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***Evaluating Judicial Education Organizations:
What Can and Should be Measured?***

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Introduction

This paper seeks to provide an analytical framework that may be used to evaluate a judicial education organization (referred to in this paper as a judicial academy). It is meant to be complementary to my colleague Tom Langhorne's paper on evaluation of judicial education programming. It describes issues in addition to programming that determine the programme impact and the realization of judicial education objectives. It asks the following questions:

- (1) Are there articulated national objectives of judicial education?
- (2) Are there articulated national standards of judicial education including users of training?
- (3) Is there an appropriate governance mechanism?
- (4) Are there appropriate functions of a well functioning judicial academy present?
- (5) Is there an organizational structure of a well functioning judicial academy?
- (6) Is there a methodology of curricula development that responds to the community's perception of areas of judicial weakness that would benefit from study?
- (7) Is there an appropriate policy for the attraction of and development of faculty and the use of adult education pedagogy?
- (8) The budget – Is it an appropriate amount? Does it come from appropriate sources? Are there untapped appropriate sources?
- (9) Is there appropriate evaluation of programme impact?
- (10) Is there a research division? Is there a publication programme? Is appropriate use made of IT?
- (11) Is there a catalogued central collection of judicial education material available to judicial educators served by the academy?
- (12) Is there an appropriate physical plant?

What is the standard against which these criteria may be measured? An easy answer would be "international best practice". However, all of us here are involved in judicial education to support judicial reform and we know that a "cookie cutter" approach does not work. We know that social, economic, historical and cultural factors determine the success of reform efforts. Ultimately, the success of a judicial academy and its programming will be judged on whether or not it improves national public trust and confidence in the judiciary.

However, it is of great assistance in working to achieve this goal to be able to comparatively study and analyze the successes and problems of other judicial academies. In addition, the rationale behind successes has created a tentative "best practice" body of learning which, when screened through national social, economic, historical and cultural factors, provides a measure and may well point a way forward.

National Objectives of Judicial Education

International best practice considers the objectives of judicial education to be identical to those of judicial reform – an impartial, competent, efficient and effective judicial branch. The judicial academy is a cradle for judicial reform.

Objectives of Judicial Education	
I	Impartiality
C	Competency
E	Efficiency
E	Effectiveness
<hr/>	
= Community Confidence in the Judiciary	

“**Impartial**” stands for both the reality and the perception of impartiality. It includes the concepts of: an impartially minded and independent judiciary respected for its integrity; transparency in the appointment process through to the rendering of judgments comprehensible to the public; a transparent and accessible judicial complaint process; and an articulated, annotated and publicized code of judicial ethics and conduct so that the community is aware of the standards they have the right to require of a judiciary. “Impartiality” and “Independence” are often used interchangeably. “Impartiality” is used here to describe the desired judicial character and state of mind. Judicial independence refers to freedom from improper pressure in the decision making process from any quarter.

This concept of judicial independence identifies roles and responsibilities for the judiciary, the executive, the media, the legal profession and the public. The creation and support of an impartial mind has different foci. For example, in some transitional states of eastern Europe, the focus was on changing the judiciary from a bureaucracy mechanically applying the law and acting as a conduit for the delivery of political decisions to an impartial, independent dispute resolution mechanism as well as a protector of the rule of law and civil and human rights. In some countries, the focus is on ridding the judicial branch of the reality and perception of corruption or incompetence. In others, judicial education places emphasis on attitudinal change to improve judicial integrity and independence and to eliminate open and hidden bias from the judicial mind in fact finding, particularly in relation to discrimination by reason of gender, ethnic and the disadvantaged issues.

“**Competency**” relates to knowledge of substantive and procedural laws - no easy task for a generalist judge in the complex modern legal world and almost impossible in transitional and developing countries where statutes, case reports and textbooks maybe in short supply. It also includes “judicial skills” such as chairpersonship skills and oral and written communication skills.

“**Efficiency**” includes behavioural change to limit a tolerance of delay, timely pre and post trial practices, efficient judicial courtroom and case flow management - placing the judge and not the bar in charge of case management – case flow, process efficiency and reform of Rules and procedures. It encourages timely settlements and court annexed and free standing mediation as well as other ADR practices.

