CONTINUING LEGAL EDUCATION:
INTEGRITY AND COMPETENCE*
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Court of Appeal for Saskatchewan

1. Introduction

Integrity and competence: these two principles are two of the five fundamental ethical principles which bind the conscience of the Canadian judge and lead him or her to seek to improve judicial knowledge and skills.\(^1\) They are also two principles which must be respected by organizations that offer judicial education.

Integrity, as an ethical principle, asks the judge to make every effort to ensure that his or her conduct is above reproach in the view of reasonable, fair minded and informed persons.\(^2\) Competence, as a part of the ethical principle of diligence, asks the judge to take reasonable steps to maintain and enhance the knowledge, skills and qualities necessary for judicial office.\(^3\)

Judicial integrity must also be respected in the design of judicial educational programming. Maintaining judicial competence must also be considered as the ultimate goal in judicial education.

Thus, these two ethical principles can be seen as guiding both the judge receiving judicial education and the training organizations providing judicial education.

This paper provides an overview of what Canada provides by way of judicial education tools to the judge in the light of the need to respect the principles of integrity and competence. Particular emphasis will be placed on the work of the National Judicial Institute.

2. History of the National Judicial Institute

The National Judicial Institute is the primary vehicle for the provision of education to judges in Canada. The history and origins of NJI parallel the growth of sophistication and competence of the Canadian judiciary.\(^4\)

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* Presented during the *International Conference and Showcase on Judicial Reforms* held at the Shangri-la Hotel, Makati City, Philippines on 28-30 November 2005.

\(^1\) *Ethical Principles for Judges*, Canadian Judicial Council, 1998. The other principles are “judicial independence, impartiality and equality.”

\(^2\) *Supra* at p. 13.

\(^3\) *Supra* at 17.

\(^4\) By starting my discussion of Canadian judicial education in 1988, I must mention the excellent work performed by the Canadian Judicial Council in the provision of the summer educational series and the Canadian Institute for the Administration of Justice with respect to programming for new judges and judgment writing. All this work pre-dates 1986 and, of course, CIAJ continues to perform an important educational role in Canada. The creation of the NJI is significant in the history of Canada because it is a professional organization and, at the same time, is as independent as a judicial education organization can be from the influences of the governments that fund it and from the discipline process of the Canadian Judicial Council.
In 1986, the Honourable William Stevenson, a former Justice of the Supreme Court of Canada, was instrumental in preparing a report which recommended the creation of a new agency which would have as its central objective: “to develop a permanent professionally operated, bilingual, national resource facility for Canadian judicial education”.

On April 18, 1988, Letters Patent were issued which incorporated the Canadian Judicial Centre and established a Board of Governors. This organization subsequently changed its name to the National Judicial Institute in May, 1991.

While the NJI began its work in 1988, almost immediately a research and consultation project was undertaken which resulted in the approval of a formal set of standards for judicial education in Canada in 1992. These standards outline the goals of Canadian judicial education:

- To bring about an awareness by judges that education immediately after appointment, and on a regular basis throughout the judicial career, is necessary if they are to maintain and enhance essential competence, personal growth, and social awareness;

- To provide to interested parties and the public information on judicial education, clear guidelines which will bring about recognition of the need to make time and resources available for this purpose;

- To create standards for judicial education, both at a national and local level, which will provide excellent judicial education and procedural and substantive law in particular jurisdictions and in national standards and trends, and which will make available educational opportunities in jurisdictions where they are not otherwise available.

Flowing from these standards, NJI developed its mandate which is:

- To foster a high standard of judicial performance through programs that stimulate continuing professional and personal growth;

- To engender a high level of social awareness, ethical sensitivity and pride of excellence, within an independent judiciary;

- Thereby improving the administration of justice.\(^5\)

The mandate led to the development of these objectives:

- To update continuously the identification of the needs of the Canadian judiciary for education including skills training, professional development and personal growth;

- To maintain an inventory of, and disseminate to the judiciary, information about programs throughout Canada that are related to judicial education;

\(^5\) National Judicial Institute, Annual Report 1997-1998 at p. 3
To develop and to assist courts and cooperating agencies in the development of programs to meet the needs of the judiciary for judicial development;

To develop and deliver educational programs, in order to make them available to the judiciary as widely as possible;

To provide technical and organizational services to the courts and other agencies in the delivery of their services;

To keep the Canadian judiciary informed about new legislation and other developments of particular interest to the judiciary, and to develop programs to achieve these ends;

To cooperate with and respond to requests for assistance from courts and agencies in Canada and elsewhere with respect to judicial education projects in other countries.\(^6\)

Then from 2000 to 2004 NJI engaged in an extensive scrutiny of how judicial education could be delivered. This work resulted in the implementation of the Judicial Learning Network which is a systematic approach to judicial education.

