



Centre for Democratic Institutions

**Judicial Training at the Commonwealth Judicial Education Institute of Canada
26 September–15 October 1999
Halifax, Ottawa and Toronto, Canada**

In September 1999, the Centre for Democratic Institutions sponsored the participation of Judge Zenaida N. Elepano, Deputy Court Administrator of the Supreme Court of the Philippines in an the Intensive Study Programme for Court Administration offered by the Commonwealth Judicial Education Institute of Canada. The Programme was held from 26 September to 15 October 1999 in Halifax, Ottawa and Toronto, Canada.

Below is Judge Elepano's report of the Programme.

Firstly, I would like to thank the Honorable Court and Your Honors, the Centre for Democratic Institutions through its Director, Roland Rich, and Judge Sandra Oxner, President and Founder of CJEI, for giving me this opportunity to be exposed to and learn new directions, trends and concepts in court administration and management developed by the judicial systems of the Commonwealth. While the programme was principally a learning process, it also served as a virtual forum in which the participants were afforded the chance to share and compare with each other their peculiar country experiences, problems and innovative strategies in court administration and management.

The first phase of the course was held from 26 September to 3 October in Halifax, Nova Scotia where CJEI is based. CJEI's offices are located at the University of Dalhousie Law School. Our classes were held at the Weldon Law Building of the University which has excellent educational facilities and services, including a magnificent law library. There, we were taught new techniques in adult education involving the development of effective planning programs for judges towards delay reduction in trial courts. We had an excellent lecturer in Dr Teresa MacNeil, a recognised authority on adult education. She focused mainly on the methodology of organising a caseload management project for our respective countries.

Professor Carl Baar, an expert on court administration and management in Canada, lectured on basic management activities in court systems and their underlying philosophies. By defining the essential elements of court organisation such as direction setting, strategic approaches, resources and support systems, he laid the premise for his subsequent presentation on the five models for court management, namely, the Machine model, Network model, Performance Control model, Virtual Government model and Normative-Control model. The Normative-Control model, according to Professor Baar, appears to be an ideal system as it is rooted in values and beliefs. It is not only about structures and systems but also about 'soul' for it focuses on attitudes and not numbers, and seeks to continuously improve public service by the courts. This in effect is the core philosophy of Total Quality Management (TQM) in courts, which is also the same

doctrine adopted by the English Courts Charter of 1996. For TQM reinforces the operational more than the technical aspect of the business of a court organisation. The Normative-Control model chooses employees on the basis not only of credentials but also on values and attitudes. It ensures a membership dedicated to an integrated 'social' system and guides members by accepted principles rather than by imposed plans, and by visions rather than by set targets. Responsibility is shared by all, and performance is judged by experienced individuals, including the recipients of the services themselves.

Professor Baar also lectured on principles of caseflow management to set the tone for our very enriching encounter with the Project Coordinator of the Halifax Pilot Project on caseflow management, Ms Karen Hollett, at the Halifax Law Courts Building.

Ms Hollett explained that the Halifax Caseflow Management (CFM) project began in 1990 with the creation of a Caseflow Management Committee, a joint committee of the Supreme Court of Nova Scotia, the Nova Scotia Barristers' Society and the Law Courts Administration. Its purpose was to investigate the application of caseflow management principles in Nova Scotia. In 1991, the Committee recommended the adoption of the CFM project which was immediately approved by the Supreme Court and the Halifax Department of Justice. From 1992 to 1993, the Project developed a computerised Case Index System. In 1993, a Backlog Reduction Project was undertaken and training sessions for Judges and Court Administrators were held, followed by training sessions for court personnel and lawyers (by open invitation).

The distinguishing features of the Halifax CFM Project are mandatory settlement conferences, proactive judicial involvement in complex cases right from the start, selection of a track system appropriate to a particular case, time limits rather than restrictions on discoveries and, as an administrative model, the requirement that all matters in the CFM project pass through the Project Coordinator before these are referred to the judge handling the case. New cases filed from September 1995 were decreed to be on caseflow while old ones were conducted on regular case processing time. Excluded from caseflow are cases involving family law, mechanics liens, foreclosures, proceedings against government and quieting of title. The Project also placed premium on differentiated case management which necessitates the development of four track systems, i.e., fast track, standard track, complex track and holding track, to which cases may be assigned depending on the nature of the cause of action. This is based on the principle that not all cases demand the same attention and time by the court, and that the principle 'first filed first served' has no place in caseflow management.

The key elements of the Halifax CFM Project which ensured its success were sound judicial leadership, a strong commitment to see the project succeed, early court supervision of the progress of each case, continuous consultation with the bar, time standard operational goals, an effective information system, accurate and firm scheduling (trial date certainty) and a definite backlog reduction scheme.

The last two days of our stay in Halifax focused on the use of Power Point. We were required to prepare a Power Point presentation that can be used in a Judicial Education programme for Court Administrators in our respective jurisdictions. I used the presentation I prepared in Halifax in my lecture on TQM before MetroTC and MTC Executive Judges during the PHILJA Seminar last 7 December 1999 in Tagaytay City. Using my newly learned skills, I am now preparing a Power Point presentation for my lecture on Caseflow Management scheduled for 11 January 2000 at the PHILJA Orientation Seminar for newly appointed judges in Tagaytay.