It is not enough for a judge to be impartial, efficient and competent. He or she must also be “**effective**” in interpreting and shaping the law to achieve a just solution. Knowledge and understanding of the community in which one lives is a prerequisite for an effective judge. Another prerequisite is a high level of judicial skills. Other aspects of effectiveness include predictability and a collective judicial responsibility of listening to the community’s complaints about the justice system. In its role as guardian of the image of justice, the judiciary has an interest and responsibility in supporting necessary process reforms in non-political ways. To be effective a judiciary must be legitimate, it must be trusted, respected and relevant.

A judiciary must not only be impartial, competent, efficient and effective, but must be perceived to have those qualities. Transparency in procedure and process is required to achieve public faith, as is an understanding by the judiciary that they perform a public service and need to respond to community expectations. Judges, like other players in the justice system, often need intellectual leadership to help them to fully understand the importance of this and to encourage them to lend their support to the means to achieve it. The use of training in detection of factual and jurisprudential bias is important in achieving an impartial and effective judicial branch. The greatest power of a fact-finding judge lies in the function of accepting or rejecting evidence. A finding of guilt or innocence or rights between parties determined by the facts is based on the subjective beliefs of the finder of fact.

National Standards of Judicial Education

A best practice definition of judicial education includes collegial meetings (international, national, regional and local) and all professional information received by the judge, -

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| <p>Standards should include:</p> <ul style="list-style-type: none">• adoption of a definition of judicial education that includes self study, mentoring, feedback and distance learning programs;• participant representation on governing board;• articulated policy of judicial control of board;• determination of reach of program (who will the academy serve and how much service can be provided);• determine number of judge / court administrator / support staff days a year desirable to be set aside for collegial and self study programs; and• development of a long range plan including priorities in programming. |
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print, audio, video, video teleconferencing, computer disk, satellite television, on-line, mentoring, organized feedback such as performance evaluations, self study material and distance learning.

Best practice identifies the need for judicial control of at least curricula (with public input) and faculty, the number of judge days per year to be given over to education, the desired reach of programming and the standards to be

required of programming. The users of training should also be identified.

The users of judicial education to support judicial reform are:

- (1) Aspirant judges,
- (2) Newly appointed judges,
- (3) Sitting judges,
- (4) Judicial support staff;
- (5) The legislature,
- (6) The executive,
- (7) The media,
- (8) School children, and
- (9) The community at large including NGOs and CSOs.

The targets of judicial academies vary from one jurisdiction to another. Some offer training to subordinate court judges only (much of Commonwealth Asia); some to appeal court judges, high court judges, subordinate court judges (Canada, United States); and some offer orientation and continuing judicial education training to appeal court judges, high court judges, subordinate court judges and judicial support staff (United States, Malawi, Ghana, Trinidad and Tobago and OECS). To achieve the objective of a judiciary attracting public confidence, all of the above listed targets should be included to at least some degree in the work of the judicial academy. While the judicial academy cannot take on training for users (5) to (9) above, it can help draw up programming for others to deliver.

“Aspirant” or pre-appointment training is relatively rare in common law countries, although there are exceptions. England and Wales gives training to the part-time judges whose part-time work forms part of the criteria for appointment to judicial office. Some African common law jurisdictions, such as Zimbabwe and Uganda, have formalized training for lay magistrates. The Uganda program is under a statutory body called the Law Development Center. It is chaired by a Supreme Court justice and gives a nine-month diploma course on the basics of substantive, procedural and evidentiary law as well as ethics. The cost for tuition and accommodation is 2 million Uganda shillings (US\$1,112). Successful completion of the course qualifies one for a lay magistrate position. The course has been such a success, however, that there are more graduates than lay magistrate positions. Many graduates find employment in legal firms.¹

On the other hand, pre appointment training is part of the judicial culture in the judicial career path European countries of Italy, France, Germany, Portugal and Spain. It is also part of the judicial training in the Philippines.

Governance Structure

A judicial academy can be a simple committee named by the Chief Justice or it may be a legal entity incorporated by Letters Patent, statute or under a companies act. The functions of the body will determine the structure most appropriate for the jurisdiction. Highly organized entities with a number of paid staff and entering into contracts, etc. may

feel more comfortable with an incorporated structure. In addition to the issue of liability of an individual judge – director, there are two other issues arising from the question of structure. The first is who controls the judicial academy and thereby judicial education.

