

**2ND INTERNATIONAL CONFERENCE ON THE TRAINING OF THE
JUDICIARY**

JUDGES AS LEARNERS

Reflections on Principle and Practice

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Abstract

This paper provides a model of judicial education and training. The model is constructed from an assessment of the application of educational theory and principle to the endeavour of educating judges. The practice of international experience is then reviewed in five case studies to identify common challenges in judicial education around the world. Finally, the paper develops some practical guidelines and tools to assist courts to develop and train judicial trainers.

Over the past twenty-five years, judicial education has emerged as an important new means to develop judicial competence and improve the quality of justice and performance of courts in many countries. As illustrated in France, the United States, Britain, Australia, Pakistan, the Philippines, Mongolia and Papua New Guinea, judicial education is now becoming established as an integral element in judicial development.

It is now timely to review this experience. The introduction of formalised judicial education addresses the dual needs to improve the professional competence of judges and the institutional needs for the judiciary to consolidate its independence by demonstrating an accountability for performance enhancement.

Judicial learning is a complex process. Judges epitomize adult learners. Judges are also professionals by training, career practice, and self-image. Moreover, judges as learners exhibit characteristics, styles and practices which are distinctive, and which have direct and important implications for educators.

These learning characteristics arise from the process and criteria of judicial selection, the formative nature of the judicial role, doctrinal constraints relating to the imperative to preserve judicial independence, the environment surrounding judicial office, and the specific needs of judges. In addition, there is emerging evidence to suggest that judges as a profession exhibit preferred learning styles and utilize preferred learning practices developed over the course of their careers.

Judges as learners are characterised as being rigorously autonomous, having an intensely short-term problem-orientation, and being exceptionally motivated to pursue competence for its own sake rather than for promotion or material gain; those appointed within a merit system, in particular, may also generally represent a professional elite possessing extraordinary levels of pre-existing professional competence. These insights directly affect how we should go about educating judges so that judicial education can assume its full potential as an agent for performance improvement.

The paper assesses how these considerations affect the application of educational theory to judges in the light of the experience of practice, and offers insights on developing a model of court-owned and judge-led training to build competence specifically in judicial skills and outlook, and facilitate a process of self-directed learning and critical self-reflection. Critical elements in this model include governance structure, strategic and activity planning, involvement of civil society, educationally-sound curriculum, and the establishment of judicial training faculty. The paper outlines the elements of faculty development, and provides a judicial training inventory, a curriculum-planning matrix, and the framework for a trainers' handbook.

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1 INTRODUCTION

It is timely and useful to survey the context and experience of judicial education and training around the world since its inception less than fifty years ago. It is interesting to observe that while justice may be as old as Socrates, research indicates that the notion of formalised judicial education was first introduced in the early 1960's. Earlier, training was either unstructured or unformalised in on-the-bench judicial apprenticeship and mentoring. Since then, the steady spread of a more formalized approach can be observed throughout the jurisprudential world, across common law and civil systems, across continents and nations of diverse tradition, ideology and culture, in developed and developing economies, and transitional and post-conflict states.

In developed countries, the institutionalization of judicial education is very recent, and commenced with the establishment of The *École Nationale de la Magistrature* in France in 1958. Shortly after, the National Judicial College was established in the United States in 1963 and the Federal Judicial Center in 1967 under the leadership of Chief Justice Warren Berger. The first sentencing workshop was conducted by Lord Parker in the United Kingdom also in 1963, and the Judicial Studies Board commenced operation in 1979. The Canadian Judicial Council conducted its first training session in 1972, and the Canadian Judicial Institute was established in 1988.² The Australian Institute of Judicial Administration was established in 1975, and the Judicial Commission of New South Wales in 1986. The Commonwealth Judicial Education Institute was formed in 1994.³

In developing countries, the trend is similar. For example, in Pakistan, judicial education was initially recommended in 1959, though it was not until 1988 that the Federal Judicial Academy was established. In the Philippines, the Philippines Judicial Academy was established in 1996 under the leadership of Chief Justice Hilario G. Davide, Jr. In Mongolia, the National Legal Training Centre commenced judicial training in 2000. In Uzbekistan, the judicial leadership is presently considering introducing a system of judicial training.

Over the past decade in particular, this trend has been embraced by international development, and it has become increasingly common for multilateral and bilateral donors to sponsor judicial education and training projects as sub-objectives of broader program strategies to strengthen governance systems and the rule of law around the world. Most recently, in the "9/11" environment, this trend has increased exponentially as an element in radically restructured global strategies to improve safety and security and to counter terrorism. Unprecedented investments are now being directed into this sector by international donors.

A case-study to illustrate this growth is Papua New Guinea, a small country of some 6 million people, which confronts many of the challenges of new states establishing systems of governance and economic wellbeing, including a serious law and order problem. Granted independence in 1975, PNG received its first major foreign aid in 1990 with a ten million dollar 3-year grant to strengthen the Constabulary. In 2002, this aid was restructured into a law and justice sector-based program – or SWAp – integrating police, prosecutions, policy, courts, prisons and ombudsman, valued at A\$100m. In 2004, this program was again restructured into what is called the Enhanced Cooperation Program, estimated at a value of more than A\$1B. This represents a massive growth of

x100-fold into the sector in little more than one decade. Judicial education and training comprise an element of this development. This example is hardly unique, when we consider similar but much larger investments being made in Iraq and Afghanistan at the present time.

To illustrate this growth in another way, there are now many more projects of judicial education and training than ever before. The World Bank estimates that it is financing some 600 projects relating to legal and judicial reform, ranging from Mongolia to Guatemala, Togo, Zambia and Cambodia.⁴ It describes judicial training as a critical element in promoting sustainable economic development, through consolidating judicial independence, with the objective of not only improving knowledge, but also changing attitudes towards impartiality, integrity and potential bias.⁵ These span many aspects of law development and structural reform, including and often supported by judicial education and training. Other major multilateral donors such as the Asian Development Bank and United Nations conduct similar programs. Numerous bilateral agencies of national governments, such as USAID (United States), DFID (UK), JICA (Japan) and GTZ (Germany) manage robust bilateral aid programs. Some smaller agencies, such as DANIDA (Denmark), focus relatively heavily in judicial education in particular. Over just the past decade alone, I personally have worked in judicial development and training programs involving some twenty countries.⁶

Clearly, judicial education has experienced an extraordinary growth in recent years, described by one commentator as an explosion.⁷ It is already a public international investment valued in billions of dollars. Subject to positive results or return on this massive investment becoming evident in the short to medium term, this is likely to increase potentially significantly in the immediate future.

So, it is most judicious to reflect on the wealth of this experience with the view to distilling some lessons learned and guidelines for ongoing endeavour.

2 RATIONALE

Recognition of the need for judicial education is now firmly established in many jurisdictions around the world. There are various reasons for the emergence of judicial education. The major rationales for judicial education include independence, improved service delivery, social accountability, and institutional capacity-building.

Most important, there is a doctrinal imperative to strengthen the capacity and independence of the judiciary as a formative institution in its society. Judicial education provides the judiciary with the means to consolidate its independence. This is of paramount concern where the judiciary is constitutionally responsible to dispense justice by interpreting and applying the law of the land to any matters in dispute which are brought before the courts. Central to this role of dispensing justice is the need for fairness: that the law is being applied fairly and evenly to both parties in any dispute. Not only must the courts be fair; but they must also appear to be fair in order to establish credibility and secure the confidence of the community in its integrity. Credibility rests on visible independence: independence from any vested interest whatsoever – whether that be governmental, commercial or personal. . With judicial independence comes the need for accountability and transparency on the part of the judiciary. Judicial education and training provides the means for the judiciary as an institution to consolidate, develop and perform this crucial, yet fragile, role in society. Recognition of this need is reflected in the observation of Nicholson:

*Judicial education is now an accepted part of judicial life in many countries. It is an enhancement of the mental qualities necessary to the preservation of judicial independence Judicial independence requires that the judicial branch is accountable for its competency and the proposition is now accepted as beyond debate.*⁸

As a part of the building of independence, judicial education assists the judiciary to professionalise and to improve service delivery, by improving its competence. This provides the judiciary with a visible means of social accountability to address mounting consumer dissatisfaction with judicial services, which historically was a prominent “driver” for the introduction of judicial education in developed countries in the post WW2 period.

Moreover, the rationale for a judiciary to invest in training of trainers is to develop its own capacity to manage judicial competence and standards in a sustainable manner.

Mission and objectives

The mission of any continuing judicial education is to improve the quality of judicial performance by helping judges to acquire the tools for professional competence. The concept of competence illuminates the issue of what makes a good judge. It includes mastery of theoretical knowledge, developing problem-solving capacity, cultivating collegiate identity, relating to allied professionals, conceptualizing the judicial mission, maintaining an ethical practice and self-enhancement. At an operational level, the goals and objectives of judicial education are to meet the education, training, and development needs of judicial officers. These needs are defined through a variety of analysis techniques and then addressed through the provision of specific education services.⁹

In 1992, the National Association of States Judicial Educators in the United States published some Principles and Standards of Continuing Judicial Education. These Principles and Standards define the goal of judicial education to be:-

*to maintain and improve the professional competency of all persons performing judicial functions, thereby enhancing the performance of the judicial system as a whole.*¹⁰

They outline the objectives of judicial education to be:-

*to 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.*¹¹

Continuing judicial education is now accepted as an "integral and essential part" of the judicial system of the United States.¹² Indeed, it is increasingly seen as a basic necessity, made so by pressures of workload, the size of courts, the complexity of modern judicial programming and the invasion of technology.¹³ In relation to the development of judicial education, Catlin has observed:

Lawyers don't become good judges by the wave of a magic wand. Not even the best lawyers. To reappear behind the bench as a skilled jurist is a tricky manoeuvre. Going from adversary to adjudicator means changing one's attitude, learning and using new skills, and in some cases severing old ties. In many jurisdictions, judges must learn their new roles by the seat of their pants. In Michigan though, both new and veteran judges are trained extensively.¹⁴

Recognition of the need for continuing education by the judiciary – as a profession – comprises three principal components, being:

- *new judge transition* - to train and educate new appointees to assume office, to facilitate the transition from advocate to adjudicator, and to bridge the gap between inexperience and experience
- *continuing education* - to facilitate the ongoing professional development of judicial officers and to keep them abreast of change
- *ongoing development* - to a considerably lesser degree, to address other career or personal development needs.¹⁵

Since 1986, all states have provided some form of education for judges, and judicial education was well established. Most state programs are in fact mandatory. The average number of training leave days allowed for education and training is approximately five per year. Hudzik observes:

The most striking trend of the last twenty years in continuing judicial education is its virtual spread throughout the United States and its emergence as a big business.¹⁶

Judicial education has also become increasingly accepted in Britain over recent years, where the Judicial Studies Board has observed that,

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 organized means of enhancing performance.¹⁷

By 1995, this position had dramatically consolidated, when Lord Justice Henry reported what he described as a "sea-change in judicial attitudes to training over the past 25 to 30 years." He added, "judges have accepted, appreciated, and benefited from training in a way that has confounded the sceptics."¹⁸ This is confirmed by Partington:

Twenty years ago, a majority of judges would have denied there was any need for training. Today only a minority would share that view.¹⁹

In Australia, judicial education is similarly established and, in the words of Sallmann, "heralds the advent of potentially significant changes in the Australian judicial culture."²⁰ Traditionally, judicial education was non-existent in any formalized sense and relied heavily, in the words of one senior judge, on "the gifted amateur."²¹ More recently, in the words of Chief Justice Mason:

[In the past] new judges were expected somehow to acquire almost overnight the requisite knowledge of how to be a judge. Perhaps it was thought that judicial know-how was absorbed by a process of osmosis ... One of the myths of our legal culture was that the barrister by dint of his or her long experience as a advocate in the courts was equipped to conduct a trial in any jurisdiction.²²

3 JUDGES AS LEARNERS

Judicial education and training build on the foundation of educational theory or pedagogy which is refined, first, through the application of principles of adult learning, secondly, through the practice of professional development and, thirdly, through the formulation of a distinctive model of judicial learning.

Adult Learning

In broad terms, judges epitomize adult learners. Adult learning is a complex phenomenon. Learning is the process whereby knowledge is created through the transformation of experience. While it shares commonalities with childhood learning, there are at the same time substantial differences. The adult's independent self-concept, ability to be a self-directed learner, readiness, and orientation to learning are interactive factors that help explain not only the great diversity among adult learners, but also many of the commonalities.²³

The education of judges, as adults, is different to that of children, and places particular importance on the need for autonomy and relevance in the adult learning process. There is a broadly-held consensus among educational theorists, commentators and practitioners that adults do learn in a manner which is distinctive to children. The principles of adult learning should lie at the foundations for any program of judicial education. These principles recognise the distinctive nature of adult learning which Knowles has defined as being characterized by its autonomy, self-direction, preference to build on personal experience, the need to perceive relevance through immediacy of application, its purposive nature, and its problem-orientation.²⁴ Put another way, Brookfield argues that adults learn throughout their lives:

As a rule, however, they like their learning activities to be problem centred and to be meaningful to their life situations, and they want the learning outcomes to have some immediacy of application. The past experiences of adults affect their current learning Finally, adults exhibit a tendency towards self-directedness in their learning.²⁵

The application of learning theory, specifically humanistic and developmental explanations of learning, provides a range of useful insights on the process of judicial learning, for example, in the observations of Cross:

It does make sense to argue that, generally speaking, humanist theory appears relevant to learning self-understanding; behaviourism seems useful in teaching practical skills; and developmental theory has much to offer to goals of teaching ego, intellectual or moral development.²⁶

Adults participate in continuing education for a variety of reasons: to become a better informed person, prepare for a new job, improve present job abilities, spend spare time

enjoyably, meet interesting people, carry out everyday tasks, and get away from daily routine:

*The major emphasis in adult learning is on the practical rather than on the academic; on the applied rather than the theoretical; and on skills rather than on knowledge or information.*²⁷

Continuing professional development

Judicial education has much to learn usefully from the practice of continuing professional development because judges are professionals by training, career practice, and self-image.

