Judicial Education for Sustainability

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Is there a need for judicial education on sustainability? This paper argues that given the increasing relevance and widespread nature of sustainability, it is important for judges to be educated on these concepts. Further, there is some evidence that both an identified need and judicial acceptance for judicial education programs on sustainability does exist, at least in some parts of the judiciary. This analysis draws on international statements, conferences, symposia, case law, and comments made by those within and outside the judiciary to demonstrate this need. While judicial education on sustainability is a global need, the specific content of the education might vary between countries. This article provides several examples of what judicial education curricula might focus on in different jurisdictions, including a discussion of the importance of context and its role in shaping country-specific programs. The paper concludes by demonstrating that the judiciary is and will continue to be called upon to adjudicate on matters of sustainability as well as other related concepts, as they increasingly become part of jurisprudence, legislation, and government action. Therefore, judicial education for sustainability is of growing importance.

Y a-t-il un besoin pour l'éducation judiciaire à la durabilité ? Cet essai propose que, compte tenu de la pertinence croissante de la durabilité et de sa nature répandue, il est important que les juges soient éduqués à ces sujets. De plus, il existe de la preuve soutenant qu'il existe tant un besoin reconnu qu'une volonté judiciaire—du moins de la part d'une partie du système judiciaire—pour des programmes d'éducation à la durabilité. Cette analyse se fonde, en guise de preuve, sur des déclarations internationales, des conférences, des symposiums, de la jurisprudence ainsi que des commentaires formulés par des individus au sein et à l'extérieur des systèmes judiciaires. Quoique l'éducation judiciaire à la durabilité correspond à un besoin mondial, le contenu spécifique de cette éducation peut différer d'une juridiction à une autre. Cet essai fournit plusieurs exemples de curriculums judiciaires afin de souligner leur contenu dans différentes juridictions, et il présente une discussion de l'importance du contexte et de son rôle dans la conception de programmes propres à chaque pays. Cet essai conclut en affirmant que les juges sont présentement appelés—et qu'ils le seront encore—à adjudiquer des disputes sur la durabilité et sur d'autres concepts liés, et que ces derniers intègrent de plus en plus la jurisprudence, la loi et les mesures gouvernementales. Ainsi, l'importance de l'éducation judiciaire à la durabilité est en croissance.

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1. INTRODUCTION

Sustainability or sustainable development[1] is not a new concept. In fact, the ideas behind it date to long before the 1987 Brundtland Commission that popularized the concept.[2] Still, despite the fact that sustainability and its goals have been around for quite some time, environmental degradation continues, in many cases unabated. Governments the world over are taking legislative action to curb these problems, and yet, while laws and international agreements can play a role in protecting the environment, they alone are insufficient to safeguard sustainability.[3] We continue to be plagued by various environmental crises and therefore educating the judiciary on sustainability concepts and ideas may play an important role in moving towards a sustainable future.

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1 These terms are used somewhat interchangeably throughout this paper, though the author does acknowledge that to some there is a distinct difference between the two (see e.g. Benjamin J. Richardson & Stepan Wood, "Environmental Law for Sustainability" in Benjamin J. Richardson & Stepan Wood, eds, *Environmental Law for Sustainability* (Portland, Oregon: Hart Publishing, 2006) 1 at 13–14.

2 Marie-Claire Cordonier Segger & Ashfaq Khalfan, Sustainable Development Law: Principles, Practices & Prospects (Oxford, UK: Oxford University Press, 2004) at 16 discuss how the underlying environmental principles related to sustainability, "that humanity must live within the carrying capacity of the earth, and manage natural resources so as to meet both current demand and the needs of future generations", have been present for decades or centuries.

3 Mary Christina Wood, "Advancing the Sovereign Trust of Government to Safeguard the Environment for Present and Future Generations (Part I): Ecological Realism and the Need for a Paradigm Shift" (2009) 39 Envtl L 43 at 44.

Since Brundtland,[4] the goals of sustainability and sustainable development have been incorporated into many international agreements and continue to gain legal recognition.[5] Sustainable development has also been adopted in a number of constitutions, including in Portugal and Sweden, and environmental protection has been adopted in many others.[6] In addition, more specific principles of sustainability, considered essential to achieving these overall goals, have been incorporated into international and domestic legislation. Arguably, some have now even gained the status of norms of customary international law.[7] These principles include intergenerational equity, precaution, and common-but-differentiated responsibilities, among others.

