JUDICIAL EDUCATION IN NEW ZEALAND: A WORK IN PROGRESS

By Justice Susan Glazebrook[1]

Introduction

The notion that judicial education is a threat to judicial independence or that such education is unnecessary may now seem surprising. But that was, until the last few decades, the prevailing view in many common law jurisdictions, including New Zealand.

So what changed? First there has been a general and growing recognition of the need for continuing education in the professions and the public sector. This means that newer appointees to the Bench are accustomed to continuing education programmes and do not see that the need for such programmes diminishes upon appointment.

Secondly, judges are no longer routinely drawn from the ranks of experienced generalist court lawyers who operate across all fields, both civil and criminal.[2] The practice of law has become increasingly specialised, even for court lawyers. Further, with a view to expanding the commercial experience on the Bench, there have been some appointments to the Bench in New Zealand of commercial lawyers with limited litigation experience. These appointees[3] in particular appreciate the benefits of judicial education.

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1 Chair of the New Zealand Institute of Judicial Studies and Judge of the Court of Appeal. This article is based on a paper presented at the (Australian) Supreme and Federal Court Judges Conference held in Wellington in January 2011. I have drawn heavily for this article on the following: Justice T M Gault "Judicial Education – New Zealand" (paper presented to the Fourth World-Wide Common Law Judiciary Conference, Vancouver, 3 May 2001) and Justice Rodney Hansen and Judge John Adams "Education Programmes for Longer Serving Judges: Theory, Process and Product" (paper presented to the International Organization for Judicial Training Conference, Sydney, October 2009). I have also drawn on interviews with the following judges and former judges: Sir Anand Satyanand, Sir Thomas Eichelbaum, Sir Ivor Richardson, Justice Judith Potter and Justice Patrick Keane.

2 Of course it was always a fallacy that even experienced advocates could immediately become fully fledged and competent judges as soon as they were sworn in. There is, as pointed out by Chief Justice Martin in his paper for the conference, a fundamental difference between the role of an advocate and that of adjudicator.

3 Of which I am one.

Thirdly, the nature of judicial work has become more complex and public expectations and scrutiny of judicial work have increased. There has been an upsurge in legislative activity, commercial disputes are becoming more complicated, criminal trials have lengthened, the pressure of case loads continues to grow and more detailed reasoning is required. I take sentencing as an example. One of our judges tells a story of an old style sentencing he witnessed. The sentencing judge said, "Prisoner Bloggs: you have been a fool but a dangerous fool. Five years. Stand down." While this approach has the benefit of simplicity and directness, it would not be considered appropriate today.[4]

Fourthly, the extent and pace of change in society have given rise to new and difficult social and technical issues. There is increasing recognition that judges should be informed about and part of the society in which they judge and that they be able to communicate effectively with all those who come before the courts and with the public more generally.

Finally, it became increasingly recognised that it is possible to design an education system that protects (and indeed enhances) judicial independence by having "judge driven" judicial education, while still ensuring the necessary accountability for the expenditure of public funds.

The emergence of formal judicial education in New Zealand

Formal judicial education in New Zealand began in 1988 when Judge Anand Satyanand (as he then was[5]) led the first orientation programmes for new judges in New Zealand. The year before, he had gone on a study tour in the United States to help with the preparation of the programme. The first orientation course was for judges of the District Court only and was a fairly modest affair. However, the programme expanded over the coming years and some higher court appointees attended later programmes.

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4 For the current approach to sentencing in New Zealand see *Hessell v R* [2010] NZSC 135 at [70]–[77].

5 He served as New Zealand's Governor-General from August 2006 to August 2011.

While the orientation programme was a success, a desire for something more arose, including in the higher courts, particularly among those judges who had studied in North America. An inter-Bench committee was formed on the initiative of the then Chief Justice, Sir Thomas Eichelbaum.[6] This led in 1994 to a report recommending the establishment of an Institute of Judicial Studies (the IJS or the Institute).[7] It took some years to persuade the government to support the establishment of the Institute and for the necessary issues as to structure and funding to be ironed out,[8] but in 1998 the Institute was formed.[9]

Structure of the Institute

The IJS operates under a Memorandum of Understanding signed by the Chief Justice on behalf of the judiciary and the Chief Executive of the Ministry of Justice.[10] The Governing Board comprises a majority of judges,[11] together with representatives from the Ministry of Justice, the legal profession, the law schools and the general public. The Board is chaired by a member of the judiciary.[12] The budget of the IJS is under the Board's control.[13]

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6 It was chaired by Sir Ivor Richardson and its members were Justice Hammond, Justice Fisher, Judge Satyanand and Judge Keane (as they then were).

7 I have not been able to find a copy of that report. Justice Hammond, who was the principal author, had a copy until recently but it fell victim to the clean-up preparatory to him taking up his new role as Chair of the Law Commission.

