

## **EMAIL CORRESPONDENCE**

**Justice Katherine McLeod to CAPCJ Executive**

**November 19, 2021**

RE: CAPCJ Executive Meeting & follow up

Hello

Further to my attendance at the Executive Meeting, Rob and I have spoken. Attached to this email are now 3 documents:

**1. CCCJ Aspirational guidelines for the support of Judicial Education for Provincial and Territorial Judges.**

I believe this was the document to which Martha referred at the meeting. I understand the history of this document is as follows: this initiative was originally commenced by Ron Le Blanc when he was Ed. Chair. Rob then picked it up. It was completed and sent to CCCJ who then responded with bullet points 1 & 2 added. I am advised it was then approved in principle by both CCCJ & the NEC. So it is a living document. We do not believe that this conflicts in any way with the Sub Committee Report which speaks to the content of core programming.

2. The Report of the NEC Sub committee with amendments as suggested by the Executive

3. The Addendum to that report.

We propose forwarding documents 1 and 2 as a package to the education committee of CCCJ and inviting members of that committee to meet with Rob and myself and the author of the sub committee report (Ryan Rolston) to discuss any comments, changes, contributions that CCCJ would like to see included.

Thereafter each committee would bring it back to the whole of their respective organization for discussion and hopefully adoption.

As I explained on the call, we believe it is very important that these documents be part of our framework going forward and that of CCCJ. The Pandemic effects are going to be long lasting and we want to be seen to protect judges mandate for education.

Please let me know if there are any further changes you wish to make to the sub committee report.

Trust all is well with you all

Best wishes

Justice Katherine L McLeod

Ontario Court of Justice

7755 Hurontario Street

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Tel: 905-456 4830

Re: CAPCJ/ACJCP - NEC Sub-Committee Report - Follow-up

I am writing to advise that the CAPCJ Executive addressed the NEC Sub-Committee Report, the updated and additional documents attached to your November 19, 2021 email, and related issues at the December 16, 2021 and January 18, 2022 Executive meetings. The Executive has identified four points that need to be addressed before the proposal can be returned to the CAPCJ Board:

1. Since the request is for the NEC to meet with the CCCJ, what role does the NEC envisage for itself given that the CCCJ and the NJI have already embarked on a pilot project?
2. Is it possible to have each province and territory prepare a more detailed and current summary with respect to funding for judicial education than the limited information which has been fitted into the chart attached to the report?
3. Given that the report is more than two years old and committee membership may have changed in the interim, can the report go back to the committee to ascertain if it is still the consensus?
4. Has the committee given any consideration to mandatory education for judges in light of federal legislation pertaining to new judges and events such as the Private Member's Bill in Manitoba and how mandatory education could be distinguished from best/ideal practices which they are promoting?

We kindly ask that you provide the following information to the Executive:

1. What role does the National Education Committee (NEC) envisage for itself given that the CCCJ and the NJI have already embarked on a pilot project with regard to judicial education?
2. What are the educational components currently in place in each jurisdiction - including comprehensive information regarding the source and amount of funding, the number of available/mandatory education days, the number of in-house conferences and the core education requirements?
3. Does the *National Strategy on Education Report* represent the position of the current NEC membership?
4. Has the NEC given any consideration to mandatory education for judges in light of federal legislation pertaining to new judges and the movement in various provinces towards mandatory education protocols? How can mandatory education be distinguished from best/ideal practices that the NEC is promoting?

We look forward to hearing from you.

We anticipate that the NEC item will be returned to the Agenda of the 2022 Spring Board Meeting.

*Judge Wynne Anne Trahey*

*Secrétaire de l'ACJCP*

*Secretary, CAPCJ*

Provincial Court of Newfoundland and Labrador

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Re: CAPCJ\ACJCP FW: Response of the NEC to the Executive's inquiries

Hello Wynne Anne

I write in response to your email to me of February 9. The NEC met last Friday evening and formulated responses to the questions from the Executive. Hopefully these responses will allow this matter to go forward.

Question 1: Since the request is for the NEC to meet with the CCCJ, what role does the NEC envisage for itself given that the CCCJ and have already embarked on a pilot project?

Answer: In addition to nominee(s) of CAPCJ Executive, members of the National Education Committee will be present at any joint meeting of NJI, CCCJ and CAPCJ to provide a collaborative approach to discuss education and its delivery to Provincial and Territorial Court judges.

Question 2: Is it possible to have each province and territory prepare a more detailed and current summary with respect to funding for judicial education than the limited information which has been fitted into the chart attached to the report?

Answer: The information summarized (and amended on request from the Executive) is really the responsibility of the individual members of the CCCJ and if more fulsome information is required, the NEC respectfully requests that a request should be forwarded to the Chair of the Education Committee of CCCJ since it is the Chief Judges/Justices who set the budgets for the education of their courts.