Despite advances in legislative environmental protection, however, environmental crises such as global climate change have not been contained. In order to truly make progress, we need more inclusion of sustainability in government policy, statutes, and regulations as well as more active and progressive adjudication.[8] The judiciary has an important role to play, some have said a transformative role,[9] in moving towards a more sustainable future. Interestingly, the judiciary itself is becoming more aware of this role and the responsibility it has in terms of promoting environmental governance.[10]

While courts have sometimes applied sustainability principles,[11] it is by no means common practice, especially outside of specialized environmental courts and tribunals (ECTs). This is understandable, since judges are not necessarily educated in environmental or sustainability law,[12] let alone the new developments in these fields. Even among members of the judiciary that are familiar with the principles of sustainability, the tools being used to achieve these goals, for example those that relate to the green economy, are less likely to be well understood. The result is that judicial education programs are needed to fill this gap.

Judicial education will be all the more vital as governments work towards their sustainability commitments, employing novel and increasingly complex policy tools. These

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4 World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).

5 The 2016 United Nation Goals were entitled the Millennium Development Goals and yet their follow-up (goals for 2030) are known as the Sustainable Development Goals. *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, UNGAOR, 70th Sess, Agenda Items 15 and 116, UN Doc A/RES/70/1 (2015) [SDGs].

6 David Boyd, *The Right to a Healthy Environment: Revitalizing Canada's Constitution* (Vancouver: UBC Press, 2012) at 67–89.

7 See generally Owen McIntyre & Thomas Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997) 9:2 J Envtl L 221 (for a discussion on the status of the precautionary principle as a norm of customary international law).

8 See generally Lynda Collins, "Judging the Anthropocene: Transformative Adjudication in the Anthropocene Epoch" in Louis J Kotzé, ed, *Environmental Law and Governance for the Anthropocene* (Portland: Hart Publishing, 2017) 309.

9 *Ibid* at 310.

10 Lal Kurukulasuriya & Kristen A. Powell, "History of Environmental Courts and UNEP's Role" (2010) 3:1 J Court Innovation 269 at 269.

11 See below pages 15–19.

12 *Infra* note 27 for details.

may include using green economic indicators, implementing legal instruments such as taxes or trading systems, imposing strict regulations on the use of certain types of natural resources, or providing additional information on sustainable behaviour to the general public. The increasing use of these tools by governments means courts are likely to be presented with them as well. Specifically, there is an emerging trend where courts are being asked to consider whether governments are doing enough to meet commitments, and inevitably such cases include consideration of the policies and tools being used. An excellent example of this movement is the *Urgenda* case,[13] which ultimately led to the District Court of The Hague directing the Dutch government to do more to reduce greenhouse gas emissions. More generally, constitutional provisions and legal principles, particularly newer ones, always require interpretation. Though ideas of sustainability are not new, to many judges they are unfamiliar and yet the judiciary will increasingly be faced with cases requiring interpretation of sustainability, its principles, and related policy tools. This requires courts to be knowledgeable about these issues and concepts in order to make well-informed decisions.

The majority of this paper is focused on considering the need for judicial education to spread into the area of sustainability. In this article, there is a particular focus on environmental sustainability,[14] which is the lens through which most judicial engagement in this area has occurred. For example, this is the term used in the *Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability*.[15] Using Hudzik's needs assessment framework,[16] the conclusion is that there are clear gaps in the knowledge of the judiciary at large around sustainability, its principles, and its tools of implementation. Further, even when sustainability related offerings do exist, they are not part of regularly offered judicial education programs,

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13 *Urgenda Foundation v The State of the Netherlands (Ministry of Infrastructure and the Environment)* 1 C/09/456689/HA ZA 13-1396, Judgment of 24 June 2015 [*Urgenda*].

