

# the Commonwealth Judicial Education Institute *Report*



June 2006 Edition

## Intensive Study Programme 2006

"An opportunity to acquire high level educational skills in a non-threatening environment."  
- Hon. Justice Esme J. Chombo, Malawi

### *inside:*

President's message	3
Message from the Chair	3
Interview	6
Focus: Nigeria	6
C.J. M.L. Uwais	8
CJEDI Fellows	10
Court Reporter	11
Skill Building	13
Upcoming Events	15
Contact Information	16

### The thirteenth

annual Intensive Study Programme of the Commonwealth Judicial Education

Institute began on June 4, 2006, with participants from around the globe coming to Halifax for the rigorous series of lectures, exercises, and tours, based in Dalhousie University's Law School. From Halifax, the distinguished guests fly to Ottawa, Ontario, for a tour of the Supreme Court and other, specialized courts, as well as the resources of the National Judicial Institute.

This year's distinguished guests come from thirteen different nations, from the Bahamas to Papua New Guinea. Learning from other jurisdictions

about how judicial education is approached and developed is one of the distinct benefits of such an assembly, and one quickly identified

by the members. Other goals reflect the specific needs of the participant countries.

The Honourable Justice J.V.M. Dotse, who sits on the Court of Appeal in Ghana, is a member of the board of that country's Judicial Education

Training Institute and would like to develop a specialized commercial course and learn skills for capacity-building of the Institute.

Justice Dotse is also one of four judges this year participating in a World Bank funded project, working in tandem to analyze their laws, court cases, and procedures

with a view to proposing strategies for addressing gender violence and legal dimensions of HIV/AIDS.





Dr. N.R. Madhava Menon



Judge Mahamadu Iddrisu



Deputy Chief Justice D. Moseneke  
and Justice Asif S.K. Khosa



This year's program is led in part by the distinguished Dr. N.R. Madhava Menon, recently the Director of the National Judicial Academy, Bhopal. Dr. Menon is also renowned as the Founder-Director of the National Law School of India University in Bangalore. He founded other law schools on that model, and enhanced the quality of legal education in the country.

A first foundational week included introduction to print and

online resources, computer orientation, discussion of judicial education structures, and workshops, with heavy involvement of the Institute's chair, Judge Sandra Oxner. A tour of the Young Offenders Centre in Waterville, Nova Scotia was included in the programme.

The second week featured sessions on judgment writing, courtroom communication and long range education planning, as well as perspectives on impartiality.



Ms. Eleanor Donaldson-Honeywell



Justice Jones Dotse

# Message from the President

The Honourable Chief Justice Sir Dennis Byron

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This edition of the CJEI newsletter coincides with the Intensive Study Programme. The faculty has an international flavour, including as it does **Dr. N.R. Madhava Menon**, recently retired Director of the Indian National Judicial Academy, **Professor James C. Raymond**, a distinguished international consultant on judgement writing, and **Dr. Gordon I. Zimmerman**, a Professor of Speech Communication at the University of Nevada and a communications consultant. Reflecting on the import of this, it is of particular significance that the Third Biennial Meeting of Commonwealth Judicial Educators was hosted by the Indian National Judicial Academy in March 2005. It was an outstanding occasion for those of us who had the opportunity to attend. It was of particular interest that the Academy at Bhopal hosted, at the same time, members of the Indian Judiciary, with two joint sessions shared by the groups. The two programs nicely complemented each other, for everyone's benefit.



It is quite noticeable that there is constant development in National Judicial Education Institutes throughout the Commonwealth. This testifies to the determination to improve the quality of justice delivery with high quality judicial education services structured along national lines.

The ISP has consistently supported such activities. Over its years of operation, it has certified judicial educators from dozens of countries. One of the lasting values of this service is making the resulting human and material resources available to all. The Gateway program, a partnership between CJEI and the World Bank Legal and Judicial Reform Practice Group, is the venue for sharing these resources and offering support to national services. Already, 13 countries have linked their experiences on our website, substantively divided into five topics of learning materials. We encourage everyone to see the efforts for themselves, participate by linking their own national experiences, and give us feedback on how we can continue to improve.

# Message from the Chair

The Honourable Judge Sandra E. Oxner

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I write you in the midst of our thirteenth annual programme for judicial educators. It is always an exciting time for the Commonwealth Judicial Education Institute, and this year is no different. We have an outstanding group of participants and we have all learned much from each other. We will dedicate the next issue to the results of their work here. One of our special projects this year, in partnership with the World Bank, involves developing judicial education modules designed to sensitize court officers to the special circumstances of women and HIV issues; we are pleased to have been asked to take an initiative in this area.

With this issue, I am very pleased indeed to share with you some of my wonderful Nigerian experience. We look forward to a CJEI meeting at the outstanding new National Judicial Institute in Nigeria.







