

# Review of Judicial Training and Education in Other Jurisdictions

Dr. Cheryl Thomas

May 2006

# Review of Judicial Training and Education in Other Jurisdictions

Report prepared for the Judicial Studies Board

by

Dr. Cheryl Thomas

May 2006

**For further information please contact:**

Dr. Cheryl Thomas  
Director, Judicial Appointments Project  
University of Birmingham School of Law  
London Project Office  
3 Meard Street  
London  
W1V 3HQ  
Email: [judicialproject@aol.com](mailto:judicialproject@aol.com)

## Contents

	Page No.
<b>Executive Summary</b>	<b>3</b>
<b>Part 1.      Introduction</b>	<b>11</b>
Demand for training	11
Justifications for judicial training	12
Purposes of judicial training	14
The report	16
<b>Part 2.     Training requirements and structures</b>	<b>17</b>
Training requirements and entitlements	16
Self-development	24
Organisational structures for training	26
Responsibility for training	31
Scope of training	32
On-line resource directory	32
<b>Part 3.     Training needs, curriculum development and evaluation</b>	<b>35</b>
Training needs assessment	35
Curriculum development	37
Measuring effectiveness	39
Strategic plans	40
Jurisdictional approaches	41
On-line resource directory	53
<b>Part 4.     Training programme content</b>	<b>55</b>
Types of training	56
Social context programmes	58
Legal skills or “judge craft”	58
Judicial ethics	58
Other judicial skills	58
Personal welfare programmes	58
Curriculum summaries	60
On-line resource directory	87
<b>Part 5.     Training methods and delivery</b>	<b>89</b>
Types of training methods	89
Centralised, face-to-face programmes	91
Decentralised programmes	94
Distance learning: IT and web-based programmes	97
Modules	101
Bespoke programmes	101
Streamed programmes	102
Integrated programmes	106
Certificate and degree programmes	107

<b>Part 6</b>	<b>Barriers to judicial training</b>	<b>109</b>
	Funding and time	109
	Geography	110
	Judicial dominance	111
	Institutional inertia	111
	Resistance to new training approaches	112
<b>Part 7.</b>	<b>Judicial evaluation and competence frameworks</b>	<b>114</b>
	Common and civil law divide	114
	Aims of judicial evaluation	116
	Developing competence frameworks	116
	Jurisdictional summaries	118
	France	118
	Germany	120
	Austria	124
	The Netherlands	125
	Finland	127
	Spain	129
<b>Part 8.</b>	<b>Conclusion</b>	<b>130</b>
	Types of training provided	130
	Entitlement to training	131
	Training structures	132
	Organisation and scope of training	132
	Training delivery methods	132
	Needs assessments and programme evaluation	134
	Barriers to training	134
	Evaluation of judges and competence frameworks	135

## List of Tables

<b>Table 1. Approaches to Judicial Continuing Education</b>	<b>18</b>
<b>Table 2. Initial Training Requirements in Civil Law Jurisdictions</b>	<b>21</b>
<b>Table 3. Areas of Judicial Education and Training Covered in Curricula</b>	<b>57</b>
<b>Table 4. Approaches to Delivering Judicial Education and Training</b>	<b>90</b>
<b>Table 5. Judicial Evaluation Schemes and Competence Frameworks</b>	<b>115</b>

## **Executive Summary**

This report provides a comparative overview of judicial education and training in a number of jurisdictions and covers five main issues related to judicial training and education:

- Structural approaches to delivering training
- Methods of devising and evaluating judicial training programmes
- Key components of other jurisdictions' training curricula
- Methods of delivering judicial training and education
- Judicial evaluation programmes and competence frameworks

The report encompasses a wide range of jurisdictions, both common law and civil law, including: the United States, Canada, France, Germany, Spain, the Netherlands, Austria, Denmark, Portugal, Finland, Italy and Australia.

### **1. Need for and Objectives of Judicial Training (Part 1, p.11)**

Major changes in judicial recruitment, increasing caseloads, and more complex laws and legal issues have increased the demand and need for judicial continuing education and training in both common law and civil law jurisdictions, and there is now much more comparability between the two systems in terms of judicial training and educational needs.

#### ***Increasing Similarities in Common and Civil Law Jurisdictions (p.11)***

Many if not most European judiciaries now appoint at least some experienced professionals to the judiciary later in their careers, and their initial training needs are therefore similar to new appointees in common law systems. In addition, common law judiciaries are increasingly becoming "career" judiciaries in which more appointments are being made from among younger, less experienced lawyers and where progress to higher judicial posts is not just possible but encouraged (p.11). Moves to diversify the judiciary also bring those with less traditional legal backgrounds into the judiciary, who have both a need for and expectation of continuing professional development. In addition, judges face increasing media scrutiny of judicial decisions, and the growing introduction of "quality control" measures for the judiciary has required that judicial training provides judges with more than just updates on changes to the law (p.12).

#### ***Justifications for Continuing Judicial Education (p.12)***

Other jurisdictions view judicial education and training as an essential element of judicial independence, as it helps to ensure the competency of the judiciary. In an age that increasingly demands more judicial independence and understanding to solve the increasingly complex and sensitive issues society leaves to be settled by litigation, the need for judicial education is perceived as greater than ever. In addition, the value of judicial education can be related to specific outcomes, such as better managed and less costly litigation, as well as greater public confidence in the judiciary. The primary means of demonstrating the benefit of judicial education and training programmes are court user and public surveys of the judiciary (needs assessments and evaluations that extend outside of the judiciary itself) (p.14). In this context, judges are seen as providers of a public service and need to have the skills to meet the demands of the justice system.

In general, the most comprehensive judicial training systems are in the United States (p.60), Canada (p.67) and Spain (p.78). However, when it comes to judicial appraisal or evaluation schemes and competence frameworks for the judiciary, common law countries do not have much to offer in the way of models. Civil law systems, where career progression is possible, have more highly developed criteria for assessing judicial performance, especially France (p.118) and Germany (p.120).

## **2. Training Requirements and Entitlements (Part 2, p.17, 18)**

In all national jurisdictions fully appointed judges are not required to take part in continuing education and training programmes, and mandatory in-service training would generally be viewed as an infringement of judicial independence. However, mandatory training does exist in all civil law jurisdictions for trainee judges without any practical legal experience (p.21), in some civil law jurisdictions for judges promoted to senior posts, and for most state (but not federal) judges in the United States (p.19). As opposed to training *requirements*, some jurisdictions have training targets for new judges and education and training entitlements for established judges (p.18, 22).

### ***Continuing Training for Fully Appointed Judges (p.22)***

For established judges on-going training is not required in any jurisdiction, except at the state level in the US. Austria comes closest to a formal requirement for training, with judges under a general statutory duty to update their knowledge and skills, although there are no specific requirements beyond this. In France, all judges are entitled to a minimum of five days training a year. Australia is currently drafting a statement on "National Standards for Judicial Professional Development". There is little statistical information on the proportion of time each judge in each jurisdiction spends in training, although some jurisdictions have made estimates (p.23). This is due in part to the fact that in-service training is voluntary, some judges take many courses in a year, while others take few or none.

### ***Self-development culture (p.24)***

In other jurisdictions the notion that the judiciary needs to develop a culture of personal development is rather outdated, albeit for different reasons depending on the jurisdiction.

In common law countries such as the US and Canada (p.24), where significant proportions of judges are drawn from academia and where all lawyers are post-graduates, most judges come into the judiciary with a background where self-development is already well established. Also, judicial appointees in these countries are expected not just to have legal experience but to have substantial involvement in the community, and are therefore much more likely to have varied interests in comparison to judges in the UK where the candidate pool for judicial appointments is much narrower. In civil law jurisdictions (p.24), where most judges enter the judiciary through an extended period of initial training provided by the judiciary and where evaluation and promotion based on continuing development of judicial skills and knowledge are integral parts of their professional lives, self-development is simply part of the ethos of the profession. These judges generally do not need to be convinced to pursue self-development.

What is important in all jurisdictions is the existence of a culture of support among judges' superiors for requests to attend individual training and educational events (p.25). In contrast to judges in Britain, judges in most of these jurisdictions are seen as public servants with wider community service responsibilities, and therefore requests to superiors for time (and funds) to participate in external, personal development activities are more likely to be seen as fulfilling their public service duties.

Several jurisdictions have developed self-directed learning programmes for judges (p.26), including for instance, the Individualized Education Plans (IEP) in Canada (p.52). These programmes allow judges to create a personalised education plan, based on their individual needs and time constraints. More generally, IT and web-based distance learning programmes have been developed in most jurisdictions to

allow judges to access training opportunities at any time (although these have not been universally successful) (p.97,113).

### ***Training Organisations (p.26)***

Four basic types of organisational structures are used to deliver judicial training in the jurisdictions covered in this report:

- State judicial schools
- Justice ministry departments
- Committees of judicial self-governing bodies
- Multiple organisations (usually involving university-affiliated bodies)

At one end of the spectrum are the formal state judicial schools (France, Spain, Portugal, Germany), funded by government ministries but controlled predominantly by the judiciary and involved in both the recruitment and training of judges (p.27). At the other end are less structured training organisations with no formal premises, usually either committees within judicial associations (Denmark, Italy) (p.28), or units located within ministries of justice (Austria, the Netherlands, Finland) (p.27).

Common law jurisdictions have tended to adopt the formal judicial school model but with a strong affiliation to a university and with multiple organisations involved in delivering training (United States, Canada, Australia), due in large part to the existence of multiple jurisdictions in these federal states. (p.28)

### **3. Training Needs, Curriculum Development and Evaluation (Part 3, p.35)**

Ideally, judicial training programmes and curricula should respond to concrete problems, be based on a needs assessment, have specific objectives that shape the training programme and be subject to periodic evaluation. However, in most jurisdictions there is little to distinguish between needs assessment, curriculum development and training evaluation. The basis for these activities in most jurisdictions is confined to feedback questionnaires completed by judges at the end of training sessions, or sometimes wider periodic surveys of the judiciary on their training needs.

#### ***Identifying and assessing training needs (p.35)***

A number of different assessment methods have been used by jurisdictions to determine the curriculum and training programme for judges (p.36), but in only a few jurisdictions (US, Canada) are more than one or two of these methods used:

- Training committees/coordinators (p.36)
- Questionnaires or surveys of judges (p.41)
- Court users and community assessment exercises (p.36)
- Large-scale reviews of the judiciary (p.44)
- Research (p.360)

In several European countries (Denmark, Finland) user surveys are used to measure satisfaction with the judiciary, and these feed into training programme development. In other instances, large-scale reviews of the performance and organisation of the judiciary in recent years and changes to the judicial appointments process have also helped to identify training needs (Spain, Denmark, Finland and the Netherlands) (p.44).

In Canada each court appoints an education chair – a judge whose role it is to plan court-based education (p.37). The National Judicial Institute works with courts to design, develop and stage education programmes. Planning committees are also created for each of the NJI's programmes and determine which issues are most timely, what should be delivered, by whom and how. In the US, the Federal Judicial

Center's Education Division works closely with judicial advisory committees to identify judicial training needs and shape its programmes. The Center also has judicial education attorneys who regularly speak with judges on a more informal basis. These conversations provide information about training needs and interests.

### ***Developing the training curriculum (p.37)***

Most jurisdictions develop training programmes by a process of analysing previous course evaluations and discussions with judges and their representative groups. However, in the US and Canada there has been more examination of the overall process of curriculum development (p.49).

Between 1999 and 2004 Canada pursued a process of programme development through the Canadian Judicial Learning Network Project (CJLN), which addressed several problems facing judicial education there: a lack of coordination, an absence of resources to systematically plan and develop judicial education programming, and limited capacity to expand teaching methods or develop partnerships (p.37).

National judicial education organisations exist in the US, which provide extensive information, organisational support and resources on judicial training and education (NJC, NCSC, AAJE, NASJE, JERITT) (p.38). This includes information on how to develop judicial education curricula, how to implement it, how to evaluate it and research on judicial education. These organisations have also developed curricula themselves for direct or tailored use by individual judicial education providers (p.53).

### ***Measuring the effectiveness of training (p.39)***

In most cases there is little to distinguish judicial training programme development from programme evaluation. The basis for these two activities in most jurisdictions is the feedback questionnaires completed by judges at the end of training sessions. Assessing training needs, developing training curricula and assessing the effectiveness of training programmes is more widely connected to the development of strategic plans by providers of judicial education (p.40). Given the mandatory continuing education requirements for state judges in the US, there has been some significant work done there on the development of strategic plans for the delivery of judicial continuing education programmes (p.53).

## **4. Training Content (Part 4, p.55)**

All the jurisdictions covered in this report have varied judicial training curricula (p.57), but some offer a wider range of programmes and approaches than others. The main curriculum areas include:

- Substantive law
- Social context
- Legal skills ("judge craft")
- Judicial ethics
- Judicial skills (management, media, technology, languages)
- Personal welfare

All the jurisdictions covered in this report provide training and education in substantive law, but they have all also responded in varying degrees to demands (from judges, court staff and the public) for programmes beyond those that deal with strictly substantive legal issues. Significant elements of all jurisdictions' curricula now deal with the social context of judging, judicial ethics, legal skills and judicial skills, and there has also been a growing trend for courses on judges' personal welfare concerns. Some jurisdictions (such as the US, Canada and Spain) provide

virtually the entire range of curriculum options to all judges through a mix of different training bodies.

**Social Context (p.58):** All jurisdictions covered in this report provide judicial education and training programmes which address the social context of law and the judicial process, usually including subjects related to the potential for gender, race, age and disability discrimination in the legal process. The National Judicial Institute in Canada is particularly well known for its social context education which covers the impact of diversity and equality jurisprudence in the day-to-day work of judges and issues related to judicial independence, impartiality, discretion, decision-making and the judicial process.

**Legal Skills (“Judge Craft”) (p.58):** All the jurisdictions provide training and education in what are usually referred to as “judge craft” skills - or the specific legal skills judges need in the courtroom. These cover training in areas such as: opinion writing, sentencing, dealing with expert evidence, vulnerable witnesses, unrepresented litigants, and the use of mediation and alternative dispute resolution techniques.

**Judicial Ethics (p.58):** All the jurisdictions covered in this report also provide education and training programmes to judges on judicial ethics. These cover a range of issues such as avoiding bias in judging, dealing with conflicts of interest and ethical issues related to specific legal issues (e.g., in reproductive medicine).

**Judicial Skills (p.58):** The definition of judicial skills is growing increasingly wide, as demands grow for judges to manage courts and staff, to interact more with the public and the media, and for cases to be conducted in other languages or through the use of new technologies or methods involving witnesses and evidence. All jurisdictions covered in this report provide courses in areas such as communication, court management, use of technology. A number (Canada, Austria and Spain) also provide language training for multi-lingual proceedings.

**Personal Welfare (p.58):** Many of the jurisdictions covered in this report have also introduced programmes for judges on their personal welfare. These are primarily focussed on issues such as stress management for judges and maintaining physical and psychological health, although a new course in Canada also encourages judges to begin planning for retirement and offers advice on financial and lifestyle planning.

## 5. Training Methods and Delivery (Part 5, p.89, 90)

The range of options available to jurisdictions for delivering judicial training programmes is wide and can include:

- centralised, face-to-face programmes
- decentralised, court-based programmes
- IT and web-based distance learning
- modules
- streamed programmes for individual judicial ranks
- integrated programmes for judges and court personnel
- bespoke programmes for individual courts

**Face-to-face** lectures, seminars, workshops and conferences (p.91) on legal issues are the most common approaches to judicial training and continuing education programmes across all the jurisdictions, and remain the most popular training methods among judges in all jurisdictions. Traditional formal lectures are

increasingly less popular among judges than smaller more participatory seminars and workshops.

However, judicial systems covering large geographic areas have had to develop more **decentralised** methods of delivering judicial training (p.94), as it is not usually practical for all judges to travel to one central location. This includes regional courses and courses delivered at individual courts.

Most jurisdictions are introducing or at least experimenting with delivering some training programmes and educational materials **on-line** or through the use of some form of information technology (IT) (p.97). In addition, the introduction of on-line judicial information systems and computerised case management systems has also required special training programmes in IT for judges and court staff.

Canada, Australia and the US have introduced training “**Modules**” – smaller units of educational programming that are components of larger courses or seminars (p.101). The idea behind modules is that judges (or groups of judges at courts) can complete the larger course in progressive sections (modules) or can design their own courses based on specific modules from different programmes. They are designed to provide judges with both greater control and flexibility in training and education.

The National Judicial College in the United States custom designs “**bespoke**” programmes for administrative law agencies, tribal and state courts and other organisations that wish to have programmes in their own states (p.101).

The use of “**streamed**” programmes, in which training and education is delivered to judges based on their judicial rank or court is most often used for new judges, who will have specific and immediate training needs (p.102). However, jurisdictions are also increasingly providing streamed training programmes for more senior judges, particularly those with managerial responsibilities.

The Federal Judicial Center in United States provides an innovative, **integrated** approach to delivering training, where programmes are attended by judges, their clerks and court staff together (p.106). In some instances, judges and staff travel to Washington DC to attend these courses together, but in other instances the FJC delivers the programmes at the court itself.

The only jurisdiction to offer specific **qualifications and certifications** to judges for continuing education is the United States (p.107). This reflects the strength of judicial studies as an academic discipline in the US, in comparison to most other jurisdictions.

The development of **faculty** or trainers is a key function for judicial education bodies (p.46). Judges have traditionally been favoured as faculty in response to judicial reluctance to receive or be perceived to be receiving outside instruction. However, specialists have increasingly become involved as law has become more complex and as demand for training in social issues has also grown. **Mentoring** is used in many jurisdictions, but usually on an ad hoc basis and not with widespread success (p.48).

## **6. Barriers to Training (Part 6, p.109)**

The common barriers or obstacles to delivering judicial training and education across jurisdictions include:

- Funding and Time
- Geography
- Judicial dominance
- Institutional inertia
- Resistance to new training approaches

### ***Time and Cost (p.109)***

The cost of delivering judicial education to busy judges is the perennial problem for most jurisdictions. For example, the Federal Judicial Center has found that federal judges in the US have only limited time to participate in live educational programmes, which also involve substantial expenses for travel and facilities. Mandating judicial education for state judges in the US did not solve time and funding issues. State judicial education providers became aware that it was not enough to say why judicial education was important or necessary – it had to be demonstrated. This has taken the form of regular surveys of senior judges and court administrators, who are asked to assess the value of training services. A few states in the US have been less hard hit by budgetary cuts because they have developed funding mechanisms for judicial training that offer protection from government-wide cuts - for instance, New Mexico funds judicial training and education programmes from fees attached to court fines.

### ***Geography and Decentralisation (p.110)***

Centralisation of training is particularly problematic for jurisdictions covering a large geographic area and/or including substantial rural or remote areas. The difficulty in getting leave from busy court lists and the financial costs of travelling to one central location for training are major barriers for some judges in jurisdictions like Australia, which has turned to technology-based distance learning to supplement its face-to-face programmes. In Canada, the two systems of law (common and civil) and bilingualism also present specific issues for judicial training. Given the dual system of both federal and provincial courts in Canada there is also uneven access to judicial education due in part to different levels of support across the country.

### ***New Training Approaches (p.111,112)***

In other instances, the existence of long-established judicial schools may create barriers to innovative programming. In France, it has been suggested that more teachers should be recruited from outside the judiciary, and that the ENM, its instructors and judges should have more contacts with other institutions training public servants. The programme development committee at the German Judicial Academy has also been criticised for being too large, centralised and slow to innovate. (p.111)

Where personal resistance on the part of judges may be a factor is in terms of specific types of programmes, for instance with what are referred to as “complex curricula” as well as technology-based distance learning courses (p.112). Judges’ learning style preferences for concise, logical analysis, abstract ideas, technical tasks and practical solutions often mean these courses are more difficult to implement. In Germany, the US and a number of other jurisdictions it appears that judges generally resist distance learning courses (at least at first), and even when they accept them they are only willing to use them as a supplement to face-to-face training, not as an overall substitute. One means used to overcome this resistance to technology-based distance learning is the use of live interactive video on websites to create more of a face-to-face feel to distance programming. On a more technical

level, the Federal Judicial Center in the US has also found that it is more difficult to evaluate the success of its web-based programmes than its face-to-face programmes.

## **7. Judicial Evaluation and Competence Frameworks (Part 7, p.114, 115)**

Only civil law jurisdictions covered in this report have judicial evaluation and appraisal systems and competence frameworks for the judiciary. There is little to no formal judicial appraisal in the common law countries covered in this report, where appraisal and competence frameworks are seen as incompatible with judicial independence (p.114). In this respect the recent development of judicial appraisal schemes and competence frameworks for some judges in England and Wales highlights a greater compatibility with civil law rather than with common law systems.

In many civil law jurisdictions judicial evaluation or appraisal is part of the professional life of a judge, and is an integral part of career progression and promotion. France (p.118), Germany (p.120) and Austria (p.124) have the most highly developed, institutionalised evaluation programmes, where virtually all judges are evaluated by judicial superiors at regular intervals. In other countries, such as the Netherlands p.125), evaluations for most judges involve peer review, and institutional evaluation is primarily for judges in more senior, managerial positions. However, the Netherlands along with Spain (p.129) and Finland (p.127) appear to be moving towards more institutionalised evaluation of all judges to supplement the court-based evaluation already in operation there.

Judicial evaluation (and hence competence frameworks) is likely to be an increasingly important issue for the judiciary in all jurisdictions. However, judicial evaluation has a jurisdictional context. In Scandinavia and the Netherlands, where the focus is placed on courts as organisations, there is more acceptance of the need to measure court performance – but not judicial performance. In Germany and in France and other Latin judiciaries there is much more of an acceptance that judges will be evaluated internally by the judiciary for promotion and career reasons, but less acceptance of the idea of quality control standards for the courts as a whole.

## **Part 1. Introduction**

Judicial training and education is an increasingly important issue in the wide range of both common law and civil law jurisdictions covered in this report: the United States, Canada, France, Germany, Spain, the Netherlands, Austria, Denmark, Portugal, Finland, Italy and Australia<sup>1</sup>. Some jurisdictions offer more lessons or models than others, and in many cases some countries have more to offer in one area of training than others.

### **Demand for judicial training**

Major changes in judicial recruitment, increasing caseloads, and more complex laws and legal issues have increased the demand and need for judicial continuing education and training in both common law and civil law jurisdictions. While the underlying issues are similar, different legal traditions and practices have produced somewhat different responses to the need for judicial training and continuing education programmes, although there is a growing convergence in the types of programmes being offered to judges in the jurisdictions covered in this report.

European civil law countries instituted training programmes earlier than common law countries and initially placed greater emphasis on entry-level training, while common law countries have traditionally focused more on in-service training. These early differences were the result of the civil law system of recruiting judges from among recent law graduates, which meant that entry-level training was often part of the actual selection process, and trainee judges had to demonstrate competence after a period of training in order to be appointed. In contrast, common law judges have traditionally been recruited from among experienced lawyers, often with substantial advocacy experience. However, changes have occurred to judicial recruitment in both civil and common law jurisdictions so that now there is much more comparability between the two systems in terms of judicial training and educational needs.

Many if not most European judiciaries now appoint at least some experienced professionals to the judiciary later in their careers, and their initial training needs are therefore similar to new appointees in common law systems. In addition, common law judiciaries are increasingly becoming “career” judiciaries in which appointments are being made from among younger, less experienced lawyers and where progress

---

<sup>1</sup> The information contained in this Report has been drawn from a number of sources, including confidential information provided directly to the author from individuals in each jurisdiction who either conduct research into judicial training or are involved in delivering training to judges.

to higher judicial posts is not just possible but encouraged. Even where new judges are highly skilled professionals, they may not have extensive courtroom experience when appointed. As a result, common law countries have been forced to introduce more entry-level programmes in recent years, although these are not usually as comprehensive and lengthy as in Europe.

A number of other factors have encouraged change in the types of training programmes offered to judges in both common and civil law jurisdictions and the demand for them by judges. In addition to the trend towards earlier recruitment, judges face increasing demands from both the public and government. Media scrutiny of judicial decisions and the growing introduction of “quality control” measures for the judiciary have required that judicial training provides judges with more than just updates on changes to the law. In addition, there have been increasing demands in most jurisdictions to diversify the pool of judicial appointees beyond a narrow group of practicing lawyers. As the qualifications for appointment become less restrictive and encompass non-practicing lawyers, these judges are more likely to come with expectations of a structured system of professional development based on their previous work environment.

### **Justification for judicial training and education**

At the most fundamental level, other jurisdictions view judicial education and training as an essential element of judicial independence, as it helps to ensure the competency of the judiciary. The quality of the judiciary is an essential component in achieving access to justice, and a key element in maintaining the high quality of the judiciary is judicial education. In an age that increasingly demands more judicial independence and understanding to solve increasingly complex and sensitive issues society leaves to be settled by litigation, the need for judicial education is perceived as greater than ever. In addition, the value of judicial education can be related to specific outcomes, such as better managed and less costly litigation, as well as greater public confidence in the judiciary.

