

ONTARIO COURT OF JUSTICE

CONTINUING EDUCATION PLAN

2019 – 2020

Continuing Education Plan

2019-2020

PREAMBLE

Control over judicial education is within the sole purview of the Ontario Court of Justice. Independence of the judiciary is a cornerstone of the rule of law. By ensuring an impartial judiciary, judicial independence protects the public and assures the fundamental precept of the presumption of innocence.

GOALS OF CONTINUING EDUCATION PLAN

The goals of continuing education for the judges of the Ontario Court of Justice are as follows:

1. Maintaining and developing professional competence;
2. Maintaining and developing social awareness.¹

The *Courts of Justice Act* requires the Chief Justice of the Ontario Court of Justice to establish a plan for the continuing education of provincial judges.² In establishing a Continuing Education Plan, the Chief Justice ensures the professional and personal development of judges and the growth of their social awareness through the programming designed, developed and offered by the Ontario Court of Justice and other programming offered by judicial and education organizations available to the judges of the Court.³

The Continuing Education Plan provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, the *Canadian Charter of Rights*

¹ *Courts of Justice Act*, s. 51.10(3)

² *Courts of Justice Act*, s. 51.10(1)

³ *Courts of Justice Act*, s. 51.9(3)

and Freedoms, skills development and social context. While many of the programs attended by the judges of the Ontario Court of Justice are developed and presented by the judges of the Court themselves, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, government and law enforcement officials, academics, and other subject matters experts and professionals have been used extensively in most education programs. In addition, judges are encouraged to identify and attend external programs of interest and benefit to themselves and the Court.

EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs offered by the Court is assured by the Education Secretariat. The Chief Justice and the Association of Ontario Judges have shared roles and responsibilities for judicial training and education. The Memorandum of Understanding between the Chief Justice and the Association of Ontario Judges states that “education programming and policy-making for all continuing education and training programs for the judiciary shall be coordinated through the Education Secretariat.”⁴The Education Secretariat is committed to the importance of education in enhancing professional excellence. Judicial education serves to maintain and encourage standards of integrity, impartiality and independence as detailed in the Ontario Court of Justice *Principles of Judicial Office*⁵ and the Canadian Judicial Council’s *Ethical Principles for Judges*.⁶

The Secretariat’s mandate is:

⁴ Memorandum of Understanding Between the Chief Judge of the Ontario Court of Justice (Provincial Division) and the Ontario Judges Association and the Ontario Family Law Judges Association

⁵ <http://www.ontariocourts.ca/ocj/ojc/principles-of-judicial-office/>

⁶ https://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_1998_en.pdf

- To promote education that encourages judges to be reflective about their professional practices;
- To increase judges' substantive knowledge, skills and awareness of social context issues;
- To support programs which maintain and enhance social, ethical and cultural sensitivity and awareness; and
- To ensure judges engage in ongoing, lifelong and self-directed learning.⁷

The goals of the Education Secretariat are:

1. To stimulate continuing professional and personal development;
2. To ensure that education is relevant to the needs and interests of the judiciary;
3. To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure, substantive law and judicial skills;
4. To develop and deliver programs that increase knowledge and awareness of social context issues and the communities in which judges preside. Specifically, programs will be designed with the goal of increasing knowledge and awareness of the diversity of the population and community resources that may assist and complement the work of the judges of the Ontario Court of Justice;
5. To foster the active recruitment and involvement of the judiciary at all stages of program design, development, planning, delivery and evaluation;
6. To promote an understanding amongst judges of the necessity developing their knowledge and skills throughout their judicial careers;
7. To facilitate the desire for life-long learning and reflective practices;

⁷ In 2011, the Education Secretariat approved a schedule of judicial qualities and abilities that should be supported and developed through education. This schedule has proved helpful in assisting to design and develop the Court's education programs. It can be found in Appendix A of the Continuing Education Plan.

8. To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
9. To evaluate the educational design and development process and programs offered to ensure they meet the standards set out in the Continuing Education Plan.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Ontario Court of Justice. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The composition of the Secretariat is as follows: the Chief Justice as Chair (*ex officio*), four judges nominated by the Chief Justice and four judges nominated by the Association of Ontario Judges. Research counsel of the Ontario Court of Justice and a Counsel, Judicial Education of the National Judicial Institute serve as consultants. The Secretariat meets approximately five times per year to discuss matters pertaining to education and reports to the Chief Justice.

