



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

Teaching Judicial Ethics: Providing Experience to Build Skills

THE HONOURABLE JUSTICE C. ADÈLE KENT
Court of Queen's Bench of Alberta
Calgary, Alberta

SUSAN LIGHTSTONE
National Judicial Institute
Ottawa, Ontario

**IOJT Conference
Sydney, 2009**

www.nji-inm.ca



Judicial Education in Canada

- Entirely voluntary
- No formal career or educational path to becoming a judge
- Appointments are for life
- No special courses required to maintain one's status as a judge, but...
- Most courts encourage their judges to devote at least ten days per year to education
- All education must respect the principle of judicial independence



The National Judicial Institute (NJI)

- Primary provider of judicial education in Canada
 - Serves 2000 judges with varying skill levels across 10 provinces, 3 territories and close to 40 separate courts
- Founded in 1988
- Primarily funded by governments - federal and provincial
- Staff of 50 and hundreds of judicial volunteers, including 12 Judicial Associates
- Programming divided between National and Court-based programming
 - National programming is open to judges across courts
 - Court-based programming is staged for and by judges of a specific court (or group of courts)



Three Dimensions of Judicial Education... Plus One:

- Knowledge
- Skills
- Social context
- Ethical awareness



Principle:

- Every area of the curriculum asks judges to develop:
 - Knowledge (analysis), and ability to do things (skills)
 - Within:
 - Legal and social contexts (attitudes)
 - A judicial manner (ethical awareness)



What "skills" do judges use?

- **Listen, Assess and Filter**
 - Receive evidence (filtering)
 - Assess credibility
 - Hear legal submissions
- **Speak (Verbal and non-verbal communication)**
 - Managing the trial process
 - Communicating in the courtroom
 - Questioning
 - Facilitating dispute resolution (settlement conferencing)
 - Delivering oral judgments



... judges

- **Think** (Intellectual or cognitive skills)
 - Interpret and apply principles of law, procedure
 - Take into account context; exercise discretion
 - Synthesize information
 - Apply judicial reasoning (fact + law + context = decision)
- **Decide**
 - Reach a decision (result)
 - Decide on the outcome (remedy): a sentence, an order.
- **Write**
 - Convey decisions with sufficient reasons
 - Organize evidence, notes, affidavits: “the writing process”
 - Write judgments



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

Principle:

Implementing Adult Learning Principles



Judges as Learners

- Attributes
- Concerns
- Expectations



...attributes

- Highly motivated learners but not necessarily for traditional reasons
 - Judging is an isolated job; judicial education brings judges together to share experience
- Accustomed to processing a great deal of information in a short time period
 - Are skillful listeners
- Tend to be impatient
- Look for positive reinforcement



...attributes

- People who have succeeded in their chosen profession of law, and thus be used to giving out "advice" rather than receiving it
- Have a desire to succeed in tasks (and education activities)
- Like to be in control
- Skeptical by training and instinct
- Tend to be concrete thinkers who are problem-solvers; tend not to want "theory" for its own sake; material has to be on point and practical



...attributes

- Have a broad range of interests
- Like to have fun - sociability and stimulation in learning environment
- Reluctant to learn new things in new ways (unless it has tangible results)
- Appreciative of good judicial education programs and exchange. Will adopt new approaches if they work/meet their needs



... differences

- Work in both rural and urban settings
- Work in regionally distinct areas
- Work in (differing) multi-cultural contexts



Principle:

Judicial education should reflect the character and profile of the judiciary in Canada



...expectations

- Already know a lot about law and process; want to learn new, relevant, deeper and more engaging things
- Want what they hear to relate directly to the work that they do (relevance)
- Want to have a chance to share experiences with other judges given isolation of daily work
- ... "herd like cats," in other words, judges tend to resist rigid structures and expectations



...expectations

- Are used to being taught by other judges and in a professional lexicon
- Want faculty members to be not just good presenters but to have relevant and convincing experience
- Want education to be less about finding the right answer and more about helping judges to make choices



...concerns

- Confidentiality and "safe learning space" are very important
- Will jealously guard judicial independence in the learning environment
- Will resist "right answer" education or prescriptive approaches. Are careful about to whom they will listen and respect
- Are adverse to criticism; not used to feedback



Principle:

Judges are adult learners who have a particular professional context and constitutional position. Judicial education will be most engaging and effective when it implements adult learning principles and uses a experiential, skills-based approach



Adult Learning Principles:

