

the Scottish Justice



Issue 8: Summer 2010

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Association News

Annual General Meeting

The AGM will be held on Saturday 30th October, in the Edinburgh Sheriff Court building, Chambers Street, Edinburgh

Members are encouraged to submit items for discussion at the meeting. These and any proposed changes to the Constitution should be received by the SJA Secretary by 2nd October. The final agenda will be sent out to members on or before 9th October 2010.



Editorial Comment

by Johan Findlay

Summer has arrived, at least on some days! What better to read out in the garden but the latest issue of the Scottish Justice?

The communications committee is also now producing a monthly Bulletin to keep members informed as timeously as possible and we are grateful to Robin White for putting this together. It is sent by e-mail to keep costs as low as possible but the newsletter will continue to be printed and sent to your home approximately every 4 months. We would be grateful if you could let the committee know what you think of the Bulletin – and indeed the Scottish Justice!

Across Scotland four sheriffdoms have appointed the first of the new justices since Summary Justice Reform (SJR) and we extend our congratulations to them and welcome them to the Commission of the Peace and also to the SJA! Installation ceremonies have been held in some of the sheriffdoms over the last few months and having witnessed the Dumfries installation, it proved to be an emotive and motivational event presided over by Sheriff Principal Brian Lockhart. These justices have taken their place on the respective benches, many commenting that both the local and national training they have received has been excellent.

Installing new justices and hearing the Judicial Oath again reminds us of the very powerful words and the onerous promise we make ..'to do right to all manner of people without fear or favour, affection or ill will'.. and it is always good to reflect on these humbling words every so often as

we take our places on the bench.

Training of judges at all levels has been gaining importance across the world over many years now and Canada is the renowned leader in this field and indeed, judicial training is mandated within their Constitution with the National Judicial Institute of Canada considered a centre of excellence. Social context education and understanding the nature of diversity is an important part of their judicial training.

Over the past 2 years, the Scottish Judicial Studies Committee has been working with the National Judicial Institute of Canada in sharing information and material for judicial training. Several Judges from Canada were invited to participate in the week of judicial training in Scotland culminating in a formal dinner in the Great Hall of Edinburgh Castle, on 3 June. This was hosted by both Mr Kenny MacAskill MSP Cabinet Secretary for Justice and the Lord President, Head of the Scottish Judiciary and was a momentous occasion.

The partnership was formalised by the signing of a document by the Lord President, and The Hon Justice Cromwell, Justice of the Supreme Court of Canada. This was an historical event and will be of great benefit to judges at all levels on both sides of the Atlantic. A copy of the document is reproduced with thanks to the Judicial Studies Committee.

I am particularly pleased to have an article ►



on contempt of court which is always a concern for justices. New rules have been brought in to deal with a contempt aimed at the presiding judge and I am grateful to Sheriff Bobby Dickson for doing this for us.

The Scottish Government has begun a programme of Evaluation and Monitoring of the changes brought about under SJR. The research into the impact of Direct Measures –out of court penalties - has been underway for over a year now and attention now turns to Lay Justice. This is one of three separate questionnaires you will read about in the Scottish Justice, one of which you have already received by e-mail and the next two will be sent to you over the following few months to find out your opinion on various matters. I urge you all to participate to give as much information

as possible as these will ultimately assist us in the work we do.

Further articles in the Scottish Justice include advice on accessing the SCS e-mail system and a ‘futuristic’ look at the courts. Scotland has not embraced the full available technology just yet – some may say this is good! - and video conferencing in courts in Scotland is only used between prisons and remand courts or where child / vulnerable witnesses are involved. Please e-mail the Editor at the Scottish Justice if you have any comments on use of videos in court other than evidence from CCTV. Justices have used video conferencing for training and an article written last year has been reprinted to show how it can be done very successfully.

There is information about the Judicial Studies Committee and training for justices and the Annual National Training event. The Judicial Office was set up under the Judiciary and Courts (Scotland) Act and I am delighted to have an article on how this works and what it does.

SJA elections are on us once again and you will be sent information over the next few months about the areas where there is an election. Please do consider standing for these elections – new justices are welcome and may well have good new ideas. The SJA needs people who are prepared to work and are committed to the furtherance of the Justice of the Peace.

Enjoy your Scottish Justice!

Johan Findlay

Editor

Home Thoughts From Abroad



As Justices of the Peace, we are encouraged to be spectators in other courts from time to time. Most of us go to sit in on our nearest Sheriff Court or a neighbouring Justice of the Peace Court, but on recent trips to Belfast and Dublin I spent a little time in the back rows of courts there, and I found some interesting differences. I’m not qualified to comment on the legal systems of the countries involved, but some procedural differences caught my eye, and made me think.

In the Magistrate’s Court in Belfast, the bench was

occupied by a Resident Magistrate- a qualified lawyer equivalent to a Stipendiary Magistrate in Scotland. A case was called, the accused was called by name over the building’s Public Address system to come to Court 6, and the court officer was asked to call the name outside as well.

So far, so familiar, but on return from his fruitless errand, the Court Officer picked up a Bible in his right hand and recited the oath.

He was asked “Was he there?” and said “No.” A warrant was then duly issued!

Questions - Why do we feel that Court Officers don’t need to be put on oath, when we make everyone else (even Utility Company representatives) take the oath? Would we allow anyone to self-administer the oath?

Why do English Courts, and Northern Ireland Courts use a Bible (and indeed Police Court Bibles used to be kissed!) when we Scots just raise a hand?

In the Four Courts in Dublin, I sat in on a murder trial. I was not surprised that the judge didn’t have a coat of arms with a lion and unicorn and a crown on the wall behind him – the Irish Harp was a dignified alternative. I was, however, surprised that the witness sat in a chair up beside the judge. She was certainly more comfortable than in most Scottish witness boxes, and the relative positions of cross-examiners and the witness meant that the acoustics were much better.