Houle argues that the way in which professionals learn requires the development of a specific professional education which involves a separate body of knowledge, inquiry, research and practice.²⁸ This has been frequently endorsed by subsequent theorists.²⁹ Houle demonstrates that professionals' reasons for participation in continuing education generally tend to be more refined than those of adults at large, and are usually job related. Professionals participate for functional purposes rather than for the sake of learning per se, and focus more closely on the job relationship and career development; for most professionals, continuing education is seen as a means to assist them with new duties or to prepare them for promotion.³⁰

Cervero agrees that the study of professional learners builds on general adult learning theory to develop its own distinctive practice:

*Members of a specific profession are like all other adults [sic] in that they share basic human processes such as motivation, cognition, and emotions, like some other adults in that they belong to a profession, and like no other adults in that they belong to a particular profession. Each frame of reference implies important dimensions that need to be taken into account in the practice of continuing professional education.*³¹

Schon, in developing a model of professional knowledge, argues that the context of a professional practice is significantly different from other contexts for the purpose of learning and education. Schon identifies the characteristics of professional practice. He argues that professionals,

*share conventions of action that include distinctive media, languages and tools. They operate within particular kinds of institutional settings - the law court, the school Their practices are structured in particular kinds of units of activity ... and [are] made up of chunks of activity, divisible into more or less familiar types, each of which is seen as calling for the exercise of a certain kind of knowledge.*³²

Cross describes professional people as being among the most active self-directed learners in society. This is due in part to the patterns of learning developed in attaining and retaining membership in a profession, and in part to the nature of the professional role itself. She argues that professionals have highly focused problems; they usually know what they need to learn, and consequently any general course will probably contain much that is redundant or irrelevant to the problem-orientated learner. Cross observes that:

*A corollary to the assumption that adults are largely problem-orientated learners is that the more sharply the potential learner has managed to define the problem, the less satisfactory traditional classes will be.*³³

In essence, professionals exhibit certain general characteristics as learners which are distinctive: they are more active, career-related and self-directed as learners than adults at large. Each profession, Schon argues, has a systematic knowledge base with four essential properties: "It is specialized, firmly bounded, scientific and standardized."³⁴

Cervero argues that continuing professional development should be seen as a self-managed process giving the individual ultimate control over his or her long-term learning and growth. His observations highlight the difference between education based on the delivery of declarative knowledge (knowing what) and procedural knowledge (knowing how), and reveals a contradiction in the practice of judicial education. The application of facilitated learning is specifically applicable to professionals. While recognizing the importance of facilitation in adult education and need for adults to assume self responsibility for their own learning,

*[I]t is evident that professionals require guidance and assistance in structuring their continuing professional education so that it will, in fact, benefit their practice.*³⁵

Self-managed professional development requires both the learner and the educator to rethink their roles and goals, and is a logical consequence of the application of adult learning theory to continuing professional education and, in turn, to judicial education. The precise nature of this application is affected by the characteristics of judges as learners, the assumptions of competence which can be reasonably inferred from the appointment process, the continuing education needs of judges, the features of judicial tenure in terms of career development, and the environment surrounding the office of judge in society. Each of these factors plays a role in the development of any program of continuing education for judges and has an impact on its character.

Within this understanding of the process of adult and professional learning, any paradigm of formalized judicial education should be seen, primarily, as a process of facilitation based on self-directed learning rather than an authoritarian model of teaching.

Judicial disposition

Within the framework of adult and professional education outlined above, it is possible to identify characteristics and practices of judges as learners which give rise to the need to pose a particular model of judicial education. There are significant differences between judges and other professionals in their motivations and perceived needs for continuing education.

Catlin, for example, has found that appointment to judicial office and the environment surrounding judicial tenure – in the United States, at least - created educational needs distinct from other professionals.³⁶ These distinctive features related in particular to the motivational factors in continuing learning. Judges ranked personal benefits, professional advancement and job security significantly lower than other professionals such as physicians and veterinarians.³⁷ This is consistent with judges perceiving themselves as public officials, now behaving differently from professionals in the private sector. Catlin observes that "the difference appears most dramatic when the reward

system is examined."³⁸ Judges may participate to develop new skills in order to be more competent, but not to increase their income; thus, the development of competence, in the case of the judge, must be a reward in itself.

The lack of importance of personal benefits, professional advancement and job security has "serious implications" for purposes of planning education programs; comparisons between groups suggest that for judges the concept of judicial competence is a much broader factor than professional service; in addition, judges operate in an environment where there is a lack of any distinctly identifiable patient or client relationship.³⁹

Added to this, the circumstances characterizing the process of appointment on merit to judicial office, in terms of the formal and informal criteria of selection, arguably have an impact on the type of person - and even personality types - selected for appointment; these circumstances may also have an impact on the preferred learning styles of those successful advocates who are likely to be considered for appointment to the bench, and thus on preferred forms of education. Herrmann, for example, argues that there is empirical evidence that the preferred learning styles of judges and lawyers tend to be "left brained;" that is, logical, analytical, problem-solving, controlled, conservative and organizational.⁴⁰

The distinctive elements of continuing judicial learning include judges' motivation to learn and their perception on the need to learn, learning practices predicated on the process of judicial selection, and their preferred learning styles. These elements are important distinguishing features in terms of any program of continuing judicial education, and have significant implications on both the content and the process of any program of continuing judicial education.

Judges as Distinctive Learners

It follows from this discussion that the characteristics of judges as learners are distinctive in a number of ways that are significant for educators. These characteristics arise from four factors relating to selection, learning preferences, doctrinal constraints and perceived learning needs.

***i* Judicial appointment and tenure**

The process of selection determines appointment to judicial office, and establishes a particular threshold of pre-existing competencies in legal knowledge and skills. Consequently, it is generally valid to claim that judges appointed on merit are likely to possess extraordinarily high levels of pre-existing professional competence, in terms of their knowledge of the law. In addition, Catlin has demonstrated that the distinctive nature of judicial tenure, specifically, its security and lack of promotional opportunity, have implications of systemic influences affecting individual judges' motivation to learn, and place them in a different position to many other professionals who operate in working environments which lack these features.

ii Preferred learning styles and practices

There is emerging evidence of judges as a profession exhibiting preferred learning styles, and utilizing preferred learning practices developed over the course of their careers. Judges are generally autonomous, entirely self-directed, and exhibit an intensely short-term problem-orientation in their preferred learning practices. Moreover, clinical experience tends to suggest that Schon's approach to professional learning is apposite to judges' continuing learning and should, as a result, form an active element in any process of continuing judicial education.

iii Doctrinal constraints of judicial independence

It is imperative to preserve judicial independence within any Westminster system of government. The doctrinal significance of this precept has been seen to be highly influential in any judicial approach to the notion of continuing education. It follows that educators should make efforts to ensure that judges recognize the independence and integrity of the process in order to appease any concerns of possible indoctrination. Equally, the formative nature of the judicial role can create discomfort for some judges under conditions which could possibly be seen to erode the authority of their role. Both these considerations contribute to the need for an independent, discrete process of education.

iv Reasons for participating in continuing education

Judges' reasons for participating in judicial education have been discussed above, and further below.⁴¹

In effect, the learning needs, practices, preferences and constraints of judges are quite distinctive, for a number of professional, educational and doctrinal reasons. More specifically, the learning needs of judges are in certain respects quite particular, relating both to the nature and content of the learning, and to the education process supporting that learning.

Model of judicial education

These considerations give rise to the need to develop a distinctive model of judicial education. This model should be based on foundations of adult learning and professional development, and also reflect the distinctive characteristics of judges as learners.

Judicial learning is a complex process. Judges, as professionals, exhibit characteristics, styles and practices as learners which are distinctive, significant and have direct important implications for educators. As has been seen, these arise from:

- doctrinal imperative to preserve judicial independence
- process and criteria of judicial selection, and the nature of tenure
- formative nature of the judicial role and the environment surrounding office,
- judges' learning needs and reasons for participating in continuing education.
- preferred learning styles and practices.

As already discussed, the pursuit of competence is a crucial element in the rationale to consolidate judicial independence, and it provides a means of professional accountability to society.

The process of selection determines appointment to judicial office, and establishes a particular threshold of pre-existing competencies in legal knowledge and skills. This threshold defines the point-of-departure for ongoing judicial induction and in-service training, in terms of knowledge of the law and practice. The nature of judicial tenure also has implications of systemic influences affecting individual judges' motivation to learn.

The essence of judging is a highly complex, intellectual, problem-solving process which resists procedural description or predictable outcomes. In practice, judges place greater value on self-directed learning than perhaps any other professional discipline.

There is emerging evidence based on clinical experience that judges exhibit preferred learning styles, and utilize preferred learning practices developed over the course of their careers. Judges – at least in developed jurisdictions - are characterised as being rigorously autonomous, entirely self-directed, exhibit an intensely short-term problem-orientation, and are exceptionally motivated to pursue competence for its own sake in their learning practices rather than for promotion or material gain. Those appointed within a merit system may also generally represent a professional elite possessing extraordinarily levels of pre-existing professional competence which defines the threshold for any ongoing program of continuing education.

Judges' reasons for participating in judicial education have also been documented, notably in certain developed jurisdictions, disclosing that judges as a professional group place high importance on the reasons for participation which are related to keeping abreast of new developments in the law, being competent in their judicial work, matching their knowledge and skills with the demand for their judicial activities and improving their ability to better respond to the questions of law presented to them.⁴² Judges' reasons for participation were found to be multidimensional and more complex than might previously have been believed. Three factors emerged from representing the underlying dimensions of the respondents' reasons for participation. They were, in order of importance, judicial competence, collegial interaction, and professional perspective:

a *judicial competence* - the need to maintain an acceptable level of competence and develop new judicial skills, to develop proficiencies necessary to maintain quality performance, and to keep abreast of new developments are all regarded as very important reasons. The emergence of the judicial competence factor in these findings suggests that judges do place significant importance on maintaining and developing their professional skills and keeping abreast of the law.

b *collegial interaction* - relates to the need for interaction, exchange of ideas and thoughts, and to be challenged by the thinking of colleagues. This suggests that program design must allow adequate time for judges to constructively interact and learn from their colleagues through a variety of structured educational experiences including problem-solving workshops, and small group discussions.

c *professional perspective* - items included in this factor are associated with the professional role of the judge, such as to assess the direction their profession and to maintain identity with their profession. This suggests that judges participate to reinforce their identity in that profession, and that judges see the opportunity to develop a perspective of their professional role, review their commitment to their profession and develop leadership capabilities in their profession through participation in continuing judicial education.

These considerations affect the application of educational theory to judges in a number of significant ways. For example, in some developed merit-based judicial systems, the application of adult and professional education practice should be modified for judicial learners to embody the particular importance of peer leadership in the education process, procedural knowledge ("knowing how," as opposed to "knowing what") and the facilitation of individualized learning. In other systems, these considerations may affect the application of educational principles in different ways, though this remains to be assessed and documented.⁴³

4 REVIEW OF EXPERIENCE – LESSONS LEARNED

The purpose of this section is to review relevant international experience in the form of some case studies on institutionalizing judicial education in various countries, with the view to promoting a judicial education approach capable of providing career-long continuing judicial education around the world.

The study distills the empirical experience of programs of judicial education and training in a selection of brief case studies of Australia, Britain, Pakistan, Philippines and Mongolia on the establishment of judicial education institutions in those countries that have, for diverse reasons, decided to make efforts to significantly improve judicial education. These case studies are extracted in the annex to this paper. It identifies some critical elements of developing program strategy and approach to ensure that the judicial training institution does provide training services which are effective in supporting the judiciary to perform its role. Observations on this experience are then used to develop a strategic approach enumerated in guidelines on the establishment and institutionalization of judicial education.

As illustrated in these case studies, judicial education is now starting to play a significant and dynamic role in improving judicial competence and thereby the quality of justice through the promotion of rule of law: free and fair trial, the consolidation of judicial identity and independence, and the consolidation of legal rights.

This experience demonstrates that the rationale for investing in judicial education and training is two-fold: (a) to develop the professional competence of the judiciary to perform its duties and, thereby (b) to improve judicial service delivery. In doing so, courts around the world have responded to consumer dissatisfaction with quality of services by addressing the need to become more accountable and to make an effective commitment to enhance performance.

The survey of available curricula reveals that programs of continuing judicial education generally comprise two major components: first, *pre-service* or *induction training* meets the need to train and educate new judges to assume office, to facilitate the transition from advocate to adjudicator, and to bridge the gap between inexperience and experience. Second, *in-service* or *continuing education* meets the further need to facilitate the ongoing professional development of more experienced judges to keep abreast of change and to acquire specialized competences.

Analysis of this experience indicates that the mission of judicial education is usually to improve the quality of judicial performance by helping judges to acquire the tools for professional competence. The notion of competence, as the goal of judicial education, is central to professional development. Judicial competence can be variously defined but,

for practical purposes, involves three distinct components (a) mastery of legal *knowledge*, (b) development of professional *skills*, and (c) acquisition of judicial *disposition*. In all case studies, the goal of judicial education is to enhance the quality of justice by raising the professional competence of judges to deliver service to their communities.

Challenges

Notable throughout this experience has been the commonality of challenges confronting the proponents for judicial development and training, which have included:

- a. developing effective partnerships with the executive
- b. instilling judicial leadership, ownership and engagement
- c. building sustainability with adequate resourcing
- d. collaborating with educators to develop technically sound programs
- e. integrating training with broader sector-wide strategies
- f. investing in rigorous monitoring and evaluation.

As has been said, in order to address these challenges, judicial education and training should be *judge-led* and *court-owned*. There are three overarching reasons for this: (a) within the *doctrinal* context, there is an imperative to consolidate judicial independence from erosion or dependence on the executive arm of government or other external interests; b) within the *pedagogical* context, judge-led training brings educational authenticity and crucial know-how to the process; put most simply, judges know their training needs better than anyone else; (c) within the *development* context, the paramount reason is sustainability; investing in Training-of-Trainers (ToT) will instill the capacity of judiciaries in transitional jurisdictions to direct and conduct their ongoing training needs in the medium- to long-term.⁴⁴ In addition, any program of judicial education should be developed to address the distinctive learning characteristics of judges as professionals in order to be educationally effective.

Analysis of case study experience leads to the emergence of certain common themes which may have application for courts around the world. In summary, these themes include the following:

- *Independence and autonomy* – it is essential to ensure that the judicial training institution is led by the judiciary rather than the executive to avoid the constraints in independent decision-making. Similarly, there is a need to delegate as much financial autonomy (accompanied by accountability) as possible in order to consolidate judicial independence, elicit ownership and buy-in from the judiciary, and enable the institution to deliver the training which the judiciary perceives it needs. Constraints in the independence and financial autonomy of institutions have limited the scope of training services available to the judiciary in Mongolia, Pakistan and additionally the Philippines. While it is recognized that there is usually a shortage of financial resources available for training purposes, it may be observed that independent judicial training institutions are more likely to be actively supported by donor bodies in the interests of good governance.

The impact of a lack of independence is seen in the constraints which exist in judicial autonomy to determine its own program of training. In practice, the judicial training institution must not only secure the endorsement of the judicial leadership to its proposed program of training activities, but this must also be

agreed by representatives of the executive. This places the judiciary in an unsustainable position of subservience in the decision-making process. The legacy of this subservience is all-pervasive and should be avoided from the outset through the establishment and composition of court-owned and judge-led governance structures if at all possible.

- *Ownership* – as seen in Australia and Britain, the viability and utility of any program of judicial education rests on it becoming accepted by the judiciary as being court-owned and judge-led. There are many useful structures, mechanisms and processes to strengthen this sense of ownership which have been developed around the world. These include judicial leadership in the governance structure, representation and participation in oversight committees and courts' education committees, and active consultative processes in assessing needs, planning activities, and establishing a core faculty of judge trainers.
- *Governance structure* – In addition to embedding the leadership and representation of the judiciary, experience in the Philippines, Britain and Australia indicates that representation of community interest and educational expertise in the governance structure is appropriate in informing policy-based decision-making.
- *Judicial leadership through training faculty* – It is a universal feature of experience that judges prefer other judges to act as their trainers because they are recognized as having the relevant experience and insight on the subject. Judge trainers are seen as authentic and as practitioners, rather than theorists. They do however need training in presentation skills, and Training-of-Trainers courses are offered by the training institutions. A further problem which is encountered in Pakistan is enabling talented judges to serve on the core faculty of trainers by amending the judicial service rules so that judges can serve as training faculty without losing seniority.
- *Resources and financial viability* – It is a relatively universal feature of judicial education around the world that there is a shortage of financial resources. Such shortages are likely to define the operating environment of those training institutions. That said, the critical issue is how those resources are allocated and managed. The Philippines Judicial Academy (PHILJA), like the Federal Judicial Academy (FJA) in Pakistan, the National Legal Centre (NLC) in Mongolia and other institutions, is constrained by this problem. The solution to the challenge of financial constraint is found in the strategic outlook and managerial direction of available resources to ensure that priorities are identified and addressed in an educationally effective manner as outlined in Part B of this paper. Moreover, because of endemic shortages of resources available for judicial training, resort should be made to existing resources whenever available and appropriate, as is the case in Mongolia where the NLC training facility is shared with lawyers. A related issue is ensuring adequate resources are available for distant courts to participate in training programs. While it is doubtless cheaper to establish a single centralized body to provide training services, this approach transfers the invisible burden of funding the recurrent logistical costs of travel and accommodation of training judges to provincial or distant courts, and often creates a significant invisible barrier to participation in practice for courts with no training budgets, as is the case in Pakistan. The solution to this problem is to ensure that recurrent funding for travel and accommodation is adequately

provisioned. This provisioning should be centrally allocated to the training institution to ensure coordination in the application of funding. This will enable the national judicial training program to, for example, provide allowances for the travel/accommodation of distant judges and prevent funding being spent on unrelated provincial purposes.

