THE SPECIAL VALUE OF JUDICIAL EDUCATION

The art of judging has changed very much in the last ten years.

Judges were nearly always recruited from the bars with the occasional solicitor or academic appointment. Consequently, the socio-demographic profile of judges was consistently white, anglo-saxon, male, mostly educated in private or elite state schools. The bars were seen as the primary training ground for judges. Twenty years experience as a barrister including about five as senior counsel were broadly accepted as the necessary training to be a judge. The rest was learned on-the-job or from asking more experienced colleagues.

By the 21st century this approach was seen as antiquated, out of step with practices in the business world and not the most effective way to make sure judges were prepared to function at their optimum levels.

The usual functions of running a trial, hearing an appeal and writing a judgment in the traditional way came under scrutiny. Hi falutin, verbose and long judgments were criticised. Judges were accused of being out of touch with the community. Their attitudes towards gender were attacked. The lack of social diversity on the bench was highlighted. Judges' sentences were criticised. All in all the historic respect for judicial office was questioned in some quarters.

Politicians joined the chorus. From the High Court of Australia in *Mabo* down to a County Court judge in a sexual assault case, judges were criticised and classed as a last bastion that needed to be pulled down to mix with the *hoi poloi*. The catchcry from talkback radio and the printed media was that judges "needed to be told".

While all this was happening, the media in a very sophisticated way were turning to the courts as providers of cheap and easy sources for the news.

The large media arms, according to US analysis, developed a strategy to make the news more entertaining[1]. There was a public fascination with scandal, human interest and quality-of-life stories. One of the key performers in the daily play became the judge. How a judge decided the case became something the community were encouraged to have an opinion upon. With opinion, often lacking information, came criticism.

The news infotainment from the courts encouraged politicians to promote the law and order mantra. National and local calls were made for mandatory sentences – judges could not be trusted.

Faced with apparent perceptions of being out of touch, old fashioned and suddenly in a severe spotlight, something had to be done. At state and national levels judicial education was the panacea. Drawing on Canadian and US experiences, attorneys-general could quell the community's concerns and give comfort to judges by creating real schools for judges. Hence, we now have in Australia the National Judicial College (to which all states – except Victoria - and the Commonwealth contribute), the Judicial Commission in New South Wales (a body that looks after judicial education, sentencing and complaints) and the Judicial College of Victoria (which only looks after education).

The prospect of judicial education was met with some apprehension at the start of the Victorian College. Many judges said or thought: "I have spent years as a barrister before becoming a judge and many years as a judge – why should I go to school?" The prospect of continuing professional development was anathema for judges.

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1 Beale, S.S., *the News Media's Influence,* (2006) 48 William & Mary Law Review 397, 426.

The challenge in Victoria was to provide an educational facility for judges that was their own. A facility that was not fused with any other institution. In Victoria the focus was wholly on enriching the quality of judicial work. The approach taken was for judges to run the College syllabus themselves and to participate in determining the type of education provided.

Victoria adopted the national benchmark of a minimum ten hours judicial education for all judicial officers per year. This time is intended to be provided in the context of the working day and not as an extra-curricular activity.

Now in Victoria we have extensive programs covering judicial orientation, leadership and court craft; technical training on evidence; field visits to forensic science centres, indigenous cultural centres and prisons; statutory interpretation; alternative dispute resolution including judge-led mediation; judgment writing and oral delivery; mental health; cyber-space law; cultural education; and 360 degree reviews.

In Victoria judicial officers are provided with enriching educational development for the duration of their judicial lives. The ten year plan was to establish a university campus for judges: a centre for excellence connected with a Victorian university.

Without doubt, the Judicial College of Victoria is an outstanding and enduring legacy of the current government. The strength of the Victorian system has been two-fold. First, it has developed from a purely educational model. Secondly, it has been developed by the judges themselves. It has also been a very cost effective tool.

Given this educational success, it was surprising, therefore, that the Proust and Allen *Review of Victoria's Integrity and Anti-Corruption System* announced that all classes of public officials should be subject to scrutiny and investigation, not only parliamentarians and public servants but also the judiciary. The report described

the lack of an existing judicial complaint body in Victoria as an "oversight" that needed strengthening. It was a pity that the judiciary was encompassed with the three P's – parliamentarians, politicians and public servants. Whilst acknowledging that the Victorian Attorney-General and the Victorian judiciary were working to strengthen this apparent "oversight" the report failed to acknowledge that in fact it had been the Victorian judiciary itself which promoted and pursued the reform. It is accepted by the judiciary that the community needs to know that complaints against judicial officers will be taken seriously and determined fairly and impartially.

In supporting the establishment of a judicial complaints body in Victoria, the Supreme Court urged its separation from the Judicial College, that is, Victoria should head in a separate, or different direction from that pursued in New South Wales.

When Proust and Allen were conducting their investigations, at my invitation, they came to see me. The discussion ended on the basis that they would not address the judiciary. If they had a change of heart they would come back. I did not hear any further from them. It was disappointing, therefore, that the first I learned of the inclusion of the judiciary in the report on anti-corruption was very shortly before the press conference releasing the report. It is a pity because where complaints are made of the judiciary in my experience they are not of the same type which interested Proust and Allen in their work. There is a world of difference between a delay in a judge deciding a case and a politician, police officer or public servant taking a bribe.

It is essential to the ongoing success of judicial education in Victoria that it be entirely separate from judicial complaint treatment. In NSW the two aspects, education and complaints, have developed together. In Victoria, judicial complaint is viewed by the judiciary as a matter of such stigma there is a risk that the merging of the two operations will taint and deter interest by judges in judicial

education through the new Victorian judicial commission just announced. There must be a strong demarcation between education provision and complaint determination. Both are supported but separately.

The Hon. Marilyn Warren AC
Chief Justice of Victoria
and Chair of the Judicial College of Victoria