

# Journal of Judicial Administration

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## EDITOR

Peter A. Sallmann



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## Continuing Judicial Education: The Education Programme of the Judicial Commission of New South Wales\*

Livingston Armytage LL.B. B.Juris.

*Education Director, Judicial Commission of New South Wales*

*The author reviews the programme of continuing judicial education which is conducted by the Judicial Commission of New South Wales. The paper places this programme of judicial education within the context of the literature of adult education and continuing professional development in order to identify the specific role and goals of judicial education. The author canvasses the essential elements of the Commission's education programme with reference to formulating policy, defining management structures, undertaking the needs analysis process, and providing evaluation mechanisms. Finally, the paper details the nature and range of education services currently conducted by the Commission for judges and magistrates in New South Wales.*

In this address, I will review the programme of continuing judicial education which is conducted by the Judicial Commission of New South Wales to the extent that our experience to date may be of interest and possible relevance to other courts around Australia.

### History of Judicial Commission's Education Programme

The Judicial Commission of New South Wales is an independent body established by the *Judicial Officers Act 1986* (N.S.W.) with a charter to assist courts to achieve consistency in sentencing;<sup>1</sup> to organise and supervise an appropriate scheme for the continuing education and training of judicial officers<sup>2</sup> (being defined as judges, magistrates and masters but not registrars or courts administrators); to investigate complaints concerning the ability or behaviour of a judicial officer;<sup>3</sup> and to give advice to the Minister as the Commission thinks appropriate.<sup>4</sup>

\* This article is based on a paper presented to the 11th Annual Conference of the AIJA in Brisbane on 22 August 1992.

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 the members of staff of the Commission.

The history of the Judicial Commission will be well known to any judicial audience. Suffice it to recount that the formation of a judicial commission had been considered for a number of years prior to its introduction in 1986. However the spur for statutory intervention on the part of the government—which created a *furor* within the judiciary as you will remember—was an appearance of serious erosion of the integrity of the judiciary. As Riches outlines:

“The standards of judicial conduct and competence were not, until recent times, a matter of particular public concern in Australia. However, criminal charges, trials and a Commission of Inquiry into the particular conduct of the late Mr Justice Lionel Murphy, criminal charges against a District Court judge and the conviction of a former Chief Magistrate led to closer scrutiny of judicial standards and to the New South Wales Government taking steps, *inter alia*, to soothe over these discomfiting events.”<sup>5</sup>

It is probably reasonable to observe that but for the external impetus to establish a judicial conduct organisation, there might have been no momentum for the government to fund a scheme of continuing judicial education. The circumstances surrounding the inception of the Commission caused both mixed and often strongly held views to be taken on the notion of continuing judicial education. Since that time, however, the work of the Commission has proceeded with considerably less controversy to the present position where, for most practical purposes, it is recognised by most judges and magistrates as providing a range of useful education and research services which assist judicial officers in performing their duties.

### Structure and Management

The Judicial Commission consists of the head of jurisdiction of each of the State's six courts (Supreme, Industrial, Land and Environment, District, Compensation and Local Courts), and has as its president the Chief Justice of New South Wales, The Honourable Mr Justice Gleeson A.C.

The Commission conducts its education programme in conjunction with the education committees of each court under the direction of the head of jurisdiction. This education programme is co-ordinated by a Standing Advisory Committee on Judicial Education which consists of the chairmen of each education committee and reports to the Commission. Education committees for each court are responsible for developing and managing programmes of activities conducted on behalf of each court with the assistance of the Commission's professional staff. Indeed, the success of the education programme is the result of the close collaboration with the judiciary and extensive involvement of judges and magistrates in determining its nature and content.

The Commission's education programme commenced in 1988 and initially concentrated on offering occasional seminars to judicial officers as the need arose,<sup>6</sup> publishing the *Judicial Officers Bulletin* and bench books, and on designing and developing a series of activities for the Local Courts of New South Wales, Australia's largest court, comprising 128 magistrates.

### Role of Continuing Judicial Education

A number of definitions of continuing judicial education have been formulated but, in essence, the notion is perhaps best summed up in the words of Sallmann:

“The purpose of judicial education, judicial training, or whatever one wishes to call it, is to assist in producing a better and more effective judiciary. We should not be reticent or bashful about this”.<sup>7</sup>

This, of course, then raises the further question: “*How do we do this in the most useful way?*” The answer to this question is provided by undertaking an education needs analysis. Needs analysis can be—and often are—undertaken informally on the basis of “intuitive” assessments of anecdotal evidence and personal experience. Alternatively, a more formalised process can be adopted aimed at testing these subjective indications with objective or at least a range of diverging subjective indicators.<sup>8</sup> In this regard, some very interesting doctoral research has been undertaken in the United States on judges' reasons for participating in continuing professional education.<sup>9</sup>

