THE EDUCATION OF A JUDGE…

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The education of a judge begins long before judicial appointment. Judges are first and foremost lawyers. In Canada, that means that they typically have an undergraduate university degree[1], followed by a three-year degree from a Faculty of Law, involving studies in a wide variety of legal subjects, including contracts, real estate, business, torts, tax law, family, civil and criminal law, together with practice- oriented courses on the application of the law. The law degree is followed by a period of six to twelve months of practical training with a law firm. Before being allowed to work as a lawyer, the law school graduate will have to pass a set of comprehensive Law Society exams on the law, legal practice and ethics. In total, most lawyers will have somewhere between seven and nine years of post-high school education when they begin to practice.

It is not enough to have a law degree in order to be appointed as a judge. Most provinces and the federal government[2] require that a lawyer have a minimum of 10 years of experience before being eligible for appointment. It is extremely rare that a lawyer is appointed as a judge with only 10 years' experience. On average, judges have worked for 15 to 20 years as a lawyer before appointment and most judges are 45 to 52 years of age at the time of their appointment. They come from a variety of backgrounds and experiences and have usually practised before the courts to which they are appointed. Their professional lives include both successes and disappointments; their family lives the same triumphs and anxieties of families everywhere. They are in and of the communities in which they live. Unlike other judicial systems, where a student can become a judge upon university graduation, our justice system has always valued work and life experience in its judges.

The systems of judicial appointment within Canada have evolved over time. Most now involve an independent selection process requiring a formal written application[3], references, evaluation and interviews. A selection committee will make inquiries about the qualities of candidates within the legal and judicial communities and provide a list to the Attorney General or Minister of Justice of candidates who are recommended for appointment. The Minister can only appoint from the candidates who have been recommended. The qualities that the appointing bodies are looking for include professional excellence (with a commitment to continuing education), community awareness and involvement, as well as personal characteristics such as integrity, politeness, respect, empathy and patience. The Ontario Judicial Appointments Advisory Committee (to take one example) is similar to most appointment processes in recognizing the need for the judiciary to be more representative of our evolving Canadian society and in encouraging applications from "…women, aboriginal peoples, francophones, persons with disabilities, and visible and ethnocultural minorities."

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[1] Québec is the only province where a law degree is a first university degree.

[2] There are two broad systems of judicial appointment in Canada. The provinces and territories appoint judges to sit on provincial and territorial trial courts; the federal government appoints judges to sit on superior trial courts and on the Court of Appeal in each province, as well as on the Federal Court, Federal Court of Appeal, Tax Court and the Supreme Court of Canada. There are approximately 1100 provincial and territorial judges and an equal number of federally-appointed judges in Canada.

[3] For an example of an application form, see the application by Ontario Provincial Judge David Paciocco for his recent appointment to the Ontario Court of Appeal. https://www.canada.ca/en/department-justice/news/2017/04/the_honourable_justicedavidmpacioccosquestionnaire.html

The successful candidate for appointment is typically an experienced, well-respected lawyer, recognized for their excellence and high ethical standards, with a long record of community involvement and a capacity for hard work. He or she will be welcomed to a court which has its own court-specific initial education program, which frequently involves observation of court proceedings and the assignment of a mentor judge.

In addition to court-based initial education and to the programs available to all judges, both federally and provincially-appointed judges in their first year of appointment are provided with two weeks of education specifically designed for new judges: for federally-appointed judges, the program is presented jointly by the Canadian Institute for the Administration of Justice (CIAJ) and the National Judicial Institute (NJI); for provincial and territorial judges, by the NJI and the Canadian Association of Provincial Court Judges (CAPCJ). CIAJ and CAPCJ were both established in 1974 as the founding judicial education bodies in Canada. It was a time when many people thought that a judge should come to the bench fully formed, with all the knowledge that he[4] would ever need, and that he could learn the rest as issues arose: judicial education was seen as largely unnecessary (except by the judges). Despite this view, individual courts had long-established informal education programs for their judges: in an age when important decisions of courts of appeal and the Supreme Court of Canada could take months before they were published, those early programs tended to concentrate on a discussion of the most recent cases.

The creation of the Western Judicial Education Centre (WJEC) in 1985, followed by the National Judicial Institute in 1988[5] led to a revolution in judicial education. Judicial education programs were carefully designed based on adult education principles, identifying learning needs and establishing learning objectives. There were three main areas of focus: the law, skills training and social context. With the advent of electronic communications in the 1990s, judicial decisions became instantaneously available to all judges and the need to provide information about recent decisions greatly diminished. While the law remained an important focus area, there was a shift to analysis and application and a much greater emphasis on skills training and on social context.

Although it had been recognized that peer education required judicial control over content and delivery, judicial education had always involved academics, lawyers and other experts. Now, the new models called for planning committees including professional educators, academics, lawyers, experts and, for elements of social context, community representatives at the earliest stages of program development. Extensive planning and design required that judge-educators receive training in the principles of adult education and facilitation. Then and now judicial education programs typically are based on the experiential model of judicial education (learning by doing), where judges learn and apply their craft in a variety of learning models. And social context education is either a principle focus or an element in virtually every program.

[4] Judges were almost exclusively old, male, and white, the exceptions being largely in Provincial Family Courts, where female appointments had begun to make an appearance.