The value and importance of judicial education has long been recognised in the United States, and in large part this is connected to the early recognition of the significance of the judiciary in the social and political life of the nation. The need for judicial education to ensure that American judges remain in touch with social developments has been advocated for over four decades:

*It would be easy, but intellectually lazy, to hold that the sole business of judges is judging, that all else is at least distracting and that accordingly a judge should avoid all non-judicial activities that might either be time-consuming or influence his opinion on matters that come before him... A judge is likely to be a better dispenser of justice if he is aware of the currents and passions of the time, the developments of technology, and the sweep of events. To judge in the real world a judge must live, think, and partake of opinions in the real world.<sup>2</sup>*

While the need for judicial education is generally taken for granted in most jurisdictions, recent budget cuts in judicial education in the America have led to much more overt promotion of the benefits of judicial education. The NASJE<sup>3</sup> have highlighted the specific “Benefits of Judicial Branch Education” for three main groups:

Individual judges:

- ensures appropriate training to succeed in their jobs
- an opportunity to learn from experts and from each another
- energising judges, providing an opportunity to reflect on the “bigger picture”
- helps to “professionalise” a judge’s work
- courses on stress management improve the working environment

The court system:

- ensures judges trained in necessary competencies to do their jobs
- helps modernise the court system
- increases public trust and confidence in the courts
- helps create a more satisfied workforce
- makes courts open to new perspectives

The public:

- judges perform their jobs in a competent manner
- judges deal effectively with people, including communication and cultural competency skills
- judges reflect core values of the court system, including fairness, access to justice, and the rule of law
- judicial education is part of the accountability to the public

Australia, as part of the establishment of a national judicial school, has also recently reviewed the benefits of judicial education and highlighted a number of factors that make judicial education important:

- In a diverse society, judges in discharging their responsibilities are likely to encounter situations, attitudes and values outside their personal experience.
- Legislators have to keep pace with the complex ethical and social issues raised by developments in science and technology and so must judges.

---

<sup>2</sup> R. McKay “The Judiciary and Nonjudicial Activities”, 25 *Law and Contemporary Problems* 9, 12 (1970)

<sup>3</sup> Also see *Principles and Standards of Judicial Education*, National Association of State Judicial Educators <http://nasje.org/archives/index.htm>

- Judges roles are changing, and they need to efficiency conduct cases in court.
- Given all these considerations there is a belief in government and in the judiciary that the ability of judges to discharge their responsibilities is enhanced by their participation in education programmes that take these issues into account.<sup>4</sup>

Australia's Chief Justice has also drawn a direct connect between the need for judicial education and training and the changing judicial appointments process, suggesting that the type of people governments might want to appoint to diversify the judiciary will not be willing to take up these judicial posts unless they are properly equipped to perform their judicial duties.

*The success of any programme that has as its object widening of the pool from which judges are drawn depends upon the existence of adequate facilities for judicial training and continuing professional development.... The days when governments could act on the basis that, unlike their counterparts in civil law jurisdictions, judges required no training or continuing professional development, are gone. The trend towards increasing recruitment of judicial officers from outside the ranks of experienced advocates is not the only reason why that is so, but it makes the need for appropriate systems of judicial education more obvious and more urgent.<sup>5</sup>*

The primary means of demonstrating the benefit of judicial education and training programmes are court user and public surveys of the judiciary (ie, needs assessment or evaluations of the judiciary that extend this process outside of the judiciary itself). In this context, judges are seen as providers of a public service and need to have the skills to meet the demands of the justice system.

### Purposes of judicial training

Regardless of its form, development and cultural context, judicial training programmes are designed to improve judicial performance by:

- Preparing new judges for performing their duties
- Guaranteeing greater consistency in judicial decisions
- Updating judges in new methods, laws and other knowledge

There are a wide range of options for how education and training is delivered to judges. It may be long term or short term, full time or part time, on-site or off-site, voluntary or compulsory. It can employ specialised trainers, outside experts, or peers. It can be delivered through traditional lectures or more interactive,

---

<sup>4</sup> Hon. Justice S C Justice Kenney (Federal Court of Australia) "Judicial Education in Australia" First Australasian Judicial Educators Forum, 11-14 February 2003

<sup>5</sup> Murray Gleeson (Chief Justice Australia) "Judicial Selection and Training: Two Sides Of The One Coin" Judicial Conference of Australia Colloquium, Darwin 31st May 2003

participatory methods. It can be directed towards specific levels of the judiciary or combine ranks and court staff as well. The content of judicial education programmes may include general legal knowledge, specific legal skills, non-legal skills and knowledge, or attitudes and values. In theory the choice of approaches should be determined by an objective assessment of existing needs, available resources and the relative merits of each approach, although it has been argued that in practice the choice of approaches is more likely to be determined by judicial culture or a failure to envision the options<sup>6</sup>.

At its most basic level, judicial training provides the information and tools judges need to do their jobs effectively, including: legislation, practice directions, case reports, academic articles, bench books or manuals. Beyond providing information in substantive law, judicial training and education also addresses what is usually referred to as “judge craft” - the specific skills judges need to do their job, including skills training in areas such as opinion writing, sentencing, dealing with certain types of litigants and evidence. The format for delivering such information and skills training varies widely: from formal lectures, seminars and meetings to printed material, audiovisual formats, e-mail and even television broadcasts. At its more sophisticated level, inspiring attitudinal change in the judiciary through judicial education often presents the most challenges for training programmes. In recent years the focus for attitudinal change in the judiciary in most of the jurisdictions covered in this report has been on helping judges recognise and eliminate gender or racial bias and on promoting a judicial culture of service to the wider community.

In general, the most comprehensive judicial training systems are in the United States, Canada and Spain. This is perhaps not surprising, as Spain and the United States were among the first countries to establish formal judicial schools or training institutions<sup>7</sup>. However, when it comes to judicial appraisal or evaluation schemes and competence frameworks for the judiciary, common law countries do not have as much (or much) to offer in the way of models. Civil law systems, where career progression is possible, have more highly developed criteria for assessing judicial performance. France and Germany in particular have more detailed judicial evaluation systems, while other civil law systems have tended to focus on quantitative measures of judicial or court performance. However, a number of these

---

<sup>6</sup> Linn Hambergren *Judicial Training and Justice Reform* (USAID 1998)

<sup>7</sup> A judicial school was established in Spain in 1944 (although not in its current form), and the US National Judicial College was established in 1963. The current French judicial school, the ENM, has some claims to be the first current judicial school to be established in Europe in 1953.

(Spain, the Netherlands, Denmark, Finland) appear to be moving towards more comprehensive qualitative assessments of judicial performance, although progress has not been swift or easy. In general, common law jurisdictions have resisted judicial appraisal and evaluation on judicial independence grounds. In this area, England and Wales are an exception with the recent introduction of a competency framework for judicial appointments and the piloting of judicial appraisal schemes.

### **The report**

This report adopts an issue-based approach to a comparative overview of judicial training, not a strict jurisdictional approach. Within each judicial training issue covered in this report, the experiences of specific jurisdictions are highlighted. The report covers five main issues related to judicial training and education:

- Training requirements and organisational structures
- Methods of devising and evaluating judicial training programmes
- Content of training curricula
- Training methods and means of delivery
- Barriers to training
- Judicial evaluation programmes and competence frameworks

Part Two describes the extent to which judges are required to undergo training or are entitled to training, as well as the different organisational structures used to deliver training in different jurisdictions. Part three examines how different jurisdictions identify training needs and evaluate the effectiveness of training programmes. Part Four examines the different subjects covered by training in other jurisdictions, and provides brief synopses of each jurisdiction's training curricula. Part Five explores the different methods used to deliver judicial education programmes in other jurisdictions. Part Six explores the extent to which barriers exist to training in other jurisdictions and how these barriers may have been overcome. Part Seven provides an overview of judicial evaluation programmes in a number of civil law jurisdictions and the specific competence frameworks used in the evaluation process.

## **Part 2. Training Requirements and Structures**

This part explores the different approaches jurisdictions have taken to the structure and organisation for delivering judicial training. It covers whether training is compulsory or voluntary, the extent to which a culture of self-development exists in the judiciary, who has primary responsibility and control over training, whether there is a formal judicial school or a more ad hoc structure for delivering training, how training is financed, and whether training is targeted only at judges or whether it is also provided to judicial staff.

### **Training Requirements and Entitlements**

In all *national* jurisdictions, fully appointed judges are not required to take part in continuing education and training programmes, and mandatory in-service training is generally viewed as an infringement of judicial independence. However, mandatory training does exist in all civil law jurisdictions for trainee judges without any practical legal experience, in some civil law jurisdictions for judges promoted to senior posts, and for most state (but not federal) judges in the United States. As opposed to training requirements, some jurisdictions have training targets for new judges and education and training entitlements for established judges.

See Table 1 below for jurisdictional summaries of approaches to judicial training.

**Table 1. Approaches to Judicial Continuing Education  
(in-service training of fully appointed judges)**

	Type of organisation delivering training	Training body	Scope	Voluntary or compulsory	Training entitlement
<b>Austria</b>	Justice ministry department	Judges' & Prosecutors' Training Unit	Judges & prosecutors	Voluntary but requirement to develop skills	Judges average 3-4 days per year
<b>Canada</b>	Multi-organisations + university affiliation	National Judicial Institute (& others)	Judges only	Voluntary	New judges objective: 10-15 days per year for 4 years
<b>Denmark</b>	Judicial self-governing body committee	Judges' Training Committee	Judges	Voluntary	
<b>France</b>	State judicial school	<i>Ecole nationale de la magistrature</i> (ENM)	Judges & prosecutors	Voluntary Compulsory for some senior promotions	All judges entitled to 5 days per year minimum
<b>Finland</b>	Justice ministry department	Department of Judicial Administration	Judges	Voluntary	
<b>Germany</b>	State judicial school	<i>Deutsche Richterakademie</i>	Judges & prosecutors	Voluntary	
<b>Italy</b>	Judicial self-governing body committee [New state judicial school created]	Training Commission of <i>Consiglio Superiore della Magistratura</i>	Judges & prosecutors	Voluntary	
<b>Netherlands</b>	Justice ministry department	SSR21	Judges & prosecutors	Voluntary	
<b>Portugal</b>	State judicial school	<i>Centro do estudos judiciários</i>	Judges only	Voluntary	
<b>Spain</b>	State judicial school	<i>Escuela Judicial</i>	Judges only	Voluntary	
<b>United States</b>	Multi-organisations + university affiliation	National Judicial College Federal Judicial Center National Center for State Courts	Judges & court staff	Voluntary (federal) Compulsory (state)	Requirements vary by state: 7-15 hours per year average
<b>Australia</b>	Multi-organisations + university affiliation	National Judicial College of Australia & others	Judges & magistrates	Voluntary	Developing entitlement statement

### ***Mandatory Training***

While federal judges in the United States are not required to take part in continuing judicial education programmes, continuing judicial education is compulsory for state judges in the 50 states. In many states, court administrative staff are also required to complete a set number of continuing education credit hours per year. The requirements vary from state to state, but the average training requirement for judges is between 7-15 hours per year. These requirements are tied to Judicial Codes of Conduct, which specify rules on what are accredited programmes or activities, judges' reporting requirements, the means of validating hours completed, and disciplinary proceedings if requirements are not fulfilled. In most cases, state judicial education providers are affiliated with their state supreme courts and often have a close association with a university.

The development of compulsory judicial education at the state level has led to judicial continuing education being well established and the most highly developed in the US in comparison to other jurisdictions. Information and organisational resources for judicial education are extensive in the US. There are now over 70 different organisations providing judicial education for state judges as well as judicial education programme development assistance. The main providers of information and assistance to all states are the National Center for State Courts (NCSC), American Academy of Judicial Education (AAJE), National Association of State Judicial Educators (NASJE) and the National Judicial College (NJC - which provides education to both federal and state judges). They are all involved to some extent in research into judicial education as well, and a main information resource is JERITT (the Judicial Education Reference, Information and Technical Transfer project) based at the University of Michigan.<sup>8</sup>

However, mandating judicial education at the American state level has not been without its problems. AAJE felt it was necessary to pass a resolution calling on state governments to ensure judges had adequate time and funds to attend training courses and that the programmes were properly funded. Financial issues became particularly problematic in 2003 when the fiscal crisis in the states resulted in cuts to judicial education and personnel. (This is discussed in more detail in Part Six "Barriers to Training").

---

<sup>8</sup> See the on-line resource directory at the end of this Part of the Report for web addresses for all these organisations.

In civil law jurisdictions trainees or probationary appointees who have entered the judiciary immediately after law school must complete a training period prior to formal appointment. The period of training varies from jurisdiction to jurisdiction and ranges from 16 months (Spain) to 6 years (the Netherlands). There may be some argument that this type of training has the least comparability with common law systems, given that most of these civil law trainees come into the judiciary with little or no practical legal experience. However, some trainees do enter with substantial experience, for instance in Germany, France and Finland, and in general the content and approach to these initial training programmes in civil law jurisdictions may still be of some interest to the JSB. The recent reduction in the number of years in practice required for appointment to the judiciary in England and Wales also means that judges may now be appointed at roughly the same age as many new judges in Europe, providing further grounds for considering how new judges are trained in civil law jurisdictions.

In terms of civil law countries, this report focuses on two types of training programmes: in-service or continuing education training for established judges, and training provided to new appointees who enter the judiciary *as experienced professionals* where this is applicable (e.g., France, the Netherlands). The report does not cover in detail training programmes in civil law jurisdictions for those recruited straight out of university. Even though these initial training programmes are not strictly comparable to training needs for new judges in common law countries, they may still have some relevance to training provision in England and Wales, particularly with the recent lowering of the years in practice eligibility requirements for judicial appointments.

The requirements of initial training programmes in civil law jurisdictions are summarised in Table 2 below.

**Table 2. Initial Training Requirements in Civil Law Jurisdictions**

	Qualification	Mandatory training	Training Period	Elements of Training	Training Evaluation
<b>Austria</b>	5 year law degree	Yes	9 months leading to position of Judge Office Candidate	Court practice Training courses Judicial supervision	YES Legal knowledge Reliability Decision-making Work rate Work under stress Communication Social & personal behaviour
	Appointment as Judge Office Candidate	Yes	3 years	2 years court practice under judicial supervision 1 year training courses	YES Same criteria
<b>Denmark</b>	Law degree & appointment as Deputy judge	Yes	3 years	In-court with supervising judge 10 courses, 2-4 days each in substantive law Examination & interview	Yes, annually by supervising judge
	Section head in Ministry then appointment as temporary judge	Yes	9 months		
<b>France</b>	Law degree and entrance examination	Yes	2 years + 7 months	2 months internship in non-judicial organisation 7 months course work 1 year court internship Examination 1 year court internship	Yes Course work by continuous evaluation Court work by supervising judges
	Examination (for experienced professionals)	Yes	3 months over first 6 years	Courses at ENM	NO
<b>Finland</b>	Law degree & temporary judicial appointment	No			
<b>Germany</b>	Top pass marks in first and second state examinations resulting in appointment as Junior Judge	Only for some Lander	various	2-8 weeks shadowing judge in specialist courts seminars in judicial skills training	NO
<b>Italy</b>	Law degree and examination (uditore giudiziari)	Yes	18 months minimum	13 months ordinary training in court and courses 5 months specialist training in court and seminars	Yes (but no failures)
<b>Netherlands</b>	Law degree and admission as trainee judge	Yes	6 years under supervision of mentor	3 years course work 10 months in court 2 years in non-judicial legal work	?
<b>Spain</b>	Law degree and examination	Yes	16 months	10 months theoretical training 6 months practical training	Yes (but no failures)

### ***Training Entitlements and Targets***

Given the general rule that judicial education is voluntary, it is perhaps more informative to consider the extent to which judges are *entitled* to continuing training, and the extent to which there are *targets* for judicial education and training. Here, distinctions are usually made between entitlements for new judges in their first year of appointment, and continuing in-service training for established judges. There are targets of 10-15 days per year for new judges in Canada in each of the first four years from appointment. Australia provides 5-day orientation programmes for new judges. The Federal Judicial Center in the US provides new federal judges with specific orientation programmes. There are also specific programmes in a number of jurisdictions for newly appointed senior judges. The National Judicial College in the US provides 2-3 weeks courses for new senior judges. France requires some limited training for judges promoted to senior managerial posts. Denmark and the Netherlands also provide special management training courses for new senior judges.

### ***Continuing Training for Fully Appointed Judges***

For established judges on-going training is not required in any jurisdiction, except at the state level in the US. Austria comes closest to a formal requirement for training, with judges under a general statutory duty to update their knowledge and skills, although there are no specific requirements beyond this. In France, all judges are entitled to a minimum of five days training a year. Australia is currently drafting a statement on “National Standards for Judicial Professional Development”, which will indicate the amount of time that should be available to all judges each year for education and training, and the amount of funding that should be provided on an annual basis.

In practical terms it is also important to consider the extent to which *career progression* for judges in practice necessitates participating in such training programmes. Judicial participation in training programmes may be considered a positive quality in deciding whether to promote a judge to a higher position in the judiciary. In the United States, federal judges can receive formal certification for courses taken at the National Judicial College, which may be considered in decisions on higher appointments.

There is currently debate in Germany about whether participation in further training should be introduced as a pre-requisite for promotion, and the debate there has highlighted the problems that can arise if such a direct connection is introduced between training and promotion. If further training is a prerequisite for career advancement, it would also be necessary to grant opportunities for further training to all those who wish to take part. It might be difficult to meet an increasing demand, selection procedures for training courses might have to be created and more regular working days might be lost because judges would attend seminars in order to maintain their chances of promotion.

### ***Time spent training***

There is little statistical information on the proportion of time each judge in each jurisdiction spends in training. This is due in part to the fact that in-service training is voluntary, some judges take many courses in a year, while others take few or none. What information exists tends to be information from the training provider on the number of training days/hours provided to the judiciary as a whole each year. But these are not very informative as they can only indicate the *average* how much time each judge spends in training each year. Austria has attempted to estimate this, and suggests that on average each judge participates in about 3 to 4 training days a year. In France, where judges are entitled to 5 days minimum per year, the ENM estimates that it provides at least one course for 60% of all magistrates each year. In Germany the federal judicial academy offers over 100 hours of seminars per year, and this is supplemented by additional courses offered by the individual Lander.

Even at the state level in the US where training is mandated, there are not formal rules governing release time, and by and large judges must request time (and funds) from their judicial superiors on a case-by-case basis. In some cases there remain problems with state judges finding time to complete their annual required hours of judicial training, although states judiciaries have attempted to address this by allowing a wide range of activities to qualify for continuing education credit (public lectures, publications, law school teaching).

The general approach in all jurisdictions is that judges must request time from judicial superiors for continuing education and training. Where there is an annual entitlement to training (for instance, in France) it is not viewed as “judge release time” but an integral part of their judicial work. Placements at courses run by the ENM in France operate on a first-come first-serve basis. In Germany, there are course quotas for

each of the different regions for the courses offered by the federal judicial academy, and each jurisdiction collects requests to participate from its judges and decides which judges will attend. The Lander offer additional courses of their own, which enables more judges to participate in judicial training and education programmes.

### **Self-development**

In other jurisdictions the notion that the judiciary needs to develop a culture of personal development is rather outdated, and would generally be considered an odd subject, albeit for different reasons depending on the jurisdiction. In common law countries such as the US and Canada, where significant proportions of judges are drawn from academia, many judges come into the judiciary with a background (as scholars and teachers) where self-development is already well established. In addition, in the US and Canada all lawyers and therefore almost all judges are post-graduates: there are no undergraduate degrees in law and all law degrees are three-year post graduate degrees following four years' undergraduate education. As lawyers who are already post-graduate professionals, North American judges come with far less need to develop a belief in the benefits of self-development.<sup>9</sup>

Also, where judicial appointment decisions are based on a “global” assessment of candidates those appointed to the judiciary are much more likely to have varied interests outside of narrow legal areas. In Canada and the US (particularly at the federal level), the criteria for judicial appointment are much broader than in the UK. Prospective appointees will be expected not just to have legal experience but to have substantial involvement in the community, experience teaching in law schools, publications, etc. By the time they are considered for judicial appointment, continued personal development is therefore likely to be an integral part of their professional life. The traditional narrowness of the candidate pool for judicial appointments in England and Wales means that judges in this country are more likely to have a more restricted view of personal development and the need for continuing education and training.

In civil law jurisdictions, where most judges enter the judiciary through an extended period of initial training provided by the judiciary and where evaluation and promotion based on continuing development of judicial skills and knowledge are integral parts

---

<sup>9</sup> It is, however, still an issue addressed by judicial education providers in the United States. See for instance *Self-directed Learning in the Judicial Branch*, Diane Cowdrey, NASJE Newsletter Spring 2003, <http://nasje.org/archives/index.htm>

of their professional lives, again self-development is simply part of the ethos of the profession. These judges generally do not need to be convinced to pursue self-development.

Instead, what judges in these jurisdictions may need some convincing about are particular styles or subjects of judicial education and training. As discussed in the “Barriers to Training” section below, certain types of curricula can generate resistance from judges, in part because they may not fit typical judicial learning style preferences. For instance, in the US work has been done exploring judicial difficulties with “complex curricula” – courses that challenge judges’ attitudes and beliefs (and what judges often refer to as “touchy feely” courses). In addition, a number of jurisdictions have highlighted the fact that IT and web-based distance learning programmes can take some getting used to by judges and are often met with initial resistance or at least a lack of initial interest. (See “Barriers to Training” below for more details).

What is important in all jurisdictions is the existence of a culture of support among judges’ superiors for requests to attend individual training and educational events. What one needs to bear in mind is that, in contrast to judges in Britain, judges in most of these jurisdictions are seen as public servants with wider community service responsibilities, and therefore requests to superiors for time (and funds) to participate in external, personal development activities (attending conferences and courses, speaking at public events) are more likely to be seen as fulfilling their public service duties. For US state judges these types of activities (public lectures, community work) are allowed to count towards fulfilling their annual education requirement.

A number of jurisdictions have worked to develop self-directed learning programmes for judges, including for instance, the Individualized Education Plan (IEP) in Canada and Independent Learning Program (ILP) in Utah. These programmes allow judges to create a personalised education plan, based on their individual needs and time constraints. More generally, IT and web-based distance learning programmes have been developed in most jurisdictions to allow judges to access training opportunities at any time. (However, see “Barriers to Training” below on judicial views of web-based training).

## **Organisational structures for training**

In terms of the formal organisational structure for delivering judicial training, a variety of different approaches have been taken in the jurisdictions covered in this report.

At one end of the spectrum are the formal state judicial schools (France, Spain, Portugal, Germany), funded by government ministries but controlled predominantly by the judiciary and involved in both the recruitment and training of judges. At the other end are less structured training organisations with no formal premises, usually either committees within judicial associations (Denmark, Italy), or units located within ministries of justice (Austria, the Netherlands, Finland). Common law jurisdictions have tended to adopt the formal judicial school model but with a strong affiliation to a university (United States, Canada, Australia). The National Judicial College in the United States is quite unique as it is a separate corporation with its own board of trustees but based at the University of Nevada-Reno. The Canadian National Judicial Institute started out based at an existing university (University of Ottawa), but has since moved off campus, although it still maintains an association with the University. In many cases these institutions are funded by the government (Canada, Australia, FJC in the US), but the National Judicial School in the United States is a privately endowed charity.

### **1. State Judicial Training Schools**

**France:** In service training of judges is provided by the *Ecole nationale de la magistrature* (ENM), which is a formal “établissement public” (public agency) in France. The government appoints its director, who has always been a member of the judiciary. The ENM is in charge of two kinds of training with relevance for the JSB: the training of new judges recruited with some considerable professional experience and in-service training of longer-serving judges. The directors of the ENM are members of the judiciary, members of the judiciary form a clear majority of its Board, and all permanent teachers and instructors are members of the judiciary. The ENM has an annual budget of approximately 7 million Euros for training (excluding staff costs).

**Spain:** The *Escuela Judicial* (Judicial School) in Madrid is perhaps the most active and innovative of all the European judicial training organisations, with programmes at the regional, national and international levels. It organises the continuing education programme for Spanish judges through a specialised commission (*Comisión Pedagógica*) which is appointed each year by the Director of the School. The Commission is made up three members of the Judicial School, one representative

from each of the three professional associations of judges in Spain<sup>10</sup> and four judges from each court jurisdiction (civil, criminal, administrative, and labour jurisdictions). The programme of continuing education for judges is approved every year by a plenary session of the Spanish judicial self-governing body, *Consejo general del poder judicial* (CGPJ). Its budget is approximately 3 million Euros.

In **Germany**, continuing education is organised at the national level, Länder and regional levels. On the national level, the German Judges' Academy (*Deutsche Richterakademie*) was created in the 1970s and has two locations, in Trier and in Wustrau. It is run jointly by the Federal Ministry of Justice and by the judicial administrations of the Länder, and each pay half of the costs of the academy. The continuing education budget at the federal level is approximately 5.5 million Euros, and in North-Rhine/Westphalia (which has about 25 percent of the judicial staff of Germany) about 2 million Euros are available annually for judicial training (although these funds have been subject to budget reductions in recent years).

**Portugal:** The *Centro do estudos judiciais* in Lisbon is responsible for in-service training and continuing education of judges. It is funded by the Ministry of Justice, but its activities are overseen by the self governing body of the judiciary (*Conselho Superior de Magistradura*).

## 2. Departments within Justice Ministries

In the **Netherlands**, judicial training courses are organised by an agency of the Ministry of Justice (SSR21), which has a management board in which the Council of the Judiciary (the judicial self governing body) is represented. In **Finland**, in contrast to most other European jurisdictions, there is no judicial self-governing body. Instead the Department of Judicial Administration within the Ministry of Justice is responsible for all aspects of the running of the judiciary, including the provision of continuing education for judges. Its budget is approximately 900,000 Euros per year.