From the perspective of a judicial educator, it is appropriate to adopt a definition of education which is both practical and compatible with adult learning theory:

“Education services are defined generically to include 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”.<sup>10</sup>

Within this context we can see continuing judicial education as a process being primarily concerned with facilitating learning rather than teaching in any pedagogical sense.<sup>11</sup> As Houle expounds after reviewing the research on professional learning practices:

“the primary responsibility for learning should rest on the individual; both desire and ability are crucial . . . continuing education should be considered as a part of an entire process of learning that continues throughout the life span”.<sup>12</sup>

Educational theorists argue that adults learn in a distinctive way. Put simply, they are self-directed, build on the reservoir of actual experience, are orientated increasingly to the developmental tasks of her or his social role (that is, is specifically task-orientated rather than abstract) and focus on immediate problem solving.<sup>13</sup>

This raises a number of interesting implications for those responsible for conducting professional education programmes. As Cross observes, professionals are among the most active self-directed learners in society. They have highly focused problems. They usually know what they need to learn and—the headache of adult educators—any course general enough to appeal to sufficiently large numbers will therein probably contain much that is redundant or irrelevant to the problem-orientated learner. She concludes:

“A corollary to the assumption that adults are largely problem-orientated learners is that the more sharply the potential learner has managed to define the problem, the less satisfactory traditional classes will be.”<sup>14</sup>

This has led Tough to conclude that in order to operate effectively, continuing education should focus on the learner rather than the subject in order to give freedom to pursue self-directed development.<sup>15</sup> Consequently, the role of the continuing professional educator is primarily facilitative.<sup>16</sup>

The question must then be asked: "*To what extent is adult learning theory applicable to this new discipline of continuing judicial education?*" To this point, the lack of researched data precludes any conventional answer. What can be said on the basis of experience and observation, I believe, is that judges are likely to epitomise the distinctive learning characteristics of professionals generally. That is, the work practices which judges inherit from successful careers at the bar are continually refined to succeed against an opponent in winning a current case through the most effective research and application of the law. Recognising that no counsel or even judge would claim to "know all the law" this work ethic can be translated into a continuing professional learning practice which is highly intensive, entirely self-directed, inherently competitive, and orientated to an immediate practical outcome.

The implication of extending this hypothesis on the application of adult learning theory to judicial education has the effect that, put simply, we should see the ultimate goal of judicial education as being to promote the effective facilitation of continuing learning by judicial officers.

### Needs Analysis

The Judicial Commission has undertaken two education needs analyses in 1988 and again in 1991, in order to assist it to organise an appropriate scheme of continuing judicial education. Most recently, this process involved a number of major activities including:

1. *Judicial Interviews*: an extensive series of interviews was undertaken. Interviewees were selected on the basis of ability to provide informed direction and insights for purposes of continuing judicial education. They included all Heads of Jurisdiction, chairpersons of each court's education committee, members of the Judicial Commission, and other pre-eminent non-judicial members of the justice system from the private profession, public law offices, and others with an interest in judicial education.
2. *Judicial Survey*: a detailed 35-question survey was distributed to all judicial officers in the State addressing a range of issues relating to educational and occupational needs and practices, and to the effectiveness of existing Commission services.
3. *Review of Judicial Management Data*: management data relating to judicial administration, generally, and the management of caseloads by the three major State courts, specifically, has been collected and appraised from the various courts, government departments and the Director of Public Prosecutions.
4. *Analysis of Resources (Budget, Staffing and Facilities)*: were undertaken to determine the outer constraints on the education services which the Commission could deliver.

The outcome of this analysis was to provide the Commission with an abundance of information on a range of needs in the judiciary<sup>17</sup> which formed the basis for defining the most useful directions for the development of our education programme.

### Policy of Continuing Judicial Education

It was necessary from the outset to develop an education programme which could prioritise and deliver services effectively to meet those identified needs and contribute to the continuing enhancement of judicial competence and expertise. This was done by formulating and subsequently refining a policy on continuing judicial education, and by methodically planning a programme of education services which met specific needs in a manner which permitted us to attain our strategic goals.

The rationale for developing a formal policy was to provide a manageable means of implementing the Commission's education charter by identifying specific goals, defining the broad direction and parameters of the programme, setting priorities of action, and finally, allocating roles and responsibilities of affected parties.

The content of the Commission's current policy reflects these objectives by outlining the Commission's "Guiding Principles", specifying a range of education services to be provided, and defining the nature of the roles and responsibilities of those involved in providing judicial education.<sup>18</sup>

### Programme of Education Services and Activities

Since the early days in 1987, the Commission's education programme has grown considerably to the point where we now conduct an extensive range of conference, publication and computer training services for every court and judicial officer in the State.

