

*Session 6.1*

*The Journey Towards Court Excellence: Integrating Quality Management into Judicial Training*

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- 1 In the time allotted it is unlikely that I will have the ability to do more than briefly introduce the Framework ,and leave it to other speakers to talk to you about their particular journeys towards improving court administration and achieving excellence. The Framework starts from a number of premises, the first and most obvious being that it is essential for the social and economic wellbeing of societies that courts function as well as they can, that it is necessary for judicial officers to lead court administration if a court is to reach its full potential. That is not to suggest that others in the court are not important but it seems to us that judicial officers have the most immediate stake in the proper functioning of the courts and the clearest understanding of their values, but judicial officers often have no background, or very limited background, in administration.
- 2 There are many private-sector models of administration which have proven value in the private sphere and in other areas of public administration but none is based upon the particular values which are central to courts. It is for that reason that the Consortium set itself the goal of developing a framework of values, concepts and tools that courts worldwide can use to assess and improve the quality of administration of justice. ‘Worldwide’ is important there. It is assumed that while court resources in any particular jurisdiction will vary, the core values do not. The aim is to provide a framework which any court can adapt to suit itself, but not a prescription that a court must follow. This is in effect, I suppose, a teach-yourself or do-it-yourself court administration tool, designed to be used and adapted by individual courts, to learn about the sorts of questions they should be asking themselves and the process they should follow in order to answer those questions.
- 3 The purpose of the Framework has three main areas: providing courts with a resource for assessing their performance, providing clear guidance for courts intending to improve, and providing a process which the courts can follow to improve and to achieve excellence in managing their courts. The Framework began with the initiative of the Singapore Subordinate Courts’ Richard Magnus, Senior District Judge at the time. He contacted a number of institutions and invited them to participate. The first meeting was held in Singapore with a follow-up in Washington. The Framework was finalised in more or less its present form by mid-2008 and was released at a forum in Sydney in September last year. Attendees included the Consortium partners, who I will speak about in a moment, and representatives of the bodies advising the Consortium, and other courts in Australia and in our region.
- 4 The Consortium continues in existence, and I will mention the plans for the future in a moment. It is important, perhaps, to understand who the members of the Consortium are, so that you understand where we are coming from in developing the Framework. The Australasian Institute of Judicial Administration draws its membership from all levels of Australian and New Zealand judicial practitioners, court administrators, law

librarians, legal academics, those with an interest in judicial administration. The Federal Judicial Centre is the research institution for the federal judicial system in the USA. The National Centre for State Courts has a board consisting of state judges, court managers, and attorneys and court users, and provides consulting, training, research and evaluation, not confined to the United States. The Subordinate Courts of Singapore have a broad jurisdiction in civil and criminal law matters, family law, and juvenile justice. They are recognised, I think, as having a long-standing commitment to efficiency in judicial administration. Then, of the assisting organisations, CEPEJ (The European Commission for the Efficiency of Justice) is composed of experts from all members of the States Council of Europe. SPRING Singapore is a public body concerned with excellence in all kinds of enterprise, public and private. The World Bank's broad aim is that of alleviating poverty worldwide and it sees governance reform as important to that mission.

