons for participation which had been foreshadowed by Catlin, and which gave rise to an immediate imperative to recognize a multiplicity of needs which could only be addressed through the classification of different educational services defined by the substantive nature of the need, and by the level of application. Consequently, the Commission's education program has been developed on a matrix of educational services defined by content, level of application, and identity of court. |

In 1991, the Judicial Commission undertook a comprehensive educational needs analysis of judicial officers in New South Wales. The methodology triangulated a range of techniques. | These included extensive consultations and brain-storming with standing judicial education committees, open and closed interviews of selected judicial officers and others, appraisal of courts' management data, observations of judicial practice, resource analysis and occupational task analysis, and a survey of all judicial officers. | An analysis of these

findings reveals an abundance of information pertaining to the perceived needs of judicial learners, and the preferred means of meeting those needs. |

These findings are outlined beneath to the extent that they further clarify the precise nature of judges' needs for judicial education and, in particular, orientation:

- a Underlying factors influencing participation - Analysis of these responses discloses a number of significant underlying factors influencing participants' responses. These factors were, in part, consistent with Catlin's findings. These were identified as including:
  - i Nature of court (which approximates Catlin's "level of court" factor).
  - ii Seniority, as measured by the extent of judicial experience (which approximates a combination of Catlin's "years since law degree" and "tenure on bench" factors).
  - iii Geography, including the location and size of the court, and the extent to which judges' duties involve transient work on circuit, personal isolation and a lack of collegial support (none of which was tested by Catlin); these factors give rise to stronger relationships existing between judges and continuing education.
- b Reasons for, and barriers against, education usage - Respondents ranked in descending order of importance the following reasons for participating in continuing judicial education: keeping abreast of recent developments, maintaining current abilities, enhancement of professional competence and the development of new knowledge and skills. Shortage of time, geographic inconvenience and irrelevance or impracticality to work were ranked as the main barriers against usage; the issue of whether services were too basic or too esoteric was rated as being not significant.
- c Usefulness of education services - Respondents ranked as most useful the following areas in descending order: substantive law, procedure, and updates on recent developments. They rated social issues, and juristic dilemmas affecting the role of the judge as least useful. Significant differences were identified in these findings on further analysis by court and by seniority. | Respondents ranked a number of proposed services in the following order: production of a bench book for each jurisdiction, update seminars on major recent changes in law, publications on selected judgments with or without commentary, an induction handbook for new judicial officers, and annual court conferences. Proposed services least highly rated included visiting or exchange jurist programs, and a research project into public perceptions of the judiciary. Again, some significant differences were expressed between courts and members according to their seniority. |
- d Use of Education Services - Respondents reported extremely high levels of regular usage of bench books and the Judicial Commission's monthly bulletin of topical articles and updates in case and statute law. |
- e Preferred form of education - The universally preferred format is the small-group workshop, followed by informal collegial discussion, self-directed research and reading, and then the large-group conference. Audio and video tapes are not favoured, nor are post-graduate studies or correspondence courses. Judges are preferred as presenters, followed by qualified experts and then respected counsel. Solicitors are least regarded.

These empirical findings provide an abundance of data on the existence and nature of perceived need for judicial orientation and education. As such, they go beyond the findings contained in the literature, and are useful in establishing parameters to any program of judicial education which is likely to be seen as relevant and useful for new judges. The findings confirm the existence of underlying relationships between the three factors identified by Catlin (judicial competence, collegial interaction and professional perspective), and designated characteristics (sex, years since graduation, tenure on current bench, level served on court, and levels of past participation). In addition, it is argued that this data reveals a number of previously unidentified characteristics which influence participation in continuing education by judicial officers.

Of most relevance to the issue of judicial orientation, the findings confirm Catlin's observations that level of court, and duration on bench are significant underlying factors influencing participation in judicial education.

- i Level of court - This was identified by Catlin, and confirmed empirically. The survey of judicial officers disclosed some significant variations in responses between the level of court on which respondents served, giving rise to quite separate and distinct educational strategies being required for each respective court in order to respond to the differences in perception. The most marked differences are predictably identifiable between responses from the Supreme and the Local Courts. For example, the Supreme Court

responses reflect a consistently broader intellectual pre-occupation, while the Local (and District) Courts reflect a pre-occupation with more pragmatic, practical issues.

ii Duration on bench - Similarly, this was identified by Catlin, and confirmed empirically. The survey delineated significant variations in responses by reference to the duration of experience on the bench to the extent that separate layers of educational servicing have been implemented to meet the different needs of induction, updating, and replenishment. Thus, while each layer may focus on substantive or skills-based approaches, each is conducted at different levels of application according to prior experience.

These findings identify additional underlying characteristics influencing educational need and participation to include other factors such as education, position and situation. It is observed that each of these additional characteristics has a significant impact on attitudes and behaviour of respondents to judicial orientation and continuing education.

iii Education (or qualification) - Comparative analysis of findings of judicial officers (law-trained) and tribunal officers (non-law trained) identified, in many regards, similar occupational tasks and attitudes, and permitted an assessment of the impact of prior formal education as a variable. The data supplied by non-legally qualified personnel calling for the supply of basic tools of legal trade with bench books and assistance in decision-making, for example, leads ultimately to the observation that prior qualification exercises a significant underlying influence on attitudes and behaviour. |

iv Position (describes rank of office, nature of duties - judicial or administrative; and basis of appointment - full or part-time) - Significant variations were consistently identified in the responses of Tribunal members by reference to these underlying characteristics.

v Situation (includes geographic location, and size of court/registry) - Significant variations were revealed relating to the distinctive needs of isolated or itinerant judicial officers and tribunal members. These variations consistently related to distinctive needs for information and formalized collegial support to substitute for a lack of access to formal interaction with peers, loneliness and the absence of informal networking arrangements. This factor was visible by reference to geographic description of location and size of court/registry.

In terms of the level of application, these findings empirically validate the practice of conducting special induction programmes for newly appointed judicial officers. They identify distinctive reasons for participating in judicial training, and specific perceptions of need which should be addressed in the course of that training.

In regard to the content of judicial education, there is a broadly-acknowledged need to provide opportunities to develop particular skills of judging, as distinct from teaching them the law which is clearly not the role of judicial orientation, at least in any merit-based appointment system. Empirical research supported by actual experience confirms that a range of underlying factors should be taken into account in planning to meet the educationally distinctive needs of judges, in particular, the pursuit of competence and the need for collegial interaction and perspective.

In regard to the manner of delivery of judicial orientation, there is a need to provide education in a manner which is conducive to meeting the distinctive needs of judicial officers within the constraints imposed by the doctrine of independence. There is a further need to accommodate the preferred practices of learning which exists within the judiciary which it will be argued are intensely self-directed. The significance of this inheritance of preferred learning practices has implications for program development and curriculum design. It will be argued later that there is a higher than usual need to promote facilitated self-directed learning through the provision of access to educational resources (such as bench books, digests, reports and appeal decisions), and relatively less reliance on classic formalized didactic instruction in classes and seminars. Notwithstanding, Catlin has correctly identified the subsidiary importance of group-learning processes in workshops and conferences to provide environments for collegial interaction and the development of professional perspective.

These findings provided an important conceptual framework within which to development activities to meet specifically-defined educational needs, and laid the foundations for this programme of judicial orientation.

#### 4 Judges as Learners

Fourth, the educational characteristics of judges as learners are relevant in the development and design of any programme of judicial orientation.

Judicial learning is a complex process, and one about which not a great deal is yet known.

Cross has observed that there is a notable lack of theory in the field of adult education at large, which she attributes to the market orientation of practitioners concerned with delivering services to clients, and to the multi-disciplinary nature of adult education which she considers to cause confusion and a lack of academic coherence. |

The educational strategies which underpin any approach to educating judges should rest on foundations of adult learning theory. These foundations must, however, be specifically designed to support the distinctive requirements of judges who exhibit characteristics, styles and practices as learners which are distinctive, and which have direct and important implications for educators.

#### 4.1 Application of Adult Educational Theory

Education is a formalized process by which people learn. Pivotal to the development of any education process is the need to provide the means for effective learning. Theorists have sought to understand and explain the learning process, and their investigations have focused upon the individual components of the learning act and the delineation of various types of learning. Explanations of how learning takes place have been assessed through various theoretical and clinical means.

Generally speaking, adult learning is characterized by being autonomous, self-directed, building on personal experience, and the immediacy of application in problem-solving. | In this sense, it is argued that judges epitomize adult learners. Participation in continuing education is usually a purposive activity: to prepare for a new job or improve present job abilities, and rewards such as improved employment and remuneration tend to dominate the choices of learning. |

Within this understanding, it is argued that any paradigm of adult education should be seen, primarily, as a process of facilitation based on self-directed learning, where the educator is cast in the role of facilitator in a process centred on the learner, rather than as an authoritarian model of teaching where the educator directs a learning process which focuses on the subject.

The application of this learning theory - specifically, humanistic and developmental explanations of learning - provide a range of useful insights to the process of judicial learning. Generally speaking, it is argued that humanist theory appears relevant to learning self-understanding; behaviourism is useful in teaching practical skills; and developmental theory has much to offer to goals of teaching ego, intellectual or moral development. | In broad terms, it is argued that these theoretical explanations provide the most appropriate foundations for any model of judicial education on equality.

#### Developmental Theory

Developmental theory offers particular insights to educators concerned with inducting judges to their new profession and duties. Developmental theorists see the various stages and phases of human development as an inevitable unfolding of predetermined patterns, and relate phases of the life cycle with developmental stages of growth and maturity. | Havighurst, for example, identified developmental tasks for the 3 periods of adulthood: early adulthood; middle age; and late maturity. | Knox views adult development and learning in terms of change events: leaving home, marriage, children, retirement; interspersed with death, health and new jobs. |

For developmentalists, the educator is cast in the role of helping the individual advance to the next level of cognitive development, through designing educational experiences which will challenge the learner to reach for growth-enhancing cognitive experiences. | Developmental theory provides some useful explanations for the existence of particular phenomena pertaining to learning by reference to the stage of career at which the learner may be found, such as judicial orientation on appointment to the bench.