While it is not appropriate in this forum to discuss in detail the planning and design of a programme of continuing judicial education, it may be useful to outline a conceptual framework within which this process can be undertaken. In our experience we have found that any programme of judicial education should be planned in a way which facilitates a balanced approach being maintained. This is possible by categorising the nature of education services by reference to their content and pitch.

"Content" can be defined as the subject of the education. It describes what is being dealt with. This includes five variables of substantive law, procedure, management and administration, judicial skills or court craft and finally ethics. "Pitch" can be defined as the level of the education. It describes the treatment of the subject to match the experience of the participants. This includes a further five variables of induction and orientation, updating, exchanging experience, specialisation and refresher.

A matrix containing some 25 variables is created by combining these two axes.<sup>19</sup> These variables describe the nature of education services in planning terms and permit our education committees to control the structure, shape and direction of their education programmes. For example, one might discern a particular need to provide new appointees with training on how to conduct hearings or to write a judgment. Or one might determine

that it is useful to provide a short refresher course for circuit judges and magistrates with over ten years' experience on the *Evidence Act*. And so on.

This "matrix-planning" approach commends itself for identifying exactly what we are trying to do: it obliges us to define "need" and then to match a specific education "service" to address that need. As a consequence, those involved in planning and conducting judicial education should recognise where the education resource is being directed—and, conversely, where it is *not* being directed. As a result, any gaps in a programme become readily apparent using this approach, for example, in perhaps demonstrating that all resources are being focused on new judges—at the expense of providing any ongoing service for those with more than five years' experience.

The Commission's programme of education services and activities comprise the following:

#### *Conference and Workshop Programme*

1. *Annual Conferences for each Court*: Annual conferences provide a unique collegial forum for members of each court to address important topical issues of specific relevance to that court. Typically these may include recent or imminent changes in law, practice and judicial administration, acquiring specialist technical information, exchanging experience on current problems, developing future policy directions, and managing the impact of computer technology on the court.

Consequently, the Commission has actively promoted the introduction of annual conferences with the result that all courts in New South Wales now conduct their own annual conferences, which this year have included the Supreme, Industrial, Land and Environment and District Courts conducting inaugural annual conferences of between one and a half and three days in duration. In the case of the Industrial Court, this was residential. These conferences have been very highly appreciated by participants and, where appropriate, may be extended on to a residential basis in future.

2. *Five-day Education Programme for Local Court*: The education programme of the Local Court is the oldest and most extensive in Australia. All members of the Local Court again participated in the Court's education programme consisting of a three-day Annual Magistrates Conference, two two-day regional seminars and two series of five one-day workshops for metropolitan magistrates. In addition, an extensive orientation programme was conducted for new magistrates which is outlined below.
3. *Implementation of a Finding of the Royal Commission into Aboriginal Deaths in Custody*: The Local Court has begun to implement Recommendation 96 of the Royal Commission Report on judicial education<sup>20</sup> by setting the theme "Aborigines and the Law" for the Annual Magistrates' Conference. Magistrates were addressed by The Honourable Justice Mary Gaudron of the High Court of Australia, Mr Elliott Johnston Q.C., former Royal Commissioner, and representatives from the Commonwealth Attorney-General's Department, the New South Wales Police Service and the Aboriginal

Legal Service who were invited to participate. Members of the court then conducted workshops to consider ways in which the court could best respond to the Recommendations.

4. *Inter-Curial Seminar on Evidence Law Reform*: The Commission extended its tradition of promoting cross-judisdictional contacts by conducting another inter-curial seminar for all members of the judiciary. On this occasion a faculty of judges from New South Wales, Victoria and South Australia addressed issues for judicial officers arising from the proposed Evidence Bill 1991 (N.S.W.), following which a submission on the proposal was made to the Attorney-General.
5. *Conciliation Skills Workshops*: The Commission designed, developed and conducted a new series of workshops to develop dispute resolution and judicial skills for Magistrates. The workshops built very successfully on participants' experience to develop conciliation skills using role-play case studies.
6. *Computer Training*: Judges and Magistrates throughout the State are increasingly seeking assistance in the use of computers. A series of individualised computer training tutorials has been conducted to assist judicial officers particularly in managing evidence in complex hearings and in editing word processed documentary material. In addition, more than fifty judges and magistrates have undergone training on the Commission's Sentencing Information Service (a computerised database to promote uniformity in sentencing practices) in the past year. The Commission is planning to significantly extend computer training facilities in the immediate future to meet these increasing needs.
7. *Special Workshops for Non-Judicial Officers*: Education services have been extended to assist courts at the request of heads of jurisdiction on several occasions, where those non-judicial officers are exercising a quasi-judicial role and where the Commission has the capacity to do so. This has involved extending a number of courts' conferences to designated court officers such as assessors, conciliators and commissioners and on other occasions in conducting special educational activities for them. Examples of the latter have recently included members of the Industrial Relations Commission with a workshop on "Exercising Costing Powers".
8. *Production of a Speakers' Handbook*: The Commission has designed and produced a Speakers' Handbook for presenters and workshop leaders in Commission activities. The handbook provides clear and concise advice on how to make presentations more effectively. A number of presenters have expressed appreciation for this assistance which is a part of the Commission's commitment to promoting the highest quality education service.

