

*Session 6.2*

*Social Context Workshop*

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- 1 In speaking about social context education in the judicial setting it is important, I think, to keep in mind that the ultimate goal is a system of justice that is, in fact, just. In order for this to happen we must ensure that judges are able to fulfil their roles effectively and in a way that respects the human rights of not only all those who come before them but also those who are affected by their decisions.
- 2 This necessarily engages principles of fairness, impartiality and the rule of law, including equality before and in the law, and non-discrimination, the very foundation of human rights. I think it is important to remember that this is why we talk about social context education: it is founded in fundamental human rights. One can therefore not consider true or substantive equality and non-discrimination without addressing the historical discriminatory treatment of women and certain other identifiable other groups socially, economically, politically and culturally in both the public and private spheres. It is for this reason that we speak of social context inevitably in terms of principles of equality.
- 3 It follows then that courts cannot be just and judges cannot effectively carry out their responsibilities without an understanding of the social context in which they operate, including a comprehensive understanding of equality. It is this simple link that underlines the importance of social context education although, as we know, in practice it is anything but simple.
- 4 We have discussed some of the significant barriers and the often deep-seated resistance to social context education and the acceptance of equality law that exists among members of the judiciary who, paradoxically, have both a legal and ethical obligation in Canada to uphold the fundamental principles and values underpinning it. What I would like to do now is turn our minds to some of the strategies that we in Canada have adopted, to varying degrees of success, in an attempt to deal with the nuances and complexities of social context education, bearing in mind the critical role that judges play in achieving the ultimate goal of a system of justice that is indeed fair and just.
- 5 One of the approaches that we have taken is to teach equality law as a discrete subject of doctrinal law. This is a relatively new development, as Stephen has indicated, compared to other areas of law, and not one that many judges have studied at law school. The purpose of teaching equality law is in fact to teach judges, or help them appreciate, that this area of law is not a so-called 'soft' subject but in fact is an area of substantive law that in Canada is constitutionally enshrined. We are aided in this by a comprehensive and increasingly well-defined body of jurisprudence that has evolved under our Canadian Charter of Rights and Freedoms. I should add here that running parallel to this has been the development of a comprehensive body of international law, resulting from various conventions and protocols to which Canada is a signatory. From time to time it is interesting that the Supreme Court of Canada has made reference to these international instruments in its judgments, when talking about

equality and the social context that gives rise to it. It is interesting because there has been considerable resistance among the legal profession, and certainly also among lower-court judges, to the adoption of these international conventions, to the importing of them into judicial decision-making. I think this is, in fact, a fertile area which requires further judicial consideration, and a further area for education, and one that I think Canada might well want to engage in, and that you might want to consider as well.

- 6 A second approach we have taken is the use of judicial leaders. We have discovered that judges learn best from other judges, and I think that is probably a principle that is applied in a number of other countries. We have also identified the effective use of judicial ‘champions’, those who are particularly committed to social context education, as well as other judges who will help in planning, teaching, and facilitating educational sessions. It goes without saying, but I will say it anyway, that leadership comes from the top and we have been very fortunate that the Canadian Judicial Council has been extremely supportive of social context education and, in fact, has passed a number of resolutions to this effect, starting back in 1994.
- 7 In addition to that, however, we have Chief Justices who are personally involved in social context planning and education, Cathy Fraser being a good example. Chief Justices have allowed judges on their courts to take time away from their regular sitting duties to be involved in National Judicial Institute programs, both as faculty and as students. But I cannot emphasise the importance of using judicial leaders, both in national programs and within the court system, where court-based programs are planned by education committees. It is a wonderful opportunity to educate judges locally on the court and recruit new judicial champions at the same time.
- 8 Another strategy that we have adopted is a very inclusive planning process. Normally the planning group is relatively small but there is a very broad consultative process where academics and community members have also become involved. Getting the community involved has been the subject of some discussion. There are some judges that feel that it is not appropriate, but I think the NJI has pretty much taken the position that if we want to ensure our programming is solid, locally relevant and balanced it is very, very helpful to have that broader perspective. As with all judicial education it has to be practical. We strive to ensure that we are always linking social context education closely to the day-to-day work of a judge, that is, not only teaching a broader perspective and a broader understanding – and I have to say here that we do try to change attitudes – but linking that teaching to substantive knowledge and skills so that it is both practical and useful.
- 9 We do not have mandatory attendance. It is in some respects an appealing idea because, as has already been noted, often the people who come to social context education programs are the ones that need it the least, but as with all our programming it is voluntary. We know that our social context education attendance is light compared to some of the more substantive, bread-and-butter types of course, but what we have found is that judges come to different courses for different reasons. I was recently involved in the Race Law and Judging course and there was, in my workshop for the week, a judge who I would not necessarily have expected to be there. He admitted, on the first day of the program, that he only came because his daughter was going to university in that city and it was a chance to visit. He was very sceptical about the program. On the fifth day he came and told me that he thought it was the

