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POLICY DEVELOPMENT IN CONTINUING JUDICIAL EDUCATION: AN ASSESSMENT OF SOME APPROACHES TAKEN IN N.S.W., U.S.A., U.K. AND CANADA.

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'The picture of the judge as learner is complex. The considerations of ages, prior professional training, not to mention attitudes brought to the bench, make the design of a comprehensive continuing judicial education program extremely complex' (Catlin 1988).

This paper[1 & 2] explores the question how to provide continuing judicial education through a policy-setting perspective. It defines and considers a number of underlying philosophic questions, and postulates a framework of educational theory with which to approach continuing judicial education (CJE). In the process, a number of critical issues on the nature, role, purpose and scope of judicial education are identified. How these issues are resolved has fundamental implications on the character of the education process and its outcomes.

INTRODUCTION

This paper will address the issue *what is the most effective means of providing continuing judicial education ?* It is concerned with how to deliver CJE and will explore the framework and process of policy-making with the view to formulating a model approach.

It will identify and examine a range of issues in policy development terms, the resolution of which has fundamental impact on the nature and outcomes of the CJE process. These issues include: *what is the purpose of CJE? what is its scope and content? how far should it go? prescription or choice? how should it be planned? how should it be structured? how should it be provided? and, how should it be managed?*

As many of these issues are in fact concealed, it is the primary purpose of this paper to focus attention on the importance of policy development, and to identify at least some of the pivotal questions for policy-makers and judicial educators alike; it is clearly beyond the scope of this discussion to define either all of the policy issues which may arise or to attempt to provide definitive answers to all the questions addressed.

The paper will also explore underlying philosophic questions with a view to proposing a framework of education theory and design applicable to the practice of continuing judicial education. In the process, an assessment of some approaches taken in New South Wales, the United States, United Kingdom and Canada will be undertaken.

GOALS AND OBJECTIVES - WHAT IS THE PURPOSE OF CJE?

Despite the importance of the policy-setting process, there is a dearth of research on the practice of policy development in the arenas of professional development or judicial education. This, however, at least according to Cervero (1988:112), may be fortuitous:

> It should not be surprising that most continuing professional educators reject textbook planning frameworks as descriptive of how they actually work . . . in place of these textbook frameworks . . . professionals must develop their own continuing theory of practice under real-time conditions . . . The central task for effective practice is to make one's own framework explicit, analyse its assumptions and principles, and alter it when necessary. If continuing educators are to become reflective practitioners (Schon, 1983), they must constantly be engaged in this important task.[3]

The policy-setting process of judicial education is affected by the context within which it operates. In New South Wales, for example, three features of judicial tenure have an important influence on the policy-setting process. They relate to the judicial career path, merit appointment and promotion.

The judiciary in New South Wales shares with the United States and Canada the common law tradition inherited from the United Kingdom of appointing judges from the practising legal profession. It does not have a *professional* judiciary in the sense of the continental approach where graduates in law must elect a career as a judge from the outset and are thereafter trained and promoted within the ranks of the judiciary.

Judges in Australia and Britain are appointed on merit - unlike some jurisdictions in the United States where they may be elected - and are selected generally from the ranks of the most experienced and successful trial advocates at the bar.

Finally, once appointed to the bench, there are generally no promotional opportunities for judges' continuing career development in Australia as may exist in some other jurisdictions - most closely, the British Recorder system.

These three features of judicial appointment and tenure have a major influence on the role and scope of any program of judicial education. Consequently, this paper will confine the exploration of relevant issues to those common law jurisdictions which have similar judicial tenure, specifically the United Kingdom, Canada and the United States, as appropriate.

The purpose of education policy is broadly to define the goals, scope, direction and purpose of that education program and the means with which to ensure effective implementation. Thus, the exercise of examining the policy-setting process focuses attention on a range of issues which are fundamental to the nature of the education program, such as: *why do we have (need) continuing judicial education? what is it supposed to do? how is it put into effect?*

In conceptual terms, there are two issues which define the foundations of the education policy process: goal analysis and setting objectives (Roper 1988). These determine the main function of the education program and how it is attained. By specifying aims and objectives, the educator can provide the basis for selection and design of learning experiences and the means for assessing them.

For policy-makers and educationalists alike, there are a number of philosophical questions to be addressed in determining the goals and objectives of any scheme of continuing judicial education:

1. *Should CJE be developmentalist or rationalist?*, and, *should CJE be primarily concerned with the individual or the society*? The implications of these questions affect whether there is an emphasis on content and passing on the culture or, alternatively *process* with an emphasis on the individual's development.

2. *Should the role of CJE be to assist judges to keep up or to get ahead?* The minimalist position is concerned 'in our ever changing society' primarily with preventing the professional, who does not keep up, from getting behind. Should CJE be directed to these *laggards* in Houle's (1980) learners' typology or should it be more aspirational - or, both?

3. *Should CJE be vocational or liberal*? Should the scope of education be focused on transferring relevant information, developing judicial skills and enhancing practical competencies along the lines of an occupational training model designed to improve work performance, or should it encompass broader quality of life issues (such as, for example, stress management, multiculturalism in our pluralistic societies, recreation or self-expression)?

It is argued that an over-arching goal of continuing education generally should be to improve the quality of human life and, specifically, to help people acquire the tools for physical, psychological and social survival; to help people discover a sense of meaning in their lives; to help people learn how to learn; and to help society provide a more humane social, psychological, and physical environment for its members (Apps 1979:101). In effect, education can become a vehicle for servicing Maslow's (1970) needs hierarchy. In the highly refined environment of continuing judicial education, many of the participants' basic needs of survival have been largely satisfied, even in the professional sense. But other aspirational needs will always remain to be met both in personal and societal terms.

At a more literal level, the goals and objectives of CJE are to meet the education, training and development needs of judicial officers as identified and defined through needs analysis, in a way which complements the overall goals or mission of the justice system within which those judicial officers operate.

Houle (1980:165) defines continuing professional education as:

> at a minimum, a complex of instructional systems, many of them heavily didactic, in which people who know something teach it to those who do not know it. The central aim of such teaching, as offered by many providers, is to keep professionals up-to-date with their practice.

The classic statement of the goal of continuing professional education has been crystalized by Houle (1980:34) and has been the subject of repeated endorsement by subsequent theorists, as being:

> The mastery of new theoretical knowledge and practical knowledge and skill relevant to a profession, and the habitual use of this knowledge and skill to solve the problems that arise in practice.