In **Austria** the Judges' and Prosecutors' Training Unit in the Ministry of Justice is said to be an invisible judges' academy. It is responsible for defining current training topics, creating the training programmes and supporting research. As there are no physical premises, most of the seminars are held on court premises or in seminar

---

<sup>10</sup> *Asociación Profesional de la Magistratura*, *Jueces por la Democracia*, and *Asociación de Jueces Francisco de Vitoria*. For additional information of these associations, see Thomas (ed) *The Power of Judges* Guarieri and Pederzoli OUP 2003

hotels. There is also a Further Training Advisory Board, which provides direct input from judges into the work of the Judges' Training Unit. The eight members of the Further Training Advisory Board include judges' representatives of the four courts of appeal, the Supreme Court and representatives of the professional association of judges. The presidents of the four courts of appeal, who contribute the most to the judicial training programs, the Judges' Association with its expert groups in specific areas of the law, and the Ministry of Justice itself, which annually creates and organises training seminars, workshops and conferences for judges. Training costs are paid by the Ministry of Justice, and approximately 730,000 Euros per year is set aside to cover the costs for participants and trainers.

### **3. Committees of judicial self-governing bodies**

In **Denmark** the content of judicial training programmes is decided by a permanent committee, consisting of representatives from the Council of the Judiciary (the judicial self-governing body) and the two judicial employee organisations (the Association of Judges and the Association of Deputy Judges). Its training budget is approximately 2.3 million Euros.

Similarly, in **Italy** at present a Commission of the judicial self-governing body (CSM) is responsible for all aspects of judicial training and education, and has a training budget of approximately 6 million Euros. However, in 2005 legislation was passed establishing a formal judicial school in Italy (Superior School of the Magistracy)<sup>11</sup>. It has not yet begun operations, and its organisation may well undergo change after the 2006 general election in Italy.

### **4. Multi-organisational approach (with university affiliated institutions)**

**United States:** There are three main judicial training and education bodies in the United States: the National Judicial College (open to all judges), the Federal Judicial Center (for federal judges and court staff) and the National Center for State Courts (primarily for state court judges).

The **National Judicial College (NJC)** was established in 1963 by the American Bar Association, as a private, non-profit educational institution, offering a variety of courses to judges and other court officials at the University of Nevada campus in Reno. It now also offers courses at other sites across the United States. Participants

---

<sup>11</sup> law n. 150 of July 25, 2005

include state trial judges, special court judges and magistrates, federal and appellate judges and administrative law, military, and Native American tribal court judges. The NJC faculty consists of judges and industry professionals, and judges, lawyers and law professors serve without compensation as members of the NJC faculty. Additional instructors include representatives of other disciplines including physicians, psychologists, sociologists and computer/technology experts. Each year, more than 250 faculty members offer lectures, workshops, panels and structured discussion groups. Donated faculty time is estimated to be equivalent to more than \$1.7 million annually. The Faculty Council represents the interests of the volunteer faculty, and is responsible for ensuring that teaching standards are maintained. The NJC was established with a major endowment from a charitable foundation. For recurrent funding, the NJC relies on income from the endowment, plus a combination of tuition, annual gifts and grants from individuals, corporations and foundations. This is a somewhat unique model, relying as it does on private donations and corporate sponsorships, rather than on government funding. In other jurisdictions this model might raise questions about the compatibility of private funding with judicial independence. However, private funding has, among other things, enabled the NJC to create a dedicated judicial education endowment fund program to enable individual states and courts to obtain training without having to use their own limited budgets.

**Federal Judicial Center (Washington DC):** Four years after the founding of the National Judicial College, the U.S. Congress in 1967, enacted legislation to create the Federal Judicial Center (FJC), an independent education and research agency within the judicial branch of the federal government. The FJC receives federal government funding to conduct education and training programs for federal judges and federal court employees; to conduct research on issues of court administration; and to explore new technology for the federal court system. By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference. The Board appoints the Center's director and deputy director; the director appoints the Center's staff. The Education Division plans and produces educational programs, services, and resources for judges and for nonjudicial court personnel, such as those in clerk's offices and probation and pretrial services offices. The Research Division undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its

consequences, often at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal system.

The **National Center for State Courts (NCSC)** was established in 1971 as a central resource to improve the ability of the state courts to dispense justice in a fair and efficient manner. This is accomplished primarily through direct expert assistance, national conferences, education and training courses, and information exchanges. The NCSC library in Williamsburg, Virginia, is the largest international lending library on court administration in the world.

**Canada:** Judicial training and education in Canada is also delivered by a number of different organisations, with the main institution being the National Judicial Institute (NJI). The **National Judicial Institute**, located in Ottawa, was established in 1988, as an independent, non-profit organisation that plans, coordinates and delivers judicial education dealing with the law, the craft of judging and social context. The NJI is responsible for the overall coordination of judicial education in Canada, in addition to being a primary education deliverer. The Board of Governors is chaired by the Chief Justice of Canada and is made up of federal judges and academics. The NJI is not the sole organisation providing education to Canada's judiciary. It was originally located at the University of Ottawa, and even though it has moved its premises off campus it still retains an affiliation with the university. Others organisations involved in judicial training include the courts themselves, the Institute for the Administration of Justice and the Association of Provincial Judges.

Each of Canada's **courts** provide education to the judges who sit on that court. Approximately fifty percent of the education available to Canada's judges is delivered at the court level, and some courts have extensive judicial education programmes. The courts in fact, deliver much of the NJI curriculum. The **Canadian Institute for the Administration of Justice (CIAJ)** mandate is to improve the quality of justice for Canadians, and it focuses on developing judicial skills through its new judges programme, introductory and advanced decision-writing seminars, and an administrative law programme. The **Canadian Association of Provincial Court Judges (CAPCJ)** is a federation of provincial and territorial judges' associations, and its membership includes most of the over 1,000 provincial and territorial judges in Canada. CAPCJ and NJI have established a partnership in developing distance education courses, and CAPCJ was also a participant in the development of the new

skills-based program for newly appointed judges offered (details of this programme can be found in Part 4 of this report).

**Australia: National Judicial College of Australia (NJCA):** Until recently most education and training programmes for judges in Australia were developed and delivered by committees of judges in Australian courts. However, in 2002 the National Judicial College of Australia was established as an independent body, funded by contributions from central government as well as some states and territories. It is controlled by a governing Council, and the majority of the Council's members are judges. Judges (and magistrates) from all courts in Australia are eligible to attend College programs. Some programs are limited to particular categories of the judiciary (for example orientation programs are limited to recent appointees). The College's operating costs are met by annual contributions from the central government and the governments of New South Wales, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory (totalling \$333,739 in 2004/2005). Because that funding does not cover the cost of delivering programs, the College charges registration fees for judges at some of its programmes, and in 2004/2005 this generated an additional \$240,982.

A number of other organisations also deliver training to Australian judges. The **Australian Institute of Judicial Administration (AIJA)** is a research and educational institute associated with Monash University, funded by the Standing Committee of Attorneys-General and from subscription income from its membership. It has been involved in developing courses in a number of specialised areas including gender awareness, cultural awareness, court technology and case management. The **Judicial Commission of New South Wales (JCNSW)**: New South Wales has about one third of all the judicial officers in Australia, and the JCNSW was established in 1986 and is funded by the NSW government. It has an education division with full-time staff running a large array of programme and an extensive publication programme. The **Judicial College of Victoria** was recently established in 2003, and is involved in assisting with court conferences, organising seminars and workshops for judges and magistrates. It is also reviewing and updating sentencing manuals and benchbooks for Victorian courts.

### **Responsibility and control over training**

In most jurisdictions the overall control and direction of judicial training is in the hands of the judiciary, although there is often usually some involvement on the part of

justice ministries (in both common and civil law jurisdictions) at least as funding bodies or representatives on governing bodies of training institutions or organisations. Judicial control is usually achieved by having a majority of judges on the governing body. This helps to ensure that judicial education is credible to the judges, and ensures that judicial independence is not undermined. Where judicial training schools or institutions are closely allied to universities, a Management Board made up of judges and law professors is the main means of maintaining judicial independence and control.

### **Scope of training**

The scope of training varies from one jurisdiction to another, with some offering training to judges only (Canada) while others provide training to judges and judicial support staff, both separately and in combined courses (United States), or judges and magistrates (Australia). In addition, all the common law jurisdictions reviewed in this report have more than one organisation or institution that provides training and education to judges, and all the federal states (Germany, Canada, United States, Australia) also have regional training bodies or other organisations that provide training at the regional level. In addition, in a number of jurisdictions training of judges and prosecutors is combined. In France and Italy, where they form a combined profession (and both are referred to as "magistrates") this is a logical consequence of the professional structure of the judiciary. In other countries, where there is more distinction between the two professions there is still some combined organisation of training (the Netherlands, Austria, Germany, Portugal), although this tends to be most relevant for the type of training not covered in this report (initial recruitment and training of inexperienced law graduates).

### **On-line resource directory**

The following is a list of web addresses for the judicial education and training providers covered in this part of the report.

#### **United States**

Federal Judicial Center

<http://www.fjc.gov/>

National Judicial College

<http://www.judges.org/>

National Center for State Courts

Site for links to all 50 state and DC judicial education sites:

<http://www.ncsconline.org/WC/Publications/StateLinks/JudEduStateLinks.htm>

**Canada**

National Judicial Institute

<http://www.nji.ca/>

Office of the Commissioner for Federal Judicial Affairs

<http://aja.ncsc.dni.us/>

Canadian Institute for the Administration of Justice

<http://www.nji.ca/>

**Australia**

National Judicial College of Australia

<http://njca.anu.edu.au/>

Australian Institute of Judicial Administration

<http://www.aija.org.au/>

Judicial Commission of New South Wales

<http://www.judcom.nsw.gov.au/>

Judicial College of Victoria

<http://www.judicialcollege.vic.edu.au/>

**France**

Ecole Nationale de la Magistrature (French National Judicial School)

<http://www.enm.justice.fr/>

**Germany**

Deutsche Richterakademie (German Judicial Academy)

<http://www.deutsche-richterakademie.com/>

**Spain**

Consejo General del Poder Judicial

<http://www.poderjudicial.es/>

**Austria**

Austrian Ministry of Justice

<http://www.justiz.gv.at/>

**Portugal**

Centro do estudos judiciares

<http://www.cej.pt/>

**Denmark**

Danish Justice Ministry

<http://www.domstol.dk/>

**Finland**

Finnish Justice Ministry

<http://www.om.fi/>

**Italy**

Consiglio Superiore della Magistratura

<http://www.csm.it/>

<http://www.csm.it/documenti%20pdf/incontri-di-studio-2006.pdf>

**The Netherlands**

SSR

<http://www.csm.it/>

### **Part 3. Training Needs, Curriculum Development and Evaluation**

This part examines how judicial training needs are identified and assessed, how the training curriculum is developed and how the effectiveness of training is measured. It also provides details of specific needs assessment programmes in a number of jurisdictions, particularly those that have the most advanced methods of curriculum development.

Ideally, a judicial training programmes and curricula should respond to concrete problems, be based on a needs assessment, have specific objectives that shape the training programme, and be subject to periodic evaluation. However, in most jurisdictions there is little to distinguish between needs assessment, curriculum development and training evaluation. The basis for these activities in most jurisdictions is confined to feedback questionnaires completed by judges at the end of training sessions, or sometimes wider periodic surveys of the judiciary on their training needs.

In all the jurisdictions covered in this review, the judiciary is involved at some level in the design of training programmes. In most cases, the director of a school or program and most members of any oversight board or council will be high-ranking judges. This is obviously important to ensure judicial cooperation in the training programme. However, if representation is confined primarily to the senior judiciary it can work against creating a common program for all judges, particularly if senior judges do not view training as something that applies to them but only to judges below them in rank. In addition, if there is little involvement by individuals outside of the judiciary in the design of judicial training programmes this may not ensure that judicial training meets the needs and demands of the public. For instance, in the past, the French training programme has been criticised on the grounds that so much judicial ownership has produced a closed caste of judges.

#### **Training Needs Assessment**

A number of different assessment methods have been used by jurisdictions to determine the curriculum and training programme for judges, but in only a few jurisdictions (US, Canada) are more than one or two of these methods used:

- Training committees/coordinators
- Questionnaires or surveys of judges
- Court users and community assessment exercises
- Large-scale reviews of the judiciary
- Research

**Training committees/coordinators:** Here judges, lawyers and others responsible for monitoring and assessing training needs, act as the eyes and ears of the training provider. These committees report their findings to the training provider, usually on an annual basis.

**Questionnaires or surveys of judges:** These usually ask judges what training is needed or what kind of knowledge they feel they lack. This is the most common approach to needs assessment, and can take the shape of a general survey of judicial needs or specific surveys asking for feedback on courses taken. Virtually all jurisdictions ask judges to evaluate the training programmes they have just participated in and this information is fed into the programme development. The criticism of this approach (especially the general survey of judicial needs) is that it tends to focus on what judges do not know and, as a consequence, its usefulness is dependant on judges always being fully aware of what their actual needs are. This type of exercise can often result in a long list of very general training needs.

**Court users and community assessment exercises:** These identify areas where the community believes that judicial training or education would strengthen the justice system. This approach can compliment judicial surveys and help enhance public confidence in the judiciary, as it indicates to the public that the judiciary is sensitive to the views of the community it serves.

**Large-scale reviews of the judiciary:** Reviews of training needs sometimes arise out of larger reviews or reforms of the judiciary (Spain, Austria, Denmark, Finland, the Netherlands).

**Research:** Jurisdictions may fund research on judicial training, examine other jurisdictions' programmes, and employ advisors with less traditional views of the judicial role as part of overall programme development.

In most jurisdictions needs assessment primarily involves analysing the responses to feedback questionnaires completed by judges at the end of training sessions. In some cases, general feedback is requested on a periodic basis from judicial organisations. In several European countries (Denmark, Finland) user surveys are used to measure satisfaction with the judiciary, and these feed into training programme development. In other instances, large-scale reviews of the performance and organisation of the judiciary in recent years and changes to the judicial

appointments process have also helped to identify training needs (Spain, Denmark, Finland and the Netherlands).

In Canada each of the 35-plus courts appoints an education chair – a judge whose role it is to plan court-based education. Each of these individuals confers with his/her colleagues to assess learning needs. The National Judicial Institute works with the majority of courts in Canada to design, develop and stage education programmes, working with education chairs and planning committees to do so. Planning committees – often comprised of judges, academics, content experts and community members -- are also created for each of the NJI's national programs (in Family Law, Criminal Law, Civil Law, Social Context, etc). Together, committee members determine which issues are most timely, what should be delivered, by whom and how.

In the US, the Federal Judicial Center's Education Division works closely with judicial advisory committees to identify judicial training needs and shape its programmes. The Center sometimes receives requests for specific educational programmes or topics from committees of the Judicial Conference of the United States, the federal judiciary's policy-making body. Judicial Conference committees are composed, primarily, of judges. The Center also has judicial education attorneys who regularly speak with judges on a more informal basis. These conversations provide information about training needs and interests.

### **Curriculum development**

There is little to distinguish curriculum development from needs assessment. Most jurisdictions develop training programmes by a process of analysing previous course evaluations and discussion with judges and their representative groups. However, in the US and Canada there has been more examination of the overall process of curriculum development.

Between 1999 and 2004 Canada pursued a process of programme development through the Canadian Judicial Learning Network Project (CJLN), which addressed several problems facing judicial education there: a lack of coordination, an absence of resources to systematically plan and develop judicial education programming, and limited capacity to expand teaching methods or develop partnerships. The CLJP was then used to develop a multi-stage approach to judicial curriculum development. One result of this curriculum planning has been the Individualized Education Plan

(IEP), an innovative education planning tool for judges. It is a structured process by which judges identify their learning interests, set their learning priorities and plan their participation in judicial education seminars. A version of the IEP tool (called the “Court Education Planner” or CEP) aggregates input from individual judges’ IEPs into a summary of learning needs and goals for all judges within a given court. The CEP then compares this list against a list of educational modules offered by the National Judicial Institute to produce recommended programming for conferences and court-based education.

Educational materials developed for national programmes in Canada are often re-packaged as “modules” and made available as court-based programmes and as online courses. Together with the NJI’s senior advisors, education chairs and planning committees work with existing modules (tailoring them to suit the needs of individual courts) and design and develop new education sessions. All planning occurs against the backdrop of NJI’s existing curriculum. Additionally all materials developed for National programs are posted in the Judicial Library and made available to all judges (federal and provincial) across Canada.

In the US, judicial education attorneys, working in consultation with advisory committees and programme faculty, develop the Federal Judicial Center’s education programmes. In some instances Center staff plays the primary role in developing the programme; in others it is a collaborative process, with judges taking the lead. The FJC also collaborates with university law schools and other private institutions that develop and host FJC-sponsored programmes for the federal judiciary. The curricula for university-based programmes are developed by the university faculty, in consultation with Center judicial education attorneys. The curriculum at the Federal Judicial Center in the US is modified based upon feedback from the judicial advisory committees as well as comments included in the evaluation forms distributed at every Center educational programme.

In addition, with each state in the US involved in delivering judicial education programmes major national judicial education organisations have been established for many years, which provide extensive information, organisational support and resources on judicial training and education. (See earlier notes on NJC, NCSC, AAJE, NASJE, JERITT). This includes information on how to develop judicial education curricula, how to implement it, how to evaluate it and research on judicial

education. These organisations have also developed curricula themselves for direct or tailored use by individual judicial education providers.

In **France**, the annual national in-service training programme at the ENM is established after a training commission carries out consultations each spring with: the main branches of the judiciary, the judicial unions, the main departments of the Ministry of Justice, the inspectorate for the judiciary, and France's other national training schools. After this consultation, the commission makes recommendations to the ENM Board of Directors on which existing courses to withdraw and which new ones to introduce. Each year approximately 30% of the courses offered are new. The national training programme is then distributed to all judges in September for the coming year. There is also a separate system of in-court programme development at the appeal court level in France. Each appeal court has a designated judge (*Magistrat Delegue a la Formation*) responsible for submitting a yearly programme of training courses for that court to a special training board run by the heads of division in that court. The approved programme for that court is then funded by the ENM, and it is estimated that more than 2000 magistrates take part in these in-court training programmes each year.

### **Measuring the effectiveness of training**

In most cases there is little to distinguish judicial training programme development from programme evaluation. The basis for these two activities in most jurisdictions is the feedback questionnaires completed by judges at the end of training sessions. In the US, for instance, the Federal Judicial Center programmes are reviewed each time they are delivered. The evaluation forms are distributed, tabulated and analysed, and this analysis informs whether a programme will be repeated, whether it will use different speakers or make possible changes in content and materials. However, there is no process for evaluating the impact of Center programmes on judicial performance. This is the general pattern in all jurisdictions.

The lack of thorough training evaluation by all jurisdictions is not surprising, given that measuring judicial training effectiveness requires substantial commitment: in time, funds and willingness for the programme providers to accept what the results may reveal and for the judiciary to be evaluated. However, as a result of budget cuts in training at the state level in the US and the resulting need to more clearly demonstrate the value of training to the quality of and access to justice, education providers in the US have begun to address the importance of demonstrating the

effectiveness of judicial training. The National Center for State Courts and the Institute for Court Management regularly surveys the Conferences of Chief Justices and Court Administrators in the US and asks them to rate judicial training in terms of value in relation to the other services they provide. NCSC has also carried out a survey of state court users, including their perception of the quality of the judiciary.

In addition, information and assistance is available in the US to judicial education providers for conducting comprehensive judicial training impact evaluations. National resource organisations such as the National Association of State Judicial Educators and JERITT have published information outlining the possible approaches to judicial training evaluation, and what issues education providers need to tackle to carry out such evaluations. For instance, the evaluation resources address issues such as the four progressively more complex levels of evaluation: reaction, learning, behaviour change, organisational results – although it is recognised that most education providers do not go beyond the first level.<sup>12</sup>

### **Strategic Plans**

Assessing training needs, developing training curricula and assessing the effectiveness of training programmes is more widely connected to the development of strategic plans by providers of judicial education. Given the mandatory continuing education requirements for state judges in the US, there has been a substantial amount of work done there on the development of strategic plans for the delivery of judicial continuing education programmes.

When the fiscal crises at the state and federal levels in the US led to budget cuts in judicial education programmes and the loss of personnel, judicial education providers began to develop means of demonstrating why judicial education was important or necessary. Judicial educators had to focus on accountability and the ability to show political leaders (i.e., the funders) the impact of judicial education programmes on the judicial system. In order to prove the value of judicial education programmes, they began to develop strategic plans for judicial education. For instance, the California Center for Judicial Education and Research and the Judicial Education Center of New Mexico have both developed strategic plans with identifiable objectives for judicial education and training, along with plans for assessing the effect of training programmes. At the national level, the National Center for State Courts and the

---

<sup>12</sup> For details on information resources on evaluating judicial training see the directory of on-line contacts at the end of the Part of the report.

Institute of Court Management conduct regular surveys of Chief Justices and Court Administrators across the US to determine the extent to which they consider judicial training and education of value to the courts<sup>13</sup>.

It has been suggested that the effectiveness of training in achieving learning, attitudinal and behavioural change and improved professional conduct and performance should be measured by a combination of:

- pre, post and year end focus groups/surveys
- participant satisfaction and self evaluation interviews
- assessment of court data and records
- personal interviews with designated officials
- independent expert appraisal

It has also been suggested that careful evaluation of programmes by participants, supervising judges, court managers and court users should take place, although anonymity should be ensured and clearly defined objectives be included in course programmes. A summary of these evaluations should be made available to the public, the Chief Justice and relevant government department.<sup>14</sup> However, most jurisdictions have less well structured evaluation programmes than this.

### **Jurisdictional Approaches to Programme Evaluation**

**1. Surveys and questionnaires:** The most common approach to needs assessment is the use of feedback questionnaires with judges, either as a general exercise asking what their needs are or when asking judges to evaluate the training programmes they have just participated in. The criticism of this approach is that it focuses on what judges do not know and, as a consequence, its usefulness is dependant on judges always being fully aware of what their actual needs are.

**Australia:** The Council of the National Judicial College of Australia and individual planning committees for programmes review and revise College programmes in the light of feedback from participants. The College seeks written feedback from judges participating in its programmes. The College develops new programs on the basis of proposals made by judges in evaluating programmes they attend and based on

---

<sup>13</sup> For details on the development of strategic plans for judicial training see the directory of on-line contacts at the end of the Part of the report.

<sup>14</sup> For details on models for evaluating judicial training see directory of on-line contacts at the end of the Part of the report.

responses to a survey of the judiciary conducted in 2003. The College has a Consultative Committee which advises the Council on how the College should meet the professional development needs of judicial officers, on the quality and value of the College's programmes and on how to facilitate good communications between the College and judges.

**Judicial Professional Development Curriculum:** Following discussions at the annual meeting of the College's Consultative Committee in February 2005, the Council decided to develop a national curriculum for judges' professional development. The curriculum is intended to be a guide for the College and for other Australian bodies (court education committees, State judicial education bodies) providing education and training programmes for judges, and will cover the full range of offerings that should be provided to judges. A consultant has been retained by the College to prepare a draft of the curriculum.

**National Standards for Judicial Professional Development:** The College has invited the Judicial Conference of Australia (JCA) and the Australian Institute of Administration (AIJA) to develop a statement of the amount of time that judicial officers should commit to their professional development, the time that should be made available each year by the courts for judges' professional development, and the amount of funding that should be provided on an annual basis. The statement will be developed in consultation with heads of jurisdiction, members of the judiciary, and other bodies involved in providing professional development for the judiciary. The statement is intended to be a benchmark to encourage Australian governments to make an appropriate financial commitment to judicial education and training, and is also intended to encourage heads of jurisdiction to release judges from ordinary duties for the required amount of time each year. It will also encourage individual judges to recognise their own obligation to commit time to professional development, including some of their own time. The Standard is expected to be finalised in 2006.

In **Ontario**, the provincial judges' association has attempted on a number of occasions to have the justices tell it what their education needs are. A few years ago the association undertook a survey of all judges attending the annual conference, which asked what they were looking for in education and the delivery method they found most helpful. At every annual conference the association receives evaluation forms which ask for feedback on that conference as well as suggestions on the ways to improve the existing courses and new topics for consideration. These evaluations

are always taken into account in devising the following year's programme. In addition, the education delivery team will regularly meet and discuss the perceived successes or failures in the particular programme.

In **Austria**, needs assessment for judicial training is carried out by the Judges' and Public Prosecutors' Training Unit at the Ministry of Justice. This unit defines training topics of current importance, lays down the training programs and supports research into judicial training. The Further Training Advisory Board also holds consultations twice a year, where they define and fix the content and extent of the next annual training program and discuss general training needs and matters for future development. Additional meetings are held as the occasion demands. The Judges' and Public Prosecutors' Training Unit at the Ministry of Justice acts as a coordinator by checking all the training proposals submitted and by laying down the training programs for the following period in the light of discussions with the Further Training Advisory Body. The main method of quality control is the use of evaluation questionnaires. At the end of each judicial training seminar participants are asked to fill in an evaluation form. Every participant is asked to give an (anonymous) opinion on the structure of the seminar, its practical effect, the quality of the trainers, their ability to deal with concrete questions from the participants etc. The questionnaire also invites participants to indicate any additional training needs or ideas for future training programs. Through the use of these feedback sheets, the opinion of the participants on the seminar attended and any general further training needs can be identified and taken into consideration by the organisers for the next training period. The Training Unit in the Ministry collects and distributes these evaluations to the other organisers.