- 5 I just want to mention a couple of the benefits we perceived in adopting a framework of some kind. It can be difficult to know where to start in energising judges and staff to provide solutions especially because, as I have mentioned, there are models which are concerned with excellence in administration generally but not based necessarily on the core values of courts. It is easier to solve problems if you have a process. The shared perspective is also important. I know, certainly, that in the Land and Environment Court of New South Wales, which has been through the process, it was found that implementation was educational in itself. Different people in different areas of the court have information and perspectives which they assume that others share. Implementation, going through the process, often shows that to be not the case. Importantly, perhaps, the fourth point I want to emphasise, it provides a means for self-oversight by courts, which is important because of the need for independence.
- 6 The Framework is based on three conceptual areas. One is the identification of court values. They inform the identification of the seven areas of court excellence. Court performance and quality is then assessed against those areas of court excellence and so, ultimately, against the values which have been identified. What are the values? All of the Consortium members considered that there was broad international agreement regarding these core court values: equality before the law, fairness; impartiality, independence of decision-making, competence, integrity, transparency, accessibility, timeliness, and certainty. The only one that was the subject of any real discussion, I can tell you, was timeliness. In the end, all members agreed that justice delayed is indeed justice denied, but it is important to recognise there that timeliness does not mean a rush to judgment. It means a disposition of the matter in the most expeditious way possible, consistent with the other values.
- 7 The seven areas of excellence that we identified, based on those values, fall broadly into three categories: court management and leadership, which we see as critical, is the driver which enables appropriate systems to be set up. The systems are the court policies, management of human and financial resources, and proceedings, and the results, one hopes, are that client- and public needs are met, court services are affordable and accessible, and public trust and confidence is maintained.
- 8 The term 'client' may be contentious. After some discussion we concluded there is no one word that adequately captures the court's relationship with those brought before it, those who seek to use its processes, those who are 'consumers' of the legal 'product', the rulings and decisions that it creates. 'Clients' came as close as we could

get to that concept. I am not going to go through all of the elements in detail but can I mention a few of them: so far as leadership is concerned, we are not just concerned with heads of jurisdiction although the support and involvement of the head of jurisdiction is obviously critical. Courts are organised in different ways and there are leadership roles available for judges at many levels. It was important, we thought, to involve all of those who might perform some sort of leadership role. Leadership involves, at another level, the administrative areas of the court also.

- 9 Regarding the second area, the policies, of course it was important not just to have policies, to implement them and assess them, but to ensure that they reflect the core values, and that is another reason why it is important to be explicit about what the values are to start with. Human Material and Financial Resources includes the judges, and matters like education, sharing of knowledge, ensuring a sound division of labour between judges and administrative staff. Accessibility includes things like physical accessibility, IT, atmosphere, matters of that kind.
- 10 The process is, at a broad level, a simple one. The key elements are that it is court-driven, evidence-based, and continuous. There is an initial assessment by the court. The court decides on an action plan. Improvement, one hopes, results. In any event, the results are measured. By 'measured' I mean not just quantitative measures but qualitative ones as well. Once you have done your measurements and the results are in they are assessed against the core values and you start all over again.
- 11 Assessment is basically concerned with estimating the court's performance, principally by use of the Framework's self-assessment questionnaire. It allows a court to assess its performance against those seven identified areas, and it is important that the assessment be carried out in a way that has broad participation so that judges, administrators, other court employees, all have a role to play in evaluating the court's processes. The questionnaire contains 29 questions, divided into the seven areas of court excellence. There is a scoring mechanism which enables the answer to each question to be assessed in terms of what are called 'approach', 'deployment' and 'results'. To oversimplify those terms, basically 'approach' involves asking the question, has the court thought about this area, at all, and if so, in what detail? 'Deployment' looks to the policies and processes which are actually being implemented in that area, and 'results' asks the question whether there are measurements or assessments which allow the court to see the results of its policies and processes, and what they show.
- 12 The system allows for assessment and comparison with other courts. It is not essential that that comparison take place, although in some jurisdictions that may be very useful. Importantly, it will allow comparison within the court over time, in relation to its progress and in relation to those areas that allow for assessment. Of course, it may not be possible to define the court's trajectory too precisely because what tends to happen as courts improve is that they become tougher on themselves. When they ask the same question, 'how are we doing?' – they are less likely to give an uncritical answer.
- 13 The questionnaire is something which could be filled out collectively by different areas of the court, including the judiciary, and the results collated. It could be administered by some independent person, or selected judges and administrators. It could be administered to everyone in the court. It could be discussed collectively by

an executive group if one already exists. All sorts of other ways are possible. It is left to the individual court to decide the process for itself because it is important that the court is involved and that the court is happy with the process that is followed. Regarding the questions that are asked, for example in relation to things like approach, if there are none it is pretty easy to get to that answer.