Question 3: Given that the report is more than two years old and committee membership may have changed in the interim can the report go back to the committee to ascertain if it is still the consensus?

Answer: Yes the report has been reviewed by the current membership and is supported by the current members of the NEC.

Question 4: Has the NEC given any consideration to mandatory education for judges in light of federal legislation to new judges and the movement in various provinces towards mandatory education protocols: How can mandatory education be distinguished from best/ideal practices that the NEC is promoting?

Answer: The NEC is of the view that the obligation rests on the Provincial and Territorial Governments to provide the funding and resources for "mandatory education". The NEC is a committee of judges with a principled mandate to ascertain and provide education to fulfill judges' needs. The NEC is of the view that Government mandates are an encroachment on Judges' judicial independence.

Best wishes  
Katherine

Justice Katherine L McLeod  
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**The Canadian Council of Chief Judges  
Aspirational Guidelines for the Support of Judicial Education for  
Provincial and Territorial Judges**

1. Principles:

- The Canadian Council of Chief Judges (the CCCJ) recognizes the importance of judicial education as a means to insure judicial excellence in fulfilling a judge's ability to hear cases and render decisions in a timely and impartial manner consistent with the rule of law;
  - The guidelines are aspirational in nature and intended to complement and support each provincial and territorial court's education policy and program to attain judicial education excellence in the delivery of judicial education.
  - The guidelines are intended to support judicial education for judges appointed to provincial and territorial courts.
2. Wherever possible the CCCJ supports the principle of 10 days of non-sitting time for judges to devote to judicial education;
3. All newly-appointed judges should attend the New Judges Training Program, which should be in both official languages, organized by CAPCJ in consultation with the CCCJ. The program should be offered in both official languages. New appointed judges should attend as soon as possible but in any event within 2 years of their appointment, if at all possible.
4. All newly-appointed judges should attend the Newly Appointed Judges Skills-Based Program (organized by the NJI, CAPCJ and the Ontario Court of Justice) or an equivalent program offered in either official languages. Newly appointed judges should attend as soon as practicable and within 2 years of their appointment, if at all possible.
5. Each Provincial and Territorial Court should host 4 to 5 days of judicial education conferences or equivalent programming each year for the judges of the court.
6. In addition to the education conference or programs provided in paragraph 5 each judge shall, where possible, have available one week of education leave to attend approved educational courses.

7. Chief Judges encourage as appropriate judges' attendance at national programs such as those developed by the NJI, Federation of Law Societies, CIAJ and similar education providers and international courses and conferences with the approval of the Chief Judge.
8. Chief Judges support special focus courses where appropriate to meet the needs of the court, as determined by the Chief Judge in consultation with the provincial/territorial education committee. Such courses could include updates on the law such as introduction of new legislation and skills-based courses such as judgment writing, delivery of oral reasons and mediation skills
9. Chief Judges support language training in French or English language training courses to meet the needs of the court as determined by the Chief Judge of that court.
10. Chief Judges support continuing language training for judges qualified to hear cases in a both official languages to maintain the skill and proficiency required, to meet the needs of the court as determined by the Chief Judge of that court.
11. Chief Judges should encourage participating in training to enhance their technical capability and to participate in on-line courses as they become available.

The CAPCJ National Education Committee (NEC) met on October 2, 2019 in Banff, Alberta. A substantial discussion has been ongoing at the NEC regarding several barriers to education that our judges are facing across the country. The NEC passed a resolution in Banff that:

A motion was made by Nancy Orr, seconded by Danielle Cote that the Discussion Paper presented to the NEC be taken to the Board of Directors for CAPCJ with a request that they authorize the continuation of the work of the subcommittee of NEC in association with CCCJ. Carried.

The NEC respectfully requests that the CCCJ and the NEC form a joint sub-committee to further examine the advancement of a core education strategy. While NEC has endorsed the idea of moving forward with such an initiative, it is important to note that the working paper of the NEC sub-committee is intended to be a discussion piece as opposed to a final plan of action.

There are three parts to the paper:

1. A brief outline as to the history of funding for CAPCJ education, provincial funding for education and the relationship between CAPCJ and NJI.
2. A proposal for a strategy for advancing a core educational strategy
3. Some suggestions as to how the strategy might be advanced on the short term and on the longer term.

It should be noted that the working paper only deals with Criminal cases. The NEC feels that in order to move forward, a similar analysis should be undertaken for each jurisdiction that is covered by our courts across the country.

Prior to our discussion in Banff as to the sub-committee's report, we were grateful to hear from Justice Adel Kent, and CEO Danielle May-Cuconato from NJI. Their presentation reinforced our desire to work with NJI to move forward in ensuring that the interests of the provinces and territories are accounted for at NJI. Chief Justice Maisonneuve also made remarks at our meeting which urge the NEC to work together to push for more robust funding in education. The NEC feels that in order to move forward in such an initiative, a concise education initiative that establishes national core courses is necessary.