Looking around the courtroom, I was able to identify the clerk of the court, the prosecution and defence lawyers, the bar officer, and the jury. Nowhere, however, could I find the accused. I asked the friendly spectating lawyer sitting beside me, and he said “Good Heavens, we don’t put them in anything as old-fashioned as a dock. He is sitting halfway down the court on the right, next to a plain clothes prison officer.”

Questions - When the question is asked in Scottish Courts

- “Do you see that person in court?” – are we surprised when the witness looks for the two escorting persons and points out the figure between?

Do we think that might be an infringement of the accused’s human rights?

Do we think that forcing witnesses to stand up in a cramped and uncomfortable witness box makes them more likely to give valid testimony?

Perhaps courts in Ireland are different – an Irish judge was once heard to say to the accused -

“You leave this court with no greater stain on your character than having been found not guilty by a Limerick jury!”

I have no ambitions to start a study course in comparative law, or to lobby for changes in Scottish court procedures - I just found sitting in courts in the other side of the Irish Sea an interesting and thought-provoking exercise.

John Burns



Judicial Studies Committee

Important changes came into effect on 1 April 2010 with the vesting of new responsibilities in the Lord President as the Head of the Scottish Judiciary for making and maintaining arrangements for the welfare, training and guidance of judicial office holders in this country.

The Judicial Studies Committee (JSC) supports the Lord President in undertaking his role with regard to the training of all members of the Scottish judiciary, and is part of the Judicial Office for Scotland. The continued independence of the judiciary is guaranteed under the new arrangements. So far as the training of the judiciary is concerned it is a guiding principle of the JSC that it should be judge-devised and judge-led.

The operational activities of the JSC are led by the Director of Judicial Studies, Sheriff Tom Welsh QC. He is supported by a small staff which includes me as Deputy Director. Gillian Mawdsley, a part time consultant is specifically responsible for advising on Justice of the Peace training matters.

Nationally, the JSC's key functions in discharging its role in relation to Justices of the Peace are:-

- identification of the needs of Justices of the Peace for education,
- devising and delivering national training courses,

- the provision of reference materials and resources, and
- providing advice to the Lord President on the development of judicial studies.

Local training is agreed and set out by the Justices Training Committee (JTC) in each Sheriffdom. As part of its statutory role, each JTC publishes an annual training plan that includes details of the types of training, the number of justices, and the places and dates on which training is planned to take place. Annual Reports must be produced to the Lord President on the delivery of such training. In many parts of the country the Sheriffdom Legal Advisers (SLAs) and their teams are responsible for delivering this local training.

The JSC supports the role of the JTCs. We are undertaking a programme of regular visits to a number of Justice of the Peace Courts and liaison with each SLA to ensure that we can help them to fulfil their roles. Together, it is our objective that the training delivered at both local and national levels should assist Justices of the Peace to perform their judicial functions effectively.

Current events

Each autumn we publish the annual programme of JSC training events for the following calendar year. Our main event for Justices this year is the Annual Conference 2010 which takes place at the Beardmore Hotel and Conference Centre, Clydebank from 22 - 24 October 2010. Approximately 70 Justices of the Peace have been invited. We invited Justices who had not attended the previous Conferences in 2008 and 2009.

I would like to record the Committee's appreciation of the positive responses to the invitations that were sent. Over 80% of the Justices of the Peace that were invited have made the commitment and time to attend. Those that have been unable to attend will be invited to next year's conference. Our aim for future years will be to invite those Justices of the Peace that have not yet attended such a Conference in line with the expectation of attendance at such events once in every five years.

This Conference is important not only for educational purposes but provides an opportunity to justices to meet Justices from other Sheriffdoms and to share common experiences. A new focus of this year's Conference will be Case Management. The programme is currently being finalised and includes a range of speakers and related group workshop activities. Further information on the Conference will be given in a later newsletter.

Two induction events for prospective Justices of the Peace being recruited for the Sheriffdoms of North Strathclyde and Tayside, Central and Fife are to take place on 12-14 November and 10-12 December at Dunkeld. We anticipate that 61 prospective Justices will receive training at these events. Like the Annual Conference for existing Justices, these two induction events will supplement the training provided locally in the Sheriffdoms.

The Committee recognises that both the JP Bench Book and Signing Manual need updated and refreshed. A questionnaire is to be distributed to all Justices of the Peace for assistance in identifying how

Justices make use of the Bench Book, any current omissions and errors. I would encourage you to complete the questionnaire. That will allow the JSC to ensure that the next version of the Bench Book is as comprehensive as possible, in a format that can readily be understood, and can be easily kept up to date. Up to now the Signing Manual has not been the responsibility of the JSC, but that is expected to change soon and the updating of this publication will be addressed in the course of this year.

It is essential that we maintain effective and efficient communication with our audiences. Where possible, in the future, the JSC intends to communicate with Justices electronically. For Justices of the Peace who do not have email, communication will continue by post for the time being.

In order to comply with our obligations and to check the current addresses that we hold for Justices of the Peace, we will be sending an email to ensure that our records are fully up-to-date and comprehensive. I would encourage you to respond when you receive our email.

I look forward to meeting a number of you at upcoming training events and hearing from you in response to our consultation on the Bench Book. In these times of change we are keen to support you all in your important roles as members of the judiciary.

Sheriff Alastair Thornton
Deputy Director of Judicial Studies



Contempt of Court

Contempt of Court can arise in various situations including the witness who prevaricates or is drunk, those who attend late or who by their behaviour wilfully challenge the authority and dignity of the Court.



Sheriff Dickson with Berry

For many years the power of the courts to punish what the judge regarded as contempt was unfettered and it was only after 1981 that a limit of 2 years imprisonment was created for the worst possible behaviour in the highest courts.

People have for at least 2 centuries insulted judges and challenged the authority of the courts. In 1822 the Judges of the Court of Session were expressing their judicial wrath in two separate cases. In one a letter had been sent to Lord President Hope “containing matters disrespectful and insulting to the Court and injurious to the administration of justice”.