An Interview with the Honourable Justice

## K.G. BALAKRISHNAN Supreme Court of India



*As a boy, he took his father's lunch up the hill every day to the court where the man worked. It was a busy, bustling place, and once, the young Balakrishnan was very pleased to receive a pat on the back from the District Judge, who told him what a good, hard working boy he was. The proud boy reported this back to his brother – who didn't believe it. "You're lying!" But the young K.G. Balakrishnan insisted it was so, and when his father came home, the boy described the incident, with details such as the judge's impressive costume and red cap. "That wasn't the District Judge," his father informed him. "That was his personal peon." In other words, the Judge's servant.*

*The boy was deflated. But evidently, that servant recognized something, and he, like others, would today be awed by the fact that the person who carried the lunch pail is now on the verge of becoming Chief Justice of the Supreme Court of a country of more than a billion people—including a million lawyers.*

*The Honourable Justice K.G. BALAKRISHNAN, of the Supreme Court of India began his law career pleading criminal and civil cases in Ernakulam Court in the state of Kerala. Appointed as a Munsif (a lower court civil judge) in the Kerala Judicial Services in 1973, he later resigned to resume practice in the Kerala High Court. In 1985 he was appointed to that court, and then to the Gujarat High Court in 1997. The following year he became Chief Justice of the Gujarat High Court, and in 1999, the Chief Justice of the High Court of Judicature at Madras (in India, appointments to the position of Chief Justice are made in a different State.)*

*He became a judge of the Supreme Court on June 8, 2000, and on January 14, 2007, he will become the Chief Justice of India.*

*Halifax and the Commonwealth Judicial Education Institute were proud to receive Justice Balakrishnan and his family in June and hear some reflections on his life and the law. His wife, Mrs. Balakrishnan, son Pradeep and daughter Rani were all proud of Justice Balakrishnan's achievements and his imminent ascent to the position of Chief Justice – all the more so, given that both children have followed their father into law careers.*

*Did anything in your personal background influence your outlook on life or the law?*

Nothing special. My father worked as court staff - he retired as chief of administrative staff of the district – so, right from the beginning, I was aware of the courts, their hierarchy and importance. That is where my interest came from. In Kerala, even today, the judges are held in high esteem

*What judicial education did you receive upon being first appointed to the bench?*

In 1973 I was appointed as a Munsif – a civil judge, a junior judge – and we received six months of training, in the Revenue department, the Forestry department, basic land reforms, land measurements. As temporary magistrates, we were assigned cases - even during the training period we were vested with

powers. We had to maintain a diary, scrutinized by the District Judge, and he would give us guidance. That was very useful.

*Could you comment on the need for judicial education?*

Without judicial education, we cannot improve the quality of our judicial system. Many of the officers appointed may not have the requisite experience or educational background. The experience of a lawyer is not always helpful as a judge, as he probably practiced in a particular branch, but as a judge, must see all kinds of cases. Even if the judge is good, he requires continuous training so that he can be a model judge. That would ultimately help the judicial system. In India, almost all the states have judicial academies, working under the respective high court of the state.

*What advice would you give to newly appointed judges?*

They must understand that we decide the right of others, so they must be extremely careful not to cause any harm to anybody by their acts. A judge should feel that within the given circumstances and the law, he should give the best that he can do.



*Photo by Timothy Gonsalves, CCA*

*What are your impressions of CJEI?*

It's doing a lot of good things, such as developing teaching modules which will be helpful to Commonwealth countries that are lagging in providing education to their judicial officers (maybe due to economic reasons.) In education, sharing of knowledge is very important and can only be done through interaction between countries. The CJEI is providing that link.

Each Commonwealth country should send more judges. I participated in the 2004 Conference the Institute held in St. Lucia, representing India there.

*What are the biggest challenges facing the Indian judiciary currently?*

The large number of cases is the only challenge. We're considering ADR - we have some already, with cases settled in the Lok Adlat (the people's court). But only some types of cases are eligible – motor accident, insurance cases, some matrimonial (maintenance) cases. We want to settle more complicated cases by conciliation and arbitration as well. We seek the help of retired judges and expert lawyers, and are amending the Civil Procedure code. Now the code can send cases to the Conciliation Board for settlement, but it hasn't begun in a big way. People must be inspired to seek settlement through mediation. That's the only way to wipe out the large number of pending cases.

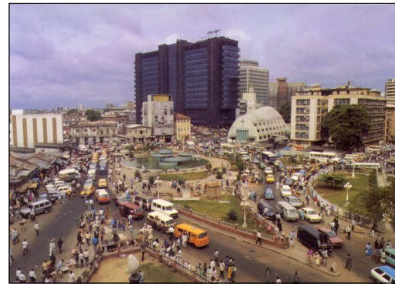
Apart from that there are no challenges to the judiciary – it's working well in India, and almost all the matters are held in high esteem. The court is very independent, free from interference from the Executive.

