

**The International Organisation for Judicial Training  
The Fourth International Conference on the Training of the  
Judiciary**

**"Judicial Education – A Global Phenomenon"**

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Consideration of judicial education requires consideration of the judicial task and the competencies necessary to support it. The primary judicial task is to hear and decide cases that come before the Court. In carrying out that task judges must identify the applicable legal rules or standards, determine the facts of the case based on the evidence before the court and apply the law to those facts. The application of the law to the facts leads to the disposition of the case by the award of some remedy or the imposition of some penalty or by the dismissal of the claim for relief.

The core elements of the judicial task point to the competencies which are necessary for its proper discharge. They include the following:

1. An understanding of the nature of the judicial role in the constitutional setting in which it is to be discharged and the

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relationship of the judiciary to the other branches of government.

2. Knowledge of the law and the techniques for identifying legal rules and standards.
3. Competencies relevant to fact finding including:
  - 3.1 The capacity to distinguish relevant from irrelevant evidence.
  - 3.2 The capacity to weigh evidence and to draw inferences from evidence relevant to the factual questions to be determined.
  - 3.3 Where factual issues are to be determined in matters relating to the physical or life sciences, technology, economics or other disciplines outside the law, an understanding, or the capacity to acquire an understanding, of the underlying area of knowledge sufficient to enable the requisite findings to be made reliably.
  - 3.4 Where factual findings require partly qualitative judgments such as judgments about reasonableness in tort or good faith in contract law or market definition in competition law or inventiveness or novelty in intellectual property law - an understanding of the nature of the qualitative judgment required and, if it be purposive, the purpose which it serves.

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3.5 In cases raising cultural issues because of the involvement of indigenous people or members of particular ethnic or social groups an awareness of cultural differences which may affect or explain behaviour or testimony which may be relevant to the fact-finding function. Linked to this competency there will necessarily be an appreciation of the limits which the requirements of the rule of law and equality before the law impose on judicial responses to the recognition of difference.

4. Knowledge and experience of matters relevant to the judicial process including:

4.1 How to manage the litigious process to avoid unnecessary cost, delay and stress on parties.

4.2 The requirements of procedural fairness including absence of actual and apparent bias and the provision to any party of a proper opportunity to be heard before any decision adverse to the interest of that party is made.

4.3 The nature of judicial independence from government and from any organisation, group or individual interested in the outcome of the case.

4.4 The capacity to communicate with clarity orally or in writing the reasons for any decision that is made.

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5. Knowledge of the ethical requirements of judicial office and the capacity to make practical judgments about ethical issues.

There are no doubt other judicial competencies that could be suggested. It may be that the selection of those set out above is skewed by the traditions of the judicial systems of the common law world. Whatever its shortcomings, the list indicates the variety of matters that should be considered in ensuring that persons appointed to judicial office have, maintain and enhance the competencies necessary for its discharge.

The times are long gone when persons appointed to judicial office in the common law world were thought to ascend to the Bench on the date of their appointment, fully equipped with all the knowledge and skills necessary to the judicial task. And even those in civil law countries who have been appointed after lengthy pre-appointment education and internships, will still have a need for the lifelong learning that only experience and continuing education can bring. Judicial education and training upon appointment and during the tenure of judicial office is now a well-established feature of judicial systems around the world.

In this paper I would like to refer briefly to the history of judicial training and education internationally as a way of setting the scene for the discussions which are to follow in this conference. I also propose to make specific reference to the important but difficult area of cultural awareness education.

## **The growth of judicial education**

Judicial education in common and civil law jurisdictions has undergone rapid developments in the post World War II period and particularly in the last 20 years. However its focus in the past tended to be on local systems rather than internationally consistent approaches.<sup>1</sup>

Clifford Wallace has argued that judicial education must globalise in order to be relevant to the global legal community in which judges now have to carry out their tasks. A global approach it is suggested "would improve local or regional judicial education methods, results, and resources".<sup>2</sup> Few could disagree that the exchange of information, ideas and experiences about judicial education is of benefit to all who are engaged in that activity. It is that objective which is served by this conference. Against that background it is useful to undertake a brief overview of the growth and diversity of judicial education in national jurisdictions.

### *Australia*

Traditionally, formal judicial education in Australia before the 1970s was non-existent. During the 1970s, various courts took initiatives to conduct conferences and seminars "usually on a national, biennial or ad hoc basis".<sup>3</sup>

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<sup>1</sup> C Wallace, 'Globalization of Judicial Education' (2003) 28 *Yale Journal of International Law* 355.

<sup>2</sup> C Wallace, 'Globalization of Judicial Education' (2003) 28 *Yale Journal of International Law* 355 at 356.

<sup>3</sup> L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 17.

Early proposals for the introduction of formalised judicial education in Australia to assist new appointees in the transition to the Bench and to keep judges abreast with change were met with a "mixed" response in the judiciary.<sup>4</sup> However, by 1986-7 programs became more formalised with the establishment of the Judicial Commission of New South Wales in 1986 and the delivery of programs by the Australian Institute of Judicial Administration (AIJA) from 1987. Both the Judicial Commission and the AIJA conducted state based and national judicial conferences and workshops.

The first judicial orientation course was conducted by the AIJA and the Judicial Commission of New South Wales in 1994. Chief Justice Mason referred, in opening the course, to the "myth" of legal culture that the barrister with long experience as an advocate in the courts was thereby equipped to conduct a trial in any jurisdiction.<sup>5</sup>

Judicial education provided by these bodies increased significantly since the 1990s. Government funding was made initially in the specific area of gender awareness<sup>6</sup> and later for cultural awareness training in connection with indigenous people interacting with the court system as parties or witnesses.