- 14 Once the court has done the assessment it can then start to think about improvement. The assessment, of course, will identify good practices that you want to keep and build on, as well as areas for improvement. The Framework describes a process by which courts might think about identifying and prioritising areas for improvement. Obviously, some courts will be able to do a lot all at once whilst others will have to take very small steps in small areas, before preparing an action plan. There are measures and resources which are available. The Courts Excellence web address is <http://www.courtexcellence.com/> and I suggest you go to that if you want more detail. There is quite a lot of it.
- 15 Examples of court performance measurement tools are found in the framework, and these are some of the sorts of measurement tools that are referred to. Appendix B of the full document contains examples of court performance measurement tools, both quantitative and qualitative. The caveat there is that in some areas we are still searching for really good tools. Appendix C deals with lessons learned from international experiences, and that provides what is at present a fairly brief overview of some of the international measures taken in a more detailed way, and links to more detailed information, that might help courts to understand the process better. In each case, as I have already mentioned, the court decides for itself the most appropriate measures, having regard to its jurisdiction and its resources.
- 16 Action plans could include all sorts of things. For example, it might be as simple as saying, ‘we don’t have a vision statement; we’ll start there’. It might be developing policies. You can go to the Framework document for more detail.
- 17 It then comes to measuring the steps taken and, importantly, this is an evidence-driven process. It is not about just what we think might be happening but what we are able to know is happening. The measurement of the results of the action plan could be very simple, could be very complex. Taking first things first, does the court have a vision statement? In some courts that might be the only question: ‘yes, there is; no, there isn’t; we used not to have one; now we do’. In other courts the question might be, ‘does it adequately capture the court’s objectives; does it need modification?’. At a more sophisticated level again the question might be, ‘is it actually used to formulate policies?’ – and so on. To what extent is it understood by, and embedded in, all levels of the court’s administration?
- 18 It is recognised that improvement does not always come without chaos and it is understood that this process might not necessarily be comfortable or reassuring at all stages. We suggest that there are many ways you can improve, in linear fashion or in a much more chaotic way, but we do hope that improvement will be the ultimate result.
- 19 As Chief Justice Durham mentioned this morning, it is happening in a number of areas. So far, the one with which I am best acquainted is the Land and Environment

Court of New South Wales. I know its initiatives are under active consideration in a number of other Australian jurisdictions.

- 20 I should at this point add a word of caution about implementation. There has been some interest in the Framework also from the executive in a number of jurisdictions. Those who fund courts may be inclined to see this as an accountability or comparability device. The whole point of the process is that it is judge-driven and capable of responding to the needs of particular courts, as determined by those courts. It will simply not serve its purpose if it is imposed on courts. One would hope that the executive might be sympathetic and might assist with the process. I know that in New South Wales the Land and Environment Court was given a small grant to engage a consultant to help them with the process, but that I would see as the only role for the executive in relation to a process of this kind.
- 21 The full framework document is available on the website. There are brochures also, and there are links to a variety of resources. We have tried to provide as many different sorts of resources as possible but there are some significant limitations. One is that at the moment I think only the brochure has been the subject of any translation into a language other than English. The Consortium recognises that as an important issue and we have been discussing it already. It is a resource issue and one we may have to give some priority to.
- 22 Looking to the future, the parties are looking for examples of evidence-based continuous improvement to add to the information already available. We recognise that the scoring system and some of the terminology may not be easy for courts not used to this sort of process and we are attempting to simplify it. We would very much appreciate feedback, either in relation to resources we have overlooked or to experiences with attempting to implement the Framework or parts of it.
- 23 In summary, from a judicial education point of view this document seems to me to be not something you would teach judges about so much as something you would invite them to use, to develop independent administrative skills and interest in administration, and as a kind of a do-it-yourself court administration improvement device.