#### *Publications Programme*

1. *Judicial Officers Bulletin*: Since its inception, the Commission has produced and published a monthly bulletin for all judicial officers in New South Wales which is designed to keep the judiciary informed. Most recently, the Commission has refined the Bulletin in response to conducting a readers' survey by raising editorial and production

standards and refocusing articles to address issues of the most topical relevance for judges,<sup>21</sup> including: The Role of the Law, Judiciary and Public Policy, Judicial Independence, Expediting Trials, Appeals and the High Court, Public Relations for the Courts, Judicial Appointment, The Courts and A.D.R., Doctrine of Precedent and the Role of the Judge, and Ex Tempore Judgments.

The commissioning of articles is directed to pre-eminent jurists from around Australia and the common law world. Recent contributors have included the Chief Justice of the High Court of Australia, The Honourable Sir Anthony Mason A.C., K.B.E., The Right Honourable Sir Ninian Stephen A.K., G.C.M.G., G.C.V.O., K.B.E., His Excellency The Honourable Richard McGarvie, Governor of Victoria and former member of the Supreme Court of Victoria, The Right Honourable The Lord Donaldson, Master of the Rolls.

At the same time, the Bulletin continues to monitor and analyse significant legislative reforms and unreported judgments in order to focus attention on the practical impact of such changes for judicial officers.

2. *Bench Books*: Bench books, or bench guides as they are sometimes called, are not new to the judiciary. However, for the most part, bench books vary substantially in their content, style and quality, and usually comprise a raft of precedents and notes gathered for possible future reference by individual judges.

The Commission has from its earliest days had a commitment to assisting judicial officers by devoting substantial resources to producing and publishing comprehensive, accurate and up-to-date bench books. In the past year, the Commission has significantly extended this commitment in response to our research indicating the highest level of appreciation from those judicial officers using our existing bench books by producing and publishing new bench services and improving our system of updating existing ones.<sup>22</sup>

The accuracy of existing bench books is of fundamental importance, and requires a considerable amount of work and diligence on the part of members of education committees who must continuously oversee and actively revise existing bench books. We have now introduced a twelve-month audit standard to ensure regular checking of the contents of services as well as ad hoc special revision as the need arises. Consequently, the Local Courts Bench Book has been substantially revised and fully updated during the year. The Supreme and District Courts Criminal Trials Bench Books have also been partially revised.

In the past year the Commission has produced two new bench books services including the Compensation Court Bench Guide, and has finalised material for publication in the Industrial Court and Industrial Relations Commission Bench Book. In addition, extensive work has been undertaken on the Land and Environment Court Bench Book which is expected to be completed in the near future. Finally, the Commission has most recently been requested to assist the Supreme Court and District Court with a new Common Law (Civil) Bench Book.

3. *Children's Court Bulletin*: The Commission collaborates with the Children's Court to publish two editions of the Children's Court Bulletin for all judicial officers exercising the children's jurisdiction each year.
4. *Judicial Commission Journal*: In view of the increasing volume of highly publishable papers being commissioned and delivered on matters of juristic importance and interest as a part of the Commission's conference programme, the Commission has approved the production of a journal of selected articles which will be published twice yearly commencing in 1992.

### Judicial Induction—New Magistrates Orientation Programme

The Local Court of New South Wales has developed an extensive orientation programme for new magistrates, based on a selection of the best judicial induction programmes from overseas.<sup>23</sup> Consequently, considerable attention has been directed to address the critical educational design issues to ensure the programme operates most effectively in assisting new judicial appointees. These issues include planning not simply the scope and content of the curriculum, but also its ideal format, structure and the most appropriate instructional techniques to be applied.

This orientation programme is designed to assist new magistrates make a smooth transition to the bench and address the major issues arising from those aspects of our education needs analysis.<sup>24</sup>

The nature and scope of any judicial induction programme is determined largely by the selection criteria, qualifications and experience of successful candidates to judicial office. Not a great deal is publicly known about formal selection criteria for appointment to judicial office. In Australia, judicial appointment falls within the domain of the ministerial prerogative and, to some extent, remains shrouded in mystery. What can be said, however, is that judicial appointment in Australia is on merit, appointees must be of good character, command the respect of their peers and have undertaken a minimum period of practice. While the criteria for this appraisal may vary from minister to minister and indeed from court to court, it is important to observe that the criteria for selection to judicial office play a decisive role in establishing the threshold for any scheme of continuing judicial education and, perhaps in this light, warrant further articulation.