8 The more detailed planning work was undertaken by Justice Tom Gault and Judge Keane (as he then was), with the assistance of the Chief Executive of the Department for Courts. At the time the IJS was formed the relevant government department was the Department for Courts, which has since been subsumed by the Ministry of Justice.

9 Even before the Institute was formed there were some significant educational events. The most significant was the Gender Equity seminar which was conducted in 1997 under the direction of the then Chief Judge of the District Court, Dame Silvia Cartwright, and the then Chief Justice, Sir Thomas Eichelbaum. This was the first time where the entire judiciary had met together for an educational programme. There have been two other whole-of-the-judiciary seminars since, one on judicial ethics and one on cultural diversity. Another on dignity is planned for 2012. These inter-Bench seminars are planned and run by the IJS but funded separately by the Ministry.

10 The Ministry provides all administrative services for the running of the courts.

11 The judicial members of the Board span all jurisdictions and include the Heads of Bench of the District and High Courts, which has been very useful in ensuring not only attendance of judges at programmes but also that the programmes meet the needs of those courts.

12 The first chair was Justice Tom Gault, followed by Justice Judith Potter from 2002 to 2007. I am the current chair.

13 All payments are, however, handled and administered through the Ministry's systems.

The work of the Board is supplemented by a number of Bench Education Committees.[14] These committees ensure that the IJS is responsive in its programmes to the needs of each Bench and specialist jurisdiction.[15] There is an annual allocation of funds to the programmes for each Bench.

The Institute has a small (and very dedicated) staff, currently consisting of the Director,[16] another legally trained professional educator, an office manager and a conference organiser.[17] Contract staff work as required on benchbooks.[18]

First stage of development

When the Institute began, it took over the responsibility for the orientation programme for new judges, provided updates on relevant changes of law and delivered a programme of bench-specific seminars. It also took over the responsibility for the benchbooks and provided planning and educational advice for Bench conferences which were not funded by the IJS.

The Institute, from the beginning, applied adult learning theory to the development of all its programmes.[19] This involves identifying delivery mechanisms that enhance learning. These include case studies, hypotheticals, role plays, critiques, modelling,

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14 The Education Committee has ensured that a wide range of judges have involvement in planning judicial education. I note that these committees also have academic members from a spread of law schools.

15 There has, in the past, been an issue about a possible disconnection between these committees and the Board and also some issues about the lack of communication between the various committees. These issues should be ameliorated by measures recently taken to ensure that the chairs of the most important educational committees are on the Board and that the committees are kept informed of the programmes being planned by the other Bench committees.

16 The Director, Richard Moss, has been with the Institute since its inception (and indeed before, as he was involved with setting it up). He came from a background of continuing education for the legal profession.

17 The current staffing structure arose out of a review of the human resources needs of the Institute conducted in 2009. In the course of this review interviews with a number of judges were conducted. The interviews showed general satisfaction with the programmes provided by the Institute but identified a need for more support for the design of programmes – hence the appointment of an educational officer to supplement the role of the Director.

18 Currently the Institute is responsible for maintaining and updating the criminal benchbook, as well as benchbooks for some of the specialist courts.

19 See generally David A Kolb *Experiential Learning: Experience as the Source of Learning and Development* (Prentice-Hall Inc, New Jersey, 1984).

panel discussions, workshops, testimony from 'outsiders', individual reflection, dramatic techniques, and so on.

Judges soon became open to these modern educational techniques. Trust grew out of leadership by Heads of Bench and the engagement of representatives from all levels of the judiciary in the planning and delivery of programmes.

The links formed with other judicial education institutions were of great value in the early stages of the IJS (and continue to be so).[20] In the Institute's formative stages, faculty members travelled to Canada, Australia and the United States to participate in programmes and to meet with faculty members. This enabled them, on return, to develop and customise programmes for delivery in New Zealand. On occasion, overseas faculty members have been invited to participate in the development and presentation of new programmes.

The Institute also formed partnerships with other professional disciplines. Faculties have included university professors, psychologists, accountants, editors and writers, all of whom contributed to the depth and relevance of projects.

Strengths of the first stage of the IJS's development included:

(a) Judicial education led by the judiciary itself;

(b) Close continuing liaison between the Board and specific Benches (and in particular Heads of Bench);

(c) Close association of all new Judges with the IJS through the orientation programme and the IJS's involvement in ongoing programmes and conferences; and

(d) Respectful development of key relationships with Heads of Bench, education committees, faculties and other stakeholders.

[20] There have been recent (and very welcome) initiatives in Trans-Tasman cooperation in this regard.

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

Sharpe review

In 2004 the IJS was audited by Justice Robert Sharpe of the Court of Appeal for Ontario. The Sharpe Review generally applauded the achievements of the IJS, particularly its excellent standing with the judiciary. It, however, challenged the IJS Board to take a strategic overview to build on its work and also to establish a comprehensive curriculum, which would allow individual judges to tailor their educational experiences to suit their own particular needs.