14 Naturally, there is disagreement over how sustainability should be defined, and different aspects have been emphasized in different contexts, such as environmental sustainability versus economic sustainability. For the purpose of this article these details are not essential, as the focus is on judicial need for education on the broader idea of sustainability. A more nuanced debate about the nature and specific principles of sustainability might be useful at a later stage, such as the design of a specific curriculum. For readers particularly interested in this debate, a discussion on sustainability, and more specifically on environmental sustainability, see Robert Goodland, "The Concept of Environmental Sustainability" (1995) 26 Annual Rev Ecology & Systematics 1; Robert Goodland & Herman Daly, "Environmental Sustainability: Universal and Non-Negotiable" (1996) 6:4 Ecological Applications 1002; Julian D. Marshall & Michael Toffell, "Framing the Elusive Concept of Sustainability: A Sustainability Hierarchy" (2005) 39:3 Envtl Sci & Tech 673; Bedřich Moldan, Svatava Janoušková & Tomáš Hák, "How to Understand and Measure Environmental Sustainability: Indicators and Targets" (2012) 17 Ecological Indicators 4 at 6–7; Bill Hopwood, Mary Mellor & Geoff O'Brien, "Sustainable Development: Mapping Different Approaches" (2005) 13 Sustainable Development 38; John P. Holdren, Gretchen C. Daily & Paul R. Ehrlich, "The Meaning of Sustainability: Biogeophysical Aspects" in Mohan Munasinghe & Walter Shearer (eds) *Defining and Measuring Sustainability* (Washington, D.C.: United Nations University by The World Bank, 1995).

15 *Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability* (Rio de Janeiro: United Nations Development Program, 2012) [Rio+20 Declaration].

16 John K Hudzik, *Judicial Education Needs Assessment and Program Evaluation* (East Lansing, MI: Judicial Education Reference, Information and Technical Transfer Project, 1991).

but rather are piecemeal and inconsistently available.[17] In addition, those enrolling in such educational avenues are likely to be already interested in sustainability topics (members of ECTs, for example) while the broader judiciary may not even be aware of the connection between many of their cases and issues of sustainability. Based upon this understanding, I argue that sustainability should be a feature in judicial education programs. This, I contend, is a global need, but the content of that education will depend on the relevant country, as it should take into consideration the judiciary itself, existing judicial education systems, and the specific area(s) of sustainability that are most relevant. Importantly, even in situations where the judiciary may not seem particularly interested in ideas of sustainability, such education is arguably particularly important because of the clear connections between many areas of law and sustainability that may be overlooked in these conditions.

The end of this article briefly discusses potential curricular components to fill these gaps and to educate judges on the topics that they are likely to face in the coming years. This includes considering tiered sustainability education programs for jurisdictions that have a history with ECTs or have constitutional protection of the environment. The lower tier would offer general sustainability education and detail how cases that may on the surface seem unrelated, in actuality are connected to principles of sustainability. A more advanced curriculum might consider new developments such as green economy concepts and the innovative approaches governments are taking to meet sustainability commitments. In addition, the stage of economic development and level of enforcement of environmental law might dictate the focus of sustainability education for the judiciary—for example, a country known to have lax enforcement of environmental law might want to focus their programs on principles such as polluter pays.

2. BRIEF HISTORY OF JUDICIAL EDUCATION

Continuing education for judges, or judicial education, has been around for over half a century, but was probably not well accepted until sometime in the 1980's. Since then, the idea that judicial education is valuable to the profession and society has become fairly well accepted[18] and the use of judicial education programs has become widespread.[19] Many countries around the world now have dedicated judicial education institutes that help facilitate many types of judicial learning.[20] In the Canadian context, the National Judicial Institute was established in

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17 For example, the Canadian National Judicial Institute currently lists 52 course offerings, none of which mention the natural environment or sustainability, illustrating how courses on these topics are not readily available (National Judicial Institute, "Judicial Education Overview and Education Resources" (2014), online: <www.nji-inm.ca/index.cfm/publications/nji-education-course-calendar/> [*NJI*]).

18 Suki Goodman & Joha Louw-Potgieter, "A Best Practice Model for the Design, Implementation and Evaluation of Social Context Training for Judicial Officers" (2012) 5 African J Leg Studies 181 at 182.