The National Judicial Institute currently offers programs ranging from traditional substantive law based courses, to skills training and social context courses. The Institute also assists individual courts to tailor-make courses. A range of educational opportunities are provided including face to face training, computer taught training and self-learning through bench books and an electronic library containing many of the past papers presented at NJI seminars.

Like most national judicial training organizations, NJI receives its funding from governments. A provision in the federal *Judges Act* allows NJI to be funded for expenses incurred in designing and offering programs approved by the Canadian Judicial Council for federally appointed judges. NJI also receives core funding from federal and provincial governments, and funding for special projects from governments and agencies. The perception of influence that this creates is lessened by the fact that the federal government and all of the provinces contribute to this funding either though direct grant or by the provision of services in kind. Core funding is also provided on the basis of proposals generated by the National Judicial Institute.

As a further means of preserving NJI’s independence, it is governed by a Board of governors none of whom are appointed by any government. Indeed, the positions of the chair and vice-chair are occupied by the Chief Justice of Canada and a judge from the Supreme Court of Canada. The members of the Board of Governors are nominated not only by the Canadian Judicial Council, the body which is responsible for the discipline and education of federally appointed judges, but also by the Canadian Association of Provincial Court Judges and the Canadian Superior Court Judges Association. These latter two organizations represent the judges who are their

\(^6\) *Ibid.*
members. An additional appointment is by nomination of the Chief Justice of Canada from the Provincial Court Chief Judges.

3. Other Judicial Training Organizations

Judicial independence is enhanced with respect to judicial education in Canada by the existence of other training organizations which can provide different perspectives and approaches, and, to some extent, compete for the judges’ interest in education, e.g., the Canadian Institute for the Administration of Justice (the “CIAJ”) and the Canadian Association of Provincial Court Judges (“CAPCJ”). While both the CIAJ and CAPCJ receive some government funding, their structures, funding sources and constituencies are different and provide a different approach to judicial education. From time to time, NJI works in partnership with both of these organizations in delivering some of its programs. Other organizations like the International Association of Women Judges and the Canadian Institute for Advanced Legal Studies also provide judicial education but on a lesser scale.

4. Expectations of and for Canadian Judges

Judicial education is not mandatory. One exception is court-based programs, at which attendance is expected of members of the court, but even this remains an expectation rather than a rule. As a principle of judicial independence, judges are free to select and attend those courses that interest them (limits are placed on the numbers of judges that may attend any given course). Courses are of such high quality, however, that most judges accept freely their ethical obligation to participate in judicial education and courses invariably meet their enrolment limit. To further illustrate this point, in terms of evaluations, NJI programs invariably receive excellent course ratings.

The standard set by the Board of Governors for judicial education in Canada is 10 days per judge per year but rather than being cast in terms of a norm for judges, it is directed to Chief Justices. Chief justices are asked to make it possible for the judges of their courts to take 10 days of judicial education each year. On average, Canadian judges take about nine days of training per year through NJI alone. Given the presence of other judicial training organizations this probably means that most Canadian judges exceed the 10 day norm in any event.

In the last year, NJI was involved in 166.5 days of education (which includes most Federal court-based programming), 10,295 judge days of education and 3936 registrations for a federal judicial population of 1000 judges.

5. The National Judicial Institute’s Approach to Judicial Education

NJI conceives its role as providing a comprehensive support system for judicial education. It either provides programming itself or supports the programming initiatives of other organizations and individual courts. It follows the philosophy of identifying and supporting the best judicial education whoever designs and delivers it. While a paper of this length cannot do justice to the extent of NJI’s work, a brief overview of the judicial education system can be provided. The framework of NJI looks like this:
A. Executive Director who provides advice on all aspects of judicial education programming;

B. Judicial Associates who are sitting judges and who are responsible for curriculum development, courses, methods of education;

C. Senior Advisors who are academics and experts in pedagogy, curriculum design and course planning, and who are either full-time with NJI or on leave from their respective universities;

D. Program Managers who are trained conference planners; and

E. Computer-Based Education Developers who are responsible for the development of bench books and computer courses.

Each educational initiative calls upon the resources of one or more of the individuals from the above categories. For example, a national program in Criminal Law would in all likelihood begin with a judicial associate or a senior advisor putting together a committee of experts which will include judges in Canada and one or more academic experts. The Committee would be supported by a program manager who would be assisted by a program officer. The ultimate choice of education tools made by the programming committee may result in computer based education either for the particular course being developed or for another course for another court on another day.