The writer, an Edinburgh solicitor named William Jamieson originally challenged the authority of the Court to deal with the matter but after reflection withdrew his objections and instead apologised for the original correspondence. The Judges found him “guilty of a high offence against the dignity of the Court” gave him a public reprimand and ordered him to find caution of £100 for his good conduct towards the Court and Judges for five years. Mr Jamieson, however, left Scotland and died three years later.

On the same day the Judges also dealt with Mr John Hay. Mr Hay was involved in a litigation which he insisted on conducting without counsel or any form of legal advice. Dissatisfied with the progress of his case he published an article “wickedly defaming” certain Judges and attacking the administration of justice in Scotland. Unlike Mr Jamieson he refused to apologise or withdraw anything which he had written. He was found to be in contempt, imprisoned for four months and ordered to find £300.00 caution for his good behaviour for the next five years. The following year he lost the Court case which had been the cause of his outburst.

The difference between Mr Jamieson and Mr Hay lay in the lawyer’s abject apology. A similar policy was adopted by a Birmingham journalist Mr Gray who was summoned to appear before Mr Justice Darling in 1900 following an article which he had written for a local newspaper.

Equating the Judge to “little titch giving fits” Mr Gray advised his readers that there was not a journalist in Birmingham who had anything to learn “from an impudent little man in horse hair, a microcosm of conceit and empty headedness”. The report reminded the public that as a young man the Judge had been left a considerable sum of money by a relative. “That misguided testator spoilt a successful bus conductor” concluded Mr Gray.

Faced with the prospect of a considerable time in prison the journalist took cold feet and “humbly apologised for using intemperate, improper and ungentlemanly language which was void of the respect due to his Lordship’s person and office”. He escaped with a fine of £100.

Not so fortunate, probably because he would not apologise at the time, was Robert Cordiner, who in 1972 was jailed for three years by Lord Stott after he shouted and bawled at the Judge who had found against him in a divorce case. Mr Cordiner unsuccessfully appealed against the sentence, his petition being held to be incompetent, and he was returned to Saughton Prison where his ex-wife visited him regularly.

Since the passing of the Contempt of Court Act 1981 the maximum sentence for contempt of court has been restricted to one of two years imprisonment. Authority to impose such a sentence applies only to the High Court, Court of Session or where a Sheriff is dealing with a criminal case on indictment. There are, however, still powers elsewhere to deal with those who are deliberately late for Court as one solicitor found when he was fined by an irate Sheriff for delaying the start of proceedings.

Some judges take a more benevolent attitude to lawyers who are late for court. In 1936 Lord Justice Clerk Aitchison and the whole Court was kept waiting for half an hour by the lateness of the advocate who was due to represent the accused. No regret was expressed when the QC ultimately appeared and at the end of the case an enquiry from

the bench as to the cause of the delay was met with the blunt response “my breakfast was late”. A benevolent smile from the bench followed and Lord Aitchison instructed his clerk to call the next case. It seems unlikely that any of today’s QCs would have either the temerity or arrogance to adopt such an attitude in Court.

Certainly one English solicitor Mr John Walsh learned to his cost in 1992 that public criticism of the running of a Court can be dangerous. Complaining about the delay in reaching his case at Tamworth Magistrates Court he was heard to remark “any delay is as a result of the ridiculous listing of cases by the clerk of this Court”.

For his outspoken comment he was imprisoned by the offended bench. Three Appeal Court Judges quashed the order however pointing out that the absence of common sense on all sides had created a “storm in a teacup”.

Nowadays courts are far less likely to make a finding of contempt. Common sense suggests that unless the person’s behaviour is such that the court or the administration of justice is being seriously impaired that it is better to ignore the occasional outburst. An accused or members of his family are often in a highly emotional state in court and can behave in a less than acceptable manner. Frequently a quiet but firm reprimand will ensure that order is restored. Should the running of the court be affected by one person’s behaviour then it is often more dignified to adjourn the court for 10 minutes to allow tempers to cool and to leave it to the police to deal with any public order offence.

Sometimes however patience, tact and a judicial deaf ear are not appropriate and firmer measures are required. As a result of a decision of the European Court of Human Rights, it is no longer appropriate to deal with a contempt which arises from behaviour or remarks directed at the judge personally. New rules, approved by the Lord Justice General and contained in the Act of Adjournal state that when that occurs the original court must firstly decide if in its opinion a possible contempt has arisen. If ▶



so then the court must remit the matter to a differently constituted court to assess, on the basis of a report from the original court, whether there has been a contempt and if so what penalty should follow. In a JP court this is restricted to a fine not exceeding £2500 and/or 60 days imprisonment.

An important exception to the rule relates to a witness who prevaricates. Section 155(1) of the Criminal Procedure (Scotland) Act 1995 restricts the maximum penalty to a fine of £1,000 or 21 days imprisonment (see also *Forrest v Wilson* 1994 SLT 490)

The basic rule is that where there is a

contempt which is personal to the JP (i.e. it is the JP who is the subject of the insult or the abuse) then the matter must be remitted to a different JP to assess whether there has been a contempt and what should be done about it. In all other cases the original JP can deal with the matter himself/ herself.

Before making any finding a court must give the person a chance to obtain legal advice (there is provision for immediate legal aid which the JP can grant) and the miscreant must be given a chance to apologise. Often that apology defuses the situation and it is not necessary to proceed to a finding of contempt.

If imprisonment is in the mind of the JP as a disposal an SER should be obtained before sentence. As in all cases the means and circumstances of the offender must be taken into consideration before disposal.

Finally it is well worth bearing in mind the terms of the Memorandum used by the Lord Justice General in 2003.

“Although an act of contempt should be dealt with expeditiously, it is much more important that it is dealt with - and seen to be dealt with- fairly and objectively”.

Sheriff R. Dickson
Airdrie Sheriff Court

What is the Judicial Studies Committee?

Since its inception in 1997 the Judicial Studies Committee (JSC) has been responsible for judicial training in Scotland, running courses for the judiciary and issuing written materials for judges. Since 2007 this responsibility has been extended to include Justices of the Peace.