Strategic planning

After the Sharpe review, the IJS Board, through a series of professionally facilitated workshops, produced a refreshed Statement of Purpose supported by a detailed strategic plan for the period 1 July 2005 – 30 June 2010.

The new Statement of Purpose set out the scope of the Institute's role under three broad heads. It said:

> The Institute of Judicial Studies is the professional development arm of the New Zealand Judiciary.
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> The Institute provides education programmes and services to the Judiciary which:
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> - Support them in the ongoing development of their judicial careers;
> - Promote judicial excellence; and
> - Foster an awareness of developments in the law, its social context, and judicial administration.

The strategic plan that followed identified key issues and programme and institutional success factors and provided detailed measures designed to achieve those objectives.

Development of the curriculum

The Sharpe review also prompted the Board to consider and plan the best shape, scope and direction for the curriculum. The Board began this task by identifying the learning needs of judges according to:

- ***Career*** including new, mid-career and end-of-career judges;
- ***Jurisdiction*** including family, criminal, youth, civil, and appellate judges; and
- ***Responsibility*** including Heads of Bench and judges responsible for judicial administration.

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

In 2005 and 2006 the curriculum committee developed this logical organisational scheme through:

(a) Consultation with Bench Education Committees, Heads of Bench and the National Judicial College of Australia;

(b) Reviewing literature, articles and published papers;

(c) Studying judicial education organisations in Canada and the United States, the range of programmes offered, and the philosophies underpinning their curricula and programmes; and

(d) Researching the judicial role as it relates to education.

The research targeted judges in three career bands: new, mid-term and end-term. It aimed to identify educational needs, barriers to education, and the role of the IJS.

There were in-depth interviews with 20 judges,[21] selected to provide a range of experience, gender, Bench and personal circumstances. Topics included the characteristics of an effective judge, their educational aspirations, education required over the next ten years in response to changes in society and the judicial role and barriers to education.

The responses were compiled and scrutinised. From that process the Institute developed a curriculum framework based on what is required of judicial officers to perform their judicial role. The curriculum as originally drafted had nine components. It said that all judicial officers, in performing their role, need to:

1. Maintain their knowledge and mastery of the law;

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

3. Make decisions and give reasons for decisions, both written and oral;

4. Apply appropriate standards of judicial conduct;

5. Be responsive to the relationship between the judiciary and society and to changes in society;

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

7. Maintain their health and well being;

8. Administer and lead; and

9. Use technology to assist with judicial work.

[21] Because of funding constraints all of the judges interviewed were from Wellington where the researchers were based.

The IJS Board developed a comprehensive core curriculum based on all nine components. The curriculum is reviewed periodically in order to maintain currency.[22] Core curriculum programmes are conducted on a rotating basis.

Other educational opportunities

As well as the core curriculum programmes, the specialist needs that arise in particular jurisdictions from legislative change, policy change or research in associated disciplines are dealt with by programmes for each Bench provided by the Bench Education Committees.[23] These programmes are provided on a rotating basis as well. There are also judicial education components to Bench-specific and inter-Bench conferences.

Some judges also regularly attend a variety of other educational programmes and seminars, both in New Zealand and offshore.[24] Individual courts also organise seminar series or occasional speakers on topics of interest and field trips, for example to prisons.

Newly appointed judges

When judges are appointed they complete a general orientation programme, usually within the first year or eighteen months of appointment. The Institute has also, over the years, developed a number of specialist orientation programmes[25] and new judges will attend those programmes which are applicable to them. New judges will also be assigned mentors by the Head of Bench.[26]

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22 The current curriculum has ten elements as we have separated out the orientation programmes into another section.

23 It has to be said that, while there have been some very good Bench-specific programmes, they tend to retain the lecture "talking head" format. We are hoping that the programme we are running this year on course design and adult education principles (discussed below) will enhance the educational quality of the Bench-specific seminars.

24 The budget for attendance at these outside conferences is held by the Heads of Bench and not the IJS.

25 Such as the criminal jury orientation and the Youth and Family Court orientation programmes.

26 The IJS does not administer the mentor scheme but does provide training for mentors.

New judges identify their other education priorities in consultation with the Head of Bench and the Director of the IJS. They will, within the first three years, undertake a number of the other programmes that are offered by the Institute.[27] The expectation is that new judges will spend ten days a year on judicial education.[28]

Examples of programmes offered in the core curriculum

I set out below a description of a number of the programmes in the core curriculum. The first two I discuss in some detail to show the rationale behind the programmes, the mode of development and the contents.