In **Germany** the program of seminars offered by the Judges Academy is decided upon by a committee consisting of representatives of all the Länder, of the Federal Ministry of Justice and of the professional associations of judges and prosecutors. This committee meets twice a year and decides the curriculum on the basis of proposals which have been collected in advance by its members. A decision is also made on the distribution of the work-load concerning the organisation of the seminars among the judicial administrations (ministries of justice). This includes finding speakers, collecting the applications of those who want to take part and admitting participants. In practice, this means that over a hundred seminars per year are being organised by persons in at least 17 different offices (of the ministries of the Federation and of the Länder). The substantial organisation of the seminars is not

done by the staff of the academy, which is only responsible for clerical work involving the actual running of the academy and the seminars. The seminar programme is published well in advance before the beginning of each year, and generally participation is possible on a quota basis whereby a certain number of openings is allotted to each participating jurisdiction. As a result, each jurisdiction has to collect applications and to decide whom to nominate for the available space.

## **2. Training assessments as part of judicial reform programmes**

Reviews of training needs sometimes arise out of larger reviews or reforms of the judiciary (Spain, Denmark, Finland, the Netherlands).

**Denmark:** The content of judicial training programmes is decided by a permanent committee, consisting of representatives from the Council of the Judiciary (the judicial self-governing body) and the two judicial employee organisations (the Association of Judges and the Association of Deputy Judges). In 2000, the Council on the Judiciary invited all courts to debate and send suggestions to it for a new “vision” for the judiciary. Later that year, two-day seminars were held across Denmark where judges and court staff (comprising a fifth of all judges and court staff) discussed a draft of a common vision and strategy for the judiciary. The Vision for the Danish Courts which emerged identified four basic values:

- Each individual is entitled to respectful treatment
- Judicial independence
- Responsibility and trustworthiness
- Openness, dialog and co-operation

Each year each court must specify what that court will do in the coming year towards achieving the vision and objectives. Each court can choose its own strategies to reflect local needs, although common initiatives have included:

- Colleagues provide feedback on each others' court behaviour and handling of meetings
- Final verdicts in appeals cases are discussed systematically at lower courts
- Courts conduct their own user surveys to identify needs in their area
- Regular meetings are held with police, lawyers and other courts to develop ways to improve relations and workflow.
- Larger courts set productivity targets
- Staff education is provided to enable personnel to work in multiple policy fields

In 2001 all courts in Denmark conducted user opinion surveys (of plaintiffs, defendants, lawyers, prosecutors and staff). There was a high level of satisfaction among users, with the overwhelming majority considering judges competent and neutral, a perception that was not dependent on the outcome of cases.

A new Judicial Appointments Council was also created in Denmark in 1999 specifically to ensure that a broader range of individuals from different career backgrounds (academics, practising lawyers and deputy judges as well as civil servants) were selected for these positions, although the majority still come through via the traditional route.

**Finland** has undergone a major programme of constitutional reform in the last decade, and this has involved reform proposals for both the appointment and training of judges. Most appointments to the judiciary in Finland are made from individuals with 15 to 20 years experience as a part-time judge, court clerk or legal secretary. In 2000, a Judicial Appointments Board (Tuomarinaluntalautakunta) was established, which shifted control for judicial appointments away from the senior judiciary into the hands of a 12-member Board comprised of nine judges, a lawyer representing the Finnish Bar Association, one prosecutor, and a member of the Ministry of Justice in charge of legal training and research. Proposals were also made at the same time to reform the judicial education and training system, however the creation of the Appointments Board has taken precedence, and judicial education and training reforms are still under development by a working party.

**Spain:** In 2001 proposals were made to modernise the Spanish judicial system, including new criteria for the training and evaluation of judges<sup>15</sup>. It proposed an objective assessment of the abilities and professional experience of those being appointed to the judiciary with substantial legal experience (who would have to spend more time training at the Judicial School), and also recommended broader training programmes for all members of the court system (including secretaries and administrative personnel) and greater connections between universities and the judiciary. These proposals resulted in the adoption of a reform programme in 2003<sup>16</sup>. These reforms restricted the appointment of experienced legal professionals to junior judicial positions, and required that judicial promotions and transfers would in future

---

<sup>15</sup> The 2001 State Agreement for Justice ("Pacto de Estado por la Justicia") was preceded by a series of reports from the Spanish judicial self-governing body (CGPJ) addressing the same issues (see the 1997 *Libro Blanco de la Justicia* and CGPJ, 2000).

<sup>16</sup> Reform of the 1985 *Ley Orgánica del Poder Judicial* (LOPG)

require evaluation of merits and judicial specialisations. These evaluations will be conducted either through examinations or an evaluation of previous experience in specialised jurisdictions (i.e., administrative, labour, and commercial courts). The reforms also provide for the introduction of new technology for information and communication (ICTs), and this points to further reforms based around the introduction of case management systems, and programmes for implementing legal decisions and developing relationships with citizens and other external institutions. This in turn means that new professional skills (and skills training) will be required of judges and court staff.

#### **4. Faculty development**

The development of faculty or trainers is a key function for judicial education bodies, and often the first step is training trainers – those who will train others and develop a network of trained judicial educators. Judicial education bodies have traditionally favoured judges as faculty in response to judicial reluctance to receive or be perceived to be receiving outside instruction. However, as law has become more complex and judges remain generalists, and as demand for training in social issues has also grown, those who provide judicial education have increasingly recognised the need for specialists. There are also some inherent problems with relying too heavily on judges as trainers. Judges, even those who have been law professors, are not necessarily good teachers, and teaching adults usually requires different teaching skills. Many judicial education bodies engage skilled professional adult educators to improve the teaching skills of the faculty.

##### **(a) Training the trainers**

In **Austria**, judges who are best-qualified in their specialist fields of work as well as lawyers, university professors and other legal experts act as trainers for legal topics. In other, non-judicial areas, especially for training in professional skills, experts from the respective professions are chosen as trainers. There is also a regular series of **train-the-trainer** seminars for judges, which the Ministry of Justice initiated in 1997. These seminars deal with training methods, teaching techniques, teaching relationships between trainer and trainee, communication theory, and personality development. These courses utilise video-training, incorporate feedback for the judges who act as trainers, and are presented by external experts. The general view is that these train the trainer seminars have improved the quality of in-service training for judges.

**(b) Alternative faculty development programmes**

The National Judicial Institute in Canada has developed a **judicial peer education model** in which judges take the lead in planning and delivering courses, not the NJI. It does not follow the train-the-trainer model. It does not bring judges together to learn the content and design of a particular subject which they then take back to teach their colleagues. It attempts instead to bring judges together to learn how to deliver judicial education, and for the judges themselves to develop a wide range of educational initiatives in their own courts, with the assistance of the NJI or other judicial education providers in Canada.

The faculty development programme began with the introduction of Social Context training from 1996-2003. One of the main objectives was to develop a cohort of judicial education leaders who had advanced understanding of social context issues and whose skills and engagement as judicial educators were well developed. NJI offered a programme in curriculum design and faculty development to enable judges to acquire the advanced skills needed to effectively plan, prepare, and deliver social context education programmes for their colleagues. It was hoped as well that judges who completed the faculty development programme would provide continuing peer leadership in their own courts and form a network to share resources and curriculum with other colleagues.

This two-course programme brought judges together to learn the principles of good social context education design. The first part involved a 3-day course on the information and skills needed to develop and deliver effective social context training. Before the next course, judges were required to design an education program using these principles, and were encouraged to choose a topic area that interested them and which they thought would be practical and relevant for their colleagues. Judges had access in this period to a team of academics, judges, and community members with expertise on equality and social context issues and adult-learning. The judges' programme outlines were then presented at the second course where feedback was provided. Judges were then encouraged to deliver their programmes to their own courts within one year of completing their coursework. NJI provided a "Handbook" which contained readings and a series of forms to assist judges in following the curriculum design process laid down in the faculty development programme. When a judge's programme was implemented at their own court and a final report completed, judges received a Certificate of Completion from the NJI signed by the Chief Justice of Canada to recognise their professional expertise in the field of integrated judicial

education. Examples of programmes implemented under this scheme include: expert evidence; poverty, disability law; aboriginal youth justice; domestic violence; judge as problem solver; judicial notice; self-represented litigants; credibility assessment and diversity; judicial needs assessment; community involvement protocols; drug courts and the harm reduction principle; racial profiling; impact of social context of civil law development; evidence in context; aboriginal family law dialogue; developmental disability.

While the Social Context Education Program was the first to use this Faculty Development scheme, the NJI has steadily introduced judicial faculty development for many of its other courses. This can take the form of a one-day meeting in advance of a course to review the material and approach, refresher sessions with workshops or more extensive advance faculty development. The Faculty Development programme is closely linked to the NJI's ongoing curriculum renewal.

### **(c) Mentoring**

Most jurisdictions have some form of mentoring programme for judges, although they are in general not considered to be completely successful, in large part due to the ad hoc nature of mentoring and a lack of specific training for mentors.

**Denmark:** There are two means of entering the judiciary in Denmark. The first is to be hired as a deputy judge after completing a law degree, followed by several years of training under the supervision of a judicial "mentor"<sup>17</sup>. All deputy judges work in larger district courts for several years before their permanent appointment. During this period every deputy judge is assigned a judge who is responsible for his or her training programme. Training is to a large extent on the job training, with deputies responsible for their own judgements. But the judge "mentor" must work out a training programme for the deputy, which specifies the responsibilities of the deputy judge, and how long the deputy must work within specific legal areas. The mentor attends some of the court hearings presided over by the deputy, goes through the deputy's decisions, provides feedback and generally guides the deputy on how to perform duties. Once a year, the mentor interviews the deputy judge and evaluates

---

<sup>17</sup> The other way is to work as a section head in the Ministry of Justice prior to appointment as a judge. Those who pursue this second route work for nine months as a part-time judge in one of the two High Courts.

and assesses his or her skills. The mentor must then make a written statement on the deputy, which is submitted to the Council for the judiciary<sup>18</sup>.

## **5. Large-scale curriculum development programmes**

The most comprehensive approaches to developing the judicial curriculum are in Canada and the US.

### **Canada: National Judicial Institute's Curriculum Development**

The NJI took the view that determining what it is that judges need to learn is particularly difficult in common law systems because there were limited resources for curriculum development, there are assumptions about what judges already know, and there is often judicial resistance to systematic curriculum planning through such means as observing judges and identifying competencies. As a result they identified the best approach to be a continuous effort to identify judges' overall education needs, but one that builds gradually using a number of sources. These sources were both judicial and non-judicial and reflected a "3 pillars approach to planning" involving judges, academics/researchers, and the community.

Judicial Input included:

- Judicial Associates
- Advisory and Planning committees for curriculum and course development
- More informative, useful course evaluations
- Reviewing judges' individual education plans
- The "DELPHI" process<sup>19</sup> which involved 40 judicial volunteers (new, experienced, generalist, and specialist judges.)
- Gathering, feeding back their views
- Gradually building a consensus on what judges should know, be able to do and understand about the context of judging

Non-Judicial input included:

- Experts in pedagogy, curriculum development
- Social context advisory committee
- Community advisory committees (at court level)

---

<sup>18</sup> After the three-year training period, deputies must take a formal examination and be interviewed by the Council for the Judiciary, which makes the final decision on continued appointment.

<sup>19</sup> The Delphi method involves a series of written questionnaires sent to a single group of judges to progressively focus their views on judges' educational needs. The first questionnaire is usually quite broad in scope and asks the relative importance of a number of tasks performed by judges, which tasks they and their colleagues perform most frequently, and which tasks they feel are performed most poorly within the profession. The second questionnaire is based on the results of the first and asks more specific questions about those tasks that emerged as most important, frequently performed, or performed most poorly. Depending on the objective of the process, there may be additional questionnaires sent to the same judges.

Between 1999 and 2004, the NJI initiated the Canadian Judicial Learning Network Project (CJLN). This project was designed to address several issues which were generally agreed to face judicial education in Canada in 1999: a lack of coordination, an absence of resources to systematically plan and develop judicial education programming, and limited capacity to expand teaching methods or develop partnerships. The CLJN was then used to develop a multi-stage approach to judicial curriculum development, which involves:

1. Identifying judicial learning needs and developing a sense of an overall set of learning objectives for judges.
2. Building partnerships with other organizations, including universities and courts across Canada as well as professional associations such as the Canadian Institute for the Administration of Justice and the Canadian Association of Provincial Court Judges.
3. Working to enhance collaboration between organisations which provide judicial education programming to enable them to determine together how, and by whom, the various parts of the curricula are offered;
4. Establishing curricula to guide the development of programming that ensures that over time, judges have access to the full range of education in each area;
5. Implementing a number of curriculum design principles and processes; working to develop a sustainable approach to the integration of substantive law, skills and social context;
6. Using a range of teaching methods; developing an integrated plan for the best use of technology and pedagogical methodology in the delivery of judicial education;
7. Promoting individual planning; developing a means by which judges can assess their own learning needs and develop individualised plans to meet them and to reinforce the view that continuing judicial education is an essential element of an ongoing judicial career.
8. Preserving, reviewing and adapting the curriculum on an ongoing basis;
9. Adopting policies in support of judicial education
10. Ongoing evaluation of all aspects of programmes.

As a result, the NJI have organised a judicial training and education curriculum built around:

- judicial career
- craft of judging
- substantive law
- social context
- distance education
- contemporary issues

In order to develop this curriculum the NJI has:

- conducted reviews of major programmes and consulted with judges and advisory groups in reviewing judicial learning needs.
- developed a planning tool for judges (the **Individual Education Plan**) which is designed to help judges with identifying their learning interests and crafting a personal program of education over a 2-3 year period (see below for details)
- implemented a process to monitor and preserve the ‘best learning sessions’ as **modules** of education. These modules include learning objectives, learning activities, key faculty members and learning materials. They are made available to courts across the country as a means of making the best of NJI programmes available to local courts and to improve the efficiency and cost effectiveness of judicial education at the local level. (See Part 4 for details of NJI modules)
- adopted a cyclical planning model for NJI seminars to ensure that over time all components of the curriculum are available to judges.
- planned some courses in partnership with other organisations
- Created a Calendar of Judicial Education which is printed each year and is also kept up to date on the NJI website
- developed an online curriculum database and integrated work process in which agendas for courses are entered online and are linked to faculty information, materials, evaluations and scheduling.
- developed a “Judicial Library” as a searchable repository for course materials. Over time, judges will be able to personalise this library for their own use. The Library “document management system” will also grow to permit planning committees to use it as an online meeting and document development process.

### **Individual Education Plan (IEP)**

One result of this curriculum planning has been the Individual Education Plan (IEP), an innovative education planning tool for judges developed by the NJI. It is a structured process by which judges identify their learning interests, set their learning priorities and plan their participation in judicial education seminars. Judges complete it online entering information in a series of screens. The information categories contained in the IEP correspond to the categories contained in the NJI online curriculum database and schedule. The information a judge enters into the system about his or her needs and preferences accumulates to the point at which a final button is pressed and a list of courses matching the judge's interests and priorities is generated. Judges then filter this list to select those courses that they will attend.

The IEP was developed for several reasons:

- it is part of a commitment made by NJI to guide the development of judicial education programming to ensure that, over time, judges have access to the full range of education in each area. The IEP helps judges access the curriculum in a systematic way.
- IEP reflects the belief in judicial education as career-long professional learning. Many professional sectors provide skills-based inventories which become the basis of setting a learning plan. The IEP is the first comparable process to offer such a planning tool to judges.
- IEP acknowledges that judges have different learning needs, and they need to be able to shape their own learning path.
- IEP provides a 'feedback loop' to NJI. If judges are interested in particular topics or skills but no courses match their interest, the tool 'tells' NJI about gaps between its offerings and judicial interests. New judges are a particular focus of the IEP process.

Consultants assisted in an initial research and consultation process for the IEP, judges provided input on skills they considered essential to being a judge (using the DELPHI process), and these were compared with the existing curriculum. The software and coding system was then built and tested. The IEP system is kept constantly up to date and can be used at any time by judges to update their own plans. This is felt to be more effective than simply reading the online or paper calendar, as it enables judges to review their plans online, revise an existing plan or start a new education plan.

## **On-line resource directory**

The following provides a number of information resources on judicial training needs assessment, curriculum development, programme evaluation and the development of strategic plans for judicial training.

JERITT: The Judicial Education Reference, Information and Technical Transfer Project (this site provides extensive materials on judicial training programme development and assessment in its resource, publications and database sections of its website)

<http://jeritt.msu.edu/>

*Developing Curricula for Challenging Topics*, NASJE Newsletter Fall 2003  
<http://nasje.org/archives/index.htm>

*Designing Complex Curricula*, Kathleen Sikora, NASJE Newsletter Fall 2003  
<http://nasje.org/archives/index.htm>

*New Judge and Continuing Judicial Studies: Curriculum Designing*, Judicial Council of California  
<http://www.courtinfo.ca.gov/jc/>

*Skills Development: Needs Assessment and Evaluation* Brian Bank, NASJE Resources Fall 2002  
<http://nasje.org/archives/index.htm>

*Impact Evaluation or “Everything I Know About Impact I Learned from Maureen Conner*, Blan Teagle, NASJE Winter 2003  
<http://nasje.org/archives/index.htm>

*Building and Implementing an Effective Court Performance Measurement System*, Ingo Keilitz, NASJE Newsletter Winter 2006  
<http://nasje.org/archives/index.htm>

*360-degree Feedback: Are You Using this Tool in Your Court Organization?* Brenda Wagenknecht-Ivey, NASJE Summer 2003  
<http://nasje.org/archives/index.htm>

National Association of State Judicial Educators (NASJE) 2003 Strategic Plan  
<http://nasje.org/business/stratplan.htm>

California Judicial Council (Strategic Plan)  
<http://www.courtinfo.ca.gov/jc/>

New Mexico Judicial Education Center (Strategic Plan)  
<http://jec.unm.edu/training/index.htm>

National Center for State Courts (see resource and database sections of website)  
<http://www.ncsconline.org/>

American Academy of Judicial Education (see resource section of website)  
<http://www.aaje.org/>

Institute for Court Management (for programmes evaluating impact of judicial training  
programmes)  
[http://www.ncsconline.org/D\\_ICM/icmindex.html](http://www.ncsconline.org/D_ICM/icmindex.html)

## **Part 4. Training Programme Content**

This part of the report examines the breadth of judicial training programmes and courses offered in other jurisdictions. It illustrates the conceptual categories jurisdictions offer education and training programmes in, and presents curricula summaries for a number of jurisdictions where the education programmes are most diverse. It also highlights some of the ways jurisdictions are meeting new demands for judicial education and skills development.

An international analysis of the role and function of the judge<sup>20</sup> identified the need for judicial education in the following areas:

- judicial independence
- judicial accountability
- judicial ethics and conduct
- sensitivity training in contemporary social issues
- gender, ethnic and other disadvantaged group sensitivity training
- media-bench relations
- judgment writing and delivery
- assessment of damages
- the science of fact-finding
- judicial skills (sensitivity to witnesses, litigants and the public)
- judicial reasoning
- computer training
- alternative dispute resolution
- case-flow management
- time management
- working to goals training
- modern business law including corporate law
- banking law
- bankruptcy law
- court management skills
- stress management and adapting to change
- judicially exercised discretion
- intellectual property law
- contract law
- new developments in statutory and case laws
- economic and social impact of judicial decisions

---

<sup>20</sup> Hammergren (1998)

## Type of training provided

All jurisdictions covered in this report have varied judicial training curricula, although some offer a wider range of programmes and approaches than others. The main curriculum areas include:

- Substantive law
- Social context
- Legal skills (“judge craft”)
- Judicial ethics
- Judicial skills (management, media, technology, languages)
- Personal welfare

All the jurisdictions provide training and education in substantive law, but they have all also responded in varying degrees to demands from judges, court staff and the public for programmes beyond those that deal with strictly substantive legal issues. Significant elements of all jurisdictions’ curricula now deal with the social context of judging, judicial ethics, legal skills or “judge craft” (opinion writing, sentencing, dealing with different modes of evidence, etc.) and other judicial skills (in communication, management, language and the use of technology). Most recently there has also been a growing trend towards providing programmes that address judges’ personal welfare concerns.

Today many jurisdictions (such as the US, Canada, Austria, Germany and Australia) provide the enter range of curriculum options to all judges, and most of the remaining jurisdictions provide programmes in almost all areas. Italy currently has perhaps the least varied training programme, primarily involving traditional lectures on more formal legal subjects.

*See Table 3 below for summaries of the training content in each jurisdiction.*

**Table 3. Areas of Judicial Education and Training Covered in Curricula**

	Substantive Law	Social context	Legal Skills <sup>21</sup>	Ethics	Other Judicial Skills <sup>22</sup>	Personal welfare
Austria	✓	✓	✓	✓	✓	✓
Canada	✓	✓	✓	✓	✓	✓
Denmark	✓		✓	✓	✓	
France	✓	✓	✓	✓	✓	
Finland	✓	unknown	unknown	unknown	unknown	unknown
Germany	✓	✓	✓	✓	✓	✓
Italy	✓	✓		✓		
Netherlands	✓	✓	✓	✓	✓	
Portugal	✓	✓	unknown	unknown	unknown	unknown
Spain	✓	✓	✓	✓	✓	
United States	✓	✓	✓	✓	✓	✓
Australia	✓	✓	✓	✓	✓	✓

<sup>21</sup> Legal Skills: e.g., decision-writing, sentencing, handling the courtroom, mediation

<sup>22</sup> Other Judicial Skills: e.g., management, media relations, computer skills, language skills

### ***Social Context courses***

All jurisdictions covered in this report provide judicial education and training programmes which address the social context of law and the judicial process, usually including subjects related to the potential for gender, race, age and disability discrimination in the legal process. The National Judicial Institute in Canada is particularly well known for its social context education which covers the impact of diversity and equality jurisprudence in the day-to-day work of judges and issues related to judicial independence, impartiality, discretion, decision-making and the judicial process.

### ***Legal Skills (“Judge Craft”) courses***

All the jurisdictions provide training and education in what are usually referred to as “judge craft” skills - or the specific legal skills judges need in the courtroom. These cover training in areas such as: opinion writing, sentencing, dealing with expert evidence, vulnerable witnesses, unrepresented litigants, and the use of mediation and alternative dispute resolution techniques.

### ***Judicial Ethics courses***

All the jurisdictions covered in this report also provide education and training programmes to judges on judicial ethics. These cover a range of issues such as avoiding bias in judging, dealing with conflicts of interest and ethical issues related to specific legal issues (e.g., in reproductive medicine).

### ***Judicial Skills courses***

The definition of judicial skills is growing increasingly wide, as demands grow for judges to manage courts and staff, to interact more with the public and the media, and for cases to be conducted in other languages or through the use of new technologies or methods involving witnesses and evidence. All jurisdictions covered in this report provide courses in communication, court management, use of technology. A number such as Canada, Austria and Spain also provide language training for multi-lingual proceedings.

### ***Personal Welfare courses***

Many of the jurisdictions covered in this report have also introduced programmes for judges on their personal welfare. These are primarily focussed on issues such as stress management for judges and maintaining physical and psychological health,

although a new course in Canada also encourages judges to begin planning for retirement and offers advice on financial and lifestyle planning. The NJI's Retirement Goals and Strategies module includes lectures, group and individual exercises on issues as:

- Income planning for retirement
- Job pension and benefits
- Successful Strategies for Retirement
- Tax Planning and Estate Planning
- Ethical Issues Faced by a Retiring Judge
- Physiological Aspects of Getting Older
- Introduction to Lifestyle Planning

The Ontario Conference of Judges provides a "Wellness Session", where a National Health Service doctor addresses the provincial judges about how judges can cope with stress and lifestyle issues that impact on staying well as judges. One judge indicated that it is uncharted water for a group this size, but having covered the issue before in much smaller groups, the conference felt that even if some questioned whether it should be in an education programme, it was an important topic for judges and was important to present it to the largest group possible.

## **Curriculum summaries**

The following provides outlines of the different judicial education and training curricula offered by different jurisdictions. Part Five of this report examines the methods used to deliver these curriculum elements.

### **1. United States**

#### **National Judicial College (University of Nevada, Reno)**

The NJC offers an average of 95 courses a year to over 2,700 judges. The NJC curriculum concentrates on the art and skill of judging, and on new trends in the law.

The key elements of the judicial education programme include:

- Core curriculum (on campus)
- Seminar series (at locations around the country)
- Professional Certificate
- Web-based courses
- Judicial Studies programme (Masters and Ph.D)

#### **Core curriculum**

The core curriculum includes over 50 two-day to three-week residential sessions offered throughout the year. Courses utilise NJC's technology-enhanced classrooms, a legal resource center, a state-of-the-art model courtroom, modern seminar rooms, distance education facilities and a computer lab at the University of Nevada.