*Could you tell me about a controversial ruling over which you presided, debarring political parties?*

Kerala has a lot of political parties, and the trade unions are very powerful. Each party would organize "bundhs" – asking people to keep away from work. They weren't allowed to open shops, allow employees to work – a complete stoppage – and this was causing great difficulty to citizens, resulting in public interest litigation. This litigation contended that political parties had no right to force others to participate in the bundh, as a right to life was violated: forcing people to abstain from work. Even patients could not be taken to the hospital. The petitioner contended he has a right to life, and the parties didn't have a right to organize the bundh. The bench was presided over by me, and we said, the parties cannot organize bundhs like that, causing serious inconvenience to people: if they do, their registration as a

political party would be cancelled. That decision was upheld by the Supreme Court (it refused to hear an appeal.)

The Supreme Court of India is a very powerful court. In environmental matters, for example, it has given directions, fully complied with by the Executive. In the city of Delhi, there was pollution by motor vehicles (both diesel and petrol.) The SC directed that all public carriage vehicles shall use natural gas (CNG,) and now all those vehicles comply, and Delhi is free from pollution to a great degree. Another SC decision on forest uses halted some large-scale mining and unauthorized tree-falling operations. There was also public interest litigation that resulted in midday meals being provided to schoolchildren. Though many States opposed this measure, the SC firmly said it should be implemented, and as a result, the dropout rate in the schools has been drastically reduced.



# Focus on NIGERIA

## NIGERIAN JURISTS LOOK AHEAD WITH NEW JUDICIAL INSTITUTE

### The National

Judicial Institute of Nigeria in Abuja has moved from its former offices in the Supreme Court Complex to a new location, in the first part of a permanent site being developed for the Institute. Three phases of construction are planned. The first consists of an administrative block, an auditorium and library, and it's to this site on Airport Road that the employees have relocated. The administrative block has been completed and work has now begun on the auditorium. Plans for the second phase include housing for the NJI's administrator and senior staff as well as a motel for judges and court employees who come to attend lectures. A planned third phase will add housing for junior staff, but the timeline for completion of these projects will depend on funding.

A move became necessary as the Supreme Court Complex location became inadequate for the growing institute's needs. The new facilities will resolve problems of inadequate office space and allow staff to better prepare and host training events. The NJI consists of Research, Studies and Administration departments as well as Library Services. The Administrative Department is responsible for administration, accounts, and protocol, while the Studies and Research staff work together closely to draw up programs and organize workshops and conferences. *(Continued on page 9)*



# CJEI FELLOW BECOMES A KING



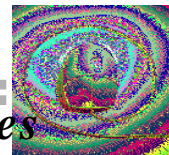
## NIGERIA

The Commonwealth Judicial Education Institute has enjoyed the participation of many distinguished people, and seen its Fellows go on to receive titles and positions as diverse and impressive as the list of countries from which they come. But even among these distinctions, the latest to be bestowed upon the **Honourable Justice John A. Ajakaiye** (a CJEI Fellow in 2004) is singularly impressive: he has become a king.

He is now the new Oluyin in the town of Iyin Ekiti, in the Irepodun/Ifelodun area of the Nigerian state of Ekiti. In his distinguished career, the Honourable Ajakaiye served as both Chief Judge of the state as well as an administrator of the National Judicial Institute in the Nigerian capital, Abuja, before ascending to his ancestral throne in December last year. His coronation was held in April in Iyin Ekiti and drew an enthusiastic response from locals and eminent guests. The state Governor, Mr. Peter Ayodele Fayose, and Archbishop of Ondo Province, Samuel Abe, attended, as well as Chief Judges from other Nigerian states, the Supreme Court, and the retiring Chief Justice Muhammadu Lawal Uwais (see the feature article, next page.)

According to *The Comet* newspaper, Governor Fayose described the new monarch as a "reconciler and a righteous judge" as well as a "man of destiny." The Oluyin reciprocated with thanks to the governor for supporting democracy, and he pledged community support for the administration. He also asked the government to support a new asphalt road into the region, crucial to its economic well-being. Before the appreciative crowd, the former Chief Judge received the official staff of office, and the monarch's new era began, which will no doubt blend the nobility of his ancestral lineage and the judicial prudence he represents.

## One Destination on the Internet: *A World of Judicial Education Resources*



CJEI is in the process of creating a "gateway" on the Internet that will link judicial education resources of as many as 53 countries in the Commonwealth. Each country will have material available under headings such as General Judicial Education, Impartiality, Competency, Efficiency and Effectiveness. Included in the cataloguing will be materials such as programmes, print, audio and video teaching tools, and background information. These will be useful in strengthening judicial education programmes, sharing resources, and finding common solutions to common problems. A test site (for the Organization of Eastern Caribbean States) features such items as "How to Build a Power Point Presentation," "Terms and Conditions of a High Court Judge," and an "Overview of Civil Procedure Rules" – all available with a single click of the mouse.