#### Humanism

Another useful explanation of the learning process is provided by humanism. The humanistic approach to learning emphasizes that a person's perceptions grow out of experience, and stresses the individual's responsibility for becoming what one wants to become. |

The research of Tough supports the humanistic approach that there is a natural tendency for people to learn and that learning will flourish if encouraging environments are provided. | This approach has been highly

influential in underpinning many approaches to continuing education. The humanistic explanation has been adopted by Maslow in constructing his theory of human motivation based on a hierarchy of needs. | This hierarchy, in turn, has been relied upon by many subsequent theorists, including Knowles. Darkenwald and Mirriam argue that Knowles' philosophy of andragogy is based on a humanistic developmentalist orientation, that of "man in his wholeness" and the adult as a self-directed learner. | This approach is also supported by Cervero and Brookfield, who argue that effective facilitation of learning is the goal towards which all continuing professional educators should strive. |

The implications of humanism for the educator is to cast the educator in the role of facilitator rather than as the agent to direct the learning process. Humanism conceives the education process being centred on the learner rather than the subject in order to give freedom to pursue self-directed development - when, how and where he or she wants. It will also be argued that this explanation of the learning process is appropriate to the learning practices of judges, and can be useful in developing a model of continuing judicial education.

### Cognitive Psychology

The cognitive concept of learning provides an important new perspective to finding an answer to the question "how do adults learn". Cognitive psychology focuses on the acquisition of knowledge and knowledge structures rather than on behaviour. Cognition is the process of registering, storing, and retrieving information and manipulating that information to solve problems. | The cognitive model of the learner is,

based on the premise that learning is an active, constructive and goal-orientated process that is dependent upon the mental activities of the learner. |

Proponents of a cognitive psychological explanation of learning seek to understand mental processes, thinking, concept-formation and the acquisition of knowledge. A major long-term objective of education, according to cognitivists, is the learner's acquisition of clear, stable, and organized bodies of knowledge. |

A key assumption to cognitive theory is that learning is cumulative in nature and rests on prior experience. Thus in this model of education, the educator must take into account the prior level of knowledge because understanding and interpretation of the information presented depends on the availability of appropriate schemata: adults - and particularly professionals - must, according to Shuell, be able to test, evaluate and modify understanding and experience. Thus a major goal of this form of instruction is to teach learners how to derive schemata that will be useful for their practice. Shuell concludes:

without taking away from the important role played by the teacher, it is helpful to remember that what the student does is actually more important in determining what is learned than what the teacher does. |

### Experiential Learning

The work of Kolb is valuable in any study of adult learning for the manner in which he integrates the application of cognitive psychology with human developmental theory. | It is argued that this work comprises two practical elements which are universally relevant to adult learners and has specific application to judges.

The first element of Kolb's work emphasizes the essential role of experience. It sees learning as being a continuous process grounded in experience, and places greater importance onto the process rather than its outcome | . In this process, learning rather than teaching becomes the dominant concern. For Kolb,

Learning is the process whereby knowledge is created through the transformation of experience. |

The first element of the learning process occurs in a four step process, which Kolb describes as a "learning style inventory". This inventory consists of a four element cycle: (a) concrete personal experience; (b) observations and reflection on that experience reworked into (c) abstract concepts and generalization which are (d) tested in new situations. |

The second element rests on the premise that learners have preferred orientations to learning permitting classification into the above types. The learning style inventory provides illuminating insights for the design of integrated instructional strategies to promote effective learning. This classification of preferred learning styles can also provide a useful basis for facilitated learning equipping educators to design instructional programs which integrate each of the four major learning styles for group learning situations or, potentially more usefully, to design individualized learning programs tailored to meet both the particular styles and needs of individual judges. |

## Behaviourism

Behaviourism is an antithesis to the cognitive approach in searching for an explanation of the learning process. The behaviourist approach, which is sometimes referred to in discussions by practitioners as a "competency-based" approach to education, lies at the foundation for one of the largest and most visible segments of adult education, namely occupational training in the workplace. | This approach is generally based on applying learned experiences for the attainment of functional outcomes and is frequently applied in skills training where the learning task is broken into segments where there is what Cross describes as "a correct response," which is rewarded. |

Implicit in this approach to the learning process is a model of education developed by Tyler which was designed as a means of defining good practice and providing a conceptual structure to assist educators. | This model comprises five elements for identifying needs, defining objectives (preferably in behaviourist terms), identifying learning experiences to meet those objectives, organizing learning experiences into a plan with scope and sequence, and evaluating program outcomes in terms of attainment of behaviours specified.

The Tylerian model of education has been highly influential in forming the basis for much subsequent work. | It does however suffer the limitation of focusing on behavioural outcomes, which constrain its application in the domain of disposition, attitudes and values. Brookfield argues that it distorts reality. | More importantly, he argues that it is antithetical to effective learning. Brookfield argues that learning entails fundamental change in learners and leads them to redefine and reinterpret their personal, social and occupational worlds, in the process exploring affective, cognitive, and psychomotor domains that they had not previously perceived as relevant. |

## Facilitated Learning

A corollary of adults being autonomous learners, is the shift from the classic pedagogical model of didactic teaching to a process of self-directed learning.

Learners, as much as facilitators, have been socialized into a view of education as an authoritarian-based transmission of information, skills and attitudes from teacher to student. Yet, Brookfield argues, to give in to this temptation is to reaffirm precisely those patterns of dependency that prevent adults from becoming empowered, self-directed learners. |

Brookfield observes that talk of the role of the teacher is unfashionable and distasteful to some educators of adults who are at pains to stress the democratic and student-centred nature of their practice.

Facilitators do not direct; rather, they assist adults to attain a state of self-actualization or to become fully functioning persons .... |

Developing in adults a sense of their personal power and self-worth is seen by Brookfield as a fundamental purpose of all education and training efforts. | Only if such a sense of individual empowerment is realized will adults possess the emotional strength to challenge behaviours, values, and beliefs accepted uncritically by the majority. Effective facilitation requires a philosophy of practice, and is present when adults come to understand that the belief systems, value frameworks, and moral codes informing their conduct are culturally constructed. Thus he argues that effective facilitation means that learners will be challenged to examine their previously held values, beliefs, and behaviours and will be confronted with those which they may not wish to consider. | In this sense, the mission of continuing education is to engage learners in the continuous critical analysis of received assumptions, common sense knowledge, and conventional behaviours:

Central to [the process of adult education] is a continual scrutiny by all involved of the conditions that have shaped their private and public worlds, combined as a continual attempt to reconstruct those worlds. This praxis of continual reflection and action might be accurately viewed as a process of lifelong learning. |

As such, Brookfield provides a cogent philosophic outlook of empowering the adult learner within any formalized approach to education, which is highly compatible with the preferred self-directed learning practices of judges and, perhaps more importantly, the doctrinal imperative to preserve judicial independence within the education process. Facilitated learning provides a philosophically compelling approach to judicial education, and postulates a dual answer to the nature-nurture debate: first, it asserts that good judges can be educated and not just born; second, it highlights that learning rather than teaching is the most important element in that education process.

Within this understanding of the process of adult learning, the observations of Cross are endorsed:

It does make sense to argue that, generally speaking, humanist theory appears relevant to learning self-understanding; behaviourism seems useful in teaching practical skills; and developmental theory has much to offer to goals of teaching ego, intellectual or moral development. |

It follows that any paradigm of formalized judicial orientation should be seen, primarily, as a process of facilitation based on self-directed learning rather than an authoritarian model of teaching.

#### 4.2 Judges as Professionals

Judges, as professionals, possess certain characteristics as learners which should be acknowledged in the development of any program of judicial orientation. Most influential of any understanding of this learning process in the work of Schon.

##### Schon's Model of Professional Knowledge

Schon's explanation of professional learning offers insights on the essence of professional expertise which distinguishes exemplary professional performance from occupational competency. In view of the impact of merit selection on the threshold of judicial competence, Schon's focus on the domain beyond competence has particular relevance for judicial educators: it addresses the higher-order skills of professional practice; and it orientates the education process to the continual aspiration of excellence rather than to the bare attainment of competence.

Schon has developed a model of professional knowledge which consists of two elements: the first identifies the essence of professional competence in a concept which he defines as "artistry"; and the second examines the ways in which highly successful professionals have accomplished their artistry.

Schon uses the term professional artistry to refer to the kinds of competence practitioners display in unique, uncertain, and conflicting situations of practice:

Artistry is the competence by which practitioners actually handle indeterminate zones of practice ... Artistry is an exercise of intelligence, a kind of knowing, though different in crucial respects from our standard model of professional knowledge .... In the terrain of professional practice, applied science and research-based technique occupy a critically important though limited terrain, bounded on several sides by artistry. There is an art of problem framing, an art of implementation, and an art of improvisation - all necessary to mediate the use in practice of applied science and technique ... |

(and) ...

Most situations of professional practice are, however, characterized by uniqueness, uncertainty and value-conflict; (mastery of knowledge, or past actual experience) is unlikely to solve such problems; the ability to resolve these situations is the essence of professional artistry. |

Integral to Schon's concept of professional artistry is his theory of how it is attained. In describing the learning process, Schon identifies two models of professional learning. The first, knowing-in-action, is like learning to ride a bike. Once an adult has learned how to do something, he or she can execute a smooth sequence of activity, recognition, decision, and adjustment without having to "think about it". It encompasses a common body of explicit, more or less systematically organized professional knowledge, values, preferences and norms. | The second form of learning, which he describes as reflection-in-action, on the other hand, is the process learning new ways of using competences which are already possessed. | It is the process through which practitioners sometimes make new sense of uncertain, unique or conflicting situations of practice, where students construct and test new categories of understanding, strategies of action, and ways of framing problems. | This approach to learning focuses not simply on the process rather than the outcome, but also on the problem-setting rather than the problem-solving aspect of this process.