Specifically, the objectives of the orientation programme focus on the development of judicial skills, court craft, judicial administration and case management technique, sentencing practice, and ethics; except in specifically defined areas (such as assessing the impact of recent developments and important changes in law), we do not see the role of judicial induction or continuing education encompassing instruction on matters of law.<sup>25</sup>

The orientation programme of the Local Court of New South Wales operates as a coherent supplementary part of the education programme of that court, and comprises four distinctive elements: pre-appointment, post-appointment, continuing follow-up, and mentoring.

1. *Pre-Appointment*: The initial induction of new appointees to the court consists of an intensive two-day workshop which is designed to assist the new magistrate make the transition to the bench. The workshop highlights in advance particular aspects of "court craft" including judicial skills (such as conducting a committal, or conducting a hearing of an unrepresented accused), and court management techniques. Instruction is provided in a series of detailed role play exercises in which the new appointee personally participates as judicial officer presiding over an orchestrated case study scenario on which he or she receives detailed personal evaluation from senior instructors; video-recording of some role plays is undertaken to allow appointees to appraise their own performance.
2. *Post-Appointment*: The second phase of induction consists of a five-day residential course which is designed to review and consolidate experience obtained in the initial six to nine months of judicial appointment. This course builds on the themes raised in the pre-appointment workshops and also extends attention to new issues calling for actual experience, for example, in the form of sentencing exercises. Once again, instruction technique is primarily through participatory small group workshops interposed with occasional informal lectures.
3. *Continuing Follow-up*: Owing to the broad nature of the general jurisdiction exercised in the Local Court, and to the confluence of special law and procedure involved in particular matters likely to arise, an additional series of short half-day seminars have been developed to address particular requirements of specific matters such as bail, committals, family law, Children's Court, *Mental Health Act 1990* and so on.
4. *Mentoring*: A mentor scheme has recently been innovated and introduced in the Local Court to assist new appointees. The scheme supplements the structured orientation programme by providing direct and informal access to the assistance of an experienced Magistrate. Mentoring is a classic and fundamental means of professional induction: it is on-the-job, practical and the learning process is soundly based on a model of demonstration, practice and appraisal. With the approval of the Chief Magistrate, the Commission has prepared Guide-lines for Mentors and New Appointees designed to clarify the role and expectations of the parties. A preliminary evaluation of the scheme indicated that it was a useful source of assistance and support, and will be extended in future. The progress of this scheme is the subject of publication by the United States Judicial Education Reference, Information and Technical Transfer Project (JERITT).

To the extent that the orientation programme of the Local Court consists of between seven and nine days of structured induction from the period immediately preceding appointment to between 12 and 15 months after appointment, it is supplementary to the court's commitment of five days for continuing judicial education. The new magistrate in New South Wales may thus participate in up to 12 to 14 days of judicial education in the first year of appointment. The commitment of the Local Court of New South Wales to continuing judicial education is a major investment. It is obviously a

costly investment for the court in terms of sitting time forgone. Is it worth it? We believe it is. We reach this view as the result of evaluating the programme.

### Evaluation

All Commission education activities are subjected to formalised and systematic evaluation to critically gauge the success of our efforts and to provide an objective means to review and continually improve the programme. This evaluation is both formative and summative and consists of numerous segments: the feedback of participants and instructors, our professional observations, and comments and appraisal from members of the education committee on behaviour patterns following activities. Clearly this is unavoidably anecdotal evidence, yet it correlates with other indicators which collectively assure us that the investment in judicial education is already bearing fruit in New South Wales.

The issue of evaluation raises some interesting issues for judicial officers and educators alike—put simply, "how do you know what you're doing is worth it?", or put more directly: "How do we *demonstrate* the value of judicial education?"

There will be many with us here today who are satisfied with the usefulness of C.J.E., based on the anecdotal evidence of our personal experience either as a participant or an observer. But how many of us can "prove" the value of C.J.E. and demonstrate its worth to our Attorneys-General on whom our education funding may depend; particularly when they typically may exhibit the cynicism of economic rationalism which demands an identifiable, tangible net financial benefit from our endeavours.

Once we have absorbed the useful but unavoidably limited feedback of "happy sheets" after our seminars, we are confronted with the more serious challenge of introducing methodologically-sound, objective frameworks to measure the benefits of judicial education in terms of performance. It is at this point that we confront the conundrum: where the notion of evaluation of training is normally raised, we also find references to measuring the effects of that training in terms of observable work behaviours. And when we search for appropriate performance criteria in the dispensation of justice, almost irresistibly we find reference being made to case loads, throughput times and appeal rates as being the appropriate indicators. These are selected as quantitative—measurable—indicators. But, only governments deal in terms of these indicators; in my observation, lawyers and judicial officers in particular do not. Judicial officers deal in terms of the quality of justice, not the quantity. Judges find quantitative criteria anathema to the essence of justice which requires a fair trial for all.