To that end, we are enclosing the attached report of the sub-committee at the NEC for the consideration of the CCCJ, with the request that the report be considered as a starting point for a discussion on how to move forward. The NEC proposes that the current subcommittee continue forward with the CCCJ to determine how this core educational strategy can come to fruition. Thank you for your consideration.

## **CAPCJ – Education Committee**

### **National Strategy on Education**

**Banff, 2019**

#### **Purpose of this Report**

The Provincial Education Chairs met during the PEC training session in February, 2019. During a discussion as to the availability of programming provided by NJI and what the future CAPCJ strategy might include as to Educational goals for provincial and territorial court judges, a sub committee was struck to determine what if any core educational elements should be put forward as a guideline to each of the provinces to adopt. Ultimately, if the participants in the CAPCJ NEC can come to a consensus as to core educational components, the NEC can begin to construct a strategy as to how to provide those core components.

The Sub-Committee was comprised of: Judge Ryan Rolston (Manitoba) – Chair, Judge Peter Chisholm (Yukon), Judge Rita Bowery (B.C.), Judge Marcella Henschel (Ontario), Judge Elizabeth Buckle (Nova Scotia).

This report identifies what programming is currently available and outlines the history of the various sources of funding for that programming. A breakdown of each province and territory's current education plan is provided. Lastly, recommendations and barriers have been provided for consideration.

This report is meant to begin a discussion for the NEC by providing information and a possible direction as to how the NEC might shape the future of education of Provincial Court Judges.

#### ***How Are Provincial Court Judges across the country Educated?***

##### **Provincial Court Judge's Education Funding**

Funding for CAPCJ and more specifically education of provincial and territorial judges comes from a patchwork of sources to say the least. CAPCJ has attempted to equitably spread limited resources however, it is also true that contributions of each region are different. This MAY be a barrier to overcome in establishing policies or practices nationally if our goal is to move toward a unified educational program.



Below is a breakdown of CAPCJ's Education funding:

**New Judges School (Bromont)**

PQ provides judges and assistants to organize the program.

CAPCJ provides \$35,000 through a grant from the Federal government for translation.

NJI contributes \$20,000.

Registration fees are set at \$500 per judge.

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Each Province offers judges to serve as faculty and pay expenses for each.

CAPCJ contributes \$10,000.

NJI contributes 2 full time staff and a technical assistant for the week.

Registration fees are set at \$525 per judge.

*Note: PQ does not participate in this program as they have their own version.*

**Atlantic Education Program**

CAPCJ contributes \$10,000.

Registration fees are set at between \$150 - \$450.

The Content of this program is determined annually by an organizing committee.

**Prairie Provinces and Territories Education Program**

CAPCJ contributes \$10,000.

There is no additional registration fee, but participants are responsible to cover hotels and travel.

This is a judgment writing course over two days that rotates between Alberta, Saskatchewan and Manitoba. An organizing committee meets over email and/or teleconference a few times yearly, and the chair (currently Judge Ryan Rolston (Manitoba)) reports to the NEC yearly. While the grant is for \$10,000, the expenses have consistently amounted to around \$7000.

**Provincial Education Chairs**

CAPCJ contributes \$5000.

NJI contributes \$20,000.

This is a bi-annual event. The purpose of the course is to train the provincial education chairs on holding educational conferences in their respective provinces.

### **Relationship with NJI**

In the latest report to CAPCJ, Judge Anand (CAPCJ/NJI liaison) reported:

The Institute has, over the past other several years, had healthy surpluses that have been deposited into large reserve funds. In fact, these reserve funds have grown so large that they were becoming a concern. Thus the revenue shortfalls compared to expenses over the past two years allowed the Board to authorize the depletion of these reserve funds so that they now contain smaller, albeit ample, amounts. In short, there do not appear to be any present issues with the economic feasibility of the NJI or its operations.

In 2015, Justice Adele Kent addressed the NEC. At that time, she stressed the importance of the relationship between NJI and the provinces. She advised that the provinces contribute approximately 5-8 % of the *total* NJI budget. The *core* NJI budget is mostly covered by the provinces (approximately 60%), but this only covers operational costs as opposed to the development and presentation of courses. That amount, approximately \$23,000 per day of programming is borne by the Federal government and NOT passed on to the attending provincial court judge. One might surmise that this is the reason why the federal judges are currently being given priority to attend these programs over provincial court judges.

There is a further complicating factor here. PQ no longer contributes to NJI as the Cour du Quebec has opted to develop its own in-house programming. Judges can attend NJI courses if there are seats available. This requires special permission from the Chief Judge and presents practical difficulties in that spots are often filled by the time that permission is received. Ontario contributes additional funds to NJI beyond the funds contributed to the core budget.

