

CANADIAN JUDICIAL COUNCIL PROFESSIONAL DEVELOPMENT POLICIES AND GUIDELINES

PRINCIPLES

A. Purpose of the Policies and Guidelines

1. The purpose of this document is to promote the establishment of policies and guidelines for the professional development of federally-appointed judges to ensure the fair and equal delivery of justice in Canada.
2. Chief Justices must be, and must be seen to be, leaders in judicial education. While the Canadian Judicial Council (CJC) does not have the authority to direct or manage any particular court, Chief Justices do. Chief Justices draw their power and authority through tradition, constitutional theory and conventions of the office. They are responsible for managing their respective courts and safeguarding the institutional independence of each court by ensuring that judges are provided with sufficient resources and tools to carry out their constitutional responsibilities and to continually enhance their professional development. While responsibility for the functioning of each court remains with its Chief Justice, Council, which is vested with the collective authority of all Chief Justices and Associate Chief Justices across Canada, performs an oversight and guidance role. These Policies and Guidelines have been adopted pursuant to this authority.
3. To safeguard public confidence in the administration of justice, the justice system relies on the existence of a well-educated, professional and independent judiciary.
4. Overseeing judicial conduct and education are fundamental constitutional responsibilities of the judicial branch of government. In striving to foster a culture of support for ongoing learning, Council has adopted a comprehensive approach to continuing judicial education and training—one that encourages judges to continually acquire and maintain the highest degree of judicial knowledge and skills.
5. Competence and diligence are prerequisites to the due performance of judicial office. Judges should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for the proper performance of their judicial duties. Council's responsibilities in respect of judicial conduct include ensuring that judges are aware of their duties in this area.
6. Council has formally recognized that effective judicial education demands a three-dimensional approach encompassing substantive content, skills development and social context awareness. With these Policies and Guidelines, Council affirms its commitment

to this approach, and underscores that “credible, in-depth and comprehensive” social context education is indispensable to maintaining a fair and well-informed judiciary.¹

B. The Nature of Professional Development

1. Professional development is a term used to describe learning activities, formal and informal, in which a professional person engages and which contribute to the ongoing development of that person’s capacity to fulfil their professional role. In the judicial context, the principle of judicial independence requires that professional development be planned, implemented and supervised by judges.
2. Professional development includes both education and training as important facets of learning. The purpose of education is to gain or develop knowledge; the purpose of training is to gain or develop a specific skill.

Professional development also includes awareness of the social context within which judges perform their role. Judges must ensure that personal or societal biases, myths and stereotypes do not influence judicial decision-making. This requires awareness and knowledge of the realities of individuals who appear in court, including an understanding of circumstances related to gender, race, ethnicity, religion, culture, sexual orientation, differing mental or physical abilities, age, socio-economic background, children and family violence. At all times, professional development must be judge led and delivered in a manner that ensures the fair and equal delivery of justice to preserve the impartiality of the court.

C. Judicial Independence

1. An independent judiciary is indispensable to impartial justice. In keeping with principles of judicial independence, professional development must remain under the control and supervision of the judiciary, free from outside influence or interference. A well-educated and informed judiciary that adheres to the highest standards of conduct is key to preserving public confidence in the administration of justice and the rule of law.
2. There are two main dimensions to judicial independence, namely; the adjudicative independence of judges on an individual level; and, the independence of the judicial institution that keeps the judiciary distinct and apart from the other two branches of government with respect to the management of the courts.
3. The principle of judicial independence was not created for the benefit of judges, but for the protection of the public. By protecting judges against outside influence, it ensures that any dispute entrusted to judges will be decided fairly and impartially.

¹*Governing Resolution*, Canadian Judicial Council (Sept. 2005) (quoting a 1994 CJC resolution on social context education).

D. Professional Development is Essential to the Judicial Role

1. The public rightfully expects judges to be competent and knowledgeable in the law. As noted in a 2017 Council report: “Canadians expect their judges to know the law but also to possess empathy and to recognize and question any past personal attitudes and sympathies that might prevent them from acting fairly. Those qualities sustain public confidence in the judiciary.”²
2. Judicial education is essential for the objective, impartial and competent performance of judicial functions and to protect judges from inappropriate influences. Courts are expected to provide the highest quality judicial services to the public. To that end, judges must hear cases and render quality decisions in a timely manner, impartially and consistent with the law and the evidence. Professional development is a judicial duty that assists judges to better fulfil all aspects of their adjudicative role and constitutional responsibilities.

STATEMENTS

A. Judges’ Accountability for Ongoing Professional Development

Self-development is the act of deciding for oneself how to develop and improve one’s knowledge and skills. Continual self-development is critical to maintaining the high professional standards demanded of judges. Individual judges accordingly are accountable for their own ongoing professional development. If they do not fulfil this obligation, Chief Justices may become involved and take appropriate measures.