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<sup>4</sup> L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 17. Indeed Kirby was an early proponent of judicial education; see M D Kirby, *The Judges*, The Boyer Lectures, Sydney: ABC (1983) at 24-26.

<sup>5</sup> See A Mason, *The Role of the Judge, Inaugural Judicial Orientation Program* (1994).

<sup>6</sup> On gender issues see: L Armytage, 'Judicial Education on Equality - With Particular Reference to Gender and Ethnicity' (1995) 58 *Modern Law Review* 160.

The objectives of the AIJA today encompass teaching in the administration of justice, programs of continuing education for judges, magistrates and officers of the court and practising members of the legal profession, including those employed by governments and professional teachers of law.<sup>7</sup>

The principal policy objective of the Judicial Commission of New South Wales, as set out in the *Judicial Officers Act* (NSW) 1986, is to:<sup>8</sup>

[O]rganise and supervise an appropriate scheme for the continuing education and training of judicial officers.

The Commission offers educational services which encompass "any service which may facilitate the performance of ... judicial duties and enhance the quality of justice."<sup>9</sup> A primary mission of the education programs is to assist judicial officers in the performance of their duties by:<sup>10</sup>

Enhancing professional expertise, facilitating development of judicial knowledge and skills, and promoting the pursuit of juristic excellence.

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<sup>7</sup> P Sallmann, 'A note on Judicial Education in Australia: An Australian Institute of Judicial Administration Perspective' (1992) 2 *Journal of Judicial Administration* 28.

<sup>8</sup> *Judicial Officers Act* (NSW) 1986 s 9(1).

<sup>9</sup> Judicial Commission of New South Wales, *Continuing Judicial Education Survey*, Preamble, 1991 cited in L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 162.

<sup>10</sup> Judicial Commission of New South Wales, *Continuing Judicial Education Survey*, Preamble, 1991; in appendix cited in L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 162.

In 2003, the Judicial College of Victoria was established as the second state-based judicial training institute in Australia. The College coordinates court conferences, as well as organising seminars and workshops for judges and magistrates. The College has established a Judicial Officers Information Network under which Victorian judicial officers access all necessary information electronically. It provides visits and field trips to correctional and forensic facilities and forensic services. Judicial officers are also made aware of drug rehabilitation facilities and issues of homelessness, drug use and gambling. The College provides a two year induction framework for new appointees to ease their transition from legal practice to the bench.<sup>11</sup>

A significant national development in judicial education in the last decade has been the establishment of the National Judicial College of Australia.<sup>12</sup> The creation of such a body was supported by former Chief Justices Sir Anthony Mason, Murray Gleeson and by the AIJA.<sup>13</sup> In 2000, the Australian Law Reform Commission published a report<sup>14</sup> which recommended its establishment. The College was established in May 2002 as an independent entity, funded by Commonwealth and State governments and controlled by a governing Council, which includes judicial officers.

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<sup>11</sup> See Judicial College of Victoria website: 'About the College', available at <[www.judicialcollege.vic.edu.au/](http://www.judicialcollege.vic.edu.au/)>. On recent developments in judicial education in Victoria see 'Back to School for Judiciary' (2007) 81(11) *Law Institute Journal* 31.

<sup>12</sup> On the early development and proposal for a national college see M Gleeson, 'The future of judicial education' (1999) 11(1) *Judicial Officers' Bulletin* 1.

<sup>13</sup> See J Doyle, 'The National Judicial College of Australia' (2005) 16(1) *Commonwealth Judicial Journal* 16.

<sup>14</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No. 89) (2000).

The College has four guiding principles relevant to the provision of judicial education:<sup>15</sup>

1. Judicial independence requires that participation in programs should be voluntary.
2. Programs must be of the highest quality.
3. Programs must avoid any hint of compulsory re-education: "or of the deliberate shaping or forming of judicial attitudes on issues that will fall for decision."<sup>16</sup>
4. Programs must not only be relevant, but convenient considering the time constraints of judicial officers.

It is in a sense regrettable that in a country with a population of just over 21 million people and a relatively small body of judicial officers who form part of a national international integrated judicial system, there is a diversity of bodies delivering judicial education programs. However, this is an aspect of a larger phenomenon of institutional diversity with which Australians are well familiar. It is an incident, although not a necessary incident, of federation. Accepting that reality, there is a need for the coordination of the provision of judicial education in Australia so that the best use can be made of available financial and human resources and they can be targeted to the areas of greatest need.

### *United States*

The commencement of formal judicial education in the United States can be traced back to the establishment of the National Judicial

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<sup>15</sup> See J Doyle, 'The National Judicial College of Australia' (2005) 16(1) *Commonwealth Judicial Journal* 16 at 17-18.

<sup>16</sup> See J Doyle, 'The National Judicial College of Australia' (2005) 16(1) *Commonwealth Judicial Journal* 16 at 17.

College in 1963. By 1967 a Federal Judicial Centre had been established providing judges with continuing education. Judicial education subsequently evolved predominantly on a state basis.<sup>17</sup> The Californian Centre for Judicial Education and Research was at the forefront of state based judicial education, conducting its first programs for trial judges in 1976.<sup>18</sup> The Michigan Judicial Institute commenced its programs in 1977. Within ten years, most States were providing mandatory training for their judges. The training involved about five days a year. Judicial education has now become a "big business" serving tens of thousands of judges each year.<sup>19</sup>

Today, the National Judicial College programs offer an average of 90 courses each year with more than 2000 judges enrolled from all States of the United States.<sup>20</sup> Programs in judicial education are also offered at Masters and PhD levels. Nearly every state in the United States today has established an agency responsible for judicial education, but many of these state programs are voluntary.<sup>21</sup>

Various formulations of the policy objectives of judicial education have been developed in its forty years history in the United States. In 1992, the National Association of States and Judicial Educators

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<sup>17</sup> L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 13.