A patchwork indeed.

### ***What does NJI do for Provincial Court Judges?***

Traditionally, provincial court judges have had “complete” access to NJI bench books and materials. Recently, there has been some apparent concerns raised that some materials (i.e. The recent videos on sexual assault training) may not be available without special permission. The rationale for this is unclear.

Additionally, the NJI has provided support for individual provinces educational endeavours. For example, NJI was instrumental in supporting a joint Manitoba/Saskatchewan program on the *Charter* that took place in May, 2019. Justice Adele Kent played crucial role by assisting in the organization of the program and facilitated key presentations from Justice Joyce DeWitt-Van Oosten and Professor Steven Penny. This contribution was significant and valuable to the success of the conference.

To summarize, NJI has funded programming as indicated in the above section regarding programming. NJI has provided free on-line course to provincial court judges. NJI has been an important resource for individual jurisdictions in providing programming. On the other hand, there have been recent difficulties for provincial and territorial judges' attendances at NJI sponsored programming.

### Current Common "Core" Education

Prior to the PEC meeting in February 2019, Judge Katherine McLeod created a chart setting out the educational components currently in place in each jurisdiction. The committee was able to extrapolate on the information gathered in order to enable easier comparison (amended to reflect change in Newfoundland & Labrador):

	Funding	Number of Education Days	In-house Conferences	Core Education Requirements
<b>Alberta</b>	Personal allowance to each judge of \$3700			<ul style="list-style-type: none"> <li>- Bromont</li> <li>- Niagara</li> <li>- Prairie Provinces Judgment writing course with CAPCJ \$10,000 contribution</li> </ul>
<b>British Columbia</b>	Educational allowance to each judge of \$4000	5 days per judge aside from in house education	<ul style="list-style-type: none"> <li>- 2 yearly in house conferences of 2.5 days</li> <li>- Half day of wellness training</li> <li>- "living working document"</li> </ul>	Bromont Niagara

			as ongoing education - family law and criminal law "boot camp" (3.5 days)	
<b>Manitoba</b>	Educational allowance to each judge of \$3000 (separate from personal allowance), in addition to \$40,000 "core education budget" that supplements education at the discretion of the education committee	4 days per judge aside from in house education	2 yearly in house conferences of 2 days	<ul style="list-style-type: none"> <li>- Bromont</li> <li>- Niagara</li> <li>- Prairie Provinces Judgment writing course with CAPCJ \$10,000 contribution</li> <li>- Evidence (NJI)</li> <li>- Charter (NJI)</li> </ul>
<b>Newfoundland/Labrador</b>	F/T judges \$1000 allocated from Allowance for education and expenses. \$500 for per diem judges	As authorized by CJ	<ul style="list-style-type: none"> <li>- Atlantic Education Program with CAPCJ \$10,000 contribution</li> <li>- 1 yearly in house</li> </ul>	Bromont Niagara
<b>New Brunswick</b>	No current educational budget. Education authorized by CJ	5 days	<ul style="list-style-type: none"> <li>- 3 annual lectures sponsored NBCA and run by NJI</li> <li>- Atlantic Education Program with CAPCJ</li> </ul>	Bromont Niagara

			\$10,000 contribution	
<b>Northwest Territories</b>	Funded by government	10 days generally but no limit	none	Bromont Niagara - Prairie Provinces Judgment writing course with \$10,000 CAPCJ contribution - other provincial court programs
<b>Nova Scotia</b>	No current educational budget. Education authorized by CJ	As authorized by CJ	-Atlantic Education Program with CPACJ \$10,000 contribution - 1 yearly in house	Bromont Niagara
<b>Ontario</b>	Judicial allowance to each judge of \$3750 can be used for ed. - Arrangement with NJI to run programming - MOU with CJ	Not limited but mixed with 44 non-sitting days	- 2 yearly in house conferences of 2.5 days - NJI plans core educational conferences - additional programming outside NJI (new judges orientation, technology, pre-retirement, etc.)	- 4 regional criminal conferences - 2 family law conferences - Bromont - Niagara
<b>Saskatchewan</b>	Personal allowance to each judge of \$4000	5 days for discretionary education leave plus up to 6 days for attendance to in house conferences and core educational conferences	2 yearly in house conferences of 2 days	- Bromont - Niagara - Prairie Provinces Judgment writing course with CAPCJ \$10,000 contribution.