The current education plan for judges of the Ontario Court of Justice is divided into two parts: education for newly appointed judges and continuing education for all judges.

1. EDUCATION FOR NEWLY APPOINTED JUDGES

All new judges appointed to the Court are required to attend new judges' education programming. Newly appointed judges' education incorporates instruction on substantive legal issues, the law of evidence and procedure, judicial ethics, judgment writing, social context and equality issues.

The education required for newly appointed judges includes the following:

1. **CAPCJ New Judges' Education Program:** New judges attend a six-day New Judges' Education Program presented annually by the Canadian Association of Provincial Court Judges (CAPCJ). This intensive one-week program is largely substantive in nature and is oriented to criminal law.
2. **Newly Appointed Provincial and Territorial Judges Skills Program:** New judges attend a five-day intensive program jointly presented by the Ontario Court of Justice, the National Judicial Institute and the Canadian Association of Provincial Court Judges. The program focuses on judicial skills training and is offered in November of each year at Niagara-on-the-Lake. The program includes sessions on the delivery of judgments (both written and oral), issues related to self-represented accused, managing the courtroom, communication skills, judicial ethics, and the effective conduct of a judicial pre-trial. The program has been very successful and is refreshed annually. The Ontario Court of Justice gives national leadership at this course by providing many of the organizers and faculty members along with financial support.
3. **Shadowing Period:** Upon appointment, each new judge is assigned by the Chief Justice to one of the seven regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly appointed judge for a period of time (usually

several weeks prior to swearing-in) to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom, attends in chambers with experienced judges and has an opportunity to become familiar with his or her new responsibilities. Recognizing that judges have different learning needs, the length of this period of “shadowing” depends on the requirements of each new appointment and serves as a *de facto* mentoring program for new judges.

4. **Orientation Program:** The Ontario Court of Justice organizes an orientation program for newly appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including, but not limited to, judicial conduct and ethics, social context issues, courtroom demeanour, and administrative procedures.
5. **Sophomore Program:** This program completes the cycle of new judges’ education. Judges attend this program approximately four to five years following appointment. As new judges continue to refine their skills, this program is designed to provide the tools and skills to manage the challenges and stresses of the judicial role. The program focuses on the effective and timely delivery of judgments and the development of courtroom management skills. The program will be offered in June 2020.
6. **Mentoring Program:** A formal Mentoring Program was introduced in 2018 as a way to give all new members of the Ontario Court of Justice the ability to access the collective wisdom, experience and culture of the bench, while reinforcing the independence and ethical responsibilities of judicial officers. The Association of Ontario Judges and the Chief Justice worked together to develop this program. The Mentoring Program is supported administratively by a Mentoring Committee, comprised of judges from various regions of the province. Participation in the Mentoring Program is voluntary on behalf of both mentees and mentors.

Newly appointed judges are also encouraged to attend all education programs relating to their fields of specialization presented by the Ontario Court of Justice. These programs are outlined under the heading “Continuing Education.”

Each judge of the Ontario Court of Justice is provided with certain texts in print or electronic format and materials upon appointment including:

- *Writing Reasons: A Handbook for Judges, 4th edition*, Edward Berry
- *Commentaries on Judicial Conduct* (Canadian Judicial Council)
- *Ethical Principles for Judges* (Canadian Judicial Council)
- Precedents for both criminal and family benchbooks
- *Tug of War: a Judge’s Verdict on Separation, Custody Battles, and the Bitter Realities of Family Court*, Justice Harvey Brownstone (family judges only)
- *Watt’s Manual for Criminal Jury Instructions, 2nd edition*, Justice David Watt
- Evidence texts, such as *Evidence in Family Law*, Harold Niman (editor), *The Law of Evidence, 7th edition*, Justice David Paciocco and Lee Stuesser, and *Watt’s Manual of Criminal Evidence*, Justice David Watt.

In addition, all judges have access to the legal research databases, Quicklaw and Westlaw. Westlaw also provides access to a number of leading legal texts.

A Library Committee of the Court develops a list of texts and reporting services from which each judge is permitted annually to select materials for their personal chamber’s library of a value of up to \$2,500 per judge and \$3,100 for judges sitting in criminal and family courts.