- *Organizational mission and structure* – It is important that the mission of the training institution specifies its purpose with sufficient direction to promote judicial competence, and identifies specific objectives and services in order to guide and inform the management and operations of the institution. In the Philippines, a lack of clear definition and delegation of responsibilities impedes efficient management and the expeditious delivery of training services.
- *Participation policy* – Approaches to participation vary from country to country. For example, the Australian approach to participation is voluntary, supported by active encouragement from the leadership, and an emphasis on designing practical training services which entice judges to attend because it makes their job easier. Other countries, such as the United States, have mandated participation. While this is clearly a policy-based decision for the judicial leadership, it may be considered by the judicial authorities that it is more culturally-appropriate at this time to mandate participation.
- *Accessibility and use of information technology (IT)-based delivery media* – as seen in Pakistan and the Philippines, active steps are required to ensure the accessibility of any centrally-based training initiative in terms of enabling the participation of judges from regional areas by dismantling financial disincentives, delivering training in decentralized activities, and using web-based instructional media to overcome problems of distance.
- *Sensitization* – A common feature confronting the introduction of judicial training programs is an initial reluctance of some judges to recognize the need for or benefits of judicial training. Deeply held sensitivities relating to judges' perceptions of the need and usefulness for continuing education must be addressed on judges' terms, and this may take time. Moreover, judicial training must be shown to be led by the judiciary itself, rather than externally imposed by the executive as this undermines judicial independence and is likely to be obstructed by judges themselves. This was certainly the case in both Britain and Australia where there were also suspicions that it may be an intrusion on independence by the executive. Experience in both countries has demonstrated that these sensitivities can be satisfactorily overcome during the establishment period through the provision of court-owned and judge-led practical training which helps judges to do their job on a day-to-day basis.
- *Practicality:- competency-based approach* – As observed recently in Pakistan, as elsewhere, there is an increasing trend towards the development of competency-based judicial training which in addition to transmitting information on law and procedure, develops the practical skills and professional attitudes of good judging and is directed towards improving both personal and institutional performance.

5 MODEL GUIDELINES OF PRACTICE

From this review of international experience, it is possible to offer some guidelines for the consideration of a court introducing programs of continuing education. These include:

1. develop and standardize programs of induction training and continuing judicial education which are court-owned and judge-led, and provide a range of conferences, seminars, workshops and paper-based and electronic publications that are practical, address the needs of judges for competency and skills-based development, and improve judicial performance.
2. develop strategic and activity plans to define the goals and objectives of its program of judicial education, and the priorities, structure and content of its curriculum and services.
3. establish a governance structure, or council, for the judicial training body to be chaired by the Chief Justice, and include representatives of the judiciary, educational experts and community interests.
4. consider whether continuing judicial education should be voluntary, court-endorsed or mandatory.
5. involve members of the judiciary in the planning, establishment, management and evaluation of the judicial training program.
6. conduct a comprehensive training needs analysis, which includes active consultation with representatives of the legal profession, business community and representatives of civil society.
7. undertake an assessment of the resources available and needed to establish and implement the program of continuing judicial education, including fixed infrastructure, human resources and recurrent budget requirements.
8. use existing resources wherever relevant and appropriate.
9. apply the principles of adult and professional learning in the design and delivery of training services.
10. develop a Training-of-Trainers program for judges.
11. design and implement a system for monitoring and evaluating the effectiveness of judicial training and its contribution to judicial performance.
12. convene a special conference of the judicial leadership and relevant stakeholders to consider these recommendations and to develop a plan of implementation

6 OBSERVATIONS

In exploring the options to institutionalize judicial training, particularly in transitional jurisdictions around the world, there are a number of key decisions which need to be addressed by judicial authorities. These are addressed below:

a Juristic model

While there are many different approaches to delivering programs of judicial education and training, a review of the international experience indicates that there are in essence two major models. These models are based on the underpinning systems of justice within which they operate, viz. the continental civil system and the British-based common law system.

- *Continental civil model* – this includes many hybrid varieties but is structured around a careerist approach to judicial appointment, that is, new judges are appointed from the ranks of law graduates for the term of their careers. Their induction is preceded or supported by an extensive institution-based training period prior to initial appointment as a magistrate or junior judge. As they acquire experience and seniority, they return to the training institution for further training ahead of promotion within the judicial hierarchy. This approach in training is establishment focused, institutionally directed, mandated and prescriptive, tightly structured, based on a comprehensive curriculum, and usually includes examinations and formal assessments. A classic example of this approach is found in France with the establishment of *L'Ecole Nationale de Magistrature* in 1958. Other countries using variations of this approach include Germany, Italy, Japan and Thailand.

The strengths of this approach are that it is highly structured, comprehensive and quality assured. The disadvantages are that it is very expensive in requiring extensive infrastructure and institutional capacity-building, it may be rigid and non-responsive to changing conditions and needs, and it is classroom-based and theoretically-focused rather than practical and applied in its approach.

- *Common law model* – this alternative approach is based on systems of judicial selection from the ranks of experienced lawyers who are either appointed or elected to a judicial office, and usually remain in that office without promotion until retirement or completion of term. This approach builds on substantial levels of pre-existing professional legal competence, as the usual qualification for selection. It focuses on providing usually short transitional orientation or pre-service training to the judicial role, and in-service continuing education usually in updating on recent developments. Examples of this approach are found in the British Judicial Studies Board, the Judicial Commission of New South Wales, and the Philippines Judicial Academy. Variations of this approach relate to its prescriptive or elective nature: (a) in the United States, most states have *mandated* continuing judicial education as compulsory for purposes of ongoing licensure as a judge; (b) In New South Wales, however, ongoing training is formally voluntary, but it is *endorsed* by each court with the effect that it is informally mandated; (c) In Britain, it is strictly elective and relies on *voluntary* participation.

The strengths of this approach are that it is accessible, practical and court-focused, structured around supporting relatively experienced in-service judges performing their duties in court. It also requires considerably less infrastructure and resources and as a result is much cheaper to supply. The disadvantages are that it provides a much less comprehensive framework of structured training and pre-qualifying promotion to support the development of judicial competence, and inexperienced judges may lack sufficient technical and professional guidance and support in performing their role.

The selection of model depends on the fundamental structure of the judicial system in each country and the process for judicial appointment. These in turn affect the mission and objectives of each judicial education. In the careerist approach, it is the mission of judicial training to develop the candidate to the required level of competence prior to appointment or promotion; in the common law approach, it is the mission of judicial education to facilitate transition to the judicial role from a base of preexisting professional competence as a lawyer, and to support in-service continuing professional development. There are various arguments about which approach is better, which go beyond the scope of this paper. Yet, interestingly, many of the issues and challenges of practice are observed to remain the same, irrespective of model.

b Leadership

Experience indicates that it is fundamentally important that the judiciary as an institution directs the process of its ongoing training, education and development. This requires the championship and commitment of the Chief Justice to lead this development. It may also require the support and endorsement of the Ministry of Justice. Analysis of governance structures for judicial training around the world discloses that this leadership is generally established in the governance structure of the judicial training institution, most commonly through the chairmanship of its peak decision-making body as an indication of the importance and sensitivity of the endeavour. Other experienced and respected members of the judiciary should be members, representing various interests within the judiciary. Other members should include the government, educational experts and representatives of the community, or civil society, that the judiciary serves.

c Ownership

Similarly, it is important that the judiciary have an adequate opportunity to participate actively in its own professional development through active membership of oversight committees, consultations regarding needs, and contribution to the faculty of instructors. Any suggestion that this training is being imposed from the outside risks demoralizing the judicial constituency and creating barriers to effective learning. As already mentioned, there are a number of mechanisms, structures and procedures which will promote and consolidate ownership and leadership. These include:

- Leadership of and representation in the governance body
- Establishment of judicial policy and quality oversight committees
- Formation of education program committees in each court
- Participation in training needs assessment consultations
- Conducting training as part of the judicial faculty
- Providing feedback on services as part of monitoring and evaluation.

d Client focus

In order to ensure that the curriculum of training focuses on developing competence and practical aspects of judicial service delivery, representatives of the community and court should be included in the governance structure of the institution.

Experience demonstrates that while judges are insightful in their perceptions of their own training needs, this presents only half of the assessment. A doctor asks a patient to describe his/her symptoms, but this does not complete the diagnosis. Similarly, the assessment of judicial training needs is usefully extended to the clients of the judiciary who can provide valuable feedback of their perceptions of the quality of judicial service. Provided this task is handled with appropriate sensitivity, valuable insights of need can be provided by representatives of the legal profession, business community, and civil society. For example, judges in Australia did not recognize that they used technical jargon which is impossible for lay people to understand and needed to use plainer language. This gave rise to valuable training in communication skills. Similarly, judges in England did not know that they are regarded as being slow, arrogant and out of touch with community values. This in turn gave rise to extensive training in case management skills, communication skills, and taking steps to get back in touch with prevailing social values.

e Needs

The single most dynamic element in determining the educational content of any program of judicial development is the nature of the training need it is intended to address. The needs are defined in terms of key competencies - the *knowledge*, *skills* and *disposition* required for judges to perform their duties effectively. For this reason, a comprehensive training needs assessment or analysis should be conducted from the outset. Articulation and prioritization of these needs will then inform the objectives for the education program.

The needs assessment should be inclusive and participatory, and involve three principal constituents: (a) members of the superior and subordinate judiciary, (b) relevant educationalists and other respected academics, and (c) community representatives and civil society, representing both “clients” and “non-clients” of the courts, business, alienated poor as represented through NGO’s and other interest groups.

The methodologies of these assessments will usually combine a number of elements including:

- Face-to-face interviews of key stakeholders
- Standardized surveying on all/sample judicial officers
- Clinical observations of judicial performance in courts
- Analysis of court performance data
- Expert consultations and appraisal

The benefits of investing in a comprehensive needs assessment comprising all or a combination of these methodological elements is foundational in building the training program and will directly inform its nature and content.

f Mission and objectives

As discussed earlier, once the training needs of the judiciary are identified, the judicial training institution should determine its mission, objectives and priorities as the basis for developing its curriculum of courses and publication services.

A review of the experience in other countries discloses a commonality in the overall mission of programs of judicial education, but some quite marked refinements in specific objectives dependent on the specific needs being addressed. The universally recognised mission of judicial education is to enhance the competence of judges and thereby to improve the performance of courts to provide services applying the law and resolving disputes. Beneath this overarching mission, objectives may vary but are likely to aim at building competence by improving the knowledge, skills and outlook of judges. Examples of some program objectives are to focus on orientation and induction training, or to conduct seminars to improve legal knowledge or workshops to develop judicial skills or computer literacy. Priorities are those matters identified by the judiciary as needing to be addressed first in its training program.

Reference has already been made giving examples of different objectives and priorities in different institutions focusing services. Experience around the world commonly demonstrates that training institutions determine initial priorities at induction level training for subordinate courts through face-to-face training. These priorities tend to evolve as the institution becomes more established and starts to address other priorities such as the in-service needs of more experienced judges, the needs of more remote judges, and the higher level needs of senior and specialist judges.

This 'competency-based' approach to training and development has as its ultimate objective the improvement of institutional performance of the courts as a whole. Clearly, improvements in court performance require the support of training programs which do more than just give judges information about the law. In addition, these programs need to develop the skills and attitudes of good judging which equip judges to do their jobs effectively. In practice, there may be more needs than resources or opportunities to address them. In these cases, it is usual to set priorities to guide the focus of the training response. Determination of these priorities is a policy-based task which should be made by the appropriate decision-makers responsible to the judicial leadership.

An example of training objectives and priorities decision-making is recently provided by Pakistan's Federal Judicial Academy expanding its education program from conducting lectures on legal information into developing a workshop program on judicial skills development. This policy-based decision has resulted in the expansion of the training program with the following curriculum of new training packages:

- Legal research skills
- Computer research skills
- Decision-making skills
- Judgment writing skills
- Communication skills
- Assessing evidence skills
- Case management skills
- Backlog reduction skills
- Alternative dispute resolution (ADR) skills

Other examples of setting objectives include the decision of the Philippines Judicial Academy to reduce the preponderance of its face-to-face conference activities by introducing a distance-learning strategy to enable judges to participate in training remotely, using IT web-based media. In Australia, the initial priority for the focus of training services was to newly appointed magistrates because as a matter of policy the Judicial Commission of NSW determined that it would offer the largest and most immediately apparent benefits by addressing the needs of new appointees in the subordinate courts. It was only after the subordinate courts' induction programs were firmly established after five years, that the Judicial Commission reviewed this policy and priority, and expanded its services to the superior courts on a continuing professional development basis.

g Resources

The next most influential factor in the institutionalization of any judicial training program is the resources available to address training needs. This will be affected by which judicial model is appropriate: careerist or common law, or a hybrid of the two as may be appropriate. The former clearly requires substantially more resources in the form of infrastructure and a permanent training establishment. Are these available, or can they be shared from existing resources? A detailed resource assessment, including fixed and recurrent budgets should be prepared within the context of what is feasible. In Pakistan, for example, the Federal Judicial Academy has a hostel with a capacity for 52 participants to undergo courses of up to 3 months. Similarly the Philippines Judicial Academy offers hostel facilities. But many other countries, such as Britain or Australia, have not considered it necessary to make such investments to date.

The case study experience demonstrates that another crucial resource is the availability of judges to serve as trainers. As has been seen in Pakistan, an invisible barrier may obstruct the availability of good judges to perform this role until judicial service rules have been modified to count faculty service for purposes of seniority.