<b>Quebec</b>	Education allowance \$4000	Up to 10 days annually	November conference plus training programs are offered monthly between Sept. and June	<ul style="list-style-type: none"> <li>- Bromont,</li> <li>- Challenges of being a judge;</li> <li>- Written Judgments,</li> <li>- Oral Judgments,</li> <li>- Communication/Conduct in the courtroom, social context, first nations</li> </ul>
<b>Yukon</b>	Funded by government	As approved for specific educational opportunities	1-day annual Bench and Bar training session – content determined annually by organizing ctee	Bromont Niagara <ul style="list-style-type: none"> <li>- Prairie Provinces Judgment writing course with CAPCJ \$10,000 contribution</li> <li>- other provincial court programs</li> </ul>
<b>PEI</b>				

The Chart illustrates that there is a large variety of funding models and educational opportunities afforded to judges, depending on where each judge presides. The common ground seems to be that each jurisdiction holds annual conferences, and each jurisdiction seems to use Bromont and Niagara as introductory programming for new judges.

The data and the breakdown as to the allocation of CAPCJ expenditures illustrates that funding is key. CAPCJ has done good work to assist the smaller jurisdictions to receive some educational opportunities. The committee observes that these opportunities are not consistent across the country.

There is an obvious and understandable sentiment that may emerge from the data. The larger jurisdictions can deliver a wide array of educational experiences to their judges that are beneficial to those judges over the entirety of the judicial career. Those jurisdictions arguably do not require any direction from CAPCJ as to “core educational” requirements. Meanwhile, the smaller jurisdictions welcome the notion of additional education, and have no difficulty agreeing that there are some core courses that should be provided to everyone.

It is important to remember that CAPCJ cannot dictate any jurisdiction’s educational programming. Nonetheless, there are valid purposes of identifying and agreeing to core programming nationally. Core Programming

- would ensure that all judges have a base of knowledge and skills necessary to carry out their function,
- create consistency across the country in basic judicial educational,
- allow CAPCJ and the National Education Committee to create and adopt a strategy to facilitate and/or provide programming going forward.

It is likely that agreeing to adopt a strategy or policy that all jurisdictions undertake to provide core educational programming may not impact or benefit the larger jurisdictions at all in the short term. The Committee believes that it is nonetheless worthwhile for the NEC to put forward an education strategy that adopts a core education approach. The committee submits that decisions respecting how, when and where programming is delivered should be driven by the strategy developed around the notion of core education.

### ***What are the common needs of every provincial court judge?***

The committee identified that each province and territory has slightly different jurisdiction, with criminal law being the only common thread, but also representing the bulk of the workload. To that end, the committee agreed to consider only criminal law needs at this stage.

Also, the committee agreed that our mandate did not involve concerning ourselves with funding barriers. While we acknowledge that funding is a major concern, if we allowed lack of funding to limit the discussion at this stage, the discussion would be very short.

The committee was in agreement that the following 6 core education components are desirable for provincial and territorial court judges across the country:

#### **1. Niagara - New Judges School Part 1**

The committee agrees that the current program is an excellent introduction to judicial life. The focus at this program should remain on the skills associated with the position and efforts should continue to ensure that there is little, if any duplication with the Bromont program.

#### **2. Bromont – New Judges School Part 2**

Bromont is also a high-quality program and should continue to focus on substantive skills in co-ordination with the Niagara program. CAPCJ receives a grant to assist in translation costs at Bromont in the amount of \$25,000.

### **3. Charter Education**

*Charter* issues arise regularly in the courts of Provincial and Territorial court Judges. The NJI provides an excellent program although it seems designed to suit section 96 judges. The existing program can nonetheless provide thorough education for any judge. Leaving aside the possibility of finding a way to hold programming exclusively reserved for provincial and territorial judges, the NJI course seems to satisfy this core educational piece.

### **4. Evidence**

Evidentiary issues arise regularly in the courts of Provincial and Territorial court Judges. Again, the NJI provides an excellent program although it seems designed to suit section 96 judges. The same comments apply as were made previously regarding the *Charter*.

### **5. Written and Oral Judgments**

The Committee views judgments delivery in both written and oral form to be essential to what we do.

There are already various options available for receiving this education. Some jurisdictions provide their own education in this regard. CAPCJ contributes to the Prairie Provinces and Territories Judgment Writing program at a cost of \$10,000 (this program only covers written judgments). Atlantic Canada has a similar grant which is allocated to other education, leaving those jurisdictions without consistent education in this area. Meanwhile, the NJI does have programming in both oral and written judgments, but again this is subject to availability.

If CAPCJ elected to adopt a core education strategy, the focus would shift from allocating equal funds to various regions, to ensuring similar education is spread across the country. This very important area of education illustrates lack of consistency in education across the country.

### **6. Social Context/Sophomore Course**

The need for awareness of social context has become the focus of courts recently. In the committee's view, this area would properly be covered once the other core



elements are achieved. We would suggest that social context be dealt with in conjunction with a sophomore course that to a certain extent revisits some of the New Judges school components now that the judge has the perspective of 4 – 5 years of on the job training.