In April 2010, with the coming into force of the Judiciary and Courts (Scotland) Act 2008, a new governance framework for the JSC was adopted for the Lord President, the Head of the Scottish Judiciary, to discharge his responsibility in relation to training.

While acknowledging that the Lord President may “at his absolute discretion” depart from the provisions of the governance arrangement, the document states:

“The Lord President requires there to be a committee, of which he shall be President, called the Judicial Studies Committee”. Its membership is described as follows:

- two Senators of the College of Justice one of whom shall act as Chairman and the other Vice Chairman of the Committee;
- a sheriff principal nominated by the Sheriffs Principal;
- two sheriffs nominated by the Sheriffs Association;
- one part-time sheriff nominated by the part-time Sheriffs Association;
- two justices of the Peace nominated by the Scottish Justices Association;
- a representative of the Justice Directorate of the Scottish Government;
- two lay persons appointed by the Lord President on the recommendation of the Chairman who provide particular professional expertise which the Chairman considers would be of assistance to the Committee’s work;
- such other person(s) as the Lord President may from time to time appoint.

Members will hold office for a period of five years, but will be eligible for re-appointment for a further two years at the discretion of the Lord President.

It is worthy of note that two Justices of the Peace, who were invited to join the JSC when JPs were formally incorporated into the Judiciary, have been retained under the new arrangements and the responsibility of the Scottish Justices Association in nominating them has been clarified. Currently these places are held by Rodger Neilson (GHI) and Graham Coe (L&B).

The remit of the JSC spells out its responsibility for (*inter alia*):

- promoting and continuously updating the identification of the needs of the Scottish judiciary for education, including skills training, IT training; case management training; professional development and personal growth as judges;
- developing courses to meet the needs of the judiciary for life-long education and training;

It also includes the following:

- generally providing advice to the Lord President on the development of judicial studies and in particular the circumstances in which he should use his powers under s2(4) of the Judiciary and Courts (Scotland) Act 2008 to compel a judicial office holder to attend training.

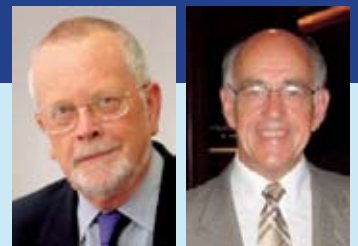
It is interesting to note the mention of compulsion. Justices of the Peace accepted an undertaking to attend specified training as a condition of their appointment, but this reference could well have a wider application. Judicial education and training is not an option.

The guiding principles of the JSC are enunciated as follows: Judicial training and education should be directed to fostering a high standard of judicial performance through training and education courses that stimulate the continuing professional and personal growth and development of judges;

- Judicial training and education should engender the highest level of social awareness of cultural, sexual and ethnic diversity, ethical sensitivity and pride of judicial excellence within an independent judiciary serving a diverse public in modern Scotland; and
- Judicial training and education should be directed to improving the administration of justice.

Justices across Scotland must surely welcome the fact that, under a unified judiciary, lay justice is represented in the membership of the Judicial Studies Committee and that appropriate attention is being given to ensuring that justices are being provided with opportunities to equip themselves with the skills necessary to deliver justice in the JP courts.

Graham W Coe, Rodger Neilson





IT Services for JPs in the Scottish Court Service

The Scottish Court Service adopts a positive approach to the provision and use of technology solutions within the courts. A range of internal administration and case management systems have been developed and put in place to provide efficiencies in the processing of business.

During the course of the Unifications of courts, SCS issued invitations to JPs to apply for registration to obtain an ID Card to assist in passing security for access to court buildings and to become registered as a User of the SCS networks. Of the over 400 JPs who have been listed, some 340 have received their ID cards. If you haven't yet received an ID please contact either your local Sheriffdom Legal Advisor or the SCS IT Helpdesk helpdesk@scotcourts.gov.uk. Tel 0131 444 3333.

Once you have an SCS ID and User Account it is possible to log in over the internet to SCS email. The web address for this is www.scotcourts.gov.uk/webmail. On reaching this page you will need to enter the User ID you have been given, preceded by a "SCS" (eg scs@scotcourts.gov.uk

smith), and your password. Being able to access this will improve the ability for SCS to send information to you. There is an intranet site <http://myscs> which is only accessible while logged on to the internal SCS network, which contains information about staff facilities, news, advice and contact names and numbers. Contact and directional information for courts is available on the internet site www.scotcourts.gov.uk/locations

SCS do not generally require members of the judiciary to access operational systems but a range of reference material is available while logged onto the network. Computer equipment is not supplied to JPs as a matter of course but should you wish to use a computer while in courts during working days, please discuss with your local sheriff clerk to see what can be made available.

If you have any questions or issues with IT provisions please get in contact with the Helpdesk by email or phone. The desk is manned from 9:00 till 4:30 weekdays.

IT Helpdesk - 0131 444 3333
helpdesk@scotcourts.gov.uk

SCS Secures IIP Accreditation Again



Eleanor Emberson

Following external assessment, SCS has been awarded a Bronze standard which is given when Investors in People (IIP) places an organisation at the leading edge of best people management practice. Bronze organisations are advanced Investors in People, using the framework to meet their goals, progressing well beyond initial Standard

On this occasion the IIP assessors were particularly looking at the IIP standard in the context of SCS priorities in relation to ensuring the effective integration of Justice of the Peace Court staff and managing resources effectively and efficiently.

In her report lead external IIP assessor, Ruth Oulton, commented: *"We were struck by the compassion people expressed for their colleagues and the sense of collaboration to deliver the best service possible. Staff are aware that their actions impact on the lives of people in the communities they serve"*

Chief Executive, Eleanor Emberson pictured has confirmed that annual IIP assessments would be undertaken to help further improve how the SCS develops staff. Eleanor Emberson commented:

"The report is very encouraging and recognises that the SCS is committed to helping every member of staff achieve their full potential within the organisation. The report identified many good things and ways in which we might do things better in future. It is significant that the assessors commented very positively on the obvious pride which SCS staff show in working to deliver effective court services"

Susan Whiteford

Head of corporate Communications SCS

Not Just One But Three!