Cervero endorsed this approach to learning, which he specifically applies to the professions: |

Two forms of knowledge must be fostered through continuing professional education. First the focus must be on ... practical knowledge and what cognitive psychologists call procedural knowledge and know-how ... [that] repertoire of examples, metaphors, images, practical principles, scenarios or rules of thumb that have been developed primarily through prior experience .... The second form of knowing that must be fostered consists



of processes by which professionals use their practical knowledge to construct an understanding of current situations of practice ... variously called reflection-in-action, intuition, or problem-finding. |

Cervero's observations draw attention to the fundamentally important distinction in the practice of two divergent models to education based respectively on the delivery of declarative knowledge (knowing what) and procedural knowledge (knowing how).

### Self-Managed Professional Development

Smutz and Queeney translate the notion of facilitation in adult education specifically to professional learning. While recognizing the importance of facilitation in adult education, and the need for adults to assume self responsibility for their own learning,

[I]t is evident that professionals require guidance and assistance in structuring their continuing professional education so that it will, in fact, benefit their practice. |

The nature of this guidance and assistance is described in the concept of "self-managed" professional development. Smutz and Queeney see the process of preparing the individual, providing learning resources, and building a supportive infrastructure as being the key ingredients to facilitate the adoption of systematic, self-managed professional development. |

### 4.3 Distinctive Features of Judicial Education

Judges as learners are distinctive.

In particular, it is argued that the learning characteristics, needs, practices, preferences and constraints of judges are distinctive from adult learners, generally. These distinctive features arise from:

- a the process and criteria of judicial appointment, and the nature of tenure;
- b judges' preferred learning styles and practices;
- c doctrinal constraints, the formative nature of the judicial role, and the environment surrounding judicial office; and
- d judges' needs and reasons for participating in continuing education.

#### a Judicial appointment and tenure

It has already been argued that the process of merit selection determines appointment to judicial office, and establishes a particular threshold of pre-existing competencies in legal knowledge and skills. Consequently, it is generally valid to claim that judges as learners possess extraordinarily high levels of pre-existing professional competence, in terms of their knowledge of the law. In addition, Catlin has demonstrated that the distinctive nature of judicial tenure, specifically, its security and lack of promotional opportunity, have implications of systemic influences affecting individual judges' motivation to learn, and place them in a different position to other professionals who operate in working environments lacking these features. |

#### b Preferred learning styles and practices

There is emerging evidence to suggest that judges as a profession exhibit preferred learning styles, and utilize preferred learning practices developed over the course of their careers.

While there is little empirical data available on how judges learn, it is argued from clinical experience and observation that judges tend to be autonomous, entirely self-directed, and exhibit an intensely short-term problem-orientation in their preferred learning practices. | The research of Herrmann lends credence to this hypothesis, providing empirical evidence that the preferred learning styles of judges and lawyers tends to be "left brained," that is: logical, analytical, problem-solving, controlled, conservative and organizational. |

Cervero applies and extends Schon's concept of professional artistry to educating judges. Cervero argues that judges, like all professionals, rely on a repertoire of practical, non-abstract, knowledge or know-how as the basis of their expertise. Judicial problem-solving, however, involves a special form of artistry, in that these problems are always ill-structured, solutions are inconclusive, and important features of the problem become apparent only as the situation unfolds. Cervero argues that expert judges bring to bear their own implicit theories on situations - personal perspectives and values developed from prior experience, and this influences how they look at the particular case before them. | It follows, according to Cervero, that the

challenge for the judicial educator is to be able to integrate knowledge acquired from judicial practice with principles and theories to facilitate the best application of judgment. |

While it may be premature to discern support for this hypothesis, the clinical experience and observation of the writer in educating judges suggests that Schon's approach to professional learning is apposite and appropriate to judges' continuing learning and should, as a result, form an active element in any process of continuing judicial education.

#### c Doctrinal constraints

Earlier reference has been made to the imperative to preserve judicial independence within any Westminster system of government. The doctrinal significance of this precept has been seen to be highly influential in any judicial approach to the notion of continuing education. It follows that educators should make efforts to ensure that judges recognize the independence and integrity of the process, in order to appease any concerns of possible indoctrination.

Equally, the formative nature of the judicial role can create a discomfort for some judges participating in continuing learning under conditions which could possibly be seen to erode the authority of their role.

Both considerations contribute to the need for an independent, discrete process of education.

#### d Reasons for participating in continuing education

The distinctive nature of judges' reasons for participating in judicial education has already been identified and discussed.

From the preceding discussion, it is now argued that these features give rise to the need for the development of a distinctive approach to educating judges. This approach can be encapsulated in the following guidelines.

### 4.4 Guidelines for Educating Judges

It has already been argued that any model of formalized continuing judicial education should be based on foundations of adult learning, build on Catlin's work, and reflect the distinctive characteristics of judges as learners. Humanist theory, behaviourism and developmental theory each provide useful explanations of the process of adult learning. Within this understanding of the process of adult learning, it has been argued that any paradigm of formalized adult education should be seen, primarily, as a process of facilitation based on self-directed learning rather than on an authoritarian model of teaching.

It has also been argued that judicial learning is a distinctive process in educational terms and that, consequently, the mission of continuing judicial education should extend beyond conventional notions of technical competence to embrace professional excellence or artistry. The essence of judicial practice exists beyond the domain of behavioural explanations of competence, and eludes satisfactory explanation within the behaviourist approach. Whether described in terms of judicial artistry (as defined by Schon), | authenticity (as defined by Catlin), | or simply expertise, the essence of judging is a highly complex intellectual, problem-solving process which resists procedural description or predictable outcomes (as discerned by Cervero and Conner). | In place of behaviourism, it is argued that experiential learning, based on an application of the principles of cognitive psychology, provides a more useful explanation of how judges actually learn (that is, through critical reflection and re-interpretation of experience applied to specific problems), and how educators can facilitate that learning.

Taking these considerations into account, any model of judicial orientation should embody the following precepts:

a Voluntary, Judge-led Process - there is a doctrinal imperative for a voluntary, independent education process, in addition any to the humanistic rationale for learning which must depend for its effectiveness on motivation, recognition of need and perception of benefit. The credibility of any education process for judges is critically dependent on the ability of any education provider to preserve judicial independence from any risk of indoctrination, whether actual or apparent.

b Procedural Knowledge - Judicial education should explore the domain which extends beyond the realm of professional competence. In simple terms, this involves developing the professional artistry of judges. A study of the literature of educational philosophy reveals the need for the practice of judicial

education to promote the development of judicial skills, disposition and attitudes, in addition to the cognitive acquisition of information.

c Facilitated, Individualized, Learning - To be meaningfully effective, any formalized process of judicial education should facilitate individualized learning which is self-directed, reflective, and promotes the capacity for rigorous self-critique. In this sense, the purpose of education relating to judicial disposition, attitudes and values is to promote a continuous critical analysis of received assumptions, common sense knowledge and conventional behaviour. This process should accommodate the distinctive styles in which judges prefer to learn and practice. Judicial education should be seen in humanistic terms as a process which builds on the preferred learning styles and practices of judges through facilitating self-education. Consequently, there is also a need for the development of instructional strategies which promote self-managed learning, and are facilitative rather than didactic in technique. Finally, the instructional design of judicial education should focus on individualised learning strategies: while instructional design and delivery based on group learning does offer a valuable opportunity for the exchange of experience for judges, who otherwise practice in isolation, the educational adequacy of group learning for judges is limited.

In this sense, it is postulated that there are two answers to the classic nature/nurture debate as it applies to educating judges: first, good judges are made rather than ordained by fate; second, however, they make themselves through learning rather than being taught.

## 5 Policy Considerations

The fifth factor which influences the development of any programme of judicial orientation relates to a number of issues of a policy nature. Any discussion of such issues should be prefaced with a review of the work of Catlin in establishing a policy-based approach to judicial education.

### 5.1 Catlin's Model of Judicial Education

Catlin has developed a model of judicial education which applies educational theory to judicial learning, and provides a foundation for a distinctive paradigm of continuing judicial education. |

Using seven objectives of judicial education, Catlin links technical competence with what he describes as judicial authenticity, which as a concept offers some similar connotations to Schon's notion of artistry. These objectives he describes as mastering theoretical knowledge, developing problem-solving capacity, developing collegiate identity, relating to allied professionals, conceptualizing the judicial mission, maintaining an ethical practice, and self-enhancement. |

Catlin's model is built in turn on seven characteristics of the judicial profession that must be acquired on becoming a judge. These characteristics include a transition which may be traumatic and unprepared; integration with a larger judicial body; isolation of practice; unique decision-making obligation; absence of financial incentive to participation in learning; changing judicial roles; and extreme heterogeneity of new judges in age and experience. |

This model provides a useful foundational approach to judicial education, distinguishing induction from other tiers of continuing education, and identifying a range of goals and objectives towards which orientation should be directed at a level of educational policy.

### 5.2 Prescription or Choice?

A critical issue affecting the delivery of any judicial orientation or education service is the question whether it should be mandatory or not.

In Australia, there is as yet no mandatory continuing judicial education. | Indeed, formalized structured continuing judicial education is minimal in any state other than New South Wales, where education is voluntary.

The voluntary character of judicial education is of fundamental importance, for a number of reasons. First, prescription is anathema to any program of continuing professional education, where it is recognized in humanistic terms that motivation is essential for meaningful learning; it is all the more anomalous for any program of judicial education whose mission extends beyond the domain of basic competence to promote professional artistry.

Notwithstanding the existence of overwhelming educational and doctrinal arguments against prescription in continuing education it is, however, noted that most judicial education in the United States is mandatory. | This situation defies explanation, until the provision of a visible means of accountability is recognized as being central to the process of judicial professionalization: in effect, it is argued that mandatory judicial education has much more to do with demonstrating a concern for the pursuit of competence rather than implementing an effective means of attaining it.

