

The Chief Justice of Ontario's Symposium on Lifelong Learning in Professionalism

The following are condensed notes from the Symposium on Lifelong Learning in Professionalism which took place at the University of Toronto on February the 20, 2009. The Symposium consisted of three panels of distinguished members of the legal field who gave speeches on the changing developments in legal professionalism and the continuing need for lifelong learning. The Symposium concluded with the Goodman Lecture, delivered by Justice Stephen Goudge. For access to the full Symposium, please go to: <http://www.clp.utoronto.ca/events/cjo.htm>

This is a summary of Session Three.

Session Three: What is the role of stakeholders?

To see the full version of this session see:

<http://mediacast.ic.utoronto.ca/20090220-CLP-3/index.htm>

Professor Michael Code:

- The problem of declining standards of professionalism and its impact on the criminal trial: the leaders of bench and bar have been speaking out about crises in modern criminal trial due to declining standards of professionalism as one of the underlying problems.
- Criminal trials have reached critical breaking point — they are no longer operating effectively. Increased numbers of complaints to law society.
- We're NOT talking about overzealous advocacy on behalf of clients, but we are talking about misconduct and professional misconduct, or abusing the court or your opponents in the court.
- Serious misconduct has contributed to public unhappiness with the system.
- This is not about ideals; it is about properly working trials that end up with just results.
- Recommendation: that the two professional associations should have joint educational programs.
- Both prosecution and defense counsel associations have a responsibility to ensure that the system runs smoothly.

Laurie Pawlitza:

- There are only 65 firms in Ontario are 25 lawyers or more. So when we are thinking of professionalism, we must think of it in that context.
- 80% of professionalism complaints are about sole practitioners or firms with five lawyers or less. And 92% of complaints arise from urban areas within Ontario.
- Who is falling through the cracks in our system?
- Women comprise only 20% of complaints.

- Small firms, with little to no infrastructure and less support, are mainly concerned with paying rent.
- So when we are thinking about teaching professionalism, we have to consider the context and the circumstances of the people whom we are trying to reach. How do we reach that group?
- Common continuing legal education experience is that those who require continuing legal education the most probably take it the least.
- Should we test mandatory continuing legal education? (Mandatory tests, with suspensions of lawyers' licenses if they fail). This is reactive.
- A more proactive route is using practice management review — reviewers who go into a practice on a random basis and review the supports and practice management in place. Could be an early detection technique. Because they are remedial, they could also use mentoring. But because we call 1500 people every year in Ontario, we can't match everyone with a mentor.
- Does the regulator focus on groups that we know have the most need for support?
- Should we be focusing on the context in which we receive professionalism complaints?

Robert Bell:

- The Advocate Society takes a practical approach to things. It views civility as extremely important. Professionalism at its core is what the advocate society does.
- The Advocate Society has a skills program for lawyers, a learn-by-doing skills training program. The learn-by-doing method is the best method to learn by.
- Ranges from cross-examination, examination in chief, disclosure, etc. and workshops.
- Students actually perform, but in a non-threatening setting. There is often 2-to-1 coaching.
- Mentoring dinners, attended by judges, senior counsel, etc.
- Professionalism has an aspect of service, of contributing to society.
- Our system of justice is the envy of the world, but we can do better.

Justice Stephen Goudge:

- Most in the judiciary know the stake we have in professionalism. We have a stake in two ways: the degree to which it is essential for the confidence of the public in the legal system and vital for just results to have lawyers act professional.
- How can the judiciary help?
- First, at the level of participating in traditional endeavors (mentoring) judges have a significant role to play. They tend to be listened to more than peers may be. And judges may understand issues better.
- Second, a court room may be used as a teaching tool. Judges often feel frustration when they see unprofessional conduct. Judges should use the courtroom to find opportunities to enhance professionalism. They also should hold discussions with other stakeholders on how to work out mechanisms for improving professionalism.

Susan Lightstone:

From the National Justice Institute.

- NJI established in 1988.
- When they opened their doors, judicial education was an oxymoron. Today it is not mandatory in Canada, but is an integral part of a judicial career.
- NJI supports all courts in the education they deliver and offers their own programs as well.
- 2300 judges in Canada and the NJI sees the majority of them each year.
- Judges teach NJI programs, and we involve the judges in designing all of the programs.
- The NJI tries to capitalize on the judges experiences and encourages them to discuss their own experiences.
- Offers face-to-face classes and online classes.

Brettel Dawson:

- Also from the NJI.
- Did not develop lecture-based programs.
- Clear shifts in judicial education: shift from lectures to discussions and broader take on learning.
- Shift from teacher-focused to learner-focused: it's about what the learner is doing.
- Shift from expert transmission model to peer transmission model: it's about judges talking to each other.
- Judicial ethics: ethical issues do not come with label that says, "This is an ethical issue".
- The programs help judges determine what issues are ethical issues, and they help judges explore and discuss with their peers what the issues are. They also discuss what the options are to solving those issues, where there's no right answer.