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**Education Programmes For Longer Serving Judges:
Theory, Process And Product**

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Introduction

The New Zealand Institute of Judicial Studies plans education programmes for longer serving judges and others within a curriculum framework. To appreciate the part of the curriculum which caters for longer serving judges, it is useful to understand the context provided by the framework.

The curriculum was developed over time and is based on a scheme of learning needs. This paper provides both an historical overview and explanation of that scheme then outlines what has so far been developed for longer serving judges.

The emergence of formal judicial education in New Zealand

Formal judicial education in New Zealand grew out of a desire for something more than occasional papers, updates on black letter law, and conferences. In recent decades, most lawyers appointed as judicial officers have experienced ongoing education as a requirement for, or complement to, their professional lives. When they became Judges, they looked for more of the same. In 1991 Judge Satyanand (now Governor-General) led the first tentative orientation programmes for new Judges well before the establishment of the Institute of Judicial Studies (IJS) in 1998.

The IJS was an initiative of the judiciary at a time when many members of the public and the profession took the view that newly appointed judicial officers went to the bench fully equipped with the skills they needed. The judiciary responsibly indicated that this was not the case and set up a permanent resource for judges recognising that professional development was a significant element in judicial performance.²

This sea change in judicial education not only turned old views on their heads, but revitalised views of the judicial role. Jurisdictions which two or three decades ago

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² Hon. Justice Susan Glazebrook foreword to IJS Annual report 2007/2008

regarded judicial education as incompatible with the status, competence and independence of the judiciary, now embrace it.³ Although caution about judicial independence is still voiced³ it is now generally accepted that judging is a professional task comprising skills and understanding that can be enhanced by education.⁴ A judiciary that embraces education is likely to be better informed, more competent and less prone to social blunders⁵. Where the educational enterprise is managed and directed by the judiciary itself, concerns about a challenge to judicial independence disappear.

New Zealand Institute of Judicial Studies

The IJS operates under a Memorandum of Understanding signed by the Chief Justice on behalf of the judiciary and the Chief Executive of the Ministry of Justice. The Governing Board comprises a majority of Judges together with a representative for each of the following four categories:

- Ministry of Justice
- Legal profession
- Law schools
- General public

At the outset the Board established a number of Bench Education Committees to ensure that the IJS was responsive to the needs of the judiciary. The IJS developed an orientation programme for new Judges; provided updates on relevant changes of law; and delivered a programme of bench-specific seminars. It also provided (and continues to provide) planning and educational advice for Bench conferences not funded by the IJS.

Strengths of this first stage of the IJS development included:

- Judicial education led by the judiciary itself
- Close continuing liaison between the Board and specific Benches
- Close association of all new Judges with the IJS through the orientation programme and the IJS involvement in ongoing programmes and conferences
- Respectful development of key relationships with Heads of Bench, education committees, faculties and other stakeholders.

³ Hon Chief Justice Underwood: Educating Judges – What Do We Need? The Judicial Review (NSW, Australia) Vol 7 Number 4, pp423-429; Justice J A Dowsett: Judicial Education, Paper presented to Judicial Conference of Australia Colloquium Nov 1998 (<http://www.jca.asn.au/pubs/dowsettpaper.html>)

³ Chief Justice Murray Gleeson: Judicial Selection and Training: Two Sides of the Same Coin, Paper for Judicial Conference of Australia Colloquium May 2003 (http://www.HighCourt.gov.au/speeches/cj/cj_judicialselection.html). This paper notes the savings to government where judges are selected from experienced trial lawyers as contrasted with the increased need for education where judges are drawn from wider sources. Among other comments on related topics, it warns of the risks to separation of powers if judicial education became subject to media or political influence.

⁴ Livingston Armytage: Training of Judges: Reflections on Principle and International Practice (2005) 2 (1) ELJE 21-38

⁵ Hon Justice Louise Mailhot: Judicial Education in Canada. Supreme and Federal Judges Conference Melbourne 2002

As a result, the IJS became a trusted arm of the judiciary and Judges were soon open to modern educational techniques such as role playing. Trust grew out of leadership by Heads of Bench and the engagement of representatives from all levels of the judiciary in planning and delivery of programmes.