The scope of any education program depends significantly on what is meant by 'education'. For the purpose of this paper, it is argued that it is more appropriate to adopt a broad definition of education which does not invoke pedagogical connotations from the outset in order to avoid pre-empting proper consideration of the philosophical issues raised above. Education might usefully be seen, for example, as a process to promote learning, where learning may be defined as a change of behaviour. In this sense, education may be defined as 'planned changes in behaviour' (Fleisner (1974) in Houle 1980:226). Thus, it is necessary to recognize that CJE may appropriately possess a variety of goals - to be concerned with both the individual judge *and* the society, to be both minimalist *and* aspirational, and to be both liberal *and* vocational, depending on its context. In this sense CJE can be described as consisting of three components: education, training and ongoing development.

Catlin (1988:5) has perhaps gone farthest in refining an understanding of the goals and policy processes of continuing judicial education. He sees the goals of continuing judicial education within the context of Houle's (1983:34, 106) model of professional education[4] - that is, after completion of selection and certification of competence - as being threefold:

- new judge transition - (induction into new responsibilities and preparation for change),
- continuing education - (refresher, maintenance and modernization), and
- career development.

He proposes the development of a model for continuing learning of judges which adopts and embodies Houle's over-aching mission of education, identifies its major goals and describes important objectives built on seven characteristics of the judicial profession. He describes the characteristics of the judicial profession - which must be acquired on becoming a judge - as involving (1) a transition which may be traumatic and unprepared; (2) integration with a larger judicial body; (3) isolation of practice; (4) unique decision-making obligation; (5) absence of financial incentive to participation in learning; (6) changing judicial roles; and (7) extreme heterogeneity of new judges in age and experience (Catlin 1988:5). Catlin then links technical competence with what he describes as 'judicial authenticity' using seven objectives of judicial education, which are 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 1988: Fig 6, 15).

In practice, the use of educationalist terminology - with its connotations of pedagogy which may be seen by judges and educationalists alike as inappropriate - is generally avoided in day to day discussion. Indeed, such are the sensitivities of the judiciary in Britain that the Judicial Studies Board has remarked on what it described as an 'awkward question of nomenclature' regarding matters which in other disciplines would be uncontroversial including 'training', 'education', 'teach', 'student', 'learn', and even 'need'. Notwithstanding the difficulty presented by these sensitivities towards education, the Judicial Studies Board (Report 1983-87:13) then proceeded to define *judicial studies* as 'an organized means of enhancing (the judge's) performance . . . to enable him to perform his duties more effectively.'

To avoid some of these difficulties in New South Wales, the Judicial Commission (1991: Preamble) adopted a broad treatment of 'educational service' when surveying judicial officers as a part of its training needs analysis in 1991. This definition included not only induction training, updating, and continuing judicial development but also 'any service which may facilitate the performance of (your) judicial duties and enhance the quality of justice'.

The Judicial Commission of New South Wales is a body incorporated by statute (Judicial Officers Act (NSW) 1986) with a principal object to 'organise and supervise an appropriate scheme for the continuing education and training of judicial officers' (s9(1)). The Commission commenced its education function in 1988, formulating and then refining a formal policy in 1991 with which to implement its statutory object (Judicial Commission of NSW 1992)[5]. This policy defined the mission of the education program, the range of its education services, and the roles and responsibilities of the parties involved. The mission is outlined in paragraph two of the Policy, and is three-fold:-

> The purpose of this scheme of continuing judicial education is to assist judicial officers in the performance of their duties by enhancing professional expertise, facilitating development of judicial knowledge and skills, and promoting the pursuit of juristic excellence.

The policy provides that education services should be delivered by reference to five categories of content (law, procedure, management and administration, judicial skills and conduct and ethics), and five categories of application (induction, update, experience-exchange, specialisation and refresher).

The policy specifies a wide range of education services which include orientation, update and refresher courses, regular bulletins and bench book publications, conference administration, judgment indexing, computer support and training, research and development.

Significantly, this policy also answers the important question: who *should do what in the policy process?* It defines the relationship, roles and responsibilities of participants in the policy process by allocating policy-making, advisory and implementional roles to the paramount body (the Commission itself), its judicial education sub-committees and to its staff, respectively.

It is interesting to compare the approach of the Judicial Commission with that of the National Association of States Judicial Educators (NASJE), an umbrella network of judicial educators throughout the United States. In 1992, NASJE promulgated a model policy document which claimed to 'frame CJE activities within an organization context - in this case, the Judicial Branch (sic) of government or courts' (NASJE 1991). These Principles and Standards were designed as a guide to advance the quality and quantity of educational opportunities for the judiciary from minimums to higher levels of accomplishment (Nasje 1991: Standard 3).

The NASJE Principles & Standards defined the goal of CJE to be:-

> To maintain and improve the professional competency of all persons performing judicial functions, thereby enhancing the performance of the judicial system as a whole (NASJE 1991).

They then proceeded to outline the objectives of CJE as:-

> (1) to assist judges acquire the knowledge, skills and attitudes required to perform their judicial responsibilities fairly, correctly and efficiently; (2) to promote judges' adherence to the highest standards of personal and official conduct; (3) to preserve the integrity and impartiality of the judicial system through elimination of bias and prejudice, and the appearance of bias and prejudice; (4) to promote effective court practice and procedures; (5) to improve the administration of justice; (6) to enhance public confidence in the judicial system (NASJE 1991: Preamble 6).

A number of other institutions around the common law world have distilled a variety of conceptions of continuing judicial education.

The National Judicial College (1988), which has operated for some twenty-five years, dedicates itself to 'promote improvements in the system of justice by providing education and training programs for judges supported by research, publications and technical assistance and by promoting public understanding of the role and the needs of the judiciary in preserving rights and liberties'.

The mission of the Canadian Judicial Centre is to foster a high standard of judicial performance through programs that stimulate continuing professional and personal growth; to engender a high level of social awareness, ethical sensitivity and pride in excellence, within an independent judiciary; thereby improving the administration of justice.

The charter of the Canadian Association of Provincial Court Judges (1989) states that 'judicial education is one of the principal means of ensuring judicial independence, and of promoting the proper administration of justice'.

At the time of writing, it is understood that the Judicial Studies Board in Britain is in the process of formalizing its policy.

A number of observations can be offered from this comparative assessment. It can be seen from these examples that while the NASJE model is less service-specific than the policy of the Judicial Commission and makes no reference to defining the roles of those within the policy-making process, its scope is wider and, for example, embraces the region of courts management. The NASJE Standards extend CJE to playing a role in the attainment of 'public confidence'- connoting an external accountability - compared to the Judicial Commission's more abstract reference to 'enhancing the quality of justice', in which sense it retains a more introspective perspective. The NJC approach also externalizes the perspective by extending the mission of CJE to the broader social context within which the justice system operates with reference to 'promoting public understanding of the role and needs of the judiciary in preserving (our) rights and liberties'. Interestingly, both Canadian examples extend the goal of judicial education explicitly to becoming a means of enhancing judicial independence, while the CJC approach expressly incorporates recognition of 'personal growth' as a goal of continuing judicial education.