They say that things come in threes and we are about to find evidence that sometimes this is indeed the case!

Possibly three questionnaires are coming your way – one has already been sent to your e-mail addresses.

Firstly, the Judicial Studies Committee is responsible for the production of both the Justices Bench Book and the Justices Signing Manual - two publications which are of great use to justices in the performing of their duties both

on and off the bench. The JSC is planning a revision of both the Book and the Manual but wanted to contact justices first and ask them to complete a questionnaire to find out what we want and what is needed. If you have not already done so, please respond positively to the invitation to complete the questionnaire and so help ensure that the revision will maximise the benefit of both volumes to our work as justices.

Secondly, as is the case with most legislation, the

government has a policy of checking up to see how effective the legislation has been. To this end research companies have been contracted to provide the evidence on which a verdict on various aspects of the summary justice reform legislation can be formed. The reform of lay justice will be considered and the views of justices will be sought. At some time in the near future you will hear about an online and anonymous questionnaire that justices will be invited to complete (with hard copies available to those not using the

internet). Again all justices are urged to participate in this exercise for the views of justices themselves must be an important part of the evidence being compiled to assess the success of the reform of the lay court.

Thirdly, the SJA Development Committee are considering the possibility of consulting justices about best practice in the JP court. Look out for more information on this at a later date.

Rodger Neilson
Vice Chairman




Canadian Partnership



The Lord President and Justice Tom Cromwell with Lord Brodie looking on, sign the partnership agreement



Judicial Office
for Scotland
**Judicial Studies Committee
Scotland**



**National Judicial Institute
Canada**

THE JUDICIAL STUDIES COMMITTEE OF SCOTLAND and the NATIONAL JUDICIAL INSTITUTE OF CANADA are the bodies charged with primary responsibility for judicial education programming for the judiciary in their respective countries. Since 2008, judges and other experts associated with the two organizations have begun to build a judicial training relationship that has included attendance at programmes and courses in each country. The partnership has also included:

- Free exchange of curricula material and teaching strategy;
- Sharing information about the logistics of course planning and advanced educational theory and methodology in relation to judicial training objectives and delivery;
- Full and open mutual access to the teaching and training personnel within the respective organizations;
- Unlimited access to electronic library facilities on the internet, and Valuable exchanges of IT information to improve remote learning capabilities, ebooks and emanuals.

THIS FRATERNAL AND GRATUITOUS exchange of knowledge, information and experience in the spirit of a common commitment and aspiration to enhance the legal knowledge, education, court craft and practical skills of all judges has proved to be of direct mutual benefit to the delivery of judicial training and education to the judges of both countries.

AS A CONSEQUENCE OF and with a view to the further promotion of this joint and fruitful association both organizations now wish to formalize this developing partnership and articulate some of the objectives to be achieved by working together and sharing resources and expertise.

IT IS AGREED AND DECLARED that, within available resources, judicial and other representatives from each organization will meet periodically to discuss areas of potential cooperation. We will continue to share our respective programming and make available education resources where this would be helpful. We will look for opportunities to work closely together to create programming that can be adapted to meet the needs of judges in both jurisdictions. We will also seek opportunities for the judges in each country who are leaders in judicial education to connect with and learn from their counterparts in the other country.

THE OVERALL OBJECTIVE is to strengthen the valuable partnership that already exists and to identify ways in which the experience of each organization can be used to build the capacity of both bodies to meet the modern training and educational requirements of their respective judiciary.

IN WITNESS WHEREOF these presents are signed on the 3rd day of June 2010 in the Great Hall of Edinburgh Castle in the presence of the Senators of the College of Justice, the Judicial Studies Committee and representatives of the National Judicial Institute of Canada by The Right Honourable Lord Hamilton, Lord President of the Court of Session and the Honourable Justice Thomas Cromwell of the Supreme Court of Canada.

.....
The Lord President
Head of the Scottish Judiciary.
For the Judicial Studies Committee of Scotland.

.....
The Hon Justice Cromwell,
Justice of the Supreme Court of Canada.
For the National Judicial Institute of Canada.

Training Partnership

The Canadian - Scottish training partnership will have very real benefits for all levels of the judiciary in Scotland. Canada is a world leader in Judicial Training and Judicial members of the National Institute are invited to all parts of the globe to share ideas and types of training. We are all now familiar with the DVDs used by the Scottish Judicial Studies and these are commonly used in Canada.

There is emphasis on 'Problem solving' or Therapeutic Jurisprudence –eg solving the problem such as drug use is the important issue in reducing offending in drug users.

We look forward to seeing the ideas in practice.



The Effective JP

How new technology can help us

By Susan Kirkwood JP and Tom Mason JP



You have been summoned to appear before the virtual bench at <http://www.aberdeenvirtualcourt.gov.sco/987ryt789>. You and your representative, if you have one, must log on at 10.25 hours precisely and wait for the court to attend you. If the court is delayed by more than 30 minutes, please log off and a new date and time will be allocated to you.

Such a scenario is a long way off, but the same technology used for web seminars could be effective for holding such hearings. With the inclusion of cameras (built in to many notebook computers), all participants will be able to see and hear each other and so lose little of the live experience. Or so some say!

While we may consider that appearances in person are with us for some time to come, the use of online learning and web tools is here and now – but not yet for Justices of the Peace- though you will find it in primary and secondary schools and of course Universities. This article discusses the usefulness of some of the modern ways of learning (“e-learning”) and makes recommendations on how training for Justices could develop in future. It also considers some other ways that new technologies can make our lives easier.

Before discussing e-learning, it is important to appreciate that it does not replace all the training and experience which Justices require – in fact it addresses directly only 2 of the 9 “Attributes of a highly effective Justice of the Peace performance” – knowledge and self-development. It can however support other areas by giving Justices the experience and confidence to support performance in court.

Is e-learning appropriate?