<sup>18</sup> See H H McCabe, 'California's Approach to Judicial Education' (1967) 51(2) *Judicature* 58-63.

<sup>19</sup> J K Hudzik, *Issues and Trends in Judicial Education* (1993) at 205.

<sup>20</sup> See National Judicial College website available at: <<http://www.judges.org/about.html>> .

<sup>21</sup> See C Wallace, 'Globalization of Judicial Education' (2003) 28 *Yale Journal of International Law* 355 at 357.

(NASJE) promulgated its Principles and Standards of Continuing Judicial Education. They proposed as objectives of judicial education:<sup>22</sup>

[T]o assist judges acquire the knowledge, skills and attitudes required to perform their judicial responsibilities fairly, correctly and efficiently; to promote judges' adherence to the highest standards of personal and official conduct; to preserve the integrity and impartiality of the judicial system through elimination of bias and prejudice, and the appearance of bias and prejudice; to promote effective court practice and procedures; to improve the administration of justice; to enhance public confidence in the judicial system.

### *United Kingdom*

The Judicial Studies Board administers judicial education in Britain. It was established in 1979 as the result of a working party chaired by Lord Justice Bridge.<sup>23</sup> The Board initially confined its role to providing education in relation to the criminal jurisdiction, magistracy and lay magistracy. In 1985, under the direction of Lord Hailsham, it expanded its programs to cover Civil and Family jurisdictions.<sup>24</sup>

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<sup>22</sup> National Association of States and Judicial Educators, NASJE Principles and Standards of Continuing Judicial Education, Commentary on Preamble, 3 and 6 cited in L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 159.

<sup>23</sup> Working Party on Judicial Studies and Information, chaired by Lord Justice Bridge in 1978 known as the *Bridge Report*: Judicial Studies Board, *Report for 1983-1987* (1988). On the earlier stages of judicial education in Britain see also I R Scott, *Judicial Training in England* (1974) 5 *International Bar Journal* 42. For an overview of the development of the Judicial Studies Board through the 1980s and 1990s see A Rutherford, 'Judicial training and autonomy' (1999) *New Law Journal* 1120.

<sup>24</sup> Judicial Studies Board, *Report for 1983-1987* (1988) at 8-9.

The development of judicial education seems to have been less formal in Britain than in the United States.<sup>25</sup> The Board conducts a range of orientation and updating programs which extend to lay magistrates and tribunal members.<sup>26</sup> The Board observed in 1988:<sup>27</sup>

Judicial studies are no longer a novelty ... No competent and conscientious occupant of any post would suggest that his performance is incapable of being improved, and, since there is a limit to what can be done simply by self improvement, almost all judges are able to perceive the need for organised means of enhancing performance.

By the mid 1990s, Lord Justice Henry reported a "sea change in judicial attitudes to training ....". He said that judges had "appreciated, and benefited from training in a way that has confounded the sceptics".<sup>28</sup>

Today, the Judicial Studies Board is involved with the training of judges "in the Crown, county and higher courts"<sup>29</sup> and also includes training for tribunal judges exercising judicial functions in magistrate courts. The Board's activities have continued to expand in the past

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<sup>25</sup> L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 15.

<sup>26</sup> In its 1995 report the Judicial Studies Board found in addition to judges and "embryo judges" (3000), the Board provides services to Magistrates (30 000) and members of tribunals (30 000).

<sup>27</sup> Judicial Studies Board, *Report for 1983-1987* (1988) at 13 cited in L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 15.

<sup>28</sup> Judicial Studies Board, *Report for 1991-1995* (1995) at 4.

<sup>29</sup> Judicial Studies Board, *Annual Report* (2008-2009) at 2.

decade and include participating in programs organised by European, Commonwealth and international training institutions.

### *Canada*

The Canadian Judicial Council conducted its first educational activities in 1972, which was followed over the next decade by the establishment of the Canadian Institute for Administration of Justice in 1974, and the Canadian Judicial Institute in 1988.<sup>30</sup> Other educational bodies also operate at a state and local level, such as the Canadian Association of Provincial Court Judges, and the Western Judicial Education Centre.

At the beginning of the 1990s, the National Judicial Institute declared its mandate to be:<sup>31</sup>

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

Over the past ten years the role of the Institute appears to have broadened. Its website this year states that it is:<sup>32</sup>

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<sup>30</sup> See L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 16, comments the National Judicial Institute was established, replacing the Canadian Judicial Institute, following the recommendations of J Stevenson, *Towards the Creation of a National Judicial Education Service for Canada* (1986).

<sup>31</sup> National Judicial Institute, *Annual Report*, 1991-1992 at 4 cited in L Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 160.

<sup>32</sup> National Judicial Institute website available at: <[www.nji.ca/nji/index.cfm](http://www.nji.ca/nji/index.cfm)> .

[D]edicated to the development and delivery of educational programs for all federal, provincial and territorial judges. The Institute's programs stimulate continuing professional and personal growth and reflect Canada's cultural, racial and linguistic diversity, as well as the changing demands on the judiciary in a rapidly-evolving society. The programs focus on the three major components of judicial education: substantive law, skills training and social context issues.