As has been discussed earlier, particularly in relation to the experience of the Philippines and Pakistan, the lack of resources generally available for training programs impels an approach which makes best use of what resources are available. In Mongolia, for example, judges and lawyers are trained together. As a guiding principle, active use should be made of appropriate resources and materials which may already exist in other institutions, for example, universities and related training institutions.

h Curriculum

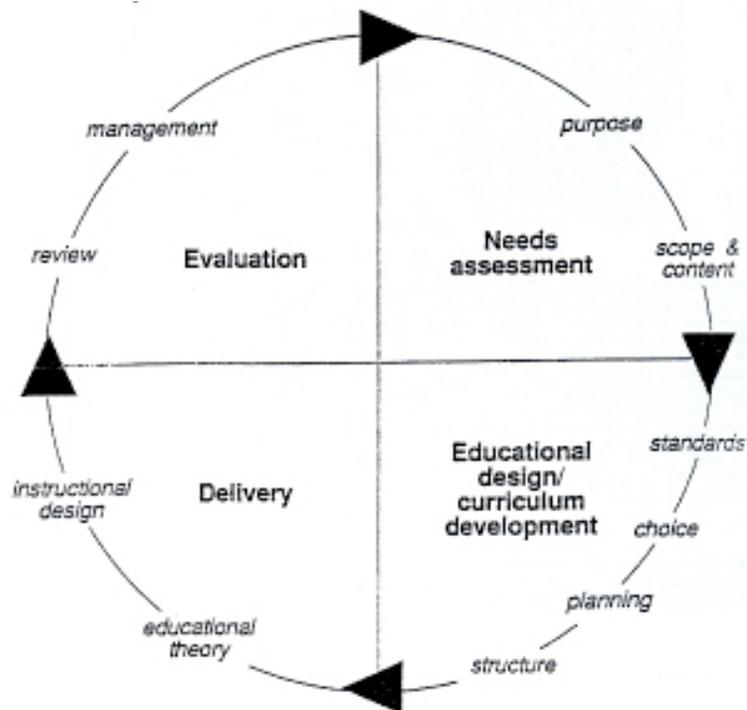
The curriculum of any program of judicial education will vary according to the learning needs, educational objectives and program priorities of each judiciary.

Curriculum design provides a framework to help judicial educators to plan what is to be taught, to whom and why, and implies that decisions have been made about the subject matter, the relationship between segments of knowledge, skills and abilities, and their organization and sequence. The value of curriculum development in continuing judicial education is that it offers a plan of the proposed learning outcomes and the means of reaching them. This enables educators to identify whether segments of the program are missing or operating ineffectively.

A curriculum strategy should be devised to match and rank training services to those needs which have been identified in a planned manner, rather than throwing ad hoc training in a piecemeal way at one topic after another. This strategy could usefully include the introduction of an establishment plan, the setting of educational goals and objectives, a perpetual cycle of annual training plans comprising pre-service and in-service programs, the formulation of policies and standards, and a career-planning stairway that offers an appropriate framework of promotional incentives and rewards for aspiring judges.

To assist in the development of effective practice, a cycle of model practice for judicial education is proposed below. This cycle builds on principles of adult learning, professional development, and judicial education to integrate managing the education process. This cycle is perpetual, and consists of four quadrants, each comprising additional spokes: (i) *needs assessment* – identification of purpose, scope and content of training required, (ii) *curriculum* – setting of strategies and priorities, application of resources, and design of curriculum approach (iii) *delivery* – development of capacity through training-of-trainers, presentation of courses, publication of materials; and (iv) *evaluation* – ongoing monitoring, refining and updating in light of feedback and change. Reference to this cycle of practice management should assist judicial policy-makers and educators alike in addressing the planning issues associated with judicial education in a methodical and systematic fashion.

Cycle of Practice



Curriculum planning using a planning matrix also provides a means to plan and structure training services to meet categories of educational need in a methodical way, by classifying those services in terms of the nature of educational need which they are planned to meet.

This planning process can operate effectively through the formulation of a matrix of educational services. This matrix is defined by content (subject matter) and pitch (level of application). This approach defines content as consisting of five categories: law, procedure, management and administration, judicial skills, conduct and ethics. Pitch is categorized as induction, update, experience-exchange, specialization and refresher. By combining both axes, a matrix of twenty-five service options is created which facilitates the identification and characterization of services being provided by the institution within an overall framework.

This matrix configuration commends itself for identifying the range of potential services which can theoretically be provided, and by highlighting those which actually are provided. This promotes planning, monitoring and ultimately evaluation. For example, an absence of any programming specifically designed for experienced judicial officers, or an absence of skills development generally, becomes readily apparent and can then be ratified or rectified at a planning level.

Matrix planning

Content Pitch	Substantive law	Court Procedure	Judicial skills	Ethics and conduct	Judicial administration management	Inter disciplinary
Induction - orientation						
Update - change						
Networking - problem solving						
Specialist - advanced						
Refresher						

i Training of trainers

As has already been discussed, another foundational issue is the application of principles of adult education, and the need to ensure the educational effectiveness of judicial training. The challenge of ensuring educational effectiveness applies at all levels in the planning, design and delivery of training services. As has been seen, these considerations affect the application of educational theory to judges in a number of significant ways and, in summary, any model of formalized continuing judicial education should be based on foundations of adult learning, but must also reflect the distinctive characteristics of judges as learners.

Training-of Trainers (ToT) is a major element in any successful program of judicial education and training. Just as we have seen that judicial education builds the capacity of the judiciary in terms of its independence, competence and accountability, more particularly, ToT instills the means for sustainability by enabling the judiciary to train its own members. A good judge may be a fine role-model, but s/he is not automatically a good trainer of other judges. It is relatively straightforward for judges to write and present papers on the law; it is not necessarily so straightforward to impart experience effectively, and to develop the skills and disposition of judging in others. Just as judges are not usually experienced trainers, so educators are not usually familiar with the distinctive training needs of the judiciary. This means that the judiciary, as an institution, should consider how, and who, it wishes to invest in its training program, and it additionally requires the provision of a comprehensive Training-of-Trainers (ToT) program to establish the expertise to deliver the training required.

The purpose of ToT is to provide a faculty of judicial trainers with the capacity – the knowledge, skills and understanding – to train other judges effectively. This capacity is required at two levels: (a) directing and managing the education program, and (b) delivering training services in the form of training activities and publications.

The TOT component will build on and develop the existing experience and expertise of the Federal Judicial Academy which completed a program of training in 2002. The proposed ToT will be divided into two segments (a) Curriculum Development and (b) Presentation Skills.

The ToT will be conducted using the experience of the existing faculty of the FJA in order to expand and develop expertise among themselves, and will also include the new faculty members and occasional trainers of the FJA and the subordinate level under the oversight of the provincial High Courts.

Module 1 - Curriculum Development

Objective - To introduce and develop capacity to (a) assess needs for judicial education/training, and (b) develop curriculum and materials building on the existing experience of existing professional staff.

Workshop 1 Needs Assessment # 1
Techniques and findings

Workshop 2 Needs Assessment # 2
Induction training: topic inventories, priorities

- Workshop 3* Needs Assessment # 3
Continuing education: topic inventories, priorities
- Workshop 4* Curriculum Development # 1
Resource analysis, educational strategy and policies
- Workshop 5* Curriculum Development # 2
Session planning and materials.

Module 2 – Presentation Skills

Objective - To introduce and develop formal and informal presentation skills, building on the existing experience of existing professional staff.

Each workshop (3-4 hours) explains and demonstrates the practice of adult learning by using training-by-doing active learning techniques. In each workshop, participants make presentations which are *video-recorded* for the purpose of review, critique and feedback.

- Workshop 6* Introduction
Understanding the principles of adult learning
- Workshop 7* Presentation Skills – Lecturing techniques
Communicating effectively
- Workshop 8* Presentation Skills – Workshop techniques # 1
Participatory learning and questioning
- Workshop 9* Presentation Skills – Workshop techniques # 2
Using teaching aids, power-point and materials
- Workshop 10* Workshop Session Planning
Brainstorming, group discussion, Q+A, Debate, problem-solving case-studies, solo/duet exercises
- Workshop 11* Presentation Skills – Workshop techniques # 3
Designing skills training curricula:
* Case management skills, Assessing witness credibility; Legal research skills; Judicial decision-making skills; Judgment writing skills.
- Workshop 12* Presentation Skills – Workshop techniques # 4
Revising/ representing skills development workshops

Trainers' Handbook

The quality assurance and sustainability of the ToT will be consolidated by the publication of a *Judicial Trainers Handbook*. This handbook would provide a custom-designed, comprehensive and culturally-appropriate resource for faculty members. The content of this handbook should include the following sections:-

- Learning objectives
- Learning and training theory
- Characteristics of adult learners
- Learning styles
- Learning by doing
- Four steps of learning
- Planning your session
- Presentations techniques
- Traditional techniques
- Workshop facilitation techniques
- Large groups methods
- Small groups
- Papers, handouts and materials
- Some golden rules
- Questions
- Hearing and listening
- Non-verbal communication
- Presentation aids
- Common problems for presenters

Transforming method and content

A professional approach to judicial education involves both the content and the method of training. Traditionally, much of whatever judicial training was being provided has concentrated on substantive law. In some cases, this is much needed. But, in many systems particularly those which are merit-based, the training needs of judges include the development of skills and attitudes – sometimes called social context education – as much as information on the law. Moreover, delivery has often been very ‘Socratic’ – by this, we mean it has focused on delivering information on or about the law, mainly in a lecturing format. With the introduction of a new professional approach to judicial training based on the theory and principles of adult education, a more useful and effective means of delivering educational services will commence. In terms of content, this will focus not just on substantive law, such as information of important statutes and law, but also on the skills and disposition of judging. In terms of method, lecturing will be heavily supplemented by the introduction of small-group seminars and workshops which will build on the active participation of judges in techniques of active learning, such as problem-solving case-studies, scenarios and simulations, and panel discussions to develop professional skills and judgment which build on their foundation of information and knowledge. It is important to stress that this training approach will be considerably more practical rather than theoretical, and active rather than passive.

Distance learning – publications, bench books and web-based support

Additionally, it is often important to develop a strategy of ‘distance learning’ which will overcome the challenges of geography and inaccessibility, specifically the direct and opportunity costs associated with the centralised delivery of training based in capital cities. This distance strategy should commence with the introduction of a publications program, comprising the writing of a first bench book, or practice manual for judges, focusing on court practice and procedures to provide them with practical assistance in performing their day-to-day role as judges. In addition, the institution should usefully start to publish a regular newsletter or digest on important current issues on law and practice,

possibly, for example, extracts of the most useful papers from its new seminar program for the lasting benefit of all judges, including those in distant regions who were unable to attend the proceedings. Later, detailed consideration should be given to extending this distance program with the production of other training media which could include audio-tapes, video-tapes, computer-based packages and even satellite broadcasting.

Judicial training inventory

The services offered by any program of continuing judicial education is determined by need. With the above curriculum approach, the ToT will facilitate participants to identify, organise and prioritise training services from the following generic inventory of training needs.

- *Substantive law and court procedure*
To be assessed depending on the prior training, experience and duties of judges
Criminal law and procedure
Civil law and procedure
- *Judicial skills*
how to conduct a hearing trial
control of courtroom
note-taking
legal research
admitting evidence
statutory interpretation
judgment writing and giving reasons
principled and uniform sentencing
administering natural justice, due process and fair trial
protecting human rights and civil liberties
resolving disputes and alternative dispute resolution (ADR)
- *Judicial management and administration skills*
case management
administering courts: filings, fixtures, hearing lists and queuing
record management
registry management and practice
team leadership between judicial and court officers
judicial information technology and computer skills
managing complex litigation and commercial disputes
- *Judicial disposition – social context - outlook, attitude and values*
judicial role, powers and responsibilities
judicial independence, impartiality, integrity and outlook
judicial review
judicial conduct and ethics
gender/race equality
- *Generic management and administrative skills*
Communication skills – written and oral
Time management

Computer skills
Coaching and mentoring

- *Inter-disciplinary*

To be assessed depending on the prior training, experience and duties of judges

Forensic scientific evidence: psychiatry and pathology – in criminal prosecutions

Financial accounting – in complex commercial disputes

Medico-legal fundamentals – in injury cases.

Learning by doing

As judicial educators, we understand that adults “learn best by doing.” Consequently, our preferred approach to developing institutional capacity is to guide and assist them in delivering training services – whether courses, publications or other support services for the judiciary – actively at the operational level. This implies that considerable practical support is initially required at the formative stages of establishing a new program of continuing judicial education to assist in conducting training needs assessments, developing the curriculum strategy, and delivering courses and workshops with evaluation and the provision of constructive feedback.

j Monitoring and evaluation

It is in the interests of all stakeholders that a system for monitoring the performance and results of judicial training is introduced in order to (a) provide a means for feedback to refine operations, and (b) demonstrate an effective contribution to improving judicial service delivery. Yet, the application of this principle in practice is recognized by its breach.

A system to monitor the judicial training program is required to ensure that it delivers what is intended, and provides mechanisms to review and refine activities in the light of feedback and experience. The design of this system hinges on the specific goals and objectives of the program, once endorsed.

Because no single indicator can comprehensively measure professional development with validity and reliability, a range of indicators were required to measure the impact of the program. These indicators measure specific outputs and then “triangulate” an assessment of their outcomes on the performance of the judiciary. Because qualitative measurements are variable, preference to selection of quantitative indicators will be made wherever possible.

The process recommended a two-tiered building-block approach to performance indicators be adopted to assess the program in terms of its process and its impacts.

- a) “*Process Indicators*” – These measure the implementation of the program in terms of its efficiency and effort. These indicators are “internal” to the program and evaluate whether it is doing what it set out to do. Typically, these indicators should include the following:-

The lead indicator relates to central project activity and efficiency, and is activity-

based, such as conducting a specified number of training courses on time and within budget.

While a criterion for success of the program relates to judges learning and competence, any direct assessment of improvements in the levels of knowledge, understanding, skills and attitudes of individual judges may be difficult and expensive.

For this reason, it may be more appropriate to select secondary indicators relating to participants' reaction to the program and training. These secondary indicators usually include *participation* in training as an objective; a visible, quantitative measure of project output and efficiency. Similar indicators may relate to publication and distribution of materials.

While it may be difficult to directly measure increased judicial competence, it is useful to measure (a) participants' *satisfaction* in terms of whether they perceived that the training added to their knowledge, understanding, skills and attitudes, and (b) any existence of their *intentions* to make improvements in service delivery as a result. While these indicators are inferential in measuring qualitative perceptions of program value, they do enable ongoing refinement and fine-tuning of project effort (formative evaluation). More importantly, they provide the means to measure the will to improve systemic performance, which is essential to improving performance in terms of service delivery (summative evaluation).

- b) "*Impact Indicators*" – These measure the effectiveness of program outputs in terms of their results or outcomes. They are "external" to the program, and describe objectively visible measurables and how they contribute to enhancing service delivery for indigenous people.

Ultimately, the lead impact indicator may be the performance of the courts to dispose of disputes in a timely and cost-efficient manner. It is not, however, easy to select any single indicator of measurement. Official statistics abound, but they do not necessarily describe all relevant considerations. While invariably anecdotal and qualitative, client satisfaction of service may ultimately synthesize all other indicators.

A number of techniques could be used to collect data using these indicators for purposes of evaluating the intervention. These techniques include: -

- Comparative surveys – self, peer and external assessment
- Interviews of key stakeholders and representatives of court users
- Observation and expert appraisal
- Courts' performance data.

Ultimately, a variety of performance indicators were selected with which to "triangulate" measurements of the contribution of the program to enhancing the quality of court services to the community. These indicators combine process and impact evaluation techniques, subjective and objective criteria, and quantitative and qualitative data.

* * *

ANNEX - CASE STUDIES

The case studies outlined below were selected from diverse judicial systems and legal traditions to define the key issues from actual experience that inform the development of any good judicial training program over time. Each case study features different experiences and generic lessons which are nonetheless universally relevant in illustrating choices made and lessons learned by such institutions. The lessons from these experiences inform the observations and recommendations in this paper.⁴⁵

The case studies are narrated in chronological order relating to the establishment of judicial training institutions in each country, and reflect an evolutionary trend in the development of experience in judicial training around the world from which lessons will be distilled for the consideration of judicial authorities in transitional jurisdictions.

