

The supervisor is encouraged to take a 'mentor' role. This means that the student will be working with a specific legal staff member of the placement office, not as a general factotum to the office.

In the real-world context of a field of legal practice, students learn through two mechanisms: by experience and reflection and by the transfer of existing knowledge and skills into new situations. Since the objective of a placement program is to provide the learner with experience that enhances formal learning, the student needs to be provided with appropriate mechanisms to identify the new knowledge, skills and insights which have been acquired from the experience. During each placement in the Wollongong program, students must maintain a detailed diary, recording both the professional activities in which they have taken part and their observations on that experience. Students are encouraged to make the diary a 'reflective process diary' so that they record their impressions as they occur. Reflection on experience and learning from it is a process which develops both self-reliance and lifelong learning skills.

The second mechanism involves the transfer of knowledge and skills. In the Wollongong undergraduate placement program, the learning objectives are focussed on developing the students' understanding of the real-world context in which law operates. The undergraduate student comes to the program with legal knowledge and skills and the learning process will be further enhanced if students are able to apply their existing theoretical knowledge and skills in a practical way.

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which law operates, not on training the student in the skills and tasks of legal practice, as with PLT. This leads to students making the linkages needed to transfer existing knowledge and skills into new situations.

The experience of the Wollongong placement program suggest that it is an effective and valuable teaching and learning method. The student diaries show that most placement supervisors ensure that students are actively involved in relevant work and that students' observations of 'the law in action' are objective, stimulating and insightful. In particular, placement programs of sufficient length and range of experience promote processes of self-assessment and reflective practice which are the hallmarks of the lifelong learner and of professionalism.

## JUDICIAL EDUCATION

### The desirability of judicial education in Australia

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14 *J Prof Legal Ed* 1, 1996, pp 77-96

Education of the judiciary in Australia as in other common law countries is a relatively recent phenomenon. The process has traditionally been largely informal. Recognition and acceptance of the need for and value of structured judicial education has emerged slowly. The increasing workload of the courts, the rapid change in the law, new technology, judicial accountability for case management and containment of costs and delays, as well as public criticism of the courts, have been listed as factors which have placed enormous demands on judges and thus prompted judicial education programs.

The purpose of judicial education is to assist in producing a better and

more effective judiciary. The British Judicial Studies Board points out that the successful conduct of any court hearing goes far beyond the avoidance of vitiating errors in substantive or procedural law. The quality of the hearing depends at least partially on the personal qualities and attainment of the judge. The Board argues that judicial education has a role to play in this respect.

There are many views put forth by commentators on the need for judicial education. Wood has proposed that the key question to ask is whether a system of judicial education would be desirable and beneficial for judicial officers in Australia, rather than looking for proof that it has become necessary. The justification for judicial orientation should not depend upon proof that it has become necessary, since it would be virtually impossible to ascertain such a thing.

There are a number of policy issues to consider in implementing a judicial education program. The purpose of the Australian Institute of Judicial Administration (AIJA) is to improve the overall operation of the judicial system, with judicial education being only one of its activities. This is significant because it illustrates that, at the national level in Australia, judicial education is still not a particularly high priority. The AIJA has organised seminars, conferences and workshops which have been instrumental in promoting the exchange of views between courts and the means for keeping each jurisdiction in touch with developments in the others. Justice Wood describes the AIJA as having excellent channels of communication with governments and the courts, access to an experienced panel of presenters, a good collection of resource materials, a program of ongoing research, experience in the



preparation and presentation of seminars and workshops, and university affiliation with access to inter-disciplinary skills. All these, coupled with AIJA's background of permanence and independence, and a governing body representative of all interests, place it in an excellent position to provide judicial education.

Objections by the judiciary to judicial education can be summarised as: claims that education is not needed; that education is incapable of meeting whatever need might in fact exist; and that education is inappropriate for the standing of judges and inconsistent with the notion of judicial independence. It is important that the policy of continuing judicial education be formulated so that these objections are countered. Armytage has suggested that the educational strategies which underpin any approach to educating judges should rest on foundations of adult learning theory. These foundations must be specifically tailored to the distinctive requirements of judges. Judges exhibit characteristics, styles, and practices as learners which are distinctive and which have direct and important implications for educators.

In Australia, there is no mandatory continuing judicial education. Virtually all writers in the area view any form of prescription for judicial education as anathema. They argue that the prescription of any scheme of judicial education constitutes a violation of judicial independence. Mandatory judicial education is incompatible with adult learning theory, which recognises that adults have a deep need to be self-directing.

However, the arguments against mandatory judicial education can be countered to some extent. First, it does not follow necessarily that mandatory judicial education will fail to respond

to the need for motivation and self-direction. Secondly, formalised judicial education does not necessarily impinge upon the independence of the judiciary.

Some commentators argue that difficulties flow from responding directly to calls from beyond the judiciary for judicial education. McGuinness argues that such calls are inescapably value-laden and reflect particular sectional interests. Armytage points out that there is difficulty in discerning which interests are representative of a broad social interest, as distinct from a disproportionately vocal lobby group. Likewise, Mason indicates that there has been some apprehension that educational programs which focus on equality issues could amount to indoctrination or an inducement to hold 'politically correct' views, thereby compromising judicial independence.

The dilemma is that while the judiciary, as an arm of government under the Westminster system of government, should be independent, it must be counterbalanced with the need for judicial accountability. However, judicial non-accountability is a political non-accountability, rather than a societal non-accountability. This could perhaps be used as a theoretical basis to justify the inclusion of equality issues, such as gender bias, in judicial education programs. Accountability and independence need not be inconsistent. It is unlikely that participation in an education program will compromise this important aspect of the judiciary. Accepting that judges are intelligent adults and that it can be argued that the notion of intelligence incorporates the quality of open-mindedness and the ability to critically analyse new information, then it may be concluded that exposure to new ideas and concepts

through judicial education programs, whether mandatory or not, will not impinge on independence.

The objectives of judicial education should go beyond mere competency to incorporate a qualitative dimension of professional artistry. Clearly, judicial education has an important role to play in eradicating gender and other forms of bias from judicial decision-making, thereby improving the quality of justice.

## LEGAL EDUCATION GENERALLY

### **Half a league onward: the report of the Lord Chancellor's Advisory Committee on Legal Education and Conduct**

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31 *Law Teacher* 1, 1997, pp 1-12

The First Report of the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) is, in many ways, exemplary. It has positive qualities: it is terse, fluent, sensible, well-informed, enlightened and politically astute. However, it does not address certain issues which are crucial to any reform of legal education.

The Report aims to respond to 'the changing needs of legal practice .. and the changing shape of legal education' by means of structural and substantive reforms which produce six outcomes.

It is at the point of transition from recommendations to outcomes that the Report reveals its greatest weaknesses. It fails to locate legal education reform within its socio-economic, academic and professional environment. Since this environment is in many ways uncongenial to the reforms proposed, this represents an important, arguably fatal, flaw in the