### 5.3 Facilitating "Judge-led" Learning

For judges in New South Wales, as perhaps elsewhere, the voluntary, independent character of continuing education is of considerable importance. The need for judicial education to be judge-led has become something of a mantra. | This catch cry of judicial education can mean a variety of things:

- a it can highlight the importance of judges owning their own education program and playing a decisive role in policy-making;
- b it can mean that any program of continuing education should preserve judicial independence from any risk of indoctrination;
- c it can mean judges should make up the faculty as being the only appropriate reservoir of expertise and experience to fuel the delivery process;
- d it can also be used to express the view that judges should be the masters of their own learning - that education should not be formalized or even organized for them, as they are experienced and indeed successful in meeting whatever needs may exist in a self-directed fashion.

Whatever judge-led may ultimately mean, it is symptomatic of a view that professionals generally and judges, in particular, see themselves as the best arbiter of their learning needs and how to meet them and, within this self-image see any notion of external prescription as anathema. This imperative for judge-led education should not, of course, be confused with the need for expert assistance to facilitate meaningful learning.

### 5.4 Standards

Standards are important to judicial education. First, they provide instructional objectives or benchmarks of performance towards which education can be directed. Second, they provide a means of measuring the effectiveness of that endeavour through attainment of those standards as a part of any evaluation process.

In Australia, there are as yet no measurable standards of either judicial education or judicial competence. This is due to two factors: the complex and sometimes contentious philosophical issues underpinning any debate of judicial competence, and the technical difficulties of objectively measuring the effectiveness of education and training.

The notion of judicial competence has been the subject of detailed earlier discussion: suffice to recapitulate that competence is the aggregate of skills, knowledge and attitudes required for proficient judicial practice. It is argued that judicial competence is the ability to apply knowledge and skills to the resolution of problems, and the ability to perform a range of tasks and solve a range of judicial problems according to measurable standards within the framework of the rules of conduct and ethics of the judicial profession. This classic behaviourist concept of competence imports a notion of standards: but, how are these standards to be measured?

Tobin sees the answer to this question as being the challenge of educators. He argues that there is a need for educators, in conjunction with appropriate representatives of the profession, to develop measurable standards of practice, building on principles of adult learning and concrete and measurable definitions of competencies. He argues that educational strategies should translate Knowles' five adult learning characteristics into educational goals and objectives, with features of instructional design that promote a self-directed approach to learning which is experience-based, developmentally-orientated, problem-centred, and has an immediacy of application. He proposes a three-step design process which defines competencies, formulates explicit learning objectives (and how they will be measured: by performance, conditions and criterion), and arranges a learning hierarchy. |

This approach is supported by Gold who argues that in order to train for competence in performance, there is a need for the training designer to:

describe the performance, criteria and conditions of competent performance. Once competence is described in terms of a concrete, specific and visible action or product, then one can begin to test for it. |

In the United States, the NASJE Standards propose to define a model curriculum framework for judicial education. These standards tend to be measurable quantitatively rather than qualitatively in terms of the duration of courses, thus, a new judge orientation program of five days should be undertaken between three and ten weeks of appointment, with a further ten days more within the first two years; together with at least eight court days each year on account of continuing education. |

Thus, despite the exposition by theorists and policy-makers alike, no examples of professional standard-setting can be found within the practice of judicial education. In the United States, the NASJE Principles and Standards of Continuing Judicial Education are a misnomer. These Standards provide minimum levels of participation in judicial education measured by the duration of attendance only, rather than any behaviour benchmarks of competence toward which participants are assessed or even directed. In effect, these Standards are quantitative rather than qualitative. The reason for this is, presumably, the difficulty of describing qualitative indicia of skills, knowledge and attitudes in measurable form. However, this difficulty is overcome in various other occupational arenas.

Judicial education in the United States espouses the need for standards of competency but fails to deliver any meaningful process within which they can be measured. This absence of standards is dysfunctional and has broad implications: it renders the process of judicial selection less precise, and undermines the foundations of proficiency which define the threshold for any program of continuing judicial education; it also obscures the criteria for reviewing and maintaining professional competence and for assessing the effectiveness of the continuing education endeavour. These consequences should not be overlooked.

It is argued that either the practice of judicial education should be brought into line with its espoused theory and policy through the formulation of meaningful qualitative or quantitative standards of professional competence, or alternative mechanisms of professional quality assurance should be developed.

## 6 Experience: International and Local

The sixth and final factor influencing the development and design of the orientation programme was similar experience gained to date locally and internationally. Specific consideration was given to comparable courses conducted in the United States by the Federal Judicial Center, National Judicial College, Michigan Judicial Institute, and the Californian Center for Judicial Education and Research; by the Judicial Studies Board in England, by the National Judicial Centre in Canada, and by the District Court of New Zealand. In addition, detailed consideration was given to the experience gained by the Judicial Commission in New South Wales in conducting judicial orientations programmes since its inception in 1986. |

Any study of the need for judicial orientation in common law systems should start chronologically with a review of the American experience. |

### 6.1 United States

In the United States, judicial education is accepted as an "integral and essential part" of the judicial system. | Indeed, it is increasingly seen as a basic necessity, made so by pressures of workload, the size of courts, the complexity of modern judicial programming and the invasion of technology. |

Formalized judicial education commenced in the United States with the establishment of the National Judicial College in 1963, and the call of Chief Justice Warren Berger in the following year for judges nationally to participate in continuing judicial education. | In 1967, the Federal Judicial Centre was established to provide federal judges with a range of services including continuing education. Subsequently, the provision of judicial education evolved predominantly on a state basis. At the forefront, the Californian Centre for Judicial Education and Research conducted its first orientation program for trial judges in 1976. | In the following year, the Michigan Judicial Institute commenced its education program. In relation to the development of judicial education, Catlin, the head of Michigan Judicial Institute, has observed:

Lawyers don't become good judges by the wave of a magic wand. Not even the best lawyers. To reappear behind the bench as a skilled jurist is a tricky manoeuvre. Going from adversary to adjudicator means changing one's attitude, learning and using new skills, and in some cases severing old ties. In many jurisdictions, judges must learn their new roles by the seat of their pants. In Michigan though, both new and veteran judges are trained extensively. |

By 1986, all states provided some form of education for judges, and judicial education was well established. | Most state programs are in fact mandatory. |

Most recently, Hudzik observes:

The most striking trend of the last twenty years in continuing judicial education is its virtual spread throughout the United States and its emergence as a big business ... annual programming is provided to nearly 57,000 participants, in over 1,000 programs. |

Judicial orientation courses in the United States are conducted on a federal, national and state basis: The Federal Judicial Center in Washington DC conducts a comprehensive education program for members of federal courts, which includes orientation courses usually of 6 days duration conducted centrally, together with an in-court program with an "advisor" judge. The Center also supplies new appointees with a package of books, audio and video-tapes on a range of subjects on a self-paced basis. |

A number of national programs are conducted for new appointees from around the United States: the National Judicial College in Reno, Nevada, conducts the oldest program to which a number of state judiciaries still actively subscribe. | Induction programs organized by the College vary in length but are usually of 1 week duration on a range of generic or themed subjects for new appointees and those with less experience. These include, for example, judicial writing, case flow management and complex trials. It also offers distance learning programs using library and interactive video modules. Other national providers include the Institute for Court Management of the National Center for State Courts in Denver; the National Council of Juvenile and Family Court Judges, also in Reno; and the American Bar Association (Judicial Administration Division), operating from Chicago.

In the past decade, the provision of judicial orientation and education services has increasingly devolved to a state level. Indeed, most states now provide local judges with all or most of their education requirements. Most prominent among these state-based providers are the California Center for Judicial Education and Research (CJER) which was established in 1973. | Owing to the size of the Californian judiciary, CJER is the largest local provider of judicial education. Of particular assistance to new appointees, CJER offers an extensive range of bench books and video tapes focusing on local laws and procedures in addition to a week-long orientation program.

The Michigan Judicial Institute, which was established in 1977, is also noted for the innovation and professionalism of its judicial orientation programs and, similarly, produces an extensive range of bench books and video tapes for its judges. |

Analysis of judicial education activities in the United States reveals that most effort is focused in two areas. These are orientation programs for new appointees, and "continuing" education which is usually updating on recent developments. The content of these education activities focuses on the study of law but is, in Hudzik's words, "substantively heterogeneous" in character. In addition to segments on particular aspects of law and procedure, subjects also include judicial management and administration, communication skills, and coping with stress.

Throughout the United States, the provision of judicial orientation and continuing education is promoted and assisted by a number of umbrella organizations. These include the National Association of States Judicial Educators (NASJE) which provides a professional network for judicial educators and conducts an annual conference, and the Judicial Education Research Information and Technology Transfer project (JERITT) which publishes a range of immensely useful educational and research monographs in the field and acts as an information clearing house.

## 6.2 Britain

In Britain, judicial orientation and continuing education is administered by the Judicial Studies Board which found its origins in a one-day sentencing conference organized by Lord Parker in 1963. In the mid 1970's, a working party on judicial studies was formed under the chairmanship of Lord Justice Bridge which resulted in the establishment of the Board which commenced operations in 1979. | The Board was established with the object of providing a range of education services to the judiciary, magistracy and lay magistracy. The Board confined its role to training in the criminal jurisdiction until 1985 when it was expanded under the direction of the then Lord Chancellor Lord Hailsham to cover the provision of training in the Civil and Family jurisdictions. |

Initially, the suggestion of introducing continuing judicial education was however controversial and divisive, and was seen as anathema to a properly-appointed judiciary. In Britain, opposition was taken up by Lord

Hailsham who attacked what he described as the "ignorant clamour" in support for the findings of the Bridge Report that judges should be made to undergo specialized training:

I also regard with a degree of indifference verging on contempt the criticism of judges that demands for them a type of training which render them more like assessors or expert witnesses than judges of fact and law ... The judge's function is to listen intelligently and patiently to evidence and argument ... to evaluate the reliability and relevance of oral testimony ... and finally to reach a conclusion based on an accurate knowledge of law and practice ... The capacity of being a judge is acquired in the course of practising the law. |

With the passage of time, judicial education has become more generally accepted. While the British approach to continuing judicial education is less formalized and extensive than that of America, the Board now conducts a judicial orientation and updating program, and has a substantial clientele which predominantly consists of lay magistrates. | Regarding the standing of judicial education in Britain, the Board observes:

Judicial studies are no longer a novelty .... No competent and conscientious occupant of any post would suggest that his performance is incapable of being improved, and, since there is a limit to what can be done simply by self improvement, almost all judges are able to perceive the need for organized means of enhancing performance. |

Of singular interest, the British appointment process to the Crown Court commences with a term as a Recorder. Recorders, who exercise a para-judicial role, are drawn mainly from the ranks of the practising trial bar and hold this office for a designated period of time before their appointment as a judge is made. This system of judicial apprenticeship has considerable merit from an educational perspective, involving not only formalised training conducted by the Judicial Studies Board, but also a period of supervised pupillage the successful completion of which exists as a prior condition to promotion to judicial office.