Malcolm Knowles, a pioneer in the study of adult learning, observed that adults learn best when:

- They understand why something is important to know or do.
- They have the freedom to learn in their own way.
- Learning is experiential.

- The time is right for them to learn.
 - The process is positive and encouraging.
- E-learning for Justices done well satisfies all these.

The form of the e-learning is crucial too. While only 30% of adults say they learn best by listening; another 30% report they'd prefer to learn by reading and reflection and everyone has their own preferences in the way they absorb new information. As a method of ‘passing information’ the written word is allegedly the most effective way to operate. If the learning is about new laws, or even new processes, seeing the information in writing will assist the learner to acquire the knowledge more quickly than most other methods. Group discussions and trainer-led workshops do a good job in training us how to operate a procedure, (such as how to apply new sentencing options) but if we have to learn the sub-sections of the Road Traffic Act, to distinguish between the sections, then seeing it written on paper, or a screen, will do that job better than a workshop. A mixture of written, spoken and video information, backed up by exercises enables the needs of all learners to be met. The advantage also of e-learning is that the material remains available for reference or repeat when needed.

How can e-learning help?

The answers lie in the variety of knowledge that e-learning supports ; 24/7 availability; demonstration of self development and evidence of hours of training to satisfy the statutory requirements; the range of information and links that it can maintain and its patience with the busy or slow learner. Additionally it is delivered locally – to wherever the Justice has access to a computer. This is particularly valuable in some of the remote areas of Scotland where the distance to drive to a training event is often impractical especially in the winter.

The volume of business in some courts is low, so that familiarity with some types of case is limited and it may require

considerable effort to bring knowledge of procedures to the fore when particular cases or hearings appear in the court. The opportunity to refresh our knowledge before a court session in an easy way, can speed up the court process – a benefit for all court users.

E-learning formats

- Interactive learning. This you may have experienced when learning a new software package. It works like the real software as we are led through the use of the different options with encouraging words and direction. It then provides words of encouragement when you select the wrong icon or button – and praise when you select the right one . This may also be referred to as computer-based training or CBT. This type of learning could be used to go through a new process efficiently (e.g. risk assessment for signing duties).
- Programmed learning. This has been available in other subjects in workbook forms for many years. This methodology is growing in use on the web and there are many software or web tools available to make it easy to create and administer the content. It can include video, so a briefing can use a full-length scenario; photos interspersed within text; links to other websites, for cross-referencing. This is used by many universities (e.g. Robert Gordon University’s Virtual Campus now called ‘moodle’) to provide a rich learning experience.
- Video and podcasts. Recorded video and sound messages designed to be viewed on i-pods and computer screens. The BBC is one of the best known sources for such material and technically they are not difficult to produce. For example, the initial briefing to Justices about their next appraisal could be provided in a podcast that the appraisee could download a few days before their appraisal.
- Webinars. As mentioned above, this is an on-line seminar, usually with a discussion leader and two-way communication



between the facilitator and participants. It can be a bit impersonal, but the content can be just as good as a live discussion. Video conferencing has been used for training sessions in North Strathclyde because of the geographical challenges of gathering all the Justices together.

Editor's note : An article by Ian Smyth on video conferencing in N.S. was published in the Scottish Justice Summer 2008 and repeated in this issue.

- E-mail, e-coaching, e-tutors. Many Justices use e-mail to communicate and these words simply reflect the ease with which such communication can take place, in a way which is often less intrusive and more convenient for both parties than phone calls. The Open University has been using e-mail for student/tutor communication for some time.
- Blogs and forums; social networking; instant messaging; twitter. These are tools which can be used to offer a wealth of knowledge and comment on a wide variety of human activity. There is even a Magistrate's Blog. The small number of Justices in Scotland makes it unlikely that these will be an effective learning tool as only a small number are likely to take part in them.

Other online resources

E-learning is not the only technology that can support our work. A few examples of others are

Personal and Training records. Each of us should be able to log in to view and change our personal details and training record. This would also be linked to records of e-learning undertaken and record of court duties.

Expenses. We should be able to submit these online (a pre-paid label could be printed for an envelope to send in any receipts) and they would be authorised and paid promptly.

Feedback. We should be able to submit feedback online – whether it is the post-court discussion, or feedback on other issues in court, or feedback on training events.

Library Access. Specialist material either direct or linked can be accessed for considered reading and browsing at any time. This could be part of the SCS online document library.

The vision

I come to court and discover an unusual traffic offence e.g. overloading. I use the online course which reminds me of the critical elements of the charge and the range of sentencing disposals available and I test myself on them. After the court, I complete a feedback comment online on how well the training assisted me and what advice I would give to others. (This will be reviewed by a legal advisor requested by email to check my comment and, if legally correct, will be added to the online course as a comment for the next users of the module to see).

The Way Forward

Software is available in open formats and the costs are small. They do require a host computer and champions with sufficient training to ensure their success.

SCS already uses StudyitOnline for some standard staff training.

Just imagine a dream scenario when we all have access to the same level of quality training, where ever we are and as soon as it is available.

Susan Kirkwood and Tom Mason are both Justices of the Peace in the Aberdeen court. Susan has wide business experience and a certificate in e-business through e-learning from the Robert Gordon University. Tom Mason has recently retired as Course Leader of the MBA at Robert Gordon University which makes extensive use of e-learning platforms to his students on a World Wide basis.

This article was inspired by an article by Tony Kaye JP in the April 2009 edition of the Magistrate – in particular the court scenario at the beginning of the article and the list of e-learning formats.

Video Conferencing in Action

Sheriffdom wide training events mean that for some Justices, travel to weekday evening training can pose a problem, particularly if you are still in employment and have to cover a reasonable distance.

Distances in Argyll and Bute (NS) are particularly problematic and some areas require a ferry to get to the mainland. Oban lies about 100 miles from Paisley, Campbeltown approximately 130 miles while Lochgilphead is around 80 miles away, so travel to weekday evening training events is difficult involving 4 to 6 hours of travel to attend 2 hours of training and would mean getting back home after midnight, which is bad enough in the spring and summer months but unthinkable and often impossible during a long and bleak winter.