The biggest advantage to the project is simply accessibility: rather than having to search the Internet for such resources or have them delivered by mail, judicial educators can start here and immediately access materials. If participating countries do not have a website related to judicial education, CJEI will create and host one for them, in the appropriate format.

The project has an anticipated completion date of March 31, 2007.

# The Honourable Chief Justice of Nigeria Retires

## *with Vigour*



### The Chief Justice

is not departing from his role timidly. One might expect that after eleven years of distinguished service as Chief Justice in Nigeria's highest court, the Honourable Muhammadu Lawal Uwais might be content to retire from the bench accompanied only by the platitudes that such an occasion call for. Not so: in his last months in this position, the Chief Justice has been a vocal critic of changes proposed by the executive arm of the government, changes which he sees as threats to the proper constitutional division of powers and even Nigeria's democracy itself.

Nigerian law set the date of his retirement. The Supreme Court Act stipulates that Chief Justices will retire by the age of 70, and Uwais reaches that age on June 12, 2006. But it's the process by which judges are chosen that sparked debate between him and the government. Under a proposed change to the country's constitution, the President and Governors of Nigeria could appoint head judges directly, with only consultation from the National Judicial Council. Currently, it is the NJC who first makes recommendations to the President on such appointments. According to the *Nigerian Tribune*, the Chief Justice spoke at a meeting of the Nigerian Bar Association with both the Attorney General and Minister of Justice in attendance and warned that such a change would facilitate political influence in the judiciary.

Uwais also recently decried the government's move to change how lawyers are educated in the country. The country's Attorney-General announced plans to deregulate the Nigerian Law School; critics of the plan characterize it as privatisation. The Chief Justice, according to the *Vanguard*, spoke at a conference on legal education in May where he scolded the government for not consulting the Council of Legal Education and the Body of Benchers, saying "the need for consultation is the hallmark of democracy. That is what distinguishes a military government from a democratic government.... [the] process of law making under a democracy is subject to series of discussions and debate."

That the Chief Justice should speak strongly to articulate and maintain these distinctions is particularly admirable given the recent history of his country. Since independence in 1960, Nigeria has been pulled back and forth between democratic elections and military coups. In 1995 during the rule of General Sani Abacha, writer and oil-industry critic Ken Saro-Wiwa was executed, leading to sanctions by the European Union and three years of suspension from the Commonwealth. Presidential elections were held in 1999, bringing back Olusegun Obasanjo, a former military ruler, as President. Civilian-run elections were held in 2003, but allegations of electoral fraud challenged Obasanjo's re-election; the Supreme Court rejected a lower court's annulment of state results. Evidence of some electoral fraud was not enough to have changed the result, and the Chief Justice said: "I have come to the conclusion that the election was conducted substantially in compliance with provisions of the Electoral Act."

The Honourable Chief Justice has seen great change in his country during both his tenure and his life. Born in Zaria in Kaduna State in 1936, he attended Barewa College and the Institute of Administration at Ahmadu Bello University in his home city before travelling to London, England to attend the Oriental and African Studies department at the University of London in 1961. He received legal training at Gibson and Weldon College of Law in London, and post-bar education with the Council of Legal Education in London. He then returned to Nigeria in 1963 to attend the Nigerian Law School in Lagos.

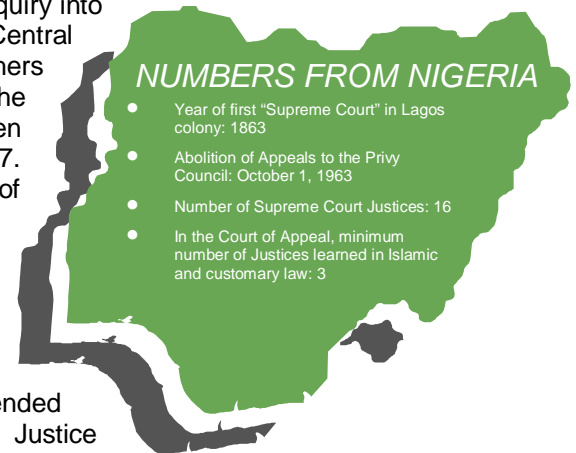
Once he entered the Nigerian legal system, his rise was swift. He was Pupil State Counsel in the Ministry of Justice for the Northern Region of Nigeria in 1964 and Senior State Council within the same department by 1969. He joined the bench as Acting High Court Judge



for the North Central, Benue-Plateau and North-Eastern States of Nigeria in 1973 and received the permanent position the following year. In 1976 he became the Acting Chief Justice of Kaduna State and then, in 1977, went to the Federal Court of Appeal. He became a Justice on the Supreme Court of Nigeria in 1979 and has been on that highest court of the country ever since. In 1991 he was appointed Acting Chief Justice and then became the Chief Justice in 1995. It's the second longest term for anyone in the position since the Supreme Court re-emerged through the Republican Constitution of 1963.

