



**NATIONAL JUDICIAL INSTITUTE  
SOCIAL CONTEXT EDUCATION**

**INTEGRATION PROTOCOL FOR SOCIAL CONTEXT**

**(Approved, Board of Governors, October, 2009)**

**APPLICATION**

This Protocol applies to both the Canadian and international operations of the NJI.

**DESCRIPTION**

This Protocol specifies the commitments made by the National Judicial Institute (NJI) to ensure that social context is continually and sustainably integrated into its courses, resources and processes.

**RATIONALE**

The concept of social context as an integral part of effective judicial education is not new. The NJI implemented the Social Context Education Project (SCEP) between 1996-2004. The Ten Principles of Social Context Education (Appendix 1) capture many of the lessons learned and best practices developed from our experience. At the outset of the SCEP, Katherine Swinton, stated that “Credible and comprehensive social context education must be an ongoing part of judicial education, in the same way that there is ongoing education about substantive law or criminal justice issues.”<sup>1</sup>

In 2005, the Canadian Judicial Council (CJC) resolved as follows:

Be it resolved that the Canadian Judicial Council *recognizes* that “credible, in-depth and comprehensive” social context education must be an ongoing part of judicial education, *supports* a “three-dimensional approach” to judicial education in which substantive content, skills development and social context awareness are continually addressed in judicial education programming and course development and *mandates* the National Judicial Institute to continue to implement social context education in its curriculum.

In 2006, the NJI Board of Governors endorsed the “The Twenty Principles of Judicial Education” (Appendix 5) which itself integrates social context education concepts. Principle 2 states that “[r]espect for Charter values and judicial independence must

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<sup>1</sup> Katherine Swinton, *Report to the National Judicial Institute on Social Context Education for Judges*, 1996.

underpin all judicial education. This complements a long-standing understanding of “the overall objectives of judicial education as being fairness, impartiality, and consistency with legal principles.”<sup>2</sup> This Protocol complements these Principles.

This Protocol is a further step towards achieving the long-range objective for the Institute, identified by (then Dean) Lynn Smith in 1996, “the pervasive treatment of relevant ‘social context’ issues in all contexts in which judicial education occurs. The goal would be to make such discussion automatically part of the landscape”.<sup>3</sup>

More discussion on the scope of social context education and specific guidance on the steps to take to ensure that social context is included in course design, planning process and content is provided in the [forthcoming] *Judicial Education Guide: Social Context Education* published by the National Judicial Institute and available online.

## COMMITMENTS

### I. COURSES AND RESOURCES

#### 1. Ongoing Integration of Social Context across the Curriculum

The National Judicial Institute has committed itself to the principle of ‘three dimensional judicial education’<sup>4</sup> which expresses the aspiration that all courses will integrate knowledge, skills and social context.

The NJI is committed to integrating social context in:

- New judges education (and other programs related to the judicial career)
- National programs (such as civil law, criminal law and family law)
- Skills seminars (such as managing the trial process, settlement conferencing, communication skills); and
- Education resources.

The NJI will also support integration of social context in programs developed by Courts and in programs where NJI is a partner.

#### 2. Standalone Social Context Education

Stand-alone social context education courses provide a touchstone to deeper knowledge and contribute to the process of integration in other areas of the curriculum. They incubate ‘modules’ of education that can be offered in other programming. At the same time, they foster development of judicial champions who understand well the principles

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<sup>2</sup> Lynn Smith, *Statement of Needs and Objectives for Continuing Judicial Education on the Social Context of Judicial Decision Making*, (Ottawa: National Judicial Institute, 1996) [unpublished, archived at the NJI] at 7.

<sup>3</sup> See Smith, *infra*.

<sup>4</sup> See *Twenty Principles of Judicial Education* (NJI, 2006).

of social context and their relevance in judicial education. Accordingly, the National Judicial Institute is committed to:

- Offering courses which have social context issues and themes as the primary lens.
- Maintaining a ‘standing curriculum’ of social context modules.
- Developing education resources addressing social context.

### **3. Inclusive Planning Processes**

National Judicial Institute programs are normally developed by planning committees whose members are ultimately appointed by the Executive Director. Preference is given to small, working committees which can consult broadly with subject experts as needed to assist them in their work. Each planning process is different depending on the type of program involved. All committees have a close linkage to NJI personnel and resources.

Ideally, judicial members of planning committees will be representative of their colleagues (reflecting diversity of seniority, region, rural/urban, gender and other diversity characteristics).

- The individual responsible for finalizing NJI Planning Committees will attend to social context considerations as part of finalizing committee membership.

### **4. Involvement of Academics and the Community in Judicial Education Development and Delivery**

The National Judicial Institute has committed itself to the ‘Three Pillars Principle’ which expresses the aspiration that judges, academic experts and community resource persons work together on design and delivery of judicial education.<sup>5</sup> While judges should lead judicial education and be responsible for deciding upon its direction, format and content, non-judges have valuable inputs to offer to judicial education design and delivery. The goal of non-judicial input is to ensure that practical, soundly based, balanced, and locally relevant information is available to judges.

- The NJI will seek to implement the “Three Pillars Principle” while acknowledging that the relationship between judges and non-judges is a complex and sensitive area in light of the unique position of judges and the requirement to uphold judicial independence.
- Non judicial members of planning committees should be selected for their expertise and credibility on the program topic. Academics/clinicians/professional should be recognized experts in the subject area and also committed and good teachers.
- The NJI will play a role as a ‘trusted intermediary’ in identifying and recommending orienting non judicial members for NJI programs and, upon request court programs and partnered programs.

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<sup>5</sup> See Twenty Principles of Judicial Education, (NJI, 2006). See also, Judicial Social Context Education, Ten Principles (Appendix 1).