- **Connect learning to learners' experiences**
 - Learning is achieved through connections with past experiences
 - Link to what judges have done
- **Use learners' experiences as resources**
 - Adults learn best when their experiences are valued
 - Create opportunities for judges to share experience



...adult learning

- **Contextualize learning experiences**
 - Adults learn well when they have context for the learning experience
 - Use learning activities — for example, role playing courtroom scenes or giving judgments — that are as close to judges' realities as possible
- **Integrate various perspectives in the learning activities**
 - Encourage learners to be critical thinkers
 - Judges are excellent information filters; allow learners to explore and progress at their own level with the subject matter



...adult learning

- **Adult learning is facilitated when learners are actively involved**
 - Use a variety of formats and "go around the circle" – more on this later...
- **Use a "learner-centred model" rather than a "teacher-centred model"**
 - Focus on what the learner is doing at any given moment – not what the teacher is doing
 - Create formats where learners "generate" the knowledge and, thus, their own learning. This promotes learner autonomy and self-development
 - Lectures have their place (knowledge transmission is part of learning), however, they become shorter and tied to activities rather than being the main event



...adult learning

- **Respect judicial authority**
 - Frame education as enhancing knowledge and skills rather than as teaching judges “things they need to learn”
 - Don’t purport to give “right answers” (and especially not from non-judges!)
- **Provide “safe space” to learn**
 - Provide a safe space to ensure that — even outside their normal comfort zones — judges can remain confident and in control of the learning process
 - Some sessions need to be judge-only. Confidentiality rules. No media



Principle:

Accommodate different learning styles for adult learners



But...

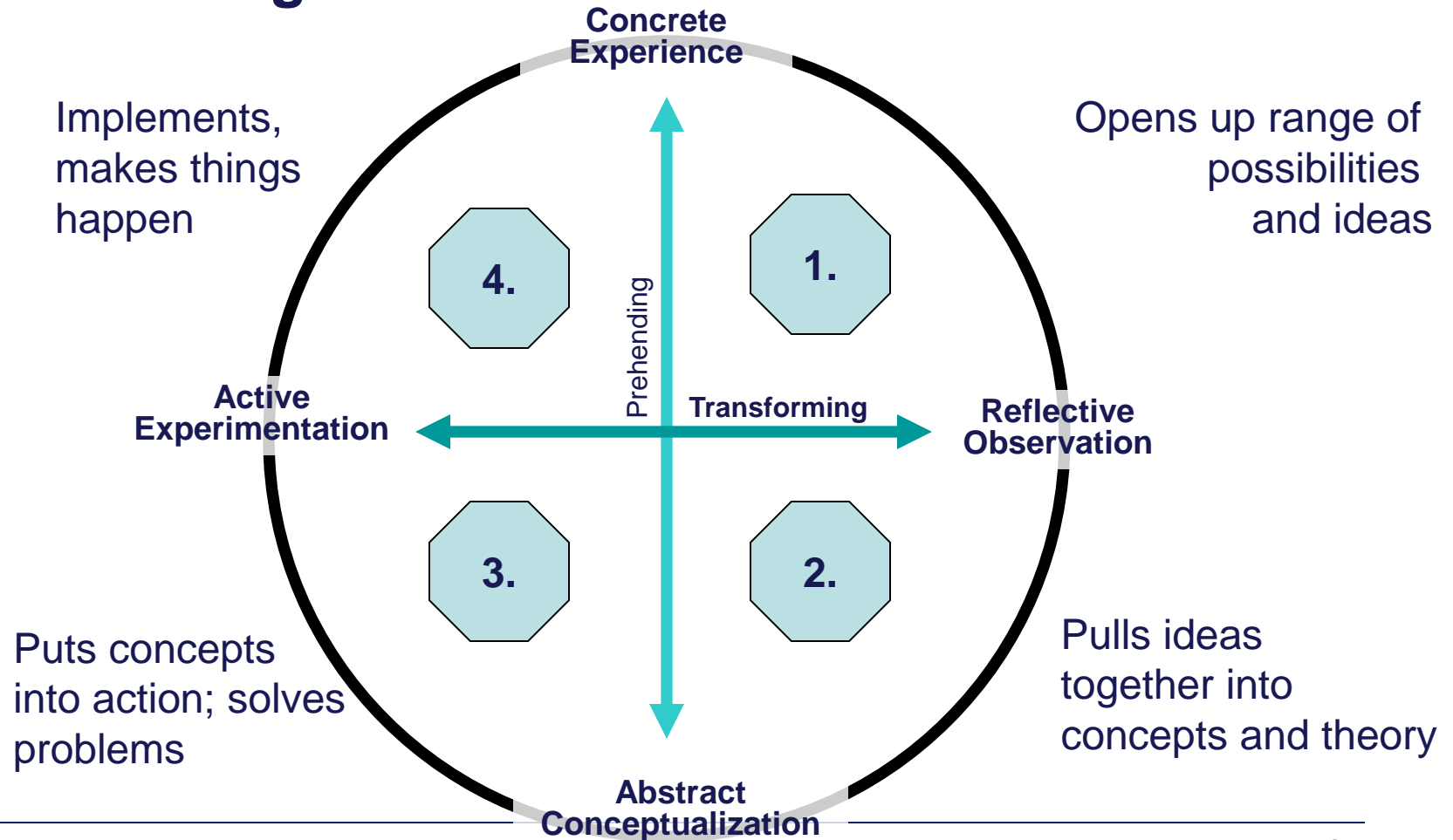
- Every group will have a mix of a learners