### 6.3 Canada

Numerous other common law countries have recognized the need for continuing judicial education and some, most notably Canada, have established specialist judicial education bodies. In 1992, a Commonwealth conference on judicial education noted:

While none of the Commonwealth countries could boast as comprehensive a system for the training and the continuing education of judges as could be found in the United States of America, there was, however, a wide variety of programmes already in existence, ranging from established institutes to local programmes. |

In Canada, the Canadian Judicial Council conducted its first educational activities in 1972, followed by the establishment of the Canadian Institute for the Administration of Justice in 1974, and the Canadian Judicial Institute in 1988. | The Canadian Institute for the Administration of Justice operates in conjunction with the Institute to provide orientation and continuing education to federally appointed judges. Other educational bodies also operate at a state and local level, such as the Canadian Association of Provincial Court Judges, and the Western Judicial Education Centre. While it may be observed that structured orientation programs are less developed in Canada than in the United States, considerable work has been undertaken in recent years in the development of innovative continuing education programs particularly on the issues of gender and race equality, in which new appointees can participate. |

### 6.4 New Zealand

Similarly, in New Zealand, an active program of court-based continuing judicial education operates within the District Court structure which commenced with the launching of a judicial induction program in 1988. |

### 6.5 International and Regional Organizations

At an international level, a number of bodies provide some judicial orientation and education. In addition to the National Judicial College which invited foreign participants on a fee-paying basis, the Commonwealth Judges and Magistrates Association based in London conducts conferences triennially and provides in-country judicial training on a project basis; the Asia Foundation operating from the United States provides some legal and judicial training in that region; and the Commonwealth of Learning has convened an international conference and provided a directory of educators and resources with a view to acting as a co-ordinating body in the field. Neither of these bodies, however, offer judicial orientation programmes off the shelf.

## 6.6 Australia

Since Kirby's invocation in 1983, the momentum for judicial education in Australia is gathering considerable momentum, and in the words of Sallmann, "heralds the advent of potentially significant changes in the Australian judicial culture."|

The institutional introduction of judicial orientation in Australia can be traced to the establishment of the Judicial Commission of New South Wales in 1986 and the formation of the AIJA secretariat in 1987. | Both bodies were incorporated with various objectives, each specifically including judicial education. | Since then, Victoria followed the example set by New South Wales by enacting legislation for the establishment of a judicial studies board in 1991. | Western Australia is presently investigating the options in establishing a similar body to assist the judiciary of that state.

The only body with experience in conducting programmes of judicial orientation in Australia is the Judicial Commission of New South Wales, which was established at the initiative of the government of New South Wales in 1986. The Commission commenced providing formalized, structured educational services in 1988 which have expanded over the intervening period to judges of all courts in an extensive program of conferences, seminars, workshops, publications and an electronic sentencing database. | This education program has continued to develop, and has most recently been described by Sallmann as the "Rolls Royce of judicial education ... in Australia."|

## 6.7 Local Court of NSW Orientation Programme

The Judicial Commission has developed an extensive and well-tested judicial orientation program for members of the Local Courts of New South Wales annually since 1988. The Local Court of New South Wales is the largest court in Australia with the oldest program of formalised continuing judicial education. This orientation program consists of the following elements:

- a 2-day pre-appointment workshop designed to develop court craft skills and a judicial outlook;
- b 5-day bench observation program during the first week of their appointment;
- c 5-day residential program conducted within twelve months of appointment to consolidate experience and refine a range of judicial skills; and,
- d 3-month mentor program where new appointees are paired with experienced members of the court for the purpose of providing immediate informal access to assistance as required. |

Taken in conjunction with the court's 5-day program of continuing judicial education for all members, new appointees will undergo up to 17 days of judicial training within the first year of appointment. | This represents a substantial investment of resources on the part of the court, most obviously in the opportunity costs of magisterial faculty development and delivery time, and the sitting time forgone in participants attending the programme.

## Part C EVALUATION

While it is too early to provide any meaningful assessment of the inaugural judicial orientation programme conducted in Sydney in October, three observations can be made.

First, evaluation is essential to orientation and any other form of judicial education. Most directly, evaluation measures the quality of the learning process for the individual judge. Of greater systemic significance, however, evaluation measures the impact of continuing education on judicial performance, and provides the means to demonstrate the judiciary's concern for the development of competence. Thus, educational evaluation integrates the pursuit of competence and, in the evidence of success in that endeavour, a means of social accountability. Thus, it is now timely to establish a meaningful evaluation framework.

Second, it is necessary to clarify the purpose of evaluation. The nature of any evaluation process varies depending on which purpose is being met: external accountability, for example to funding bodies such as the federal government, generally requires greater reliance on objective outcomes, while internal accountability is more concerned with the qualitative learning process. The classic formulation of evaluation criteria was made by Kirkpatrick, who organized four foci for evaluation - reaction, learning, behaviour and results. | Commentators generally agree that evaluation of behaviour and results has greater value: Cervero, for example, describes assessing the impact of application of learning as "the holy grail" of evaluators. |



Equally, however, this is the most difficult to undertake. While this form of evaluation is "often difficult if not impossible" to undertake, Hudzik argues that:

Ultimately, evaluation ought to concern itself with the question of outcome and impact: have conditions changed, and does the change represent an improvement or a deterioration of performance when set against our objectives? |

In practice, practical as well as doctrinal difficulties frequently lead to an expedient reliance on inferential measurements of the quality of the education process rather than its outcomes, with the result that qualitative assessments are frequently used to provide quantitative measurements. Attainment of educational objectives relating to enhancing judicial competence may be very difficult to discern, owing to the difficulty of selecting appropriate performance indicators for an essentially intellectual quality, and the reluctance of judges to subscribe to the process of being assessed through any means other than the formal appeals process.

Brookfield notes that difficulties of assessment are exacerbated and become "somewhat tortuous" when dealing with a host of highly interpretive, essentially intellectual, frequently discretionary political, social, moral and ethical questions which frequently arise. |

These difficulties are compounded by impediments associated with the doctrine of independence which render a range of conventional measuring techniques inappropriate with judges.

Additionally, a number of other constraints exist to limit the rigour and utility of most evaluative efforts in practice: the most obvious include limitations on resources such as cost, time and expertise. However, constraints will also frequently include qualified institutional support, goal ambiguity, and fear of results. Technical constraints such as complexity, research design problems, lack of data and limited experience and expertise also play influential roles in confining the scope of the evaluation and the methodologies employed. |

In sum, the usual level of evaluation undertaken systematically by the various organizations is minimal. |

Hudzik observed that most courts do not usually even attempt to measure learning or knowledge gain, to determine if participants change their behaviour on the job, and if the changes improve their performance. | This is clearly illustrated by the Judicial Studies Board, the body charged with educating and training judges in Britain. The Board reports that "the efficacy of judicial studies cannot be measured directly." |

The Board cannot take hold of a judge and make him better. It would be unrealistic and impertinent to try. |

Notwithstanding these doctrinal and practical difficulties, it is in the interests of educators to be able to demonstrate the value of their endeavours.

Third, it is necessary to select an appropriate evaluation methodology for judicial education. A range of methodologies or techniques are available for possible application in judicial education. Within the context of formalized review being provided by appellate courts, a number of doctrinal and environmental factors constraint application of the full range of techniques in the judicial arena. Those techniques which are available could include participant surveys, client assessment, systematic expert judgment, control testing, and observation. | As an integral part of any evaluation process, selection of appropriate performance indicators, with designated standards, is also required in order to permit measurements of change to be made. Selection of these indicators can be a difficult task requiring considerable sensitivity. While these indicators can be either personal or systemic, it is argued that selection of systemic indicators presents a more viable option for a variety of doctrinal and practical reasons; additionally, these indicators should be amenable to meaningful description in either quantitative or qualitative form.

In any given situation, evaluation measurements can be limited in their validity, reliability and utility. Consequently, the utility of findings is usually best assured through the triangulation of methodologies: for example, the combination of interviews, client surveys, observation and expert judgment is generally likely to test hypotheses and tentative conclusions to reach a consensus on the value of efficacy of any assessment findings.

In New South Wales, all judicial educational program activities are subject to formalized needs assessment and evaluation processes, as a matter of course. Adapting a combination of classic Tylerian and Kirkpatrick models, needs are identified using compound methodologies including interviews (both within and beyond the judiciary), observation, surveys and analysis of courts' management data. Educational objectives are

then defined to meet these needs. All programs are subjected to both formative and summative assessment focusing primarily on participant reaction, together with appraisal by instructors, education staff and education committee. Because it is recognized that satisfaction need not correlate with effective learning, this measure may be overridden by the expert appraisal of the education committee in final assessment for purposes of future planning. Finally, the needs assessment cycle should be renewed on completion of the education program to ascertain the extent to which previously diagnosed needs have been met, and what needs and action continues to be required. Most usually, this should involve going back to user representatives for their reassessment of the impact of education on judicial performance and improvements in the quality of justice.

In relation to judicial orientation, specifically, consideration should be given to integrating the methodologies adopted in establishing need to provide the means to evaluate outcome. In addition to undertaking process-based evaluation of the efficiency of the education delivery, endeavours should also be made to assess what improvements can be discerned in terms of the judicial behaviour and performance previously assessed as deficient, at either an individual or systemic level.