The United States, Canada, England and many other jurisdictions have adopted as a first precept that the overall control and direction of judicial training must be in the hands of the judiciary. There are two reasons for this. First judicial education must be credible to the judges. Judges will more readily accept tuition from other judges.

Additionally, “the constitutional imperative of judicial independence also requires that judicial training remains in the apolitical hands of the judges and not in the potentially doctrinaire hands of government”.ⁱⁱ Such control requires at least a majority of judges on the governing body or at least on the body controlling curricula and faculty. The second issue questions if the governing body is representative of all categories of learners. Representation from the user groups encourages ownership by and sensitivity to the needs of all users.

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| <p>Governance Structure</p> <ul style="list-style-type: none">• Committee? Statutory Body? Incorporation under Companies Act?• Composition<ul style="list-style-type: none">– Majority of judges– Reflective of judicial and support staff users• Powers |
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Secondly, “the constitutional imperative of judicial independence also requires that judicial training remains in the apolitical hands of the judges and not in the potentially doctrinaire hands of government”.ⁱⁱ Such control requires at least a majority of judges on the governing body or at least on the body controlling curricula and faculty. The second issue questions if the governing body is representative of all categories of learners. Representation from the user groups encourages ownership by and sensitivity to the needs of all users.

The following is a thumbnail review of various structures that have been established in common law jurisdictions for judicial education. The United States, a pioneer in judicial education, has, inter alia, a Federal Judicial Center for federally appointed judges and their support staff. The eight member Board is chaired by the Chief Justice of the United States and is made up of two Appeal Court judges, three trial court judges, one Subordinate Court judge and a court administrator. The Director of the Center is a seconded judge. The Board’s function is to provide orientation and continuing judicial education for federally appointed trial and appeal court judges and administrative support staff. It is incorporated by Statute.

In Canada, the National Judicial Institute has a nine person Board chaired by the Chief Justice of Canada. The Deputy Chair is also a Supreme Court of Canada judge. On the Board, there are two appellate court judges, one Superior Court Trial judge, two Provincial Court judges and two academics (all judges but two). The Director of the Institute position is for a two to five year term and until the present incumbent alternated between a seconded federally appointed and provincially appointed judge. There is an Associate Director representing the court not represented by the Director. The Board’s function is to provide orientation and continuing judicial education for trial and appellate court judges of all levels of courts. It is incorporated by Letters Patent.

In Pakistan the Federal Judicial Academy has a nine person Board of Governors chaired by the Chief Justice of Pakistan. The Board includes four State Chief Justices, the Registrar of the High Court (Acting Director General), the Minister for Law, the Secretary of Law and the Attorney General. The Minister for Law, the Secretary of Law and the Attorney General are the non-judicial members (a majority, 6 out of 9 members,

are judicial officers). The Board's function is to provide orientation and continuing judicial education for judges and orientation for State law officers. It is incorporated by Statute.

The ten to eighteen member English Judicial Studies Board is chaired by an Appellate Court judge and has representatives of all levels of courts as well as academic membership. A majority are judicial officers. The Director of the Judicial Studies Board is a seconded circuit judge. The Board's function is to provide orientation and continuing judicial education for judges of criminal, civil and family jurisdictions and to supervise training for the magistracy, judicial chairpersons and members of tribunals. The Judicial Studies Board is established by an exchange of letters between the relevant ministries.

Malawi, Uganda, Zambia, Trinidad and Tobago and OECS are examples of the many common law jurisdictions where judicial education is governed by a committee named by the Chief Justice.

Functions

A well functioning judicial academy has many tasks. It analyzes the judiciary to identify areas which require strengthening through training (this includes both topics to be studied and processes to be improved); it engages in research, both to identify and prepare programs that respond to the judiciary's and community's perceptions of judicial weaknesses as well as to evaluate their impact; it ensures its faculty are not only competent but are trained and skilled in interactive learning techniques essential for adult education; it prepares teaching plans and tools; it presents and evaluates sessions; and it provides judges and support staff with information to improve the quality of justice.