And

- Everyone responds to and needs the stimulus of all types of learning styles to one extent or another



Learning Preference and the Experiential Learning Circle





NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

Principle:

Design education to move around the
experiential learning circle

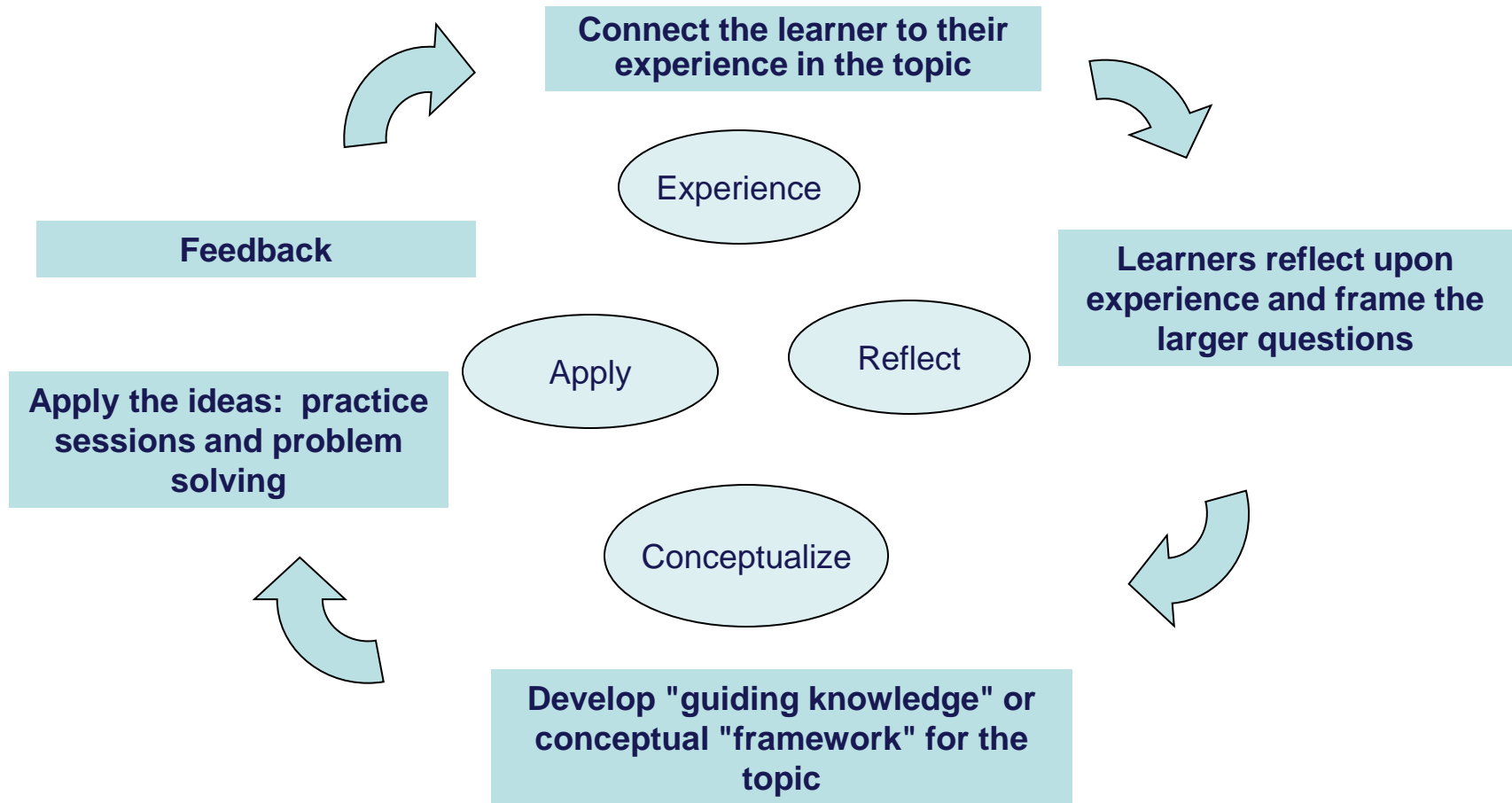


Moving "around the circle"

- Promotes growth and development of learner
- Creates an environment that everyone will feel comfortable in at one point or another
- Broadens the learning content
- Leads towards more active learning and retention



Example of General Experiential Design





Example: Judicial Ethics Program (Circles within Circles)

- Circle One: Macro -- Overall Program
 - Topic introduced (judicial role, Canadian guidelines and process) (**experience**)
 - Ethical issues defined (**reflect**)
 - Framework for problem solving given and demonstrated (**conceptualize**)
 - Practice on ethical problems using framework (**apply**)