Resolving these issues lie beyond the domain of this paper. They should, however, be resolved in the short term in order to ensure and demonstrate the value of any educational endeavour. Until then, it will remain difficult to evaluate the utility of judicial orientation, its cost effectiveness, and its contribution to improvements in judicial performance at either a personal or systemic level in any objectively meaningful way.

Livingston Armytage  
Sydney,  
7 October 1994.

## 6 FACTORS

### INFLUENCING PROGRAMME

#### DEVELOPMENT

- \* Recognition of need
  
- \* Selection process
  
- \* Judges' reasons for participation
  
- \* Judges' characteristics as learners
  
- \* Policy considerations
  
- \* Experience: international and local

Catlin DW, "Michigan's Magic Touch in Educating Judges," *The Judges' Journal*, 1986, 25, 6, 32-45.  
The judicial orientation programme was planned and developed by the Australian Institute of Judicial Administration and the Judicial Commission of New South Wales in collaboration; the writer acted as coordinator of this orientation programme.

27 participants attended this course from 14 courts including the Federal and Family Courts of Australia, the National Court of Papua New Guinea, and various state Supreme, District/County and Local Courts.

The charter of the Judicial Commission is to provide continuing judicial education, to promote uniformity in sentencing (primarily through undertaking research), and to investigate complaints against judicial officers: *Judicial Officers Act (NSW) 1986*.

This is contrasted with the position in New South Wales where the Judicial Commission conducts a two-staged orientation programme, both before and after appointment, for new members of the Local Courts of New South Wales.

In educational terms, the course builds on and extends Bloom's taxonomy of educational objectives, appropriately modified for judicial practice integrating Catlin's model of judicial education. Content of the programme is classified in the following categories: (i) law, practice and procedure; (ii) skills; (iii) disposition, such as attitudes and values, ethics and conduct; (iv) management and administration, and (v) a range of interdisciplinary issues. Bloom BS, *Taxonomy of Educational Objectives*, London: Longmans, Green and Co, 1956; see subsequent discussion of Catlin's model of judicial education in "Policy" below.

See outline of course in schedule, attached.

See discussion of the characteristics of judges as learners, below.

This assistance is provided to presenters/facilitators in the form of train-the-trainer tutorials, a Faculty Handbook, and support in the design and delivery of sessions; see also Armytage L, *Facilitation Skills for Judges: Applying the principles of adult learning*, workshop materials, Judicial Commission of New South Wales, 1994.

Kennedy GA, "Training for Judges?", *University of New South Wales Law Journal* 1987, 10, 47-59, 48.

Kennedy, 47.

Berger WE, *School for Judges, Federal Rules Decisions*, 1964, 33 139-150. In fact, this call followed the establishment of the National Judicial College in the previous year.

Kirby MD, *The Judges, The Boyer Lectures*, Sydney: ABC, 1983, 24-6.

Kennedy, 56.

Richardson I, "Changing Needs for Judicial Decision-Making", *Journal of Judicial Administration*, 1991, 1, 61-68, 61.

Richardson, 68.

Wood J, "The Prospects for a National Judicial Orientation Programme in Australia", *Journal of Judicial Administration*, 1993, 3, 75-95, 86.

Id.

Nicholson RD, "Judicial Independence and Accountability: can they co-exist?" *Australian Law Journal*, 1993, 67, 404-426, 425.

Mason A (Sir Anthony), transcript of interview, *The Law Report*, ABC Radio, 17 May 1994.

International Bar Association Code of 1982 of Minimum Standards of Judicial Independence (the IBA Code); see also, Article 3, *Syracuse Draft Principles on the Independence of the Judiciary*: "Applicants for judicial office shall be individuals of integrity and ability, well trained in law and its application"; and, Article 5 provides for equality of access, without distinction on grounds of race, color, sex, religion, political opinion. See also: Article 2.11, *Universal Declaration on the Independence of Justice*. For a detailed discussion of international standards, see Shetreet S, "Who Will Judge: Reflections On The Process And Standards Of Judicial Selection", *Australian Law Journal*, 1987, 61, 766-778.

Gibbs H, "The Appointment & Removal of Judges," *Federal Law Review*, September 1987, 17, 141-150, 145 (hereafter: Gibbs, September 1987); See also Gibbs H, "The High Court and Judicial Appointment," *Judicial Officers Bulletin*, Sydney: Judicial Commission of NSW, 1993, 5, 81-82.

Gibbs, September 1987, 141.

Shetreet, 1987, 766.

ABA Standing Committee on Federal Judiciary - What it is and how it works, *American Bar Association*, 1991, 7.

ABA, 1991, 3.

Id.

Id.

ABA, 1991, 4.

Lord Hailsham, *Law Society's Gazette*, 28, Aug 1985, 2335; see also *Judicial Appointments - The Lord Chancellor's Policies and Procedures*, London: Lord Chancellor's Department, 1986.

| Megarry R, "Seventy-five Years On - Is the Judiciary what it was?" The Edward Bramley Lecture, 1984, 13; cited with approval by Gibbs H, "The Appointment of Judges", Australian Law Journal, January 1987, 61, 7-11, 7 (hereafter: Gibbs H, January 1987).

| The extent to which the attorney-general consults the head of the jurisdiction or the profession, and the extent to which any advice is accepted provides significant opportunity for different decision-making processes in selecting judicial candidates.

| Gleeson AM, "Judging the Judges," Australian Law Journal, 1979, 53, 338-347, 340.

| Samuels G, "Judicial Competency: How Can It Be Maintained," Australian Law Journal, 1980, 54, 581-587, 586.

| Kirby M quoted in "Law Report," Law Institute Journal, 1984, 58, 748-9, 748.

| Kennan J quoted in "Law Report," Law Institute Journal, 1984, 58, 748-9, 748.

| Shetreet, 1987, 768.

| See, for example, Mason A, The State of the Judicature, address to the 28th Australian Legal Convention, Hobart, 30 September 1993, at 24: "I do not think that judicial education should be confined to the discussion of legal principles, judicial activities and court administration. Judicial education should extend to aspects of the interreaction between law and society."

| Catlin DW, The Relationship between Selected Characteristics of Judges and their Reasons for Participating in Continuing Professional Education unpublished doctoral dissertation, Michigan: Michigan State University, 1981, 125; see also, Catlin DW, "An Empiric Study of Judges' Reasons for Participation in CPE", The Justice System Journal, 1982, 7, 2, 236-256.

Catlin's research has revealed that judges' reasons for participation are complex and multidimensional. Three underlying factors emerged from analysis of judges' reasons for participation which, in order of importance, were judicial competence, collegial interaction, and professional perspective. Catlin found that significant relationships exist between these participation factors and judges' characteristics including their sex, years since qualifying, tenure on current bench and court level currently served. Thus, Catlin concludes that it is wrong to assume that participation is primarily a function of program content in formulating curricula and designing programs.

| Compare the empirical findings of Catlin with those of Cervero relating specifically to physicians and veterinarians specifically: Cervero R, "A Factor Analytic Study of Physicians' Reasons for Participation in Continuing Education" Journal of Medical Education, 56, 1981, 29-35.

| Catlin 1981, 125.

| Id.

| Catlin 1981, 126.

| Armytage L, "Towards a Charter of Continuing Judicial Education: The New South Wales Experience," Commonwealth Judicial Journal, 1991, 9, 2, 3-8; Armytage L, "Continuing Judicial Education: The Education Program of the Judicial Commission of New South Wales," Journal of Judicial Administration, 1993, 3, 1, 28-46; Armytage L, "The Need for Continuing Judicial Education," University of New South Wales Law Journal, 1993, 16, 536-584; Armytage L, Some Insights into the Needs of Magistrates, unpublished paper presented to the annual conference of the Local Courts of New South Wales, Sydney: Judicial Commission of NSW, September 1991.

| Riches AL "Judicial Education - A Look at the Overseas Experience," The Australian Law Journal, 1990, 64, 189-202; see also, Riches AL, "Continuing Judicial Education in New South Wales," Journal of Professional Legal Education, 1989, 6, 2, 149-162.

| In other respects, the survey focused on topic research by ascertaining the views of respondents on useful topics for educational programming. While it may be observed that topic research of this type has a strictly limited value, it is more useful as a means of establishing client relations and has particular importance at the inception of any education program. Riches reports that the topics which attracted largest number of high priority ratings were ranked in the following order: evidence, sentencing, legislative developments, current issues in criminal law, management of complex litigation, and the judicial decision-making process; Riches, 157.

| Armytage L, Some Insights into the Needs of Magistrates, Conference Paper, Annual Magistrates Conference, 1991: these findings were integrated with those of the comprehensive survey of judicial officers in 1991, respective to the Local Courts of New South Wales.

| These were ranked in descending order as being: pre-appointment skills training on court-craft, bench books, and post-appointment refinement of skills based on experience. The court's annual conference, regular update seminars and monthly digest were ranked significantly less highly.

| Armytage L, "New South Wales, Australia Mentoring Profile" in Mentoring in the Judiciary, Lansing, Michigan: Judicial Education Reference, Information and Technology Transfer Project (JERITT) Monograph 2, 1992, 52-59. The Local Court of New South Wales developed a formal mentor scheme in 1991 in response to this call, which was evaluated and refined in the following year and now operates to supplement the structured orientation program of the court.

| Armytage L, "Continuing Judicial Education: The Education Program of the Judicial Commission of New South Wales," Journal of Judicial Administration, 1993, 3, 1, 28-46, 31.

Triangulation involves the use of multiple methods of data collection in the study of the same aspect of human behaviour, such as the use of both qualitative and quantitative data comprising observation, interviews, survey results and testing. This approach is suitable where a more holistic view of educational outcomes is sought, and provides a practical means of cross checking validity of data and findings.

#### Methodology:

At the outset, a number of key consultations were undertaken in unstructured discussions with the heads of jurisdiction of each of the state's six courts. These discussions were designed to provide an opportunity to establish a core of shared perceptions on the role and usefulness of judicial education; nominate preferred strategies, directions and priorities; and delineate the domain of judicial education as distinct from other management strategies such as new technology.