He served as Chairman of the Judicial Commission of Inquiry into the Awards of Contracts by the Military Government of North-Central State, Jimeta Disturbances Tribunal, the Nigerian Body of Benchers and the National Judicial Institute of Nigeria and is a Fellow of the Nigerian Institute of Advanced Legal Studies. He has also been an Honorary President of the World Jurist Association since 1997. Recognition through national honours include the Commander of the Order of the Niger (CON) the Grand Commander of the Order of the Niger (GCON.) He has two wives, Hajiya Saratu Ahmed, whom he married in 1960, and Hajiya Maryama Isa Wali, married in 1988.

Upon Uwais' retirement, the second-most senior Justice of the Supreme Court, the Honourable Salihu Modibbo Alfa Belgore, will take the position of Chief Justice – as recommended to the President by the National Judicial Council. Next year, Justice Belgore himself will turn 70 and face retirement, making for a short term. It is the hope of Chief Justice Uwais, and in the interest of all Nigerians, that his successors will pursue the independence of the judiciary, as he has done so vigorously during the country's ongoing evolution.



## The National Judicial Institute of Nigeria Looks Ahead

*(continued from page 7)*

Judicial training and the institute's origin go back to 1980 when the late Chief Justice of Nigeria, the Honourable Atanda Fatayi-Williams, GCON, asked another Justice on the Supreme Court, Sir Udo Udoma, to conduct a course in his chambers. At that time, prior to the capital being changed to Abuja, the court complex was located in Lagos State, and a small number of recently appointed judges from across the country attended. When Sir Udoma retired from the bench in 1982, this training came to an end. The late Honourable Justice Mohammed Bello, GCON, became Chief Justice in 1987, and he acted on a recommendation coming out of the Commonwealth Chief Judges Conference to establish an advisory committee on continuing education for the judiciary, appointing as its Chairman the Supreme Court Honourable Justice A.O. Obaseki, CON. This committee met in the Chief Justice's conference room, arranging induction courses for newly appointed judges and kadis (Muslim judges who render decisions according to Sharia law,) as well as ongoing lectures for the judiciary.

In 1991, at the request of Chief Justice Bello, acting Chief Justice M.L. Uwais drafted a decree establishing a permanent commitment to judicial training and creating the National Judicial Institute. This decree was approved by the Armed Forces Ruling Council and the then-President of Nigeria, General Ibrahim Babangida, and it gave birth not only to the NJI but the office of its Administrator. The Honourable Justice A.O. Obaseki, who had retired from the bench by this time, held this position first. The institute's training now widened to include not only new judges but also support staff of the federal and state judiciaries, and courses were held in parts of Nigeria beyond the capital, as well as a biannual All Nigeria Judges conference.

A suitable home in Abuja for the NJI was scouted and planned before the Supreme Court moved to that city from Lagos in 1996, but the Institute remained housed in the court complex until February 8<sup>th</sup> of this year, when the new Administrative Block was ready.



**The Honourable Judge Hasan Shaheed Ferdous** (CJEI 1998) has joined as a District Judge of Gazipur, a World Bank Pilot District of Case Management and Court Administration.

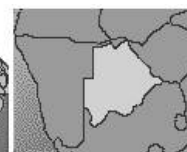
## BANGLADESH



**The Honourable Mr. Justice Stanley Moore** (CJEI 1999) was reappointed to the Court of Appeal of Botswana and appointed Adjunct Professor of Comparative Constitutional Law at Florida State University.

**The Honourable Goemegabo Tebogo-Maruping** (CJEI 2000) has found renewed energy after being elevated to the position of Judge in the Industrial Court of Botswana.

## BOTSWANA

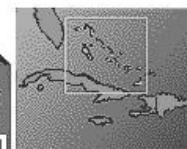


In May, **the Honourable Chief Justice, Sir Burton Hall**, (CJEI 2002) was presented with the Pelican Alumni Peer inaugural award for Outstanding Alumnus of the University of the West Indies Faculty of Law. The award recognizes professional excellence and outstanding service to society.

**Mrs. Cheryl Albury** (CJEI, 1998) was appointed an Acting Justice of the Supreme Court for one year, effective November 2005.

**The Honourable Madam Justice Anita Allen** (CJEI, 2001) received the title of Senior Justice, effective October 1, 2005.

## BAHAMAS



### RECENT EDUCATION EVENTS

**MALTA** In January, a seminar on the implementation of the European Arrest Warrant was held in Valletta, Malta, chaired by Dr. Guy Stessens of the Council of the European Union's Judicial Co-operation Division. Topics included the framework decision on the warrant and surrender procedures between member states, national implementation, and experience in member states.