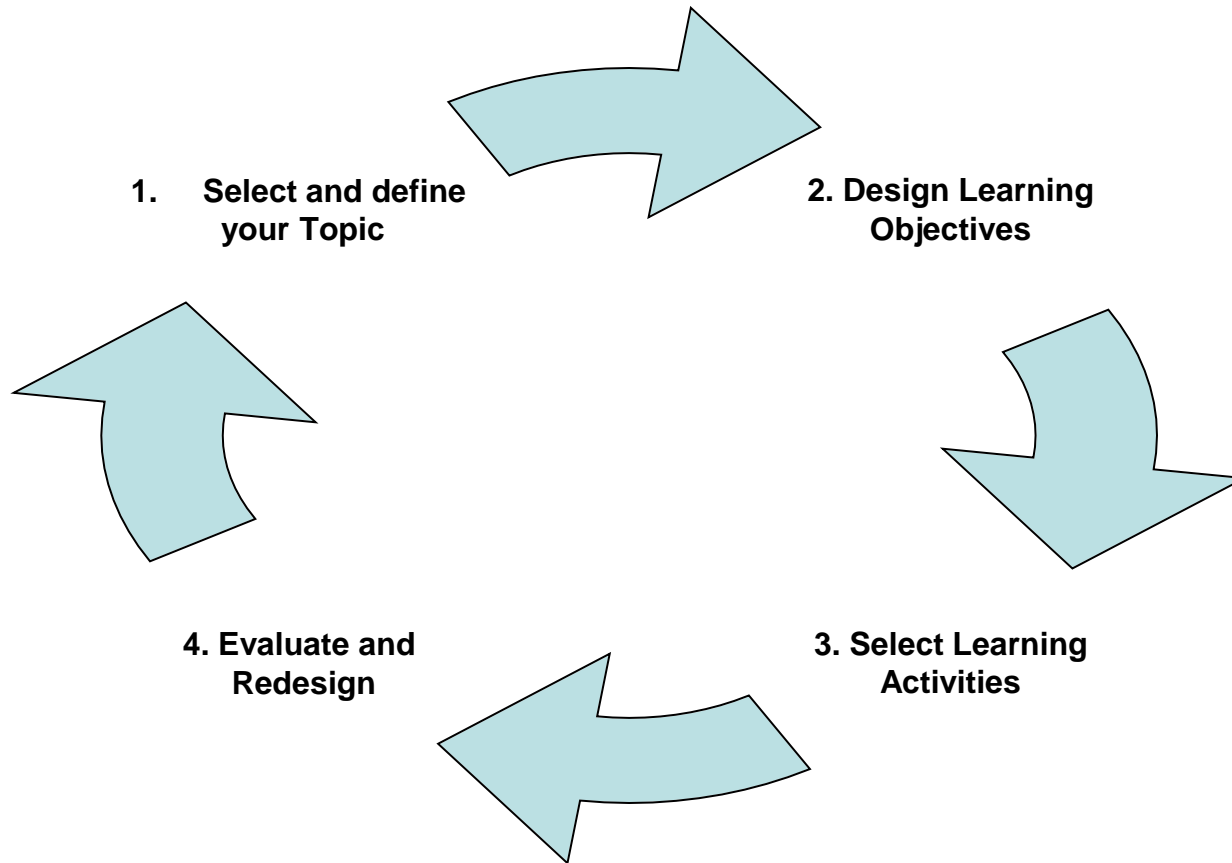


...ethics design

- Circle Two: Micro -- The Practice Session
 - Video vignette of problem (**connect to experience**)
 - Identify issues (**reflect**)
 - Complete blank ethical framework given for problem (**conceptualize**)
 - Small group discussion (facilitated) and receive completed framework (**apply**)



Course Design





The “Three Pillars”

- The forum of judicial education -- outside of the adjudicative and adversarial process -- creates a space for exchange and learning between judges and non-judges
- Who’s involved?
 - Judges
 - Academics/researchers
 - Practitioners/community-based experts



...judges and non-judges

The Planning Committee:

- a broadly representative group of planners and faculty members can enhance understanding of issues, quality of content and broad credibility of programming
- Judicial confidentiality must be respected
- Under judicial leadership



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

Principle:

Set Learning Objectives



Why identify learning aims and objectives?

- Aids in the process of designing an education program.... informs decisions about content, methods, learning approaches, and materials
- Allows the educator to describe and summarize the content and value of the program
- Gives the participants an overview of the session, and an indication of its value to them in advance
- Allows educators to assess whether the content is complete and relevant in advance of the program



...why learning objectives

- Helps ensure that facilitators and speakers understand their task(s)
- Allows participants to see more clearly the particular knowledge, skills and attitudes they are expected to acquire or improve upon, and
- Provides a framework for proper program evaluation at the end of a program



Aims... Learning Objectives

- An **aim** describes the broad purpose of the program...
- **Learning objectives** are stepping stones on the way to achieving the aim. They are what the participants should know, understand, and be able to do at the end of the education program
- As a result of this training, what will judges be able to do?

↓ Write the objectives