Nonetheless, in those early years, the emerging curriculum did not receive rigorous questioning and was based as much upon anecdotal need as upon a principled curriculum.

Sharpe review

In 2004 the IJS was audited by Justice Robert Sharpe of Court of Appeal Ottawa. The Sharpe Review generally applauded the achievements of the IJS, particularly its excellent standing with the judiciary. It challenged the IJS Board to build on its work and establish a comprehensive curriculum.

This prompted the Board to consider and plan the best shape, scope and direction for the curriculum. It started by identifying the learning needs of Judges according to:

- **Career** including new, mid career and end of career judges
- **Jurisdiction** including family, criminal, youth, civil, appellate judges
- **Responsibility** including Heads of Bench and Admin Judges.

A curriculum committee was established and in a paper for the Board observed: *A curriculum is more than a collection of programmes and seminars. The difference between a curriculum and a series of conference programmes is that a curriculum has, at its core, a logical organisational scheme that encompasses the scope of judicial work.*

The IJS Board, through a series of professionally facilitated workshops, produced a refreshed Statement of Purpose supported by a detailed Strategic Plan. The new Statement of Purpose adopted in 2006 set out the scope of the Institute's role under three broad heads:

The Institute of Judicial Studies is the professional development arm of the New Zealand Judiciary.

The Institute provides education programmes and services to the Judiciary which:

- *Support them in the ongoing development of their judicial careers*
- *Promote judicial excellence*
- *Foster an awareness of developments in the law, its social context, and judicial administration.*

The significance of that Statement of Purpose, for this paper, is that longer serving judges can look to the IJS to support them in the ongoing development of their judicial careers; and to promote judicial excellence throughout their careers.

Development of the curriculum

In 2005 and 2006 the IJS developed the curriculum through:

- Consultation with Bench Education Committees; Heads of the Benches; and the National Judicial College of Australia.
- Reviewing of literature, articles and published papers
- Studying judicial education organisations in Canada and the United States, the range of programmes offered, and the philosophies underpinning their curricula and programmes.
- Researching the judicial role as it relates to education.

Research methodology

The last item deserves further discussion because it added particular rigour to the overall undertaking. Through that research the IJS captured the views of the New Zealand judiciary on the scope and balance they wanted in the curriculum.

The research targeted judges in three career bands: new, mid-term and end-term; and aimed to identify educational needs, barriers to education, and the role of the IJS. There were in-depth interviews with 20 judges, selected to provide a range of experience, gender, Bench, location and personal circumstances. Topics included the characteristics of an effective judge; their educational aspirations; education required over the next 10 years in response to changes in society and the judicial role; barriers to education.

The responses were compiled and scrutinised. From that process the Institute developed a curriculum framework based on what is required of judicial officers to perform their judicial role. The curriculum has nine components.

A balanced curriculum of nine components

The curriculum assumes that all judicial officers, in performing their role, need to:

1. Maintain their knowledge and mastery of the law.
2. Manage efficiently the cases before them, the courtroom and the people who appear before them.
3. Make decisions and give reasons for decisions, both written and oral.
4. Apply appropriate standards of judicial conduct.
5. Be responsive to the relationship between the judiciary and society and to changes in society.
6. Keep abreast of emerging issues in associated disciplines and in public policy that impact on the law.
7. Maintain their health and well being.
8. Administrate and lead

9. Use technology to assist with judicial work.

The nature of each component is as follows:

1. Maintaining their knowledge and mastery of the law

At the very centre of a judicial officer's work is the need to know and apply the law, both substantive and procedural. This includes an appreciation of the sources of law and the application of the laws of evidence and procedure.

Professional development activities can help judicial officers to keep up to date with changes and developments in the law and to refresh and deepen their knowledge and understanding of it.

2. Managing efficiently the cases before them, the courtroom and the people who appear before them

Judicial officers have a management role in two situations. They need to manage the cases before the court over which they preside including pre-trial directions, and the courtroom including the people who appear before them.