Canada provides an interesting example of the proposition that the nature of the legal system in which judicial education is being offered may affect the character of that education. In a 2005 paper,<sup>33</sup> Justice Lederman of the Superior Court of Ontario argued that substantive law in Canada today is less rule-based and more "principled in nature"<sup>34</sup> and therefore judicial education has had to adapt to these changes. He commented:<sup>35</sup>

Judges are required to balance competing policy interests in making decisions, and to better appreciate these various policy interests, judges are receptive to hearing from those who can articulate the underpinnings of particular policy positions.

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<sup>33</sup> S Lederman, 'Personal Reflections on Judicial Education in Canada' (2005) 38 *University of British Columbia Law Review* 561.

<sup>34</sup> S Lederman, 'Personal Reflections on Judicial Education in Canada' (2005) 38 *University of British Columbia Law Review* 561 at 564.

<sup>35</sup> S Lederman, 'Personal Reflections on Judicial Education in Canada' (2005) 38 *University of British Columbia Law Review* 561 at 564.

Thus we now find an easy integration of the judiciary and academics at judicial education seminars. Both worlds have been enriched. Indeed, it is not uncommon to have scholars from fields outside of law and community leaders address judges on all manner of topics. Anything that serves to expand the judge's mind is acceptable because knowledge makes for a better judiciary.

The mode of delivery of judicial education in Canada has undergone considerable change in recent years. Originally, courses were delivered by formal lectures. Training is now delivered not only at conferences, but at interactive workshops that deal with specific or general issues, and also through the internet to cater for the demanding schedules of judicial officers.<sup>36</sup>

### *New Zealand*

In New Zealand, an active program of court-based continuing judicial education operates within the District Court structure. This program commenced with the launching of a judicial induction program in 1988.<sup>37</sup> In 1991, a more formal and systematic approach to judicial education was endorsed by Sir Ivor Richardson who argued that judges in New Zealand could no longer depend on self education.<sup>38</sup>

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<sup>36</sup> S Lederman, 'Personal Reflections on Judicial Education in Canada' (2005) 38 *University of British Columbia Law Review* 561 at 566.

<sup>37</sup> See S Cartwright, 'Judicial Studies in New Zealand's District Courts' (1993) 2 *Journal of Judicial Administration* 162.

<sup>38</sup> I Richardson, 'Changing needs for judicial-decision making' (1991) 1 *Journal of Judicial Administration* 61 at 61.

[F]ormal judicial education programs are, I believe, the most effective means of gaining information and insights; of stimulating awareness of changing social and economic perspectives and values; and generally of enabling us to keep abreast of all those facets of our work in changing times.

In 1998 the Institute of Judicial Studies was established through a Memorandum of Understanding between the judiciary and the Department for Courts. The primary functions of the Institute are to:<sup>39</sup>

[A]ssist in the professional development of judges, promote judicial excellence and to foster an awareness of judicial administration, developments in the law and social and community issues.

The educational programs of the Institute fall into three categories.<sup>40</sup> The first involves skills-training such as a judgment writing workshop and a settlement conference workshop. The second is education in substantive law, usually in areas that have been subject to significant recent law reform. The third type of program provides a broader context for judges to consider issues relating to the administration of justice as a whole. These programs cover such topics as gender equity and judicial ethics. The Institute has developed cultural awareness programs which include training in Maori language and knowledge of Maori culture and protocol during the orientation program.<sup>41</sup>

<sup>39</sup> Courts of New Zealand, 'Judicial Committees' available at: <[www.courtsofnz.govt.nz/about/system/judicial-committees](http://www.courtsofnz.govt.nz/about/system/judicial-committees)> .

<sup>40</sup> Courts of New Zealand, 'Judicial Committees' available at: <[www.courtsofnz.govt.nz/about/system/judicial-committees](http://www.courtsofnz.govt.nz/about/system/judicial-committees)> .

<sup>41</sup> D J Carruthers, 'Judicial Education in New Zealand' 14(3) *Commonwealth Judicial Journal* 30 at 31.

No doubt an area of interest to all those involved in the delivery of judicial education programs is the degree of diversity between countries with similar legal systems and whether and to what extent their differences are accidents of history or explained by deeper underlying factors. Livingstone Armytage in the mid 1990s identified a number of significant differences between policy approaches in common law countries.<sup>42</sup> He pointed to a wider ranging judicial education in the United States than in Australia and evidenced its inclusion of court management as falling within the domain of judicial education. The importance of the attainment of "public confidence" and a philosophy of external accountability was said to be a factor informing the United States approach. A similar approach was taken in Canada where the National Judicial College extended its mission to the broader social context within which the justice system operates. The notion of judicial education as playing an explicit role in preserving and enhancing judicial independence is recognised in Canada. It is also seen as a means of promoting the personal growth of judges, whereas in other places it may be viewed more narrowly as a means of enhancing professional competence.

I think it can be said that the approach undertaken in Australia has broadened significantly. Issues of case management by judges and the efficient use of public resources, and the minimisation of cost and delay in litigation is a high public priority and something which occupies the attention of the courts and informs ongoing training of judges.

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See L. Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (1996) at 158-163.

Awareness of non-judicial dispute resolution and its techniques has also been made something of a priority area.

### **Civil law countries – education for a career**

Civil code countries historically had an informal internal apprenticeship system where aspiring judges entered the career as semi-professional staff.<sup>43</sup> Germany is one of the notable exceptions in the civil system. Its six year university programs with rigorous entrance and final examinations are a source of highly qualified candidates to the bench. Those programs include internships, which eliminate much of the need for entry level training.