- In the early phases of its work, NJI will encourage a planning committee comprised of judges and non judges to consider building an inclusive committee process through which both judges and non-judges are ‘acculturated’ to the processes and parameters of working effectively with one another in an educational setting.
- The National Judicial Institute will continue to explore appropriate means to support or lead community consultation and dialogues with the community.
- Where a decision is taken not to include non-judicial members on a planning committee, alternative, credible processes for accessing the information from those sectors should be decided upon at the outset of committee work.

## **II. INSTITUTIONAL CONGRUENCE WITHIN THE NATIONAL JUDICIAL INSTITUTE**

Just as judicial leadership is a principle of effective judicial education, so too, is the support for social context integration by the Board of Governors, Executive Director and senior management of the National Judicial Institute.

NJI is committed to maintaining the necessary infrastructure to implement social context throughout all forms and stages of judicial education. This “institutional congruence” sends a clear message that social context is a valued and necessary dimension of judicial education. Equally importantly, it is designed to build ‘self-executing’ processes into the culture and operation of the Institute itself.

### **1. Resource Allocation**

- In overall program selection and priority setting, social context programming and resource development will be considered on an equal footing with more traditional types of programming.

### **2. Personnel [minor format and order changes]**

- The NJI prides itself on being an inclusive organization able to function bilingually and bi-jurally.
- The NJI values diversity in staff appointments on all dimensions, including race, gender, ethnicity and disability.
- One criterion to be considered by the Board of Governors in regards to the appointment of Executive Directors at NJI will be candidates’ awareness and experience of/or openness to expanding their knowledge of social context issues in judicial education.
- One or more Judicial Associate(s) will be appointed to retain responsibility for social context programming, resources and integration.
- One member of the senior management complement will be designated as having responsibility for social context integration.
- The NJI will ensure that social context expertise is retained at the level of program design and development (Senior Advisors).

- This Protocol will be referenced in the NJI Policy Manual provided to all new staff and accessible for consultation.

### **3. Process**

- Internal NJI work processes will be designed to include and track social context elements. For example, course agenda, database and bibliographic templates will include fields related to social context. This includes the Judicial Learning Plan, the Curriculum Inventory, Faculty Database, Electronic Benchbooks, the Electronic Judicial Library and other projects as they evolve.
- Program evaluations will include questions to evaluate social context integration which will serve the dual function of emphasizing its importance to the participants and providing valuable feedback on the progress of integration.
- A copy of this Protocol may be provided to Committee Chairs.
- As a practice, letters of invitation to planning committee members and faculty members in individual courses will include reference to the NJI's commitment to social context integration.
- NJI honorarium and expense policies will be further developed and reviewed to ensure that it is cost-neutral for individuals who are not judges to participate as members of planning committees or as program faculty.
- Program managers and senior curriculum developers at NJI will discuss how to fulfill the Institute's commitment to social context and equality in programming policies. As a result, NJI policies and practices will continue to evolve. At a minimum, contracts entered into with hotels will be attentive to issues of access for persons with disabilities and the language of the program (and hence on site signage). Evolving modalities of ensuring linguistic equality will also be addressed.
- From time to time, seminars and discussion of social context issues will be conducted for NJI staff, consultants, Judicial Associates and others under the guidance of the senior staff member responsible for social context integration.

### **4. Needs Assessment**

- NJI will consider and devise ways to continue to receive advice on social context education from the judiciary, academics and members of the community, seeking funding support for such processes if necessary.

### **RELATED DOCUMENTS**

Appendix 1: Principles of operation for Social Context Education.

Appendix 2: The detailed implementation plan for ongoing social context education at the National Judicial Institute, endorsed by the National Judicial Institute Board of Governors in 2005.

Appendix 3: Resolutions of the Canadian Judicial Council in support of social context education.

Appendix 4: A summary of the work of the SCEP prepared in 2004 for the International Organization of Judicial Training.

Appendix 5: The Twenty Principles of Judicial Education approved by the Board of Governors, 2006 (and appended to the NJI Strategic Plan).

## Appendix 1: Social Context Education – Principles of Operation

### Judicial Social Context Education: Ten Principles<sup>6</sup>

One important enduring outcome from Phase II was the evolution and solidification of the following Ten Principles of Judicial Social Context Education. These principles were found to be essential in Phase II and can now serve as a model for sustaining and integrating social context education throughout all forms of judicial education. It should be noted at the outset that these Ten Principles do not operate in isolation and, when applied together, they have a synergistic effect.

#### 1. *Judicial Leadership*

An initial and sustained commitment to social context education from Chief Justices and Chief Judges, education committees and local judicial leaders is critical.

#### 2. *The Three Pillars of Integrated Social Context Judicial Education*

Social context education is generally about what judges do not know, or have not experienced. While judicial education must always be led by the judiciary, judges alone cannot develop, design and deliver effective social context education programs or integrate social context issues into all programming. Experts on issues of diversity, disadvantage and difference must be relied upon to help identify social context issues and be involved at all stages of the development, design and delivery of judicial programs and curriculums. This expertise is best found in well-respected community leaders (pillar one) who have direct experience with these issues. Legal academics (pillar two) can then help to filter and translate these experiences into relevant legal concepts and issues. Finally, judges (pillar three) can mould and focus these experiences and issues into the act of judging. In this interactive way, the Three Pillars of social context education provide the best foundation for structuring the development, design and delivery of integrated social context judicial education curriculums and programming.

#### 3. *Sustained Social Context Integration*

Equality and social context issues are so diverse, pervasive and ever-changing, that an effort must be made to systematically and continually seek out and identify social context education issues in all judicial education topics, programs, and curriculum planning. Structuring this input by means of institutionalizing the participation of the Three Pillars at each stage of program development is the most efficient and effective way to achieve and sustain integration.