Functions
<ul style="list-style-type: none">• Teaching• Faculty development• Curricula development• Program development – teaching tools, plans, self study kits• Assembly and cataloging of judicial education material, teaching tools, etc.• Research<ul style="list-style-type: none">– Statistics gathering, i.e. baseline data• IT/ Publications• Evaluation• Appropriate fundraising

It analyzes the judiciary to identify areas which require strengthening through training (this includes both topics to be studied and processes to be improved); it engages in research, both to identify and prepare programs that respond to the judiciary's and community's perceptions of judicial weaknesses as well as to evaluate their impact; it ensures its faculty are not only competent but are trained and skilled in interactive learning techniques essential for adult education; it prepares teaching

plans and tools; it presents and evaluates sessions; and it provides judges and support staff with information to improve the quality of justice.

In addition to these functions of curricula development, faculty development, and organization and delivery of sessions, a judicial academy should provide and catalogue judicial tools, - manuals, bench books and other essential legal and judicial information, both in print and electronically. It should also organize in partnership with the judiciary judicial feedback and mentoring systems. Fundraising, from the limited appropriate sources that do not give rise to conflict of interest issues, is also a function of a judicial academy.

If the judicial education programs are not of high quality, presented in such a way as to attract the judges' attention, the judges will lose interest in the present session as well as interest in attending future programs. This risk can be minimized by the preparation and delivery of first quality programs using interactive teaching tools. To do this requires the assistance – part or full time – of an adult educator attached to and paid by the Institute.

Organizational Structure

The organizational structure of the judicial academy will flow from its function. There will usually be a program presentation committee to develop teaching techniques, teaching tools and plans for collegial, self study and print, electronic, video conference and cable TV programming. Such a committee should have as a resource a full or part time professional educator who will be able to guide the judicial academy on the most effective ways to both transmit information to and achieve behavioural change in adult learners. A faculty development committee will ensure adult education skills are transmitted to judicial and non judicial full and part time faculty. In many common law jurisdictions this may involve extra national training for some judicial educators. Those

<p>Organizational Structure</p> <ul style="list-style-type: none">• Program Presentation Committee (teaching tools, plans and self study kits)• Faculty Development Committee• Curricula Development Committee and Special Topics subcommittees• Statistics Gathering and Research Committee• Publications and IT Committees• Evaluation Committee• Judicial Career Development Committee (if career judiciary)

so trained need to transmit their acquired skills on their return home to colleagues also charged with judicial education responsibilities.

The organizational structure of a well functioning judicial academy will include a curricula development committee with special topic subcommittees, a statistics gathering and research

committee, publication and IT committees and an evaluation committee and, where there is a career judicial, a judicial career development committee.

Curricula Development

How does a judiciary determine what to study? In many common law countries, judicial education began with judges electing to spend their study time considering the law of evidence and procedure. However, community criticism of the justice system rarely seems to find fault with judicial application of the law of evidence and procedure. Criticisms dwell on other weaknesses that are perceived.

You may recollect the story of the Chief Justice of England during medieval times who wished to petition the King to seek improvements in the benefits of judicial office. Thinking it tactful to take a soft approach the Chief Justice wished to begin the document

with the following preamble "mindful as we are of our inadequacies . . .". The judges, however, were not prepared to agree that they had inadequacies. The following

<p>Curricula Development</p> <ul style="list-style-type: none">• Curricula must respond to judicial weaknesses that can be strengthened by judicial education• Such weaknesses should be identified by judges, court users and the community at large• Continual evaluation of programs for impact and cost efficiency• Curricula should respond to both subject and process needs

compromise was arrived at: "mindful as we are of each other's inadequacies".