Some of the current topics include

- judicial ethics
- relationships with communities and the media
- good caseload management
- alternate-dispute resolution techniques and management skills
- building a bias free environment in the courtroom
- computer uses for judges
- managing cases involving persons with mental disabilities
- enhanced judicial bench skills
- logic and opinion writing
- essential skills for appellate judges
- scientific evidence and expert testimony

- management skills for presiding judges
- threats to the independence of the judiciary
- civil mediation
- court management for tribal court judges
- managing complex litigation
- criminal pre-trial and post-trial challenges
- best practices in handling pro se litigants

### **Professional Certificate**

The Professional Certificate in Judicial Development is an innovative program of the NJC designed for judges who want to concentrate their studies in a specific academic area including:

- Administrative Law Adjudication Skills
- Dispute Resolution Skills
- General Jurisdiction Trial Skills
- Special Court Trial Skills
- Tribal Judicial Skills

### **Seminar Series**

The Seminar Series is held at a range of locations across the US, is designed for judges' professional and personal growth, and is taught by experts in their fields of study. This year's programme includes seminars on:

- When Justice Fails: Threats to the Independence of the Judiciary
- Current Issues in the Law
- Evidence in a Courtroom Setting
- Handling Capital Cases
- Essential Skills for Appellate Judges
- Law and Popular Culture
- Enhancing Judicial Bench Skills
- Conducting the Trial
- Judicial Philosophy and American
- Ethical Issues in the Law: A Novel Approach
- Handling the Criminal Case

### **Online Courses**

These web-based on-line courses currently include:

- Selected Criminal Evidence Issues
- Evidence Challenges for Administrative Law Judges
- Handling Small Claims Cases Effectively
- Ethics, Bias and Judging: Reaching Higher Ground
- Traffic Adjudication for Administrative Law Judges
- Rural Courts
- Ethics, Bias and the Administrative Law Judge

**Judicial Studies programme (Masters and Ph.D. level)**

The Judicial Studies programme provides a formal academic that treats judicially-related issues from a liberal arts perspective, including the humanities, social, behavioural and natural sciences, and provides a series of courses on technical legal subjects.

## **Federal Judicial Center (Washington, DC)**

The FJC conducts over 50 seminars and conferences annually for on average 2,000 federal judges, and 10,000 court staff. The Center provides orientation and continuing education through:

- Face-to-face conferences
- Seminars
- Workshops
- Distance learning/ web-based programmes
- Broadcasts on the Federal Judicial television Network

Seminars on particular topics for small groups of judges usually last two or three days, and are often conducted in collaboration with law schools or other educational institutions.

***Center conferences and seminars:*** Face-to-face conferences, seminars, and workshops continue to be the primary vehicle for education for federal judges. Programmes that judges attend in person include orientation seminars for newly appointed judges, periodic national and circuit-based workshops, and small-group seminars devoted to specific topics. Seminars on particular topics for small groups of judges usually last two or three days, and are often conducted in collaboration with law schools or other educational institutions. Recent topics covered include:

- international litigation
- employment law
- law and terrorism
- mediation skills
- law and genetics
- law and society
- law and science
- humanities and science

**Court-based seminars:** the Center offers several “in-court seminars,” for which FJC faculty travel to individual district courts that request such a seminar. Recent topics have included:

- developments in biology
- improving the editing and writing of opinions
- intellectual property cases
- first appointments to the federal judiciary (1789-1811)
- law and literature

### ***Streamed programmes***

There are “streamed” programmes for specific types of federal court judges to address specific areas of concern related to their courts. These include individual workshops for federal district, bankruptcy and magistrates judges, and conferences for Chief district judges.

### ***National Workshops***

Recent national workshops for district judges covered:

- USA PATRIOT Act and the PROTECT Act
- updates on the Federal Rules of Evidence
- Supreme Court decisions
- application of the Code of Conduct for United States Judges
- management of federal capital cases
- immigration law
- intellectual property
- case and calendar management under the federal courts' automated Case Management/Electronic Case Files (CM/ECF) system

Workshops for bankruptcy judges covered:

- developments in Chapter 7, 11, and 13 cases
- changing role of judges
- judging in a diverse society

Workshop for magistrate judges covered:

- search and seizure of computers and computer-stored data
- managing electronic discovery disputes in civil cases
- authorisations to collect electronic communications

### ***Chief Judges' Conferences***

The Center also streams conferences for federal chief district judges, focusing on budgeting, juror utilisation, and managing defense costs in federal capital cases. The conference for chief bankruptcy judges provided presentations on:

- management decision making
- consolidation of services
- maintaining services and staff morale in times of declining resources

### ***Federal Judicial Television Network (FJTN)***

The Center also broadcasts programmes on the Federal Judicial Television Network (FJTN). FJTN broadcasts primarily for judges and legal staff and analysed US Supreme Court cases that presented issues likely to affect federal court dockets, including:

- Evidence
- Sentencing
- civil rights litigation
- Habeas Corpus in Alien Removal Cases
- PROTECT Act
- periodic updates on bankruptcy law
- orientation series for new judicial law clerks

### ***Web-based distance learning (Resource Pages)***

One of the main distance learning tools is the Center web-based resource pages, including:

- a resource page on electronic discovery and evidence including relevant local rules and sample orders, and a regularly updated bibliography of case law and articles
- a resource page on courtroom technology including manual on effective use of courtroom technology and research on the use of video-conferencing in criminal proceedings and the use of animation, simulations, and virtual environment technology.
- a model survey that bankruptcy judges can use to get feedback about their performance from attorneys who practice before them.
- a resource page on managing capital habeas cases, which includes a guide to law and case-management procedures used by federal judges, case-management plans, general procedure orders, budgeting forms, scheduling orders.

### **Combined programmes for judges and court staff**

The FJC also provides combined training and education programmes that judges and court staff attend together. Recent programmes have included:

- sentencing policy institute for district judges, probation and pretrial services officers, federal prosecutors, and federal defenders.
- initiating or revising Alternative Dispute Resolution programmes.
- executive team-building programmes for new chief judges and their clerks
- successful techniques for juror management and utilisation
- Case Management/Electronic Case Files (CM/ECF) operational practices
- implementing appellate electronic case filing.

### **National Center for State Courts**

The NCSC provides education and information services to state courts and court personnel in areas including:

- caseflow
- jury and management
- records management
- planning and budgeting
- court security
- computer automation

## 2. Canada

### National Judicial Institute (Ottawa)

The NJI has an extensive curriculum organised around the following main areas of judicial education and training:

- judicial career
- craft of judging
- social context education
- substantive law
- specialised education
- modules
- web-based learning and information provision
- computer skills training

#### ***Judicial Career***

A significant part of the judicial education curriculum has been designed for judges at different stages of their careers, with specific courses on:

- Education for newly appointed judges
- Education for longer serving judges
- Judicial mentoring
- Chiefs and associates
- Appellate court judges
- Retirement planning

#### ***Craft of Judging***

The responsibilities and tasks a judge performs are numerous and varied. The judicial role incorporates core professional skills but also requires the flexibility to adapt to an ever-changing system of dispute resolution. The education curriculum is designed to further develop the unique skills associated with judging, including courses on:

- Judicial dispute resolution
- Dealing with the Charter of Rights and Freedoms
- Trial process
- Decision making
- Language training
- Computer skills training

### ***Social Context Education***

Seminars that examined:

- the impacts of diversity and equality jurisprudence on judges
- judicial ethics
- judicial independence, impartiality, discretion
- judicial decision-making
- judicial process
- gender
- aboriginal peoples
- race
- age
- disability

### ***Education in Substantive Law***

Educational programming is available through NJI and other organisations on a range of legal topics, with overall curriculum development in the following fields:

- Criminal
- Family
- Civil
- Evidence

Other seminars provide access to more specialised programming, often in areas where there have been major, recent developments in the law or related disciplines.

### ***Specialized Education***

Specialized education has been developed on emerging trends and topics to address the changing needs of what is happening in today's courtroom, including courses on:

- Domestic application of international law
- Problem solving jurisprudence
- Violence and abuse in intimate relationships
- Science and the law
- Judicial safeguards for preventing wrongful convictions
- Youth criminal justice
- Aboriginal law

### ***Modules of Education***

There are over 100 different modules (units of educational programming for court-based use) offered on a wide range of topics. For a full list see

[www.nji.ca/Public/modules.cfm](http://www.nji.ca/Public/modules.cfm)

### ***Court - Based Programming***

Almost 50% of the education available to judges in Canada is delivered through court-based seminars. Each court in Canada offers court-based education to its sitting judges. The NJI provides planning and coordination assistance for a number of these seminars. In many cases, the court and the NJI help each other so that the court may deliver an NJI module as part of its seminar, or the court may develop educational programming on a topic that then becomes part of the permanent NJI curriculum.

### ***Technology-Based Distance Education***

The NJI is developing technology-based distance learning (TBDL) as a complement to its face-to-face programming. TBDL addresses, for example, uneven access to content and problems with the timeliness of content. Materials available on-line can be distributed widely and can be quickly and regularly updated. Similarly, TBDL can provide a "just-in-time" model of education, allowing judges to find necessary information quickly and easily. NJI offers courses in a variety of formats: audio-video conferencing and web-casting, video-streaming, two-way text communications courses, video resources and electronic database tools.

### ***Web Streaming Courses***

The NJI, in partnership with the Ottawa courts and the faculties of law (common and civil) at the University of Ottawa, hosts noon hour meetings of judges from the broad range of courts located in Ottawa to discuss topics of interest. Three such sessions have been held and are available for viewing by judges across Canada. Other taped sessions include presentations on internet security.

### ***Electronic Bench Books***

The NJI has developed a series of EBBs including:

*The Mentally Disordered Offender*

*Family Law* (prepared by the Superior Court of Justice, Ontario)

*Evidence*

*Child Witness*

*The Youth Criminal Justice Act (YCJA)*

*Loi sur le système de justice pénale pour les adolescents (LSJPA)*

All EBBs are regularly updated by experts in the respective subject areas. In addition, there are several other books in development expected to be released within the forthcoming year which include:

*The DNA Databank*

*Domestic Violence*

*The Self-Represented Litigant*

### ***E-Letters***

Every three weeks, electronic newsletters on family law and criminal law are available to judges through their JUDICOM email addresses. Each newsletter includes:

- recent developments in case law
- developments on new or proposed legislation
- references to recent articles of interest

Subscribers receive two e-journals, *Psychology in Family Law Digest* and *Family Law Psychology Briefs*, both providing current summaries of the latest social science research. They also have access to *Criminological Highlights*, which summarises recent research in this area of the law.

### ***Electronic Judicial Library***

In partnership with FJA, the NJI has launched a new digital library with secure access for the judiciary.

### ***Web Resources Center***

The NJI/JUDICOM Online Resource Centre is intended to facilitate judicial research on the Internet by providing links of relevance to judges across the country.

***Computer Training Program***

The Computer Training Program (CTP) provides training to federal judges in both the JUDICOM system and in the use of common computer applications to help improve the efficiency of the Canadian judiciary. The objective of the programme is to develop judges' awareness, abilities, and confidence in computing in the context of performing their judicial duties; and provide training to meet their present and anticipated needs.

### **3. Australia**

#### **National Judicial College of Australia curriculum**

In its first few years of operation, the College has not followed the approach of organising large conferences with formal lectures but has preferred structured discussions of practical problems and other forms of active learning in small discussion groups. Most College programmes are for groups of no more than 25 to 30 participants.

One of its main programmes is the Phoenix Judges Program, a residential programme offered every year designed to provide an orientation programme for new judges and to provide a programme of professional development, reflection and workshops for experienced judges. The programme is developed by a Committee of judges and includes sessions on trial management, writing judgments, court craft, ethical issues, sentencing, alternative dispute resolution, cultural awareness, and stress/lifestyle issues. The Phoenix programme places a strong emphasis on using the knowledge and skills of the participating judges.

#### ***Phoenix Judges Program***

This residential programme, offered every year, is one of the main elements of the curriculum. It has two aims:

- to provide an orientation programme for new judges
- to provide a programme of professional development, reflection and workshops for experienced judges

The programme is developed by a Committee of judges and includes sessions on:

- trial management
- writing judgments
- court craft
- ethical issues
- sentencing
- alternative dispute resolution
- cultural awareness
- stress/lifestyle issues

### ***National Judicial Orientation Program***

The National Judicial Orientation Program is aimed at newly appointed superior and intermediate court judges from around Australia. The program includes sessions on:

- judicial ethics and conduct
- contempt
- assessing the credibility of witnesses
- evidence
- judgment writing
- cultural awareness
- court craft
- unrepresented litigants
- sentencing
- alternative dispute resolution
- psychological and physical health

### ***Travelling Judicial Education Program (module-based)***

The College presents a Travelling Judicial Education Program, a series of one-and-a-half day programmes for judges in capital cities around Australia. The programme contains half-day modules on subjects such as:

- litigants in person
- sentencing
- disability awareness
- court craft
- expert evidence

### ***Distance education***

The difficulty in getting leave from busy court lists and the financial costs of travel to capital cities or other states are major barriers for some judicial officers in attending face-to-face presentations. For these reasons in 2004 the College began developing pilot programs in technology-based distance to supplement its face-to-face programs.

The **Australian Institute of Judicial Administration** has also been involved in developing courses in a number of specialised areas including

- gender awareness
- cultural awareness
- court technology
- case management

The **Judicial Commission of New South Wales** conducts an ongoing programme of judicial education for judges in NSW, including new judges' orientation conferences, and seminars and conferences for judges and magistrates covering issues such as:

- Judicial skills and knowledge
- Court craft
- Decision-making
- Sentencing
- Judicial administration
- Judicial conduct
- Stress management
- Court practice and procedure
- Dealing with difficult litigants
- Children giving evidence
- Appellate process
- Estoppel
- Negligence
- Drug courts
- Children's court
- DNA for judges
- Anti-Terror legislation
- Unrepresented accused in sexual offence proceedings
- Psychopathic profiling
- Suppression orders

It also has an extensive publication program, with the production of:

- 'Bench Books' for each court
- a regular journal (the Judicial Officers Bulletin)
- research monographs
- statistical papers
- online facilities (the Judicial Information Research System, which includes a sentencing database as well as online access to cases and statutes)

The **Judicial College of Victoria** was established in 2003. It is involved in assisting with court conferences, organising seminars and workshops for judges and magistrates. The curriculum encompasses:

- Face-to-face programs
- Web-based distance learning
- Site visits
- Two-year induction framework for new appointees
- Judicial education packages

### ***Face-to-Face Programs***

This involves learning from and with peers in law and other disciplines. It encompasses small groups (no more than 30), cross-jurisdiction programs, and is interactive & scenario-based to share knowledge and experience. Utilising peer support, experiential learning and reflective practice principles, the curriculum offers a range of programs to judicial officers in Victoria in five categories:

- New appointees induction framework
- Skills development
- Social context
- Substantive law and practice
- Web-based learning
- Site visits
- Conference assistance to the jurisdictions

### ***Skills development***

Each year a residential **Judgment Writing Workshop** is conducted. The lead tutor is US Professor of Rhetoric, James Raymond. An innovative feature of the workshop, borrowed from New Zealand, and designed to improve the quality of written judgments, is the inclusion of professional writers such as novelist Ms Helen Garner and poet Mr Christopher Wallace-Crabbe in the teaching faculty. Throughout the workshop judicial officers constructively critique their own and each other's judgments. Differing approaches to **Courtroom Management** are canvassed and shared. **Communication skills** (verbal and non-verbal) are practised, techniques for diffusing highly charged situations, and ways of working with unrepresented litigants and managing aggressive barristers are worked through using scenarios and role plays.

### ***Social context***

Cross-Cultural Workshops are an integral part of the College's curriculum when judicial officers mix with diverse ethnic communities to learn how they see our law from their cultural perspectives. Those involved so far include:

- Aboriginal
- Vietnamese
- Horn of Africa Communities

Awareness Programs are conducted to increase judicial sensitivity to the potential for secondary victimisation by the legal system. Those involved so far include:

- children in the criminal justice system
- complainants in sexual assault and family violence cases
- persons with mental and physical disabilities

### ***Substantive law and practice***

A range of seminars are conducted throughout each year to keep judicial officers up-to-date with the latest cases and legislative changes.

### ***Conference assistance to the jurisdictions***

Each year the College provides educational input and planning and administrative assistance to some of the conferences conducted by individual jurisdictions.

***JOIN (electronic resources for self-directed learning):***

Cross-jurisdictional intranet for judicial officers, including:

- JCV electronic benchbooks and manuals
- increasing use of technology
- sharing of knowledge and information

User-friendly resource that even the most technologically-challenged judicial officer can master

***Visits and Field Trips (learning by observation & reflection):***

Visits and field trips to correctional, forensic and rehabilitative facilities - and others (Urban Seed tour of back alleys of CBD) to expand thinking and introduce different perspectives

***Two-Year Induction Framework for New Appointees***

To ease the transition from legal practice to Bench the College has developed an induction framework that operates over first two years post-appointment. It is designed to ensure that new appointees are well equipped to perform their judicial functions competently and with confidence at the end of the two years. The framework comprises three components:

1. Internal induction processes [immediate]
  - Conducted in and by each jurisdiction
  - JOIN & online legal research training
2. Orientation programs [within six to twelve months of appointment]
3. College cross-jurisdiction activities [within two years of appointment]  
Covering core judicial skills and knowledge:
  - skills development
  - social context
  - substantive law & practice
  - visits to correctional, forensic and rehabilitation facilities

***Judicial Education Packages***

To address specific areas the College is developing training packages in Sentencing, Family Violence, Sexual Assault and Court Craft.

It is also reviewing and updating sentencing manuals and benchbooks for the Victoria courts.

## 4. Spain

There are two main objectives to the courses offered at the *Escuela Judicial* (Judicial School) in Madrid:

- fostering the specialisation of judges of the ordinary jurisdictions
- keeping judges in touch with emerging legal areas (i.e. biotechnologies, e-crime, telecommunications law, etc.)

### ***Centralised courses in Madrid***

There are a series of one-week courses, where attendance is voluntary, organised into six training and education areas:

- civil law
- criminal law
- administrative law
- social law
- European law
- interdisciplinary issues

More recently two new types of programmes have been developed:

- on-line courses
- decentralised courses held outside of Madrid

### ***On-Line courses***

The Judicial School now has on-line courses in:

- Catalan civil law
- Basque civil law
- Economics
- Auditing
- foreign languages

### ***Decentralised courses***

These are designed to enable judges to gain training within their own regions are jointly organised by the Judicial School and the Autonomous Regions, the bar associations, and law schools in various locations around Spain.

## **5. France**

Every year the ENM publishes in advance the programme of in-service training for the following year, in order to allow time judges to apply. The curriculum is designed to address the following issues confronting judges:

- Legislative reforms
- Changes in case law
- Specialist skills
- Social context to law
- European in international law
- Social and inter-personal skills
- Court management
- Judicial ethics

### **Seminars (5 days)**

In-depth study of technical or cultural topics with presentations, debates and practical work

### **Training series (two-day sessions over 6 months)**

In-depth study groups organised at regular intervals

### **Conferences (1-2 days)**

Provided when legislative reforms are introduced or when special demands arise.

These include conferences on technical skills and professional methods

### **Discussion groups (1-3 days)**

Organised with members of other professions on topics of common interest

### **Workshops (6 days in total over the course of a year)**

Group projects designed to produce a comprehensive report on a specific topic of concern for the judiciary

### **Symposia (2 days)**

Organised around current issues and open to the public to debate the issues with the judiciary.

### **New senior appointments**

Other sessions are organised for those whose position has changed, for example those appointed for the first time as head of a court..

### **External Training**

Serving judges spend a week working in another institution outside the courts (press or broadcast media; manufacturing or service industry (Renault, French railroads, Paris public transport system); Council of Europe or European Union; National Assembly, Senate; police or customs. The ENM also arranges for judges to go on foreign language courses and other courses to meet specific needs not catered to by the school itself.

## 6. Austria

In **Austria** the Judges' and Public Prosecutors' Training Program offers about 120 seminars, workshops and conferences a year, organised by the judiciary. As the seminars differ in length (most are two or three day courses) this results in about 300 training days a year with approximately 25 participants at each seminar, resulting in approximately 7500 training days a year for the judiciary. In addition, judges participate in training events organised by other institutions (private or public). They may be sent by the judiciary as delegates or, in some cases, may attend on their own initiative and expense, depending on the relevance of the particular training topic for their actual duties in the court.

Substantive law

Inter-disciplinary topics

Judicial skills

Substantive law

Current legal topics of in-service training include seminars on:

- civil law
- criminal law
- commercial law
- family law
- procedural law
- EU-law

### Inter-disciplinary seminars

These deal with historical, social and psychological aspects, medical matters, technical matters as well as matters of current concern in society, such as:

- equal treatment of men and women
- fight against organised crime
- human trafficking
- domestic violence
- child abuse
- racism
- xenophobia and other forms of discrimination

### **Judicial skills seminars**

Austria offers judges seminars dealing with aspects of training that reflect the growing public expectations of judges' social skills, covering topics as such:

- personality development
- conflict-management
- rhetorical training
- training in interrogating children
- contacts with the media
- court management
- judicial administration
- personnel management

## 7. Germany

In Germany judicial continuing education is provided by the federal Judicial Academy and at the Länder level. All involve seminars in four basic categories:

- Law
- Skills
- Organisation, information technology
- General topics

### Law

Judicial continuing education in Germany has traditionally taken a technical approach, emphasising substantive and procedural law, and a large number of seminars still deal with these. There is an extensive range of seminars on topics such as

- *New Developments in the Law of Contract*
- *Insurance Law*
- *Trials in Traffic Accident Case*
- *Introduction to Tax Law*
- *Recent Decisions of the European Court of Justice*
- *Appeals in Civil Proceedings*

### Skills

Another group of seminars for German judges deals with improving judges' professional skills, and covers topics such as:

- *Examining Witnesses*
- *Relations with Advocates*
- *Video Evidence*
- *Court Experts*
- *Media and the Courts*
- *Stress Management*
- *How to Organizing Your Work Flow*

## **Organisation, information technology**

A major process of court restructuring has required a substantial amount of continuing education seminars on information technology and court re-organisation dealing with issues such as:

- *Judges' Interaction with Court Staff*
- *Internal Mediation*
- *Goal Setting within the Court Re-organisation Process*
- *"Corporate Identity" within the Courts*
- *Staff Development Plans*
- *Improving Diversity (in relation to gender)*

## **General topics**

German continuing education seminars involve a number of social context courses in more general interest subject areas such as:

- *Legal and Ethical Problems of Cloning*
- *Legal and Ethical Problems of the Internet*
- *The Role of the Judiciary from 1933-1945*
- *The Role of the Judiciary in the German Democratic Republic*

Resources appear to be evenly distributed across these four types of programmes, although there appears to be more emphasis on organisation and information technology and, perhaps, less on the general topics.

## **8. Denmark**

In Denmark, training and education courses cover:

- Substantive law
- Judicial communication and social skills
- Judicial management skills

### **Substantive Law**

Specific legal training is provided in areas such as:

- land registration law
- enforcement law
- probate court bankruptcy law

### **Judicial communication and social skills:**

courses and seminars are also offered on more behavioural aspects of judging:

- How to act in court
- How to speak to lawyers, witnesses and defendants
- Non-verbal communication in court
- How to write explanatory statements that are informative and acceptable to the public

### **Judicial management skills:**

Management courses for judges have become increasingly popular, particularly among the large number of judges who act as administrative leaders in their local courts. In 2002 the Council for the Judiciary initiated a major new management training programme for judicial managers, which forms a significant part of the Council's court modernisation project.

## **9. Italy**

At present, a Committee of the Italian Higher Council of the Judiciary (CSM) devises and delivers on-going training to judges (a new judicial school has been formally established but has not begun operation). Most courses are seminars lasting 2-3 days, and training is provided in three main areas:

- Civil procedure
- Criminal procedure
- Interdisciplinary areas

Interdisciplinary courses include:

- Impartiality and professional ethics of judges
- Judges and the mass media
- Religious freedom and multiculturalism
- Constitutional reform
- European Court of Human Rights jurisprudence
- Globalisation and the law
- Conflict resolution and mediation

## **10. The Netherlands**

Although the focus of continuing judicial education in the Netherlands has traditionally been on more narrow legal issues and methods training, there has also been increasing attention paid to organisational and managerial issues affecting judges (e.g., time management, communication) and interaction with stakeholders (other legal professionals and the public).

Professional development (or “Education Permanente”) forms part of the personnel policies of the Council for the Judiciary, and the Council organises its own management courses for senior judges whom it considers to have managerial ‘high potential’.

## **On-line resource directory**

The following is a directory of web addresses where further details can be obtained about each jurisdiction's judicial training and education curricula.

### **United States**

Federal Judicial Center

<http://www.fjc.gov/>

National Judicial College

<http://www.judges.org/>

National Center for State Courts

Site for links to all 50 state and DC judicial education sites:

<http://www.ncsconline.org/WC/Publications/StateLinks/JudEduStateLinks.htm>

### **Canada**

National Judicial Institute

<http://www.nji.ca/>

Office of the Commissioner for Federal Judicial Affairs

<http://aja.ncsc.dni.us/>

Canadian Institute for the Administration of Justice

<http://www.nji.ca/>

### **Australia**

National Judicial College of Australia

<http://njca.anu.edu.au/>

Australian Institute of Judicial Administration

<http://www.aija.org.au/>

Judicial Commission of New South Wales

<http://www.judcom.nsw.gov.au/>

Judicial College of Victoria

<http://www.judicialcollege.vic.edu.au/>

### **France**

Ecole Nationale de la Magistrature (French National Judicial School)

<http://www.enm.justice.fr/>

### **Germany**

Deutsche Richterakademie (German Judicial Academy)

<http://www.deutsche-richterakademie.com/>

**Spain**

Consejo General del Poder Judicial

<http://www.poderjudicial.es/>

**Austria**

Austrian Ministry of Justice

<http://www.justiz.gv.at/>

**Portugal**

Centro do estudos judiciares

<http://www.cej.pt/>

**Denmark**

Danish Justice Ministry

<http://www.domstol.dk/>

**Finland**

Finnish Justice Ministry

<http://www.om.fi/>

**Italy**

Consiglio Superiore della Magistratura

<http://www.csm.it/>

<http://www.csm.it/documenti%20pdf/incontri-di-studio-2006.pdf>

**The Netherlands**

SSR

<http://www.csm.it/>

## **Part 5. Training methods and delivery**

This part of the report explores the types of structures used to deliver judicial training programmes, and highlights some specific problems jurisdictions have encountered with delivering training to judges.