In the development of each course, NJI follows certain principles. First, judges lead the planning but experts (e.g. professors, researchers) and community persons with direct knowledge or experience in the area covered by the education are part of the planning (NJI refers to this as the “three pillars” approach to judicial education). Second, education must be based on needs assessment and must be constantly evaluated. Third, knowledge, skills and social context are to be integrated into each course. Fourth, adult education principles must be respected. Fifth, the faculty must be trained. With this in mind, NJI offers faculty development courses and facilitators training and, immediately before most seminars, some form of facilitators training takes place. NJI is in the ongoing process of evaluating and updating these principles.

6. Case Study: Teaching Judicial Ethics

To bring all of this into focus, I will take the example of how Canada teaches judicial ethics using two courses for which draft agendas (Appendices A and B) are attached.

By way of background, NJI has engaged the volunteer services of a judge to be a judicial associate, who is responsible for, among other things, the teaching of judicial ethics. This is presently Justice Adele Kent of the Court of Queen’s Bench of Alberta. Justice Kent sits full time as a judge in her home province, but she devotes some of her personal and professional time to developing courses for NJI. NJI has assisted her, as it does other judicial associates, in developing pedagogical competence.

The two courses represent two levels of sophistication in the subject matter. The Newfoundland course (to be offered in June 2005) can be considered an introductory
course. There are primarily two teaching methods reflected by the first agenda: (i) lecture format which provides *information* about the *Ethical Principles*; (ii) workshops or group work to resolve specific ethical dilemmas. Appendix A represents a good beginning, but once used it will become stale-dated and will be unlikely to attract repeat attendance. Variations of this course have been offered once nationally and to several different provinces and will be continued to be offered based on need and demand, but it can be considered “Teaching Judicial Ethics 101.” Hence the need to develop a more advanced course based on the evaluations received and the assessment of needs. This more advanced course is shown as Appendix B and it is the “Québec course” to be offered in April 2005.

Planning for the Québec course began with a day-long meeting called by Justice Kent. The persons chosen to attend this meeting were a senior associate with the NJI who is an academic, judges who have had a long-time association with the *Ethical Principles for Judges*, and a renowned legal philosopher. The purpose of the meeting was to explore options about how to teach judicial ethics while respecting the need for knowledge, skills and social context. The idea was to take the teaching of judicial ethics beyond the Newfoundland format to a new way of allowing judges to look at judicial ethics through another lens. The lens chosen is one based on philosophy and the judge’s role with respect to the ethical principles of impartiality and equality. The result is the attached program.

Both programs respect the teaching principles reflected above, i.e., judge-led education which includes academics and others and the teaching of knowledge, skills and social context. The second program shows clearly the extent to which the assessment of needs and program evaluation has resulted in a more sophisticated product.

7. Conclusion and Summary

NJI treats judicial education as a career-long enterprise. The elements of this include:

- The development of a curriculum which encompasses skills-based workshops, conferences on substantive law topics, programs on social context, and seminars specifically related to a stage in the judicial career (e.g., newly-appointed judges, long-serving judges)
- The development of the *content* of the courses that make up the curriculum by following specific defined teaching principles.

Judges are made aware of the programs, which flow out of this planning, by the provision of detailed long-term and short-term calendars which are also supported by an ever-changing website. This then permits a judge to select courses reflecting individual long-term education plans and permits a thoughtful, ongoing analysis of his or her role, and the place of judicial education in that role, all the while respecting the principles of integrity and competence.