The NJI has developed a course like this, again subject to availability.

### **Looking forward**

Again, the notion of a core education strategy should be viewed as a collective strategy, NOT as an attempt to limit or dictate the education of judges in any jurisdiction.

It has become apparent over the last several years that provincial and territorial court judges are not being treated in the same manner as s. 96 judges with respect to NJI courses. However, as can be seen from the recent *Charter* program in Regina, and in Ontario where NJI plays a large role in education, NJI remains a valuable partner in education for CAPCJ and the provincial and territorial courts.

The committee suggests the best path forward begins with developing and adopting a core education structure, then working with NJI to ensure our judges are able to receive quality training in that regard. For example, it may be that NJI can agree to reserve seats for our designated “Core Courses” in current NJI programs. Alternatively, NJI and CAPCJ and or specific jurisdictions would work together to use the current NJI resources to conduct versions of NJI courses, similar to what was done in Regina.

Also, it may be time to revisit the allocation of funds directed to the Prairie Provinces program and the Atlantic Education program. Again, not to eliminate these programs, but to ensure consistency of programming and to provide quality core programming for everyone.

Further, by developing a core education strategy, the NEC may wish to propose that the annual CAPCJ conference facilitate an aspect of the core education components, perhaps in the form of a breakout session for judges who are missing that piece.

Lastly, CAPCJ and the individual regions should work towards a system that allows judges to use the in-house programs to receive the programming offered. In other words, if a judge in Manitoba has not received a course in Evidence, and Alberta is

covering Evidence in an in-house seminar, a properly developed national strategy would allow for a guest attendance for the Manitoba judge to Alberta.

All of these ideas should be developed and are being put forward as illustrations as to one way in which the NEC can organize itself around the notion of core education programming so as to better serve the provincial and territorial judges nationally.

The committee suggests that the NEC should consider:

- Requesting that each jurisdiction agree on core education goals.
- Developing a goal oriented “Core Education Strategy” that considers the long term and short-term educational needs of judges nationally.

## **CAPCJ – Education Committee**

### **National Strategy on Education**

**Banff, 2019**

#### **Purpose of this Report**

The Provincial Education Chairs met during the PEC training session in February, 2019. During a discussion as to the availability of programming provided by NJI and what the future CAPCJ strategy might include as to Educational goals for provincial and territorial court judges, a sub committee was struck to determine what if any core educational elements should be put forward as a guideline to each of the provinces to adopt. Ultimately, if the participants in the CAPCJ NEC can come to a consensus as to core educational components, the NEC can begin to construct a strategy as to how to provide those core components.

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In 2015, Justice Adele Kent addressed the NEC. At that time, she stressed the importance of the relationship between NJI and the provinces. She advised that the provinces contribute approximately 5-8 % of the *total* NJI budget. The *core* NJI budget is mostly covered by the provinces (approximately 60%), but this only covers operational costs as opposed to the development and presentation of courses. That amount, approximately \$23,000 per day of programming is borne by the Federal government and NOT passed on to the attending provincial court judge. One might surmise that this is the reason why the federal judges are currently being given priority to attend these programs over provincial court judges.

There is a further complicating factor here. PQ no longer contributes to NJI as the Cour du Quebec has opted to develop its own in house programming. Judges can attend NJI courses if there are seats available. This requires special permission from the Chief Judge, and presents practical difficulties in that spots are often filled by the time that permission is received. Ontario contributes additional funds to NJI beyond the funds contributed to the core budget.

A patchwork indeed.

### ***What does NJI do for Provincial Court Judges?***

Traditionally, provincial court judges have had “complete” access to NJI bench books and materials. Recently, there has been some apparent concerns raised that some materials (i.e. The recent videos on sexual assault training) may not be available without special permission. The rationale for this is unclear.

Additionally, the NJI has provided support for individual provinces educational endeavours. For example, NJI was instrumental in supporting a joint Manitoba/Saskatchewan program on the *Charter* that took place in May, 2019. Justice Adel Kent played crucial role by assisting in the organization of the program and facilitated key presentations from Justice Joyce DeWitt-Van Oosten and Professor Steven Penny. This contribution was significant and valuable to the success of the conference.

To summarize, NJI has funded programming as indicated in the above section regarding programming. NJI has provided free on-line course to provincial court judges. NJI has been an important resource for individual jurisdictions in providing programming. On the other hand, there have been recent difficulties for provincial and territorial judges' attendances at NJI sponsored programming.