**SOLOMON ISLANDS** For two days in September 2005, Legal Writing Consultant and Professor James C. Raymond came to speak about judgement writing.

**AUSTRALIA** In February, the Australian Institute of Judicial Administration held a conference on family violence, with Dr. Jane Ursel of Winnipeg, Manitoba and the Honourable Judge Eugene Hyman from the Superior Court of California participating. The annual Tribunals Conference was held in April with a theme of Tribunal Practice in an International Context. The Third International Conference on Therapeutic Jurisprudence is scheduled for June 7 to 9 in Perth, with a wide range of discussions on therapeutic justice in such areas as mental health tribunals, aboriginal law, sentencing and family courts.



# Court Reporter



In early 2006 three appointments were made to the Supreme Court of India - Mr. Justice Lokeshwar Singh Panta, Mr. Justice Devinder Kumar Jain, and Mr. Justice Markandey Katju. The Supreme Court decided to reduce its own summer recess period by one week, with a view to reducing its arrears and disposing of more cases.

INDIA

The Honourable Justice Edwin Goldsbrough from England and the former Chief Magistrate of Fiji, Sekove Naqiolevu, were appointed to the Solomon Islands High Court.

SOLOMON ISLANDS

The Honourable Noel Crossley Anderson was appointed a Supreme Court judge by the Attorney General of New Zealand on February 21, 2006. The Honourable Justice had been serving as the President of the Court Appeal since 2004 and was once a partner in the firm Martelli, McKegg and Adams-Smith in Auckland.

NEW ZEALAND

Justice Artemio Panganiban assumed the position of Chief Justice of the Republic of the Philippines, replacing Chief Justice Hilario Davide Jr.

As part of a Judicial Reforms Program in the Philippines, the last pilot courts are being implemented for judicial dispute resolution. This involves judges acting as neutral evaluators, conciliators and mediators where no resolution has been achieved through the Philippine Mediation Centers. JDR courts have been established in San Fernando, Pampanga and Bacolod City, Negros Occidental Province, with a success rate above 70 percent.

THE PHILIPPINES

The retirement of the Honourable Mr. Justice John A. Major at the end of 2005 opened a seat on the Supreme Court of Canada. It was filled by the Honourable Mr. Justice Marshall Rothstein, who had been serving on the Federal Court of Appeal.

The Honourable Justice's appointment came after a televised public appearance before an all-party Parliamentary committee, a new step in the process implemented by the recently elected Conservative government. Though the tone of this question-and-answer session was civil, some have raised concerns about the effect it may have on future potential nominees.

The new Supreme Court Justice is perhaps best known for an Appeal Court decision he wrote regarding the patentability of life forms.

CANADA



# AUSTRALIAN FAMILY COURTS INNOVATE TO MINIMIZE TOLL ON CHILDREN

## Forthcoming changes

to Australia's *Family Law Act* include provisions to support a new, less adversarial approach to hearing cases involving children. The Australian Government's new approach is consistent with that taken by the Family Court of Australia in its pilot of the Children's Cases Program (CCP), which ran from March 2004 to December 2005.

The Children's Cases Program offers a different pathway to determination in parenting proceedings, but the law is the same. That is, the Judge must, as required by the *Family Law*

arrangements that are in the best interests of the children.

That is, rather than approaching the proceedings with the aim of 'winning' or 'punishing' each other, the parties (usually the parents) and their lawyers (if they are represented) participating in the CCP have been encouraged to consider how they can help the Judge find the best solution for the children.

The Court is very concerned about the adverse impacts on children who are exposed



Act, still regard the best interests of the child as the paramount consideration.

The Family Court's Children's Cases Program began as a pilot in the Parramatta and Sydney registries in March 2004 for people who consented to a less adversarial hearing in court disputes about their children. The Program has continued beyond the pilot and will soon be the way the Family Court hears all cases involving children.

A major feature of the CCP is the active role taken by the judge who is allocated to the case. Unlike traditional adversarial hearings which resemble a contest where the parties (or their legal representatives) are responsible for deciding how they prove their claims to the Court, a CCP hearing is more closely directed by the Judge and is designed to encourage the parties to focus on future

to or witness family violence and any history of violence in the parties' past or present relationship may be highly relevant.

The CCP is available whether people are represented or not. However, the Court strongly encourages representation and potential participants need to obtain legal advice about consenting to their case entering the Program.

The Program aims to provide significant benefits to children and their families and also to lawyers and other professionals through the speedier progression of these cases to determination facilitated by less formal and less costly procedures. It builds upon rather than supplants the highly effective outcomes seen in the settlement of cases by practitioners and Court mediated settlement.

Article by Ms. Angela Filippello, Principal Registrar  
Family Court of Australia

# 5 FIVE WAYS TO IMPROVE YOUR JUDGEMENT WRITING

Dr. James C. Raymond, Legal Writing Consultant, shares five clear principles to hone judgements.