#### 4. *Local Input and Relevance*

Integrated social context programs require planners to identify and include social context elements that are relevant for the work of the targeted judicial audience. Consequently,

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<sup>6</sup> Extracted from NJI at 20 Essay, Justice Donna Hackett, 2009, available [www.nji.ca](http://www.nji.ca).

seeking input specifically from the participants' jurisdiction is critical in order to identify and address relevant issues, priorities and resources from conceptualisation through to delivery.

#### 5. *Needs Assessment*

The identification of the education needs of judges when formulating both curriculum and programs should be done in consultation not only with judges, but also with those affected by the work of judges, particularly those in situations of disadvantage and those with diverse backgrounds and experiences. The involvement of the Three Pillars is therefore important in the initial needs assessment.

#### 6. *Focus on the Judicial Role*

In order for equality and social context issues to be understood as relevant and important in all forms of judicial learning, their presentation has to be connected to legal and factual issues faced by judges on a daily basis. This grounded and practical approach will link judicial education to judicial tasks and roles. The interaction of the Three Pillars facilitates linkage and balancing between judging and access to justice issues.

#### 7. *Skilled Planners and Faculty*

Social context education explicitly engages values and attitudes and touches upon assumptions and world views. It connects legal principles with lived realities. As such it is not like other forms of judicial education and requires a broader array of learning approaches. Those who plan social context programs need a skill set which encompasses knowledge of equality and social context issues, the pedagogy of adult learning, and effective program design. Optimally, planning committees and faculty members, including facilitators will have the opportunity to develop their skills in support of social context program design and delivery through participation in a pre-program session involving the Three Pillars.

#### 8. *Effective Program and Curriculum Design*

Social context issues require a skillful balancing of social and legal issues to address the experience of disadvantage and connect to the unique characteristics and responsibilities of judges. As such programs must be carefully designed to foster a learning process which touches upon the emotional, perceptual, intellectual and behavioural capacities of judges. More than in other forms of judicial education an 'experiential model' of program design is particularly useful with a focus on clear learning objectives and varied learning methods including problem-based exercises that require them to share and apply their own judicial experience to social context issues using the pedagogy of adult learning.

#### 9. *Adult Learning Principles for Judges*

Judges are a unique group of learners. Like other adult learners, judges have a wide range of skills and experiences that are important resources in the teaching and learning process. Judicial education is thus most effective when it draws on these experiences and is based on learning activities where these experiences can be shared. Several

attributes and concerns of judges as adult learners need to be taken into account. Learning spaces and approaches must respect confidentiality and uphold judicial independence. Relevant knowledge and skills must be provided prior to undertaking problem-solving or practice activities. Particular attention must also be paid to a balance between non-prescriptive approaches while advancing Charter values including equality.

#### *10. Evaluation and Feedback*

Effective judicial social context education and curriculum development requires ongoing feedback and evaluation at all stages of planning and delivery. As in other areas, ensuring that feedback is received from the perspectives of members of each of the Three Pillars helps to ensure that judicial education can continually evolve to meet our ever-changing judicial needs and social context.

## **Appendix 2: Plan for Social Context Integration**



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### **Social Context Education as an Ongoing Element of Judicial Education in Canada** (Approved by NJI Board of Directors, October 2005)

#### **Genesis of the Plan**

A report on Phase II of the Social Context Education Report was presented by the Academic Director of the National Judicial Institute to the Education Committee of the Canadian Judicial Committee in May, 2005. At the NJI Board of Governors Retreat in June, 2005, the outline of a specific plan to implement an ongoing, permanent approach to social context education was discussed. A detailed implementation plan was then presented to the CJC Education Committee in September, 2005. The plan was approved by the Committee and the related resolutions subsequently passed by the full Council at its Regina meetings in late September. It was then brought to the NJI Board of Governors for formal approval and adoption into the work plan of the NJI in October, 2005.

This Report to the Board begins with the new governing resolution and immediate actions; it then sets out the elements of the plan. It should be noted that a phased introduction is proposed over the next 5 years.

#### **New Governing Resolution**

A new ‘governing resolution’ signaling the ongoing support of the Canadian judicial leadership for social context education has been passed by the Canadian Judicial Council in the following terms:

BE IT RESOLVED that the Canadian Judicial Council recognizes that “credible, in-depth and comprehensive” social context education must be an ongoing part of judicial education, supports a “three-dimensional approach” to judicial education in which substantive content, skills development and social context awareness are continually addressed in judicial education programming and course development and mandates the National Judicial Institute to continue to implement social context education in its curriculum.

#### **Responsibility for SCE at NJI**

The Honourable Justice Adele Kent of the Court of Queen’s Bench of Alberta has been appointed as a Judicial Associate(s) with responsibility for this phase of social context

education. We will search for a second Judicial Associate to work with her. An advisory process will also be established to guide course and materials development.

Professor Brettel Dawson, who is the Academic Director of NJI, will coordinate the overall work of NJI in this area.

### **Overall Plan: A Permanent Canadian Social Context Education Initiative at the National Judicial Institute**

*Commencing immediately:*

1. We will develop a ‘standing curriculum’ in recognized social context areas and continue our work to ensure that social context is appropriately integrated into all programs offered by NJI.

#### **Details:**

- (a) *A new ‘introductory course’* focused on social context themes. A resolution has been obtained supporting a seminar called Judicial Ethics in Action: Impartiality and Equality. Justice Adele Kent and Dr. Jo-Anne Pickel are working on this program.
- (b) A new series of “*Emerging Issues Seminars*” between 2006-2010. Establishing this series of courses will provide a stable planning forecast and permit systemic development of materials. These materials in turn will form part of the envisaged “standing curriculum” on social context. Each Emerging Issues seminar will, we hope, yield a number of modules that can be delivered at the court-based education level. The seminars will be skills-based and practical (limited to 50 judges). After discussion, the Education Committee opted to give NJI discretion on final topic selection but we have committed to gender, race, and ‘faith-based issues’/multi-culturalism. We have also indicated that we anticipate that courses on disability and access to health care/health status issues (including HIV-AIDS) would be timely and relevant.