### Current Common "Core" Education

Prior to the PEC meeting in February 2019, Judge Katherine McLeod created a chart setting out the educational components currently in place in each jurisdiction. The committee was able to extrapolate on the information gathered in order to enable easier comparison:

	<b>Funding</b>	<b>Number of Education Days</b>	<b>In-house Conferences</b>	<b>Core Education Requirements</b>
<b>Alberta</b>	Personal allowance to each judge of \$3700			<ul style="list-style-type: none"> <li>- Bromont</li> <li>- Niagara</li> <li>- Prairie Provinces Judgement writing course</li> </ul>
<b>British Columbia</b>	Educational allowance to each judge of \$4000	5 days per judge aside from in house education	<ul style="list-style-type: none"> <li>- 2 yearly in house conferences of 2.5 days</li> <li>- Half day of wellness training</li> <li>- "living working document" as ongoing education</li> </ul>	Bromont Niagara

			- family law and criminal law "boot camp" (3.5 days)	
<b>Manitoba</b>	Educational allowance to each judge of \$3000 (separate from personal allowance), in addition to \$40,000 "core education budget" that supplements education at the discretion of the education committee	4 days per judge aside from in house education	2 yearly in house conferences of 2 days	<ul style="list-style-type: none"> <li>- Bromont</li> <li>- Niagara</li> <li>- Prairie Provinces Judgement writing course</li> <li>- Evidence (NJI)</li> <li>- Charter (NJI)</li> </ul>
<b>Newfoundland/Labrador</b>	No current educational budget. Education authorized by CJ	As authorized by CJ	<ul style="list-style-type: none"> <li>- Atlantic Education Program as funded by CAPCJ</li> <li>- 1 yearly in house</li> </ul>	Bromont Niagara
<b>New Brunswick</b>	No current educational budget. Education authorized by CJ	5 days	<ul style="list-style-type: none"> <li>- 3 annual lectures sponsored NBCA and run by NJI</li> <li>- Atlantic Education Program as funded by CAPCJ</li> </ul>	Bromont Niagara
<b>Northwest Territories</b>	Funded by government	10 days generally but no limit	none	Bromont Niagara <ul style="list-style-type: none"> <li>- Prairie Provinces Judgement writing course</li> <li>- other provincial court programs</li> </ul>

<b>Nova Scotia</b>	No current educational budget. Education authorized by CJ	As authorized by CJ	- Atlantic Education Program as funded by CAPCJ - 1 yearly in house	Bromont Niagara
<b>Ontario</b>	- Educational allowance to each judge of \$3750 - Arrangement with NJI to run programming - MOU with CJ	Not limited but mixed with 44 non-sitting days	- 2 yearly in house conferences of 2.5 days - NJI plans core educational conferences - additional programming outside NJI (new judges orientation, technology, pre-retirement, etc.)	- 4 regional criminal conferences - 2 family law conferences - Bromont - Niagara
<b>Saskatchewan</b>	Personal allowance to each judge of \$4000	5 days for discretionary education leave plus up to 6 days for attendance to in house conferences and core educational conferences	2 yearly in house conferences of 2 days	- Bromont - Niagara - Prairie Provinces Judgement writing course
<b>Quebec</b>	Education allowance \$4000	Up to 10 days annually	November conference plus training programs are offered monthly between Sept. and June	- Bromont, - Challenges of being a judge; - Written Judgments, - Oral Judgments, - Communication/Conduct in the courtroom, social context, first nations
<b>Yukon</b>	Funded by government	As approved for specific	1-day annual Bench and	Bromont Niagara



		educational opportunities	Bar training session – content determined annually by organizing ctee	- Prairie Provinces Judgement writing course - other provincial court programs
<b>PEI</b>				

The Chart illustrates that there is a large variety of funding models and educational opportunities afforded to judges, depending on where each judge presides. The common ground seems to be that each jurisdiction holds annual conferences, and each jurisdiction seems to use Bromont and Niagara as introductory programming for new judges.

The data and the breakdown as to the allocation of CAPCJ expenditures illustrates that funding is key. CAPCJ has done good work to assist the smaller jurisdictions to receive some educational opportunities. The committee observes that these opportunities are not consistent across the country.

There is an obvious and understandable sentiment that may emerge from the data. The larger jurisdictions are able to deliver a wide array of educational experiences to their judges that are beneficial to those judges over the entirety of the judicial career. Those jurisdictions arguably do not require any direction from CAPCJ as to “core educational” requirements. Meanwhile, the smaller jurisdictions welcome the notion of additional education, and have no difficulty agreeing that there are some core courses that should be provided to everyone.

It is important to remember that CAPCJ cannot dictate any jurisdiction’s educational programming. Nonetheless, there are valid purposes of identifying and agreeing to core programming nationally. Core Programming

- would ensure that all judges have a base of knowledge and skills necessary to carry out their function,
- create consistency across the country in basic judicial educational,
- allow CAPCJ and the National Education Committee to create and adopt a strategy to facilitate and/or provide programming going forward.