Therefore, mindful as we are of each other's inadequacies, what should judges study? The content of judicial education programming must respond to community perceptions of judicial weaknesses. The

community (in this context) includes the judiciary, the bar, court-users, but also the business sector and society at large. Judicial education is expensive – one must take into the account the judge days off the bench, the cost of maintaining courthouses and court staff during judicial absences as well as travel and accommodation expenses for participants and program delivery costs. To justify these expenditures, programming must go beyond the old standbys of "Evidence", "Procedure" and substantive law and visibly respond to areas of perceived weakness. A curriculum committee may employ several tools to identify areas requiring improvement:

- (1) an analysis of the role and function of a judgeⁱⁱⁱ;
- (2) a broad based needs assessment survey of the judiciary, the bar, court users and the community at large to determine areas which could be strengthened by judicial education;
- (3) a review of complaints under judicial and support staff discipline processes;
- (4) a review of media complaints on justice issues;
- (5) an assessment of areas of the law that call for frequent appellate review;
- (6) identification of potential hazards in new legislation;
- (7) court communication and social context issues;
- (8) a review of process gaps or weaknesses, these may be obvious, as in attracting insufficient appropriate candidates for judicial vacancies or court management issues disclosed only through gathering an analysis of statistical data; or
- (9) a combination of all of the above.

Faculty Development

The attraction of appropriate faculty is a major problem in judicial academies. Quite appropriately most draw heavily on judges. However, judges have their regular day to day work and are unable to commit the amount of time required for the development and presentation of necessary programs.

This problem can be lessened in various ways. In the first place the judge/ teacher's task can be lightened by a professional adult educator providing assistance in the development of teaching tools. Secondly, one or two judges could be seconded (freed from judicial duties) to work full time for the Institute for a two – five year term. Non judicial specialists in legal and other necessary topics can be used for faculty as needed.

Faculty Development
<ul style="list-style-type: none">• Training of trainers• Importance of professional adult educator• Judicial policy for attracting full and part time judicial educators

All faculty need to be educated in the interactive adult teaching techniques necessary for cost effective education. In smaller jurisdictions this can be achieved by sending faculty members abroad to international training of trainers' programs. This provides

access to international judicial education networks for exchange of human and material resources. The skills thus acquired should be transferred to others through local training of trainers' programs. These should be sufficiently extensive to provide trained judicial educators at local levels.

The identification and training of judicial education leaders is key to effective judicial education and reform. Few judges have teacher training. However, most are accomplished learners and with professional educator support can design programs that motivate and inspire judicial reform. Skills that judicial educators need to acquire include adult pedagogy, resource networking, the methodology of curriculum development, the development of teaching plans and tools, distance learning techniques and fundraising.

Budget

The education required for a well functioning judiciary is expensive and requires governmental commitment. The cost of judicial training in France is 140,000,000 francs (US\$23,430,000) per year. In the Netherlands, it is US\$20,008,500 per year. In the United States the judicial education budget for the Federal Judicial Center in Washington (serving around 1,900 judges and their support staff) is \$20 million a year.

A function of judicial academies is to draw budgets supportive of their long range plan and campaign for governmental support. Other financial support may also be tapped although great care must be taken that such support does not cast aspersions on the impartiality of the judiciary or lay the ground for conflict of interest issues. In practical terms this excludes all commercial funding.

In developing countries, multilateral and bilateral donor funding is appropriate for periods of intense judicial reform, which necessitate increased levels of training. However, if the Executive and Legislature accept that a well functioning judiciary is essential for social and economic development, it must provide annual adequate funds for the training to support such a judiciary.

Expenditures on bricks and mortar for judicial education need to be approached with caution to ensure that the money required for maintenance does not eat into the program budget and render it ineffective. However, that said, the judicial academy's organization must be housed and must either have appropriate meeting places with necessary audio visual and other visual aids to deliver programs or funds to rent appropriate premises.

Evaluation^{iv}

The first measure of successful program content is how well it responds to the community's concerns about its judiciary. Achieving the goal of programming that responds to areas of perceived judicial weakness, however, is only the first step. Program topics must respond not just to program objectives, but individual sessions within a program should articulate sub-objectives that can also be evaluated. These precisely defined session objectives should be linked to participation evaluation forms to measure the learning achieved. For example, a program on detecting bias in fact finding may have the following session objective: *"The participant will learn three biases of which he or she was previously unaware."* In assessing the session, the participant evaluation form would ask: *"Did you learn of any biases you hold of which you were previously unaware? If so, how many?"* This would allow quantifiable evaluation of whether programming objectives were achieved or, unhappily, not achieved.