best program he had ever gone to, and it was very encouraging to see how he developed in his thinking over the course of the weeks. My view is, get them in the door whatever way you can. You sometimes have very surprising and positive results.

- 10 We also look at ongoing integration. We attempt to integrate social context education with all programming: civil law, criminal law, family law, but also in skills-based seminars such as “Managing the Trial Process”, and settlement conferencing. This is a very specific policy. It does not just happen, it is by design. Basically, we just sneak it in wherever we can. It is a very effective way of learning because people see how it works in a very practical way. It teaches judges to be very alive to social context issues in the work they do. They learn, in fact, to identify social context problems where they might not necessarily have even noticed them before. So, there is the idea that social context thinking and analysis can become almost intuitive, a skill that once developed translates readily into day-to-day practice.
- 11 We have just done a fair amount now of stand-alone social context education, recognising that there is a need and a desire for judges to have a more in-depth understanding of social context topics, such as racism, being a competent judge in a multicultural society, disability, effective communications. It allows us to delve more deeply into the historical development in a particular area, to see how it has progressed to where we are now and then look at the challenges for the future.
- 12 One of the more creative things that the NJI has done in these stand-alone programs, which has actually been a lot of fun, is to develop a book club and a movie club. For example, at the Race Law and Judging course we had a wonderful woman who had produced a film, *The Little Black Schoolhouse*, about the segregated school system in the maritime provinces – which I had not known existed – up until the last school closed, I think, in 1993. In any case, we had a screening of this film. At the end of a day we shoved together chesterfields and we had a glass of wine. It was sort of like snuggling up on a Friday night to watch a movie at home but we had an opportunity to talk with the director and producer of this film. We have done the same thing with book clubs, where a book will be chosen that is relevant to the topic under discussion. People will know about it, read it in advance, and then have an opportunity to participate in a discussion led by the author, a very effective way of educating and broadening the judicial perspective.
- 13 Developing a core faculty is very important. It is critical to have a well-developed core faculty to plan the programs and help in training. It needs to be an ongoing process because we get these wonderfully skilled people and then they retire and go on to do other things, so it needs to be a continual recruitment/training process.
- 14 The other thing that I would like to mention is the importance of strong administrative support and creative leadership. I would like to join my voice with those that we have heard from, a number of commentators over the past couple of days, to say that we are very blessed to have a dedicated national body of highly committed, trained and very thoughtful educators and visionaries in the NJI. They provide us, all of us judicial volunteers, with professional advice and leadership, in planning and developing programs, implementing them, evaluating them and also with all the logistical support. It would not happen if we did not have that. We are also very lucky to have the funding that goes with it – never enough, but certainly it has provided the Canadian judiciary with an opportunity to become educated and we feel very, very

fortunate about that. We recognise that judges are very busy with their work and that we could not possibly do this kind of program without that support.

- 15 In my work with the NJI, both locally and nationally, I have found fulfilment as a judge particularly in my work in social context education, which is near and dear to my heart. I think it is critical in the achievement of a system of justice that is truly just. We must recognise that the process of social context education is deserving of our close attention and all our good efforts.