Judgment writing

Judgment writing was a component of the first orientation course run in 1988 and continued to be so until the foundation of the IJS. When the IJS was formed, two judges were sent to Canada to attend a Canadian judgment writing course with a view to adapting that course as a stand-alone course in New Zealand. [29]

The basis of the method taught in Canada will now be familiar to most judges in New Zealand and Australia (and indeed further afield).[30] It is an issues-based method. This means that the format is to begin a judgment by explaining what is in issue and then to deal with each of those issues in turn.[31] The overall aim of this judgment writing method is to ensure that judgments are intelligible to all of the audiences for the judgment and in particular that the judgment explains to losing parties why they have lost.

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27 These other programmes will invariably include the judgment writing programme.

28 That is also the agreed number of judicial education days for longer serving judges but pressure of work means that this ideal is not always met. The typical judge would, however, spend five days a year on judicial education.

29 The lead presenters on the Canadian course at the time were two Professors of English, Professor Jim Raymond and Professor Berry. Professor Raymond still conducts our judgment writing courses and Professor Berry runs a course on oral judgments for us.

30 My understanding is that similar judgment writing courses are now run by all of the judicial educational institutions in Australia.

31 The previous style of judgment writing had been usually to start with the procedural history of how the case came to court.

The New Zealand judgment writing course is heavily practical with attendees having individual sessions with faculty members (constructively) critiquing judgments they have submitted and having an opportunity to re-write one of those judgments in the new style. The individual workshop sessions are very intensive but are clearly extremely helpful in showing how the theory taught can be applied to actual judgments.

For the individual workshops, the Canadians used teachers of English literature.[32] Judges gave lectures on good practice but, with one exception, did not participate in the individual workshops. When the course was adapted for New Zealand, we decided to use Professor Jim Raymond as the lead presenter. However, for the individual workshop sessions where people submitted their judgments, we decided it might be interesting to use people who actually wrote for a living, such as novelists and poets and those who write reports for government departments. We also thought that these people could be the intelligent lay audience for the judgments to ensure that they were intelligible for all audiences.

As judgments are not necessarily easy to read, we decided that we should complement the writers with a judge for each workshop. This made the process more elaborate than in Canada but it has some advantages in that, if there is a participant who may not take kindly to criticism from a lay person, there is a judge there to reiterate the importance of ensuring that an intelligent lay person can understand the judgment.

At the time of writing this paper, most of the current New Zealand judges have undertaken the judgment writing course. This is understandable as judgment writing is a core element of the judicial role. We have thus expanded what is offered. We have introduced an oral judgment writing course and have developed an appellate judgment writing course dealing with the particular issues arising in appellate judgment writing. In addition, we are running what is termed a refresher course this year. As well as covering some advanced skills in judgment writing, this course will include more help on managing the hearing to draw out the issues and how to order one's thoughts during the hearing in order to make judgment writing more efficient.

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32 At least at the time of the attendance of the New Zealand judges at the course.

Jury directions

Judges in New Zealand have for some time been concerned to ensure that directions given to juries are understandable. This concern was magnified after research conducted by the New Zealand Law Commission,[33] and led to a total redraft of the New Zealand criminal benchbook,[34] moving away from standard directions and putting much more emphasis on tailoring the directions to the jury to the particular case and the issues involved in that particular case. Judges are also encouraged to give written material to the jury, including question trails with references to the evidence.[35] Judges are encouraged to discuss with counsel what is truly in issue and direct the jury only on those matters.

The ideal summing up is now considered to be the one suggested by Professor Edward Griew on the law and Lord Devlin on the facts. Professor Griew said:[36]

> It should be the function of the judge to protect the jury from the law rather than to direct them on it. The judge does in practice typically tell the jury that the law is for him [or her] and the facts are for them. This should become more profoundly true than it now is. A brief statement about the law will normally be unavoidable if the case is to be intelligible. But what is said should not be by way of formal instruction. When it comes to instructing the jury on their task, the job of the judge should be to filter out the law. He [or she] should simply identify for the jury the facts which, if found by them, will render the defendant guilty according to the law of the offence charged and of any available defence.

Summing up on the facts was described by Lord Devlin as follows:[37]

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33 See research published by the New Zealand Law Commission summarised in *Juries in Criminal Trials Part Two: A Summary of the Research Findings* (NZLC PP37(2), 1999). For a discussion of that research see William Young "Summing up the Juries in Criminal Cases – What Jury Research says about Current Rules and Practice" [2003] Crim LR 665 ["Summing Up"].

34 Largely by Sir William Young.

35 It is common practice now for juries to be given a transcript of the evidence to assist them in their deliberations.

36 Edward Griew "Summing up the law" [1989] Crim LR 768 at 799, quoted in Young "Summing Up", above n 33, at 686.

37 Patrick Devlin *Trial by Jury* (Stevens and Sons Ltd, London, 1966) at 115–116.

> All the material that gets into the ring that is kept by the rules of evidence is not of course of equal value, and the task of counsel and then of the judge is to select and arrange. In discharging this task counsel can be helpful but not disinterested and the jury must look chiefly to the judge for direction on the facts as well as the law. It is his [or her] duty to remind them of the evidence, marshal the facts and provide them, so to speak, with the agenda for their discussions. By this process there emerges at the end of the case one or more broad questions – jury questions – which have to be decided in the light of commonsense.