These consultations were followed by an extensive series interviews with those persons having an interest in judicial education within and beyond the judiciary. The external sources of data included profession and client representatives from the Bar, the Law Society and the Legal Aid Commission; representatives of public law officers, including the Attorney General, the Solicitor General, and the Public Defender; senior judicial administrators, and others with a declared interest in judicial administration and education. Overtures inviting input from representatives of central governmental agencies, such as the Premier's office, and the Office of Public Management in the State Treasury, were also extended. The purpose of these interviews was to test the validity of the findings from the consultations. These interviews generated valuable qualitative data and formed the basis for a survey of all judicial officers in relation to actual education experiences, perceived needs, and occupation analysis.

In addition, findings from observations were supplied by judicial officers, senior administrators, practitioners and client representatives.

Management data was appraised of courts' annual reports, departmental case management data, analysis of appeals and complaints, and related data. Triangulation of data from all sources of information was relied upon for the findings.

The data obtained was analysed to ascertain the mean and standard deviation, cross tabulation, correlation and discriminant analysis techniques. Factor analysis technique was not used in this survey for a number of reasons.

Significant differences emerged on analysis by seniority by years of experience: Education areas most valued by less experienced judicial officers included case management and complex-trials computer programs; access to legal databases; and personal computer facilities. Orientation and induction courses were favoured by those with less than 3 years experience. Interestingly, orientation courses were very highly ranked by the Local Court, and lowly ranked by both the Supreme and District Courts.

Differences emerged on analysis by seniority of experience: for example, new judicial officers rated the following proposed new services more highly than their seniors: an induction handbook, an induction video, an orientation programme, a bench-observation programme, visiting exchange scheme and how-to-do-it guides.

84.6% and 83.8% of respondents in those courts where bench books are provided use them at least monthly.

For a detailed comparison, see the findings related to members of the Administrative Appeals Tribunal reported in Armytage L, "The Need for Continuing Judicial Education," *University of New South Wales Law Journal*, 1993, 16, 536-584.

Cross KP, *Adults as Learners*, San Francisco: Jossey-Bass, 1981, 109-111. To remedy this situation, Cross developed two theories or conceptual frameworks on adult motivation for learning, and on teaching to facilitate learning in adults.

Knowles MS, *The Modern Practice Of Adult Education: From Pedagogy to Andragogy*, Chicago: Follett, 1980, 43-44.

Johnstone JW & Rivera RJ, *Volunteers for Learning* Chicago: Aldine, 1965, 3. Cross observes that nothing in the myriad of surveys since has changed that general conclusion - Cross, 91; Cross cites data from the US Census 1969-1978 to support this proposition; Cross, 93-94; see, also, Tough, 1971, 72.

See Cross, below.

See, for example, Darkenwald G & Merriam S, *Adult Education: Foundations of Practice*, New York: Harper & Row, 1982, 88; and Cross, 168.

Havighurst RJ, *Human Development and Education*, New York: Longmans Green & Co, 1953; and Havighurst RJ, *Developmental Tasks and Education* (3rd ed), New York: McKay, 1972, 2; see also Time in this context is measured in three contexts: life time, social time and historical time; see Darkenwald & Merriam, 87-88.

Knox AB, *Adult Development & Learning: A Handbook on Individual Growth and Competence in the Adult Years for Education and the Helping Professions*, San Francisco: Jossey-Bass, 1977, 514 and 537; see also Knox AB, "Interests and Adult Education," *Journal of Learning Disability*, 1968, 1, 2, cited in Knowles, 1980, 92; and, Cross, 171.

Cross, 230-1.

See, for example, Cross, 228.

Tough A, *Why Adults Learn: A Study of the Major Reasons for Beginning and Continuing a Learning Project*. Monographs in Adult Education (No 3). Toronto: Ontario Institute for Studies in Education, 1968, cited in Cross, 50.

Maslow AH, *Motivation and Personality*, New York: Harper & Row, 1954.

Darkenwald & Mirriam, 78.

Cervero RM, *Effective Continuing Education for Professionals*, San Francisco: Jossey-Bass, 1988, 57; and Brookfield SD, *Understanding and Facilitating Adult Learning*, San Francisco: Jossey-Bass, 1986, 283 and on.

Darkenwald and Mirriam, 102 and 107.

Shuell TJ, "Cognitive Conceptions of Learning", in *Review of Educational Research*, 1986, 56, 411-436, 415, cited in Cervero, 40.

Darkenwald and Mirriam, 102-104.

Shuell, 429.

Kolb builds on the foundations of human development theory which recognizes three broad stages of human maturation. These are acquisition (birth to adolescence: acquisition of basic learning abilities and cognitive structures), specialization (extends through formal education and career training and early adult work experiences; person achieves a sense of identity, frequently reflected through work) and integration (pursuit of personal/social fulfilment, often marked by a mid-life crisis; the challenge comes to shape one's own experience rather than accepting them as they happen); Kolb DA, *Experiential Learning: Experience as the Source of Learning and Development*, New York: Prentice Hall, 1984, 142-145.

Kolb, 26-27.

Kolb, 38.

See Kolb; also Kolb & Fry, "Towards An Applied Theory Of Experiential Learning", in *Theories of Group Processes* (Ed Cooper CL), New York: Wiley, 1975.

For example, Kolb's learning cycle/inventory can operate at the following instructional levels: by "doing" through undertaking exercises; by "reflecting" through processing experience in group discussion; by "observing" through listening to lectures or reading; or by "applying" through developing and testing theories into practice.

See Cross, 233. The application of behaviourist theory usually has the following characteristics:- the education objectives must be clearly stated; learning tasks must be analytically designed in relation to desired end behaviours; content broken into small easily-mastered steps, encouraging self-instruction and response from learner; materials provide immediate feedback to enable self-pacing; subject and activities adhere to set sequence and process conducive to mastery; completion of each step ("correct response") provide own reward; responsibility for ensuring learning takes place must rest with materials themselves as a learning instrument rather than instructor.

Cross, 232-233.

Tyler RW, *Basic Principles of Curriculum and Instruction*. Chicago: University of Chicago Press, 1949.

Regarding the enduring influence of the Tylerian model, see Houle, 226; and Brookfield SD, *Understanding and Facilitating Adult Learning*, San Francisco: Jossey-Bass, 1986, 204.

Brookfield, 213-214.

Brookfield, 214.

Brookfield, 296.

Brookfield, 123-4.

Brookfield, 283.

Brookfield, 286.

Brookfield, 293-4; and see, 287.

Cross, 233/4.

Schon DA, *Educating the Reflective Practitioner*, San Francisco: Jossey-Bass, 1987, 13.

Schon DA, *The Reflective Practitioner*, New York: Basic Books, 1983, 198; see also 138, and 169.

Schon 1987, 33.

Schon 1987, 14 and 26-31. Reflection-in-action is distinguished from two more elementary forms of knowledge being, firstly facts, rules, and procedures (what he describes as a technical training) and secondly the forms of inquiry by which competent practitioners reason their way, in problematic instances to clear connections between general knowledge and particular cases (what he describes as "learning to thinking like" a lawyer).

Schon 1987, 39.

Cervero 1988, 44-46.

Cervero, Azzaretto & Tallman, 178; in seeking to develop either kind of knowing in an educational context, Cervero argues that the key is to provide methods which build on experience, such as case-studies, by which learners can uncover and develop their practical knowledge.

Smutz WD & Queeney DS, "Professionals as Learners: A Strategy for Maximizing Professional Growth" in Cervero RM, Azzaretto JF & Tallman D, 1990, 183-205, 186.

| Smutz & Queeney, 1990, 204/5.

| See Catlin, below.

| Kolb's Learning Style Inventory is routinely modified by the imposition of predictable models of learning which are reinforced by work practices formed throughout a successful career as an advocate at the trial bar. In this hypothesis, it is argued that professional work practices impose particular patterns of learning on those who subsequently attain judicial office: throughout careers where briefs are frequently delivered at 4 pm presenting unique problems requiring personal and immediate research in the application of law to particular facts, the planning of a conceptual approach, and the delivery of compelling argument within a highly competitive environment by 10 am the following morning.

| Herrmann N, *The Creative Brain*, Lake Lure, N. Carolina: Ned Herrmann/Brain Books, 1989; see also Phillips L, *Orchestrating Learning for Judges' Preferred Learning Styles*, unpublished conference paper, 1992 National Association of States Judicial Educators (NASJE) annual conference, Charleston, South Carolina.

See "judges' brain dominance profile" produced from empirical testing and supplied to the writer; See also comparison of left-mode and right-mode characteristics in Kolb, 49 and 141; and application of the "Myers-Briggs Type Indicator" to lawyer types, *American Bar Association Journal*, July 1993 74-78. If these various observations of the characteristics of lawyers and judges are valid, this raises the vexed question whether the practice of law creates these characteristics in practitioners or whether persons with these characteristics are attracted to practice in the law. Detailed exploration of this issue, and its full implications for educators, remains a matter for further research.

The issue of judges' preferred learning styles and practices raises the question: Does lawyering promote left-brained behaviour, or, are left-brain dominant people attracted to careers in law? The author has been unable to find any empirical data to date which can provide a clear answer to this underlying question. The answer to this question warrants further research and will provide valuable insights for educators.