Judicial officers not only preside over trials and decide cases. For some, an aspect of their management of cases is the encouragement of the resolution of disputes between parties by alternative means.

3. Making decisions and giving reasons for decisions, both written and oral

Judicial officers make decisions in all aspects of their work. Decisions are made both in and out of court. At the core of a judicial officer's work is making decisions and exercising judgement.

Usually a judicial officer must give reasons for the decision. Professional development activities should help judicial officers to deliver oral judgments and write well-composed judgments.

The judicial role also involves the sentencing of offenders. In this aspect judicial officers must make decisions in order to sentence correctly.

4. Applying appropriate standards of judicial conduct

Judicial officers, while performing their role, encounter situations which require them to consider how they should appropriately conduct themselves and may involve ethical issues which raise questions in regard to appropriate judicial conduct. This includes an examination of relationships with judicial colleagues, staff and the legal profession.

5. Understanding the relationship between the judiciary and society and changes in society

The judicial system operates within society and performs a central role in society. While judicial officers always seek to act independently they are nevertheless conscious of the social contexts of many of the matters that come before them. Professional development activities which alert judicial officers to social context

issues, assist them to deal respectfully with the diverse communities that use the courts. All judicial officers are aware that every person should be able to participate fairly and equally in access to justice through the courts.

Although professional development programmes will sometimes specifically deal with social context issues, often these issues will be dealt with pervasively in programmes dealing with other topics.

6. Keep abreast of emerging issues in associated disciplines and in public policy that impact on the law.

There are many developments in knowledge in various aspects of life which are emerging and impact on the law and the work of the courts. There are also various public policy issues which arise and can be of relevance to judicial officers as they perform their judicial role.

7. Maintaining their health and well being

Judicial officers perform their work under considerable pressure. They need to maintain their physical and mental health. Doing so helps them to perform their role more efficiently and effectively.

8. Administration and leadership

Judicial officers are expected to understand and work in environments where budget and resource implications are paramount. They must come to grips with balancing judicial work, court administration, strategic planning and change management. They often sit on committees where leadership is a necessary ability.

9. Using technology to assist with judicial work

Technology is a pervasive feature of the work of the courts. The courtroom itself may well have technology which is used during cases in various ways. The case itself may be conducted using technology in regard, for example, to documents which are in evidence. The judicial officer may use technology while on the bench or in chambers, e.g. to write judgments. Other forms of technology, such as email and the use of Intranet are part of judicial life.

Other forms of technology, such as audio-visual, are also to be found in the courtroom and judicial officers need to be familiar, in general terms, with what those technologies can do and their limitations.

A curriculum

A balanced curriculum should therefore span all nine components. Further refinement of the curriculum distinguishes between core elements, specialist elements and the additional elements that might be required to produce a balanced curriculum.

The IJS Board has developed a comprehensive curriculum based on these components (see appendix A) which must be reviewed periodically in order to maintain currency. The core curriculum identifies those elements which reflect the broad scope of judicial responsibility; that is the knowledge, skills and abilities common to all

judicial officers. It is the foundation upon which other opportunities can be built including specialist needs and other elements that might give a better balance to the curriculum.

Core curriculum programmes are conducted on a rotating basis. Judges can identify their own education priorities and complete a number of the programmes that are available to them within the first three to five years.

The specialist needs that arise in jurisdictions from legislative change, policy change or research in associated disciplines are dealt with by “Updates” for each Bench provided by the Bench Education Committees. They too are provided for on a rotating basis.

A balanced curriculum is developed with the understanding that professional development is required throughout a judicial career. It therefore requires more than core elements and updates. The balanced curriculum includes elements to support judges in the development of their ongoing careers and provides for those needs as part of a regular cycle.

Characteristics of longer serving judges

Identifying the characteristics of longer serving judges has been an endeavour that began in 2006 with the commissioning of an independent report which told us:

The challenges for mid-term and third term judges are less technical in nature and more about maintaining interest and motivation. This is an issue familiar to seasoned professionals in other fields who typically reach a stage where they feel their career levelling off – people who find there is little else in their chosen area of expertise often ‘coast’ and find it harder to maintain a spark for their work⁶.