The critical question then becomes: "At what cost must justice be fair, in terms of delay, satisfaction or expense?" These are vexed questions which the judiciary is actively addressing and should not be canvassed here, other than to observe that it may ultimately be possible to assess the value of education in terms of these costs. It remains to be seen whether a credible justice management system can be developed which can relate and measure the impact of continuing judicial education in terms of improvements in

objectively identifiable criteria such as the number of successful appeals (Quaere: is this a reliable indicator of the quality of judicial intervention?), case throughput times and financial cost (Quaere: are these reliable indicators of effective judicial administration?).

Ultimately, we should be satisfied that the substantial cost of continuing judicial education in direct financial cost, in forgone sitting time, and in instructor and participant effort is worthwhile. It will only be when we develop a consensus approach to some of these fundamental questions in evaluation that progress can be made in demonstrating value.

### Current Issues in Continuing Judicial Education

I see continuing judicial education as capable of making a dynamic contribution to facilitating and expediting the process of transition to the bench. Judicial induction is at the threshold of appointment and should play an important part in any programme of continuing judicial education. As such, a soundly developed education programme which assists in orientating the new judicial officer will benefit both the new appointee and the court to which he or she is appointed.

Equally, I see the role of continuing judicial education playing a dynamic role for more experienced judicial officers. There are many new challenges and frontier issues to be addressed. This will involve developing a more comprehensive education programme which is structured to address a wider variety of particular needs of judicial officers which may include, for example, distance education programmes designed to assist circuit judges and magistrates, and individualised services specifically designed to assist experienced and senior judges; how much we are able to usefully adopt the many potential applications of computers and new developments in educational technology remains to be seen.

At the Judicial Commission we have made some significant inroads in continuing judicial education over the first four years, to the point where we match or exceed the experience in either the United States or the United Kingdom. But I see our present challenges taking us far beyond the outposts of existing experience and achievement.

### Endnotes

<sup>1</sup> *Judicial Officers Act* 1986 (N.S.W.), s. 8.

<sup>2</sup> *Ibid.*, s. 9.

<sup>3</sup> *Ibid.*, Pt 6.

<sup>4</sup> *Ibid.*, s. 11.

<sup>5</sup> A. L. Riches, "Continuing Judicial Education in New South Wales" (1988) 6 (No. 2) *Journal of Professional Legal Education* 150 at 150-162.

<sup>6</sup> For example, including "Section 52 of the Trade Practices Act" and "D.N.A. Profiling—a Judge's Perspective".

<sup>7</sup> P. A. Sallmann, "Judicial Education: Some Information and Observations" (1988) 62 *A.L.J.* 981 at 981-1005.

<sup>8</sup> J. Hudzik, "Judicial Education Needs Assessment and Program Evaluation" (1991) *Michigan State University: JERITT Monograph One*.

<sup>9</sup> D. Catlin, "An Empirical Study of Judges' Reasons for Participating in Continuing Professional Education" (1982) 7 (2) *The Justice System Journal* 236-256.

<sup>10</sup> Preamble to "Survey on Continuing Judicial Education" (1991) Judicial Commission of New South Wales.

<sup>11</sup> See, inter alia:

R. M. Cervero, *Effective Continuing Education for Professionals* (Jossey-Bass, San Francisco, 1988);

K. P. Cross, *Adults as Learners* (Jossey-Bass, San Francisco, 1981);

C. Houle, *Continuing Learning in the Professions* (Jossey-Bass, San Francisco, 1980);

M. S. Knowles, *The Modern Practice of Adult Education: Androgogy versus Pedagogy* New York (Associated Press, 1970);

M. S. Knowles, *The Adult Learner: A Neglected Species* (2nd ed., Gulf, Houston, 1978).

<sup>12</sup> Houle, *supra*, pp. 305-315. See Annexure 1.

<sup>13</sup> Knowles (1970), *supra*, p. 39.

<sup>14</sup> Cross, *supra*, p. 193.

<sup>15</sup> A. Tough, "Why Adults Learn: A Study of the Major Reasons for Beginning and Continuing a Learning Project" (1968) 3 *Monographs in Adult Education*; A. Tough, *The Adults Learning Projects: A Fresh Approach to Theory and Practice in Adult Learning* (Toronto, 1971), p. 10.

<sup>16</sup> Cervero, *supra*, pp. 57-74.

<sup>17</sup> Responses of individuals to the Survey on Continuing Judicial Education were confidential. These responses were aggregated to identify common trends and critical variables. Issues canvassed in the survey included, inter alia:

Reasons for, and barriers against, education usage;

Actual past use of Commission education services;

Usefulness of particular education services;

Usefulness of particular possible future services;

Preferred form of education and faculty;

Quantity and use of hours worked;

Delivering judgments and reserved judgments;

Changes in workload;

Role in caseload administration; and

Supply of appeal decisions.