These examples illustrate a sampling of the varying goals of continuing judicial education: they also highlight the lead set by North America which has taken a broader and more outward-looking conceptualization of judicial education compared to that adopted in New South Wales or elsewhere.

DOMAIN - WHAT IS ITS SCOPE AND CONTENT?

Within the directions set by its over-arching mission and goals, the domain and content of any program of continuing judicial education are determined in response to identified need.

Any study of the emerging domain of CJE would benefit from reference to the work undertaken in the adjacent, relatively older and more formalized arena of continuing *legal* education (CLE) - that is, continuing legal education in the broad sense of post-university practical legal induction training *and* ongoing professional development.

Gold, a Canadian and perhaps CLE's most articulate theorist, sees this identified need as the pursuit of competence, and he describes education as a process aiming to promote the acquisition of three distinct elements of Bloom's taxonomy (1956) - knowledge, skill and attitudes - required for competent practice:

> Competence is the aggregate of skills, knowledge and attitudes required for proficient practice. Without skills, knowledge itself is rarely of great use. (Gold 1983; 1982:199).

All professionals, particularly lawyers, must know a great deal of information. However, knowledge of information alone is insufficient. Gold (1983:2) argues that the development of refined, analytical skills is clearly at the root of effective lawyering:

> Knowledge required of the effective lawyer is therefore the well orchestrated co-ordination of information and intellectual skill. Knowledge on its own is rarely, if ever, powerful: knowledge must be coupled with know how . . . Beyond knowledge lie an array of both simple and complex abilities (which) require the newly admitted (lawyer) to acquire a wide variety of skills (or know-how) . . .

On the subject of professional conduct, or attitudes, Gold (1983:3) states that the way in which a lawyer carries out his work is qualified or conditioned by rules, codes and conventions of professional conduct. A professional approach is one which is supported by professional attitudes: 'one cannot be competent while being unprofessional.'

Continuing legal education - most notably in induction training or practical legal training courses (PTC), as they are called - has for some years adopted a skills-based or competency-based training approach which focuses on the skills, knowledge and professional attitudes necessary to prepare 'students' for competent practice. This competency-based approach is predicated on a thorough analysis and description of what lawyers actually do in practice in order to identify the knowledge, skills and attitudes necessary to practice.

Using systematic instructional design procedures, Gold (1983) and a team of legal educationalists formulated a *Master Skills Hierarchy* which identified about 250 skills required by lawyers in order to carry out their normal professional tasks which are generic to all of law practice. He argues that it is the successful co-ordination, integration, manipulation and orchestration of these skills that makes up the effective practitioner. Classified into basic, interpersonal, legal and decision-making skills, these skills are applied to specific tasks and functions in a designated area of practice. Each skill is described in performance terms with preset standards

or criteria and conditions for the performance identified. This clear statement of instruction intent - the objective - then becomes the performance goal which the student must seek. It is the role of instruction to assist the student in acquiring the skill necessary to complete the performance according to the standards and under the conditions specified in the objective; subject to assessment of progress.

As to the method of instruction in skills-based learning, Gold (1987:64) argues that while there is still little researched data and 'we simply do not know what is working and what is not', the acquisition of skills:

> must perforce be active, participatory and involve the student in performing the skill . . . this mode of instruction is sometimes described as 'presentation, practice and feedback' Skills cannot be learned without practice and deficiencies cannot be identified without critical comment . . . skills are learned incrementally and sequentially and are built upon one another (Gold 1983:8).

While the content - and perhaps the culture - of CJE will distinguish it from CLE, there is no reason to distinguish the process outlined by Gold as not being equally applicable to the domain of judicial education.

In the United states, the NASJE Standards & Principles exemplify a widely supported approach to defining the domain of judicial education within two graduated frameworks.[6] The first is **orientation**, when new judges should participate in substantive instruction, written materials, and an adviser judge process. This orientation process should include such matters as transition to the bench, code of judicial conduct, fairness issues, the effective use of court staff and resources, court system management, case management techniques, overviews of substantive law, court-room communication skills, demeanour, community and media relations, and meetings with administrators of various court-related agencies and programs.

Secondly, the post-orientation sphere is categorized as the domain of **continuing education** within the NASJE framework. Throughout his or her career, a judge should participate in a comprehensive series of continuing judicial education activities, whether basic, advanced or specialized, at least once a year, and for a minimum of fifteen (15) hours annually, exclusive of orientation. Curricula for CJE should include, at a minimum, offerings in the following areas:

1. *Legal Ability* - updates on law, court rules, and court procedures; in-depth analysis of complex legal issues; examination of judicial decision-making practices and philosophies; effective opinion writing through identification, analysis and clarity in expressing legal issues, reasoning and conclusions.

2. *Comportment and Demeanour* - judicial code of conduct; fostering fairness through the recognition and elimination of bias or prejudice; cultural awareness; decisiveness; and judicial temperament.

3. *Judicial Management Skills* - case, trial and jury management; settlement skills; personnel management; skills to cope with the growth of litigation and the increasing complexity of legal issues and proceedings; and, where appropriate, court system planning administration.

4. *Contemporary and Interdisciplinary Issues* - updates on scientific and behavioural sciences relevant to any judicial practice; knowledge of contemporary social issues; and the law and the humanities.

5. *Personal Development* - revitalization and rededication to public service; awareness of the need to maintain high levels of personal well-being; and stress management.

It is interesting to reconcile these goal statements with a study of education services and programming actually provided. Hudzik undertook an analysis of programs conducted by state judicial educators throughout the United States between July 1990 - June 1991 and found that the majority of programming related to:

> the fundamental business of courts - the law, sentencing, procedure and so forth. However, about 25% of all topical offerings during the year related to organizational and personnel management; juvenile justice topics account for nearly another 10%; topics related to the social science, humanities, ethics and discipline, and domestic relations account for nearly another 15% of topical offerings . . . it becomes clear that continuing judicial education has a very substantively heterogeneous meaning (Hudzik 1991:161).

Further analysis of programming by type disclosed that four-fifths of programs used lectures, about two-thirds used discussion and question/answer; over forty per cent were problem solving and one-third used case studies; less than 60% provided notebooks or manuals and about one-quarter supplied participants with readings (Hudzik 1991:173).

A number of observations can be made from this discussion. Comparatively speaking, it can be seen that judges in the United States are prepared to take judicial education further than in Britain or Australia. This is possibly because judges in the United States have had greater opportunity to observe and participate in judicial education; it may be due to an American preference to codify; or, perhaps a greater imperative to instil threshold competencies arising from a selection process not based on merit. Notwithstanding, the Judicial Council of California, for example, is prepared to go far beyond the domain presently set in New South Wales by providing in its Standards that '(all trial *and* appellate) judges should consider participation in judicial education activities to be an official duty.' (Judicial Council of California 1990: Standard 25).