Civil law countries, because of the different career structure for their judiciaries, have placed much greater emphasis on entry level training than in common law systems:<sup>44</sup>

The difference [between civil and common law systems] is a logical consequence of the civil code tradition's tendency to treat the judiciary as a career and to recruit judicial professionals from among recently graduated students of what are in effect undergraduate law programs.

As would be expected, there are dramatic differences between budgets allocated for civil and common law judicial education systems.<sup>45</sup>

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<sup>43</sup> L Hambergren, *Judicial Training and Justice Reform* (1998) at 6.

<sup>44</sup> L Hambergren, *Judicial Training and Justice Reform* (1998) at 6.

<sup>45</sup> See S Stanga, *El saber de la justicia* (1996) cited in L Hambergren, *Judicial Training and Justice Reform* (1998) at 7 (footnote 9).

Differences between civil and common law systems are illustrated by judicial education in France. This has traditionally involved candidates for judicial appointment undertaking a post-graduation competitive examination to enter the Ecole Nationale de la Magistrature in Bordeaux. The Bordeaux School was established by the French government in 1958 (as the National Centre for Judicial Studies) to encourage the independence of the judiciary. The training it provides includes internships, workshops and lectures and interdisciplinary training in fields including history, sociology, psychology, psychiatry, forensic sciences, pathology and accounting.<sup>46</sup> In a specialisation stage candidate judges are prepared for their first posting which can be to the position of a district judge, or a judge at a small claims court, a supervisory judge, or a judgment enforcement judge. On appointment they are immediately sent to their respective positions.<sup>47</sup>

In 2000, the European Union established a European Judicial Training Network which is described on its website as "the principal platform and promoter for the development, training and exchange of knowledge and competence of the EU judiciary".<sup>48</sup> The Network develops training standards and curriculum, coordinates judicial training, exchanges and programs and fosters cooperation between EU national training bodies.

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<sup>46</sup> Supreme Court of Indonesia, *Policy Paper on Permanent Judicial Education System Reform* (2003) at 26.

<sup>47</sup> Supreme Court of Indonesia, *Policy Paper on Permanent Judicial Education System Reform* (2003) at 27.

<sup>48</sup> European Judicial Training Network available at [www.ejtn.net/www/en/html/index.htm](http://www.ejtn.net/www/en/html/index.htm).

There is a European Charter Statute for Judges. It was promulgated at Strasbourg in 1998. It has no formal status but emerged from a meeting of representatives of 13 EU member countries, the European Association of Judges for Democracy and Freedom. The Charter at cl 4.4 gives a guarantee to judges of the maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties.

In Latin America the development of the judiciary and judicial education has varied widely. Venezuela and Costa Rica provided the earliest examples of modern judicial schools in that region.<sup>49</sup> The extent of the independence and professionalism of the courts is correlated with judicial education programs.<sup>50</sup>

### **The Asia Pacific Region**

Judicial education programs in the Asia Pacific region reflect an amalgam of common and civil law traditions. It is impossible, within the scope of this presentation, to do justice to their scale and diversity.

The National Judicial Academy of India (NJA) was established in 1993. There are also many state judicial education programs. The NJA is fully funded by the government of India. Its general body and governing council are both chaired by the Chief Justice of India. It provides its programs under a National Judicial Education Strategy developed in 2006. There is a particular emphasis on "timely justice".

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<sup>49</sup> L Hambergren, *Judicial Training and Justice Reform* (1998) at 6.

<sup>50</sup> L Hambergren, *Judicial Training and Justice Reform* (1998) at 7.

Its Vision Statement being "Judicial education must Enhance Timely Justice...".<sup>51</sup>

The NJA's programs are designed to bring together judges to provide a forum to identify problems in the administration of justice and to develop solutions. The approach is described on the NJA website as "problem solving through knowledge sharing".<sup>52</sup> The NJA's programs are interactive and participants are expected to share knowledge, experience and ideas.

The NJA offers national and regional workshops on delay and arrears reduction in litigation and what is called the "quality and responsiveness of justice". It is the NJA's aim to have 2,500 judges participate in the modules of its program each year. The NJA has also established a national skills database of judges to provide information on their skills and knowledge.

In the civil code system of Japan, judges at all levels of the judiciary are appointed by the Prime Minister based on the recommendation of the Supreme Court and the Secretary General for the Legal Training and Research Institute. The Institute, established in 1947, trains all judges and legal practitioners.<sup>53</sup>

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<sup>51</sup> Through (i) delay and arrears reduction; and (ii) enhancing the quality and responsiveness of justice: see National Judicial Academy, India website available at: <nja.nic.in/about-us.html#vision-statement>.

<sup>52</sup> See National Judicial Academy, India website available at: <nja.nic.in/about-us.html#vision-statement>.

<sup>53</sup> See Supreme Court of Indonesia, *Policy Paper on Permanent Judicial Education System Reform* (2003) at 31 (footnote 28); See also H Jacob, E Blankenburg et al, *Courts, Law and Politics in Comparative Perspective* (1996) Ch VI.

Following graduation from law school, or other undergraduate courses,<sup>54</sup> students who wish to become judges take part in a national examination and subsequently undertake further study at the Legal Training and Research Institute for 18 months to 2 years. If the candidate successfully completes the Institute course, their career will begin with a 10 year service as an assistant justice. After undergoing five years following the internship period, an assistant justice can serve as a full judge, where they can become a member of a panel of judges, or hear family or summary cases. After completing the entire internship of 10 years, the assistant judge can be appointed as a permanent judge and be reappointed for a further 10 years.<sup>55</sup>

In Pakistan, the Federal Judicial Academy has a nine person Board of Governors chaired by the Chief Justice. In Sri Lanka, there is a Judicial Institute with a three person governing body chaired by the Chief Justice and including two other Supreme Court members. It provides orientation and continuing judicial education for subordinate court judges.<sup>56</sup>

Two interesting examples of the construction of judicial education institutions in the Asia Pacific region are Cambodia and Nepal. They have undertaken significant reforms in this respect over the last 20

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<sup>54</sup> Non-law graduates can study at *Shihou Kenshuu Sho* with an additional 3 years of study.