2. CONTINUING EDUCATION

(A) CORE PROGRAMS ADMINISTERED BY THE EDUCATION SECRETARIAT

The programs presented by the Education Secretariat and the Association of Ontario Judges constitute the core education programs of the Ontario Court of Justice education curriculum. The Association of Ontario Judges selects a chair of criminal law education and a chair of family law education. The chairs, in turn, may create a support committee to advise and assist them in putting together the core education programs. Part of the core programming occurs annually and is presented “as needed.”

Annual Core Programs

Seven family and criminal programs are presented each year with a changing curriculum to reflect the educational needs of the Court. These courses are open to every criminal and family judge in accordance with their area of practice. They are described below:

Family Programs: There are two education programs dedicated to family law issues—the Judicial Development Institute in January and the Annual Family Law Program in the fall. Generally speaking, the principal topics are devoted to child welfare and family law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days’ duration and is open to any judge who spends a significant amount of his or her time presiding over family law matters.

A family law education component is also included in the Annual General Meeting of the Ontario Court of Justice held each year in May.

Criminal Programs: There are five major criminal law education conferences presented each year.

a) Four two-and-a-half day Regional Seminars are offered each fall covering a wide range of topics in the area of criminal law. Four separate agendas, integrating substantive law, skills and social context issues, are developed to be responsive to the issues found in each region.

Recent topics have included, but are not limited to: sentencing, assessing credibility, judgment writing, managing judicial pre-trials, the decision making process, case management at the preliminary inquiry, probation orders, search warrants, the meaning of consent in sexual assault cases, the law of firearms, the open court principle, *Charter* issues, scientific evidence, and literacy issues.

b) A two-and-a-half day education seminar is presented annually in May in conjunction with the Annual General Meeting of the Ontario Court of Justice. Recent topics have included, but are not limited to: *Charter* issues and its application in both criminal and family law, sentencing, crafting orders, understanding mental health issues in the courtroom, developing communication skills, management of the trial process with a focus on managing time, dealing with self-represented litigants, civility in the courtroom, understanding a witness' testimony through lenses of culture, gender and communication patterns, accommodating special needs witnesses, youth in the courtroom, publication bans and the open court principle, privacy issues, Indigenous issues, specialized courts, the confessions rule, communications – plain language and literacy issues, sex offences and sexual offenders.

All judges of the Court are entitled and encouraged to attend these seminars.

(B) ADDITIONAL PROGRAMS DELIVERED BY THE ONTARIO COURT OF JUSTICE

A variety of additional programs are presented annually or biannually with limited enrolment. They fulfil a variety of education needs such as the development of judicial skills and leadership and social context training. Particulars of some of the programs offered are set out below.

a) **MANAGING JUDICIAL PRE-TRIALS:** This workshop, which was first offered in 2016 and delivered again in 2017 and 2018, has the objective of equipping participants with the skills necessary to conduct effective pre-trials, with the goal of reducing trial continuations and trial collapse rates. Using a variety of skills-based learning tools, including videos, panel discussions and break-out groups and simulations, this workshop has taken on a heightened significance in light of *R. v. Jordan*. While there are currently no plans to repeat this workshop in its entirety, elements of it have been incorporated in other Court programs, reflecting the importance of education on the conduct of effective pre-trials.

b) **JUDICIAL ADMINISTRATION CONFERENCE:** This is an occasional conference held over two days, typically held every two years. It brings together administrative judges of the Ontario Court of Justice. The program was most recently delivered in February 2017 to a group of Local Administrative Judges of the Court. The curriculum included sessions on leading change, developing skills for managing people, and implementing the Court's current modernization initiatives. It will be presented again in March 2020.

c) **JUDICIAL COMMUNICATION PROGRAM:** The Court, in partnership with the National Judicial Institute, developed a Communication Skills in the Courtroom seminar presented annually for one week in Stratford. Judges learn and practise techniques to improve both their verbal and non-verbal communication skills. This program is now administered by the National Judicial Institute.

d) **JUDGES TO JAILS PROGRAM:** The first Judges to Jail program was offered by the Ontario Court of Justice in 1991. The basic template of the program has remained the same over the years: over approximately one week, small groups of 15 to 25 judges visit a variety of prisons and penitentiaries, from maximum security facilities to halfway houses. Inside the institutions, judges meet with custodial and treatment staff, as well as prisoners. The aim of these programs is to give judges a better understanding of what happens once a prisoner is removed from the courtroom. Since

2007, the program has been offered every other year and delivery is currently administered by the National Judicial Institute.