19 Duane Benton & Jennifer A.L. Sheldon-Sherman, "What Judges Want and Need: User-Friendly Foundations for Effective Judicial Education" (2015) 2015:1 J Disp Resol 23 at 23; Brettel Dawson, Ulrike Schultz & Gisela Shaw, "Gender & Judicial Education" (2014) 21:3 Intl J Leg Profession 255 at 255.

20 The International Organization for Judicial Training website provides a list of members which is an excellent overview of the many and varied judicial education organizations around the world. See International Organization for Judicial Training, "Members", online: <www.iojt.org/page-members.html>.

1985. Though originally focused on ensuring that judges were up to date with recent decisions and substantive legal issues, over the past few decades, improving judicial competence with regards to awareness of social context has become much more common. Yet, there are few programs for judges that focus on environmental sustainability.[21]

2.1. Features of Judicial Education Programs around the World

A brief comparison between how different countries facilitate their judicial education programs is worthwhile, especially when considering that the need for incorporating sustainability into these learning processes is not restricted to any one country, but rather is a global necessity. Judicial education has historically been quite different depending on the legal tradition of a country.[22] In contrast to common law countries, where judges are essentially lawyers who have "'graduate[d] from litigation"[23] and therefore have been trained as litigators, in civil law societies, specific training is designed for judges to become both record guardians and decision makers.[24] In civil law, judging is considered a distinct profession from lawyering– where judges often serve for their entire professional career.[25] The key difference here, in terms of judicial education, is that civil law has a very well established structure that trains career appointments, while common law has traditionally relied on a fairly non-uniform training methodology.[26] Importantly in the context of this paper, the three-year law school program (in common law countries) does not typically require students to study any environmental law courses in the way that tort law, contract law, or criminal law, for example, are required.[27] Therefore, lawyers who eventually make their way to the bench may well have little knowledge of concepts related to the environment or sustainability.

How and by whom judicial educational programs are delivered also varies. The structure ranges from very formal—funded by government but where the judiciary is in control—to informal organizations that are often part of judicial associations.[28] Sometimes there is a strong affiliation with universities—this is the case in Canada where the University of Ottawa has strong historical and current ties with the Canadian National Judicial Institute. The delivery of judicial education programs is also wrought with the debate over funding, that is, whether

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21 *Infra* note 65 provides details.

22 See generally Cheryl Thomas, *Review of Judicial Education and Training in Other Jurisdictions* (London: Judicial Studies Board, 2006), online <http://studylib.net/doc/11990639/review-of-judicial-training-and-education-in-other-jurisdictions>.

23 Charles H. Koch, "The Advantages of the Civil Law Judicial Design as the Model for Emerging Legal Systems" (2004) 11:1 Ind J Global Leg Stud 139 at 159.

24 *Ibid*.

25 *Ibid* at 142–143.

26 Livingston Armytage, "The Need for Continuing Judicial Education" (1993) 16:2 UNSWLJ 536 at 540–541 [Armytage, "The Need"].

27 E.g. Osgoode Hall Law School at York University (Ontario, Canada) does not require that students take an environmental/sustainability/natural resources law course ; neither does the Peter A. Allard School of Law at the University of British Columbia (British Columbia, Canada). In the United Kingdom, for example, neither Oxford University nor Cambridge University require students to take courses related to the environment. Similarly, the University of Sydney's juris doctor program does not require students to take an environmental law (or related) course.

28 Thomas, *supra* note 22 at 27.

privately funded education programs are appropriate.[29] Programs funded by private entities, whether they be organizations, companies, or even academic institutes, are often questioned with regards to their impact on the judicial process[30] and whether they are really aimed at lobbying the judiciary.[31] In some cases, this type of judicial education is described as almost a vacation, where members of the judiciary "attend free educational seminars, [are] provide[d] free food and lodging (in some cases, at resort settings)" and have their travel expenses "wholly or partially reimburse[d]."[32] Given this, there is a concern that judges will be swayed by the positions of those who are delivering (or funding) the education and providing the seminars. The debate here is over whether privately offered judicial education can undermine the independence of the judiciary—for example, are privately run judicial education programs actually masking efforts to lobby the judiciary?[33] While this is an important part of the broader discussion on judicial education,[34] the focus here is on the content of what should be offered, rather than who it is provided by.