A AUSTRALIA

An assessment of the Australian experience in introducing judicial training is illuminating for judicial authorities in other countries specifically in relation to issues of judicial ownership, judicial leadership through participation in the training faculty, participation policies, and resource rationalization.

Context – Australia is a parliamentary federation of seven states, with a multicultural population of 20 million people who are predominantly Caucasian. The economy is a prosperous western-style services-based model, with a GDP purchase power parity per capita of USD27,000.

Justice system – Constitutionally, the federation and each state make law and administer justice in a court system based on the British common law approach. The judiciary comprises approximately 1,000 judges and magistrates sitting in a two-tiered court hierarchy comprising the apex High Court and the Federal Court of Australia, together with state Supreme, District and Local Courts. These courts are supported by an extensive tribunal system for the resolution of administrative and special civil disputes.

a. *How and why the country and/or judiciary decided to reform or build a new or significantly revamped judicial education mechanism*

Judicial education in Australia is relatively well established, but nonetheless recent in its origins. Traditionally, judicial education was non-existent in any formalized sense and relied heavily, in the words of one senior judge, on "the gifted amateur." During the 1970's, various courts took initiatives to conduct conferences and seminars usually on a national, biennial or ad hoc basis. It has however gathered considerable momentum and, "heralds the advent of potentially significant changes in the Australian judicial culture."

The origins of judicial education in Australia can be traced to the formation of the Australian Institute of Judicial Administration (AIJA) by judges in 1975, and by a call in 1983 from Justice Michael Kirby for the introduction of formalized judicial education to assist new appointees in the transition to the bench and to keep judges abreast of change, following similar recent developments in France and the United States.

An additional driving factor related to the standards of judicial conduct and competence which had not been, until then, a matter of particular public concern.⁴⁶ However, criminal charges, trials and a commission of inquiry into the conduct of a justice of the High Court, criminal charges against a district court judge and the conviction of a former chief magistrate led to closer scrutiny of judicial standards and to the New South Wales Government taking steps to be seen to address these misadventures through the establishment of the Judicial Commission.⁴⁷

b. History of the establishment and development process to date

Early calls for judicial education were met with a mixed response within the judiciary. It was not until the establishment of the Judicial Commission of New South Wales in 1986 and the formation of the AIJA secretariat in 1987 that any permanent infrastructure was dedicated to judicial education. Since 1987, both bodies have conducted an increasing range of judicial conferences and workshops for judges and judicial administrators on a national and state basis respectively. Subsequently, there have been major increases in the provision of judicial education in all states. In 1994, the first judicial orientation course was conducted on a national basis by the AIJA and Judicial Commission of New South Wales. This course was opened by Chief Justice Mason, who observed:

[In the past] new judges were expected somehow to acquire almost overnight the requisite knowledge of how to be a judge. Perhaps it was thought that judicial know-how was absorbed by a process of osmosis ... One of the myths of our legal culture was that the barrister by dint of his or her long experience as a advocate in the courts was equipped to conduct a trial in any jurisdiction.⁴⁸

Looking back almost twenty years, the establishment of judicial education now seems straightforward in Australia.⁴⁹ But, at the time, its introduction was quite controversial. Many judges considered that it was not necessary, indeed an insult to their competence.⁵⁰ Others saw it as an intrusion by the executive into their independence by prescribing continuing education. These concerns were mingled with other larger problems relating to falling public confidence in the judiciary over complaints of high costs of litigation, trial backlogs, and alleged instances of corruption. Overall, there was a crisis in public confidence in the courts which took some years to resolve.⁵¹

The most significant factor in facilitating resolution and acceptance within the judiciary was the very visible judicial ownership of the Judicial Commission, defined through the chairmanship of the Chief Justice and the inclusion of all other heads of jurisdiction on its governing body. It rapidly became clear that the Commission was the creature of the judiciary rather than the executive, and this was emphasized at all operational levels through elaborate consultative mechanisms, such as standing judicial oversight committees and education committees in each court, to ensure judicial leadership and participation in all operational planning and the delivery of educational services.

In the twenty years since the introduction of judicial training in Australia, there has been a steady building in the ownership and acceptance of the practical value of continuing professional development for judges. In the early days, as outlined, quite a number of judges were guarded in their attitudes, feeling that judicial education was unnecessary, ineffective or intrusive. Over the years, as they have explored and discovered the practical utility of this training in helping them to perform their jobs more easily and

better, so a growing commitment has become steadily evident. Ultimately, this underscores the Australian approach which focuses on ensuring that the training is useful and practical in helping judges to do their jobs better.

c. *Summary description of the organization, mission and management infrastructure*

Judicial education is now provided in Australia on a national and state basis by the Australian Institute of Judicial Administration, the National Judicial College of Australia, and the Judicial Commission of New South Wales, as outlined below.

Judicial education is delivered at both the national and state levels for constitutional as much as judicial reasons. Australia is a federation and, under its constitution, law is made at two levels, federal and state, and is administered by two levels of courts. The establishment of the AJA reflected a national initiative to provide education to all judges. But in practice the reach of its services was limited by resource and logistical constraints. What then followed was the largest state, New South Wales, establishing the Judicial Commission to address the more localized training needs of its own state-based judges. In due course, this was followed in the next largest state, Victoria. This has resulted in quite patchy service delivery at the national level. The more recent establishment of the NJCA was intended to even out delivery of available training for judges particularly in smaller states. This has brought with it a new challenge to rationalize resources and services, which is presently ongoing.

Interestingly, this evolution was slightly different in the United States, which is also a constitutional federation. Here again the initiative to institutionalize judicial training was seen in the establishment of the National Judicial College in Reno, Nevada, which was designed to provide training to all and any judges *nationally*. In due course, the states similarly started to introduce their own training bodies to provide more focused training for the particular needs of their *state* judges. Moreover, the training needs of the *federal* courts were then separately addressed through the formation of the Federal Judicial Center in Washington DC. In the following years, the relevance of the NJC has been more or less completely superceded by the superior reach and focus of the state-based providers, resulting in the NJC exploring other mandates, for example, the provision of specialist training in particular areas not covered by other providers, and training to foreign judges whose countries lack the facilities to provide their own or who alternatively wish to survey the US experience.

Judicial education in Australia is voluntary. Publicly, the courts express strong views against mandatory training, mainly for purposes of distancing what it sees as intrusive and 'politically correct' calls by either the public or the executive for the courts to change their approaches and attitudes on controversial public issues. Privately, the courts increasingly recognize the value of relevant judicial education, and informally encourage their judges to actively participate. This involves courts taking steps to dismantle barriers against participation by, for example, providing official relief from sitting obligations, and ensuring participants receive normal salary, benefits and entitlements on training days. Over the years, conducting training has migrated from a weekend and evening activity to part of the mainstream business of the courts. Experience indicates that expecting judges to undergo training after hours and through weekends is attractive only to the most committed, and is a perverse recipe for the most needy going untrained.

i Australian Institute of Judicial Administration

The principal objectives of the AIJA include research into judicial administration and the development and conduct of educational programs for judicial officers, court administrators and members of the legal profession in relation to court administration and judicial systems.

Supervision of the day-to-day management of the Institute is the responsibility of the AIJA Board of Management. The Board consists of President, Deputy Presidents together with three elected Council members. The Institute is a private organization, sponsored by government, and membership is by subscription.

Historically, much of the focus of the AIJA has been upon case-flow management as a means to improving judicial administration, and the Institute has published widely in this area. In the area of education, the Institute runs a number of regular activities in the area of judicial education including annual programs for court administrators, court librarians, magistrates and judges. It has also been involved in developing courses in relation to a number of specialized areas including gender awareness programs, courses relating to cultural awareness, court technology and case management.

Each year, the AIJA runs a number of courses, conferences and seminars designed for judges, magistrates, tribunal members, court administrators, lawyers and others with an interest in judicial administration. All education activities are conducted on a fee-paying basis. These activities include:

- Sheriffs' Seminar
- Annual Conference
- Annual Magistrates' Conference
- Annual Oration
- Technology for Justice Conferences
- Guest Lectures
- Annual Tribunals' Conference
- Special projects— Indigenous Cultural Awareness, and Technology for Justice.

A major initiative involves the Regional Judicial Orientation Program, which is a 5-day residential course for judges from Australia, New Zealand and the Pacific region, featuring training on:

- Courtroom Issues
- Judicial Conduct
- Time Management
- Psychological and Physical Health
- Using Computers as a Research and Management Tool
- Judgment Writing
- Assessing the Credibility of Witnesses
- Problems in Evidence
- Court Craft
- Social Awareness Issues
- Sentencing

- Alternative Dispute Resolution
- Common Pitfalls in Decision Making

The AIJA also publishes reports on commissioned research, collections of papers from important conferences and seminars, the *AIJA News*, and the *Journal of Judicial Administration*.

ii National Judicial College of Australia

In the early 1990's, calls were made for the establishment of a body dedicated to providing judicial education for the whole Australian judiciary for the following reasons:

“Currently judicial officers in Australia attend a diverse range of judicial education programs but the availability varies greatly between jurisdictions. A national approach to judicial education would address the needs of judicial officers throughout Australia. A national college would ensure that education for judicial officers was planned and coordinated at a national level, both increasing quality and avoiding duplication.”

The National Judicial College of Australia was established in May 2002 as an independent entity, and reports annually to the Council of Chief Justices and to the Standing Committee of Attorneys General. The objectives of the NJA are:

- to provide professional development for judicial officers (federal judges and magistrates, and judges, masters, and magistrates appointed by participating State and Territory governments), and
- to conduct occasional courses for non-judicial officers, such as senior court administrators and tribunal members.

The governing body is comprised of a council of six members, headed by a state chief justice, together with judicial representatives from other states. This council is supported by regional coordinators to assess program needs, and a consultative committee to ensure that the Council has the benefit of the views of stakeholders and of all geographical regions of Australia. The work of the College is supported by a director and a personal assistant to the director. The College reports annually to federal and state attorneys-general, and to the Council of Chief Justices.

At the official launch of the College in August 2002, the first chair of the Council of the College, Chief Justice John Doyle of South Australia, said the following about the need for judicial education in Australia:

“The case for a National Judicial College for judicial education is self evident. Members of the Australian judiciary can benefit from programs of professional development that focus on their legal skills, their practical judicial skills, and their approach to their work and which help them to maintain fitness and enthusiasm for the work. The work of the judiciary is demanding. Judges are expected to have professional legal skills of a high order. Some of these practical skills are peculiar to the judicial role, some are skills that are also required in other professions. Additionally, the administration of justice involves much more than professional and practical competence. There is a qualitative aspect to the administration of

justice which calls for judicial officers to have a real enthusiasm for their work, a strong belief in the importance of justice, and a commitment to the administration of justice in the fullest sense of the word. Experience tells us that most judicial officers can benefit from programs of professional development that help them”

iii Judicial Commission of New South Wales

New South Wales has the oldest and most extensive program of judicial education in Australia and has adopted the more recent American approach of providing state-based education for judicial officers. This program is provided by the Judicial Commission, which was established in 1986 in response to calls for a formal mechanism to review sentences and sentencing practice, and to give effect to judicial accountability.

The Commission's principal functions are to:

- assist the courts to achieve consistency in sentencing
- organize and supervise an appropriate scheme of continuing education and training of judicial officers
- examine complaints against judicial officers.

The Judicial Commission's education program aims to promote excellence in judicial performance by providing judicial officers with information on law, justice and related areas; and assisting in the development of appropriate judicial skills and values. It also responds quickly to important legal developments through conferences, seminars and publications.

The Judicial Commission offers an extensive conference and seminar program ranging from induction courses for new appointees to specialist conferences. It provides special seminars on topics of importance to judicial officers. It also regularly conducts conferences to keep judicial officers up to date with current developments and emerging trends. Computer training courses aim to facilitate effective use of computers in the context of the court system, and to enable access to on-line legal databases.

d. *Curriculum and curriculum development processes*

Detailed curricula of current courses conducted by the National Judicial College of Australia, and the Judicial Commission of NSW, together with its Policy of Judicial Education, are available on inquiry.

e *Commentary and lessons learned*

Analysis of the Australian experience identifies a number of useful lessons for the consideration of the judicial authorities in other jurisdictions. These relate to judicial ownership, judicial leadership through participation in the training faculty, participation policies, and resource rationalization.

1. *Judicial ownership* – The issue of judicial ownership of its own training has been a critical element in the successful establishment and institutionalization of judicial education in Australia. High levels of suspicion initially existed in the judiciary at

the prospect of executive interference in the internal affairs of the courts and the external imposition of a mandatory program of training. In Australia, these quite universal concerns were addressed through a number of structures, mechanisms and procedures including (a) vesting real decision-making control in the leadership of the judiciary as constituted in the governance structures of those institutions, (b) the installation of standing judicial oversight committees, and (c) the formation of education committees in each court.

At a more operational level, judges are normally notified of training opportunities through their respective courts, and this is seen as an important institutionalizing mechanism for demonstrating court endorsement and, thereby, ownership and authenticity. Notification is usually through a memorandum of the chief judge. While it is recognized that many older judges still prefer conventional paper-based media, this is increasingly through electronic bulletins as the judiciary becomes progressively more electronically literate.

Another important and influential means of ownership is through the use of judges on the faculty of trainers.

2. *Judicial leadership through training faculty* – The issue of training faculty warrants some comment. Generally, judges prefer that other judges act as their trainers because they are recognized as having the relevant experience and insight on the subject. Judge trainers are seen as authentic and as practitioners, rather than theorists. They do however need training in presentation skills, and Training-of-Trainers courses are offered by the training institutions. There are also many interdisciplinary subjects where other experts are recognized as being qualified, for example, DNA profiling, forensic ballistics, mental illness or off-balance sheet accounting. Additionally, the professional staff of the training institutions, who may be educational rather than judicial experts, will act as trainers where appropriate.
3. *Participation policy* – The Australian experience demonstrates the value of eliciting voluntary participation in training rather than to mandate it through rules. This is contrary to the approach in the United States where more than 90% of states invest in mandated judicial training. In the Australian experience, the best educational approach is seen to be through voluntary motivation to participate. This imposes an obligation on the education provider to deliver really relevant and useful training in an accessible way. It also requires institutional support of judicial training by dismantling any barriers against participation, for example, the perverse incentives of expecting judges to regularly surrender their private time to attend training activities at their own cost. This has involved courts increasingly treating training as a mainstream part of their business, which is conducted during business hours, with judges receiving full entitlements to salary and costs during participation.
4. *Resource rationalization* – Australia is presently addressing the challenge of rationalizing available judicial education resources and services. Arguably, the success in introducing programs of judicial education, notably in New South Wales, has created demands by the judiciaries in smaller states which has unexpectedly resulted in an oversupply of providers. While better resourced than some other countries, the reality remains that many courts in smaller states are relatively less well serviced than in others. Providers are now rationalizing their

respective roles to avoid duplication, as has also occurred in the United States in regard to the evolving role of the National Judicial College. It is within this context that one of the useful new roles of the NJCA is to consolidate a national calendar of training from all providers, and to make this available to all judges.