Secondly in regard to defining domain, it is possible to identify a discrepancy between the theorist's conception of CJE (as proposed by Catlin (1988) , Gold et al (1983) and subsequently formulated in policy statements) and its actual public offerings (as reported by Hudzik (1991)). This is most marked in the arena of *continuing education* in the United States where a leaning towards the transfer of substantive information, rather than the building of judicial skills or the (re)formation of attitudes has been observed. Although no equivalent statistical analysis of education activity is available in Australia, or elsewhere, observations generally tend to support this analysis. Despite the topical heterogeneity remarked on by Hudzik (1991), in educational terms CJE is - at least at present - primarily a didactic process for the transmission of substantive information in line with Houle's (1980, 1983) observation of continuing professional education at large.

This observation requires two important qualifications: the first is that judges constantly remind us - at least in Australia - that they 'do not need to be taught the law.' It follows that any treatment of substantive law should (at least theoretically)

be confined to address the impact of recent change or to explore problems and dilemmas arising from applications of that law.

The second qualification relates to judicial orientation programs where an emphasis on process rather than substance is discernible. The induction of judicial officers in New South Wales for example as in many parts of the United States, is primarily concerned with promoting understanding of the judicial role and developing judicial skills (Armytage 1993). This tends to reveal itself in a range of activities intended to impart skills in court craft, trial and case management, communication, judgment writing and so on. It follows that instructional technique for such courses is appropriately participatory, and usually incorporates problem solving activities involving role plays, case studies, and other exercises with commentary and appraisal.[7]

Within the context of the domain of CJE, it is observed that the New South Wales approach adopts a narrower vocational scope to the content of its education program than is at least proclaimed in the more liberal NASJE Standards, or in the more developmental approaches seen in Michigan and California. This is consistent with a relatively conservative and restrained policy approach being adopted in the formulative period of judicial education in New South Wales.

STANDARDS - HOW FAR SHOULD IT GO?

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 extremely contentious philosophic issues underpinning any debate of judicial competence, and the technical difficulties of objectively measuring the effectiveness of education and training.

Judicial education, like all occupational or professional training is concerned with the attainment of competence: that "sufficiency of qualification' in the words of the *Shorter Oxford Dictionary* (1987) or, that fundamental notion of 'having sufficient skill (and) knowledge; (being) capable, qualified for the purpose' (Collins Dictionary 1987:196).

What, then, is judicial competence? It is the ability to apply knowledge and skills to the resolution of problems; 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.

The notion of competence - while a fundamental concept in most professional development models - can be problematic. It may imply, for example, a minimalist threshold of capability towards which the education program is aimed rather than, as is arguably more appropriate for the circumstances, an aspirational framework which is not so much concerned with attaining base benchmarks as striving for utmost quality. This distinction is not merely a matter of polemics but rather one of the fundamental distinctions between judicial development and models of 'competency-based' occupational training which are so prevalent at the present time and which are, it is argued, more appropriate to task-based learning rather than skills-based professional development.

There are other problems with the notion of competence. Catlin (1988:14), for example, sees the mission of judicial education as extending beyond the promotion

of technical competence. He sees judicial education as being concerned with developing technical competence *and* judicial authenticity, 'the combination of which should lead to the view of the judge as an authority and not an authoritarian.' He cites attentiveness, intelligence, reasonableness and responsibility as qualities upon which the authenticity of a judge may depend as practical matters which are not reducible to techniques.

Tobin (1987) sees the challenge of (legal) educators to be the development of measurable standards for legal practice building on andragogical principles and concrete and measurable definitions of legal competencies. He argues that educational strategies should apply and 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 experienced-based, developmentally-orientated, problem-centred, and has an immediacy of application (Knowles 1970, 1978). 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 (Tobin 1987).

In order to train for competence in performance, Gold (1983:8) identifies the need for the training designer:

> (to) first 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.

Some of these desired learning outcomes may be expressible in terms of observable behaviours; however, others almost certainly will not.

In the United States, the NASJE Standards propose to define a model curriculum framework for judicial education. Despite the reference to 'Standards' in the title of the document, in fact, no quantifiably measurable reference is offered to the precise nature of any standard.[8] Standards tend to be measurable only 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.

As has been previously remarked, New South Wales has to this stage adopted a consistently narrow view of judicial education to the issue of standard-setting to the extent that, first, no systematic attempt has yet been taken to defining quantitative and measurable values of competence, or to measuring the effectiveness of its education and training endeavours. However, it should also be noted that New South Wales has gone further to formalizing an approach to continuing judicial education than is yet apparent elsewhere in Australia, the United Kingdom or Canada.

MANDATORY - PRESCRIPTION OR CHOICE?

In Australia, there is no mandatory continuing judicial education; indeed, there is scant formalized continuing judicial education in any state other than New South Wales. In New South Wales, judicial education is voluntary.

With regard to continuing legal education, however, the New South Wales Law Society does conduct a scheme of mandatory continuing legal education for practising solicitors which requires a minimum of ten hours relevant legal education each year in order to qualify for continuing practice. No formalized evaluation of this scheme and its effects on participation, learning practices or professional competence has been undertaken to date.[9]

For judges in New South Wales, the voluntary character of continuing education is seen as a much-acclaimed hallmark. Much is made of the need for judicial education to be judge-led. This catch cry, which has become something of a mantra in judicial education, can mean a variety of things: it can highlight the importance of judges owning their own education program and playing a decisive role in policy-making; it can mean judges should make up the faculty as being the only appropriate reservoir of expertise and experience to fuel the delivery process; it can also be used to express the view that a judge should be the master of his/her own learning - that education should not be formalized or even organized for him, as he is 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.

Pressure for mandatory continuing professional education occurred in the United States during the 1960's when 'licensure' was no longer granted for a life term; with this change came a questioning of the need to review credentials. Calls were made for mandatory continuing education as a criteria for re-licensure from a variety of quarters: professional associations (in the hope to demonstrate compliance with professional codes to increase public confidence and diminish malpractice suits), from legislators (to reduce malpractice and appease public agitation), and from the public (to restrain the cost of services, improve competence, and raise accountability).

Evans (1985:35) postulates that mandatory education is an integral - however unsavoury - element of professionalism:

> A basic tenet of professionalism is the belief that each profession provides a service which is based on a unique body of knowledge. Implicit in this concept is the commitment of professionals to keep abreast of changes in the profession throughout their practising careers. Yet, while educational opportunities are provided to meet an array of learning needs, not all professionals can provide evidence of continuing learning. Many professionals are perceived as incompetent or only minimally competent. In an effort to prevent professional obsolescence many professions have mandated continuing education in the belief that such requirements will assure the continuing competence of its members.