All justices require training despite their remoteness so North Strathclyde training committee discussed the idea of setting up a video link with Argyll and discovered that West Dumbarton Council had video link equipment and were willing to try and organise a linkup with Argyll, and an evening was booked in Lochgilphead as it is central to all other towns. It reduced travelling time to trips of 50 and 40 miles each way and of course reduced the cost of travel considerably.

Although there were problems at the start of the training session with both sound and picture, as the noise and movement died down from the 20 people in the hall in Dumbarton, both the picture and the sound quality improved dramatically and the evening went very well. It would appear that the system can only cope with so much information, and that when there are a lot of people moving around and talking, it struggles to maintain good quality. When the audience settles down it works well.

The camera was placed at the end of the top table and with a chair and three speakers. Some minor problems were fixed by repositioning the camera and microphone. We also learned that if we press the mute button on our handset during the talk and only release when we want to speak, our colleagues at the other end will be spared our noise and comments.

Update: now used about six times and apart from one evening when the system went in the huff and stopped working after about ten minutes, the exercise has been very successful and will continue to provide training for Justices in remote areas.

Ian Smyth JP

The Judicial Office for Scotland



Steve Humphreys, Director of the Judicial Office

It takes direction exclusively from the Lord President, the Sheriffs Principal and any judicial office holder to whom the Lord President has delegated any of the responsibilities listed below.

The Lord President's Private Office, the Head of Judicial Communications (formerly Public Information Officer) and the staff of the Judicial Studies Committee are now part of the Judicial Office for Scotland which will also incorporate a section dealing with Strategy and Governance.

The Judicial Office for Scotland will provide the sole or lead support to the Lord President on the following:

- Representing the views of the Scottish judiciary to the Scottish Parliament and the Scottish Ministers;
- Laying before the Scottish Parliament written representations on matters that appear to the Head of the Scottish judiciary to be matters of importance relating to the Scottish judiciary;
- Making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders; and
- Making and maintaining, in accordance with section 28, appropriate arrangements for – the investigation and determination of any matter concerning (i) the conduct of judicial office holders, (ii) and the review of such determinations.

It also will contribute to the work of other parts of the Scottish Court Service on the

The Judicial Office for Scotland came into being on the 1st April 2010 as part of the structural changes introduced by the Judiciary and Courts (Scotland) Act 2008. It is a separate part of the Scottish Court Service and was created to provide support to the Lord President in his role as head of the Scottish judiciary with responsibility for the training, welfare, deployment and conduct of judges and the efficient disposal of business in the courts.

following:

- Making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts;
- Laying before the Scottish Parliament written representations on matters that appear to the Head of the Scottish Judiciary to be matters of importance relating to the administration of justice.

On issues relating to deployment (including redeployment) and arrangements for securing the appointment of new members of the judiciary, the Lord President and Sheriff Principals will be supported by the Judicial Office which will work closely with other parts of SCS in order to ensure that the Lord President can effectively discharge his responsibility for the efficient disposal of business.

The Judicial Office will need to work closely and often collaboratively with other directorates of the Scottish Court Service on some issues in order fully to support the Lord President. Both the Director of the Judicial Office, Steve Humphreys, and the Chief Executive of the Scottish Court Service have personal responsibilities to the Lord President to ensure that judicial independence is properly respected and that there is complete confidentiality on issues that are properly only matters for the Judicial Office.

The Chief Executive of the Scottish Court Service, Eleanor Emberson, who is a member of the Board of SCS, and SCS staff, will continue to be responsible for the day-to-day management of the organisation and the delivery of its key functions

within the courts and Office of the Public Guardian.

Strategy and Governance

The Strategy and Governance branch will take on responsibilities that were formerly undertaken by the Scottish Government in relation to the judiciary. It will support the Lord President with his new responsibilities as head of the Scottish judiciary which include:

- Making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts.
- Representing the views of the Scottish judiciary to the Scottish Parliament and the Scottish Ministers, including laying written representations before the Scottish Parliament.
- Making and maintaining appropriate arrangements for the welfare and guidance of judicial office holders.
- Making and maintaining appropriate arrangements for the investigation and determination of any matter concerning the conduct of judicial office holders.
- Shrieval deployment.
- Processing of travel and subsistence claims.

Judicial Communications

This branch of the Judicial Office will be responsible for the following:

- Providing advice and assistance to all judicial office holders on media and communications, including crisis and reputation management.
- Assisting with the preparation and



release of sentencing statements, summaries of Opinions or Fatal Accident Inquiries and handling all related media inquiries.

- Issuing media releases on behalf of judges in relation to specific issues.
- Assisting the media with queries relating to specific cases or incidents.
- Handling media arrangements at high profile trials or hearings.
- Requests for interviews, comments or clarification of facts and providing advice to judges accordingly.
- Dealing with complaints about media reporting and seeking suitable redress.
- Handling media enquiries of a more general nature including requests to film or photograph inside a court.
- Managing the Judiciary of Scotland website – expected to be launched in summer 2010.
- Internal judicial communications.

Judicial Studies Committee

The Judicial Studies Committee (JSC) is the body charged by the Lord President, as head of the judiciary in Scotland, with overall responsibility for the creation and delivery of judicial training. The Lord President is President of the Judicial Studies Committee but not a member of the Committee.

The Committee is chaired by a High Court judge. Each tier of the court system is represented on the Committee which has in addition to judicial members, one member from the senior civil service and two lay persons. The Committee meets four times per year.

Operational responsibility for judicial training and education is in the hands of the Director, a seconded sheriff, the Deputy Director, a part-time sheriff and the staff at the JSC office. There is an Office Manager, 3 legal assistants on two year contracts, 3 administrative staff and a consultant who specialises in JP training.

