

Judicial Education-A Necessity for Judicial Success

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Abstract

Judicial Education is a specialised area in which law and education intersect. Its development and acceptance in the judiciary is relatively new.

This paper discusses judicial education and its impact on judicial success. It provides insights into the expectation of judicial education and how it informs on the competency of the judiciary and confidence of the public in the judiciary. It examines the term judicial success and connects this with the recognition of judicial education as necessary. Further, it suggests that evaluation methodologies for judicial education programs are critical to confirming judicial success because judicial success is based on improved access to justice.

It is anticipated that this research will contribute to the academic work in judicial education and provide a foundation for future studies which critically analyse through more literature review and empirical data on the connectedness of judicial education and success.

Concepts in Judicial Education

Judicial Education is a critical component for any Judiciary wishing to perform at its optimum in the proper administration of justice. The process of judicial education is engaging adults who may be assumed to be unique learners and sophisticated learners given the cohort of individuals who are Judges and Magistrates. For the legal professional, it may at first appear to be a fairly straightforward continuum in the education process which follow academic and vocational training prior to qualifying.

Successful Judicial Education requires an understanding of the Judiciary's needs in terms of growth and development. Further, this will require recognition that the individuals who are the focus of the educational programs are astute and successful, and may be national or even international experts on multifaceted aspects of law.

There may be many who do not see the relevance or significance of judicial education when the target audience is expected to have all of the knowledge, skills and attitudes required to perform in their judicial roles. However, there is always more to learn, and academic and

vocational training, while perhaps preparing ‘lawyers’ for practice, is unlikely to prepare them for the specialised role of the judiciary.

There are benefits to training for the judiciary and this can be evidenced by the improvement in performance and in the confidence of the public of that performance. The Judiciary performs a very important and unique role in society and as one of the three pillars of government (i.e. Executive, Legislative and Judicial) is accountable. Judicial Education enhances the ability of the Judiciary in its accountability. This accountability is to the public with the purpose of ensuring that there is access to justice.

Judicial education underpins judicial reform and development in countries which have established democratic systems functioning at the level of international best practices. In developing countries where rule of law and corruption issues are more aligned with the norm than the exception, the need for judicial education is even more pronounced in order to assist the judiciary in meeting these challenges which if left unchecked could potentially destroy those societies.

The Independence of the Judiciary is something that must be jealously guarded. Judicial education which influences the judiciary should be controlled by the judiciary and further develop programs which strengthen judicial independence. The obligation of those engaged in judicial education should be clearly understood to assist the judiciary in the performance of their duties as impartial and fair and as the independent branch of government. Citizens rely on the judiciary to adjudicate matters when all else fails in society. Judicial education buttresses the judiciary’s ability to effectively do just that.

The recognition of the need for judicial education has been embraced generally by the judiciary. ‘We have progressed from the practice of each country developing judicial education without outside resources to regional interaction and resource-sharing’.¹ This is a significant departure from the approaches taken by the judiciary over half a century ago in relation to judicial education and its applicability.

Judicial Education entails enhancing competencies through the delivery of programs or training which encompass knowledge, skills or attitudes.² This concept has significance because of the methodology in which training is coordinated, organized and presented and its target audience are not identical to other types of adult education.

However, initially in common law jurisdictions, judges and lawyers did not support continuing educations for judges.³ ‘If we consider the development of judicial training institutes from the perspective of judges, however, we find that the development of judicial education across the globe has not been so straightforward.’⁴ In light of the fact that historically the prevailing view would have objected to judicial education it has turned this view on its head as we examine the realities of the 21st century. ‘Worldwide, judges have been involved in judicial education and training for over fifty years.’⁵

The ability to lead and demonstrate leadership skills should be a primary trait associated with judicial officers. Notwithstanding the qualifications and skills that come with serving in such high office, it is not enough to be a good manager to be effective in such a role. ‘A leader must be uneasy with routine and habit, vigilant against complacency, and ruthless in attacking smugness and arrogance.’⁶

It is fairly easy to become consumed with the reality that so many rely on the decision making of an individual who serves as a Judge. While the demands of working in the Judiciary is such that it is not intended for the intellectually deficient, there is none who has served in the past or present that is perfect. To this end, it therefore, becomes critical that Judicial Education is fully embraced to assist in strengthening leadership capabilities while also refining managerial skills.

Teaching is hard work.⁷ Interestingly enough, Judicial Education involves more than just teaching. It has its own pedagogy and style which is unique to its target audience of learned men and women. Delivering training through lectures, panel discussions, online webinars, publications are quite common.