B. Interplay Between Judicial Independence, Ethics and Professional Development

Interdependent relationships exist between the principle of judicial independence and the ethical principles for judges on the one hand, and professional development on the other. The preservation of public confidence and trust in the Canadian judiciary as an institution depends upon Canadian judges maintaining high standards in the performance of their judicial work. Public acceptance of and support for court decisions depends upon public confidence in the independence of the bench and the unimpeachable conduct of its members. A key safeguard underpinning judicial independence and ethics is continuing professional development.

C. Ongoing Nature of Professional Development

Continuing competence and the achievement of excellence require judges to participate in ongoing professional development. This learning is part of the continuum of legal education that begins with law school and continues throughout a jurist’s career. The link between ongoing professional development and ethical duties was restated by the Supreme Court of Canada in *Green v Law Society of Manitoba*, 2017 SCC 20 (at para 1):

² *Report of the Canadian Judicial Council to the Minister of Justice* (8 Mar. 2017).

A lawyer’s professional education is a lifelong process. . . . Lawyers must be vigilant in order to update their knowledge, strengthen their skills, and ensure that they adhere to accepted ethical and professional standards in their practices.

These principles have equal resonance for judges.

D. Contextual Approach to Professional Development

The word “context” as defined in the Cambridge Dictionary means “the situation within which something exists or happens, and that can help explain it.” Judges know that unless events or statements are put into their proper context, they will never be fully understood. Professional development plays an important role in judicial awareness of context. A broad contextual approach to professional development activities assists judges in fully understanding the realities, circumstances and experiences of those who interact with the legal system.

As noted above, this includes an understanding of circumstances related to gender, race, ethnicity, religion, culture, sexual orientation, differing mental or physical abilities, age, socio-economic background, children and family violence.

DEFINITIONS

- A.** “Nationally-Developed Module for New Judges” means an on-line continuing education and training program specifically designed for Recently-Appointed Judges that is offered at the national level by the National Judicial Institute (NJI) and which is intended to provide new judges with the basic programming they will require before hearing a case.
- B.** “New Judges Program” means the intensive education and training program jointly delivered by the NJI and the Canadian Institute for the Administration of Justice, the NJI program Judging in Your First Five Years and any other courses that Council may from time to time require Recently-Appointed Judges to take.
- C.** “Recently-Appointed Judge” means a judge who has held office as a federally-appointed judge for five years or less.
- D.** “Professional Development” means any continuing judicial education and training offered nationally or through a local court-based program, any program approved by the Chief Justice, or other programs required by law.
- E.** “Professional Development Plan” means an individualized education and training plan made in conjunction with the Chief Justice or designate that is intended to foster superior levels of professional competence in substantive and procedural law, communication and judicial development, and social context education training. Such plans must balance the strengths and needs of each individual judge, the requirements of the court, and available education opportunities.

POLICIES APPLICABLE TO RECENTLY-APPOINTED JUDGES

A. Professional Development

Recently-Appointed Judges are required to complete, for the first five years of their appointment to judicial office, the specific education and training programs set forth in their Professional Development Plan, including the New Judges Program and Judging in Your First Five Years. Chief Justices will schedule Recently-Appointed Judges' attendance at required professional development programs subject always to the courts' needs.

Recently-Appointed Judges are required to complete any Nationally-Developed Modules for New Judges and such other training as may be prescribed by their Chief Justice or designate.

B. Professional Development Plan

No later than three months after their appointment, each Recently-Appointed Judge is required to create a Professional Development Plan for their first year.

C. Mentoring

Where practicable, and as soon as possible after their appointment to the bench, it is recommended that Chief Justices or designates pair Recently-Appointed Judges with more experienced members of the judiciary to facilitate their transition from the bar to the bench.

POLICIES APPLICABLE TO ALL JUDGES

A. Professional Development

Judges should invest the equivalent of ten days per year of professional development, which includes any local court-based programs. Unless excused by the Chief Justice or designate, all judges are required to attend their court's local court-based programs.

Each judge's professional development should incorporate the three-dimensional approach recognized by Council and referenced above, which encompasses substantive content, skills development and social context awareness.

B. Optional Professional Development

Judges may attend professional development programs during non-sitting time, subject to reasonable limits and the approval of their Chief Justice or designate. Approval may be withheld at the discretion of the Chief Justice.

C. Judges Who Participate in the Planning or Delivery of Programs

Judges are encouraged to contribute to the planning and delivery of professional development insofar as is practicable and consistent with the fulfillment of their primary obligation to hear cases and deliver decisions in a timely fashion. In general, judges are free to participate in planning or delivery of professional development programs in non-sitting time, subject to the approval of their Chief Justice or designate.

At the discretion of Chief Justices or designates, judges who participate in the planning or delivery of professional development programs may be allotted some time to do so from what would otherwise be sitting time, insofar as this is possible and consistent with the needs of the court. Approval may be withheld at the discretion of the Chief Justice.

D. Professional Development Plan

At all stages of their careers, judges are expected to have an up-to-date professional development plan. Special consideration may be given to attendance requests that are designed to further the objectives of the plan.

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