It is likely that agreeing to adopt a strategy or policy that all jurisdictions undertake to provide core educational programming may not impact or benefit the larger

jurisdictions at all in the short term. The Committee believes that it is nonetheless worthwhile for the NEC to put forward an education strategy that adopts a core education approach. The committee submits that decisions respecting how, when and where programming is delivered should be driven by the strategy developed around the notion of core education.

### ***What are the common needs of every provincial court judge?***

The committee identified that each province and territory has slightly different jurisdiction, with criminal law being the only common thread, but also representing the bulk of the workload. To that end, the committee agreed to consider only criminal law needs at this stage.

Also, the committee agreed that our mandate did not involve concerning ourselves with funding barriers. While we acknowledge that funding is a major concern, if we allowed lack of funding to limit the discussion at this stage, the discussion would be very short.

The committee was in agreement that the following 6 core education components are desirable for provincial and territorial court judges across the country:

#### **1. Niagara - New Judges School Part 1**

The committee agrees that the current program is an excellent introduction to judicial life. The focus at this program should remain on the skills associated with the position and efforts should continue to ensure that there is little, if any duplication with the Bromont program.

#### **2. Bromont – New Judges School Part 2**

Bromont is also a high quality program and should continue to focus on substantive skills in co-ordination with the Niagara program.

#### **3. Charter Education**

*Charter* issues arise regularly in the courts of Provincial and Territorial court Judges. The NJI provides an excellent program although it seems designed to suit section 96 judges. The existing program can nonetheless provide thorough education for any judge. Leaving aside the possibility of finding a way to hold programming exclusively reserved for provincial and territorial judges, the NJI course seems to satisfy this core educational piece.

#### **4. Evidence**

Evidentiary issues arise regularly in the courts of Provincial and Territorial court Judges. Again, the NJI provides an excellent program although it seems designed to suit section 96 judges. The same comments apply as were made previously regarding the *Charter*.

#### **5. Written and Oral Judgments**

The Committee views judgments delivery in both written and oral form to be essential to what we do.

There are already various options available for receiving this education. Some jurisdictions provide their own education in this regard. CAPCJ funds the Prairie Provinces and Territories Judgment Writing program at a cost of \$10,000 (this program only covers written judgments). Atlantic Canada has a similar grant which is allocated to other education, leaving those jurisdictions without consistent education in this area. Meanwhile, the NJI does have programming in both oral and written judgments, but again this is subject to availability.

If CAPCJ elected to adopt a core education strategy, the focus would shift from allocating equal funds to various regions, to ensuring similar education is spread across the country. This very important area of education illustrates lack of consistency in education across the country.

#### **6. Social Context/Sophomore Course**

The need for awareness of social context has become the focus of courts recently. In the committee's view, this area would properly be covered once the other core elements are achieved. We would suggest that social context be dealt with in conjunction with a sophomore course that to a certain extent revisits some of the New Judges school components now that the judge has the perspective of 4 – 5 years of on the job training.

The NJI has developed a course like this, again subject to availability.

#### **Looking forward**

Again, the notion of a core education strategy should be viewed as a collective strategy, NOT as an attempt to limit or dictate the education of judges in any jurisdiction.

It has become apparent over the last several years that provincial and territorial court judges are not being treated in the same manner as s. 96 judges with respect to NJI courses. However, as can be seen from the recent *Charter* program in Regina, and in Ontario where NJI plays a large role in education, NJI remains a valuable partner in education for CAPCJ and the provincial and territorial courts.

The committee suggests the best path forward begins with developing and adopting a core education structure, then working with NJI to ensure our judges are able to receiving quality training in that regard. For example, it may be that NJI can agree to reserve seats for our designated “Core Courses” in current NJI programs. Alternatively, NJI and CAPCJ and or specific jurisdictions would work together to use the current NJI resources to conduct versions of NJI courses, similar to what was done in Regina.

Also, it may be time to revisit the allocation of funds directed to the Prairie Provinces program and the Atlantic Education program. Again, not to eliminate these programs, but to ensure consistency of programming and to provide quality core programming for everyone.

Further, by developing a core education strategy, the NEC may wish to propose that the annual CAPCJ conference facilitate an aspect of the core education components, perhaps in the form of a break out session for judges who are missing that piece.

Lastly, CAPCJ and the individual regions should work towards a system that allows judges to use the in house programs to receive the programming offered. In other words, if a judge in Manitoba has not received a course in Evidence, and Alberta is covering Evidence in an in house seminar, a properly developed national strategy would allow for a guest attendance for the Manitoba judge to Alberta.

All of these ideas should be developed and are being put forward as illustrations as to one way in which the NEC can organize itself around the notion of core education programming so as to better serve the provincial and territorial judges nationally.

The committee suggests that the NEC should consider:

- Requesting that each jurisdiction agree on core education goals.
- Developing a goal oriented “Core Education Strategy” that considers the long term and short term educational needs of judges nationally.