2.2. Content and Focus of Judicial Education Programs

Two areas of judicial education research that relate directly to the design, scope, and content of programs to improve judicial knowledge of sustainability are discussed here. One area is the role that the judiciary should play in determining the content of judicial education programs and at whom the program should be aimed. The other area explores what perspectives, such as legal, technical and sociological approaches, are appropriate for judicial education programs.

It is a prominent belief that judicial education programs should be, at least in some part, led and designed based upon what judges themselves believe they need to learn.[35] Indeed, this is generally true in practice[36] and is probably why the concept of needs assessment has been fairly popular when designing new judicial education curricula. As Benton notes, "programming and recommendations for programming should be founded on judges' preferences and needs."[37] On the other hand, there is concern that judges may not be the best evaluators of what they do not know. This means that relying solely on judges to define what needs to be covered raises questions surrounding the regulatory capture of judicial education by the

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29 See generally Bruce A. Green, "May Judges Attend Privately Funded Education Programs? Should Judiciary Education be Privatized? Questions of Judicial Ethics and Policy" (2001) 29:3 Fordham Urb LJ 941.

30 Peter Chickris & Jack Turano III, "Integrity is Their Portion and Proper Virtue: The Ethics of Funding Judicial Education" (2010) 51 S Tex L Rev 869 [Chickris & Turano].

31 Green, *supra* note 29 at 942.

32 *Ibid* at 942.

33 See e.g. *ibid*; see also Douglas T. Kendall & Eric Sorkin, "Nothing for Free: How Private Judicial Seminars Are Undermining Environmental Protections and Breaking the Public's Trust" (2001) 25 Harv Envtl L Rev 405 (for an at length discussion of this concern).

34 For additional information on this debate, see e.g. Chickris & Turano, *supra* note 30; Kendall & Sorkin, *ibid*, and Douglas T. Kendall & Jason C. Rylander, "Tainted Justice: How Private Judicial Trips Undermine Public Confidence in the Judiciary" (2004) 18 Geo J Legal Ethics 65.

35 Brettel Dawson, "Judicial Education: Pedagogy for a Change" (2015) 2015:1 J Disp Resol 175 at 175.

36 Thomas, *supra* note 22 at 32.

37 Benton & Sheldon-Sherman, *supra* note 19 at 32.

judiciary.[38] In addition, there are other questions about the needs of judges who sit on courts of general application versus dedicated or special interest courts—for example, ECTs. Should the programs be distinct and separate from one another or could having judges from both courts attending together, in fact, increase the success and learning of judges? These questions are all relevant when considering judicial education on sustainability and will be touched on throughout this article.

Importantly, there are two very different types of judicial education: 1) continuing education programs (provided to judges during their career on the bench) and 2) training (provided before individuals even begin to work as judges).[39] A needs assessment is certainly relevant to both, but probably more so for continuing education, since what judges need to know prior to donning their robes is fairly clearly laid out already.[40] Continuing education is an ideal place for new and emerging areas of law, such as sustainability, to be introduced to the judiciary. To determine what the focus of these continuing education programs should be, a needs assessment approach is an appropriate perspective to take.

The other area of relevant judicial education research examines the different types of content in judicial education programming. At the outset, the substantive aspects of legal issues tended to be the focus of judicial education programs.[41] In particular, because of the delay in publication of decisions, judicial education played a significant role in providing judges with information about current developments.[42] More recently, judges have become increasingly interested in learning about the different ways that colleagues have interpreted and applied various laws.[43]

The focus of judicial learning programs is defined in different ways. For example, some authors argue these educational offerings can be slotted into one of three broad areas, based upon: "(1) content (substantive law), (2) craft (skill enhancement including court management),"[44] and (3) social context training.[45] The distinction between knowledge, skills, and social conditions[46] is another set of categories used for the different areas of focus. Benton and Sheldon-Sherman note that while judicial education at first focused primarily on substantive legal issues, it now includes issues that are not necessarily legal in nature—for example, "science,

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38 See S.I. Strong, "Judicial Education and Regulatory Capture: Does the Current System of Educating Judges Promote a Well-Functioning Judiciary and Adequately Serve the Public Interest?" (2015) 2015:1 J Disp Resol 1 at 4 for an overview of the key issues.