### **Types of training methods**

The range of options available to jurisdictions for delivering judicial training programmes is wide and can include:

- centralised, face-to-face programmes
- decentralised, court-based programmes
- IT and web-based distance learning
- modules
- streamed programmes for individual judicial ranks
- integrated programmes for judges and court personnel
- bespoke programmes for individual courts

Ideally the choice of options is related to a training programme's objectives and possibly to existing information about the success of previous programmes.

However, resources almost invariably affect the choice of options, as do the judiciary's own preferences. Part-time or after-hours training may be the most cost-effective, but judges are often resistant to this approach when it simply adds to the judicial workload. An American programme at Princeton University, which has a waiting list of several years, is a week-long residential program of judicial education which involves no traditional law courses. Instead, the University brings leading figures in their field to acquaint senior judges with the latest research and thinking in such areas as visual art, literature, astrophysics, biotechnology, architecture, engineering and other subject areas in which litigation may arise. The popularity of a programme like this highlights the difference between this type of residential, not strictly law oriented programme and programmes where judges attend after a long day on the bench and are expected to review recent developments in a specific area of the law.

See Table 4 below for jurisdictional summaries of the methods used to deliver judicial training and education programmes.

**Table 4. Approaches to Delivering Judicial Education and Training**

	Centralised	Web-based	Court-based	Modules	Streamed (by rank)	Integrated (judges & non-judicial personnel)	Other
Austria	✓	✓	✓				
Canada	✓	✓	✓	✓	✓		Individual Education Plans
Denmark	✓						
France	✓			✓		✓	
Finland	✓						
Germany	✓	✓	✓				
Italy	✓						
Netherlands	✓					✓	
Portugal	✓						
Spain	✓	✓	✓			✓	
United States	✓	✓	✓	✓	✓	✓	Certification & degree programmes Bespoke programmes
Australia	✓	✓	✓	✓	✓		

There are a number of different teaching approaches that appear to be increasingly accepted for judicial training and education. Lectures appear to be used less frequently, and interactive teaching methods are increasingly being used: case studies, small group discussions, individual and joint presentations, panel discussions, audio-visual teaching materials and self evaluated tests. In addition, a number of jurisdictions are developing more on-line, web-based programmes often in an attempt to provide immediate and up-to-date information, and to provide distance learning in jurisdictions where it is more difficult for all judges to attend courses at a central location.

The nature of the judiciary itself can also affect curriculum offerings, for instance where there is a strong sense of rank and privilege it is more difficult to have "mixed" courses among judges or among judges and court staff (even though this situation perhaps requires them most). In the United States, the Federal Judicial Center provides training programmes not just for federal judges but also for federal court staff, and some of the FJC's most innovative programmes are mixed programmes which judges and court staff attend together. In contrast, the NJI in Canada operates for judges only, and other associations are responsible for developing and operating training programmes for court staff and others involved in the justice system.

### **1. Centralised, face-to-face programmes**

Programmes in which judges travel to a central location for face-to-face lectures, seminars, workshops and conferences on legal issues are the most common approaches to judicial training and continuing education programmes across all the jurisdictions. These remain the most popular programmes among judges, however traditional formal lectures are increasingly less popular among judges than smaller group, more participatory seminars and workshops. In Ontario, for instance, the most popular sessions (those consistently ranked higher than all others sessions) are those in which judges must be actively involved in the programme through small group discussions, videotaping and critiquing of their work. In addition, most of the jurisdictions have instituted some form of distance learning into the curricula (either with web-based learning or by developing methods of delivering training at the court level). The following section presents a summary of the core centralised, face-to-face elements of the judicial training and education programme in a number of jurisdictions.

At the **National Judicial College** in Reno, Nevada the core curriculum includes over 50 two-day to three-week residential sessions offered throughout the year. Some of the current topics include judicial ethics, relationships with communities and the media, good caseload management, alternate-dispute resolution techniques and management skills. Courses utilise NJC's technology-enhanced classrooms, a legal resource center, a state-of-the-art model courtroom, modern seminar rooms, distance education facilities and a computer lab at the University of Nevada.

The **Federal Judicial Center** in Washington, DC conducts over 50 seminars and conferences annually for on average 2,000 federal judges, and 10,000 court staff. Face-to-face conferences, seminars, and workshops continue to be the primary vehicle for education for federal judges. Programmes that judges attend in person include orientation seminars for newly appointed judges, periodic national and circuit-based workshops, and small-group seminars devoted to specific topics. Seminars on particular topics for small groups of judges usually last two or three days, and are often conducted in collaboration with law schools or other educational institutions. Recent topics covered include international litigation, employment law, law and terrorism, mediation skills, law and genetics, law and society, law and science, humanities and science.

In **Canada** courses in substantive law are available through **National Judicial Institute** on a range of legal topics. In some fields (e.g. criminal, family and selected areas of civil law), work is underway to build an overall curriculum. Other seminars provide access to more specialised programming, often in areas where there have been major, recent developments in the law or related disciplines. Elements of many of these seminars are designed to be preserved as education modules (see discussion below) and made part of the permanent NJI curriculum available for court-based programming. In addition to continuing education courses in substantive law and specialised legal subjects, the NJIO curriculum also covers judicial career, craft of judging and social context education (all details in curriculum summary in Part 4).

In **France**, every year the ENM publishes in advance the programme of in-service training for the following year, in order to allow time judges to apply. One- week sessions, seminars and conferences cover not only legal and judicial disciplines and activities, but also a number of contemporary issues. Special sessions are devoted to the implementation of recent reforms in civil and criminal law. Other sessions are organised for those whose position has changed, for example those appointed for

the first time as head of a court. The ENM invites a variety of professionals to run sessions and present papers: members of the judiciary, of the bar, civil servants, academics, managers, foreign experts.

In **Spain** there are two main objectives to the courses offered at the Judicial School in Madrid: fostering the specialisation of judges of the ordinary jurisdictions, and keeping judges in touch with emerging legal areas (i.e. biotechnologies, e-crime, telecommunications law, etc.) The topics are organised into six training and education areas: civil law, criminal law, administrative law, social law, European law, interdisciplinary issues. These courses usually last for a week and attendance is voluntary.

In **Austria** the Judges' and Public Prosecutors' Training Program offers about 120 seminars, workshops and conferences a year, organised by the judiciary. As the seminars differ in length (most are two or three day courses) this results in about 300 training days a year with approximately 25 participants at each seminar, resulting in approximately 7500 training days a year for the judiciary. In addition, judges participate in training events organised by other institutions (private or public). They may be sent by the judiciary as delegates or, in some cases, may attend on their own initiative and expense, depending on the relevance of the particular training topic for their actual duties in the court. Current legal topics of in-service training include seminars on specific legal matters, such as civil law, criminal law, commercial law, family law, procedural law and EU-law.

In **Germany**, continuing education programs at the federal and Länder levels all involve seminars and fall into four basic categories: law; skills; organisation, information technology; general topics. General resources appear to be evenly distributed across these four types of programmes, although there appears to be more emphasis on organisation and information technology and, perhaps, less on the general topics. Judicial continuing education in Germany has traditionally taken a technical approach, emphasising substantive and procedural law, and a large number of seminars still deal with these. There is an extensive range of seminars on topics such as *New Developments in the Law of Contract, Insurance Law, Trials in Traffic Accident Cases, Introduction to Tax Law, Recent Decisions of the European Court of Justice, Appeals in Civil Proceedings*.

In its first few years of operation, **Australia's National Judicial College** has not followed the approach of organising large conferences with formal lectures but has

preferred structured discussions of practical problems and other forms of active learning (self-teaching in small discussion groups. This focus on discussion rather than lectures means that most College programmes are for groups of no more than 25 to 30 participants. The College remains convinced that presenting a small number of high quality programmes of long term educational value remains the best use of the College's resources. One of its main programmes is the Phoenix Judges Program, a residential programme offered every designed to provide an orientation programme for new judges and to provide a programme of professional development, reflection and workshops for experienced judges. The programme is developed by a Committee of judges and includes sessions on trial management, writing judgments, court craft, ethical issues, sentencing, alternative dispute resolution, cultural awareness, and stress/lifestyle issues. The Phoenix programme places a strong emphasis on using the knowledge and skills of the participating judges (see details in the curriculum summary in Part 4).

## **2. Decentralised programmes**

Despite the fact that the majority of judicial training programmes are face-to-face seminars and other programmes where judges come the central training provider, a number of jurisdictions are increasingly developing new means of delivering training to judges in their own courts, either by taking training directly to the courts or through the use of information technology (IT). Judicial systems covering large geographic areas have had to develop more decentralised methods of delivering judicial training, as it is not usually practical for all judges to travel to one central location. This includes regional courses and courses delivered at individual courts.

Most jurisdictions are introducing or at least experimenting with delivering some training programmes and educational materials on-line or through the use of some form of information technology (IT). In addition, the introduction of on-line judicial information systems and computerised case management systems has also required special training programmes in IT for judges and court staff. On-line courses and web-based materials can be particularly helpful in delivering training and education in large geographically dispersed jurisdictions, and in all jurisdictions they allow information to be constantly updated and allow judges to have more control over their own time that is devoted to training and education. However, there are serious drawbacks to these types of programmes when they are used or are perceived of as replacing (not supplementing) face-to-face training programmes. Judges are particularly critical of the lack of one-to-one contact with these programmes, although

some jurisdictions have attempted to addressed this through the use of on-line “live” sessions.

The **United States** is particularly well served by decentralised programming, with 65 national and state bodies involved in judicial education. Even though the three main training providers - National Judicial College (in Reno, Nevada), the Federal Judicial Center (in Washington DC), and the National Center for State Courts (in Williamsburg, Virginia) – all provide centralised face-to-face training programmes, an important aspect of their education programmes also involved decentralised programmes and distance learning.

The National Judicial Center’s Seminar Series is held at a number of different locations across the US every year. The objective is to bring judges together at interesting locations but to provide enough different locations for all judges not to have to travel too far to obtain training. The Seminar Series is taught by experts in their fields of study, and the 2006 Seminar Series covers: When Justice Fails; Threats to the Independence of the Judiciary; Current Issues in the Law; Evidence in a Courtroom Setting; Handling Capital Cases; Essential Skills for Appellate Judges; Law and Popular Culture; Enhancing Judicial Bench Skills; Conducting the Trial; Judicial Philosophy and American; Ethical Issues in the Law: A Novel Approach; Handling the Criminal Case.

Similarly, in **Spain**, more recently new decentralised courses have been held outside of Madrid. Decentralised courses which enable judges to gain training within their own regions are jointly organised by the Judicial School and the Autonomous Regions, the bar associations, and law schools in various locations around Spain.

### ***Court-based programmes***

In addition to seminars to which judges travel, the **Federal Judicial Center** offers several “in-court seminars,” for which FJC faculty travel from Washington to individual district courts that request such a seminar. Recent topics have included: Developments in Biology; Improving the Editing and Writing of Opinions; Intellectual Property Cases; First Appointments to the Federal Judiciary (1789-1811); Law and Literature.

In **Canada**, almost 50% of the education available to judges is delivered through court-based seminars. Each court in Canada offers court-based education to its

sitting judges. The NJI provides planning and coordination assistance for a number of these seminars. In many cases, the court and the NJI help each other so that the court may deliver an NJI module as part of its seminar, or the court may develop educational programming on a topic that then becomes part of the permanent NJI curriculum.

**Canadian Provinces:** Training is also organised and delivered by judicial associations in each of the provinces in Canada. The Ontario Conference of Judges, for instance, holds an annual criminal law conference each May, which includes 2 days of judicial education programmes. While there is not a set curriculum for the education programmes, the annual conference provides a yearly programme of courses. The content of the education programmes at the conferences varies from year to year depending on needs and interests identified by the provincial judges. The actual education sessions concentrate on demonstration exercises and cover a variety of topics. In the past they have included judgments on both sides of common issues seen in court, for instance a demonstration of techniques for dealing with troublesome counsel or litigants, and demonstrations on crafting contemporaneous oral judgments to assist judges in dealing with case loads. There is an education and training team for each conference, and although the team might vary from conference to conference it always includes the 2 education co-chairs from the province and a representative of the National Judicial Institute. It might also include session organisers in charge of specific components of that conference.

**Germany:** In addition to the judicial continuing education provided at the federal level, continuing education is also offered by the Länder. Many ministries of justice have created seminars which supplement those offered by the *Deutsche Richterakademie* and allow a greater number of their judicial staff to participate in continuing education. Many of these seminars are on technical topics concerning new developments of the law, but they are increasingly dealing with information technology, work flow, interaction between judges and other court staff. North-Rhine/Westphalia has its own academy with a permanent staff responsible for creating a continuing education programme (which is approved by the Ministry of Justice) and organising seminars. The academy also hosts conferences, assessment centres and seminars for other court staff, including seminars for those who are involved as trainers. Other courts in areas without an academy organise seminars in hotels or in other government premises. The advantage of this system is that specific needs for further training (e.g. where new legislation is being enacted)

can be met more quickly than by the *Deutsche Richterakademie*. Some of the money available for continuing education has also been allocated to the regional superior courts to meet additional continuing education needs which may have surfaced on the regional level. This can save time and the costs of travelling to the academy, although because only small sums are involved it is usually first affected by budget cuts in continuing education.

### **Australia: Travelling Judicial Education Program**

The NJCA presents a Travelling Judicial Education Program, a series of one-and-a-half day programmes for judges in capital cities around Australia. The programme contains half-day sessions on subjects such as litigants in person, sentencing, disability awareness, court craft and expert evidence. The aim of the programme is to offer judges the opportunity to revisit key areas of their work while benefiting from exchanges with colleagues from other jurisdictions. Each session features discussion and problem solving by participants with little formal lecture content. The College also offers sessions from the Travelling Judicial Education Program for inclusion in annual court conferences or seminars. Other regionally-based training institutions in Australia also deliver training to judges in their own regions. The **Judicial Commission of New South Wales** has an extensive publication program, with the production of 'Bench Books' for each court, a regular journal (the Judicial Officers Bulletin), research monographs, statistical papers, and online facilities (the Judicial Information Research System, which includes a sentencing database as well as online access to cases and statutes). The **Judicial College of Victoria** was established in 2003. It is involved in assisting with court conferences, organising seminars and workshops for judges and magistrates. It is also reviewing and updating sentencing manuals and benchbooks for Victorian courts. (See curricula summaries for these organisations in Part 4).

### **3. Distance learning: IT and web-based programmes**

Most jurisdictions are introducing or at least experimenting with delivering some training programmes and educational materials on-line or through the use of some form of information technology (IT). In addition, the introduction of on-line judicial information systems and computerised case management systems has also required special training programmes in IT for judges and court staff. While on-line courses and web-based materials can be particularly helpful in delivering training and education in large geographically dispersed jurisdictions (US, Canada, Australia),

they can be useful for all jurisdictions as they allow information to be constantly updated and allow judges to have more control over their own time that is devoted to training and education. The main drawback is the lack of one-to-one contact, although some jurisdictions have addressed this through the use of on-line "live" sessions.

In the **United States** the **National Judicial Center's** on-line, web-based courses are designed to allow judges to study at any time and interact with other judges from around the country in a collegial online atmosphere. Faculty members challenge participants with self-tests, and assignments that can be completed wherever a judge has access to the internet. The courses require at least three to four hours of a judge's time per week, and each course meets for at least two prescheduled web conferences hosted by the faculty. On-line courses are currently provided in: Selected Criminal Evidence Issues; Evidence Challenges for Administrative Law Judges; Handling Small Claims Cases Effectively; Ethics, Bias and Judging; Reaching Higher Ground; Traffic Adjudication for Administrative Law Judges; Rural Courts; Ethics, Bias and the Administrative Law Judge.

The **Federal Judicial Center** in Washington DC estimates that 80% or more of the participants in FJC educational programmes received some form of distance education in their courts. One of the main distance learning tools is the Center web-based resource pages, which help judges assess the admissibility of electronic evidence. The first is a resource page on electronic discovery and evidence includes materials from Center-sponsored judicial workshops, relevant local rules and sample orders, and a regularly updated bibliography of case law and articles. The second is a resource page on courtroom technology includes the Center's manual *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial*, and descriptions of Center research on the use of video-conferencing in criminal proceedings and the use of animation, simulations, and virtual environment technology. A new resource page under development contains a model survey that bankruptcy judges can use to get feedback about their performance from attorneys who practice before them. Recent additions include a resource page on managing capital habeas cases, which includes a guide summarising relevant law and case-management procedures used by federal judges in these cases and contains case-management plans, general procedure orders, budgeting forms, scheduling orders, and other forms that judges have used.

The Center also broadcasts programmes on the **Federal Judicial Television Network (FJTN)**. FJTN broadcasts primarily for judges and legal staff and analysed US Supreme Court cases that presented issues likely to affect federal court dockets, including: evidence, sentencing, civil rights litigation, Habeas Corpus in Alien Removal Cases, requirements in the PROTECT Act, periodic updates on bankruptcy law, and an orientation series for new judicial law clerks, including a program on the basics of employment law.

**Canada's National Judicial Institute** is developing technology-based distance learning (TBDL) as a complement to its face-to-face programming. TBDL addresses, for example, uneven access to the NJI's curriculum and problems with the timeliness of content. Materials available on-line can be distributed widely and can be quickly and regularly updated. Similarly, TBDL can provide a "just-in-time" model of education, allowing judges to find necessary information quickly and easily. NJI offers courses in a variety of formats: audio-video conferencing and web-casting, video-streaming, two-way text communications courses, video resources and electronic database tools. In addition, the Ottawa courts and the faculties of law (common and civil) at the University of Ottawa host noon hour meetings of judges from the broad range of courts located in Ottawa to discuss topics of interest. Three such sessions have been held and are available for viewing by judges across Canada. Other taped sessions include presentations on internet security.

**Electronic Bench Books:** The NJI has developed a series of electronic benchbooks including: *The Mentally Disordered Offender*; *Family Law* (prepared by the Superior Court of Justice, Ontario); *Evidence*; *Child Witness*; *The Youth Criminal Justice Act (YCJA)*; *Loi sur le système de justice pénale pour les adolescents (LSJPA)*. All EBBs are regularly updated by experts in the respective subject areas. In addition, there are several other books in development expected to be released within the forthcoming year which include: *The DNA Databank*; *Domestic Violence*; *The Self-Represented Litigant*.

**E-Letters:** Every three weeks, electronic newsletters on family law and criminal law are available to judges through their JUDICOM email addresses. Each newsletter includes recent developments in case law, developments on new or proposed legislation and references to recent articles of interest. Subscribers receive two e-journals, *Psychology in Family Law Digest* and *Family Law Psychology Briefs*, both

providing current summaries of the latest social science research. They also have access to *Criminological Highlights*, which summarises recent research in this area of the law.

The NJI has launched a new digital library with secure access for the judiciary. **The Electronic Judicial Library** currently houses documents from NJI and FJA, with plans to expand the collection to add CIAJ and CAPCJ papers as well as documents from other groups. There is also a **Web Resources Center** which is intended to facilitate judicial research on the Internet by providing links of relevance to judges across the country. NJI also provides a **Computer Training Program (CTP)** to federal judges in both the JUDICOM system (secure judicial network) and in the use of common computer applications to help improve the efficiency of the Canadian judiciary. The objective of the programme is to develop judges' awareness, abilities, and confidence in computing in the context of performing their judicial duties; and provide training to meet their present and anticipated needs.

The **Spanish Judicial School** has also recently developed two new types of distance learning programmes for judges: on-line courses and decentralised courses held outside of Madrid. The Judicial School now has on-line courses in Catalan and Basque civil law, economics, auditing, and foreign languages. Decentralised courses which enable judges to gain training within their own regions are jointly organised by the Judicial School and the Autonomous Regions, the bar associations, and law schools in various locations around Spain.

In **Austria** there are also several IT and web-based projects to make judiciary more efficient and faster ("Electronic files", "Electronic trials") and to reorganise the training programs (E-Learning, networked based electronic learning - especially for orientation information which is circulated to people taking up new positions). The Austrian Federal Ministry of justice is also currently testing a new e-learning programme for "British-English".

The **National Judicial College in Australia** has recently begun to develop a distance education programme. There are approximately 850 judges and magistrates around Australia, and magistrates in particular are geographically dispersed. The difficulty in getting leave from busy court lists and the financial costs of travel to capital cities or other states are major barriers for some judicial officers in attending face-to-face presentations. For these reasons in 2004 the College began

developing pilot programs in technology-based distance learning to supplement its face-to-face programs. The first programmes introduced in 2005 deal with judgment writing and disability awareness.

The Judicial School in **Spain** now has on-line courses in: Catalan civil law; Basque civil law; economics; auditing; and foreign languages .

#### **4. Modules**

Modules are units of educational programming for individual judges or court-based use, which have been introduced in the Canada, Australia and the US. They are usually smaller components of larger courses or seminars delivered by the central training organisation. The idea behind modules is that judges (or groups of judges at courts) can complete the larger course in progressive sections (modules) or can design their own courses based on specific modules from different programmes. They are designed to provide judges with both greater control and flexibility in their training and education.

In **Canada** the **NJI Modules of Education** are units of educational programming for court-based use. They are smaller stand-alone components of larger NJI, or court-level, seminars. For example, the five-day NJI Evidence Workshop is divided-up into smaller modules such as Opinion Evidence, Privilege, Relevance and Identification of Hearsay. The modules are designed to be used by court-based education committees. Modules were created so that education committees in individual courts can independently run already tested education components, and are an alternative to having the NJI organise and run programming for each court. Each module includes: a short description, format (i.e. exercises, lecture), the learning objectives, module length, related materials (i.e. papers, power points, videos), a list of potential presenters, and the language in which it was originally presented. NJI staff are available as back-up, and every module lists both a senior advisor contact and a general information contact person.

#### **5. Bespoke programmes**

The **National Judicial College** in the **United States** custom designs programmes for administrative law agencies, tribal and state courts and other organisations that wish to have programmes in their own states. A variety of special programmes are

offered ranging in scope from courses on the needs of tribal court judges and administrative law judges, to national conferences on currently debated topics.

## **6. Streaming**

The use of “streamed” programmes, in which training and education is delivered to judges based on their judicial rank or court, is most often used for new judges who have specific and immediate training needs. However, jurisdictions appear to be increasingly providing streamed training programmes for more senior judges, particularly those with managerial responsibilities.

### **(a) Training programmes for new judges**

The following provides an overview of training programmes in different jurisdictions that are aimed at newly appointed judges. In civil law jurisdictions this discussion has been confined to programmes for new appointees who are already experienced professionals (i.e., not new recruits directly out of university with no substantive legal experience).

#### **Canada: New Judges Education Plan**

The NJI has developed a New Judge’s Education Plan based on the premise that new judges’ training should involve more than one seminar, and that it should provide the framework for the beginning of a career-long commitment to education. The focus is on training and education in the first four years after being appointed. At appointment, new judges receive:

1. Access to the Canadian electronic judicial network (Judicom), computer skills education, and the Electronic Judicial Library;
2. Court-based orientation programmes;
3. a mentor: senior colleague to provide a sounding board, support, wisdom, information.

Soon after appointment, a judge is encouraged to attend an orientation seminar which involves a total of 10 days’ training (5 in the spring and 5 in the fall) and covers most of the core curriculum. After that a judge develops and follows an individual education plan (see details of IEP in Part 3 of this report). A four-year plan is developed for each new judge in which the IEP is reviewed annually by both the judge’s chief and mentor. New judges have priority access to courses, with the objective of spending 10-15 days per year in training in these four years. During this period the focus is placed on the core curriculum to provide a well-rounded education for the new judge, including courses on:

- Judgment Writing
- Oral Judgments

- Credibility and Fact-finding
- Hearing and Deciding Charter Issues
- Evidence (Computer & Intensive)
- Settlement Conferencing
- Jury Trials/Charges
- Managing the Trial Process
- Judicial Ethics
- Social Context Modules
- Computer Skills
- Statutory Interpretation
- Judgment Writing Process

**France:** Even though the majority of judges in France are recruited in the traditional civil law route as trainees enrolled at the Judicial School immediately after university, each year a number of judges are appointed under what is referred to as the “external intake” programme, in which experienced professionals are appointed on either a temporary or permanent basis. Experienced professionals can be appointed to a number of temporary appointments. Civil servants recruited through the *Ecole nationale d'administration* (ENA) and university professors may be seconded to the judiciary for a non-renewable period of 5 years. Temporary appointment to the *Cour de cassation* requires at least 25 years of professional experience and a special qualification for membership of the *Cour de cassation*. “*Magistrats temporaires*” may be appointed as judges of the lower courts. They must be under 65 and be qualified by their experience and their competence. The idea was to recruit individuals with sufficient professional experience (such as court clerks, civil servants, barristers or members of other legal professions). This route was created in 1995 and has had only limited success. “*Juges de proximité*” are part-time lower court judges, who are either former members of the judiciary or lawyers with at least 25 years’ experience. They are appointed for a non-renewable seven year term and receive special training. Permanent appointments of experienced professionals occurs either through direct appointment or through a competitive examination. The ENM provides specific additional training to all those judges recruited through the “external intake”, and for the “*juges de proximité*” final appointment depends on their performance during the training period.