The first course will engage with issues of legal pluralism. Tentatively entitled “One Law for All Canadians?” it will examine how a judge is to ensure that ‘one law’ fits ‘all Canadians’ given their diversity of faiths and cultures (and the tensions that can arise). The recent debates over Sharia law have been a flash point in this discussion. It promises to be a stimulating seminar. We plan to convene an advisory/planning committee in conjunction with the Emerging Issues course to assist with developing the series of courses and this particular first offering.

- (c) Incorporation of social context topics as sessions or full-seminar themes in the *NJI ‘National Seminars’*. One specific example is the forthcoming Criminal

Law Seminar in March 2006 on Managing the Sexual Assault Trial.

- (d) Additional curriculum development as needed. One clear example that we see on the horizon is education in support of CJC Guidelines and Bench book on Self-Represented Litigants.
- (e) Continuing collaboration from time to time with the Canadian Chapter of the International Association of Women Judges in their periodic education seminars (e.g., to develop and deliver curriculum in the areas of international and domestic human rights).
- (f) Continuing effort to incorporate a three-dimensional approach to judicial education: substantive content, skills development and social context awareness into all course offerings.

2. We will consolidate our existing social context resources (sorting through the rather large array of materials, papers, binders, documents and reports) and ensure that they are better organized and more easily accessible. Together, the various initiatives will support the 'standing curriculum' in social context.

**Details:**

- (a) We will make efforts to post as much material as possible electronically (on the Judicial Library) as well as index hard copy materials
- (b) We will review and post current/durable Phase II social context modules on the NJI Modules Database.
- (c) We will capture and post social context modules and materials developed as part of ongoing/new NJI courses.
- (d) We will collaborate with CAPCJ on a proposed E-BB in the area of Equality and Diversity, complete work on the EBBs/E-Books on Domestic Violence; support the CJC project to develop an EBB in the area of self-represented litigants.

3. We will integrate social context in the new series of course that are part of the Judicial Educator Curriculum approved by the Canadian Judicial Council in September 2005. We believe that long-term sustainability and integration of social context hinges upon judges having continued awareness of the importance of addressing social context and the skills by which to do this on a practical basis in judicial education course design at the NJI and court-based levels.

**Details:**

- (a) We have scheduled 'Judicial Educator' courses as follows:
  - a. Provincial Education Chairs: March 1-3, 2006
  - b. Federal Education Chairs, Nov 29-Dec 1, 2006
  - c. Judicial Faculty Development (International): February 1-3 and June 8-9, 2006
  - d. Court-based workshop, tentative, Quebec Superior Court, Fall, 2006.

- (b) We plan to schedule a “judicial development program’ for judges who will be involved in module delivery for the Ontario-based initiative on domestic violence when our workplan for that project is finalized (mid-November).
- (c) The second Judicial Faculty Development Program will focus on domestic programming and be scheduled in 2007. It may well be focused on faculty development in support of the series of Emerging Issues courses (eg. gender, race, disability series).

4. We will complete development of the *Canadian Handbook of Judicial Education*. The Handbook is designed to be a resource for conceptual and practical information on judicial education in Canada. It will be made available to all NJI curriculum planners and all court-based education committee members. We envisage the Handbook being available online and in hard copy.

**Details:**

- (a) The Handbook will contain a section addressing the scope and relevance of social context for judicial education and a ‘how to’ guide to identifying social context issues in judicial education topics. It will also contain guidance on how to ensure that these topics/issues can be integrated into program design.
- (b) The Handbook will link readers to relevant social context materials and modules available online and in hard copy at NJI. The appendices of the handbook will include a copy of relevant social context ‘archive’ documents and the Social Context Integration Protocol.

*Following further development:*

5. We will undertake additional work to finalize a model for NJI and Court-Community Liaison to strengthen models for community involvement in judicial education.

**Details:**

- (a) We will review the draft manual on Community Involvement (Phase I) and the Community Liaison Committee model (Phase II, Nova Scotia) to establish what we have already learned about the process of community involvement in judicial education (one of our core principles of operation in SCEP). A consolidated paper addressing best practices will be produced and circulated.
- (b) We will examine a range of options for enhancing judicial awareness of the communities in which they live and work. One idea that we envisage piloting in the Ontario violence against women project is that of locally-organized “study tours” where trusted community leaders work with local judges and NJI to set up judicial visits to shelters, clinics and other services.
- (c) We could see this model being readily adapted to a range of communities and community-based issues (eg. visits in Vancouver to a Safe Injection Site, in Saskatoon to a Hindu temple etc). The concept would be for local tailoring of activities given the great diversity among Canada’s regions.

6. We will finalize the Protocol on Social Context Integration. This Protocol will be approved by the Executive Director.

**Details:**

This Protocol may, among other things:

- (a) set out the social context plan and its core principles of operation/lessons learned;
- (b) address institutional structure (staffing, resourcing), course development process (composition and mandate of planning committees, community involvement in judicial education; faculty development);
- (c) detail NJI policies (in areas relevant to social context – accessibility, linguistic offering, faculty planning etc);
- (d) ensure integration of consistent approaches to social context in both domestic and international programming;
- (e) detail work processes (database, web development etc); and highlight a process for continuing staff development etc.

7. We will consider the idea of developing an NJI Curriculum Workshop at which senior advisors, judicial associates and judicial leaders jointly discuss and plan curriculum development, pedagogical approaches and social context integration. An Advisory Committee could be formed to work with the Executive Director to plan and participate at this Workshop. The Workshop would be another way of ensuring “institutional congruence” – that how we work and what we offer as an Institute aligns with the principles of social context education.

**Conclusion**

When we began our work in Phase II of the Social Context Education Project, we anticipated that the project would fade away as funding came to an end. We structured our work with considerable urgency to ensure that the essentials of sustainability could be in place, most particularly elements of curriculum and judges who had learned how to be good educators and knew how to integrate social context in course design.