B BRITAIN

An assessment of the British experience in introducing judicial training is relevant for the judicial authorities in other jurisdictions because it highlights an important issue relating to facilitating the introduction of formalized programs of judicial development, and to addressing the existence of certain judicial sensitivities pertaining to the need to be trained.⁵²

Context – Britain is a constitutional monarchy with a bicameral parliament, comprising an elected lower House of Commons, and an hereditary appointed upper House of Lords. It has a population of 60 million people. The economy is highly developed, industrial and services-based, and the GDP purchase power parity per capita is USD25,500.

Justice system – Britain is the cradle of the common law approach to adversarial justice and judge-made law, which is replicated in various hybrid forms around the world. At the apex of the judicial hierarchy is the judicial bench of the House of Lords; the Supreme Courts of England, Wales, and Northern Ireland – comprising the Courts of Appeal, the High Courts of Justice, and the Crown Courts; and the Magistracy, many of whom are lay appointees, that is, unqualified in law.

a. *how and why the country and/or judiciary decided to reform or build a new or significantly revamped judicial education mechanism*

Traditionally, senior judges in Britain – as distinct from magistrates – have been appointed from the ranks of practicing lawyers, and their experience was seen as providing all of the required qualifications for performing their judicial role.

More recently, however, the judiciary has been seen as being ‘out of touch’ with the community and as failing to reflect the values of society it was commissioned to serve. Public criticism of the professions generally, and the judiciary specifically, became increasingly vocal in the latter part of the Twentieth Century. This criticism related to inadequate service systems to care for the needy, the community which the judiciary is charged to serve. The judiciary was criticized by consumers as being expensive, slow, incompetent and inefficient. This criticism imposed considerable pressures on judiciaries around the world to carry out their duties at the highest possible standards of competence, and it is arguably within this context that the concept of systematized continuing professional education evolved, as much in Britain as elsewhere.

b. *History of the establishment and development process to date*

In Britain, judicial education is administered by the Judicial Studies Board which found its origins in a one-day sentencing conference organized by Lord Parker in 1963. The Judicial Studies Board (JSB) was set up in 1979, following a review by Lord Justice Bridge, with the object of providing a range of education services to the judiciary, magistracy and lay magistracy particularly in the criminal jurisdiction. In 1985 its role was

extended to cover the provision of training in the civil and family jurisdictions and the supervision of training for magistrates and judicial chairmen and members of tribunals. The British approach to judicial education is markedly less formalized than is the case in the United States, and conducts a range of judicial orientation and updating programs which historically was predominantly designed for lay magistrates and tribunal members.

Regarding the standing of judicial education in Britain, the Board observed in 1988 that,

Judicial studies are no longer a novelty No competent and conscientious occupant of any post would suggest that his (sic) 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 organized means of enhancing performance.

By 1995, this position had dramatically consolidated when Lord Justice Henry reported what he described as a "sea-change in judicial attitudes to training over the past 25 to 30 years." He added, "Judges have accepted, appreciated, and benefited from training in a way that has confounded the skeptics."

Twenty years ago, a majority of judges would have denied there was any need for training. Today only a minority would share that view.

c. *Summary description of the organization, mission and management infrastructure*

The Judicial Studies Board identifies the *mission* of judicial training as being:

To convey in a condensed form the lessons which experienced judges have acquired from their experience...".

The *objectives* of the Board are:

1. To provide high quality training to full- and part-time judges in the exercise of their jurisdiction in Civil, Criminal and Family Law.
2. To advise the Lord Chancellor on the policy for and content of training for lay magistrates, and on the efficiency and effectiveness with which Magistrates' Courts Committees deliver such training.
3. To advise the Lord Chancellor and Government Departments on the appropriate standards for, and content of, training for judicial officers in Tribunals.
4. To advise the Government on the training requirement of judges, magistrates, and judicial officers in Tribunals if proposed changes to the law, procedure and court organisation are to be effective, and to provide, and advise on the content of, such training.
5. To promote closer international co-operation over judicial training.

The Chairman and members of the JSB are appointed by the Lord Chancellor. The Board comprises senior judges, respected academics and prominent members of the community. Representatives from the judiciary, the magistracy and tribunals constitute a majority of the JSB's members. The management of the Board consists of the chairman and a director of studies, both of whom are senior judicial officers, supported by a small secretariat staff, and a framework of honorary committees, including:

1. Criminal Committee
2. Civil Committee
3. Family Committee
4. Magisterial Committee
5. Tribunal Committee
6. Equal Treatment Advisory Committee

Each committee is responsible for developing and overseeing the conduct of particular training programs. These programs generally comprise induction training courses, continuing education seminars and publications.

d. Curriculum and curriculum development processes

The JSB has not developed a comprehensive formalized curriculum of training, consistent with its informal approach to professional education. Instead, it reports that it is now developing a more integrated approach to all aspects of judicial training, using a combination of judicial seminars, written and electronic materials, to maximize the effectiveness of the training. This is in response to receiving technical advice from educational experts to this effect. It includes developing systems of distance learning using materials supplied in CD-ROM or other electronic formats; creating and ensuring an efficient and continuing updating of materials supplied in bench books to enable them to be both a means of assisting the less experienced judiciary, and a means to regularly provide information on latest developments in the law; and to develop training in IT skills for judges.

The JSB publishes a range of materials. These publications are generally written by members of the judiciary at the JSB's request. These include journals and leaflets, and a range of bench books which provide practical assistance to judges in hearing cases, including:

1. Specimen Directions
2. Civil Bench Book
3. Family Bench Book
4. Equal Treatment Bench Book
5. District Judges (Magistrates Court) Bench Book
6. Youth Court Bench Book

In addition, it published a range of journals and leaflets:

1. Tribunals journal
2. Reporting Restrictions: Crown Court
3. Reporting Restrictions: Magistrates Court
4. Race and the courts
5. Equality before the courts

The JSB also holds occasional seminars on 'Training-the-trainers' whose aim is: 'to equip those with training responsibilities with the competences they require in order to understand how to devise and provide effective and appropriate training to judges.'

e *Commentary and lessons learned*

Analysis of the British experience highlights a curious but very important issue relating to facilitating the introduction of formalized programs of judicial development, and to addressing the existence of certain judicial sensitivities pertaining to the need to be trained.

Sensitization – While this may seem strange to non-judges, many senior judges of “the old school” did not necessarily spontaneously recognize the needs for and the benefits of formalized training. This was doubtless because in a merit-based system of appointment where they had been appointed for outstanding competence from their peers, they epitomized the successful self-directed learner, and presumably saw their earlier careers as demonstrating their capability to learn whatever they need to know without outside help of a formally organized process. In other words, many saw the introduction of a training program as being both redundant and potentially insulting.

The Judicial Studies Board confronted this sensitivity in its earlier years, and has publicly commented that the use of educational terminology – with its connotations of pedagogy which may be seen by judges and educators alike as inappropriate – is generally avoided. Such are these sensitivities that the Judicial Studies Board has remarked on the “*awkward question of nomenclature*” regarding the use of such words as ‘teach’, ‘train’, ‘instruct’ and ‘student’ in relation to professional judges. Interestingly, the Board overcame these sensitivities by using the term judicial studies, which it defines as “an organized means of enhancing (the judge’s) performance... to enable him to perform his duties more effectively.”⁵³

Seen in the light of this history, the recent endorsements of judicial training by the superior judiciary in Britain which demonstrate that these sensitivities have been addressed over the past twenty years, provide an indication of the time required for education programs to change deeply-held judicial culture and attitudes. This is particularly relevant when contemplating the time required for programs of training and development to serve as agents of change in generating leadership and culture change. Some recent topical examples of training performing this longer term leadership role in Britain, Australia and other developed countries, relate to judicial attitudes and values to the disadvantaged, women’s rights and/or the standing and treatment of racial minorities.

C **PAKISTAN**

An assessment of the Pakistani experience in introducing judicial training reveals the existence of significant constraints relating to independence and autonomy which are of considerable relevance to the judicial authorities in other countries. Other significant lessons relate to ensuring the financial viability of centrally-delivered training for provincial judges, and the need to amend judicial service rules so that judges can serve as trainers without losing seniority.

Context – Pakistan was established in the partition of British India in 1947, and is a secular Muslim republic of four provinces under transition from a military dictatorship headed by General Musharraf as president with an elected bicameral legislature. The population is approximately 150 million people. The economy is largely underdeveloped

and is mainly agricultural, with substantial textile exports. The GDP purchase power parity per capita is USD 2,000.

Justice system – The justice system is a hybrid based on the post-colonial British common law model overseen by the apex Islamic Shariat Court. The judiciary comprises almost 2,000 judges sitting in the federal Shariat and Supreme Courts, provincial High Courts, and District trial courts exercising civil and criminal jurisdiction. The Supreme Court has original, federal appellate, and advisory jurisdictions. High Courts have original and provincial appellate jurisdictions. The Shariat Court determines whether any law is repugnant to the injunctions of Islam. In addition, there are special courts and tribunals to deal with specific kinds of cases, such as drug courts, commercial courts, labor courts, traffic courts, an insurance appellate tribunal, an income tax appellate tribunal, and special courts for bank offenses.

The Pakistani judicial system has been plagued by various systemic problems that have hampered the effective administration of justice, due primarily to erosion of its independence, neglect and under resourcing. Problems include long delays in the courts; lack of a centralized coordinating body to develop legal and judicial policy; lack of professional management and case systems management in the courts; lack of budget resources; shortage of judges; inadequate infrastructure; lack of public access to justice; and the very serious decline in the standards of legal education and the profession. While changes have been made over the years to some substantive laws, little has been done to address some substantive problems. Despite its many shortcomings, the court system is responsive to reform, and is presently participating in the massive “*Access to Justice Program*” valued at USD300m funded by the Asian Development Bank aimed to improve infrastructure and judicial service delivery to the public.

a. *How and why the country and/or judiciary decided to reform or build a new or significantly revamped judicial education mechanism*

Judicial education was initially recommended by the First Law Reforms Commission in 1959. This Commission recommended that judges "should receive an intensive practical training in the functions of a subordinate judge for an adequate period of (one or two years) before they are allowed to work independently." This was supported by the Second Law Reforms Commission in 1970 that recommended that "A Judicial Service Academy be set up to impart training to serving and newly recruited judicial officers in substantive and procedural law, the art of judgment writing, the appreciation of case law, the interpretation of Statutes and in the general techniques of planning and organizing judicial work efficiently and with the least inconvenience to the litigant public." It also recommended that "Judicial Officers with less than ten years service should also be selected by rotation for a short intensive course of training of at least three months duration at the Academy."

b. *History of the establishment and development process to date*

The Federal Judicial Academy was established under a Government Resolution in September, 1988. A permanent campus was established in the capital Islamabad in 1994 comprising lecture theatre, seminar rooms, library and a hostel with a capacity for 52 residential guests. Legal cover to the organization and functioning of the Academy was provided with the enforcement of the Federal Judicial Academy Act in 1997.

Independence and autonomy – it is essential to ensure that the judicial training institution is led by the judiciary rather than the executive to avoid the constraints in independent decision-making exist in both Mongolia and Pakistan. Similarly, there is a need to delegate as much financial autonomy (accompanied by accountability) as possible in order to consolidate judicial independence, elicit ownership and buy-in from the judiciary, and enable the institution to deliver the training which the judiciary perceives it needs. Constraints in the independence and financial autonomy of institutions have limited the scope of training services available to the judiciary in both of these countries, and additionally the Philippines. While it is recognized that there is usually a shortage of financial resources available for training purposes, it may be observed that independent judicial training institutions are more likely to be actively supported by donor bodies in the interests of good governance.

c. Summary description of the organization, mission and management infrastructure

For general supervision of the affairs of the Academy and the achievement of its aims and objects, a Board of Governors has been constituted under the chairmanship of the Chief Justice of Pakistan. Other members include the Minister for Law, Justice and Parliamentary Affairs; Principal Secretary, Ministry of Law, Justice and Parliamentary Affairs; Attorney-General for Pakistan; Chief Justice of Lahore High Court; Chief Justice of High Court of Sindh; Chief Justice of Peshawar High Court; Chief Justice of Baluchistan High Court; and Director General of the Academy.

The management of the Academy is carried on under the general directions of the Board, by the Director General who is the Principal Accounting Officer as well as academic and administrative head of the Academy.

The *aims and objects* of the Academy are:

- Orientation and training of new Judges, Magistrates, Law officers and Court personnel
- In-service training and education of Judges, Magistrates, Law officers and Court personnel
- Holding of conferences, seminars, workshops and symposia for improvement of the judicial system and quality of judicial work
- Publishing of journals, memoirs, research papers and reports.

The Academy is presently expanding its pedagogical techniques for imparting training. These now include class room lectures by judges, jurists and scholars, supplemented by panel discussions, scenarios, simulations, problem solving and case studies with reference to landmark judgments of the superior courts, involving issues both pertaining to substantive and procedural law. Workshop syndicate discussions also form part of the training methodology. These aim at providing an opportunity to the participants to interact and exchange their knowledge and experience with one another; which helps in analyzing and articulating current juridical issues. Participants are divided into a number of groups. One of the participants is designated as chairman who prepares, with the contribution of other members of the group, a report which is presented in the plenary session, for conclusions and finalization of recommendations.

As a part of the capacity building of the Academy, management has recently introduced a change mainly in the method of judicial education and training. Hitherto emphasis has been on dissemination of knowledge and information about substantive law by way of lecturing. However, the FJA is now employing more useful and effective means of delivering educational services, with the introduction of a new professional approach to judicial training based on the theory and principles of adult education. This quite fundamental shift of approach was made by the Academy in response to the advice of international educational experts advising the Academy to expand the training agenda from focusing on transferring legal information to improving court performance through developing the skills of good judging. In terms of content, this will focus not just on substantive law, but on the skills and disposition of judging. In terms of method, lecturing will be heavily supplemented by the introduction of small group seminars and workshops which will build on the active participation of judges in techniques of active learning, such as problem solving case studies, scenarios and simulations, and also panel discussions to develop professional skills and judgment which will be supported by the foundation of information and knowledge. It is important to stress that this training approach will be considerably more practical and active than theoretical and passive.

d. Curriculum and curriculum development processes

The FJA has conducted more than one hundred courses since its inception in 1998, and has provided training to some 2,098 judges from all provinces. These courses have included pre-service and in-service refresher training and re-orientation courses, seminars and workshops. In addition, the Academy conducts lectures and discourses by eminent scholars and jurists on a range of subjects to equip the trainee judges with judicial skills which are required to improve the quality of justice with greater stress on subjects such as the rule of law, alternative dispute resolution, framing charge in criminal cases, issues in civil matters, the conduct of a judge, court management, etiquettes and manners, self-management and stress management. Various other topics are also covered, with particular emphasis on civil practice and procedure, maintenance of court registers and record, case management, style of judicial reasoning and the process of decision making. As already noted, the Academy has now developed and extended its curriculum from being information-focused to being skills-focused. This has involved a quite profound transition in outlook and pedagogical approach, requiring considerable provisioning of Training-of-Trainer (ToT) support for the faculty of instructors.

A detailed curriculum of current courses conducted by the FJA is attached as an annex to this report. The FJA conducts an expanding program of conferences, seminars and workshops for judges, as well as a model court, together with new programs in computer training and publications. While this volume of training – notionally suggesting slightly more than one single training experience per judge over the past six years – is relatively low compared with more established programs, such as that in Australia where each judge participates in one week of training every year on an average, it does provide an indication of volume for comparative purposes.

e. Commentary and lessons learned

There are a number of particular challenges confronting the delivery of judicial training in the Pakistani experience which have relevance to the judicial authorities in other jurisdictions. These include independence and financial autonomy, logistics of delivering centralized training, and accessing high caliber judges to establish core faculty.