In **the Netherlands** experienced lawyers may also apply to be a judges. Approximately half of all judges are recruited in this way, and this requires part-time training on the job. The formal requirements are a law degree, being over 30 and

having at least 6 years' experience as a professional lawyer (advocate, public servant or employed lawyer). Having passed the selection procedure, the candidate needs to be supported by the president of a court, and is then appointed as a deputy-judge for one day a week. After that, the deputy has a period of on the job training, under the guidance and judgment of a personal mentor who is an experienced judge. The training is usually directed at learning how to conduct a hearing and at writing judgments. In addition and depending on the experience and knowledge of the deputy, a number of courses at the judicial training centre need to be taken. However, the training programmes differ from court to court, although the Council of the Judiciary has been pursuing a national project to make these training projects uniform. Only once the mentor is satisfied with the results of the on the job training can the deputy apply for a full time judicial post, and this can take two or three years. This way of becoming a judge is quite demanding for experienced lawyers, because deputies need to maintain their jobs during the training period of training, and the training needs to take place in the deputy's own personal time. In theory, the best court clerks with a law degree may apply for a judicial post in this way, but the prevailing judicial culture has meant that this is not an easy track. Efforts are being made to give such court clerks a more realistic opportunity to become judges. The Dutch judiciary is also developing a similar programme for promising court registrars, which would enable them to apply for a judicial traineeship with less than six years' experience. These candidates would also have a similar individual training programme designed for them under the supervision of a mentor.

In **Australia**, the Phoenix Judges Program provides a residential orientation programme for new judges every year with sessions on:

- trial management
- writing judgments
- court craft
- ethical issues
- sentencing
- alternative dispute resolution
- cultural awareness
- stress/lifestyle issues

The NJCA and the Australian Institute of Judicial Administration also assist in providing orientation programmes for new judges at the regional level. For instance, in **New South Wales** they assist the Judicial Commission of New South Wales in providing 5-day orientation programmes for new judges and magistrates. These

programmes focus on developing judicial skills and knowledge, including programmes on:

- court craft
- decision-making
- sentencing
- judicial administration
- judicial conduct.

**(b) Streaming for more experienced judges**

In the **United States**, the **National Judicial Center's** core curriculum streams courses for judges of different ranks. Two- and three-week courses are offered for newer general jurisdiction judges, and similar courses are offered in two-week blocks to appellate court judges, non-lawyer judges, special court judges, tribal court judges, and administrative law judges. A series of two-day to one-week courses is directed to graduates of basic courses and to those with longer service on the bench.

The **Federal Judicial Center** also streams programmes for specific types of US federal court judges to address specific areas of concern related to their courts. These include individual workshops for federal district, bankruptcy and magistrates judges, as well a special conferences for Chief Judges. The recent Federal Chief District Judges' conferences have focused on:

- Budgeting
- juror utilisation
- managing defense costs in federal capital cases

The conference for Chief Bankruptcy Judges provided presentations on:

- management decision making
- consolidation of services provided by courts' administrative units
- maintaining services and staff morale in times of declining resources.

Recent national workshops for district judges covered: USA PATRIOT Act and the PROTECT Act; updates on the Federal Rules of Evidence; Supreme Court decisions; application of the Code of Conduct for United States Judges; management of federal capital cases; immigration law; intellectual property; case and calendar management under the federal courts' automated Case Management/Electronic Case Files (CM/ECF) system. Workshops for bankruptcy judges covered: developments in Chapter 7, 11, and 13 cases; changing role of judges; judging in a diverse society. Workshops for magistrate judges covered: search and seizure of

computers and computer-stored data; managing electronic discovery disputes in civil cases; authorisations to collect electronic communications.

In **Canada** a significant part of the judicial education curriculum of the **National Judicial Institute** has been designed for judges at different stages of their careers. Also included are specialised seminars that have been developed for judges at the appellate court level and for those who have assumed a leadership role as Chief or Associate.

**Australia's** National Judicial Orientation Program is aimed at newly appointed superior and intermediate court judges from around Australia. The program includes sessions on:

- judicial ethics and conduct
- contempt
- assessing the credibility of witnesses
- evidence
- judgment writing
- cultural awareness
- court craft
- unrepresented litigants
- sentencing
- alternative dispute resolution
- psychological and physical health.

The programme is run jointly by the NJCA, the Australian Institute of Judicial Administration and the Judicial Commission of New South Wales.

A number of the programmes already discussed earlier in this part of the report are also directed at more senior judges. This includes a new management training programme for managerial judges in **Denmark**, which forms a significant part of the court modernisation project, and management courses for senior judges in the **Netherlands** who are considered to have managerial 'high potential'.

## **7. Integrated judicial and court staff programmes**

Perhaps one of the most innovative approaches to delivering training is the integrated programmes offered by the Federal Judicial Centre, where training and education programmes are attended by judges, clerks and court staff together. In some instances, judges and staff travel to Washington DC to attend these courses together, but in other instances the FJC deliver the programmes at the court itself. Recent programmes have included:

- A national sentencing policy institute for district judges, probation and pretrial services officers, federal prosecutors, and federal defenders. This included a broad-ranging discussion of the roles of the legislative, executive, and judicial branches of government in fashioning sentencing policies. Representatives of all branches participated, and to reach a wider audience within the courts, the Center videotaped portions of the sentencing institute and broadcast them on the FJTN.
- Consultations in Dispute Resolution, which provides on-site assistance to district and bankruptcy courts that wish to begin or revise ADR programs. Judges and court staff who have substantial ADR expertise travel to courts and provide ADR assistance.
- Executive team-building programmes for new chief judges and their clerks of court in conjunction with the national conferences for district and bankruptcy judges. Workshops broadened the participation to include additional judges and court managers, and helped courts develop policy plans specific to their courts.
- Workshops for large and mid-size courts included teams of judges, clerks of court, and jury managers and administrators which explored successful techniques for juror management and utilisation
- Two national workshops on Case Management/Electronic Case Files (CM/ECF) operational practices for district and bankruptcy courts. Along with the in-person participants, court personnel from around the country were able to take part in the workshops through audio and web conferences.
- At the request of individual courts, the Center organises and conducts meetings to help courts examine their internal procedures, policies, and functions and determine the best ways to carry out court operations effectively and efficiently. For example, at the request of one of the courts of appeals and in cooperation with the Administrative Office, a Center education specialist served as facilitator for a meeting on implementing appellate electronic case filing. Participants included appellate and district judges, court and Administrative Office staff, and attorneys who practice in the circuit. Similarly, at the request of a district court, the Center helped its judges, senior managers, and administrative staff create a shared administrative services structure for the district's clerks, probation, and pretrial services offices.

The **National Center for State Courts** in Virginia also provides some combined education programmes to state court judges, court administrators, and other judicial employees, through the NCSC's Institute for Court Management (on caseflow; jury management; records management; planning and budgeting; court security; and computer automation)

## **8. Certificate and degree programmes**

The only jurisdiction to offer specific qualifications and certifications to judges for continuing education is the United States. The National Center for State Courts and

the National Judicial College at the University of Nevada offer professional certification programmes. The American Academy of Judicial Education offers Academy Diplomas and the National Council of Juvenile and Family Court Judges offer Masters and Doctorates in Judicial Studies. This reflects the strength of judicial studies as an academic discipline in the US, in comparison to most other jurisdictions.

The **Professional Certificate in Judicial Development** is an innovative program of the NJC designed for judges who want to concentrate their studies in a specific academic area. Judges who earn Certificates in Judicial Development achieve a higher level of judicial expertise, skill and knowledge, and certification is offered in the following specialised areas: Administrative Law Adjudication Skills; Dispute Resolution Skills; General Jurisdiction Trial Skills; Special Court Trial Skills; Tribal Judicial Skills.

In addition, the NJC's **Judicial Studies programme** provides specially designed courses that treat judicially-related issues from a liberal arts perspective, including the humanities, social, behavioural and natural sciences, and provides a series of courses on technical legal subjects. It is unique in providing a formal academic setting in which trial judges or juvenile and family court judges can integrate academic and technical studies of the judiciary and receive a Masters or PH.D. in judicial studies. A major objective is also to help establish the academic discipline of Judicial Studies. Admission is limited to sitting judges, and the curriculum focuses on judges and their role and contribution to society and on the improvement of services provided by judges. The curriculum encourages judges to become more proficient in the diagnosis and analysis of problems through the use of techniques developed by the social, behavioural and natural sciences, as well as by the humanities. The curriculum also covers the study of research techniques used by professionals who testify in court. A judge has up to six years to complete the masters programme, but it is designed to be completed in two to four years – which requires spending a total of 12 weeks on the UNR campus during two consecutive summers. To accommodate the trial schedules of judges, the programme is designed to provide considerable flexibility, and judges take courses in two-week blocks whenever they are offered during the year.

## **Part 6. Barriers to Training**

This part of the report examines the barriers that can exist to judicial training and how different jurisdictions have attempted to overcome them. The common barriers or obstacles to delivering judicial training and education across jurisdictions involve:

- Funding
- Time
- Geography
- Judicial dominance
- Institutional inertia
- Resistance to new training approaches

### **Funding and Time**

The cost of delivering judicial education to busy judges is the perennial problems for most jurisdictions. In Canada the time demands on courts and judges results in difficulties in planning due to staffing, volume of cases, trial schedules. Similarly, the Federal Judicial Center has found that federal judges in the US are very busy, with only limited time to participate in live educational programs. Live workshops also involve substantial expenses for travel and facilities. For these reasons, in recent years the Federal Judicial Center has worked to expand the range of its distance education programmes – from publications on law and judicial procedure, to the use of educational programmes broadcast over the Federal Judicial Television Network, and now, increasingly via its website on the judiciary's intranet. In addition, the FJC staff and funds for programming have declined, limiting the number of programmes the Center can offer. The experience of the FJC reflects that of most other jurisdictions.

In Spain time is also the key problem. As judges have very busy schedules and the continuing education programme is very extensive, a substantial amount of time is required to coordinate the provision of training for judges. This also has financial implications, since the higher council of the judiciary (CGPJ) needs to appoint substitute judges to cover the temporary vacancies in court when judges are on leave of continuing education.

At the state level in the United States mandating judicial education did not solve the time and funding issues, and the American Academy of Judicial Educators felt it had

to pass a resolution calling on state governments to ensure judges had adequate time and funds to attend training courses and that the programmes were properly funded. But one of the main barriers to judicial education in the last few years has been funding. In 2003 fiscal crises at the state and federal level led to budget cuts in judicial education programmes and the loss of personnel. Financial issues became particularly problematic in 2003 when the fiscal crisis in the states resulted in cuts to judicial education and personnel. The US states became aware that it was not enough to say why judicial education was important or necessary – it had to be demonstrated. Judicial educators had to focus on accountability and the ability to show political leaders (i.e., the funders) the impact of judicial education programmes on the judicial system. In order to prove the value of judicial education programmes, they recognised that this could only be accomplished through strategic planning and analysis. In the US this has taken the form of regular surveys of senior judges and court administrators, who are asked to assess the value of training services.<sup>23</sup>

In addition, in order to maintain some programmes, state judges have paid their own way and shared the cost of delivering face-to-face programs. Planning and provision of materials is increasingly done through email, and educational providers have formed coalitions to jointly produce programmes and conferences. A few states in the US have been less hard hit by budgetary cuts because they have developed funding mechanisms that offer some protection from government-wide cuts. New Mexico, for instance, funds judicial training and education programmes from fees attached to court fines, and these funds are not subject to general state-wide budget cuts.

## **Geography**

Centralisation of training is particularly problematic for jurisdictions covering a large geographic area and/or including substantial rural or remote areas. The difficulty in getting leave from busy court lists and the financial costs of travelling to one central location for training are major barriers for some judges in jurisdictions like Australia, which has turned to technology-based distance learning to supplement its face-to-face programmes.

---

<sup>23</sup> For a discussion of the issue of funding and judicial education and training see *Resources: Economics and Judicial Education*, NASJE Newsletter Fall 2003  
<http://nasje.org/archives/index.htm>

In Canada geography has also presented challenges to the NJI in delivering judicial training in terms of the costs of travel, the distances involved in delivering programmes to all judges in Canada across a number of time zones. In addition, the two systems of law (common and civil) and the bilingualism in Canada also present specific issues for judicial training. Given the dual system of both federal and provincial courts in Canada there is also uneven access to judicial education due in part to different levels of support across the country.

### **Judicial dominance**

Several criticisms have been made of the judicial dominance within the ENM. It has been suggested that more teachers should be recruited from outside the judiciary, that the ENM, its instructors and its students should have more contacts with other state institutions training future civil servants, and that the teaching of judicial ethics should be extended.<sup>24</sup> In addition it has been suggested that the training is too centralised, with most courses being held in Paris.

### **Institutional inertia**

In other instances, the existence of long-established judicial schools may create its own barrier to innovative programming. While the French ENM was once the model for judicial schools in other jurisdictions, it has been said to lack innovation in recent years, perhaps in part due to the centralisation and dominance of the judiciary discussed above.

The programme development committee at the German judicial academy has also been criticised for being too large, centralised and slow to innovate. At the time of its creation, the *Deutsche Richterakademie* was a modern, innovative institution which, for the first time, met the demands of judges and prosecutors and their need to have some kind of continuing education on a nation-wide basis with the additional advantage of establishing contacts to colleagues from other Länder and maybe even other jurisdictions. However, the Academy has recently come in for criticism and calls for reform. Specific problems areas that have been identified include:

- the programme committee is too large and the process of deciding on the programme is too slow
- the programme has to be planned too far in advance; this makes it difficult to

---

<sup>24</sup> See Roger Errera, "The Recruitment, Training, Evaluation, Career and Accountability of Members of the Judiciary in France" in *Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe* Di Federico (IRSIG 2005)

- include topics of actual interest
- programme planning is not done by a central institution; this encourages uncritical repetition of established seminars by less experienced planners
- expertise in programme planning cannot be developed in smaller judicial divisions
- expertise and co-operation on the European level (including the use of funds) cannot be developed
- recruitment of participants on the quota system and involving all tiers of the judiciary is ineffective
- evaluation of the effectiveness of seminars is impossible, with evaluation restricted to immediate feed-back by participants.

One critic has drawn a connection between the need for reform in the field of continuing education for judges in Germany and the lack of academic interest in judicial studies in Germany. He maintains that university research on the efficiency of the judicial system, on the sociological background of the judiciary, on recruitment, evaluation, promotion, and even on the acceptance of the courts by the public is almost non-existent, and there have been few major developments in this field since the 1970s<sup>25</sup>.

### **Resistance to new training approaches**

The barriers to training discussed above are all essentially organisational barriers. More personal barriers such as general judicial resistance to training on the grounds that it is unnecessary is not a significant issue in the jurisdictions covered in this report. It is more a question of the ability to meet judicial demands for continuing education, finding judicial time and finding funds to deliver programmes that meet these judicial demands. However, where personal resistance on the part of judges may be factor is in terms of specific types of programmes, for instance with what are referred to as “complex curricula” as well as technology-based distance learning courses.

The types of judicial education programmes that fall under “complex curricula” include those that suggest altering judges’ role, identify or sense of authority; explore judicial attitudes, values and beliefs, and are often defined by judges as

---

<sup>25</sup> See Johannes Riedel “Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Germany” in di Federico (2005)

“touchy feely” courses. What has been found is that judges’ learning style preferences generally mean these courses are more difficult to implement. Most judges personality types or learning preferences are for concise, logical analysis, abstract ideas, technical tasks and practical solutions.

In the US, judicial educators have found several ways to overcome these barriers to engaging judges with more complex curricula: work in small groups of interested judges first; always use a member of the group being discussed as faculty in diversity, social and cultural context courses; encourage judges to think about the subject before the course; ensure a follow up survey of participants evaluating impact around 6 months after the course.

A number of problems have also been identified with distant learning methods for training judges. In Germany, the US and a number of other jurisdictions it appears that judges generally resist distance learning courses (at least at first), and even when they accept them they are only willing to use them as a supplement to face-to-face training, not as an overall substitute. German judges report finding it very difficult to use technology-based distance learning courses from their office while trying to deal with their large daily work load. They prefer to leave their office for a few days and attend a seminar, not only in order to enhance their knowledge but also to exchange experience and ideas with their colleagues – even if this means they have a backlog of work when they return. On a more technical level, the Federal Judicial Center in the US has also found that it is more difficult to evaluate the success of its web-based programmes than its face-to-face programmes.

To overcome this resistance to technology-based distance learning, in the US the Federal Judicial Center has recently developed web-based courses with strategies for using technology effectively. And both the FJC and the NJI in Canada also use live interactive video on their websites in order to create more of a face-to-face feel to distance programming.

## **Part 7. Judicial evaluation and competence frameworks**

### **Civil and common law divide**

Only civil law jurisdictions covered in this report have judicial evaluation and appraisal systems and competence frameworks for the judiciary. In many civil law jurisdictions judicial evaluation or appraisal is part of the professional life of a judge, and is an integral part of career progression and promotion. As a result, civil law countries have the most to offer in the way of judicial competence frameworks, as they have had to develop more structured criteria for assessing judicial performance. It is perhaps not surprising that the comparative study of evaluation and the development of “quality standards” for the judiciary has been led in the last few years by European academics<sup>26</sup>.

In contrast, there is little to no formal judicial appraisal in the common law countries covered in this report. In most of these jurisdictions, appraisal and competence frameworks are seen as incompatible with judicial independence. In Ontario, one commentator indicated that acceptable judicial appraisal is confined to judges critiquing each other in demonstration sessions at their annual training conference. In this respect the recent development of judicial appraisal schemes and competence frameworks for some judges in England and Wales highlights a greater compatibility with civil law rather than with common law systems.

France, Germany and Austria have the most highly developed institutionalised evaluation programmes, where virtually all judges are evaluated by judicial superiors at regular intervals. In other countries, such as the Netherlands, evaluations for most judges involve peer review, and institutional evaluation is primarily for judges in more senior, managerial positions. However, the Netherlands, along with Spain and Finland appear to be moving towards more institutionalised evaluation of all judges.

Table 5 below summarises judicial evaluation and competence systems in civil law jurisdictions.

---

<sup>26</sup> See two recent collaborative research projects among European judiciaries: Fabri et al *Administration of Justice in Europe: Towards the Development of Quality Standards* (IRSIG 2003) and Di Federico *Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe* (IRSIG 2005)

**Table 5. Judicial Evaluation Schemes and Competence Frameworks**

	Evaluation/ Appraisal schemes	Who evaluates	How often	Impact of evaluation	Competence framework elements
Austria	YES		Every second year after appointment to new position	Rating below "very good" requires re-evaluation the following year Rating below "good" results in reduction in income	Legal knowledge Reliability Decision-making ability Work rate Ability to work under stress Communication Social & personal behaviour
Canada	NO				
Denmark	NO				
France	YES	President of Court of Appeal	Every 2 years	Promotions, Reassignments, Transfers	Professional ability Legal & Technical skills Organisational skills Interpersonal skills
Finland	In development				
Germany	YES	President of regional court	Every 4-5 years & When applying for promotion or change of status	Determines ranking  Promotions, Transfers, Leaves of absence	Professional competence Personal competence Social competence Competence to lead
Italy	NO				
Netherlands	YES	Peers Senior judges Section chairs	Not specified  Prior to senior appointment  Annually	Evaluation prior to senior appointment determines access to managerial training	<i>Court Quality Project:</i> Impartiality & integrity Speed & efficiency Legal consistency Expertise Treatment of others
Spain	In development				
United States	NO				
Australia	NO				

### **Aims and extent of judicial evaluation**

There are a number of arguments to justify evaluation. Because the judiciary perform a public service and are part of the state, it may be felt to be legitimate to evaluate how they perform their duties. The expectations of society at large towards the judiciary are also greater than before, and evaluation can be considered a legitimate part of the accountability of the judiciary. Evaluation can also be seen as a means of personal and professional development. It can inform judges about how they are performing and how they are perceived, and it can help an individual judge correct mistakes and increase their own personal satisfaction in their job. In civil law systems it also allows those responsible for the management of the justice system to be aware of the personal qualities of members of the judiciary when making decisions on transfers and promotions.

Judicial evaluation (and hence competence frameworks) is likely to be an increasingly important issue for the judiciary in all jurisdictions, as public and government demands grow for guarantees of quality standards and accountability in the justice system. However, what needs to be recognised here is that the concept of judicial evaluation has a jurisdictional context<sup>27</sup>. In Scandinavia and the Netherlands there is a tendency to see courts as organisations, and there is therefore more acceptance of the need to measure courts' performance – but not judges' performance. In Germany and in France and other Latin judiciaries there is much more of an acceptance that judges will be evaluated internally by the judiciary for promotion and career reasons, but less acceptance of the idea of quality control standards for the courts as a whole. In most common law jurisdictions, performance evaluations of judges are still generally considered anathema to judicial independence.

### **Developing competence frameworks**

There is not much detailed information available on the specific methods used to develop competence frameworks. In general, however, the development of a judicial evaluation scheme in France has not been without controversy. In the Netherlands, Spain and Finland attempts to identify judicial competences have emerged as a part of much larger reviews of the judiciary or larger constitutional and judicial reform initiatives. All of these jurisdictions are now in the development stage of creating a competence framework for the judiciary.

---

<sup>27</sup> See Fabri et al (2003)

In the Netherlands the main argument that convinced judges of the importance of adopting a “court quality project” was that if judges wanted government to invest in the courts, judges should prove and show how financial pressure for efficiency was negatively affecting the quality of their work. The designers of this system were well aware that it would only work if the “achievement indicators” were chosen and defined by the judges themselves, and that the judges also needed to be involved in the development of the systems for measuring quality. Only in this way would the judges trust that the system was reliable and would not be open to abuse by government. While it appears that the judges in the Netherlands do accept that courts as public service providers need adequate quality control policies, this competence framework has only been accepted as a means of evaluating *courts*, not individual judges. In principle, it could be used as the means of evaluating the performance of individual judges, but a pilot programme highlighted judges’ resistance to applying the system to individual judges.<sup>28</sup>

---

<sup>28</sup> See Philip M. Langbroek “Recruitment, Professional Evaluation and Career of Judges and Prosecutors in The Netherlands” in di Federico (2005)

## **Summaries of evaluation programmes and competence frameworks**

### **France**

In France all judges are evaluated every two years, based on a competence framework that includes four main criteria:

- **General professional ability:** for example, capacity to decide, to listen and exchange views with others, and to adapt to new situations
- **Legal and technical skills:** capacity to use one's own knowledge; capacity to preside
- **Organisational skills:** capacity to lead a team, to manage a court
- **Other abilities:** working abilities; professional relations with other institutions

Evaluation is compulsory for all judges, with the exception of the presidents of courts of appeal and members of the *Cour de cassation*<sup>29</sup>. Evaluation takes place every two years. However, an additional evaluation may take place before the two years is up if justified by particular circumstances and the interests of the judiciary. The scope of the evaluation focuses on the professional activity of judges, although the *Conseil d'Etat* has held that evaluators are entitled to take into account the behaviour of judges as well as outside factors, for instance if a judge demonstrates a breach of confidence. In the same way, factors relating to the private life of a judge may justify disciplinary action if they have repercussions on that judge's activities or on the reputation of the judiciary.

**Procedure:** The president of the Court of Appeal is responsible for conducting evaluations. There is a requirement for full transparency, and every aspect of the evaluation must be communicated in advance to the individual judge. The evaluation by the head of the court of appeal is supplemented by the opinion of other judges and a description provided by the judge being evaluated of his or her activities. The evaluation is always preceded by a personal conversation between the judge and the evaluator, and this is summarised and included in the evaluation. The whole set of documents is shown to the individual and then put into that individual's personal file. A dissatisfied judge may challenge an evaluation, although this rarely happens. The evaluations form the basis for decisions about promotions and transfers made by the judicial self-governing body in France (CSM). In addition to consulting evaluators'

---

<sup>29</sup> Evaluation is compulsory under Art 12-1 of "Statut des magistrats" and a decree of January 7, 1993

files and personal interviews, the CSM also visits the courts and holds private meetings with judges. When reading evaluation forms, the CSM also takes into account a number of factors such as previous assignments, individual circumstances and personal qualities.

***Evaluation of judicial evaluation:*** In the French view, evaluating individuals, especially members of the judiciary, is neither an easy task nor an exact science. In order to achieve the ends and to be fully accepted, understood and performed by those responsible for evaluation, several conditions must be met. They include the use of a plurality of criteria and a plurality of evaluators. Evaluation is done by different people in different places each time. This allows those who read and use the evaluations to put them into perspective and to compare them with other evaluations, taking into account the diversity of the authors. The final evaluation is ultimately the responsibility of one person, the head of the court of appeal, but it is done in consultation with others whose opinions appear in the file: heads of the lower court, other colleagues with whom the individual works. In France this is considered extremely important both from a psychological and a professional point of view.

The French consider the main pitfall to be avoided in judicial evaluations is the use of stereotyped and repetitive remarks, including non-committal language which does not reveal the evaluator's view of the personal qualities of the individual, where he or she should not be assigned and what should be done to correct any shortcomings.