Over the life of Phase II of the SCEP, the Canadian Judicial Learning Network developed many of the concepts pioneered by the SCEP and created an environment in which these concepts were disseminated across the organization. This environment included not only the content of social context but the modalities (eg. of adult education). Additional senior advisors with an understanding of social context came into the NJI and shared the process of course development. This institutional commitment to addressing social context diffused responsibility across the organization with the Coordinator having overall oversight. Programs with high social context content have been developed in a number of areas outside of SCEP (eg., Aboriginal Law, The Charter, and Youth Justice, Wrongful

Convictions, High Conflict Divorce). The Electronic Bench Books are a related example; they are not a SCEP project but results reflect a sense that the organization as a whole understands the importance of social context and its place in judicial education. This broadened capacity in the organization is central to ongoing sustainability and is an excellent development.

Our experience and reflection through the Phase II work brought home to us that ‘social context integration’ means that work in this area needs to be ongoing. Social context must be learned; its inclusion in judicial process has a legal basis (equality law and rule of law) and practical consequences for the craft of judging (contextual inquiry as part of judicial decision-making). Just as we have learned that effective judicial education should be ‘three dimensional’, so too have we come to realize that social context education itself requires attention to law, judicial skills and understanding of social realities. It is a substantive piece of the judicial education puzzle.

This plan for ongoing work in the area of social context reflects our learning and lays the basis for the continuation of Canada’s leadership in this complex and dynamic area of judicial education. As we reflected on progress made, we found the following quotation from a judge of a provincial court in Canada to be particularly apt:

At times I have difficulty determining what social context issues are anymore. I don't know how you could deal with the issue of credibility assessment without some reference to cultural diversity and ensuring that as a judge you don't ascribe a manner of dealing with something to how you would deal with it, if in the shoes of the witnesses or accused. For example, when I hear teenagers testify, I have to remind myself that society has changed considerably since I was a teen and not to 'judge' the witness and what was said or done by how I would have dealt with it as a teen many years ago. When I have a person before me who is FAS or ADD, I need to know what effect these conditions have on the person before I can craft a sentence that may address the needs of the offender as well as of society. Thus, a program on sentencing would, in my view, not only include a session on what the range of sentences are for a particular offences, but how to achieve the sentencing goals in cases where the person has a learning disability, an addiction or a medical condition. The law is not applied in isolation -- it is applied by people to people and thus, the days of 'black letter law' if they ever existed, are no longer sufficient to provide judges with the tools to properly carry out their functions.<sup>7</sup>

The goal we have is that social context will indeed become a permanent and enduring feature of judicial education and remains visible as such. This plan for social context integration recognizes the ongoing importance of identifying and including social context and equality issues in all forms of judicial education: “what we do” (courses and content), “how we do it” (process of course development) and “who we are” (institutional congruence at NJI).

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<sup>7</sup> Correspondence on file with NJI (N.O. 2002).

## **Appendix 3: Resolutions of the Canadian Judicial Council in Support of Social Context Education**

### **Phase I (1994-1999)**

At its March meetings in 1994, the Canadian Judicial Council supported:

“judicial education programs on “social context issues” including “gender and race (aboriginal peoples, blacks, and other visible minorities)”, which are “comprehensive, in-depth, and credible”.

In September 1997, the Council further resolved that,

“the Chief Justices commit to providing opportunities for the judges in each of their courts to attend the NJI’s social context programs in at least each of the three areas of gender equity, racial equity and aboriginal justice.”

### **Phase II (2000-2003)**

At the September 2000 meetings of the Council:

*affirmed* the importance of pervasive treatment of relevant ‘social context’ issues including gender, aboriginal peoples, race, age and disability, in all contexts in which judicial education occurs; and *endorsed* the National Judicial Institute’s Phase II initiative to build capacity in this area through a second, more advanced program of judicial faculty development, modeling social context integration and community involvement in judicial education and creating enhanced and accessible resources.<sup>8</sup>

At the same time, resolutions authorizing judicial attendance at the proposed Phase II “Faculty Development and Curriculum Design Programs” were obtained<sup>9</sup> along with a commitment from the Chief Justices of judges attending those courses to:

That the Chief Justices commit to providing education release time to judges in their courts who are, in consultation [with them] identified to participate in a

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<sup>8</sup> Resolution of the Canadian Judicial Council, September 26, 2000 (on file at NJI).

<sup>9</sup> See eg., “Resolved that the Council approve the attendance of up to twenty-five (25) federally appointed judges as participants plus judicial faculty, at each of three (3) further offerings of the Phase II Faculty Development Programs (for a total of seventy-five participants). Each offering of the Program will consist of two courses attended by the same judges plus inter-session work, for a total of six (6) courses to be held in various locations across Canada between September 2001 and December 2002. The judges authorized by their Chief Justices to attend the programs will be identified in consultation with the Special Directors of the Social Context Education Program, and should have an interest in and commitment to judicial education in social context issues. A judge who attends the two programs shall be entitled have his or her expenses reimbursed pursuant to ss. 41(1) of the *Judges Act*.”

Phase II Faculty Development Program, sufficient to enable their participation in the two course program, as well as in inter-session work.<sup>10</sup>

### **Phase III 2005 -- (Ongoing Integration)**

A new 'governing resolution' signaling the ongoing support of the Canadian judicial leadership for social context education was been passed in September 2005 by the Canadian Judicial Council in the following terms:

BE IT RESOLVED that the Canadian Judicial Council recognizes that “credible, in-depth and comprehensive” social context education must be an ongoing part of judicial education, supports a “three-dimensional approach” to judicial education in which substantive content, skills development and social context awareness are continually addressed in judicial education programming and course development and mandates the National Judicial Institute to continue to implement social context education in its curriculum.