1. *Independence and financial autonomy* – As with Mongolia, the issue of independence and funding are problematic in principle, but not necessarily in practice. The FJA is a creature of statute, headed by the Chief Justice, but funded through the Ministry of Justice. This arrangement means that while theoretically independent, it must curry favour with the executive through the MoJ to secure its operational survival. This has not created any overt problems to date, because it is the policy of the Ministry of Justice to second a sitting judge to serve as its secretary – and, in this way, it can be seen that the interests of the FJA and the wider judiciary are well understood by the executive. But, it does highlight the proximity of the relationship between judiciary and executive, and it should never be forgotten that on two occasions in the past 25 years the executive has dismissed judicial officers unwilling to re-swear oaths of allegiance to those administrations.

The impact of this lack of independence is seen in the constraints which exist in judicial autonomy to determine its own program of training. In practice, the judicial training institution must not only secure the endorsement of the judicial leadership to its proposed program of training activities, but this must also be agreed upon by representatives of the executive in the Ministry of Justice. While there are no visible examples of clashes between the judiciary and the executive in decision-making, what is clear is the evident subservience of the judiciary in this decision-making process which renders it reluctant to place itself in any course of collision. The legacy of this subservience is all-pervasive and, it is argued, should be avoided from the outset through the establishment and composition of court-owned and judge-led governance structures if at all possible.

2. *Centralized delivery* – While it may be cheaper to establish a single centralized body to provide training services, this approach transfers the burden of funding the recurrent logistical costs of travel and accommodation of training judges to provincial or distant courts, and often creates a significant invisible barrier to participation in practice for courts with no training budgets. The solution to this problem is to ensure recurrent funding for travel and accommodation is adequately provisioned. This provisioning should be centrally allocated to the training institution to ensure coordination in the allocation of funding. This will enable the national judicial training program to, for example, provide allowances for the travel/accommodation of distant judges and prevent funding being spent on unrelated provincial purposes.,

3. *Judicial leadership through training faculty* – A further problem encountered in Pakistan is accessing talented judges to serve on the core faculty of trainers. Members of the judiciary and the subordinate judicial service are promoted on a seniority system structured around years of sitting in court. Service in the Academy does not qualify for purposes of promotion and thereby creates a barrier for otherwise upwardly mobile judges. The consequence of the anomaly is that only those judges whose promotion is no longer assured, or retirees, volunteer for such posting – hardly an optimal source of supply. The solution to this barrier, which still exists in Pakistan, is for the judicial authorities to amend the judicial service rules so that judges can serve as training faculty without losing their seniority.

D PHILIPPINES

An assessment of the Philippines' experience in introducing judicial training is illuminating for judicial authorities around the world in four particular respects relating to the organizational mission of the training institution, its organizational structure, financial resources, and the use of IT media.

Context – The Philippines is a democratic republic headed by a president and bicameral legislature. The population of 85 million people is predominantly Catholic. The economy is underdeveloped and is service-based and industrial, with a GDP purchase power parity per capita of USD 4,600.

Justice system – The legal system is a hybrid derived from those of Spain and the United States. Civil code procedures on family and property and the absence of jury trial were attributable to Spanish influences, but most commercial statutes are of United States derivation. There are four main levels of courts: local, regional, national and the apex Supreme Court. The Supreme Court regulates the practice of law in the Philippines, and manages the Philippines Judicial Academy (PHILJA), which is responsible for the provision of judicial education to the courts.

- a. *How and why the country and/or judiciary decided to reform or build a new or significantly revamped judicial education mechanism*

The Philippines Judicial Academy performs what is seen as a vital role in ensuring judicial competence and efficiency through continuing judicial education. Chief Justice Hilario G. Davide, Jr. has described it as "the [Supreme] Court's implementing arm and the nation's watchdog in the pursuit of excellence in the Judiciary."

- b. *History of the establishment and development process to date*

PHILJA was established by statute in 1996 as a unit of the Supreme Court to be the training school for justices, judges, court personnel, lawyers and aspirants to judicial posts. It is mandated to provide and implement a curriculum for judicial education, and to conduct seminars, workshops and other training programs designed to upgrade their legal knowledge, moral fitness, probity, efficiency, and capability. The programs of the Academy enjoy the patronage and support of the Supreme Court, and participation of the judges is guaranteed: no appointee to the bench may commence the discharge of his/her adjudicative functions without completing the prescribed courses of the Academy.

- c. *Summary description of the organization, mission and management infrastructure*

The *mission* of the Academy is to bring about an institutionalized, integrated, and professionalized system of continuing judicial education for justices, judges, court personnel and lawyers aspiring for judicial positions. This system aims not only to provide knowledge and essential skills expected of members of the bench, but also to foster desirable traits, values and attitudes, particularly competence, honesty and integrity. Continuing judicial education is seen as being at the heart of fostering excellence in the judiciary. It is an indispensable tool for ensuring an effective, independent and credible judiciary whose members are of proven competence, integrity and probity.

The *objectives* of PHILJA are to:

- foster sound values and attitudes, expertise in substantive and procedural law, and develop management competence through courses, seminars and symposia for members of the Judiciary and quasi-judicial bodies;
- contribute to available legal literature of scholarly and practical significance to members of the Judiciary through the publication of a Judicial Journal and Bulletin;
- integrate the Academy's philosophy, principles and objectives and instructional programs in conventions, seminars, and programs of the association of judges and of court personnel;
- conduct research to advance the frontiers of juridical science and court technology;
- develop and strengthen networking and partnership with other institutions for the development and implementation of programs for continuing judicial education.

d. Curriculum and curriculum development processes

A detailed curriculum of current courses conducted by PHILJA is attached as an annex to this report. Generally, it provides a range of courses and publications, which include:

- Pre-Judicature program – month-long introductory program for aspirants to judicial positions.
- Orientation program – five-day course for newly appointed Judges.
- Immersion program – month-long program for newly appointed Judges
- Career enhancement seminar – four-day seminar to update Judges on substantive and procedural law
- Workshop for executive judges – management training seminar for Executive Judges which focuses on Trial Court Performance Standards.
- Regional seminar for judges and clerks – four-day seminar to update Judges and court personnel on new laws.
- Programs for judicial personnel
- Mediation – basic workshop on mediation
- Special focus programs – Shari'a, Family, Child Protection, Intellectual Property, etc
- Bulletin – Quarterly newsletter to provide updates on new rulings of the Supreme Court, orders and circulars, and other news and current events.
- Judicial Journal – Quarterly newsletter to provide a forum on the justice system, through lectures and papers
- Electronic alerts – Monthly issue on Supreme Court business and decisions online.
- Electronic updates – Quarterly legal update in CD-ROM format, which contains laws, statutes, new doctrines, administrative resolutions, orders and circulars.

e Commentary and lessons learned

There are four particular aspects of the Philippines' experience which warrant the specific consideration of the judicial authorities abroad as lessons to be learned. These relate to the organizational mission, organizational structure, financial resources, and the use of IT media.

1. *Organizational mission* – The issue of organizational mission warrants specific comment. While it is relatively straight forward for the mandate of any judicial training

institution to prescribe the promotion of competence as its overarching objective, it is important to ensure adequate specificity in its mission. In PHILJA's case this is lacking.

PHILJA's mandate exhibits a generality in words, being to "*foster sound values and attitudes, expertise in substantive and procedural law, and develop management competence through courses, seminars and symposia for members of the Judiciary and quasi-judicial bodies.*" While this mission is clear it is not specific.

A more useful approach can be found, for example, in the policy of the Judicial Commission of New South Wales, which is much more specific, providing that "*(t)he purpose of this scheme of continuing judicial education is to assist judicial officers in the performance of their duties by enhancing professional expertise, facilitating development of judicial knowledge and skills, and promoting the pursuit of juristic excellence.*" It then outlines twelve separate service components which specify how that mission will be put into effect. It is argued that a more focused mission is useful in guiding and informing the operations of the institution.

2. *Organizational structure* – In a recent review conducted on the structure and operations of PHILJA, it was concluded that it suffered from poor training resources, weak management systems and a lack of financial management and administrative autonomy, in this instance, from the Supreme Court. Remediation has been proposed with an organizational restructure, and introduction of a new decentralized approach, with greater budgetary autonomy and accompanying financial accountability. This said, it is premature to advocate a particular organizational 'model' or structure for other courts at this stage. Generally speaking, there is no "one-size-fits-all" model because different missions and objectives require different organizational structures and institutional capabilities. What is more important is a universal endorsement of the principle for firmly established organizational systems which clearly define institutional mission and objectives, and organizational roles and responsibilities. Moreover, it is important to ensure that management of the judicial training centre has clearly focused areas of responsibility – for example, administration, course development, program delivery – and is vested with sufficient operational autonomy to perform their duties in a timely and efficient manner.

3. *Financial viability* – It is a relatively universal feature of judicial education around the world that there is a shortage of financial resources. The reality is however that such shortages are likely to define the operating environment of those training institutions. That said, the critical issue is how those resources are allocated and managed. PHILJA, like the FJA and other institutions, is constrained by this problem. The solution to the challenge of financial constraint is found in the strategic outlook and managerial direction of available resources to ensure that they address identified priorities in an educationally effective manner. Simply because the budget available for judicial training in the Philippines may be considerably less than that available in Britain does not mean that its training services are inferior, provided that management is strategically positioned and the training faculty applies educationally effective methods which are outlined in Part B of this paper.

4. *Use of information technology (IT)-based delivery media* – A topical issue which PHILJA has addressed is the application of innovative information technology-based media for the transmission of its educational services, specifically electronic alerts, bulletins and updates. While there is no available information on the extent to which

trainees value these different kinds of training opportunities, it is understood that the development of these alternative/remote media is in response to judicial demand, and this is not surprising in a relatively technologically developed country such as the Philippines. This is similarly the case in the United States and Australia where judges are increasingly accustomed to working with computers on a day-to-day basis. This raises issues for a developing jurisdiction as to the extent it invests in 'old' technology of conventional educational and publishing media, and the 'new' information technology-based communication and information strategies. As much as possible, the latter course is recommended for the consideration of judicial authorities as it embeds longer term solutions from the outset to the judicial training approach.

E MONGOLIA

An assessment of the Mongolian experience in recently introducing judicial training reveals the existence of two fundamental issues which are of considerable relevance to the judicial authorities in other jurisdictions. These once again relate to the independence and autonomy of the training institution and to its financial viability, as outlined below.

Context – Mongolia is a parliamentary republic. The president is directly elected as head of state with a single chamber legislature (Great Hural) which elects the prime minister. Mongolia was a communist regime until 1990 when it introduced a new democratic constitution and ceased dependence on the former Soviet Union. It is a large landlocked country sharing borders with China and Russia. It has a population of 2.5 million people, most of whom are Buddhist. The economy, which is service-based and agricultural, is currently undergoing major market reform, involving introduction of free pricing, privatization and a stock market. The gross domestic product (GDP) purchase power parity per capita is USD 1,900.

Justice system – The Mongolian judicial system comprises some 400 judges and consists of a four-tier hierarchy of the apex Constitutional Court, Supreme Court, aimag or district-level court. The Mongolian judiciary is now independent of the other branches of government, and in recent years many of the responsibilities of the MoJ's Council of Courts have been transferred to the judiciary. All judges must have a law degree, and have been trained under the socialist system. The workload of judges has increased substantially over the last few years and the types of cases they deal with have changed. Under the socialist system, most of their work was criminal. Now two-thirds of the cases are civil, involving commercial and contractual disputes, and bankruptcies. Many judges find the new disputes they are called to deal with confusing. Much free market legislation has recently been enacted, but most judges were trained before the introduction of these reforms. There has been little new training over recent years, though judges have recently started to participate in continuing education.

The Constitution of 1992 formalized the separation of powers between the judicial and other branches of government, enshrining the judiciary's independent status. Under the previous system, while it was nominally independent, the judiciary was effectively controlled by the ruling communist party. Judges were appointed by committees of the party, and party membership was an unwritten requirement. The party could put pressure on a judge to decide a case in a particular way, and it was also common for citizens to use their personal contacts with high ranking officials to try to influence judicial decisions. Although the party had no power to override a judicial decision, it

could summon the judge to appear before a party committee to explain the result, and this in turn could lead to the judge being discredited or simply not reappointed. Now judges are subject only to law, and judicial power is vested exclusively in the courts. The government must respect the independence and impartiality of the judiciary, and in turn judges must abstain from political activity.

The new Constitution also introduced judicial standards that are embodied in the United Nations Basic Principles on the Independence of the Judiciary, such as the right to a fair trial, the right to counsel, and the presumption of innocence. The court structure has been significantly transformed by reducing the number of courts, abolishing the military and railway courts, and introducing a constitutional court.

On May 4, 2000 the Great Hural passed the "*Strategic Plan for the Justice System of Mongolia*". This involves a substantial legal training component, which is now being implemented through a Judicial Reform Program (JRP). This strategic plan focuses on court management and administration; case management; training and continuing legal education; establishment of a qualification system for legal professionals; ethics in the legal profession; and clarification of the organization, structure, jurisdiction and responsibilities of justice system agencies.

The continuing judicial and legal education component of this strategy supports the new National Legal Center (NLC) to build capacity to provide a unified program of retraining and professional advancement of Mongolian legal professionals, including judges and lawyers.

a. *How and why the country and/or judiciary decided to reform or build a new or significantly revamped judicial education mechanism*

Mongolia made a voluntary smooth transition to a democracy and market economy. To do this, a new constitution and many new laws were passed. This obviously required retraining of the judiciary. The judiciary is now implementing the "Strategic Plan for the Justice System of Mongolia," adopted in 2000.

b. *History of the establishment and development process to date*

The Mongolia Judicial Reform Program (JRP), a project of the National Center for State Courts funded by the US Agency for International Development, began in April 2001. In 2002, at the request of the Ministry of Justice, the JRP presented direct training to judges and prosecutors. The bulk of training activity is in Training-of-Trainers and assisting Mongolian stakeholders in presenting their own continuing legal education. In November 2002, parliament established the National Legal Center (NLC) as the primary provider of transition and continuing education for judges and lawyers. The NLC is an entity of the Ministry of Justice and Home Affairs, rather than the General Council of the Courts.

c. *Summary description of the organization, mission and management infrastructure*

The NLC has formulated a strategic plan for unified continuing education for judges and lawyers in Mongolia. The *mission* of the NLC is to (a) improve the legal knowledge and professional skills of judges and lawyers in conformity with the constitution, modern legal theories, legal reform and the current needs of the judiciary; and (b) to introduce

approaches/ experience/ practices/ thinking/ attitudes to work fairly, independently and creatively in adherence to the principles of lawful statehood and the professional ethical norms.

- The Continuing Legal Education (CLE) consists of improving legal skills, knowledge and qualifications, retraining and acquisition of new skills which will continue through the period of judges' and lawyers' performance of their jobs and duties. Its *objectives* are:
 - To create conditions and environments that will insist on constant inspiration of judges and lawyers to study under the laws, policies and code of ethics of the organization or according to the needs and demands of the market economy.
 - To develop and implement a unified training program to ensure continuity of systematized long-term and short-term training activities for legal professionals.
 - To create a training cycle to let judges, advocates, prosecutors and other legal professionals attend retraining regularly.

