

ASSOCIATION OF CANADIAN COURT ADMINISTRATORS (ACCA)

CORE COMPETENCIES FOR COURT ADMINISTRATORS

1: The Purposes and Responsibilities of Courts

Introduction

In studying core competencies for Canadian court administrators, ACCA looked at a number of approaches. In the end, ACCA decided to endorse the core competencies¹ as defined by the American National Association for Court Management (NACM), subject to commentaries identifying distinct Canadian issues. ACCA's decision to endorse NACM's core competencies for court administrators is based on the similarity of issues relating to court administration in the United States and Canada, the high quality of what NACM has produced, and the great resources and time invested in creating these core competencies.

Canadian Context

The NACM core competency relating to the Purpose and Responsibilities of Courts² is applicable to the Canadian Court System, subject to the comments set out below.

Unlike in the United States where the judges administer the courts, in Canada, the Executive, more specifically, the Attorney-General department, manages the provincial and territorial courts. The judiciary, however, also play a significant role. Institutional independence, as defined by the Supreme Court of Canada, does not preclude the AG's involvement in the administration of the courts, but it does require that the judiciary control the assignment of cases, sittings and court lists.³ Consequently, judges handle matters related to the administration of judicial functions.

Commentary

From the perspective of Canadian jurisdictions, ACCA suggests that the following points be kept in mind when reviewing or studying the NACM description of the Purpose and Responsibilities of the Courts.

1. Given that both the judiciary and court administrators administer the courts, there would be value in changing the title of the competency to *Purpose and Responsibilities of Courts and Court Administrators*.
2. On the introductory page reference to "court leaders" may be replaced by "court administrators" to reflect the Canadian context.

¹ Core Competency Curriculum Guidelines, online: National Association for Court Management http://www.nacmnet.org/CCCG/cccg_homepage.htm

² Core Competency Curriculum Guidelines, online: National Association for Court Management http://www.nacmnet.org/CCCG/cccg_1_corecompetency_purposes.html

³ *Valente v. The Queen* [1985] 2 S.C.R. 673, 709.

3. References to the *Federalist* on the introductory page, as well as from the description of the 5 areas included in the Purpose and Responsibilities of Courts, should be removed. References to the *American* judiciary should be read as the *Canadian* judiciary.
4. The term “judicial administration” may be replaced by “administration of the courts” or “courts’ administration” to capture the distinct practice in Canada whereby both the judiciary and the executive have a role in the administration of the courts. The expression “judicial administration” is misleading as it suggests that administration of the courts lies only in the hands of the judiciary.
5. Areas of the Purpose and Responsibilities of Courts:
 - (i) *Courts as Institutions*- remove references to the *Federalist*. This section also makes reference to the “Trial Court Performance Standards” which are not generally applicable in Canada. However, they are a highly detailed and useful set of standards by which crucial aspects of the performance of any trial court can be assessed. Further detail on these standards may be found on the Internet from the United States Bureau of Judicial Assistance at: <http://bja.ncjrs.org/publications/default.asp>
 - (ii) *Rule of Law, Equal Protection, and Due Process*- The American Constitution enshrines due process as a constitutional right, however, in Canada, the term ordinarily employed in case-law and legal commentary is “fair trial”. As such, this term should be applied instead of due process.

In Canada, there is no right to bail. Reference to the American people should be read as *Canadian* people.
 - (iii) *Accountability*- Given the shared responsibility of court administration in Canada, the term *courts* may be replaced by “courts and court administrators”.
 - (iv) *Interdependence and Leadership*- Reference to “advanced courts” is made in this section. If this means appeal courts, it should be modified to read appellate courts.
6. Curriculum Guidelines: Required Knowledge, Skill and Ability
 - (i) *Courts as Institutions*- Reference to knowledge of Trial Court Performance Standards should be removed. Add bullet referring to knowledge of rights entrenched in the *Canadian Charter of Rights and Freedoms*, and remove reference to the *Federalist Papers*, the Declaration of Independence, the US Constitution, Roscoe Pound’s 1906 ABA speech and reference to state and federal courts.

- (ii) *Rule of Law, Equal Protection and Due Process*-Add knowledge of civil law and delete socialist law in bullet mentioning knowledge of legal traditions.
- (iii) *Accountability*- As indicated earlier, the judiciary in the US manages their own courts, whereas in Canada, the provincial and territorial AG administers them. Therefore, the mention of “courts” may be replaced by “courts and court administrators”.
- (iv) *Interdependence and Leadership*- Removal of reference relating to various codes of ethical conduct. Of greater relevance in Canada are the Canadian Bar Association Code of Professional Conduct, Provincial/Territorial Codes of Professional Conduct for lawyers, mediators, assessors, etc, and the Canadian Judicial Council’s booklet on Ethical Principles for Judges