<sup>55</sup> See Supreme Court of Indonesia, *Policy Paper on Permanent Judicial Education System Reform* (2003) at 31-32.

<sup>56</sup> Sandra Oxner, *Judicial education and the state of the Philippine Judiciary* (1999) (excerpted paper) available at: <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JudicialEducation.pdf> > at 4.

years.<sup>57</sup> Cambodia has had to re-build its judiciary completely following the depredations of the Khmer Rouge which were survived by only a handful of lawyers and judges.<sup>58</sup>

In 1982, the Cambodian government established a School of Public Administration Law for training judicial officers, which consisted of a 3 or 6 month course on politics, administration and the law.<sup>59</sup> From 1993-2002, judicial education was conducted by the Cambodian Ministry for Justice. The commencement of the Royal School of Judges and Prosecutors (RSJP) in 2002 was a result of major reform in the Cambodian Judiciary – the Legal and Judicial Reform Action Plan. The RSJP is administered by a director and Council of Administration, comprising of eight senior sector counterparts and education is conducted by local and international trainers selected by the RSJP from experienced judges and law professors. Sathavy Kim and Ly Tayseng have commented:<sup>60</sup>

A pool of foreign judges and professors from a number of countries are also contributing to the training at RSJP. They are from France, Japan, Australia, Canada, and the United States, among others.

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<sup>57</sup> L Armytage (ed) *Searching for Success in Judicial Reform: Asia Pacific Judicial Reform Forum* (2009) Ch 5 (on Cambodia and Nepal) 233-294.

<sup>58</sup> L Armytage (ed) *Searching for Success in Judicial Reform: Asia Pacific Judicial Reform Forum* (2009) at 235.

<sup>59</sup> L Armytage (ed) *Searching for Success in Judicial Reform: Asia Pacific Judicial Reform Forum* (2009) at 238.

<sup>60</sup> L Armytage (ed) *Searching for Success in Judicial Reform: Asia Pacific Judicial Reform Forum* (2009) at 238.

In 2005, the Royal Academy of the Judicial Profession (RAJP) was established. It consists of the RSJP and the Royal School of Court Clerks (RSCC). Currently, the RSJP is training the third intake of students and practising judges. It has adopted the Bordeaux curriculum model, with assistance from the French judiciary, adapted to suit Cambodia, and shaped by the limited availability of resources.<sup>61</sup>

Nepal has been developing its constitution and justice system over the past 20 years. The first democratic constitution of 1990 and the interim constitution promulgated in 2007 aspire to establish a competent and independent justice system. In 2000, Nepal established the National Judicial Academy (NJA), which formally commenced program delivery in 2004. The NJA was created as an autonomous statutory body<sup>62</sup> and has a two tiered management structure comprising a 16 member governing board and 5 member executive committee. Its objectives are:<sup>63</sup>

To work towards enhancing competence and professional development judges, government attorneys, court officials, and other officers of the Nepal judicial service and private law practitioners by developing programs of judicial education; to undertake research in areas of law and justice; and to establish a legal information centre.

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<sup>61</sup> L Armytage (ed) *Searching for Success in Judicial Reform: Asia Pacific Judicial Reform Forum* (2009) at 242.

<sup>62</sup> L Armytage (ed) *Searching for Success in Judicial Reform: Asia Pacific Judicial Reform Forum* (2009) at 271 (footnote 11).

<sup>63</sup> L Armytage (ed) *Searching for Success in Judicial Reform: Asia Pacific Judicial Reform Forum* (2009) at 271.

The NJA aims to design courses on the basis of judicial duties. The programs for base-level participants are longer than those for more senior judges. The higher level programs are shorter and more focussed on skill and leadership rather than knowledge skills.<sup>64</sup>

Judicial education in the Philippines has undergone significant reform in the past 40 years. Prior to 1975, the training of judges was mostly ad hoc with conferences on selected topics conducted on an annual basis. By 1983, judicial education became more formalised and involved the Philippine Judges Association.<sup>65</sup> In 1988 Chief Justice Marcelo B Fernan issued an Administrative Order prescribing an integrated and organised course of study for judges focussed on orientation programs for new judges and development programs for career judges conducted by the Institute of Judicial Administration.<sup>66</sup> In March 1996 Administrative Order No. 35-96<sup>67</sup> established the Philippine Judicial Academy as a unit of the Supreme Court:<sup>68</sup>

Charged with the formulation and implementation of a continuing program of judicial education for justices, judges, court personnel and lawyers.

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<sup>64</sup> L Armytage (ed) *Searching for Success in Judicial Reform: Asia Pacific Judicial Reform Forum* (2009) at 271.

<sup>65</sup> Initially known as the Fraternity of Courts of First Instance Judges during the ad hoc meetings between the late 1970s and early 1980s.

<sup>66</sup> E Cruz Pano, *Judicial Education in the Philippines* (1992) at 6-7

<sup>67</sup> Administrative Order available at: [www.lawphil.net/courts/supreme/ao/ao\\_35\\_1996.html](http://www.lawphil.net/courts/supreme/ao/ao_35_1996.html).