[5] The WJEC was created by the provincial courts of the Western provinces. Its mandate ended in 1995. The NJI was the initiative of Chief Justice Brian Dickson of the Supreme Court of Canada

The National Judicial Institute has come to be recognized as a world leader in judicial education. It offers comprehensive and varied programming that is available to every judge in Canada at every stage of the judicial career. It is both pro-active and responsive to judicial learning needs. It works closely with partner organizations such as CIAJ and CAPCJ and with individual courts in creating courses, materials and resources, both in-person and on-line.

The larger courts in Canada in provinces such as Québec, Ontario, Alberta and British Columbia have well-developed and extensive education programs for their own judges, frequently working with the NJI or using its model. These comprehensive programs, as well as those offered by courts in the smaller provinces, complement the national programs that judges are free to attend to meet their own learning needs. Judicial education programs are today the product of a thoughtful planning process: they are normally part of a long-term integrated education plan and are subject to approval, within a Court, of an education committee. For federally-appointed judges, national programs require the approval of the Canadian Judicial Council[6] and its Education Committee.

It is perhaps understandable that consideration of judicial education tends to focus on formal education offered through specific programs or directed resources. This kind of formal education constitutes an important but a relatively small part of a judge's education. Pressures of work mean that judges generally aspire to about 10 days of education programming per year in addition to programs offered to newly appointed judges. As is the case with all professionals, most judicial education is self-directed. Judging is an exercise in life-long learning: judges listen every day to evidence and to argument, they read cases, arguments and submissions, statute law and judgments of other courts and discuss them with other judges, both formally and informally. (They tend to be voracious readers out of court as well: newspapers, history, novels, science). They assess evidence and its weight, credibility and, often, complicated science. The view that they have of human nature is not gleaned from newspaper accounts or media sound or video bites; it is received at first hand from real people in real-life dramas that are unfolded before the court. They see every day in their courtrooms the consequences of physical, sexual and psychological harm and abuse; children, women and men who have been battered or beaten, the homeless, the poor, the disadvantaged and those suffering from mental illness. Judges also learn about the people who appear before them though pre-sentence reports, *Gladue*[7] reports, psychiatric and psychological reports, assessments, medical and post-mortem reports. They see and listen to victims and victim impact reports. At the end of the process, judges are required to simplify often complex legal analysis in order to explain their conclusions in language that is understandable to everyone, but especially to the litigants before them.

With the exception of police, first responders and the caring professions, almost no one else in our society has such constant exposure to the frailties of the human condition. In circumstances in which the normal reaction would be sympathy, sorrow, anger or any combination of emotions, judges are required to remain fair, neutral, dispassionate, impartial and independent.

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[6] The Canadian Judicial Council is a judicial organization created by statute and consisting of the Chief Justices and Associate Chief Justices of all courts whose judges are appointed by the federal government.

[7] A form of pre-sentence report for Aboriginal offenders named after the Supreme Court of Canada decision in R. v. Gladue which recognized unique sentencing factors for Indigenous offenders.

The principles of impartiality and independence are important. The need for judicial impartiality is well understood; the need for independence is less evident. Judicial independence is sometimes viewed as an invention of judges, created to isolate them and to shield them from oversight or criticism. In practice, it is difficult to avoid either oversight or criticism when every word spoken by or to a judge in court is spoken in public, is recorded or transcribed and is available to everyone; every courtroom is accessible[8] at any time by any member of the public, every decision made is publicly available. Decisions are subject to review or appeal by any party who disagrees with the result and every judge is liable to disciplinary proceedings for misconduct. Similar examples of such intense public scrutiny are rare. In the judicial process, impartiality and independence are not separate concepts but simply opposite but similar sides of the same coin. Independence is not the property of judges but of the public: it exists not to protect judges but to protect the public. Its only purpose is to ensure impartial decision-making. The Supreme Court of Canada has recognized this on more than one occasion by stating there would be no need for independence if impartiality could be ensured in some other way; but it cannot.

It helps here to look at some British history. Until the 18th century, Parliament in England could call before it any judge whose decision it did not like and ask the judge to explain himself: if his answers were not satisfactory, the judge could be held in contempt of parliament. Judges brought the "King's justice" to local communities. The King could insist on seeing a judgment before it was rendered and could discipline judges who did not follow his desires. Even a jury could be punished by fine or imprisonment where the presiding judge, typically a political appointment, disagreed with its verdict. It is not hard to imagine how unfair the process appeared to anyone who happened to be in litigation with the Crown. It would take a brave judge or a brave jury to go against the government's, or, for that matter, parliament's wishes in those circumstances. Judicial independence became a fundamental part of our law through an Act of the British parliament in 1701 and has continued to evolve in practice to the present day. Unfortunately, in many countries of the world, the lack of judicial independence is not history but current reality: courts function without independence as an extension of the authority of the state, subject to the direction of the ruler or his delegates and subject to sanction if they refuse to follow. Even in Canada, where governments of different levels are by far the principle litigants in our courts, it is not difficult to see the importance for individual litigants of the separation of powers between the executive, legislative and judicial branches of government in ensuring individual, independent and impartial decision-making.

The Canadian model of judicial education is one of neutrality and impartiality. The education of a judge has many different sources but a single objective, the provision of impartial justice based on principles of law and reason. That education will continue to change and to evolve, but it is one of the reasons why the Canadian justice system, despite its occasional failings, has become and remains a beacon for large numbers of people in the world who may well go to court but who cannot expect to find impartial justice there.

[8] In exceptional circumstances, typically involving sexual offences or minors or, in some cases national security, courtrooms may be closed to the public.