It was recognised by the IJS that judges needed some assistance on this new approach and seminars accompanied the release of the new benchbook. However, judges embraced the new approach with mixed enthusiasm and competence.[38] It was thus felt that more was needed. This led to a two-day course being developed along the lines of the judgment writing course.

The course is a mixture of lectures and practical exercises. Participants are given an indictment and outline of evidence by Crown and defence witnesses. Their first task is to draft a fact-based question trail, specifically targeted to the facts and issues of the case. These draft question trails are then discussed in small groups, each of which is facilitated by a faculty member.

The second stage is the drafting of a summing up, based around the question trail (but ignoring evidential directions). This is again followed by small group discussion. The third and final phase is to draft appropriate general and evidential directions and to identify where in the summing up such directions best fit. Again, the aim is to ensure that directions are applicable to and reflect the facts of the particular case. Evaluations of the programme indicate that participants are enthused by the concepts and keen to apply them in actual trials in the future.

Litigants in person

This two-day workshop was developed from a programme conducted by the Victorian Judicial College. It is designed to assist judges to respond to the growing number of

[38] For an example of a recent case where the new approach would have been preferable see *Hepi and Heta v R* [2010] NZCA 503.

self-represented litigants appearing in the courts. Such litigants present unique challenges to judges endeavouring to ensure procedural fairness, while maintaining order and efficiency. Judges in the course explore the legal and practical dimensions of these challenges and leave with tools to respond effectively when they arise. The course uses role plays with actors for judges to practice the skills taught.

Long trials

Over two days judges consider approaches to commonly encountered problems in the handling and management of long trials, including case management and the management of juries, witnesses and accused. Judges work with a scenario from the criminal jurisdiction to develop appropriate responses to the range of courtroom situations that arise regularly in long trials.

Solution-focused judges

At this seminar judges focus on the developing area of non-adversarial justice and, particularly, on how solution-focused approaches can be incorporated into the work of mainstream courts. Judges consider lessons learned in specialist therapeutic courts that may inform their understanding of solution-focused judging, particularly in the area of judicial interaction with participants in the court process.

Understanding forensic science

The Institute of Environmental Science and Research (ESR) is the main provider of forensic science services to the criminal justice sector in New Zealand. It is a Crown Research Institute and is independent of police and prosecution. The ESR hosts this seminar at its Auckland site to enable a visit to its laboratories, including the national DNA facility. During the seminar judges look at current practices in forensic science, including the DNA facilities, physical evidence (for example firearms, glass and fibres) laboratories and the clandestine drug laboratory. Controversial aspects of developing forensic science are identified and investigated.

Cybercrime

Jurisdictions worldwide have had to move rapidly to deal with cybercrime. This seminar introduces judges to current practices in detecting cybercrime and gathering electronic evidence. Judges consider how developing areas of technology are impacting on court processes and the challenges they pose for the courts. The Police National e-Crime Group hosts this seminar at its Wellington site and the course includes a visit to its laboratories.

Marae visit

The marae[39] visit (which extends over a weekend) is an opportunity to explore Māori culture and life. The marae setting provides an environment for a clear expression of tikanga Māori.[40] Judges are formally welcomed onto the marae where kaumātua[41] present aspects of tikanga and explain the significance of land and history. Judges then participate, with the local people, in the life of the marae.

Courses under development

Currently under development for 2012 are courses on decision-making, child witnesses, the constitutional role and functions of judges, communicating with children and young people and an inter-Bench conference on dignity.[42]

Longer serving judges

The Board considers that the core curriculum (and particularly the orientation programmes) attends well to the needs of newly appointed judges (although there is

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39 Technically this refers to the sacred open meeting space in front of a wharenui (meeting house) where formal ceremonies take place. Colloquially the term is used to refer to the whole community meeting complex.

40 Māori customs and traditions handed down through time by tupuna (ancestors).

41 Māori elders recognised by their people as persons of wisdom, knowledge (of tikanga) and integrity.

42 For future years courses on expert evidence, human rights, cross-cultural communication, judicial ethics and vulnerable witnesses and accused are in contemplation.

always room for improvement). Even longer serving judges can and do benefit from programmes in the core curriculum and in particular those programmes covering new ground, such as the programme on assessing witnesses.

However, from around 2006 the Board began to feel that something more might need to be done to meet the needs of longer-serving judges. An independent report was commissioned which told us that the challenges for mid-term and third-term judges are less technical in nature and more about maintaining interest and motivation. This is an issue familiar to seasoned professionals in other fields who typically reach a stage where they feel their career levelling off. People who find there is little else in their chosen area of expertise often 'coast' and find it harder to maintain a spark for their work.