39 Thomas, *supra* note 22 at 21.

40 Additions are made to this from time to time—for example, when new technologies used in a courtroom become standard, or when large changes are made to critical pieces of law (for example, the introduction of the Charter of Rights and Freedoms—see Dawson, *supra* note 35 at 184 for a discussion—but, in general, this type of training is likely to be already set out).

41 Livingston Armytage, "Educating Judges: Where to from here" (2015) 2015:1 J. Disp. Resol. 167 at 167 [Armytage, "Educating Judges"]; Benton & Sheldon-Sherman, *supra* note 19 at 25; Patricia H. Murrell, "Judging: A Role with a Soul" (2006) 45 Judges Journal 1 at 5.

42 Dawson, *supra* note 35 at 178.

43 *Ibid* at 179.

44 Goodman & Louw-Potgieter, *supra* note 18 at 184.

45 *Ibid.*

46 Dawson, *supra* note 35 at 176.

drug abuse, and family violence"—but which certainly affect the administration of justice.[47] Still, others would argue that judicial education programs should assist judges in becoming advocates; specifically, they should educate them on how to advance human rights and access to justice.[48] A more general, and perhaps more inclusive characterization has judicial learning separated into two distinct areas of professional development: refining basic judicial knowledge and learning about other topics which are relevant to the judiciary—for example, science or psychology.[49] The former is primarily concerned with developing and updating the skills required to carry out the task of being a member of the judiciary, while the latter is focused on ensuring that the judiciary is aware of societal changes, including changes in what society expects of the judiciary.[50] All of these different frameworks recognize that judicial education needs to encompass areas other than strictly legal information or court management. There is now a general consensus that judicial education should be concerned with including social context education.[51]

Changes in social and legal context (which can encompass environmental or sustainability issues) are an important reason for judicial education programs. Dawson highlights the importance that an education program played for judges after the 1982 introduction of the *Canadian Charter of Rights and Freedoms* (*Charter*).[52] As *Charter* cases began to come before the courts, judges were faced with making decisions in an area of law that few had received instruction about in law school.[53] Therefore, the Canadian National Judicial Institute identified a need that could be filled by an education program. It designed judicial education seminars to focus on the elements of the *Charter* that the judiciary found particularly demanding in the course of facing related cases. This was done using rolling case studies in which participants worked through the various elements, analysis, and process components.[54] A similar approach could be taken for sustainability education where cases could be the foundation of the curriculum, and the various elements and processes could be talked about as they relate to sustainability principles.

In many ways, Canada has been the leader in social context education for the judiciary,[55] though there are similar programs in a variety of other countries such as the United States,

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47 Benton & Sheldon-Sherman, *supra* note 19 at 25; see also Murrell, *supra* note 41 at 3 (for agreement that new knowledge that may impinge on law should also be included in judicial education programs).

48 Kathleen E. Mahoney, "The Myth of Judicial Neutrality: The Role of Judicial Education in the Fair Administration of Justice" (1996) 32:4 Williamette L Rev 785 at 814–819.

49 Rainer Hornung, "Taking into Account Non-Juridical Aspects Matters in Judicial Training Programmes for Judges and Prosecutors" (2013) 1:1 J Intl Organization for Judicial Training 45 at 47; Peter Underwood, "Educating Judges – What Do We Need?" (2007) 3:4 High Ct Q Rev 133 at 135–136.

50 Underwood, *ibid.*

51 Armytage, "Educating Judges", *supra* note 41 at 167; Murrell, *supra* note 41 at 3.

52 Dawson, *supra* note 35 at 184.

53 *Ibid.*

54 *Ibid* at 185.