In addition resolutions were passed supporting the 'Emerging Issues' seminar series for 5 years and the initial pilot of core social context course.

In 2008, a resolution supporting the core course anticipated in the Integration Plan was passed. It has now been offered (Summer 2010) as *Art and Craft of Judging: Your Sophomore Years* with a focus on social context, judicial ethics, judicial philosophy and professional and personal development.

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<sup>10</sup> Ibid.

## **Appendix 4: Summary and Overview of the Social Context Education Project.**

### **THE SOCIAL CONTEXT EDUCATION PROJECT NATIONAL JUDICIAL INSTITUTE, CANADA**

**T. BRETTEL DAWSON<sup>11</sup>**

#### **SUMMARY**

The Social Context Education Project (SCEP) was a special project of the National Judicial Institute between 1996-2003. It is now an integrated element of NJI operations on an ongoing basis.

The separately funded program had two Phases:

- Phase I concentrated on full-court education seminars in every province of Canada. These seminars were designed to create a common base of information and understanding of the relevance and applicability of social context among all judges in Canada. Over 20 programs were held involving over 1000 judges.
- Phase II focused on a cohort of judicial education leaders in this area through an intensive program of judicial faculty development. Curriculum development was another focus of Phase II.

Since 2003, social context has been integrated as a regular component of NJI work through adoption of the guiding principle that judicial education should always be ‘three dimensional’ (substantive law, skills development and social context awareness) and designation of a member of the senior management team responsible for social context integration.

The Social Context Education Program:

- Built on work initiated in Canada by the Western Judicial Education Centre
- Was mandated by the Canadian Judicial Council and supported by Chief Judges.
- Built from the premise that understanding social context and integrating it into judicial processes and judicial decision-making is mandated by law.
- Was developed in synergy with jurisprudential developments explicitly recognizing the legitimacy of contextual inquiry in judicial decision-making.
- Proceeded on the basis that social context education is a long-term process not an inoculation. The long-term goal is integration of social context into all forms of judicial education as an automatic part of the landscape. .

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<sup>11</sup> Prepared by T. Brettel Dawson for the Social Context Symposium as part of the Canada Conference, Judicial Education in a World of Challenge and Change, International Organization of Judicial Training, Ottawa, 2004 (with input from Special Directors and including minor updates, 2009). See also Essays in Celebration of NJI’s 20<sup>th</sup> Anniversary, [www.nji.ca](http://www.nji.ca) for additional reading.

- Was enhanced by community input and involvement and fostered by the support of judicial leaders.
- Took a broad view of the meaning and scope of social context education.

The SCEP has worked to assist judges to:

- understand the nature of diversity, the impacts of disadvantage and the particular social, cultural and linguistic issues that shape the persons who appear before them;
- explore their own assumptions, biases and views of the world with a view to reflecting on how these may interact with judicial process;
- examine relevant research and community experience in order to enhance processes of judicial reasoning and
- provide jurisprudential and analytical tools to enable judges to examine the underlying basis of legal rules and concepts to ensure that they correspond with social realities and conform to the constitutional guarantee of equality.

## **DETAILED OVERVIEW**

### ***Scope of Social Context Education and its Place in the Judicial Education Curriculum***

*A broad view of social context education:*

Social context education is intended to improve the delivery of justice in the nation's courtrooms through bringing into focus the role of social context in judicial action. The word choice itself was a careful compromise designed to focus attention on the fact that judges become better judges when they are more knowledgeable. In Sheilah Martin's inimitable phrase, "I have never heard a compelling argument against more knowledge (1997).

In Canada, the SCEP has taken a broad approach to social context education. In our view, social context education must be seen as being a great deal more than 'sensitivity training' on 'diversity issues' for judges. Without doubt, judges can benefit from better understandings of the communities which they serve. However, building on the insight that determination of facts and law are both influenced by social context and as such, it plays an essential role in judicial decision-making, we have expanded our scope to address issues of fundamental legal analysis. SCEP has worked to i) assist judges to understand the nature of diversity, the impacts of disadvantage and the particular social, cultural and linguistic issues that shape the persons who appear before them; ii) encourage judges to explore their own assumptions, biases and views of the world with a view to reflecting on how these may interact with judicial process; iii) examine relevant research and community experience in order to enhance processes of judicial reasoning in the interpretation and application of evidence and legal principles, including credibility assessment and issue identification (iv) provide jurisprudential and analytical tools to enable judges to examine the underlying basis of legal rules and concepts to ensure that

they correspond with social realities and conform to the constitutional guarantee of equality.

*Mandated by law:*

The SCEP has been assisted in its work by recognition that equality and contextual judicial inquiry are not optional but are mandated by law in Canada through our Constitution and accession to relevant international conventions. It is an explicit ethical obligation of Canadian judges to “conduct themselves and proceedings before them so as to assure equality according to law” (*Ethical Principles*). Increased judicial awareness of social context, then, is not only essential to good judging, but is required by law. In the view of Justice Smith (as she now is), “all judges should be leaders in bringing about equality” and that it is necessary for judges to “have an understanding of the social context in which equality principles are being applied.”(Smith, 1996).

*Complemented by judicial commitment to contextual inquiry:*

Senior judges, including members of the Supreme Court of Canada, have expressed their view that social context is a legitimate and necessary part of judicial decision-making and judicial education. In *R.D.S.*, some members of the court commented that “A conscious, contextual inquiry has become an accepted step towards judicial impartiality” (RDS). Justice Michel Bastarache commented that “Our understanding of rules or laws is necessarily filtered through the context of our historical, legal and social cultures” (2002). Justice Iacobucci argued that “understanding the Canadian social context and incorporating this into the process of adjudication requires that we always bear in mind the moral underpinnings of our Constitution and in particular the fundamental principle of equality” (2001). Justice L’Heureux-Dube, pointed to “the importance of ensuring that courts remain attentive to historical patterns of discrimination in determining whether a particular rule, inference, or presumption is based on myth or stereotype and therefore violates constitutional guarantees of equality”(2001, Social). In her view, “contextual inquiry is an attempt to “to attack the problem of privilege and to understand the diversity of people's experiences.’ When issues are examined in context, it becomes clear that some so-called ‘objective truths’ may only be the reality of a select group in society and may, in fact, be completely inadequate to deal with the reality of other groups (2001, Queens).