Characteristics of good learning objectives:

- Learning objectives need to be **SMART**:
 - **S**pecific
 - **M**easurable
 - **A**chievable
 - **R**ealistic
 - **T**imebound



SMART

- **Specific**
 - Does the learning address specific knowledge, skills or behaviour?
- **Measurable**
 - Can the learning be measured?
 - Will it be possible to assess whether the outcome has been achieved?



SMART

- **Achievable**
 - Will it be possible to achieve this learning with the resources available?
- **Realistic**
 - Is it realistic to expect to achieve the learning in this context?



SMART

- **Timebound**

- Can the education be achieved in the time available?
- Timed agenda is key to an organizing program



Step: Describe learning objectives...

- Express the end result of the education program:
 - What education needs or gaps in knowledge or skills will be addressed?
 - What will participants know/be able to do/do better as a result of the session?
 - What will participants take away from the session that will enable them to fulfill their judicial role more effectively?



Example: Ethics Program

- Participants will be able to:
 - Identify ethical issues
 - Analyze ethical issue using a framework approach
 - Apply relevant ethical norms
 - Select preferred options when faced with ethical dilemmas in their work in court and outside of the courtroom



Judicial Ethics – Analytical Framework

<p>1. IS THERE A PROBLEM THAT HAS AN ETHICAL DIMENSION? SPECIFICALLY, IDENTIFY THE FACTS THAT RAISE THE ETHICAL DIMENSION.</p>	
<p>2. WHAT IS THE DILEMMA? SPECIFICALLY, IDENTIFY THE ETHICAL ISSUES RAISED BY THE CHOICE OF A COURSE OF CONDUCT.</p>	
<p>3. ARE THERE ANY STEPS TO TAKE BEFORE YOU DETERMINE A COURSE OF CONDUCT?</p>	



Judicial Ethics – Analytical Framework (continued)

<p>4. WHAT IS THE PREFERRED COURSE OF CONDUCT IN THE SITUATION? FOR THE JUDGE? FOR COUNSEL AND LITIGANTS?</p>	
<p>5. WHAT IS THE BASIS FOR YOUR DECISION? WHY AND HOW DID YOU REACH THIS DECISION?</p>	



Exercise

- Identify a challenging ethical issue in your jurisdiction
- What would your learning objectives be in any education you would develop concerning that ethical issue?