55 Goodman & Louw-Potgieter, *supra* note 18 at 189.

Australia, South Africa,[56] the United Kingdom,[57] and others. Social context education is focused on furthering the understanding of the judiciary on issues such as diversity, disadvantage, inclusion, and equality in legal processes and within legal principles.[58] Further, judicial education on social issues of race, gender, and equality is essential for "the eradication of unfair discrimination in the administration of justice and judicial decision-making."[59]

In addition to the social issues just identified, there are other new developments related to the law that have been the focus of judicial education programs. For example, the gatekeeping role that judges play in terms of admitting or denying scientific evidence for use in the court of law[60] has been incorporated into curricula for judges, as it requires knowledge about scientific methods.[61] But the use of scientific evidence is not the only new development relevant to the law; as already mentioned, sustainability is increasingly becoming an area that courts are asked to weigh in on. Yet, unlike some other areas of social context education (sexual assault,[62] for example), sustainability is not widely incorporated into judicial education and even when it is offered, it is not a required course. This is unfortunate because to be most effective, it should be part of the standard judicial education system offered to judges.[63] A scan of currently offered courses, seminars, and conference themes in Canada showed a real lack of sustainability-related education currently being offered to the judiciary.[64] While there are some environment or

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56 *Ibid*.

57 UK Courts and Tribunals Judiciary, "Strategy of the Judicial College 2018-2020" (2018), online: <www.judiciary.gov.uk/wp-content/uploads/2017/12/judicial-college-strategy-2018-2020.pdf>.

58 Dawson, *supra* note 35 at 179.

59 Goodman & Louw-Potgieter, *supra* note 18 at 187.

60 See Rebecca C. Harris, *Black Robes, White Coats: The Puzzle of Judicial Policymaking and Scientific Evidence* (New Brunswick: Rutgers University Press, 2008) at 14–35.

61 In many ways, this debate was heightened with the influential United States Supreme Court decision *Daubert v Merrell Dow Pharmaceuticals,* 509 US 579 (1993); this decision "revisited and rewrote gatekeeping expectations" according to Harris, *ibid* at 2. This decision essentially elaborated on the role that judges have in deciding what scientific evidence is admissible or not in a court of law.

62 Sexual assault education is now required for all new provincial judges in Ontario. Kristin Rushowy, "Sex Assault Law Training Now Mandated for New Ontario Judges", *Toronto Star* (17 May 2017), online: <www.thestar.com/yourtoronto/education/2017/05/17/sex-assault-case-training-now-mandated-for-new-ontario-judges.html>.

63 John Pendergrass, "Educating Judges About Environmental Law" (2010) 3:1 J Ct Innovation 305 at 306 (in reference to environment and natural resource education specifically, but the same can be said of sustainability education for judges).

64 In Canada, the main organizations responsible for judicial education (as identified by Justice Brian Lennox, "The Education of a Judge" (June 2017), online: <www.courts.ns.ca/From_The_Bench/documents/CCCJ_Education_of_a_Judge.pdf>) are the Canadian Institute for the Administration of Justice (CIAJ), the National Judicial Institute (NJI), and the Canadian Association of Provincial Court Judges (CAPCJ). Based upon publicly available information (lists of courses, seminars, topics), the NJI is not currently offering anything focused on sustainability or the environment (*NJI, supra* note 17). The CIAJ annual conference focused on Law and the Environment in 1988 and in 2006 on Sustainable Development and the Law (Canadian Institute for the Administration of Justice, "Annual Conferences", online: <https://ciaj-icaj.ca/en/library/papers-and-articles/annual-conferences/>), but since then there does not appear to have been much education offered on these topics. CAPCJ offerings are only accessible to members so could not be canvassed.

sustainability-related judicial learning programs already in existence,[65] they are not, by and large, widely available. It is possible that there are additional courses or conference seminars offered from time to time, but it seems reasonable to conclude, based on the lists of topics and skills that most organizations delivering judicial education provide,[66] that the inclusion of sustainability in judicial education is still in its infancy. This means that the way judges are currently learning about sustainability (if at all) is piecemeal and seemingly driven by their personal interest,[67] meaning there is not widespread knowledge of the topic in the judiciary.

This article emphasizes the importance of judges being educated on subjects which are not purely law, but are connected to, and influence, legal decision-making.[68] It is important to increase awareness in the judiciary about issues that are increasingly salient to society and, consequently, also to government decision makers. As Mr. Justice Ivor Archie, Chief Justice, Supreme Court of Trinidad and Tobago notes, "[t]he fact is that new and emerging technologies have spawned litigation in areas of law that did not exist 20 years ago."[69] Though this quote makes reference to privacy concerns with the advent of social media, there are also new and emerging concerns relating to social and environmental issues.