Judicial education on social context is a response to the challenge these insights pose. Chief Justice of Alberta, Catherine Fraser framed the challenge facing judges:

“...to understand one's own world views as well as those of the litigant before making a decision. [if one does not] as Patrick Devlin has suggested, a judge's biases may lead him or her to "mould" the facts of a case and thereby arrive at a decision based on an understanding that does not correspond entirely to reality... To understand context..., judges must understand people and powerlessness: in particular the protected class or group, their values, the reality of their lives and the relationship of that group to other groups in our society”(1995).

Then Supreme Court Justice Bastarache, echoed this when he said in 1999, “Ever since cases decided by the Supreme Court concerning the Canadian Charter of Rights and Freedoms began to dominate the legal scene in Canada, the importance of conducting a contextual analysis and taking an interdisciplinary approach has been stressed. ... This definitely means that we have to address a wider range of knowledge and skills in our training programs. We have to realize that what we are doing is restructuring our environment and that the legal context, in its modern sense, is very broad.”

*Based on the premise that this is a long-term process that has integration of social context as the long-range goal:*

Throughout, we have regarded social context as an area in which all judges can benefit from specialized education (to provide ‘touchstones for deeper knowledge’) and as one which informs the scope of all good education. Justice Swinton (as she now is) pointed out in 1996, ‘Credible and comprehensive’ social context education must be an ongoing part of judicial education, in the same way that there is ongoing education about substantive law or criminal justice issues. Thus, social context education should not be regarded as ‘an inoculation’ to be received through stand-alone or ‘one off’ conferences. Rather it is a long term and continuing process, the long term goal of which is to make social context factors “automatically part of the landscape, in the same way that discussion of tax implications would automatically form part of any program on estate planning.” (Smith, 1996).

Dean Smith (as she then was) pointed out that this would require efforts to reach all judges “to create a common base of information and understanding” and to develop a cohort of judicial education leaders. Our work has followed this process: in Phase I, introducing the social context approach in court-based programming across Canada; and in Phase II, working with judicial leaders in a process of social context judicial faculty development.

*Enhanced by community involvement:*

An important principle of judicial education pioneered by SCEP was outreach to the community and efforts to foster a two-way dialogue between judges and communities outside the adversarial setting of the courtroom. This took three forms in our work. First, it involved using non-judges as faculty members. This included drawing on non-lawyer community members as faculty members and in some cases, as members of planning committees. This began a long-term shift at NJI away from a model of judicial education as “J<sup>3</sup>” (judges talking to other judges about judgments) and foreshadowed acceptance at NJI of the ‘three pillars’ principle of judicial education (involvement of judges, academics, community practitioners). Having a broadly representative planning group and faculty members helps to ensure appropriate understanding of issues, high quality content and widespread credibility of programming. Secondly, this work was specifically

complemented by efforts at community consultation. Two formal community consultations were undertaken to enhance two-day dialogue between judges and communities. This initiative has been piloted further in Phase II of the Project with Nova Scotia initiating a permanent community-judicial liaison process. Finally, the SCEP worked closely with a National Advisory Committee comprised of judicial leaders, academics and community members throughout its activities.

*Fostered by judicial leadership:*

In our experience, successful social context education for judges requires the commitment of Chief Justices and Chief Judges, the involvement of respected judicial leaders in each court in program planning and delivery, and close coordination with judicial education committees. In Canada, Chief Justices supported the social context initiative through resolutions of the Canadian Judicial Council (see below), through constituting Education Committees in their Courts to plan and deliver social context seminars, and through dedicating court-based education meetings to the subject of social context. The high level of judicial leadership sent a strong message that this work was considered to be credible and a high priority for all judges.

### **Activities of the Social Context Education Project**

As noted, there have been two formal Phases of the SCEP in Canada. We secured special project funding for each phase from the federal Department of Justice. The planning process for each Phase including the various conferences and programs was lengthy and comprehensive. This reflective and critical approach to the project itself became educative for judges and also helped to make links with the community.

*Phase I of the Social Context Education Project 1996- 2001:*

This Phase focused on delivering intensive full-court social context programs to all federal and many provincial courts in Canada. By the time the final program in the first phase was completed in May 2000, the Project had worked with courts across the country to develop and deliver some 20 programs to over 1000 judges.

A key feature of the planning process was to work directly with court-based education committees in each province and provide members of these committees with in-depth 'judicial faculty development' on social context education to assist them in shaping the Phase I programs for their colleagues.

The Phase I, full-court programs lasted from 2-3 days and combined:

- plenary addresses on broad themes (judicial independence, judicial role, equality); with
- workshops on specific areas of law or social reality (e.g. aboriginal justice, poverty, language and communication; domestic violence; credibility assessment, disability issues; expert evidence; judicial notice, sentencing); and

- discussion groups for judges only with trained judicial facilitators (to allow judges to explore their reactions to the material and apply it to problems they face in their daily work e.g., a discussion problem might include recusal issues, bail etc as a basis to focus discussion).