Following, two consultations were undertaken, one with a group of High Court judges and another with a group of District Court judges. The responses indicated that longer serving judges often felt a lack of control over their docket and that the work had become repetitive. They looked for a stimulus to lift their gaze from the individual case, to direct them to overarching principle and fresh ways of regarding the important work they do.

From these enquiries a recurring theme seemed to be emerging about the challenge that judges encounter in staying fresh and engaged in their work after long terms on the bench. This flows from the flat career structure and routine nature of the work which are characteristics that in any profession will often over time lead to increased stress and decreased job satisfaction.

In a proposal to develop education in this area we learnt that “it is not at all surprising that it is hard to stay fresh and engaged. Indeed, the human brain is programmed to learn through novelty, and it is hard to find a way to create novelty in a situation with similar challenges year after year. When the world does not supply novelty, old pathways in the brain become better and better travelled, wearing down metaphorical grooves in the pathways of the mind. The strength of these connections makes it even

⁶ CERNO report at page 3

harder to recognise novelty when it does appear: the brain creates its pathways along the easiest routes, and if there are strongly-built connections, they will pull for sameness, creating ever simpler categories which are consistently recognisable.”⁷

Perhaps a simpler way of saying this is something that many of us can recognise in ourselves as we enter court when we have the feeling “here we go again” and in that frame of mind it is easy to miss what is interesting and stimulating and new. It is this cycle that we are endeavouring to intervene.

Particular needs of longer serving judges

The needs of new judges by way of orientation and skills development are obvious, compelling and arguably provide good returns. Upon reviewing the curriculum against the needs of longer serving judges it became clear that their needs had not been met consistent with the Statement of Purpose. Their needs had largely been catered for by updates in the law and the general stimulation they obtained from conference programmes for specific Benches. Opportunities are also provided by inter-bench meetings (usually triennial) where the entire judiciary gathers for two or three days to look at overarching issues such as gender equity, judicial ethics and diversity. But generally there was inadequate provision for judges who had achieved basic competency in their role.

A suite of programmes for longer serving judges

The IJS Board has worked over the last two years to respond to the particular educational needs of longer serving judges. The Board has investigated programmes developed in other jurisdictions, including one run by the National Judicial Institute in Canada, based on the works of Shakespeare. The outcome is an annual offering of a suite of programmes for longer serving judges.

One programme, *Ethics and obligations in judicial decision making* presented by Professor Douglas Lind of the University of Idaho, is based upon philosophy and supported by literary as well as judicial texts. The description follows –

This seminar will address ethics and obligation in the practice of judicial decision-making. What is the purpose of the courtroom—temple of justice or oracle of truth? What is the role of the judge—disinterested arbiter of social conflicts or committed advocate of justice and the social good? What does it mean for a court to reach the “right result”—to achieve the best outcome in terms of social utility or to follow the rigid dictates of logic and precedent, even when they lead to a result seemingly at odds with principles or intuitions of justice or fairness? This seminar will consider such questions through an exploration of drama, literature and case law.

A second programme offered by Professor Lind is *Logic and reasoning in judicial decision making*. The description follows –

This seminar will address the importance of sound reasoning and logic in judicial decision-making. The seminar will provide an overview of the most common forms of argument in judicial reasoning and opinion writing. Emphasis will be placed on:

⁷ From proposal by Jennifer Garvey Burger and Kieth Johnston 2008

- *distinguishing inductive from deductive forms of reasoning;*
- *understanding the basic forms and importance of inductive reasoning in common law judicial traditions; and*
- *developing the ability to identify different types of deductive syllogisms, and distinguishing valid from invalid (fallacious) deductive arguments.*

Evaluation feedback to date suggests that these programmes have been intellectually challenging and rewarding for judges. Participants have said that these courses remind them to look up from the detail; to read more widely and take time to reflect on higher principles of law; and that they offer rare opportunities to re-examine judging.