Following this report, two consultations were undertaken, one with a group of High Court judges and another with a group of District Court judges. The responses indicated that longer serving judges often feel a lack of control over their docket and that the work had become repetitive. They look for a stimulus to lift their gaze from the individual case, to direct them to overarching principles and to find fresh ways of regarding the important work they do.[43]

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

Programmes for longer serving judges

As a result of the research undertaken on the needs of longer serving judges, the IJS Board has worked over the last four years to respond to the particular educational

[43] It is still important that courses for longer serving judges have relevance to their work. While judges would like to attend courses of more general interest, attendance at any such course tends to suffer through pressure of work.

needs of that group of judges. The programmes we have offered that cater to this group[44] have included the following.

A programme on "ethics and obligations in judicial decision making" was presented by Professor Douglas Lind of the University of Idaho. This programme was based upon philosophy and supported by literary as well as judicial texts. The description of the course said:

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

A second programme offered by Professor Lind was "logic and reasoning in judicial decision making".[45] The description follows:

> This seminar will address the importance of sound reasoning and logic in judicial decision-making. The seminar will provide an overview of the most common forms of argument in judicial reasoning and opinion writing. Emphasis will be placed on:
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> - distinguishing inductive from deductive forms of reasoning;
> - understanding the basic forms and importance of inductive reasoning in common law judicial traditions; and
> - developing the ability to identify different types of deductive syllogisms, and distinguishing valid from invalid (fallacious) deductive arguments.

Evaluation feedback to date suggests that these programmes have been intellectually challenging and rewarding for judges. Participants have said that these courses remind

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44 But usually not to the exclusion of newly appointed judges.

45 A variant of this course is also run by the New Zealand Law Society and we share the costs of bringing Professor Lind to New Zealand. We will be exploring further cost sharing arrangements with the Law Society in the coming months.

them to look up from the detail, to read more widely and take time to reflect on higher principles of law and that they offer rare opportunities to re-examine judging.[46]
A less successful offering was a course run in 2010. The course description said:

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

While a number of the participants enjoyed the programme, it was unfortunately not as successful as we had hoped and did not achieve its stated aims.[47] The techniques explored were interesting (the idea was to pose questions instead of attempting answers and to identify those things one could control and those one could not) but the course lacked the necessary linkage back to the work of judges. It also lacked the necessary impetus in presentation to keep the participants engaged. This was probably because we had left the development of the course too much to the facilitators, instead of ensuring judicial control of the contents and delivery method.[48]

Programme design

Another recent development has been the development of a "train the trainers" course that will be run for the first time this year with a view to improving the quality of the educational experiences of judges, particularly in the programmes conceived and run by Bench Educational Committees. This course follows on from a course attended by

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46 These courses have now been run on a number of occasions. We will not run them again, or at least not for a few years until there is a suitable number of judges who have not done the courses. Even then the courses are likely to be modified before being offered again. We are currently on the look-out for replacement courses.

47 This was a pity as the course had attracted participants who are not normally enthusiastic participants in IJS courses.

48 The Victorian Judicial College is running a course for longer serving judges later this year and we are sending one of our judges over to assess whether the course is one that should be adapted to the New Zealand environment.

a number of the Board members run by the Canadian National Judicial Institute in Sydney at the end of 2010.[49]

The Canadian seminar stressed the necessity of setting learning objectives for any programme based on learning needs and designing the programme in line with those objectives. It also taught us the Canadian version of the ERCAT model of programme design. This is based on the adult educational principles that we already used but takes us a step further by providing a very useful and standard framework to work through. We will use this in future programme design and our intention is to develop a standard programme preparation kit that can be given to all programme faculty members involved in developing programmes.

The ERCAT model requires five steps:

Experience

Reflection

Conceptualisation

Application

Transfer

In my view the first step is one of the most important. It involves a practical introduction to the particular issue or issues. This not only increases judges' motivation to do the programme but also should give them actual practical experience of the issues. The next step, reflection, invites judges to look at their experience, share ideas and get the perspectives of others, so that they can begin to identify effective or ineffective performance of a skill, process or task.

The next stages are more familiar. Conceptualisation involves the provision of relevant concepts, principles, frameworks and knowledge in the particular field. Application is an opportunity to apply the conceptual material to tasks judges have to perform in their work. The concluding step, transfer, suggests when and how judges might integrate their learning into their day to day work.

[49] We are very grateful to the Canadian Institute for running this course.

Current strategic plan

The IJS Board has just completed its next strategic plan,[50] again in a series of facilitated workshops. One of the first things that the Board did in this process was to confirm that the core role of the Institute is education. There has been pressure on the IJS to take on functions other than the education of New Zealand judges.[51] For example, it has been suggested that it tackle what can be termed as broader human resource functions, research functions[52] and outreach functions.[53] The IJS has, however, limited resources and these must be directed to our core activity.