Thank you.
Attachments: Appendix A: Newfoundland Agenda; and Appendix B: Québec Agenda
Appendix A

Draft Agenda November 4, 2005

SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
EDUCATION SEMINAR

Judicial Ethics

June 1-2, 2006

Humber Valley Resort
P.O. Box 370
Humber Valley NL A0L 1K0

Telephone: 709-686-8100          Fax: 709-686-8111

Thursday, June 1, 2006

7:30 – 9:00 a.m.     Breakfast and Registration

9:00 – 9:10 a.m.     Welcome and Introduction

9:10 – 9:45  a.m.     Lecture on Judicial Ethics

                      The Honourable Justice Joanne Veit
                      Court of Queen's Bench of Alberta

9:45  – 10:15 a.m.   Presentation on the Canadian Judicial Council’s “Ethical
                      Principles for Judges”

                      A presentation to introduce the CJC’s “Ethical Principles
                      for Judges”, the fundamental principles contained in the
                      document, and the process by which judges may obtain
                      advice on ethical issues.

                      :  The Honourable Derek Green, Chief Justice Green
                      Supreme Court of Newfoundland and Labrador, Trial
                      Division

                      The Honourable Justice Georgina Jackson
                      Court of Appeal for Saskatchewan
Thursday, June 1, 2006

10:15 – 10:45 a.m.  **Framework for Analysis**

A presentation that introduces participants to a framework for analyzing potential ethical problems. The objective is to provide participants with a step-by-step process for defining the issues, considering the relevant principles and law, and then identifying and analyzing the available options. As well, the presentation will review the primary resource material which judges should consider when analyzing an ethical dilemma.

The Honourable Justice Adèle Kent
Court of Queen’s Bench of Alberta

10:45 – 11 a.m.  Health Break

11:00 – 12:30 p.m.  **Ethical Challenges in the Courtroom**

A number of specific problems that can arise within civil and criminal proceedings will be presented, using different methods of presentation. In facilitated small groups, the participants will discuss and analyze these problems, using the suggested framework for analysis. Issues that may be discussed include:

- dealing with self-represented litigants
- dealing with weak counsel
- lack of candour by counsel
- dealing with others’ questionable conduct in the courtroom
- dealing with unsavoury parties

The Honourable Justice Joanne Veit

12:30 – 2:00 p.m.  Lunch

2:00 – 2:45 p.m.  **Presentation on the Law on Recusal due to a Reasonable Apprehension of Bias**

Dean Philip Bryden,
Faculty of Law, University of New Brunswick

2:45 – 4:00 p.m.  **Small group problems**

Either in the larger group or facilitated small groups, participants will discuss and analyze fact scenarios that
raise the issue of whether or not a judge should recuse him/herself. If the discussions take place in small groups, the small group discussions will be followed by a report back to the larger group and commentary from the presenter and two or three judges with expertise on the issue.

Friday, June 2, 2006

7:30 – 9:00 a.m. Breakfast

9:00 – 10:00 a.m. Panel Discussion of Challenges that Can Arise Outside the Courtroom

Panel discussion in which a few judges provide their own analysis of a number of specific ethical issues arising outside the courtroom.

The Honourable Justice Robert Wells (TBC)
Supreme Court of Newfoundland and Labrador, Trial Division (and other members of the court)

10:00 – 10:15 a.m. Health break

10:15– 12:00 p.m. Analysis and discussion of issues that arise outside the courtroom

Participants will engage in an analysis and discussion of how to deal with specific problems that can arise outside the courtroom by discussing and analyzing specific scenarios using the suggested framework for analysis. Issues that may be discussed include:

- taking positions on contentious community issues or government policies
- responding to invitation to speak at seminars and events
- sitting on Boards

The Honourable Justice Robert Wells (TBC)

12:00 - 1:30 p.m. Lunch

1:30 – 3:00 p.m. Ethical Issues in Judgment Giving

Facilitated small group discussions of several ethical issues that can arise in the course of preparing a judgment. This can be followed by a report back to the
larger group and commentary from a panel of judges with expertise on the issue.

The Honourable Justice Jamie Saunders  
Nova Scotia Court of Appeal

3:00 – 3:30 p.m.  Concluding Remarks and Wrap-Up

Saturday, June 2, 2006

7:30 – 9:00 a.m.  Breakfast

9:00 – 4:00 p.m.  Court Meeting
Appendix B

Judicial Ethics in Action: Impartiality and Equality
April 4-6, 2006 – Mont Saint Sauveur
Draft Agenda

Learning objectives:

• To enable participants to better identify common problems that raise ethical concerns, in particular concerns regarding the ethical principles of judicial impartiality and equality;
• To enable participants to better identify ways in which the principles of judicial impartiality and equality intersect in everyday situations faced by judges – i.e. the possible tension between these principles and/or the ways in which they reinforce one another;
• To provide participants with tools to enable them to deal appropriately with common ethical problems that involve impartiality and equality concerns;
• To provide participants with the opportunity to share perspectives and experiences with judicial colleagues and experts in the field.