Mandatory continuing education is now commonly used as a basis for re-licensure and re-certification of professionals. Some fifty states in the United States operate mandatory education schemes in many professions, including law, requiring participation of between 20-50 hours every year (Phillips 1987)[10]. Mandatory continuing professional education is widely accepted in terms of credentialing by many professions. Half or more of the members of several professions recently studied, polled in favour of mandatory continuing education as a basis for re-licensure or re-certification (Houle 1980:284).

In the arena of judicial education, 31 states (70% of all states) have some form of mandated education expressed through statute, rule, or long standing practice (Hudzik 1991:31, NASJE 1991:117). Unfortunately, the term 'mandatory' does not have a clear or uniform meaning from state to state; the mandatory label includes a range of requirements from statutory provisions and court rules which enforce attendance to, on the other hand, 'the expectation (as a part of the local legal culture) that judges will or should attend (Hudzik 1991:117). The amount of training leave provided also varies significantly from 15 days per year to no set amount, and averages about five days annually (Hudzik 1991:121).

However, the concept and practice of mandatory continuing professional education is fraught with problems. Houle (1980:285) observes:

> All is not well as far as mandatory continuing education as a basis for recredentializing is concerned. Opposition is not restricted to the old, the relatively ignorant, and the professionally isolated.

Houle (1980) argues that there is little evidence that mandatory schemes increase professionals' participation in continuing education. The greatest changes occur in the minority of practitioners least disposed to ongoing learning *(laggards)* who increased their negligible participation to the re-licensure levels required.[11] However most, 70-75% of professional participants, reported little or no change after implementation of mandatory continuing education.

Cervero (1988:74) endorses Houle's concerns:

> Although mandatory CPE is touted as an effective way to foster participation, the evidence shows a relatively weak effect. In fact, in the only study that examined the overall hours of participation for all members of a profession in a state, Stross & Harlan (1987) found no difference in physician's participation before and after the implementation of a re-licensure law in Michigan.

Indeed nowhere around the world is there any compelling evidence of the effectiveness of a mandatory education scheme. At best, the evidence is equivocal as to its effect even on participation patterns, not to mention the fundamental issue of professional competence. However, this is not surprising when the ostensible objective of mandatory education - to redress professional incompetence - is so tenuous.

It has been argued by some that mandatory continuing education is a solution to the problem of professional incompetence. *But, what is professional incompetence, and how is it measured*?

There is little agreement on - and even less analysis of - the indicators which supposedly demonstrate the general problem of professional incompetence, be they complaints, professional indemnity suits or (in the case of judges) appeals. Indeed, no serious effort has been made to analyse the nature and causes of professional incompetence; *how* does one measure incompetence - through analysis of professional indemnity claims, or complaints?

Cursory analysis of professional indemnity suits against practising lawyers, for example, tends to suggest that carelessness, poor communication, stress and over-work - rather than ignorance of information or technique - are the major causes of professional incompetence - and yet, most mandatory continuing legal education is entirely informational in its content and didactic in its delivery.[12]

Even in the event of consensus on the nature and cause of the problem and its measurement, the further difficulties which exist in solving such a problem qualitatively have lead professions to adopt quantitative solutions, in this case, by requiring participation in quantities of education programs. However, the heart of the difficulty with this approach is that professional authorities have accepted unevaluated participation as the chief form of education and have therefore gone astray by adopting a system that is ultimately unrelated to performance and therefore can carry no assurance of its improvement (Story 1978:298).

Until supportable objectives to mandatory continuing professional education can be clearly articulated, it will be impossible to uphold its effectiveness in educational terms.

Stern (1976) attacks mandated continuing education as 'the most vexatious issue confronting adult educators and society.'

Cross (1981:46) quotes Houle with approval: 'The primary responsibility for learning should rest on the individual.' She concludes that the processes of recredentialing should be thoroughly rethought and redeveloped to determine the appropriate role of continuing education.

Meantime, the mandatory solution creates additional problems. Hudzik (1989:30) remarks that:

> Although there are many assumed advantages to mandatory training requirements, there are suspicions voiced by some judicial educators that mandatory training actually may lower the training sights of some individuals and organizations by placing the focus of training on the mandatory minimum.

Mandatory education confronts the judiciary as a profession, judges individually, courts and educators with a conundrum: *is compulsory learning - knowing what we do about how adults learn and the need for motivation - better than nothing?*

From the point of view of any embattled profession, mandatory education can be explained in compelling terms as an important public relations exercise - as a display of concern, a commitment to consolidate professional standards and as a visible barrier against the intervention of governmental regulation.

For the judge, the arguments surrounding mandatory education are more complex. They are as much arguments against any formalized education process as they are against formal prescription. The initial thrust of the argument against judicial education at large is that it is not needed. This argument rests on the lawyer paradigm. Put in its simplest form, it proceeds as follows: the legal profession is hierarchical in structure and aspires to the image of its pinnacle which is the High Court of Australia, the US Supreme Court and the British House of Lords. The system of legal education is classically modelled on the knowledge, skills and attitudes required by a member of those courts. Appointees to the bench are appointed on merit and represent the most competent from the legal profession. Therefore, by axiom, the appointee to judicial office has attained the objectives of the professional education system at the time of appointment, and there can be no ongoing need for further education or development This argument raises many grounds for debate: but, if nothing else, it fails in two important respects: first, to distinguish between attainment of the education needs of practitioners as distinct

from judges and, secondly, to distinguish between attainment of distinctive education, training and developmental objectives.

The second aspect of the argument claims that the prescription of any scheme of judicial education would constitute a violation of judicial independence. This argument raises a potentially major barrier both against any formalized scheme of education and its organization from beyond the ranks of judges themselves.[13]

For the court, mandatory education raises the issue of leadership and style: *how much does the court wish or need to direct its own members, and, how should that direction be provided*? The court, as notional employer, has a direct interest in the outcome of any professional development program. The court can sanction the process in a variety of ways by simply allowing the organization of activities under its egis, providing incentives such as dispensation from sitting duties, by dismantling financial disincentives by providing reimbursement allowances, and ultimately by formal prescription. In practice, decision-making within each court - while holding out the appearance of collegiality - tends on close observation to be highly autocratic. Thus, when a head of jurisdiction organizes an educational activity - and provides appropriate 'release time', that is, relief from sitting duties - members of that court are in fact expected to attend, and concomitantly high levels of 'voluntary' involvement can be observed.[14] It tends to follow that the provision of leave from sitting is likely to be as conducive to participation as formal prescription, and is likely to be considerably more conducive to the attainment of educational goals.

