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NATIONAL JUDICIAL INSTITUTE  
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## **Serving All of Canada's Judges: Bilingualism and Bijuralism at the NJI**

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### INTRODUCTION

**T**he National Judicial Institute (NJI) is a remarkable organization in a number of ways. Led by dedicated and visionary professionals, its general philosophy affirms a strong commitment to strive continuously for ways to better serve the judiciary and, by implication, to improve the administration of justice in this country and beyond. Over its relatively short 20-year existence, the NJI has certainly risen to the challenges it set for itself. A true trailblazer in the field of judicial education, the NJI has never been complacent, but rather, constantly works to stay cutting-edge in order not only to ensure that the judicial education offered is of the highest possible standard, but that it also reflects the contemporary needs of all of Canada's judges.

It is in this vein that the NJI introduced social context education to the Canadian judiciary, incorporated a variety of innovative learning techniques into the delivery of its educational programmes, and developed a wide array of electronic educational delivery tools, such as Electronic Bench Books and online courses.

Ensuring that judicial education speaks to all of Canada's judges is undoubtedly an ambitious task. While teaching judges must always take into account the diversity of the judiciary, both in terms of its make-up, background and learning styles, in this enormous country this also means that the education offered must be relevant to judges sitting in large urban areas, as well as to those sitting in smaller population centres, to those sitting in provincial courts, and to those who are federally appointed.

But in Canada, serving all judges entails two additional layers of richness and complexity. Judicial education in Canada must also take into account the fact that judges are diverse linguistically, comprising anglophones and francophones, and diverse in terms of the legal traditions in which they operate, depending on whether they sit in civil law or common law jurisdictions. In 2005, George Thomson, then Executive Director of the NJI, stated the following in a report to the Board of Governors on behalf of the French Language Services Committee. "We accepted as a given that the NJI, as a national institute serving all of Canada's

judiciary, has a responsibility to strive to become a bilingual organization that is able to serve judges well in both of Canada's official languages." In two follow-up reports that I prepared for the Board in March and October 2006, the goal of bijuralism was added to that of bilingualism. My report stated: "Canada is a bijural country, and the NJI is a pan-Canadian organization. As such, the NJI should, to the extent possible, make its training relevant to all Canadian judges."

*"The NJI's commitment to bilingualism is significant and evidenced in a myriad of ways, ranging from the translation of documents and materials and simultaneous interpretation, to actively promoting the French language at NJI courses, developing judicial education in French for Quebec judges, and even moving towards passively bilingual courses."*

This essay, which I am honoured to have been asked to prepare, will outline the strides made by the NJI, and the rewards obtained, in the areas of bilingualism and bijuralism.

#### DEFINING BILINGUALISM AND BIJURALISM

While the issues of bilingualism and bijuralism are indeed interrelated, they seek to address distinct needs. Bilingualism, in online and paper documentation, as well as in oral presentations, seeks to ensure the ability of all Canadian judges to access NJI materials and to attend, participate in, and present at NJI conferences, whatever their language of preference. Bijuralism, on the other hand, seeks to ensure the relevance of materials taught and presented at NJI conferences to all Canadian judges, those who sit in common law provinces and territories, as well as those who sit in the civil law jurisdiction of Quebec.

In short, while bilingualism ensures the accessibility of NJI materials and courses to all Canadian judges, integrating a bijural perspective ensures the relevance of these materials and courses to all Canadian judges.

#### PROGRESS TOWARDS BILINGUALISM

The NJI's commitment to bilingualism is significant and evidenced in a myriad of ways, ranging from the translation of documents and materials and simultaneous interpretation, to actively promoting the French language at NJI courses, developing judicial education in French for Quebec judges, and even moving towards passively bilingual courses.