In the Board's view, the direction the IJS took after the Sharpe report is the right one and this next period is really one of consolidation and incremental development. The new strategic plan therefore draws heavily on the previous one. In accordance with this philosophy, in the new strategic plan the first and third of the overall aims for the Institute (as set out in the first strategic plan referred to above) remain. We have replaced the rather amorphous goal of promoting judicial excellence with the following hopefully slightly more focused goals:

- Prepare judges to operate in New Zealand now and in the future; and

- Assist judges to promote the rule of law and further the interests of justice.

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50 For 1 July 2010 to 30 June 2015.

51 While its role is limited to New Zealand judges, the Institute does, however, share its resources and provides advice to other groups, such as Tribunals, coroners and judges in the Pacific.

52 The Institute does see it as part of its role to provide education on matters that might be seen as human resource issues (such as retirement planning) but not to take a wider role than education. The same applies to a broader research role. The Institute will undertake research but only as it relates to its educational role.

53 Education of the wider public as to the judicial role. I would, however, like the Institute in the future to take some lead in the outreach area when resources permit. Public confidence in the judiciary and understanding of the judicial role is vital to the maintenance of the rule of law. A paper has been prepared by an IJS staff member on possible outreach activities which will form the basis for any future activities.

We then, as in the old strategic plan, go on to identify key issues. These are set out below.[54]

Judicial independence – education arrangements

The judiciary recognises that it is both independent from and responsible to the society in which it operates. The initiative of the judiciary to provide education through the IJS recognises that education fosters responsibility without compromising independence.

Changing environment

Increasing globalisation[55] and the New Zealand government's legislative goals for the justice system will have an impact on priorities for the Institute requiring timely responses to change. Response to change includes an understanding amongst the judiciary of other disciplines outside a legal framework that are relevant to the courts.[56]

Diversity

The Institute recognises the role of the Treaty of Waitangi[57] in shaping New Zealand's constitutional framework and the importance of responding to the needs of Māori. In addition, the justice system must adapt to New Zealand's increasing cultural diversity. Judicial education is a way to facilitate appropriate responses to these needs.

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54 These are similar to the issues set out in the previous plan. The specific reference to the Treaty of Waitangi, globalisation, other disciplines and resource constraints are, however, new.

55 This will inevitably lead to more internationally defined and codified standards.

56 Other relevant changes are in the science and technology areas which may impact on the courts and require rethinking of old concepts.

57 The Treaty of Waitangi was signed on 6 February 1840 by representatives of the British Crown and about 45 Māori (chiefs). Subsequently, further Māori chiefs signed the Treaty (over 500 in total). The Treaty has three articles and two texts: one in English and one in Māori. There were significant differences in emphasis and in some cases meaning between the two versions. The preamble to the English version states that the British intentions were to protect Māori interests from the encroaching British settlement, provide for that British settlement and establish a government to maintain peace and order. The Māori text suggests that the Queen's main promises to Māori were to secure tribal rangatiratanga (status and authority) and secure Māori land ownership.

Resource constraints

The IJS is a small organisation that operates with limited resources in an increasingly resource-constrained environment. The Institute will continue to work efficiently in this environment making the best use of available resources to implement strategies.

As in the old strategic plan we then set out a number of success factors. In our view it is critical to the success of the Institute that it provides education, training and information that enables:

1. All judicial officers to fulfil the constitutional role of the judiciary and uphold the rule of law;[58]

2. All judicial officers to advance and enhance the personal and professional skills required to perform their roles effectively;

3. New judicial officers to perform their duties with confidence and build a platform for their judicial career;

4. Judicial officers who operate in generalist and specialist jurisdictions to gain the skills and knowledge they require;

5. Judicial officers to gain the skills and knowledge required to work effectively in problem solving courts and to translate the problem solving approach into the mainstream courts where appropriate;[59]

6. Judicial officers to operate within the Treaty of Waitangi with an understanding of New Zealand conditions, history, and traditions;

7. Judicial officers to orient to the current and changing cultural and social diversity of New Zealand communities; and

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58 While implicit in the old plan, this has been set out explicitly as the first success factor in the new plan. Making this explicit has prompted us to begin planning a course on the judicial role, perhaps run (at least partly) as a discussion group based on readings.

59 This is a new goal in recognition of the broader role courts are now increasingly taking for new methodologies to replace or supplement the adversarial system.

8. Judicial officers to operate effectively in an increasingly complex international legal environment.[60]

It is also critical to the success of the Institute that it:

9. Develops as an organisation, delivering effective and responsive judicial education; and

10. It is a leader in the field of judicial education, contributing to international best practice.

Detailed strategies for achieving the success factors are then set out (as in the old plan).