## 1. IDENTIFY THE ISSUES *BEFORE* YOU START WRITING

Issues don't blossom out of facts: lawyers and judges have to fashion them. The best time to do that is before the trial even begins. Meet with attorneys and counsel if possible, and have them agree on the questions that need to be determined in trial. Obviously, these questions change as the trial progresses, and you will need to change your plan accordingly. It's far better to start with a tentative plan at the beginning of the trial, rather than wait to the end, when the true issues may be obscured by lots of subsidiary issues that may turn out to be irrelevant.

## 2. ARRANGE THE ISSUES IN A SEQUENCE THAT MAKES SENSE

Sometimes the issues are so independent of one another that you can arrange them in almost any sequence whatsoever. In other cases, however, there is a threshold issue, or a dispositive issue, and it must be dealt with first. In all cases with more than one issue, it is important to foreshadow them, preferably in a bullet-pointed list before the end of the first page, or as close to that point as possible. Once you've made this list, use headings that track these issues. This will enable your readers to find a way to the part of the judgement that might concern them as precedent, or, in constructing an appeal.

## 3. ANALYZE THE ISSUES BY USING AN APPROPRIATE PATTERN OF ANALYSIS

In questions of law, it is usually preferable to express the losing party's position first, and then to explain the flaw that you've determined in the losing party's position. For questions of fact, it is often preferable to begin with the evidence of the party who has the burden of proof, followed by the evidence from the opposing party. Once you have laid out this evidence, indicate which side you prefer, and why. Try to give objective factors for making this determination, such as evidence from cheque, credit card, or telephone records, or evidence that undermines one party's credibility, such as prior inconsistent statements or evasiveness in answering questions

## 4. WRITE A BEGINNING THAT PROVIDES THE CONTEXT FOR UNDERSTANDING THE ISSUES

A good beginning indicates who did what to whom, or who was arguing about what, before anyone set foot in court. Give an overview, not a detailed narration of the facts. Avoid cluttering this overview with parenthetical aliases (e.g. "hereinafter called"), or with citations that serve no purpose at this point. The beginning may suggest where the judgement is heading, or it may conceal the result entirely; this is a choice that the judge must make with each individual case. Don't waste your first paragraph on uncontested matters or procedural history that's no longer relevant.

*Continued on next page....*

## 5. WRITE A CONCLUSION THAT RECAPITULATES YOUR ANALYSIS



The last part of a judgement is a good place to recapitulate your reasons for the benefit of those readers likely to skip the body of the judgement. It is also a good place to bolster your findings with arguments from consequence – that is, by mentioning all the bad effects that would flow from a contrary judgement. If the result is unlikely to be a popular one, the last paragraph is a good place to assure readers that remanding a case does not result in freeing an unsavoury character, but simply in a new trial that follows long-established rules of due process.

From beginning to end, a judgement is best written in language that ordinary people can understand. Each judgement contributes to the credibility and authority of the judiciary as a whole. No judgement is unimportant.

## CIVIL PROCEDURE REFORM IN NEW SOUTH WALES: RATIONALIZATION AND CASE MANAGEMENT

In 2005, the *Civil Procedures Act* was passed in New South Wales, Australia, bringing with it new *Uniform Civil Procedure Rules*. The initial project to simplify and rationalize civil court rules was hastened by the need to have them ready for integration with a new computerised case management system, also being introduced. But the computer system - called CourtLink - was delayed; meanwhile the working group on reform met its deadline, and the new rules have been implemented.

Integration with the new computer system was part of a greater goal of reducing court waiting times. The new legislation unifies rules for the conduct of proceedings in three jurisdictions: the Supreme Court, District Court, and Local Courts and Dust Diseases Tribunal. This is of immediate benefit to legal practitioners who no longer need to maintain multiple sets of precedents and forms for the three.

Another part of the task was simplifying civil procedures wherever possible. Changes were based on existing court rules and focused on identified difficulties. Rules dealing with the same subject matter were grouped together, and phrases with settled legal meanings were carried over to reduce the incidence of disputes over meanings. Also, the same general order as existing rules was continued for the sake of familiarity. The structure of the CPA is different from other Acts, however. Machinery provisions such as regulation and rule making powers appear at the beginning, allowing new provisions to be added at the end without interfering with the numbering system.

A significant change is the recognition of case management in creating efficiency and reducing court costs. Though this practise has grown substantially over the past 30 years in the jurisdictions, it had little formal mention in existing regimes. Now, provisions for active case management have the weight of statute and a position of prominence within the UCPR itself.

Case management is a tool for increasing the courts' efficiency and reducing litigation costs. The aim is to facilitate the just, quick and cheap resolution of the real issues in proceedings; the court and parties to proceedings are all required to effect this overriding purpose. The court has the power to give directions and make orders for the conduct of proceedings provided they appear to be convenient and just. Additionally, the court may set dates and times for related orders and directions. The court must implement practices and procedures with the objective of eliminating unnecessary lapses between the initiation of proceedings and their final determination.