<sup>68</sup> Administrative Order available at: [www.lawphil.net/courts/supreme/ao/ao\\_35\\_1996.html](http://www.lawphil.net/courts/supreme/ao/ao_35_1996.html).

In 1998 the *Republic Act No. 8557* established a Philippine Judicial Academy as:<sup>69</sup>

[A] separate component unit of the Supreme Court and shall operate under its administration, supervision and control.

The curriculum of the Academy has two limbs:

1. Core programs, such as the pre-judicature program, which introduces a judicial, more reflective and philosophical perspective to learning. Passing this course is a pre-requisite for consideration to be appointed a judge. The Academy also conducts orientation programs for newly appointed judges, regional judicial career enhancement programs at basic, intermediate and advanced levels.
2. Special focus programs which are usually thematic in nature. These programs are designed for judges handling cases in specific areas of the law including international law and human rights, commercial law, court technology and *Shari'a* and Islamic jurisprudence, court management, ethics and conduct and special areas of concern including security for judges.<sup>70</sup>

Reference should also be made to the important work of the Asia Pacific Judicial Reform Forum. The Forum was established following the Manila Declaration on Judicial Reforms made at the 2005 International Conference and Showcase on Judicial Reforms which was

<sup>69</sup> *Republic Act No. 8557* (1998) s. 2 available at: [www.lawphil.net/statutes/repacts/ra1998/ra\\_8557\\_1998.html](http://www.lawphil.net/statutes/repacts/ra1998/ra_8557_1998.html).

<sup>70</sup> See M Feliciano, 'Judicial Education in the Philippine Judicial Academy', *Asia Pacific Judicial Reform Forum* available at: [www.apjrf.com/papers/Feliciano.pdf](http://www.apjrf.com/papers/Feliciano.pdf).

hosted by the Supreme Court of the Philippines. The Asia Pacific Judicial Reform Forum was in receipt of financial support from the United Nations Democracy Fund. One of its objectives was the development of practical tools to help member countries implement judicial reform programs. Its initial concern has been the development of a publication for the Asia Pacific to provide information about practical reform and practice in a number of areas including:

Judicial education and skills development.

The Forum has a Secretariat which is hosted by the High Court of Australia. The Federal Court of Australia, the Supreme Court of New South Wales and the Judicial Commission of New South Wales are all members of the Secretariat. The *Judicial Reform Handbook* was completed and launched in Singapore in January 2009. The Forum plainly offers significant opportunities for regional exchange of information and cooperative endeavours in ongoing judicial education.

The preceding is only a sample of rather disparate examples. It does not pretend to be representative. Nevertheless, while it indicates diversity, it also indicates similar approaches to institutional design and similar objectives for judicial education programs.

### **Culture and judicial education**

The awareness of cultural differences between elements of a society can inform the discharge of the judicial task. As Charles Lawrence has written:<sup>71</sup>

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<sup>71</sup> H Maguigan, 'Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts' (1995) 70 *New York University Law Review* 36 at 61-62.

Human problems considered and resolved in the absence of context are often misperceived, misinterpreted, and mishandled. But the hazards and liabilities of noncontextual interpretation are not experienced randomly.

He pointed to marginalised groups within society "likely to be injured by the error of noncontextual methodology".

Consideration of culture also addresses what has been called "pluralistic ignorance" a term coined by Professor Dwight Greene. Maguigan states that pluralistic ignorance:<sup>72</sup>

is reinforced by the exclusion of evidence that explains the ways in which many people ... – including many victims and people accused of crime – are not part of the dominant legal culture and have experiences and perspectives not known or understood by decisionmakers in the current system.

Cultural awareness education cannot be based upon simplistic assumptions about homogeneity within particular cultural groups. In any effort to take culture into account it is necessary to ensure that diversity *within* a culture is acknowledged. One example is the Muslim community. It has been said of Canada, and is no doubt true elsewhere, that the Muslim community is not uniform and that while some Muslims immigrated hoping to be able to continue to freely practice their religion,

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<sup>72</sup> H Maguigan, 'Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts' (1995) 70 *New York University Law Review* 36 at 46.

"others have come to escape the restrictions that custom and religion may have imposed on them."<sup>73</sup>

Janet Bauer has warned that judges, lawyers and court interpreters:<sup>74</sup>

should only generalize so much about the extent to which "cultural background" determines immigrant behaviours. Culture is not a static or easily isolated set of values or behaviors and may vary by education or class background.

Support for taking culture into account in the administration of justice has generated a reaction from some who argue that it can lead to "balkanization" of the law, violations of equality and individual rights, and unfavourable outcomes for women and children in particular. For example, Donald Brown has written that the defeat in Ontario, Canada, of the introduction of religious arbitration in family law was due to advocacy efforts by those who viewed such arbitration as "cultural relativism".<sup>75</sup>

Consideration of cultural norms has sometimes been said to incorporate "discriminatory norms and behaviors" and, in the context of criminal justice, to contrast with the victim's interests in "obtaining protection and

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<sup>73</sup> D Brown, 'A Destruction of Muslim Identity: Ontario's Decision to Stop *Shari'a*-Based Arbitration' (2007) 32 *North Carolina Journal of International Law and Commercial Regulation* 495 at 510.

<sup>74</sup> S Bauer, 'Speaking of Culture: Immigrants in the American Legal System' in J I Moore (ed), *Immigrants in Courts* (1999) 28.