It is remarkable the extent to which the NJI ensures that its written publications, both paper and online, including its Electronic Bench Books, are translated into French and English. Furthermore, at national conferences, all the materials included in the binders distributed to conference participants (and, increasingly, the CDs or memory sticks containing this information), whether they be papers or PowerPoints prepared by conference presenters are, to the extent they are received in a timely manner, translated so that both French and English versions are available. The NJI also ensures that oral presentations at national conferences are simultaneously translated, so that everyone is free and comfortable to speak in the language of their choice, whether as a conference presenter or a judge in the audience wishing to ask a question or make a point.

*"...it is not sufficient to render NJI courses and materials accessible to all judges through translation, but rather it is important to render NJI material and courses relevant to all judges, whether they work in common law or civil law jurisdictions."*

Moreover, a concerted effort has been made over the last few years to ensure both French and English representation among presenters at national NJI conferences, and to increase the number of francophone presenters wherever it is feasible to do so. In addition, francophone presenters are encouraged to speak in French (even if they are at ease in English) in order to enhance the bilingual flavour of NJI courses, and to encourage judges from both linguistic groups to attend and participate in NJI programming. Anecdotal evidence suggests that the more we include francophone (and civil law) presenters on panels at NJI courses, the larger the contingent of judges from Quebec that will attend such a conference, and the more pan-Canadian the NJI national courses will be.<sup>1</sup>

National courses are not the only type of educational programming offered by the NJI. At times, given the particularities of issues facing certain courts, or courts in certain provinces, the NJI also develops and delivers judicial education geared specifically towards those courts (such as the Ontario Court of Justice or the Federal Court) or towards the courts in particular provinces (such as *Settlement Conferencing/Conférence de règlement à l'amiable* in Quebec). In recent years, the NJI has shown a serious commitment to work with the Quebec courts, both the Cour supérieure du Québec and the Cour du Québec, in order to develop French-language judicial education for Quebec judges in areas deemed relevant by Quebec courts. Today, the NJI offers, in true partnership with the Quebec courts, courses on *Rendre un jugement séance tenante*, *Conférence de règlement à l'amiable* and *Gestion de l'instance*.

The NJI has on occasion had considerable success in presenting programs in both official languages without the need for translation.<sup>2</sup> At the Faculty of Law of McGill University, itself a bilingual faculty, this is termed "passive bilingualism."<sup>3</sup> The results of a Bilingualism Survey sent to all Canadian judges in May 2007 concluded that "...there is likely a clear market for passively bilingual courses." What is required is that everyone attending have the requisite comprehension of the other language, while being able to participate in French or in English, according to their preference, without translation. One obvious advantage of such programs is the possibility of avoiding the costs associated with simultaneous interpretation and translation of documents.

### PROGRESS TOWARDS BIJURALISM

As already alluded to, it is not sufficient to render NJI courses and materials accessible to all judges through translation, but rather it is important to render NJI material and courses relevant to all judges, whether they work in common law or civil law jurisdictions. Incorporating a bijural perspective into NJI programming is, however, more ambitious than simply

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<sup>1</sup> This is certainly the case with respect to the *Civil Law Seminar: Contract Law* taking place in Newfoundland in May 2009.

<sup>2</sup> For example, the Joint Education Programme on Sentencing for the Ontario Court of Justice and the Cour du Québec that took place in Jan-Feb of 2006.

<sup>3</sup> 65.7 per cent of the 486 respondents stated that they are or may be interested in non-simultaneously translated (passively bilingual) courses

translating documents or presentations, no matter how time-consuming or expensive the translation enterprise might be.

For the purposes of injecting bijuralism into national NJI courses, it is too easy to fall into the trap of including a civil law presenter as an “add-on” to a common law panel, or creating separate breakout sessions for Quebec judges where they can discuss independently the civil law reactions and solutions to problematic fact patterns without disrupting the breakout sessions of their common law counterparts. This “silo” method of incorporating bijuralism is not only short-sighted, but deprives everyone of the incredible value of learning from the other. The Honourable Mr. Justice William Stevenson stated the following in a Supreme Court judgment in 1992:<sup>4</sup>