Claxton & Murrell, 1992 address a chapter on "Learning Styles of Judges", however this work is an application of Kolb's general work on experiential learning, and lacks any grounding in empirical data distinctive to judicial learning; see Kolb DA, *Experiential Learning*, Englewood Cliffs NJ: Prentice Hall, 1984; and see more detailed discussion of the application of Kolb's work.

| Cervero RM & Conner ME, *Educating Judicial Educators: Two Perspectives*, Georgia: University of Georgia: Judicial Education Adult Education Project (JEAEP), 1992, 1.1-1.17, 1.2.

| Cervero & Conner, 1.5.

| Schon 1987, and Schon 1983.

| Catlin 1988.

| Cervero RM and Conner ME.

| The initial endeavour of developing a model of education for judges as learners has been undertaken by Catlin who has devised a model of judicial education which identifies its three major goals as being new judge transition (induction into new responsibilities and preparation for change), continuing education (refresher, maintenance and modernization), and career development. Catlin DW, "Model of Judicial Education", *The Who and What of Judicial Education* State Justice Institute, East Lansing: Michigan Judicial Institute, 1988, 5-9. This approach is consistent with Houle's view of the role of professional education following selection and certification of competence: Houle proposes a three-layered educational model comprising: (1) the academic stage (2) the professional stage, comprising both institutional and in-training (3) continuing education or training: Houle, 1980, 34 and 106. Similar approaches have been applied to legal education in England and Wales in the "Ormrod Report", *Report of the Committee on Legal Education*, London, Her Majesty's Stationary Office 1971; and was endorsed in the "Pearce Report" on legal education in Australia: Pearce E, Campbell E and Harding D, *Australian Law Schools: a discipline assessment for the Commonwealth Tertiary Education Commission*, 1987, Canberra: Australian Government Printer. However, it is at odds with the two-tiered approach adopted in the NASJE Standards of induction and continuing education: NASJE, *Principles & Standards of Continuing Judicial Education*, National Association of States Judicial Educators (NASJE), 1991, Standards 3.1 and 3.2, respectively.

| Catlin 1988, Figure 6, 15.

| Id.

| In New South Wales, the voluntary nature of judicial education has been the subject of favourable comment by the Attorney General. See Hannaford P, "Voluntary Continuing Judicial Education," *Judicial Officers Bulletin*, 1993, 5, 43-47: "I am, therefore, sensitive to the need for voluntary judicial education .... The current public debate on the vexed issue of judicial education has, unfortunately, been conducted in ignorance of the extensive education programs already available."

| Hudzik JK, *Issues and Trends in Judicial Education*, Lansing, Michigan: Michigan State University, *Judicial Education Reference, Information and Technology Transfer Project (JERITT)*, 1993, 127.

| This position is shared by the British judiciary, to the point where it is described as a "cardinal principle." See, *Judicial Studies Board, Report for 1983-1987*, 30.

| Tobin AG, "Criteria for the Design of Legal Training Programs", *Journal of Professional Legal Education*, 1987, 5, 55-63, 60-61.



Gold N, Towards Training for Competence: The British Columbia Professional Legal Training Program, Journal of Professional Legal Education, 1983, 1, 2, 1-11, 1.

"The efficacy of judicial studies cannot be measured directly." The difficulty of qualitative measurement, which also besets any attempt to objectively evaluate the effects of judicial education, is acknowledged by the Judicial Studies Board, Report for 1983-1987, Paragraph 1.16, 4.

See detailed discussion, below.

Although it is beyond the scope of this paper to explore useful parallels which could be drawn from judicial training under continental systems of justice, it is this writer's view that any such study would be a fertile project for future research.

Riches AL, 190.

Hudzik JK, "The Continuing Education of Judges and Court Personnel," Judicial Education Network, 1989, 5.

Berger WE, School for Judges, Federal Rules Decisions, 1964, 33, 139-150.

McCabe HH, "California's Approach to Judicial Education," Judicature, 1967, 51, 2, 58-63.

Catlin, 32.

Murray FK, Judicial Education: A Guide To State And National Programs, Foundation for Women Judges: Washington DC, 1986, 6.

70% of state-based judicial education is mandatory, with notable exceptions being California and Michigan; Hudzik JK, Issues & Trends in Judicial Education, Michigan State University: Judicial Education Reference, Information and Technical Transfer Project (JERITT), 1993, 127; see also Houle, 1980, 283-284; Phillips LE, "Trends in State Relicensure", in Stern M R (Ed) Power and Conflict in Continuing Professional Education Belmont, California: Wadsworth, 1987.

75% of these programs are state-based, 17% are for the federal judiciary, and the remainder are nationally-conducted; Hudzik JK, Issues and Trends in Judicial Education, Michigan State University: JERITT, 1991, 175.

The Federal Judicial Center in Washington conducts seminars for newly appointed appellate judges on jurisdictional issues, case management, managing the trial, opinion writing, statutory construction, ethics, and scope of the appeal function, with an in-court mentor program.

The National Judicial College offers an extensive range of generalist and themed orientation courses usually on a 1 or 2-week residential basis.

CJER conducts a 1-week orientation program focusing on conduct, ethics, fairness, mentoring and trial skills.

The Michigan Judicial Institute conducts a 2-day new judge transition seminar focusing on the "nuts and bolts" tools needed to conduct court proceedings in the first months of appointment, and the "art of judging", new Magistrates Seminar focusing on courtroom control, bail, arraignment, ethics.

Working Party on Judicial Studies and Information, chaired by Lord Justice Bridge in 1978, known as the Bridge Report: a principle recommendation was for the establishment of the Judicial Studies Board. The terms of reference for this report were (1) to review the machinery for disseminating information about the penal system and matters relating to the treatment of offenders; and (2) to review the scope and content of training and the methods whereby it is provided": Judicial Studies Board, Report for 1983-1987, London: HMSO, 1988, 7; and Judicial Studies Board, Report for 1987-1991, London: HMSO, 51.

Judicial Studies Board, Report for 1983-1987, 8-9.

Lord Hailsham, Hamlyn Revisited: The British Legal System Today, London: Stevens & Sons, 1983, 50-1.

In addition to judges, recorders and magistrates (2,786), the Board provides services to justices of the peace (c 29,000) and members of tribunals (c 20,000), in all a total clientele of 52,000; Judicial Studies Board, Report for 1983-1987, 69.

The Judicial Studies Board conducts a series of 4-day residential orientation courses for county court judges, assistant recorders, acting stipendiary magistrates and deputy registrars. These mainly exercise-based seminars focus on trial procedure, judicial behaviour, summings-up, directions and sentencing principles and practice in particular. In addition, segments cover specific issues such as injunctions, order costs,, interlocutory orders, debt enforcement, committals, and quantum exercises.

Judicial Studies Board, Report for 1983-1987, 13.

"Continuing Judicial Education," Commonwealth Law Bulletin, July 1992, 1037.

The Canadian Judicial Institute, recently renamed the National Judicial Institute, was established following the recommendations of Stevenson J, Towards the Creation of a National Judicial Education Service for Canada, 1986.

The National Judicial Institute based in Ottawa conducts a 2-day early orientation program for newly appointed judges on the judicial role, ethics and procedure, pitfalls in conducting trials, and "the art of judging;" and an executive management orientation programme, for senior judges with new managerial responsibilities.

| See, for example, Campbell D, Judicial Education Program on Gender Equality, Western Judicial Education Centre, Canada; and, Mahoney K and Martin S, Equality and Judicial Neutrality, Carswell: Toronto (1987).

| Cartwright S (Dame Silvia), "Judicial Studies in New Zealand's District Courts," Journal of Judicial Administration, 1993, 2, 162-170.

The New Zealand District Court conducts a 5-day orientation programme for new judges covers matters such as court organization, hearing control, evidential and procedural problems, oral and written decisions, cross-cultural interaction, and sentencing; comprised in tutorial discussions and simulated court sequences.

| Sallmann PA, "Judicial Education: Some Information and Observations," Australian Law Journal, 1988, 62, 981-1005, 981.

| For a detailed discussion of the objects and purposes of these bodies, see Armytage 1993, note 44 above.

| Judicial Officers Act (NSW) 1986 s 9, inter alia, to: "organize and supervise an appropriate scheme for the continuing education and training of judicial officers"; see also Sallmann PA, "A Note on Judicial Education in Australia: An Australian Institute of Judicial Administration Perspective," Journal of Judicial Administration, 1992, 2 28-38, 30-31; the objects of the Australian Institute of Judicial Administration, an unincorporated association, inter alia: "to undertake and foster teaching in the administration of justice and in particular to arrange and conduct programmes of continuing education for judges, magistrates, officers of court the practising members of the legal profession, members of the legal profession employed by governments and professional teachers of law in Australia".

| Judicial Studies Board Act (Vic) 1990. It appears that the establishment of that body will be delayed indefinitely owing to the pallous fiscal condition of that state.

| Armytage, 1993, 33-37.

| Sallmann, 1993, 253.

| Armytage L, "New South Wales, Australia Mentoring Profile" in Catlin DW, Mentoring in the Judiciary, Lansing, Michigan: Judicial Education Reference, Information and Technology Transfer Project (JERITT) Monograph 2, 1992, 52-59.

| Armytage L, 1993.

| Kirkpatrick DL, Evaluating Training Programs, Madison, Wis.: American Society of Training and Development, 1975. Kirkpatrick's hierarchy, which is widely adopted as a balanced and practical approach - emphasizes 4 levels of evaluation: reaction, learning, performance (transference of behaviour), and organisational /community impact (results). This model is useful in devaluating participant and organisational perceptions to focus on outcome and results.

| Cervero, 143.

| Hudzik Needs and Evaluation 1991, 37.

| Brookfield, 275.

| Hudzik Needs and Evaluation 1991, 44-47.

| Hudzik 1989, 13.

| Hudzik JK & Wakeley JH, "Evaluating Court Training Programs", Judicature, 1981, 64, 8, 369-375, 371.

| Report of the Judicial Studies Board 1983-87, London: HMSO, 1988, 4.

| Report of the Judicial Studies Board 1983-87, 21.

| See for example, Anderson SB and Ball S, The Profession and Practice of Program Evaluation, San Francisco: Jossey-Bass, 1978.

| See findings of the "Dr Fox Effect:" Williams RG, Ware JE (1976), Validity of Student Ratings under different Incentive Conditions: a further study of the Dr Fox Effect Journal of Educational Psychology 14, 449-457, cited in Houle CO, Continuing Learning in the Professions San Francisco: Jossey-Bass, 1980, 245-6.

| This phase of evaluation is likely to incorporate participant-reaction, faculty assessment and expert observations.