Mandatory continuing education raises a number of serious problems for judicial educators: it imposes a *laggard* model from Houle's (1980.) learners' typology indiscriminately across the entire professional group, irrespective of individual learning practices, styles and preferences. As a result, it is for the most part misconceived as an educational mechanism and consequently ineffective in that it fails to recognize and respond to the need for motivation, self-direction, focus and relevance in professional learning; and, finally, it has no relationship with competence and no direct means of ensuring that attendees become more competent. For the judicial educator, there is ultimately a need to recognize that mandatory education is a professional rather than an educational issue. Within this context, the educator should be concerned with fostering a recognition of the need for, and the self-commitment to, lifelong learning.

To adopt the sentiments of Hudzik (1989:50):

> Good training creates its own additional demand . . . the better the training, the more people want it.

MATRIX OF SERVICES - HOW SHOULD IT BE PLANNED?

The services offered by any program of continuing judicial education should be determined in response to undertaking a training needs analysis.

An important additional influence on this process will be the availability of resources - in terms of the educational expertise to guide the process, finances to underwrite delivery costs, and judicial leadership both in the planning and delivery phases. This involves an assessment of capacity to provide. *What are the resources in money, staff (labour, time, experience, expertise), facilities*

(equipment, venues); and what constrains do these impose on the services which should or can be delivered?

In practice, there are rarely sufficient resources available to meet need, which places a burden on the shoulders of those responsible for program design to determine priorities in the delivery of services.

This, in turn, raises the question '*What are the criteria to determine how to match services to needs?*' It is beyond the scope of this discussion to specify definitively these criteria which will depend heavily on both the particular needs and resources in the situation; instead, it may be more useful to propose a planning process through which to approach the question.

This planning process rests on a conceptualization of judicial education in the form of a matrix of services defined by *content* (subject matter) and *pitch* (level of application). The education policy of the Judicial Commission embodies this approach (Judicial Commission of New South Wales 1992).[15] It defines content as consisting of six categories: law, procedure, management and administration, judicial skills, conduct and ethics and interdisciplinary. Pitch includes such categories as induction, update, experience-exchange, specialization and refresher. By combining both axes, a matrix of twenty-five service options is created which facilitates identification and characterization of services being provided by the institution within an overall framework. An analysis of services in these terms can be undertaken and will readily display where the efforts of any particular education program are being directed. It may be determined, for example, that there is a priority to address the needs of new appointees with relatively little trial experience making the transition to the bench: these needs may perhaps be characterized primarily in the areas of procedure and case management, and could be addressed with what might be described as a program of courtcraft or judicial skills development. Alternatively, the limited resources of an education program may be directed to promoting annual conferences as a means of providing maximum appeal to the largest number of judges through a single program with a smorgasbord of offerings. These offerings could be characterized as experience-exchange across the spectrum of content.

The configuration of programming variables in any given situation will be determined by need and resources: this approach commends itself for displaying the results and, significantly, highlighting the range of potential services which are not being provided. Thus, an absence of any programming specifically designed for experienced judicial officers, or, an absence of skills development generally becomes readily apparent and can then be ratified or rectified at a planning level.

CURRICULUM DEVELOPMENT - WHAT IS ITS STRUCTURE?

While considerable time and effort may be devoted to devising appropriate planning and consultative structures with which to develop programs of judicial education (Hudzik 1991:32),[16] it can be observed that, with the possible exception of new judge orientation programming, there is a need for more coherence in the development and design of continuing judicial education programs. In effect, there is a need to improve curriculum design[17] and develop training strategies which increase the effectiveness of the learning experience.

The role of the instructional designer in this process is to guide the subject specialist in the selection of the most appropriate teaching methods and the most appropriate media to support those methods so that learning efficiency is maximized.

Not very much is yet known about *how* judges learn, apart from Catlin's seminal study on the reasons *why* they participate in continuing judicial education (Catlin 1982). Experience and observation, however, suggest that *Kolb's Learning Style Inventory* (Kolb 1984) [18] 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 bar. It is argued that these 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.

This hypothesis has direct bearing on the instructional design of judicial education which, at present, is classically didactic; and, it is doubtless for the above reason that one can readily observe the visible discomfort of judges grouped together for the purpose of being 'taught' something by 'experts'!

There is, of course, a range of alternative instructional methods. These include, for example, autonomous learning and self-directed study (Knowles 1970. 1978); experiential learning (Kolb 1984) which encourages the students to work as action-researchers, starting from their own concrete experiences rather than from knowledge given by the teacher; and other approaches promoting exploration of and reflection on the student's own perception of the learning situation (Schon 1983, 1987).

The value of curriculum development in continuing judicial education is that it offers a plan of the proposed learning outcomes and the means of reaching them. This enables educators to identify whether segments of the program are missing or operating ineffectively. A curriculum as an organizing paradigm helps the educator to plan what is to be taught, to whom and why, and implies that decisions have been made about the subject matter, the relationship between segments of knowledge, skills and abilities and their organization and sequence (Hudzik 1989:54).

Hudzik (1991:179) observes that there is a pressing need for the development of a curriculum paradigm along a career-development model as a means of conceptualizing and bringing coherence to a body of knowledge delivered through a systematic progression of programs rather than a list of independently conceived and discrete offerings.

The issue of curriculum design is relevant at another level of planning. Theory of learning design is ordinarily based on some conceptualization of the educative process itself or of the series of stages that should be followed in conducting it. For example, some educational theorists base their practice on the transmission of subject matter, while others centre attention on the nature of the learner's needs. Equally, curriculum design requires a determination of the *content* v *process* debate. Widespread dissatisfaction arose in the 1960's with the purely content-centred approach in continuing professional education because of what Houle (1980:225) describes as the 'all-too-apparent fact that it was not working

satisfactorily.' As a result - perhaps more by result than design - adult educators have found useful a number of other conceptual models of education.

In continuing professional education, the fact that the learning occurs in the workplace has meant that the design of education programs has increasingly been constructed to focus on competence and modes of performance which are designed to improve the quality of the services or products. Yet, in the arena of judicial education, this development has not yet been crystallized - nor has it been explicitly embraced or rejected. As a result, in practice, CJE is tending to adopt by default the terminology and methodology of a substance-based approach and a pragmatic, occupational modelling to the process of continuing judicial learning, whether or not that has been determined to be the most appropriate and desirable approach.