### <sup>18</sup> POLICY OF CONTINUING EDUCATION: GUIDING PRINCIPLES

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 skills, 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 programme 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:

- Inducting new appointees with comprehensive training;
- Updating all judicial officers on important recent changes in law, procedure and practice;
- Producing bench books for each court, with a process for regular updating;
- Publishing the *Judicial Officers Bulletin* on a regular basis to inform judicial officers on current law and to promote consideration of important judicial issues;
- Where requested, assisting in the administration of conferences for each court;
- 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 and 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 programmes 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 programme.

#### Evaluation

The Commission will evaluate the effectiveness of its programme 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.

(Date: 10 February 1992)

The N.S.W. approach should be compared with that taken by the National Association of State Judicial Education (NASJE) in the United States: see Annexure 2.

<sup>19</sup> See Matrix Planner, below, Annexure 4.

<sup>20</sup> Royal Commission into Aboriginal Deaths in Custody, Australian Government Publishing Service (Canberra, 1991), Vol. 5, p. 91, inter alia: "That judicial officers and persons who work in the court service and in the probation and parole services and whose duties bring them into contact with Aboriginal people be encouraged to participate in an appropriate training and development programme, designed to explain contemporary Aboriginal society, customs and traditions."

<sup>21</sup> The J.O.B. is less used in the Supreme Court, than in the District and Local Courts (25 per cent of respondents do not use, compared with 3.6 per cent and 15.2 per cent respectively).

<sup>22</sup> The Bench Books and the Judicial Officers Bulletin are very actively utilised by most judicial officers (84.6 per cent and 83.8 per cent of respondents use at least monthly, respectively), and are the most frequently used Commission services. In those courts where bench books are available, extremely high levels of usage are recorded, on a monthly basis (District 92.9 per cent and Local 91.1 per cent).

<sup>23</sup> The Commission undertook detailed research and observations of judicial induction programmes conducted by the Judicial Studies Board (J.S.B.) in the United Kingdom and the most appropriate programmes in the United States from the California Centre for Judicial Education and Research (C.C.J.E.R.), the Michigan Judicial Institute (M.J.I.), the Federal Judicial Centre (F.J.C.); and from the National Judicial Institute (N.J.I.) in Canada and research material supplied from the National Association of States Judicial Educators

(NASJE), the Judicial Education Reference, Information and Technical Transfer Project (JERITT) and elsewhere. The N.S.W. approach should be compared with the NASJE approach in the United States: see Annexure 3. Annexures 5 and 6 detail subject matter distribution of entries on the JERITT database and most frequently occurring topical entries during 1990/1991 respectively.

<sup>24</sup> L. Armytage, "Some Insights into the Needs of Magistrates in New South Wales" (Judicial Commission of New South Wales: Annual Magistrates Conference 1991).

<sup>25</sup> Formidable arguments exist to militate against the inclusion of substantive law into the domain of judicial education in any system of judicial appointment on merit. In Australia appointment to the bench is based on merit, appointment to superior court benches has traditionally been almost exclusively from the ranks of senior trial counsel, while appointees to the magistracy are normally legally qualified and drawn from the ranks of practitioners and public law officers. The position is different in the United States where selection can be made on election. In the United Kingdom, appointment is usually through the ranks of Recorders who undergo formal induction under the aegis of the Judicial Studies Board. In the United Kingdom, a concept of promotion exists within the judiciary which has major implications on the education needs of appointees and on the structure and scope of any judicial induction programme. Interestingly, there are signs of an emerging trend towards the British promotional approach to judicial appointment from the ranks of lower courts to senior benches in a number of recent appointments in New South Wales.

#### Annexure 1

##### Dominant Objectives of Professional Learning

"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."

C. O. Houle, *Continuing Learning in the Professions* (Jossey-Bass, San Francisco, 1980), p. 34.

#### Annexure 2

##### National Association of State Judicial Educators

##### Principles and Standards of Continuing Judicial Education

**The Goal of C.J.E.:** To maintain and improve the professional competency of all persons performing judicial functions, thereby enhancing the performance of the judicial system as a whole.

#### Objectives

1. to assist judges to acquire 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 practices and procedures;
5. to improve the administration of justice; and
6. to enhance public confidence in the judicial system.



Annexure 3

**National Association of State Judicial Educators  
Curriculum of Judicial Education**

**Orientation**

New judges should participate in a multi-faceted orientation process which includes substantive instruction, written materials, and an adviser judge process.

It 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, courtroom communication skills, demeanour, community and media relations, and meetings with administrators of various court-related agencies and programmes.