More information on the changes is available at [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au) and in the article "Civil Procedure Reform: Gradualism or Revolution?" by the Honourable Mr. Justice Hamilton, in the August 2005 edition of the Judicial Commission of NSW's *Judicial Officers Bulletin*.

AUSTRALIA



# JUDICIAL EDUCATION EVENTS

## JULY

	WHERE & WHEN	CONTACT
Annual Seminar on Judgement Writing	July 4 – July 7, 2006 Montreal, Quebec, Canada	Canadian Institute for the Administration of Justice Website: <a href="http://www.ciaj-icaj.ca">www.ciaj-icaj.ca</a> Tel: (514) 343-6157 Fax: (514) 343-6296 Email: <a href="mailto:ciaj@ciaj-icaj.ca">ciaj@ciaj-icaj.ca</a>
Managing High Conflict Custody and Access Cases	July 7 – July 9, 2006 Kananaskis, Alberta, Canada	National Judicial Institute Website: <a href="http://www.nji.ca">www.nji.ca</a> Information: Cristina Cook at (613) 237-1118, ext. 280 Email: <a href="mailto:ccook@judicom.gc.ca">ccook@judicom.gc.ca</a>
FLSC National Family Law Program	July 10 – July 13, 2006 Kananaskis, Alberta, Canada	Federation of Law Societies National Family Law Program Website: <a href="http://www.flsc.ca">www.flsc.ca</a> Tel: (705) 374-4083 Fax: (705) 374-4131 Email: <a href="mailto:nationalfamilylawprogram@sympatico.ca">nationalfamilylawprogram@sympatico.ca</a>

## AUGUST

	WHERE & WHEN	CONTACT
2006 NASJE Conference	August 13 – 16, 2006 Minneapolis, Minnesota, USA	National Association of State Judicial Educators Website: <a href="http://www.nasje.org">www.nasje.org</a>
CSCJA Annual Meeting: Judges Day	August 15, 2006 St. Johns, Canada	Canadian Superior Courts Judges Association
Evidence Workshop	Aug 20 - Aug 24, 2006 Whistler, B.C., Canada	National Judicial Institute Website: <a href="http://www.nji.ca">www.nji.ca</a> Information : Tracy Antochi at (613) 237-1118, ext. 299 Email : <a href="mailto:tantoichi@judicom.gc.ca">tantoichi@judicom.gc.ca</a>

## SEPTEMBER

	WHERE & WHEN	CONTACT
24 <sup>th</sup> AIJA Conference – “Affordable Justice”	September 15 – 17, 2006 Adelaide, South Australia	Australian Institute of Judicial Administration Website: <a href="http://www.plevin.com.au/aijaconference2006/">www.plevin.com.au/aijaconference2006/</a>

Communication Skills in the Courtroom	September 20 – 22, 2006 Stratford, Ontario, Canada	National Judicial Institute Website: <a href="http://www.nji.ca">www.nji.ca</a> Information: Caroline Secours at (613) 237-1118, ext. 227 Email: <a href="mailto:csecours@judicom.gc.ca">csecours@judicom.gc.ca</a>
Judgement Writing Workshop: Superior Courts	September 22 – 23, 2006 New South Wales, Australia	Judicial Commission of New South Wales Website: <a href="http://www.judcom.nsw.gov.au">www.judcom.nsw.gov.au</a> Information: Ruth Sheard at 02 9299 4421 Email: <a href="mailto:rsheard@judcom.nsw.gov.au">rsheard@judcom.nsw.gov.au</a>

## UPCOMING

	WHERE & WHEN	CONTACT
Emerging Issues: Judging in the Context of Diverse Faiths and Cultures	October 4 – 6, 2006 Montreal, Quebec, Canada	National Judicial Institute Website: <a href="http://www.nji.ca">www.nji.ca</a> Information: Sam Enright at (613) 237-1118, ext. 297 Email: <a href="mailto:senright@judicom.gc.ca">senright@judicom.gc.ca</a>
Criminal Jury Trials Seminar	October 25 – 27, 2006 Vancouver, B.C. Canada	National Judicial Institute Website: <a href="http://www.nji.ca">www.nji.ca</a>
Managing Successful Settlement Conferences, Level II	December 6 – 8, 2006 Toronto, Ontario, Canada	National Judicial Institute Website: <a href="http://www.nji.ca">www.nji.ca</a>
Family Law Seminar: Children	February 7 – 9, 2007 Victoria, B.C. Canada	National Judicial Institute Website: <a href="http://www.nji.ca">www.nji.ca</a> Information: Cristina Cook Telephone: (613) 237-1118 ext 280 Email: <a href="mailto:ccook@judicom.gc.ca">ccook@judicom.gc.ca</a>



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