*[T]his Court has the benefit of being the final court of appeal in a country that has two legal traditions: the English common law and the French civil law. Our two legal traditions are independent and should not be confused. Concepts and solutions found in one tradition should not be imposed on the other tradition. But this does not mean that there is no place for comparative law on this Court.*

It strikes me as particularly apt that this comment was made by Justice Stevenson as he was, after all, the author of the report<sup>5</sup> that paved the way for the creation of the NJI. But the benefits of an integrated bijural approach have been echoed by many others. As the Honourable Mr. Justice Yves-Marie Morissette of the Quebec Court of Appeal stated, “a great deal can be gained... from a sustained and humble dialogue with otherness.”<sup>6</sup> At the time of this quote, he was the Dean of the Faculty of Law at McGill University, and he was seeking to explain the newly launched integrated transsystemic law programme in civil and common law. Having myself taught in this integrated transsystemic programme, I can affirm confidently that the McGill experience demonstrates the beauty of viewing the civil and the common law in dialogue with each other, and not in isolation, however splendid. The most rewarding aspect of such dialogue lies in learning from the other.<sup>7</sup>

Taking one NJI national course as a case in point will illustrate the benefits and rewards of such an integrated bijural approach. In the *Civil Law Seminar* on contracts offered in Halifax in May 2006, civil and common law approaches were interwoven throughout the conference. The reaction from the participating judges was extremely positive, and many of the sessions (such as the one dealing with the extent parties are required to act in good faith in contractual situations) were particularly animated, given the interventions from judges hailing from both of Canada’s legal traditions. The evaluations are worth noting in this regard. In answering the question of what was the most useful aspect of the programme, three participants said the following: “Learning more about the intersection and tensions between the civil law and common law”; “The perspective from the civil law on good faith”; and “The group exercises, as we had great input from the Quebec participants on the Civil Code.”

<sup>4</sup> *Canadian National Railway v. Norsk Pacific Steamship Co.*, [1992] 1 S.C.R. 1021 at 1174, emphasis added.

<sup>5</sup> W.A. Stevenson, Brian Grainger, *Towards the Creation of a National Judicial Education Service for Canada*, October 1986

<sup>6</sup> Yves-Marie Morissette, “McGill’s Civil and Common Law Program” (2002) 53 J. Legal Educ. 12 at 22.

<sup>7</sup> For general information on the McGill Transsystemic Programme, see <http://www.mcgill.ca/crdpcq/transsystemic>, as well as the numerous articles written for the Special Edition of the McGill Law Journal entitled “Navigating the Transsystemic”, (2005) 50 McGill L.J.

The NJI has always eschewed the concept of the “cours magistral” or the “sage on a stage” as the method of teaching judges, and rightly so. The NJI has long appreciated the value of peer learning and has actively promoted the importance of experiential and interactive learning techniques. Viewed in this light, an integrated bijural approach to judicial education is simply part and parcel of the NJI philosophy.

It is only by integrating civil and common law perspectives into NJI programming that bijuralism will truly be achieved. From earlier quoted comments, it is not hard to imagine that the rewards of such bijuralism are immense, since the cross-fertilization of ideas and legal developments can only be perceived as a benefit to all judges.

### **CONCLUSION**

As the Domestic Report to the Board of Governors presented in November 2008 stated, the NJI is committed to offering a “judging-focused, judge-led education based on the experiential learning model.” In an environment where the judges involved in this educational enterprise are both anglophone and francophone, and where these judging-focused activities take place in both civil and common law jurisdictions, it is easy to see how natural it is for bilingualism and bijuralism to fit within that NJI commitment.

The purpose of this collection of essays on the 20th anniversary of the NJI is to mark an important milestone in the life of an extraordinary organization, and to celebrate and recognize its many achievements. A serious commitment to enabling judges to access the NJI’s enormous resources and educational programs both in French and English is one such remarkable achievement. A policy of incorporating both civil law and common law perspectives in its national courses so that Canadian judges can all learn from each other is another such achievement. Both these achievements deserve celebration and recognition, but they also deserve a commitment to further bolstering and improvement, a commitment the NJI has surely demonstrated.