## **Germany**

In Germany judges are evaluated every 4-5 years and when applying for promotion. Professional evaluation of judges in Germany plays a major role in their career, and is the responsibility of the Länder judicial administrations. While each evaluation system varies according to Lander, they all share a basic structure designed to rank judges in order to make promotion decisions.

**Judiciary-wide evaluations:** Most Lander have regulations requiring that judges are evaluated at regular intervals, usually every four or five years, with a fixed date for evaluation of all judges. The idea is to evaluate all judges at one fixed date and to create a certain ranking of all judges. In most cases, judges over 50 or 55 years of age are excluded from evaluation.

**Judge-specific evaluations:** Evaluations are also conducted with individual judges outside of these regular intervals when the judge applies for a promotion, transfer or leave of absence (this may be for family reasons or in order to work for a period in government).

**Those conducting evaluations:** The person who conducts the judicial evaluation is usually the president of the regional court (or president of the superior regional court). Evaluation is a major responsibility for the court presidents and constitutes a major part of their workload. At any one time there are likely to be over 200 judges up for periodic evaluation in a single regional court, along with a significant number of “special occasion” evaluations needed for individual judges. It is considered a personal responsibility of the court president and cannot be delegated to any other judge except the vice-president. However, even though the decision on evaluation is their personal responsibility, court presidents are able to employ judicial assistants (judges working solely in court administration) in preparing the evaluation materials. The assistants will examine court files, read judgements handed down by the judge, examine statistics (e.g. the number and percentage of cases decided by judgement, of cases settled etc.) and gather information from colleagues (lawyers, presiding judges on the panel where judge is a member, appeal court judges). In most cases the president or vice-president will sit in on a trial conducted by the judge being evaluated.

**Criteria for evaluation:** The general criteria for evaluation are laid down in judicial administration regulations in the Länder. They vary in detail in each Lander, but they

generally follow the criteria that have recently been developed for initial appointment or for appointment to senior judiciary in some Länder, including:

- **Professional Competence**
- **Personal Competence**
- **Social Competence**
- **Competence to Lead:** for senior appointments

Under each of these four main competences, a number of Lander have developed more detailed lists of qualifications and abilities on which evaluation is to be based. The following competence list from North-Rhine/Westphalia is a general reflection of the competence frameworks used by other Lander:

## **Judicial Competence Framework (North-Rhine/Westphalia)**

### **1. Professional competence**

#### **Professional qualification**

- Wide knowledge of the law
- Ability to apply the law in practice
- Ability to acquaint oneself with new legal fields
- Good judgement
- Ability to apply information technology

#### **Understanding of judicial office**

- Impartiality
- Prepared to actively uphold the values of the constitution
- Prepared to defend against undue influence
- Prepared to take responsibility for judicial decisions
- Awareness of the influence of private conduct on judicial office

#### **Ability to present arguments and to persuade**

- Precise phrasing
- Ability to define issues in complex cases
- Giving reasons thoroughly, with respect to the individual case
- Openness

#### **Ability to conduct hearings and interrogations**

- Being thoroughly prepared
- Knowledge of the court files and documents
- Planning and structuring of trials
- Respect for the interests of the parties
- Understanding, sensitiveness and patience with parties
- Clear view of chances for settlements

#### **Competence in teaching**

- Prepared to instruct students in preparatory service
- Diligent correction of students' papers

## **2. Personal competence**

### **General elements of personality**

- Broad interests
- Natural authority
- Prepared to accept difficult duties
- Awareness of one's strengths and weaknesses
- Control of one's emotions

### **Sense of duty and responsibility**

- Awareness of social responsibility
- Prepared to accept responsibility for judicial administration
- Able to assess consequences of decisions
- Responsible handling of a large workload
- Openness towards lay judges and court staff

### **Ability to cope with the workload**

- Physical and psychological fitness
- Prepared to accept additional duties
- Able to work fast under pressure and with concentration
- Maintaining standards even with a larger work load

### **Ability to manage and to organise work**

- Set priorities
- Optimise work flow
- Able to motivate oneself and others
- Delegate work reasonably
- Take available resources into account

### **Ability to decide**

- Decide swiftly and responsibly
- Prepared to face necessary disputes

### **Flexibility and preparedness for innovations**

- Openness towards new technologies
- Openness towards modernisation of courts
- Prepared to work in different court structures
- Ability to develop new solutions

## **3. Social competence**

### **Ability to work in a team**

### **Ability to communicate**

### **Ability to deal with conflicts and to mediate**

- Prepared to compromise
- Fairness, positive approach in dealing with colleagues
- Constructive criticism
- Ability to mediate
- Being accepted as an authority

### **Awareness of service aspects**

- Respect for interests and concerns of parties and witnesses
- Politeness
- Keeping to schedules
- Taking the necessary amount of time

## **4. Competence to lead**

Clear instructions

Trust in staff and colleagues

Openness for concerns of staff

**How evaluation is done:** In some Länder an evaluation check-list has been introduced where all the relevant criteria are listed and boxes are ticked to show the level of performance of each element, and a final mark is recorded. In other Länder, evaluations are in narrative form describing the judge's performance under each of the criteria, followed by a final assessment mark at the end of the report. The final marks are considered crucial as they establish a ranking among judges which can be used in reaching decisions on judicial career progression. In general the following levels of performance evaluation are used:

- below average
- average or satisfactory
- above average or fully satisfactory
- high above average or good
- excellent or very good

Within each of these levels it is also usual for distinctions to be made between lower, medium and upper level so that, for instance, an overall result could be "above average (lower level)" or "good (upper level)"<sup>30</sup>. Some Lander ministries publish statistics on the spread of evaluation scores. Judges who have recently been promoted will often get a lower final mark than before the promotion because their performance is being assessed in relation to the greater demands and their lack of experience in higher judicial office. With judges seeking promotion, the evaluation may also include a prognosis, where the court president has to express his opinion about what level of performance can be expected from the judge in the new position.

While judicial evaluation is clearly a key part of the career of a judge in Germany, the guarantees of judicial independence in the German constitution place limits on the type of evaluation that can be conducted. Section 26 of the Judiciary Act states that "judges are subject to service inspections only insofar as their independence remains unaffected". Therefore, while the president of the court may criticise a judge for personal or professional conduct, the judge cannot be criticised for the way he or she has applied the law in decisions. As a result evaluations are limited to more general observations (knowledge of the law, speed and thoroughness in deciding cases) but they may not touch the "core" of judicial work (correctness of the application of the law or value of the decision).

---

<sup>30</sup> This is similar to the system used in Germany for law exams: a scale from 0 to 18 points, where 4 to 6 corresponds to "sufficient", 7 to 9 with "satisfactory", 10 to 12 with "fully satisfactory", 13 to 15 with "good" and 16 to 18 with "very good".

## Austria

In Austria, judges are evaluated every second year after appointment to a new position. Evaluation is carried out by judicial boards, which include the head of the district court, representatives of judicial associations and the head of the appellate panel who reviews the evaluation. New evaluations can be requested by the president of the court or the head of the district court if it seems that the last evaluation is no longer valid, or by the judge concerned one year after the last evaluation.

The evaluations are in writing, are similar to those carried out during the training period for judges and consist of an evaluation of the following competences:

- Legal knowledge
- Reliability
- Decision-making ability
- Work rate
- Ability to work under stress
- Communication (written and oral)
- Social & personal behaviour

There are five possible grades given for each competence:

- excellent
- very good
- good (average)
- pass
- fail

Evaluations are made based on the personnel file of the judge concerned. If the grade is below “very good”, an evaluation is repeated the following year. A grade below “good” may result in financial disadvantage. Cases of a lower grading may lead to disciplinary proceedings, which may result in dismissal. If the judge’s evaluation is rated as “fail” for two successive years, the judge is told to apply for retirement by law and is retired by law if she or he does not comply. However, while data on the number of “fail” grades are not available, it appears that fail grades are very rarely given. Judges are informed of their evaluation grades and have the right to appeal to the judicial board of the higher court of appeal.

## **The Netherlands**

Evaluation of judges takes place in a number of different ways in the Netherlands, depending on the rank of the judge. These approaches include:

- Mutual coaching/peer review
- Senior judicial evaluation
- Annual reviews

In addition, the Dutch judiciary is currently developing a competence framework for the judiciary.

***Mutual Coaching/Peer Review:*** A programme operates where judges support each other's professional development through 'mutual coaching' or 'peer review'. From time to time a colleague will come and observe the way a judge conducts a court hearing or delivers a judgment, and then shares his or her observations with the judge. The requirement is that mutual coaching takes place between judges of equal rank, and the emphasis is on helping each other to improve performance. The Council believes this is the best means for courts to 'keep professionals on track' and should be done on a regular basis. However, this requires a substantial commitment by the management boards of the courts, as mutual coaching takes time and skill. The Council provides training opportunities for judges to learn these peer review skills.

***Senior Judicial Evaluation:*** A special assessment of talents and skills takes place for judges appointed as a vice president of a court or to a specific managerial function (e.g. president, sector chair). Once (and only once) a judge receives a positive evaluation here is he or she granted access to management training.

***Annual “Reviews”:*** As a part of the development of personnel management and professionalisation policies, the judiciary in the Netherlands is beginning to implement periodic reviews of individual judges. Here, sector chairs have annual talks with each judge in their sector about their day to day functioning and their career development. The Council recognises that this approach takes time and skill, and opportunities are offered to sector chairs to learn these skills.

***Quality Control System (Competence Framework):*** The Dutch judiciary is currently developing a "quality control" system which is suppose to combine a managerial model for organisational development with a system for measuring the

quality of how judges function at the court level. The framework encompasses the following criteria:

- Impartiality and integrity (of the judges)
- Speed and efficiency (of the court)
- Legal cohesiveness of jurisprudence (of the court)
- Expertise (of the judges)
- Treatment of clients and professionals (of the judges)

For each criteria there are “Achievement Indicators” which are marked on a scale of 0-5, and there are also specific means of measuring success for each indicator.

These employ a variety of methods including questionnaires and surveys of judges and court staff, assessment made by court users, in-court observations, and statistics related to cases decided and appeals made. This type of competence or quality framework combines evaluations of both the court and the judges working at that court. The system is still being implemented, and several courts have acted as pilot courts to trial various systems of measuring quality. The development stage is to be completed by 2007.

***How the Competence Framework was developed & implemented:*** The main argument that convinced judges of the importance of using this system was that if judges wanted government to invest in the courts, judges should prove and show how financial pressure for efficiency was negatively affecting the quality of their work. The designers of this system were well aware that it would only work if the “achievement indicators” were chosen and defined by the judges themselves, and that the judges also needed to be involved in the development of the systems for measuring quality. Only in this way would the judges trust that the system was reliable and would not be open to abuse the government. While it appears that the judges in the Netherlands do accept that courts as public service providers need adequate quality control policies, this competence framework has been accepted as a means of evaluating *courts*, not individual judges. In principle, it could be used as the means of evaluating the performance of individual judges, but a pilot of the system at the Roermond District Court highlighted the judges’ resistance to applying the system to individual judges.

## **Finland**

In 1995 the Finnish judiciary adopted the state administration system of “**management by results**”. This required the courts, in conjunction with the Department of Judicial Administration, to establish performance indicators for the courts based on three main criteria:

- Productivity
- Efficiency
- Effectiveness

Productivity and efficiency are measured strictly by numeric calculations. Productivity is measured by the number of decisions per judge and the number of judgments delivered by a court based on the number of personnel working in that court.

Efficiency is determined by the ratio of a court's appropriation divided by the number of judgments made by the court. Effectiveness of the courts is meant to be based on more qualitative criteria, but this has proved more difficult to determine.

**Results discussions and targets:** Part of the evaluation and appraisal system involves annual results discussions held between officials from the Department of Judicial Administration and each court. During these annual discussions, results targets are set for each court for the coming year, based on expected caseloads and staff, prior to the DJA agreeing a court budget. The adoption of the management by results system has meant that each court must monitor the progress of cases in its court and plan and monitor the use of its resources more closely than in the past. Prior to the results discussions with the DJA, each court must carry out an internal review of working practices and work loads. All of this has required senior judges in each court to develop administrative skills. In addition to covering staffing levels and caseloads, the results discussions can also cover any training needs of the judges to meet the results targets.

**Criticisms of the system:** The management by results system in Finland is not without its critics, including judges who have felt that administrative officials setting results targets for the judiciary infringes upon judicial independence and that quantifiable targets are not appropriate for the work of the courts in comparison to other governmental bodies. It has also been claimed that this system places too much emphasis on the number and length of cases at the expense of the quality of judicial decisions. However, it has also been suggested that the regular meetings between the heads of the courts and the ministry officials have fostered more positive relationships, and that the results targets are not dictated by the ministry but

are instead only arrived at by agreement between the judges and government officials.

When the management by results system was first introduced a working group proposed that the system for the judiciary be supplemented by developing **qualitative targets** for the courts alongside the quantitative ones. Three criteria were suggested:

- (1) quality of court proceedings
- (2) quality of judicial decisions
- (3) quality of customer service

Each of these has implications for judicial training. Improving the quality of court proceedings requires continual review of procedural rules; improving the quality of judicial decisions requires on-going training for judges to develop their professional skills; and improving customer service particularly requires senior judges in these courts to develop an understanding and ability to implement information sharing systems. One consequence of this is that judges have begun to take training courses in media relations.

**Court “quality project”:** One of the six Finnish courts of appeal, the Rovaniemi Court of Appeal, has developed its own “quality project”, in which it has devised qualitative targets for the court and the seven district courts within its jurisdiction. These targets were devised by the judges themselves without the involvement of the Ministry of Justice. They identified topics for quality evaluation by forming working groups on specific topics, which involved all judges in the jurisdiction, and by surveying court users (including lawyers as well as the public). They began with projects on ensuring consistent sentencing in criminal cases and eliminating log jams in civil cases, which involved instituting new training programmes for both judges and court staff. These were subsequently followed by new qualitative projects on the admission of evidence in civil and criminal cases and the rights of judges to pose questions in civil cases. An assessment of this project has suggested that it has produced a new more positive environment where judges debate and discuss topics in small groups, and this in turn appears to have increased the motivation of judges and their sense of cultural identity and independence<sup>31</sup>.

---

<sup>31</sup> See discussion on the quality project in the Rovaniemi court in M. Fabri et al *Administration of Justice in Europe: Towards the Development of Quality Standards* (IRSIG 2003)

## **Spain**

There is currently little in the way of professional evaluation of the judiciary in Spain, although reforms in 2003 established some basic principles and guidelines, and the Spanish judicial self-governing body (the GCPJ) is currently developing a system of qualitative indicators to evaluate the performance of judges<sup>32</sup>. The new model, not yet in place, may replace the quantitative system of “productivity levels” that assigns caseload objectives to judges, depending on the specific type of court and jurisdiction. The CGPJ first established these “quantitative modules” in 1987 to set the ideal workload of all courts (and in that way the performance of judge). These quantitative measures were applied until 1998, and then refined and updated every year. When the objectives are met, judges receive salary benefits. However, these “productivity levels” have been controversial within the judiciary.

---

<sup>32</sup> Public Procurement Contract 2003/5 97 086935. See M. Poblet and P. Casanovas “Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Spain” in di Federico (2005)

## **Part 8. Conclusion**

Major changes in judicial recruitment, increasing caseloads, and more complex laws and legal issues have increased the demand and need for judicial continuing education and training in both common law and civil law jurisdictions, and there is now much more comparability between the two systems in terms of judicial training and educational needs. Judges also face increasing media scrutiny of judicial decisions, and the growing introduction of “quality control” measures for the judiciary has required that judicial training provides judges with more than just updates on changes to the law. In addition, demands to diversify the pool of judicial appointees beyond a narrow group of practicing lawyers can create new demands for training and bring individuals into the judiciary who have higher expectations of a structured system of professional development.

In general, the most comprehensive judicial training systems are in the United States, Canada and Spain, with wide-ranging and innovative curricula. The issue of judicial education and training is widely studied in the United States (and increasingly in Canada as well), and there are extensive resources available there on this issue; therefore it is perhaps not surprising that the scope of judicial training is more extensive and innovative there. Even though Europe has some of the longest standing judicial schools, they are perhaps lacking in innovation recently (with the exception of Spain). However, when it comes to judicial appraisal or evaluation schemes and competence frameworks for the judiciary, common law countries do not have much to offer in the way of models. Civil law jurisdictions, where career progression is possible, have more highly developed criteria for assessing judicial performance, and the comparative study of evaluation and the development of “quality standards” for the judiciary has been led in the last few years by European academics<sup>33</sup>.

### **Types of training provided**

All the jurisdictions covered in this report provide training and education in substantive law but have also responded to demands (from judges, staff and the public) for programmes beyond strictly substantive legal issues. Significant elements of all these jurisdictions’ curricula now deal with the social context of judging, judicial ethics, legal skills or “judge craft” (opinion writing, sentencing, dealing with different modes of evidence, etc.) or other judicial skills (in

---

<sup>33</sup> See Fabri et al (2003) and di Federico (2005)

communication, management, language and the use of technology). Most recently there has also been a growing trend towards providing programmes that address judges' personal welfare concerns. Some jurisdictions (such as the US, Canada and Spain) provide virtually the entire range of curriculum options to all judges, often through a mix of different training bodies.

### **Entitlement to training**

In all national jurisdictions fully appointed judges are not required to take part in continuing education and training programmes, and mandatory in-service training would generally be viewed as an infringement of judicial independence. However, mandatory training does exist in all civil law jurisdictions for trainee judges without any practical legal experience, in some civil law jurisdictions for judges promoted to senior posts, and for most state (but not federal) judges in the United States. As opposed to training *requirements*, some jurisdictions have training targets for new judges and education and training entitlements for established judges.

In other jurisdictions the notion that the judiciary needs to develop a culture of personal development is rather outdated, albeit for different reasons depending on the jurisdiction. In common law countries such as the US and Canada, where significant proportions of judges are drawn from academia and where all lawyers are post-graduates, most judges come into the judiciary with a background where self-development is already well established. In civil law jurisdictions, where most judges enter the judiciary through an extended period of initial training provided by the judiciary and where evaluation and promotion based on continuing development of judicial skills and knowledge are integral parts of their professional lives, self-development is simply part of the ethos of the profession.

What is important in all jurisdictions is the existence of a culture of support among judges' superiors for requests to attend individual training and educational events. In contrast to judges in Britain, judges in most of these jurisdictions are seen as public servants with wider community service responsibilities, and therefore requests to superiors for time (and funds) to participate in external, personal development activities are more likely to be seen as fulfilling their public service duties. As judging becomes more of a profession even in common law countries, training appears to be becoming increasingly seen as a necessity for professional advancement even if it is not compulsory, although this has important time and cost implications.

## **Training structures**

Judicial training organisations generally take four forms. At one end of the spectrum are formal state judicial schools (France, Spain, Portugal, Germany), funded by government ministries but controlled predominantly by the judiciary and involved in both the recruitment and training of judges. At the other end are less structured training organisations with no formal premises, usually either committees within judicial associations (Denmark, Italy) or units located within ministries of justice (Austria, the Netherlands, Finland). Common law jurisdictions have tended to adopt the formal judicial school model but with a strong affiliation to a university and with multiple organisations involved in delivering training (United States, Canada, Australia).

## **Organisation and scope of training**

In most jurisdictions the overall control and direction of judicial training is in the hands of the judiciary, although there is often usually some involvement on the part of justice ministries (in both common and civil law jurisdictions) at least as funding bodies or representatives on governing bodies of training organisations. Judicial control is usually achieved by having a majority of judges on the governing body. This helps to ensure that judicial education is credible to the judges, and ensures that judicial independence is not undermined.

The scope of training varies from one jurisdiction to another, with some offering training to judges only (Canada) while others provide training to judges and judicial support staff, both separately and in combined courses (United States), or judges and magistrates (Australia). In addition, in a number of civil law jurisdictions training of judges and prosecutors is combined. All the federal states (Germany, Canada, United States, Australia) also have regional training bodies or other organisations that provide training at the regional level.

## **Training delivery methods**

The range of options available to jurisdictions for delivering judicial training programmes is wide and can include: centralised, face-to-face programmes; decentralised, court-based programmes; IT and web-based distance learning; education modules; streamed programmes for individual judicial ranks; integrated programmes for judges and court personnel. Programmes in which judges travel to a central location for face-to-face lectures, seminars, workshops and conferences on legal issues are the most common approaches to judicial training and continuing education programmes across all the jurisdictions. However, traditional formal

lectures are increasingly less popular among judges than smaller, more participatory seminars and workshops.

Most jurisdictions are introducing or at least experimenting with delivering some training programmes and educational materials on-line or through the use of some form of information technology (IT). In addition, the introduction of on-line judicial information systems and computerised case management systems has also required special training programmes in IT for judges and court staff. While on-line courses and web-based materials can be particularly helpful in delivering training and education in large geographically dispersed jurisdictions (US, Canada, Australia), they can be useful for all jurisdictions as they allow information to be constantly updated and allow judges to have more control over their own time that is devoted to training and education. The main drawback is the lack of one-to-one contact, although some jurisdictions have addressed this through the use of on-line “live” sessions.

Canada has introduced training education modules (smaller units of educational programming that are components of larger courses or seminars), designed to provide judges with both greater control and flexibility in their training and education. The National Judicial College in the United States custom designs “bespoke” programmes for courts that wish to have programmes in their own states.

The use of “streamed” programmes, in which training and education is delivered to judges based on their judicial rank or court is most often used for new judges, who will have specific and immediate training needs. However, jurisdictions appear to be increasingly providing training programmes for more senior judges, particularly those with managerial responsibilities. In contrast, the Federal Judicial Center in United States provides an innovative, integrated approach to delivering training, where programmes are attended by judges, their clerks and court staff together. The United States is also the only jurisdiction to offer specific qualifications and certifications to judges for continuing education, through the programmes offered at the National Judicial College at the University of Nevada. This reflects the strength of judicial studies as an academic discipline in the US, in comparison to most other jurisdictions.

### **Needs assessments, curriculum and programme evaluation**

Ideally, judicial training programmes and curricula should respond to concrete problems, be based on a needs assessment, have specific objectives that shape the training programme and be subject to periodic evaluation. However, in most jurisdictions there is little to distinguish between needs assessment, curriculum development and training evaluation. The basis for these activities is primarily confined to feedback questionnaires completed by judges at the end of training sessions, or sometimes wider periodic surveys of the judiciary on their training needs. A number of different assessment methods have been used by jurisdictions to determine the curriculum and training programme for judges, but in only a few jurisdictions (US, Canada) are more than one or two of these methods used: training committees/coordinators; questionnaires or surveys of judges; court users and community assessment exercises; large-scale reviews of the judiciary; and research. In several European countries (Denmark, Finland) user surveys are used to measure satisfaction with the judiciary, and these feed into training programme development. In other instances, large-scale reviews of the performance and organisation of the judiciary in recent years and changes to the judicial appointments process have also helped to identify training needs (Spain, Denmark, Finland and the Netherlands).

### **Barriers to training**

The common barriers or obstacles to delivering judicial training and education across jurisdictions include: funding and time; geography; judicial dominance; institutional inertia; and resistance to new training approaches. The cost of delivering judicial education to large numbers of judges and balancing judicial demands for training with court schedules is the perennial problem for most jurisdictions. A few states in the US have developed funding mechanisms for judicial training that offer protection from government-wide cuts (for instance by funding judicial training and education programmes from fees attached to court fines). Centralisation of training is particularly problematic for jurisdictions covering a large geographic area and/or including substantial rural or remote areas. The difficulty in getting leave from busy court lists and the financial costs of travelling to one central location for training are major barriers for some judges in jurisdictions like Australia, which has turned to technology-based distance learning to supplement its face-to-face programmes. In Canada, the two systems of law (common and civil) and bilingualism also present specific issues for judicial training.

In other instances, the existence of long-established judicial schools may create barriers to innovative programming. While the French ENM was once the model for judicial schools in other jurisdictions, it has been said to lack innovation in recent years, perhaps in part due to the centralisation and dominance of the judiciary. The programme development committee at the German judicial academy has also been criticised for being too large, centralised and slow to innovate. “Complex curricula” as well as technology-based distance learning courses can also present obstacles to judicial education and training. Judges’ learning style preferences can make complex curricula courses more difficult to implement, and it appears that judges generally resist distance learning courses (at least at first). Even when they accept them they are only willing to use them as a supplement to face-to-face training, not as an overall substitute. One means used to overcome this resistance to technology-based distance learning is the use of live interactive video on websites to create more of a face-to-face feel to distance programming.

### **Evaluation of judges and competence frameworks**

Only civil law jurisdictions covered in this report have systems for judicial evaluation and appraisal, which can form an integral part of career progression and promotion. In this respect civil law countries have more to offer in the way of judicial competence frameworks, as they have had to develop more structured criteria for assessing judicial performance. France, Germany and Austria have the most highly developed institutionalised evaluation programmes, where virtually all judges are evaluated by judicial superiors at regular intervals. In other countries, such as the Netherlands, evaluations for most judges involve peer review, and institutional evaluation is primarily for judges in more senior, managerial positions, although the Netherlands, Spain and Finland appear to be moving towards a more institutionalised evaluation of all judges. This reflects the fact that as public and government demands grow for guarantees of quality standards in the justice system, judicial evaluation is likely to be an increasingly important issue for the judiciary in all jurisdictions. This in turn is only likely to increase both judicial needs and demands for further training and education.