The NLC is now introducing continuing training courses for judges and prosecutors, and will shortly develop a training program for newly-appointed judges and prosecutors, applying the following *principles*:

- The system of CLE should be realistic and functional.
- The system of CLE should be democratic.
- The system of CLE should be consistent.
- The system of CLE should be accessible.
- The CLE system should be fair, independent, business-like and supportive to the developmental process of the judicial organizations.
- The primary goal of the CLE will be quality training based on the needs and demands of legal professionals.

Both the judiciary and legal profession are very small. Therefore, training is consolidated in the NLC. The NLC has an Education Committee and three subcommittees: judges, prosecutors, and advocates. The NLC has a Director, Assistant Director, and Division Managers.

d. Curriculum and curriculum development processes

The detailed current curriculum of the NLC is attached as an annex to this report. Accomplishments to date in developing a continuing education program for judges and lawyers have included:

- Training-of-Trainers – building a sustainable pool of CLE trainers
- Assistance to the National Legal Center – study tour and advice on strategic plans
- First induction course for new judges
- Video on trial of a domestic violence case
- Manuals on Company Law and Contract Law
- Direct training to judges and advocates in the capital and all districts on criminal code, criminal procedure code, civil code, civil procedure code, ethics, and advocacy

- Present Training-of-Trainers courses
- Develop a continuing education curriculum for judges
- Develop alternative dispute resolution (ADR) training
- Develop creative, interactive judicial ethics courses with the NLC
- Motivate improved decision writing by judges
- Support planning retreats for the NLC Governing Board and Judicial Education Subcommittee.

The NLC's strategies plan, action plan, and tentative curriculum schedule are attached.

e. *Commentary and lessons learned*

Analysis of the Mongolian experience indicates the existence of two significant constraints in the selection of approach, what might be termed the NLC model, which are relevant for the consideration of other judicial authorities.

1. *Independence and autonomy* – In November 2002, Parliament established the National Legal Center as the primary provider of transition and continuing education for judges, as well as most lawyers. The NLC is an entity within the Ministry of Justice & Home Affairs, not the General Council of the Courts. Arguably, an independent NGO model might free the judiciary from any control by the executive branch more than is at present possible. It would also free private lawyers from any educational control by the executive branch. However, Mongolia is a small developing country, and the government thought that consolidation of training into one government institution was the most likely way to ensure sustainability. This strategy was evidently endorsed by USAID as a donor supporting this approach. It does however restrict the extent of judicial ownership and autonomy in decision-making. This factor risks restricting judicial independence and the willingness of judges to participate voluntarily and actively in the program, thereby potentially limiting its educational effectiveness.

2. *Financial viability* – The NLC has a small budget, but it is sizable by comparison to some other Mongolian government departments. The NLC is empowered to charge fees for its course to private lawyers and for its publications. It hopes to generate enough revenue that way. It is also running a bar review course for candidates taking the national lawyer qualification examination, and it can charge for that. The NLC plans to rent out its classroom facilities to generate extra revenue. While these concerns of financial viability obviously preoccupy managerial attention which would otherwise be devoted to developing the judicial program, they do at least for the present underwrite the operational viability of the program.

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ENDNOTES

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- ¹ The views expressed in this paper build on earlier researches of the author published in: Armytage L, *Educating Judges – Towards a New Model of Continuing Judicial Learning*, Kluwer (London/Boston), 1996; Armytage L, *Judicial Education on Equality*, *The Modern Law Review*, 1995, 58, 160-186; Armytage L, "Need for Continuing Judicial Education," *University of New South Wales Law Journal*, 1993, 16, 536-584; Armytage L, "Evaluating the Impact of Judicial Education," *Journal of Judicial Administration*, 1994, 4, 35-63; and Armytage L, "Pakistan's Law & Justice Sector Reform Experience - Some Lessons," *Law, Social Justice and Global Development Journal*, (LGD) 2003, 2.
- ² Canada has been notable in the development of social context education. See, for example, Mahoney Kand Martin S, *Equality and Judicial Neutrality*, Toronto: Carswell, 1987; and Mahoney K, "Gender Bias in Judicial Decisions", *The Judicial Review*, 1993, 1, 197-217.
- ³ *Educating Judges*, 12-18.
- ⁴ World Bank, *Initiatives in Legal and Judicial Reform*, 2004.
- ⁵ World Bank, *Legal and Judicial Reform: Strategic Directions*, 2003.
- ⁶ United States, Australia, Pakistan, Nepal, Bangladesh, Palestine, Tonga, Fiji, Cambodia, Mongolia, Haiti, PNG, Maldives, Philippines, China, Vietnam and India, among others.
- ⁷ Sallmann P, Comparative Judicial Education in a Nutshell, *Journal of Judicial Administration*, 1993, 2, 245-255, 252.
- ⁸ Nicholson RD, "Judicial Independence and Accountability: Can They Co-exist?" *Australian Law Journal*, 1993, 67, 404-426 (hereafter, Nicholson, ALJ, 1993), 425.
- ⁹ Educational theorists have developed a number of models to describe this process, most almost universally built on the classic approach of Ralph Tyler. In the arena of continuing professional education, Houle's Triple-Mode Model is most frequently endorsed as providing a conceptual means to strengthen professional performance. Houle identifies two basic goals of professional education which are: [T]he mastery of new theoretical knowledge and practical knowledge and skill relevant to a profession, and the habitual use of this knowledge and skill to solve the problems that arise in practice. Catlin DW, "An Empirical Study of Judges' Reasons for Participation in Continuing Professional Education," *The Justice System Journal*, 1982, 7, 2, 236-256. Houle CO, *Continuing Learning in the Professions*, San Francisco: Jossey-Bass, 1980. Tyler RW, *Basic Principles of Curriculum and Instruction*. Chicago: University of Chicago Press, 1949; and, Armytage L, *Educating Judges*, 1996.
- ¹⁰ Principles & Standards of Continuing Judicial Education, National Association of States Judicial Educators (NASJE), 1991, 1. NASJE, Commentary on Preamble, 3 and 6.
- ¹¹ Id
- ¹² Riches AL, "Judicial Education - A Look at the Overseas Experience," *The Australian Law Journal*, 1990, 64, 189-202, 190.
- ¹³ Hudzik JK, "The Continuing Education of Judges and Court Personnel," *Judicial Education Network*, 1989, (hereafter, Hudzik 1989), 5.
- ¹⁴ Catlin, 32; Catlin is the founding head of the Michigan Judicial Institute.
- ¹⁵ See, for example, Wood J, The Prospects for a National Judicial Orientation Program in Australia, *Journal of Judicial Administration*, 1993, 3, 75-96.
- ¹⁶ 75% of these programs are state-based, 17% are for the federal judiciary, and the remainder are nationally-conducted; Hudzik 1993, 205.
- ¹⁷ Judicial Studies Board, Report for 1983-1987, 13.
- ¹⁸ Judicial Studies Board, Report for 1991-1995, 4.
- ¹⁹ Partington M, "Training the Judiciary in England and Wales: The Work of the Judicial Studies Board," *Civil Justice Quarterly*, 1994, 319-336, 322. This is supported by calls outside the judiciary for more education; see, for example, Holland A, "Training Judges," *New Law Journal*, 1993, 143, 895.
- ²⁰ Sallmann PA, "Judicial Education: Some Information and Observations," *Australian Law Journal*, 1988, 62, 981-1005, (hereafter, Sallmann 1988), 981.
- ²¹ Kennedy GA, "Training for Judges?" *University of New South Wales Law Journal*, 1987, 10, 47-59, 48.
- ²² Mason A, The Role of the Judge, Inaugural Judicial Orientation Program, Sydney, 1994, (as yet unpublished paper).
- ²³ Kolb D, *Experiential Learning: Experience as the Source of Learning and Development*, New York: Prentice Hall, 1984; and, Darkenwald G & Merriam S, *Adult Education: Foundations of Practice*, New York: Harper & Row, 1982.
- ²⁴ Knowles MS, *The Modern Practice Of Adult Education: From Pedagogy to Andragogy*, Chicago: Follett, 1980, 43-44, and 57-58 (note earlier 1970 edition bi-lined Andragogy versus Pedagogy, 39); see also Knowles MS, *The Adult Learner: a Neglected Species* (2nd Ed.) Houston: Gulf, 1973, 55-59.

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- ²⁵ Brookfield SD, *Understanding and Facilitating Adult Learning*, San Francisco: Jossey-Bass, 1986, 91.
- ²⁶ Cross KP, *Adults as Learners*, San Francisco: Jossey-Bass, 1981, 233-4.
- ²⁷ Johnstone JW & Rivera RJ, *Volunteers for Learning Chicago*: Aldine, 1965, 3. Cross observes that nothing in the myriad of surveys since has changed that general conclusion - Cross, 91.
- ²⁸ Houle advances two central propositions: first, that there is commonality between the continuing education of many professions (14-15); and second, that professional education is distinctive to adult education (49-73, and 121); see also, Cervero, RM, *Effective Continuing Education for Professionals*, San Francisco: Jossey-Bass, 1988, 15-16; and Grotelueschen AD, "Assessing Professionals' Reasons for Participating in Continuing Professional Education," in Cervero RM and Scanlon CL (Ed) *Problems and Prospects in Continuing Professional Education*, San Francisco: Jossey-Bass, 1985, 34-35.
- ²⁹ See, for example: Cross, 1981, 45-46, 82; Brookfield SD, *Understanding and Facilitating Adult Learning*, San Francisco: Jossey-Bass, 1986, 171; Cervero 77.
- ³⁰ Houle 1980, 121. Grotelueschen endorses this conclusion: Grotelueschen 1985, 34-35.
- ³¹ Cervero 1988, 15-16.
- ³² Schon 1987, 32-33.
- ³³ Cross, 193.
- ³⁴ Schon 1983, 23.
- ³⁵ Smutz WD & Queeney DS, "Professionals as Learners: A Strategy for Maximizing Professional Growth," in Cervero RM, Azzaretto JF & Tallman D, 1990, 183-205, 186.
- ³⁶ Catlin DW, *The Relationship between Selected Characteristics of Judges and their Reasons for Participating in Continuing Professional Education*, unpublished doctoral dissertation, Michigan: Michigan State University, 1981, 125; see also, Catlin DW, "An Empiric Study of Judges' Reasons for Participation in CPE," *The Justice System Journal*, 1982, 7, 2, 236-256. Catlin's research has revealed that judges' reasons for participation are complex and multidimensional. Three underlying factors emerged from analysis of judges' reasons for participation which, in order of importance, were judicial competence, collegial interaction, and professional perspective. Catlin found that significant relationships exist between these participation factors and judges' characteristics including their sex, years since qualifying, tenure on current bench and court level currently served. Thus, Catlin concludes that it is wrong to assume that participation is primarily a function of program content in formulating curricula and designing programs.
- ³⁷ Compare the empirical findings of Catlin with those of Cervero relating specifically to physicians and veterinarians specifically: Cervero R, "A Factor Analytic Study of Physicians' Reasons for Participation in Continuing Education," *Journal of Medical Education*, 56, 1981, 29-35.
- ³⁸ Catlin 1981, 125.
- ³⁹ Catlin 1981, 126.
- ⁴⁰ Herrmann N, *The Creative Brain*, Lake Lure, N. Carolina: Ned Herrmann/Brain Books, 1989; Herrmann argues that judges tend to learn in a distinctively "left brained" style - characterized for being logical, analytical, problem-solving, controlled, conservative and organizational; additionally, judges tend to be intensely autonomous and self-directed in their preferred learning practices; see also comparison of left-mode and right-mode characteristics in Kolb, 49 and 141; and application of the "Myers-Briggs Type Indicator" to lawyer types, *American Bar Association Journal*, July 1993 74-78. If these various observations of the characteristics of lawyers and judges are valid, this raises the vexed question whether the practice of law creates these characteristics in practitioners or whether persons with these characteristics are attracted to practice in the law. Detailed exploration of this issue, and its full implications for educators, remains a matter for further research. Claxton & Murrell, 1992, address a chapter on "*Learning Styles of Judges*," however this work is an application of Kolb's general work on experiential learning, and lacks any grounding in empirical data distinctive to judicial learning; see Kolb DA, *Experiential Learning*, Englewood Cliffs NJ: Prentice Hall, 1984.
- ⁴¹ Armytage L, *The Need for Continuing Judicial Education*, 16 *University of NSW Law Journal*, 536.
- ⁴² Catlin, Armytage, op cit.
- ⁴³ It remains to be seen through empirical analysis what impact on the nature of judicial education contextual variables such as jurisdic model, appointment procedure, tenure and prior professional experience, judicial role and position may have.
- ⁴⁴ Recognition of the importance of judicial training being court-owned and judge-led arises from the work of Ralph Tyler and CO Houle in the arena of continuing professional education. More specifically relating to judicial training, see Catlin DW, "*An Empirical Study of Judges' Reasons for Participation in Continuing Professional Education*," *The Justice System Journal*, 1982, 7, 2, 236-256. Houle CO, *Continuing Learning in the Professions*, San Francisco: Jossey-Bass, 1980. Tyler RW, *Basic Principles of Curriculum and Instruction*. Chicago: University of Chicago Press, 1949; and, Armytage L, *Educating Judges: Towards a new model of judicial learning*, Kluwer Law International, 1996, The Hague; and Armytage L, "Judicial Education on Equality," *The Modern Law Review*, 1995, 180/1.

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⁴⁶ Houle, *Continuing Learning in the Professions* (San Francisco: Jossey-Bass, 1980) pp 14, 271.

⁴⁷ Shetreet, *Judges on Trial - A Study of the Appointment and Accountability of the English Judiciary* (Oxford: North-Holland Publishing, 1976); see also Shetreet, 'The Limits of Judicial Accountability: A Hard Look at the Judicial Officers Act 1986' (1987) 10 U New South Wales LJ 4, 7.

⁴⁸ Mason, Sir Anthony, Chief Justice, opening address (unreported), inaugural national judicial orientation programme, 3 October 1994, Sydney.

⁴⁹ Nicholson (Justice of the Supreme Court of Western Australia), 'Judicial Independence and Accountability: Can They Co-exist?' (1993) 67 Australian LJ 404 - 426, 425. Judicial education is now an accepted part of judicial life in many countries ... Judicial independence requires that the judicial branch is accountable for its competency and the proposition is now accepted as beyond debate.

⁵⁰ Lord Hailsham, *Hamlyn Revisited: The British Legal System Today* (London: Stevens & Sons, 1983) pp 50 - 51.

⁵¹ For example, see the work of Justice McGarvie (then Justice of the Supreme Court of Victoria; now Governor of Victoria): McGarvie, 'The Foundations of Judicial Independence in a Modern Democracy' (1991) J Judicial Administration 1, 33; 'The Ways Available to the Judicial Arm of Government to Preserve Judicial Independence' (1992) J Judicial Administration 1, 236-277; and Nicholson, 'Judicial Independence and Judicial Organisation: A Judicial Conference for Australia?' (1993) J Judicial Administration 2, 143-161.

⁵² The English experience is outlined by Partington, 'Training the Judiciary in England and Wales: the Work of the Judicial Studies Board' (1994) CJK 319 - 336.

⁵³ Judicial Studies Board, Report for 1983-87, London: Her Majesty's Stationery Office, Paragraph 3.5, 13; and Paragraph 3.2, 12.