<sup>75</sup> D Brown, 'A Destruction of Muslim Identity: Ontario's Decision to Stop *Shari'a*-Based Arbitration' (2007) 32 *North Carolina Journal of International Law and Commercial Regulation* 495 at 510 op cit at 537-538.

relief through a non-discriminatory application of the criminal law."<sup>76</sup> So it is said that rights should take precedence over culture.<sup>77</sup> Criminal justice systems have given to defendants opportunities to raise non-discriminatory arguments in support of their innocence. It has been contended that to take in cultural evidence is to lead to a "balkanization of the criminal law, where non-immigrant ... are subject to one set of laws and immigrant ... to another."<sup>78</sup> Concern has also been expressed that pluralism in the area of family law may threaten women's equality.<sup>79</sup> Women may be subject to heightened control and rules that make them dependent and unequal in particular communities.<sup>80</sup>

The Australian Law Reform Commission's 1992 report on multiculturalism and the law argued that to ensure social cohesion, all Australians should:<sup>81</sup>

accept the basic structures and principles of Australian society – the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language and equality of the

<sup>76</sup> D L Coleman, 'Individualizing Justice Through Multiculturalism: the Liberals' Dilemma' (1996) 96(5) *Columbia Law Review* 1093 at 1097.

<sup>77</sup> D L Coleman, 'Individualizing Justice Through Multiculturalism: the Liberals' Dilemma' (1996) 96(5) *Columbia Law Review* 1093 at 1098.

<sup>78</sup> D L Coleman, 'Individualizing Justice Through Multiculturalism: the Liberals' Dilemma' (1996) 96(5) *Columbia Law Review* 1093 at 1098.

<sup>79</sup> A L Estin, 'Embracing Tradition: Pluralism in American Family Law' (2004) 63 *Maryland Law Review* 540 at 551.

<sup>80</sup> A L Estin, 'Embracing Tradition: Pluralism in American Family Law' (2004) 63 *Maryland Law Review* 540 at 551.

<sup>81</sup> Australian Law Reform Commission Report No 57 *Multiculturalism and the Law*, (1992) at [1.18].

sexes ...

The Commission considered principles from international human rights law, such as equality before the law, freedom of speech, protection of the family and of the child, freedom of thought and religion, and cultural rights, as relevant.<sup>82</sup> Yet it also accepted that the principles sometimes point in different directions, giving as one example, the tension between equality of the rights of women and freedom of religion.<sup>83</sup>

The Commission recommended that the cultural background of offenders be taken into account in deciding sentencing, whether or not to record a conviction, and whether or not to prosecute the offence.<sup>84</sup> It recommended revision to relevant sections of the *Crimes Act 1914* (Cth) and the prosecution guidelines of the Director of Public Prosecutions (Cth).<sup>85</sup> These strategies were favoured over a proposal that the criminal law recognise a defence of justifiable ignorance of the law for certain cultural groups.<sup>86</sup> The Commission's recommendations were not accepted. The *Crimes Act 1914* (Cth) prohibits consideration of "customary law or cultural practice" in sentencing decisions and in the decision of whether to discharge an offender without proceeding to

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<sup>82</sup> Australian Law Reform Commission Report No 57 *Multiculturalism and the Law*, (1992) at [1.25].

<sup>83</sup> Australian Law Reform Commission Report No 57 *Multiculturalism and the Law*, (1992) at [1.27].

<sup>84</sup> Australian Law Reform Commission Report No 57 *Multiculturalism and the Law*, (1992) at [8.13]-[8.16].

<sup>85</sup> Australian Law Reform Commission Report No 57 *Multiculturalism and the Law*, (1992) at [8.13]-[8.16].

<sup>86</sup> Australian Law Reform Commission Report No 57 *Multiculturalism and the Law*, (1992) at [8.24].

conviction.<sup>87</sup>

The Commission itself rejected a proposal for courts to have regard to culture in determining the reasonableness of an act, omission or state of mind (objective standard) because that standard is ultimately about the broader community's value judgment on the act.<sup>88</sup> Here, "[s]uch a judgment can only be made against one set of values."<sup>89</sup>

The Report and responses to the Report indicate the complexity of the interface between cultural diversity and the law. This does not mean that cultural background may not be relevant to the judicial fact finding process. Judges may need to understand why particular testimony is given in the way that it is given and may need to understand why, and in what context, people have behaved in particular ways. This application of cultural awareness is well established in relation to Australian indigenous communities. In Western Australia in particular, the AIJA, in conjunction with the State Government, has prepared a special Benchbook for the assistance of judges and magistrates dealing with indigenous parties and witnesses. Indigenous cultural awareness training has been the subject of specific funding directed to the National Judicial College by the federal government. Many programs have been delivered across Australia since funding was first provided to the AIJA a number of years ago. There is no reason in principle why judicial education and training cannot extend to other aspects of cultural diversity within Australian society.

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<sup>87</sup> *Crimes Act 1914* (Cth) ss 16A(2A) and 19B(1A), respectively.

<sup>88</sup> Australian Law Reform Commission Report No 57 *Multiculturalism and the Law*, (1992) at [8.38].

<sup>89</sup> Australian Law Reform Commission Report No 57 *Multiculturalism and the Law*, (1992) at [8.38].

## **Conclusion**

There is much to be gained from the exchange of information and experience in the area of judicial education and the endeavour to formulate basic common principles and standards which would be recognised internationally. Approaches to education about cultural diversity and how such education can be applied consistently with the rule of law and common social norms raise issues which cross national boundaries. There are other issues in relation to the fields of international jurisprudence, particularly in areas of criminal and commercial law, competition law and intellectual property where some global standards for judicial education could be of assistance to all. In the global environment in which the judiciary operates today, where courts of one country may be asked to place confidence in the decisions of the courts of another country, a common commitment to basic principles and standards of judicial education has obvious advantages.