Day #1

7-8 PM – Reception & inspirational speaker

8 PM – Dinner

Day #2

8:30 – 9:15 – Staged simulation of submissions to Supreme Court of Canada

• Two lawyers or judges will provide submissions in a simulated appeal to the SCC on the topic of recusal/judicial disqualification due to reasonable apprehension of bias. The staged submissions are intended to stimulate interest in some of the material that will be covered in the seminar in a way that is both educational and entertaining. (The judgment that is being appealed will be distributed for participants to read in advance.)

9:15 – 10:00 – Small group discussion

• In small groups, participants will discuss the position taken in the judgment on appeal as well as the arguments put forward in the staged submissions both for and against a finding of reasonable apprehension of bias in the case.

10:00 – 10:15 – Health Break
10:15 – 12:00 – Lecture with moderated panel of respondents

- Lecture by academic or senior judge on impartiality and the role of a judge when confronted with dilemmas involving judicial impartiality.
- The lecture will be followed by presentations/discussion by a panel of 3 or 4 judges who have personal experience with one of the following issues that might raise impartiality concerns:
  - hearing cases involving former clients or colleagues (e.g. judge who was formerly counsel for the Crown);
  - taking part in community outreach;
  - deciding cases involving issues in relation to which a judge has taken a public stand in the past or has acted as counsel in the past;
  - developing positive or negative reactions to parties, lawyers, witnesses, etc. in the context of a lengthy trial;
  - dealing appropriately with self-represented litigants, especially in complex cases

12:00 – 1:30 – Lunch

1:30 – 3:30 – Small group workshops: hypothetical scenarios on impartiality related topics

- Participants will work through videotaped and written fact scenarios that raise a range of impartiality related dilemmas – for example:
  - personal financial or other interest (e.g. family or professional);
  - speaking publicly on contentious community issues, pending legislation, government policy, etc.;
  - using judgments as an impetus for law reform;
  - extra-judicial knowledge or involvement in case itself;
  - statements or conduct that might indicate a lack of impartiality;
  - dealing with self represented litigants;
  - dealing with unsavoury parties;
  - dealing with incompetent counsel; and
  - community activities/outreach.

3:30 – 5:00 – Movie with popcorn (incorporating impartiality and equality related themes)

[Possible film: To Kill a Mockingbird]
Day #3

8:45 – 9:30 - Small group discussions of movie

- Participants will discuss various themes arising in the movie and relate them to judicial impartiality and equality principles.

9:30 – 10:00 – Report back and larger group discussion

10:00 – 11:00 – Lecture on equality as an ethical principle for judges

- Lecture on equality as a fundamental principle guiding the work of judges, and one of the Canadian Judicial Council’s five “Ethical Principles for Judges”. The lecture will build on the previous day’s material to focus on the intersection of, and interaction between, the principles of equality and impartiality. Themes that might be raised include:
  - does impartiality require that judges take into account equality and social context issues? (e.g. does impartiality require that judges render gender/colour blind judgments or instead that they expressly take into account gender, racial, and other inequalities in society?)
  - how might a judge go about taking social context into account? Should they attempt to put themselves into the shoes of the parties before them? Is this possible?
  - how can judges avoid inaccurate and harmful stereotypes?
  - how might a judge deal with the values and attitudes they bring to the bench?

A respondent will provide a response to the lecture, reflecting on the themes raised and perhaps providing a comparative perspective from another country or jurisdiction.

11:00 – 12:00 – Small group workshops: hypothetical scenarios on topics that combine equality and impartiality issues

- Participants will work through videotaped and written fact scenarios that raise a range of equality and impartiality related dilemmas. Many of the fact scenarios will resemble scenarios from the previous day with an added equality or social context dimension.

12:00 – 1:15 – Lunch

1:15 – 1:45 – Small group workshops (cont’d)

1:45 – 2:30 – Report back to larger group and inspirational wrap up speaker