Similarly, the devolution of continuing judicial education - and its quest for legitimization - has tended to exclude the value of self-directed study from any formalization of the process; and yet self-directed study, particularly for judges inducted from intensely self-reliant careers at the trial bar, places greater emphasis than perhaps any other professional discipline on this particular learning technique. Increasingly, studies are tending to recognize the fact that introspective education is not only an alternate way of achieving learning goals when no other methods are available but also has unique values of its own - values which arise out of the intimacy with which the acquisition of knowledge must be interwoven with experience as well as with the necessary exercise of will (Houle 1980:225). Ironically, the techniques of systematic self-education have not been taught to most professionals, probably simply because most professors believe that their students do not need such instruction.

Ultimately, it is argued, considerably more emphasis should be given to seeing judicial education as a process of facilitating self-education.[19] Equally, it is argued, the quest of instructional design should most usefully be to research, develop and evaluate more effective techniques to facilitate approaches to learning which are directly suited to the preferred methods of learning for those individuals appointed to the bench.

DELIVERY - HOW SHOULD IT BE PROVIDED?

Application of the work of educational theorists such as Knowles (1970, 1984), Houle (1980), Cross (1981), Schon (1983, 1987), Kolb (1984), Gold (1983, 1989), Catlin (1988), Hudzik (1991) and others, it is argued, will enhance the integration of policy formulation in the design and development of any continuing judicial education program.

Without traversing this theory in any detail at this point, it is argued that the following themes can be distilled from that work to form a framework for continuing judicial education which should be applied to the policy-setting process:

1. The *goals* of *judicial education* should respond to varying needs to be both developmentalist and rationalist, vocational and liberal; but in particular, they should be aspirational and aim to develop professional artistry (Schon (1983, 1987) and encourage the *zest for learning* (Houle 1980). In this sense CJE should continue to formulate and develop an appropriate educational model which reaches beyond the prevailing competency-based educational approach.

2. Judicial education should, however, translate these goals wherever appropriate into measurable objectives and standards for judicial practice by explicitly defining concrete, observable definitions of judicial competencies.

3. The *strategy of judicial education* should acknowledge the implications of merit appointment to the bench (at least in all those jurisdictions where it operates) and the pre-disposition of judicial learners to:-

   - develop a learning environment designed for *pace setters* (Houle 1980); and,

   - promote self-education through curricula and instructional design that consolidate self-directed learning and provide control and autonomy to the participant in the learning process (Knowles 1970, 1978 and many others).

4. The *instructional modelling* of judicial education should be individualized to become more sensitive to the cultural and professional customs of judges generally and, in particular, the individual learning styles which affect the way in which respective judges work and learn (Kolb 1984, Hudzik 1991). There is a need to revamp the classic didactic group instructional model to incorporate the learning techniques *actually* used by judges.

5. The content of *judicial* education should be re-aligned to promote skills development and attitude (re)-formation as being as important in practice as in theory to the acquisition of knowledge (Gold 1983).

6. The scope of judicial education should be responsive to the variety of learning needs which transpire throughout the course of a judicial career (Cross 1981), particularly by developing new services specifically for experienced judicial officers.

POLICY-SETTING CYCLE - HOW SHOULD IT BE MANAGED?

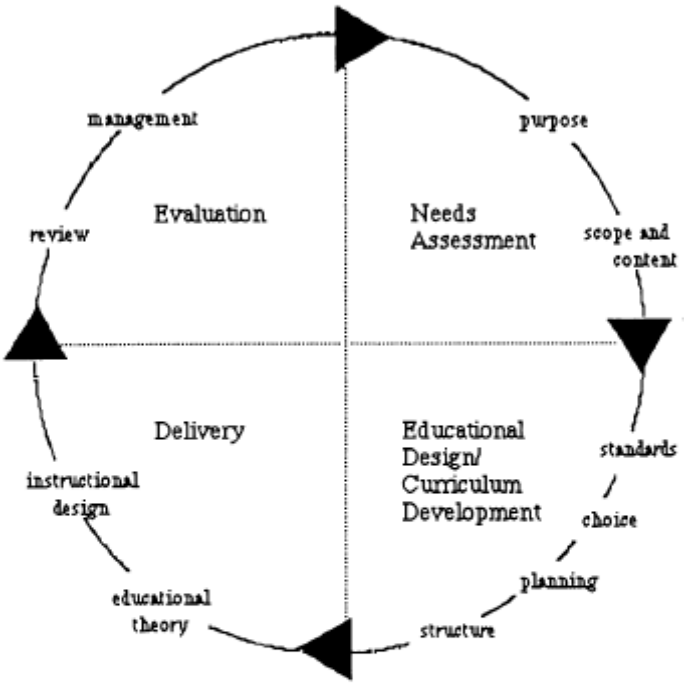
This discussion has explored a range of policy-setting issues at a variety of stages in the continuing judicial education process. These issues have a marked impact on the outcome of that process. However, many of the issues - and their potential significance - are masked. As a frequent result, decisions of major importance affecting the fundamental character of the process are not the subject of any deliberate determination by the appropriate policy-makers but are, rather, resolved by default. The effect of this failure to recognize and manage policy issues to any preferred determination may have unintended and possibly deleterious effects on the education program and its outcomes.

Under these circumstances, judicial policy-makers and educators should be alert to monitor, identify and respond to the need to define and resolve policy-setting issues at all points of the program management cycle - and not simply those identified in this paper.

In terms of the management process of continuing judicial education (which consists of four principal segments: needs analysis, educational design/curriculum development, delivery and evaluation, see diagram below), it is observed that

critical policy issues exist in each segment of that process. It is argued that this process, or cycle, can be utilized to highlight these issues in a manner which is conducive to the effective management of the policy-making process. How these issues are resolved has fundamental implications on the character of the education process and its outcomes.

Policy-setting Cycle



NOTES

1 This paper is based on a presentation delivered by the author to the annual conference of the National Association of States Judicial Educators (NASJE), Charleston, South Carolina, October 1992.

2 The author is the Education Director of the Judicial Commission of New South Wales. The views expressed in this paper are purely the views of the author. They do not necessarily represent any official views of the Judicial Commission of New South Wales, nor are they necessarily shared by members of staff of the Commission.

3 Continuing educators are urged to think of these planning frameworks (the functionalist framework applies a planning process where needs are assessed, objectives identified, instruction organized and outcomes evaluated) as forms

of scientific knowledge that will improve their practice if they are applied with great rigour. But, in fact, 'these prescriptive frameworks are generally treated with a great deal of scepticism, at least from those with years of experience . . . (t)his should not be surprising' (Cervero 1988:128). The parentage of nearly all planning frameworks can be traced to Tyler (1949).

4 This three-layered model was also adopted in England and Wales by the Ormrod Report (1971) which stated that legal education should be planned in three stages, namely: (1) the academic stage (2) the professional stage, comprising both institutional and in-training (3) continuing education or training; and was mirrored in the subsequent Pearce Report on legal education in Australia (Ormrod 1971).