“Forms of Judicial Education include collegial meetings (international, national, regional and local) and all professional information received by judicial officers (Judges & Magistrates) and court staff through the media of print, audio, video, video teleconferencing, computer disk, satellite television, on-line, mentoring, organized feedback such as performance evaluations, self-study material, e-learning, work attachments, mentoring, etc.”⁸

The concept of Judicial Education is one which is not readily accessible in terms of material in academia. In fact, most curricula in law schools make no mention of Judicial Education as a topic. It is very likely that Judicial Reform would be an area of discussion robustly debated in law schools. However, for lawyers who will transition into Judicial Education in the future either as a facilitator or user of the programs, it is an area in academia that would be beneficial to include even if on the same footing as Judicial Reform.

As a legal professional considering the next step of one’s career⁹, significant thought is given to the requirements for being on the bench if that is the intended goal. However, it is very likely that one does not consider the requirements for continuing professional development through Judicial Education as the competency enhancer that it is. It is essential for ensuring that Judges remain on the cutting edge of delivering Justice in their courts.

‘An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice.’¹⁰ Judicial Education at its foundation aims to achieve what is in the Commonwealth Latimer House Principles. Public confidence in the Judiciary can only be strengthened when Judicial Education is employed to support the Judiciary.

‘The competent and conscientious performance by judges of the duties of their office is the most effective way to maintain respect for the rule of law.’¹¹ Based on the dearth of literature on judicial education one may argue that it is not sufficiently important or relevant. However, in spite of the adequacy of the professionals who are Judges and Magistrates the law continues to evolve, and the resultant being the acceptance by the Judiciary that there is a need for Judicial Education.

‘Judicial education addressing social context assists judges to respond effectively to these challenges.’¹² It is paramount in promoting justice that context is clear and understood. Hence, the phenomenon of social context which differs by jurisdiction should be included in judicial education programs.

Throughout most Commonwealth Countries, Judiciaries either have Judicial Education Committees or Judicial Education Institutes or Colleges whose focus is to provide judicial education for their Judiciaries. This in itself demonstrates the necessity of judicial education as arguably learned men and women would not choose to utilise resources in an initiative that is irrelevant or of little use. Therefore, the concept of judicial education is now firmly established in Commonwealth Countries and in many other jurisdictions around the globe.

Often times there is a view that face to face delivery of judicial education is the best method because it allows people of like minds to congregate in one location and to fellowship and share ideas which in theory should improve their respective abilities in the performance of their judicial duties. However, fundamental education theory has proven that various styles of learning are suited to different learners and not all individuals learn at the same rate or through the same style as effectively as possible.

Given the level of education, time constraints and prominence of the target audience in judicial education, self-directed learning is a helpful tool to produce the desired result of education instructional delivery. Published works and producing publications that can be read by the judiciary can greatly assist in the continuing professional development. In many jurisdictions there has been a demand for more published material to be used in self-guided training by Judges.

“Bench books are a very important tool in building judicial capacity....The rationale for a bench book is to provide a special resource to supplement the existing literature and provide targeted assistance for the quite particular needs of judges.”¹³

If more judicial education programs are able to deliver more bench books, it is likely that the accessibility to more knowledge, skills and attitudes training becomes instantly available for those judiciaries. ‘Delineating goals for judicial education is not merely a theoretical exercise.’¹⁴ There are practical implications through which programs are developed and the impact which should be monitored and evaluated by an effective measuring standard whether qualitatively or quantitatively, will be felt by the public.

Ethics and Integrity inform on the behaviour of individuals in society. It is an accepted position that the judiciary while also subject to the law, are the upholders and guardians of the law on a personal and professional level. Judicial education ensures that there are opportunities to refresh the intellect and stimulate the thoughts of these learned men and women in continuing to be beacons of justice for all in society. Efforts to eliminate judicial corruption are critical components to engendering societal support of the judiciary. Judicial education assists in reinforcing the types of attitudes and behaviours and the expectations by society of the judiciary as men and women above reproach.

What is Judicial Success?

Reality is merely an illusion, albeit a persistent one-Albert Einstein. One may advance the view that judicial success is relative and not absolute. Is the public trust and confidence an indicator of judicial success?

“...it has long been recognized that the preservation of public confidence in the judiciary requires maintaining a standard of excellence in the performance of judicial work. To maintain this standard, ongoing participation in judicial education is required.”¹⁵

Judicial Success is measured by a number of subjective and objective indicators. Invariably one may look at the number of matters that are heard by a court in contrast with the number of issues that are available to be heard. Although quantitatively getting this information may be unlikely, qualitative inferences can be drawn from court user fora.

Competency may be regarded as judicial success.

“A competent judge, imbued with qualities of professionalism and feeling accountable, has no fear of anyone or anything... Thus, judicial training and education serve to make judges acquire the necessary knowledge, competence, and independence to take on the challenges”¹⁶

Judicial success gives the judiciary achievements with which to emulate and the public confidence with which to embrace. It inspires ordinary people to aspire for higher heights and promotes the rule of law as a concept worth following because justice is not only done but also seen to be done in the communities that judiciaries serve.