*Phase II of the Social Context Education Project: 2001-2003:*

NJI undertook a second phase of the SCEP in which there was a dramatic shift in focus from working with full courts to working with judicial leaders across Canada who would acquire the advanced skills needed to effectively plan, prepare, and deliver effective integrated social context education programs for their colleagues. The key component in this work in Phase II of the Social Context Project was the Faculty Development and Curriculum Design Program (FCD) which worked with 100 judges. The FCD program was offered four times, with each offering attended by 25 judges. The FCD program had three parts: a 3-day course addressing judicial program design and adult education principles, a period of ‘inter-session work’ during which judges developed an education program idea using these principles and a 2-day course at which they presented their outlines and received feedback and participated in additional substantive discussion of social context. Judges who participated in the FCD developed 54 social context education projects, of which 44 have been or will be offered in areas as diverse as expert evidence, judge as problem solver, judicial notice, civil law developments in light of the equality law, enhancing multi-cultural awareness, disability and law; poverty issues, self-represented litigants; and aboriginal youth justice.

*Ongoing activities:*

As our work has progressed through Phase I and Phase II of SCEP, we have had continually in mind the need to achieve sustainable, ongoing integration of social context in Canadian judicial education. In our view, integration requires more than adding one body or one topic to a committee, program or panel once in awhile. Social context integration can only be accomplished when appropriate social context perspectives and issues are regularly sought out, identified and included in a systematic way at all stages of the planning and delivery of all judicial education. To achieve integration requires attention to organizational structure and support, who plans, how topics are chosen and conceptualized, what learning objectives are identified, the process by which programs are developed and the faculty and resources chosen in support of program development and delivery.

The Twenty Principles of Judicial Education have been approved (2006) including support for Charter values in judicial education, three dimensional judicial education integrating social context and involvement of ‘the three pillars’ (judges, academic experts and community based experts) in design and delivery of judicial education. A ‘Social Context Integration Protocol’ has been adopted at the NJI (2009) addressing courses, resources and institutional congruence (including resource allocation, staffing and processes. New programming has been developed including a seminar for judges 5 years

after appointment (The Art and Craft of Judging) which is built around social context themes, judicial philosophy and judicial ethics.

### Social Context Personnel at NJI

<b>Phases I and II (1996-2004)</b>	
<b>Special Directors of SCEP,</b>	<b>National Coordinators of SCEP</b>
<p>The Honourable Justice John McGarry, Superior Court of Justice (Ontario)</p> <p>The Honourable Judge Donna Martinson, Provincial Court of British Columbia (now Justice of Supreme Court of British Columbia)</p> <p>The Honourable Justice Donna Hackett, Ontario Court of Justice</p>	<p>Professor Rosemary Cairns Way, Faculty of Law, University of Ottawa 1997-1999;</p> <p>Professor T. Brettel Dawson, Department of Law, Carleton University, 1999-2003</p>
<b>Ongoing Integration (2005 --)</b>	
<p>The Honourable Justice Adèle Kent, Court of Queen’s Bench for Alberta</p>	<p>Professor T. Brettel Dawson, Department of Law, Carleton University, Academic Director, National Judicial Institute</p> <p>Dr David Wiseman, Senior Advisor, National Judicial Institute</p>

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## **Appendix 5: Twenty Principles of Judicial Education**

### **National Judicial Institute: Principles of Judicial Education in Canada ("The Twenty Principles")**

Approved, Board of Governors  
October 2006

This document sets out a number of principles or guiding principles of judicial education which reflect how the National Judicial Institute conceptualizes and implements judicial education in Canada.

These principles have been distilled from experience and collective discussion. They are also to guide our approach to international judicial education.

#### **JUDICIAL EDUCATION AND THE JUDICIAL ROLE**

1. Judicial education is a key component to ensuring high standards of judicial performance and support for the rule of law.
2. Respect for Charter values and judicial independence must underpin all judicial education.

#### **INSTITUTIONAL INDEPENDENCE AND POLICY FRAMEWORK**

3. Judicial education must be offered under conditions of institutional and financial independence.
4. Strong support and involvement from Chief Justices and Chief Judges along with other respected judicial leaders is of central importance to foster a culture of judicial learning.
5. To facilitate and support judicial involvement, judicial education must be supported by appropriate policies, scheduling and resources.
6. Coordination among education providers is a useful way to enhance the range of education available and its cost-effectiveness.

#### **JUDICIAL LEADERSHIP OF JUDICIAL EDUCATION**

7. Judges must lead judicial education. Peer judicial education is a central principle of judicial education. Well-respected judges must be involved in the development and delivery of education activities and an organized judicial education institute provides the infrastructure, knowledge and support in this process.
8. Judicial Faculty Development is integral to supporting the peer education principle and ensuring high quality judicial education that is sustainable over the long term.

9. Judges and non-judges can usefully collaborate on program planning and delivery; indeed programming is enhanced by involvement of legal practitioners, legal and other academics and members of the wider community (the 'Three Pillars').
10. Judges need to be supported by curriculum and logistics experts in the planning and delivery of judicial education.

#### **CURRICULUM DEVELOPMENT**

11. An ongoing process of needs assessment is critical to ensuring that judicial education is relevant and responsive to judicial learning priorities and preferences.
12. A curriculum (with an inventory of course offerings) should guide the development and scheduling of courses and it should be disseminated.
13. The judicial education curriculum develops at both the national and local levels and is enriched by incorporating comparative perspectives.

#### **PROGRAM DESIGN PRINCIPLES**

14. Judicial education programming must recognize the complexity of the judicial role and must practically and concretely address judicial roles, tasks and duties.
15. Judicial education should reflect the character and profile of the judiciary in Canada.
16. In order to address the full spectrum of judicial concerns, judicial education programs should integrate elements of substantive knowledge, skills development and social context (be "Three Dimensional").
17. Court-based programs and modules of education should be 'locally adapted' to delivery settings.

#### **JUDICIAL EDUCATION PEDAGOGY**

18. Judges are adult learners. Judicial education will be most engaging and effective when it implements adult learning principles and uses a experiential, skills-based approach.
19. Judicial education programs should reflect the best principles of education program design for professional learning environments.
20. Effective evaluation methods enable continuous improvement in design and delivery of judicial education. Forms of evaluation must themselves respect judicial independence.