5

Policy of Continuing Judicial Education
(Judicial Commission of New South Wales, 1992)

Pursuant to s.9(1) of the Judicial Officers Act, 1986 the Judicial Commission may organise and supervise an appropriate scheme for the continuing education and training of judicial officers.

The purpose of this scheme of continuing judicial education is to assist judicial officers in the performance of their duties by enhancing professional expertise, facilitating development of judicial knowledge and skill, and promoting the pursuit of juristic excellence.

Services

The Commission is sensitive to the need to assist courts by providing a range of education services to meet the differing needs of each court and individual judicial officers.

The scheme of continuing judicial education should be structured to be of benefit to all judicial officers in each jurisdiction and to address the differing needs of judicial officers throughout the duration of their careers.

Specifically, the education program should apply the Commission's resources in the most effective delivery of services defined by content (law, procedure, management and administration, and judicial skills), and by level of application (induction, update, experience-exchange, specialisation and refresher).

These services may where appropriate include:-

a. Inducting new appointees with comprehensive training;

b. Updating all judicial officers on important recent changes in law, procedure and practice;

c. Producing bench books for each court, with a process for regular updating;

d. Publishing the Judicial Officers Bulletin on a regular basis to inform judicial officers on current law and to promote consideration of important judicial issues;

e. Where requested, assisting in the administration of conferences for each court;

f. Promoting the development of an improved scheme for indexing and accessing important judgments;

g. Facilitating continuing judicial education through the exchange of experience and discussion of topical issues, assisting meetings and discussion groups, and publishing articles and other papers;

h. Providing refresher services to meet the needs of judicial officers;

i. Providing special education services to meet the needs of isolated judicial officers both in the suburbs and country, and on circuit/rotation: specifically relating to the improved access to legal information;

j. Promoting the supply of computer-support facilities, and supplying appropriate training;

k. Providing an extended range of education services for the assistance of judicial officers, including interdisciplinary and extra-legal courses, where appropriate. The delivery of this scheme should integrate conference, publication, computer-support services, in order to facilitate the access to and the use of education services in an effective and convenient manner for judicial officers;

l. Promoting and conducting the research and development of educational practices to enhance the effectiveness of continuing judicial education.

Roles & Responsibilities

The Judicial Commission has ultimate responsibility to define its policy and strategies in relation to the provision of the above mentioned services and to determine direction and the priority of all activity undertaken in the name of the Commission.

The Standing Advisory Committee on Judicial Education (which comprises the chairpersons of the education committees of each of the state's courts) has responsibility to advise the Commission on matters of continuing judicial education and, where appropriate and as requested, to co-ordinate the activities of the respective education committees of each court.

The Education Committees of each court, subject to the head of jurisdiction, shall have responsibility to develop and manage the programs of educational activities conducted by or on behalf of each court.

The staff of the Commission have the responsibility to advise and assist each of the above bodies, and to act on their instruction to administer and implement the continuing judicial education program.

Evaluation

The Commission will evaluate the effectiveness of its program of continuing judicial education activities in order to ensure that it provides useful assistance and benefits to judicial officers in the performance of judicial duties. (Judicial Commission of New South Wales 1992)

6 As distinct from three which prevail in a number of other approaches such as in Michigan or California; see Note 4 and Catlin (1992). The three-phased model consists of: New judge transition which focuses on aspects which must be attended to when a person first assumes a new or changed judicial role; frequently 1-3 week seminar before and/or after appointment, with mentor judge program; continuing judicial education which is designed to keep judges abreast of the new developments in the law and procedure as the result of new legislation, court rules and appellate court decisions; and career development which includes programming on a more in-depth basis for

developing career-long judicial skills such as judicial writing, decision-making or judicial administration skills.

7 These are the techniques most commonly used in orientation training by the Judicial Commission.

8 This is a problem which also besets any attempt to objectively evaluate the effects of judicial education.

9 This surprising omission tends to given credence to the view that MCLE in NSW should be assessed in terms other than simply as an education mechanism.

10 By 1982 every state had legislated continuing education requirements for at least one profession.

11 Houle's learners' typology classifies practitioners' competence from 5% *pacesetters* to 5% *laggards* at either extreme (Houle 1980).

12 Observations based on the author's experience as a former director of continuing legal education, and discussions with professional indemnity insurance underwriters.

13 This argument has on occasion been raised by judges even against participation in education activities organized by the Judicial Commission which is presided over by the Chief Justice and consists of the heads of each of the six state courts together with two lay representatives.

14 For example, in the Local Court of New South Wales, attendance in educational activities is specifically rostered by the Chief Magistrate with dispensation from sitting duties, and travel/accommodation allowances provided - attendance is effectively universal; similarly, the annual conference of the District Court of New South Wales in 1992 was sanctioned by the Chief Judge and attended by 90% of its members - those absent were on sick or recreational leave.

15 see *Matrix Planner*, below.

16 These include program planning and evaluation techniques, ad hoc advisory committees, advisory committees, formal survey or needs assessment, participant evaluations and external influences requiring environmental scanning.

17 Curriculum design is the means by which course aims are specified, subjects are listed, syllabuses prescribed and attention given to the teaching and learning process (generally tending to relate to course content); instructional design relates to the systematic application of well-tested instructional principles (rather than reliance on intuition) in the translation of the curriculum into the working instructional package.

18 The Kolb Learning Inventory categorizes learning as occurring in a four step process. Learners are involved in an immediate concrete experience (role

plays, exercises, case studies) followed by reflection on the experience from different perspectives (small group discussions, processing of the experience). They then engage in abstract conceptualization (lectures, research, additional reading) to help integrate observations into sound conceptual frameworks; finally, through active experimentation, learners apply what they have learned to a practical situation (action plans, proposed system changes, procedures). The cycle then begins again, but at a higher and more complex level. The Kolb Learning Style Inventory provides insights into learning preferences: 'accommodators' learn best through concrete experience and active experimentation, they are very good at implementing plans and working with people; 'divergers'' great strength is imaginative ability: they learn best through concrete experience and reflective observation: 'convergers' learn best through abstract conceptualization and active experimentation, and are strong applying theoretical notions to real life situations: 'assimilators' absorb and convert disparate data into sound theories, learning best through abstract conceptualization and reflective observation.

19 See Brookfield S.D. 1986 Understanding and Facilitating Adult Learning, San Francisco: Jossey-Bass.

Program Planner

CONTENT	Orientation	Update	Exchange	Specialty	Refresher
Substantive Law					
Procedure					
Management and Admin					
Skills and 'Courtcraft'					
Conduct and Ethics					
Interdisciplinary					

APPLICATION

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