We also had a video conference with Mr Ronald Weston Sr., Clerk of Court of the U.S. District Court, Grand Rapids, Michigan, which allowed for a substantial exchange of ideas on court management. Because of the valuable insights of Mr Weston, I asked for and was given by CJEI a videotape of this video teleconference.

Our group left for Ottawa on 3 October 1999 for the second phase of our study programme. In Ottawa we met with Justice James Chadwick and Master Robert Beaudoin of the Ontario Superior Court who lectured on mandatory Pre-trial Mediation. Master Beaudoin described in detail the processes and techniques of pre-trial mediation, the problems encountered, especially the initial resistance of bench and bar to the process, and the strategies he and Justice Chadwick innovated to resolve these problems. He also shared with us very practical schemes in dealing with the problem of case backlog which he described as a system out of control by the judge and controlled by lawyers. He informed us that the Supreme Court of Ottawa created the position of Case Management Master, a judicial officer with powers to make and issue orders like a judge (except the power to write decisions), for the purpose of facilitating pre-trial mediation and overseeing the expeditious flow of cases through the court system. He emphasised that the three key elements of caseload management are court control over cases, the fixing of time standards (which must have definite consequences for lawyers and litigants for non-compliance therewith, i.e., dismissal and costs consequence), and mandatory mediation. Mediators, who are paid a 'fair' fee by the parties, are 'contracted' and approved by the court unless the parties disagree with the choice. Also, parties are required to pay a fee of Canadian \$250 when they file their notice of readiness for pre-trial. Notably, parties pay file fees for *all motions* submitted to the court. This discourages the filing of dilatory and unnecessary motions and reduces court time for handling cases, besides earning funds for the courts.

We also met with Justice Michel Bastarache of the Supreme Court of Canada who acquainted us with the judicial processes of the High Court and answered our questions on judicial review and judicial independence. We also listened to a briefing by Ms Jeannie Thomas, Coordinator of the Canadian Judicial Council, on the complaints process of the Council involving the discipline of judges and justices. Canada has no Code of Judicial Conduct like that in the Philippines because their judges feel that setting down in writing rules on judicial behaviour would impinge on their independence.

Judge Dolores Hansen, Executive Director of the National Judicial Institute of Canada, discussed with us current issues in court administration such as the use of technology in courts, court security, and continuing judicial education.

We left Ottawa for Toronto on 6 October 1999, where we were taken to a small claims court presided over by Judge Pam Thompson. There we confirmed the observation that small claims courts do play a significant role in reducing backlog of trial courts, thus, giving trial judges more time to focus on more complex cases. Small claims courts are common fixtures of the judicial systems of Commonwealth nations. The Philippines Supreme Court is submitting a proposal to the Philippine Congress for the creation of small claims courts.

Our group was also treated to a whole day mini-seminar on judicial administration by Justice Sidney Linden, Ms Heather Cooper and Mr Jeffrey Stutz. Their presentations were excellently prepared and delivered, covering the whole gamut of court administration with emphasis on specific topics such as court systems, organisational innovations in the

judicial systems of England, Ireland, Australia and Canada, budgeting and sourcing of funds, liaising with other branches of government, managing judges and court personnel, and managing judicial change.

We also visited a commercial court and observed a trial in progress presided over by Justice Robert Blair. One afternoon, we sat at a mental court (with jurisdiction over cases where the defendants are mentally ill) presided over by a remarkably humane judge, the Hon. Edward Ormston. Before this session, we observed how he conducted an actual pre-trial proceeding in his chambers. I also asked to be brought to a family court to observe its physical layout and facilities for video conferencing of child witnesses.

Master Christie-Anne Morris-Alleyne, our lecturer on Caseflow Management Program of Trinidad and Tobago, covered topics such as rules for managing caseflow, restructuring and staffing by objectives, and techniques to reduce backlog and implement an effective caseflow system.

The Assistant Programme Director of the Judicial Studies Board of England, District Court Judge Wyn Rees, explained to us the significance of Lord Wolff's Report on Judicial Reforms and its recommendations, the processes developed for judicial case management, and the training of judges and the use of case studies in this kind of training.

Our study programme concluded with a debriefing of our court visits by Professor Carl Baar who discussed future planning with us. We had a wide-ranging discussion on the seven future directions for courts, namely, judicial leadership, generic justice, courts as Road Warriors, the Multi-door Courthouse, Global High-Tech justice, super surveillance, environment and ecofeminism. We also debated on issues such as 'Home' Justice (fragmented and individualised) versus Rooted Justice (Community-based), youth courts versus global courts, and the inevitable question of Dual Justice – the international rich versus the urban poor.

The course content was excellent for the purpose, the facilities were superb, the lecturers did their job. The only recommendations for improvement would be a few minor changes such as a more logical sequencing of topics and additional time for hands-on training and actual observation of methodologies.

To conclude, caseflow management has been proven in many jurisdictions worldwide to be an effective antidote to the problem of delay and backlog in courts. As has been observed, an effective caseflow program is the heart of court administration. Thus, the Philippine court system would benefit from the consistent implementation of techniques in caseflow. The knowledge and skills I acquired from the CJEI Study Programme shall continue to be shared and echoed by me in lectures and workshops on caseflow management for PHILJA. More than this however, I hope to be able to implement a pilot project on caseflow management for a specific jurisdiction in Metro Manila, and I am now in the process of drafting a project proposal.