Challenges

The main challenge for the Institute is one of resources, both human and financial. As noted above, the permanent staff of the Institute is tiny and, while judges are generous with their time, this is necessarily a part time involvement. In addition, a large part of our financial resources are spent on travel[61] and accommodation, given that judges are dispersed through the country (and often in small numbers meaning that it is not practical to run courses in all court centres).

While there is a possibility of greater use of technology, we have been cautious in this, given the often greater costs involved. In any event much of the benefit of our educational programmes comes from mixing judges and the Benches informally, which would not be possible without face to face contact.[62]

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60 The emphasis on globalisation is new.

61 The IJS has been trying to minimise such costs by encouraging early booking and so on, but travel still remains a significant cost.

62 We are, however, actively investigating means by which we can begin using technology more. One possible initiative that I am keen to develop is "Just in time" learning – a series of quick video clip instructions on topics that judges might need on particular occasions for particular

Another challenge has been how best to integrate what we term "diversity" into our programmes. In the past we had separate committees dealing with groups[63] that might be seen as having particular issues with the justice system. We have now grouped these together under the umbrella of a diversity committee and that committee runs a programme each year and we continue to strive to find ways to include "social context" issues into all our courses.[64] The course description of the diversity committee programme this year is as follows:

> The objective of the seminar is to encourage a fresh look at familiar work and the role of being a judge. Judges will be guided through an investigation of the role judges played during the colonial period in New Zealand and consider the law, prevailing attitudes and the pressures brought to bear on judicial decision-making at the time. The focus will then move to the ideological environment in which judges operate today, asking whether judicial decision-making is subject to the same or different pressures.

The future

The IJS has, in its eleven years of existence, achieved much to be proud of. Consolidation and continuity are therefore important, particularly given the limited resources. The further matters set out in our strategic plan, such as globalisation changes in society, the changing role of courts and diversification of New Zealand society, will be addressed incrementally in the coming years in accordance with our current strategic plan.[65]

There are a few matters that I would personally like to see addressed in the next few years. One important matter that, through lack of resources, has not yet been able to be properly addressed by the Institute is how we might ensure that te reo Māori can

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cases, for example a quick update in accounting or valuation. Such education is much better delivered when it is actually needed (rather than in the abstract).

63 For example, access to justice for those with disabilities, Māori and Pacific Islanders, women and ethnic minorities.

64 The inclusion of "social context" in our programmes will form part of the "training the trainers" course and programme preparation kit mentioned above.

65 Justice Gault, in his paper referred to above at footnote 1, also refers to challenges related to workload, scientific and technological change, information and communication advances, and increasing public scrutiny and criticism of judges. I agree that these are issues that will need to be borne in mind.

truly become a language used freely in our courts – in other words, an official language[66] in practice as well as in name and without the need for interpreters.[67]

I hope also that the Institute in the future will conduct a more robust system to evaluate programmes.[68] We have recently changed our evaluation forms so that the evaluations can be tailored more to seeing if the particular programme objectives have been met on a session by session basis. No doubt further improvements will follow.

Thirdly, I hope that we will find ways of involving the wider community more, both in the design of our programmes and in the delivery of them.

I finish by setting out a rather idiosyncratic list of lessons learnt from our experiences as a small Institute:

- Liaison with and borrowing from other judicial education bodies is vital;[69]
- Do not be afraid of experimentation or failure but, at the same time, try to minimise such failures by careful planning as they risk putting judges off;
- Review courses regularly – even the better courses can do with improvement even if only to stop them becoming stale;
- Encourage attendance at innovative programmes of open minded judges who will act as "champions" for the programme;
- Plan programmes first before definitively slotting in speakers;
- Be very specific as to exactly what is required of speakers and the method of presentation – this is much more difficult with regard to outside speakers but the success of programmes depends on it;

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66 New Zealand has three official languages: Māori, English and New Zealand sign language.

67 We have done our best within the limits of our resources. We do have a three-day Māori language course each year which goes some way to ensuring some language competence, and individual judges and courts also have their own te reo (Māori language) programmes. We also have marae visits and a number of other programmes also incorporate aspects of relevance to our indigenous people. The possibility of more internet based language courses may be something worth investigating.

68 The Canadian Institute is currently working on the evaluation of programmes and we hope to learn a lot from their work.

69 Thanks to all those very generous institutions who have been willing and eager to share with us (and in particular the Canadian Institute). We also have a particularly close relationship with the Victorian Judicial College.

- Always be upfront with outside speakers at the outset as to the level of remuneration (or otherwise) that is available;
- As far as possible ensure that someone has had personal experience of other presentations by proposed speakers, particularly where those speakers are from outside the judiciary;
- Make sure that there is judicial input into the content of programmes and presentations; and
- Dare to dream: great programmes can be developed even where resources are scarce.