Evaluation

- Learning achieved/ impact on community
- Value for money spent
- Attractiveness to judges

The measurement of learning achieved, however, is relatively simple when compared with the challenge of evaluating how the learning process produces attitudinal and behavioral change. Professionals in the field spend many long hours developing effective performance indicators. While they are still fine-tuning these tools, a combination of the following is often used:

- (1) pre, post and year end focus groups/surveys of internationally accepted standards;
- (2) participant satisfaction and self evaluation interviews;
- (3) assessment of court data and records;
- (4) personal interviews with designated officials; and
- (5) independent expert appraisal.

The behavioural change which is the basis for sustainable judicial reform is likely, however, to take time to have an impact. While obviously mileposts along the way are necessary, donor agencies need to understand that in judicial reform projects the full impact cannot be measured in a three – five year project term. A project is not unsuccessful if the seeds for change have been planted and nurtured. Donors need to establish evaluation techniques for judicial reform projects that do not put pressure on

program managers to only choose project components (i.e. provision of equipment) that have little sustainable behavioural change impact.

A further aspect of judicial education that needs to be evaluated is the effectiveness of presentation. In the old days, any incumbent of a distinguished office was considered an adequate speaker to fill up judicial education hours. Failing this, a quickly established panel of those present would be talked into convening an ad hoc discussion. Long lectures – highly conducive to judicial nap-taking! – were a matter of course. Today, adult education studies have shown that an average adult (hopefully, a judge is better than average) retains only seven percent of what he or she hears. Visual aids, teaching plans, provision of background material and interactive teaching methods are now *de rigueur* in order to achieve an acceptable score in programming evaluation.

Research, Publications and IT

A research division of a judicial training center can identify weaknesses in the quality of service provided by the judiciary and assist those developing curricula, providing information which can change priorities over time. An important research function is the accumulation of baseline statistics against which to measure reform. It also provides information to the judiciary, which will stimulate self-improvement by providing information without the expense of training. Related to the research division is the publication division that disseminates the results of the research in addition to other material of educational use. The use of electronic technology is essential to keep pace with an increasingly technological world. It also provides cost effective judicial education. This presumes, however, that all judiciaries have the financial support to implement and maintain computerization including adequate telephone and electrical budgets. Both developing and developed jurisdictions need to assess the cost effectiveness in their *milieu* of IT judicial education. It is important, however, in carrying out this process to be informed of the latest developments in the use of information technology in judicial education.

Collection and Cataloging of Judicial Education Material

As in any education facility, a library of print, video, audio and electronic material is essential for program development and presentation. For this material to be usefully available on demand it needs to be not only collected but catalogued for ease of retrieval for use in curricula development and drafting of teaching plans. International and regional judicial academies provide additional cost effective exchange of resources to prevent unnecessary duplication of effort.

The development of interactive teaching tools for sessions, background material and teaching plans are basic requirements for effective judicial education. Interactive teaching tools can be print, hypothetical or case studies, quizzes, videos with accompanying workbooks, audiotapes or electronic modules.

The most cost effective delivery of collegial programs is the development centrally of session programs with accompanying teaching plans and tools for local delivery. These are referred to as “roll out” programs. The delivery of self-study modules can be by print correspondence courses, the provision of print information, audiotapes, video and electronic session modules.

Physical Plant

A well functioning judicial academy requires, in addition to a lecture room and several smaller breakout rooms for workshops, various equipment to support interactive teaching. This includes a video making lab, a recording machine and tapes for preparation of audiotapes, television monitors, LCD panels and laptops for PowerPoint presentations, flipcharts, slide projectors and transparencies.

A computer lab is often a component of a judicial training facility. The establishment of a communication line both print and electronic with the academy users to allow an information highway is a cost effective means of achieving first level judicial education as well as a tool for more sophisticated training.

ⁱ Information received from the Honourable Justice John Tsekooko, Chairman of the Law Development Center in Uganda. In Zimbabwe the Justice College, chaired by the Chief Justice, trains lay magistrates. Both programs were inspired by the need for magistrates created by a lack of legally trained candidates for the positions.

ⁱⁱ Lord Justice Henry, Judicial Studies Board Report 1991 – 1995, p. 5.

ⁱⁱⁱ *Ibid.*

^{iv} Kind permission to include this section, which was previously published in *educatus*, vol. 3, no. 2, has been given by the Canadian Association of Provincial Court Judges.