e) SOCIAL CONTEXT PROGRAMS: The Ontario Court of Justice has presented significant programs dealing with social context. The first such program, entitled *Gender Equity*, was presented in the fall of 1992. That ground-breaking program used professional and community resources in its planning and presentation phases. A number of Ontario Court of Justice judges were trained as facilitators for the purposes of the program during the planning process, which lasted over twelve months. Extensive use was made of videos and printed materials which formed a permanent reference for the judges. The facilitator model has since been used regularly in Ontario Court of Justice education programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, provided information about the changing nature of our society, to determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques, including large and small group sessions, were used in the course of the program. A group of judicial facilitators were specifically trained for this program which was presented following significant community consultation.

In September 2000, the Ontario Conference of Judges (now the Association of Ontario Judges) and the Canadian Association of Provincial Court Judges met in Ottawa for a combined conference which covered poverty issues and issues related to aboriginal justice.

At the Court's Annual General Meeting in 2003, the theme of the education program was "Access to Justice." A play followed by a panel discussion was used to describe issues of literacy, race, poverty, neglect, abuse and violence in the home affecting access to justice. Another session used lectures, videos, panel discussions and small group work to explore the issue of literacy and the courts.

As a result of our experience with these stand-alone programs and the recognition of incorporating social context issues into education, social context education is now seamlessly integrated into most of the courses presented by the Education Secretariat. Our approach to social context education has changed and matured since these courses were first offered. We no longer deliver these programs as stand-alone courses that can serve to isolate the issues from the day-to-day experiences of judges. Instead, social context issues are now addressed in most of our programming.

g) **COMPUTER TRAINING:** The Computer Effectiveness and Skills Training Seminar (now called Technology & You), developed in 2008, was delivered for the first time in February 2009. This course was designed by judges of the Ontario Court of Justice, the National Judicial Institute and the Judicial Information Technology Office. The course has been repeated regularly and will be next delivered in March 2020.

h) **INDIGENOUS ISSUES CONFERENCES:** In June 2016, the Court delivered a three-day Indigenous Issues Conference, bringing a wide range of presenters from First Nations and Indigenous communities to deliver sessions to the judges. The objectives for this program were wide ranging and included identifying what the Court is currently doing to treat Indigenous persons justly and determining how to develop initiatives that promote the just treatment of Indigenous persons. Presenters provided suggestions and guidance about ways to improve communications with Indigenous persons.

In 2011, a similar course was given to judges sitting in larger communities on the topic of Urban Aboriginal Issues. The course was designed to develop understanding of the special issues confronted by Indigenous peoples in urban settings and to encourage the development of local processes that are culturally sensitive.

i) **PRE-RETIREMENT SEMINARS:** This program assists judges and their domestic partners in their retirement planning. The one-and-one-half day program deals with

the social and financial issues that arise in the transition from the bench to retirement. This seminar was last presented in January 2019 and is presented every two years.

j) OTHER ADDITIONAL PROGRAMS: From time to time, a need is identified for a focused program of education for which judges are individually selected.

In April 2013, the Court designed and delivered a *Youth Criminal Justice Act* seminar. Over two-and-a-half days, a wide range of subjects was covered including: understanding the work of youth mental health court workers, therapeutic tools that are available to judges when dealing with youth with mental health disabilities, youth sentencing (particularly when dealing with youth with learning disabilities and literacy issues), dealing with Indigenous youth.

In October 2009, a program was offered on the subject of problem-solving courts. This program looked at the challenges, rewards and best practices for the development of problem-solving courts to address the special needs of Indigenous persons, mentally-disordered offenders and drug-addicted offenders.

In 2010, a special course was developed and delivered to educate judges on the policy and procedures of the Courts' newly implemented Discrimination and Harassment Policy. The judicial officers who attended serve as mediators/advisors to help in resolving conflicts between members of the Ontario Court of Justice that arise out of discriminatory actions or words. A follow up two-day course was presented in the fall of 2010 to develop mediation skills.

(C) EXTERNAL EDUCATION PROGRAMS

1) FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice who are proficient in French may attend one of two courses: one presented by the Office of the Commissioner for Federal Judicial Affairs, the other is a skills-based course developed by the Province of New Brunswick and offered annually in that province.

The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of French-language courses: Terminology courses for francophone judges and terminology courses for Anglophone (bilingual) judges. This program is offered annually.

2) OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including, but not limited to:

- Canadian Association of Provincial Court Judges
- National Judicial Institute
- Federation of Law Societies: Criminal (Substantive Law/Procedure/Evidence) & Family Law
- International Association of Juvenile and Family Court Magistrates
- Canadian Bar Association
- Criminal Lawyers' Association
- The Advocates' Society
- The Association of Family and Conciliation Courts and the Association of Family and Conciliation Courts (Ontario)
- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice
- International Association of Women Judges (Canadian Chapter)
- Canadian Institute for Advanced Legal Studies (Cambridge Lectures)
- French language education, Legal Language Education, Provincial Court of New Brunswick

The Education Secretariat has established a Conference Attendance Committee to consider applications by individual judges for funding assistance to attend

conferences/seminars/programs other than those presented by the Ontario Court of Justice.

3) CANADIAN BAR ASSOCIATION/CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES: In accordance with the Memorandum of Understanding between the Chief Justice and the Association of Ontario Judges⁸, the Ontario Court of Justice annually sends 10 judges selected by the Association to the annual meeting and education program of either the Canadian Bar Association or the Canadian Association of Provincial Court Judges.

4) NATIONAL JUDICIAL INSTITUTE (NJI): The Ontario Court of Justice, through its Education Secretariat, makes a financial contribution to the operation of the National Judicial Institute. Based in Ottawa, the NJI is a world leader in the development and delivery of judicial education programs. Since 2002, the Ontario Court of Justice has made a significant financial contribution to the NJI in return for receiving dedicated education assistance from a NJI Counsel, Judicial Education. This relationship has given many judges of the Ontario Court of Justice the opportunity to work on the development of innovative programming and to serve as faculty for the delivery of that programming across the country. They are then able to bring their expertise back to the Court to the benefit of all aspects of the education portfolio. This corresponds with the goals of the Education Secretariat to foster the active recruitment and involvement of the judiciary at all stages of program design, development, planning, delivery and evaluation. Our judges are our Court's education leaders.

Judges have access to the online materials contained in the NJI's Judicial Library prepared and hosted by the NJI and covering substantive law issues including, but

⁸ Memorandum of Understanding Between the Chief Judge of the Ontario Court of Justice (Provincial Division) and the Ontario Judges Association and the Ontario Family Law Judges Association

not limited to: unlawful detention, mental health, and evidence. These online learning materials are available at no cost to the judges of the Ontario Court of Justice.

OTHER EDUCATIONAL RESOURCES

1. **CENTRE FOR JUDICIAL RESEARCH AND EDUCATION:** The Centre is a law library and computer research facility located in Toronto and staffed by seven research lawyers and two assistants. It is accessible to judges in person, by telephone or e-mail. The Centre responds to specific requests from the judiciary for research assistance and provides bi-weekly updates with respect to legislation and relevant case law.
2. **SELF-FUNDED LEAVE:** In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave.
3. **SELF-DIRECTED EDUCATION:** In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected in large part through continuing peer discussions and individual reading and research.

Appendix A

Judicial Abilities and Qualities

1. Knowledge and Technical Skills

- Sound knowledge of the law, procedure and their application.
- Rapid mastery of unfamiliar areas of law.
- Maintains bilingual skills.

2. Communication and Authority

- Listens and communicates effectively.
- Establishes and maintains authority of the court.
- Manages hearing to enable fair and timely disposal.

3. Decision making

- Sound judgment.
- Appropriate exercise of discretion.

4. Professionalism and Civility

- Maintains independence and authority of the court.
- Maintains personal independence and integrity.
- Promotes highest standards of behaviour in court.

5. Effectiveness

- Manages hearings to facilitate fair and timely disposal.
- Actively manages cases to promote effective and just conclusion of business.
- Applies technologies to effectively manage cases.

6. Leadership Skills for *Puisne* Members of the Judiciary

- Sets tone for the court and courthouse.
- Shows interest in upholding a positive image of the organization.
- Demonstrates ethics, collegiality and support of colleagues.

7. Leadership & Management Skills for Administrative Judiciary

- Strategically plans and organizes.
- Manages change.
- Supports and develops talent.
- Manages judicial resources.
- Encourages and facilitates teamwork.

This list was adapted from: U.K. Judicial Studies Board, Framework of Judicial Abilities and Qualities, October 2008.