To deal directly with the issues arising for longer serving judges the IJS recently worked with consultants to develop a new programme which will explore judicial work and encourage judges to find ways of taking a more enquiring stance in the face of the same old work. This will require them to reflect in new ways—to ask questions they had not asked, collect data they had not collected and take new perspectives. Each of these are skills that can be taught, thereby assisting people to come to their work with fresh eyes and begin to see the newness even in a situation of sameness.

This programme, *A programme for longer serving judges*, will be offered in 2010. It already has a hefty enrolment which demonstrates the need. The course description follows –

Being on the bench provides a unique vantage point on the world and on society. At the same time, being on the bench can be repetitive and isolating, and the work can continue for years and decades. During this 2-day workshop longer serving judges will be guided to reflect on their day to day work and identify opportunities to continue to develop. In particular judges will learn to challenge and extend their thinking about their work and to regulate the pressures which lead to stresses that degrade the experience of judging. The approach will be interactive and the aim is to renew the connection that brought participants to judging in the first place.

Present indications are that the content will be stimulating and refreshing for longer serving judges.

Summary

In New Zealand the Institute of Judicial Studies has added additional layers of sophistication and maturity to its curriculum development in recent years. As a consequence, it currently approaches the educational needs of longer serving judges on a more principled and informed basis. The current curriculum reflects the broad scope of education acknowledged in the Statement of Purpose that underpins the work of the Institute of Judicial Studies and the changing educational needs of judicial officers as they move through their careers. While programmes provided for judges generally will continue to offer value for longer serving judges, there are additional programmes to meet the particular needs of longer serving judges. These include programmes designed to raise the consciousness of judges, to demonstrate the relevance of philosophy, science and literature to the judicial role and to encourage judges to see their job in a broader context.

Institute of Judicial Studies – Core Curriculum 2009

Component	Subject
<i>Component One</i>	<i>The Law</i>
Element 1.1	Sources of Law
Element 1.2	Evidence and Procedure
Element 1.3	Law Updates
	Public law
	Statutory interpretation
	Crime/criminal procedure/sentencing
	Family law
	Equitable remedies/interim measures
	Contract
	Tort
<i>Component Two</i>	<i>Management</i>
Element 2.1	Complex and Multi Accused Trials
Element 2.2	Summing up
Element 2.3	Courtroom Management/Communication
Element 2.4	Communication– Children and Young Persons
Element 2.4	Litigants in Person
Element 2.5	Settlement Conferences/Advanced SC
<i>Component Three</i>	<i>Decision Making</i>
Element 3.1	Judicial Method
Element 3.2	Credibility Assessment
Element 3.3	Oral Judgments
Element 3.4	Judgment Writing/ Judgment Writing Refresher
Element 3.5	Sentencing
<i>Component Four</i>	<i>Judicial Conduct</i>
Element 4.1	Judicial Conduct and Ethical Issues
<i>Component Five</i>	<i>Diversity</i>
Element 5.1	Marae Visit
Element 5.2	Te Reo Intensive
Element 5.3	Trends in New Zealand Society

<i>Component Six</i>	<i>Emerging Issues/Associated Disciplines</i>
Element 6.1	Therapeutic Interventions
Element 6.2	Litigation Accounting
Element 6.3	Ethics and Obligation in Judicial Decision Making
Element 6.4	Logic and reasoning in Judicial Decision Making
Element 6.5	Programme for longer serving judges
<i>Component Seven</i>	<i>Health and Well Being</i>
Element 7.1	Working Efficiently and Effectively
Element 7.2	Health and Well Being
Element 7.3	Retirement Planning
<i>Component Eight</i>	<i>Administration and Leadership</i>
Element 8.1	Management and Leadership for Heads of Bench
Element 8.2	Management and Leadership for Positions of Responsibility
Element 8.3	Judicial Education – Training for Judicial Educators
Element 8.4	Mentor Training
<i>Component Nine</i>	<i>Technology</i>
Element 9.1	Basic Training in Computers
Element 9.2	Technology as a Court Management Tool
Element 9.3	Computers as a Research Tool