**Continuing Education**

Throughout her or his career, a judge should participate in a comprehensive series of continuing judicial education activities, whether basic, advanced or specialised, at least once a year, and for a minimum of 15 hours annually, exclusive or orientation. Curricula for C.J.E. should include, at a minimum, offerings in the following areas:

*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;

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

*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;

*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; and

*Personal Developments:* revitalisation and re-dedication to public service; awareness of the need to maintain high levels of personal well-being; and stress management.

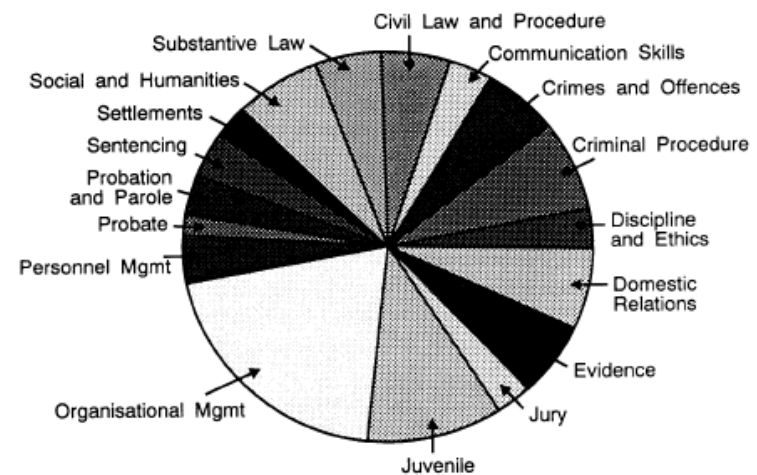
Annexure 4

**Matrix of Services: Programme Planner**

CONTENT	Substantive Law					
	Procedure					
	Management and Admin					
	Judicial Skills and Court Craft					
	Ethics					
		Orientation	Update	Exchange	Specialty	Refresher
		PITCH				

Annexure 5

**Figure 3-12.**  
**Subject Matter Distribution of Topical Entries to the JERITT Programmes Database: July 1990-June 1991**  
(All types of participants)\*



\* Source: J. K. Hudzik, "Issues and Trends in Judicial Education", Michigan State University, JERITT (1991), p. 161.

## Annexure 6

**Table 3-11**  
**Most Frequently Occurring Topical Entries in the JERITT**  
**Programmes Database for the Period July 1990 to June 1991\***

CIVIL LAW AND PROCEDURE (4.0%)	Child Support Visitation Alimony Property Rights
Enforcements Orders/Judgments Landlord/Tenant Small Claims Complex Litigation Law and Motions Pretrial	EVIDENCE (4.6%) Hearsay Scientific Expert Opinion Impeachment Documentary
COMMUNICATION SKILLS (2.7%)	JURY (2.0%)
Legal/Opinion Writing Oral Communication Written Communication	Jury Management Criminal Jury Instructions Civil Jury Instructions Selection
CRIMES AND OFFENCES (4.6%)	JUVENILE (8.4%)
Traffic Offences D.U.I. and D.W.I. Drug Cases Misdemeanors Capital Cases	Substance Abuse Child Abuse/Neglect Disposition/Treatment Alter. Probation Adoption Detention Juvenile Sex Offender
CRIMINAL PROCEDURE (5.1%)	ORGANISATIONAL MANAGEMENT (15.9%)
Search and Seizure Constitutional Rights Pretrial Proceedings Plea Agreements Bail/Bond Warrants Processing Discovery Motions	Case and Delay Management Computer Applications Leadership Managing Technology Trial Management Team Building Community and Media Relat. Strategic Planning Management Info. Systems Court Security Organisation Change and Dev. Budgeting Records Management Accounting/Bookkeeping Project Management Programme/Action Planning
DISCIPLINE AND ETHICS (2.5%)	
Judicial Ethics Staff Ethics Attorney Ethics	
DOMESTIC RELATIONS (5.0%)	
Domestic Violence Child Custody	

PERSONNEL MANAGEMENT (3.2%)	SUBSTANTIVE LAW (3.7%)
New Employee Orientation Performance Appraisal Motivation	Administrative Constitutional Tribal Employment Workers' Compensation Insurance
PROBATION AND PAROLE (2.3%)	MISCELLANEOUS (top 10) (25%)
Supervision and Monitoring	New Judges Orientation Substance Abuse Municipal Courts Clerks Magistrates Computers Appeals Procedure Decision Making Legislation/Statutes Legal Updates
SENTENCING (2.7%)	
Sentencing Alternatives Misdemeanants Sentencing Guidelines/Law	
SETTLEMENTS (1.8%)	
Dispute Resolution Tech. Mediation Alter. Dispute Resolution Arbitration	

\* Source: J. K. Hudzik, "Issues and Trends in Judicial Education", Michigan State University, JERITT (1991), pp. 162-164.