Understanding how to achieve judicial success does not necessarily happen as a result of legal training at the academic or vocational level. It is true that Judges are not trained to be judges until they become judges. This is the general rule and therefore a gap in the transition from being a successful lawyer. It is reasonable to assume that the only way for a Judge to become a better judge is through a combination of experience as a judge and training while a judge in the form of judicial education.

The planning of an appropriate curriculum and the pedagogy are paramount in the program development of judicial education. Working closely with the Judiciary is essential to getting this right. Judicial education is neither purely academic nor vocational. As such, the

approaches to instruction design and delivery are not regurgitation of adult education theory or college lecture styles.

Judicial Competence and professional development are connected through judicial education. The extent to which the efficacy of the judicial education programs are functioning is demonstrated in the judicial success that results. Whether the underlying legal system is civil or common law, judicial education is being adopted.¹⁷ As the foundation of judicial reform, judicial education is a key component because of its impact on skills and attitude change.¹⁸ Judicial education achieving sophistication inspires changes in attitudes which result in the judiciary meeting the societal expectations.¹⁹

The debate on the need for judicial education is now a matter of history, however, it is interesting to note the philosophical debate as outlined by Armytage (2015).²⁰ In the 21st century it seems difficult to grasp the far-fetched views of learned men and women who dismiss the opportunity to improve on their ability to adjudicate in matters and in effect have become “gods unto themselves” by what a reasonable person may infer is their self-perceived superior intellectual and experiential dispensation.

‘With the settled acknowledgement of the need, it is now safe to say that even the most conservative and traditionalist of our judges have come to accept the idea of continuing education and training.’²¹ In jurisdictions whose focus are financial services and which have significant impact on the global financial transactions, ensuring that the judiciary is kept up to date on trends in the law is highly relevant to the success of the global financial community.

When the judiciary meets its responsibility for judicial governance it engages the public and assures confidence. Judicial education is necessary to assure this type of judicial success. It fosters learning. ‘One of the things that I love about being a Judge is that I am constantly learning.’²² Learning is a key function of the judicial education process and judicial success is truly realised when judges actively engage and have a desire to continue to learn.

Judges must seek fairness for all.²³ This results in judicial success given the role of judges to uphold the rule of law. Judicial education fosters understanding in facilitating justice. However, it is important that in planning and executing judicial education plans that judicial educators are aware of the effectiveness of their programs. ‘Without evaluation of the educational experience, we cannot be sure that it was worthwhile.’²⁴ Judicial education requires evaluation to determine its effectiveness. This impacts judicial success because an effective judicial education cannot achieve its optimum success without evaluation.

‘The next thing that is needed for effective learning by judges is a widespread acceptance in the judiciary that life-long learning for judicial officers will be most effective if it is self-directed and collaborative.’²⁵ As judiciaries advance and develop their judicial education programs it is anticipated that greater judicial success will be more easily identifiable and thoroughly evaluated. While monitoring and evaluation of judicial education programs is important, in practical terms the identification of methodology to perform this objectively and

eliminating the subjectivity with credibility is blurred and not necessarily indicative of judicial success. As more quantitative methods are employed in the evaluation of judicial education programs, it is reasonable to deduce that there will be more objective measures of the success associated with these curricula.

Conclusion

As judicial education becomes a mantra in the majority of jurisdictions around the globe, there will be a continued push to measure its success. With a 360 degree turn around in the views of lawyers and judges with regard to the relevance or importance of judicial education, it will be interesting to observe the progress in this niche area of the intersection of law and education. While it has limited academic study it has even more limited published material. There are relatively few judicial educators on the planet and there is a significant demand given the aging population of the existing individuals in the field.

‘In broad terms, judges epitomize adult learners. Within this...formalized judicial education should be seen as a process of facilitation based on self-directed learning rather than authoritarian model of teaching.’²⁶ It has been established by judges, legal practitioners, academics and international agencies that judicial education is necessary. The evaluation of judicial education has been validated as being “inadequate and lacking methodological rigour.”²⁷ ‘Continuing education is integral to the ongoing professionalization of the judiciary.’²⁸ Through adult learning in the areas of knowledge, skills and attitudes for the judiciary there should be expectation of judicial achievement.

One may argue that with the limited information in terms of research on judicial education it is not likely that there will be significant qualitative evidence and that most of what is available is primarily connected to anecdotal indication. Such a position has merit but with more judicial educators documenting the process and systems engaged to deliver judicial education and engaging monitoring and evaluating protocols, there will be more empirical evidence to show judicial success interlinked with judicial education.

The author is of the view that in order to advance civilization as a more just and equitable species, the way in which the behaviours of people are regulated will be improved through a more competent and enlightened judiciary which can only happen with the implementation of judicial education. Judicial education is necessary for judicial success. The quality of life will be enhanced when there is judicial success.

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