A broad range of educational and training courses are created and delivered. The directing team are responsible for identifying all legal issues which the judiciary require information, education

and training. This involves preparing and issuing briefing papers on new legislation from Westminster and Holyrood. Papers are issued in relation to important developments of the common law in cases from the UK Supreme Court, The Court of Session, the Criminal Appeal Court and any sheriff court decision considered to be of importance or interest. European case law from the Court of the European Union in Luxemburg and the European Court of Human Rights in Strasburg are monitored and Scottish judges alerted on important developments. EU regulations and directives are similarly treated.

There are a number of practical bench specific courses delivered. All new judges are given an induction course. As part of life long judicial development judges periodically go to residential Refresher Courses and Skills courses which are directed at bringing judges up to date with a range of issues which include, new legislation; sentencing; procedural and substantive legal changes in civil and criminal law; social diversity and equality training in the areas of ethnicity, sexuality and gender; ethical issues affecting the office and role of the judge and many more. In addition to residential courses there are subject specific courses on judge craft, case management, judicial writing, sexual offences, adoption and other subjects. The range of subjects is constantly reviewed. Courses are offered to judges on IT skills and online legal researching.

JSC also devises and delivers national training events for Justices of the Peace and induction training for prospective Justices. These courses are in addition to the local training programmes which operate for JPs in their respective Sheriffdoms

JSC maintains a criminal and civil bench book. As part of a rolling development programme the criminal bench book will become an e-book in 2011. The civil e-book is planned to go online thereafter followed by the Jury Manual, which is also maintained by the JSC.

JSC also maintains a Justice of the Peace Court Bench Book and a Legal Advisers' Manual to support the work of the Justice of the Peace Court.

JSC is a member of the European Judicial Training Network and participates in training exchanges by taking judges from the EU to Scottish JSC courses.

The Lord President's Private Office

This Office is responsible for the following:

- Management of the Lord President's diary
- Communications with the Lord President
- Attendance of senior judiciary at conferences
- Judicial appointments
- Facilitating the appointment of Queen's Counsel process
- Preparation of all secondary legislation made by the Court or the Lord President, including all rules of court
- Supporting the Court of Session Rules Council, the Criminal Courts Rules Council, the Scottish Tribunals Forum, the Judicial Council for Scotland, the Court of Session Personal Injuries User Group, the Lord President's Advisory Group on Diligence Rules, the Judges Working Group on the Civil Court's Review, the Lord President's Advisory Group on Arbitration Rules
- Legal advice on the exercise of the Lord President's non-judicial functions
- Fees policy, including the Lord President's Advisory Committee on Fees
- Tribunal policy, including appointments and discipline
- Public correspondence received by the Lord President
- Professional regulation, including the Faculty of Advocates, the Law Society, the Association of Commercial Attorneys and applications under section 25 of the Law Reform (Miscellaneous Provisions) (Sc) Act 1990
- Policy and legal support to the senior judiciary on proposed legislation and other government initiatives

Judicial Office
for Scotland





Association News

Elections to the SJA Executive



The call for nominations is being sent out to all members on 9th July and nominations are due back by 7th August.

If there is more than one nomination for each position in the sheriffdoms, then voting papers will be sent out to the members in the relevant sheriffdom, to be returned by 11th September.

The announcement of results will be made in September.

Membership

Members will also receive a pro forma for any changes in contact details. Please do complete and return it, or email any changes. Membership of the SJA automatically ceases on retirement but should any justice resign from court duties, please inform the Sheriff Principal and we would be grateful if we were also informed with the date and a phone number for any queries. Please refer to the SJA web site, about the SJA/Membership/Resigning or retiring where there is a pro forma for this purpose.

Thank You



In the last few months the SJA executive has lost two of its valued members through resignation.

Susan Brown was a representative on the executive for Glasgow and Strathkelvin and also served on the Communications Committee for a short period before having to stand down. The Association would like to thank Susan for her willingness to serve her fellow justices and we wish her well for the future.

Ian Smyth from North Strathclyde more recently tendered his resignation. Ian has given longer service to supporting lay justice, firstly with the District Courts Association then as SJA Membership Secretary and Chairman of the Communications Committee.

The creation of a new organisation is always an arduous responsibility. Ian took on the huge task of setting up and looking after the membership details for the SJA. By putting in many hours' work, Ian ensured the membership list was up to date and new members had been properly welcomed to the Bench and the Association. With this acknowledgement we wish him well for the future.

Philip Murray
Chairman SJA

Scottish Justices Association

Chairman

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Members of Executive

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Johan Findlay
John Moore
Robin White
Andrew Webster
John Burns
Graham Coe
Fraser Gillies
David Grainger
Stewart Daniels
Andrew Leven
Allan Clasper

Summer Reading

Summer reading is essential and here are some books which you may enjoy.

Wolf Hall by Hilary Mantel is a fascinating study of Thomas Cromwell and depicts the man very differently from what we have seen in the past. The era of Henry VIII is described in terrifying detail with human empathy and need for survival. The book is published by 4th Estate 2009.

For those who are partial to crime novels – they abound! A new author described as the 'next Grisham' has produced a 24 year old Texan lawyer who rides a pedal

bike in 'extreme sports', has no money, no girlfriend, achieved only C grades at University but has honesty and integrity in abundance to say nothing of a faithful dog, and who of course gets mixed up in a sordid but riveting story. *The Common Lawyer* by Mark Gimenez is published by Sphere 2009.

A book set on an island near Australia, in the middle of a civil war where atrocities and humanity live cheek by jowl does not sound as if it would make good reading yet it most certainly does. *Mister Pip* by Lloyd Jones tells the story of the only white man on the island teaching a class of black children with only one text book - *Great Expectations* by Charles Dickens – but

every person has their own story, told gently amidst the grim reality. Published by John Murray 2007.

Tom Bingham is described as 'Britain's former senior Law Lord and one of the world's most acute legal minds', and as .. 'a master of the judicial art', has published a book *The Rule of Law*. He states in the preface that although the ... 'expression was constantly on people's lips, I was not quite sure what it meant, and I was not sure that all those who used the expression knew what they meant either, or meant the same thing'. He has written an immensely readable book about the subject which takes the reader through historical aspects to the present day. A very worthwhile read.