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65 An extensive review of judicial education programs was conducted, including some 50 educational organizations in Canada, USA, Australia, and Europe. Where available, course calendars and conference itineraries were reviewed to determine whether the judicial education organization offered programming on environmental or sustainability issues. Only six relevant courses were found out of the many offered by each organization: programs on international environmental law (delivered by the Environmental Law Institute Judicial Education Programs), a course on natural resources mining (delivered by the Continuing Legal Education Society of British Columbia), a seminar on climate change litigation (provided by the Judicial Commission of New South Wales, <www.judcom.nsw.gov.au/>), courses on EU environmental law (offered by the European Judicial Training Network), a seminar on resolving water conflicts (The National Judicial College), and programs on environmental, energy, and resources law (Canadian Bar Association). Additionally, the European Union Forum for Judges of the Environment offers annual conferences related to the judiciary and the environment, as does the Canadian Institute of Resources Law. While some program information was not reviewed since it was not publicly available, there are clearly very few judicial education programs related to sustainability or the environment.

66 For example, the Law Society of Newfoundland and Labrador considers the following continuing legal education activities as part of the Society's annual requirement: the practice of law (including ethics, professional responsibility, practice standards, substantive law, procedural law, etc.); lawyering skills (such as advocacy, drafting, research, communications, interviewing, negotiation, etc.); and practice management (including client relations, wellness, time management, practice technology, etc.). Training offered by The Judiciary of Scotland includes a variety of relevant, topical courses on specific subjects, such as sentencing, criminal law, family law and private law, as well as bench-specific skills, including court and case management. Ontario's Continuing Education Plan has Family and Criminal law at its core, with additional programs such as judicial communication, social context, and workshops on judicial pre-trials. Even within the supplementary social context programs, environment and sustainability are not listed (although programs may be offered occasionally, they are not used as an example in the document describing the continuing education program for Ontario's judges, since there is not enough of a focus).

67 For example, interested judges may be learning about sustainability on their own through written materials or online modules, which is good, but is not a substitute for generalized, in-class learning with peers. In fact, Pendergrass notes that while individually driven education is important to have, it is an extension to a broader program, not a replacement (Pendergrass, *supra* note 63 at 306).

68 See Benton & Sheldon-Sherman, *supra* note 19 at 25 for an argument for this type of judicial education.

69 Ivor Archie, "Judicial Training and the Rule of Law" (2013) 1:1 J Intl Organization for Judicial Training 15 at 19.

3. JUDICIAL EDUCATION PROGRAMS ON SUSTAINABILITY: NEEDS, SCOPE, AND CONTENT

When considering judicial education, understanding the needs, scope of delivery, and content of programs is essential. Needs assessment, which to a greater or lesser extent is directed by the judiciary themselves, is the typical process for designing judicial education programs,[70] though it is not the only system possible. Consider, for example, situations where education programs are delivered by outside institutions (private or non-profit). In these cases, the content delivered is likely to be directly related to the interests of these organizations and may not necessarily be what is "needed". A good example of this is the privately funded, all expenses paid, seminars that corporations or other foundations invite federal judges to in the United States.[71] This is a biased approach to judicial education, yet it is one which does exist and is a clear alternative to using a needs assessment approach for determining curriculum content.[72] In addition, it is certainly true that there may be times when members of the judiciary are truly in need of education on some subject matter, but they are unaware[73] (or unwilling to acknowledge) that this is the case, and therefore modified needs assessment processes are important.

3.1. Needs Assessment

Needs assessment has become a widely used approach for determining gaps in knowledge (current or anticipated) and educational needs.[74] It has been used in a variety of learning environments, including adult education,[75] continuing education in general,[76] and in medical education.[77] John Hudzik applied this approach to designing judicial education, and many have since applied and built upon his approach.[78]

In this process, it is first important to decide upon what *needs* itself actually means. As Armytage notes, *needs* can mean various things, including deficiency, want or preference, deficit,

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70 See Thomas, *supra* note 22 for a review of how some countries use this process.

71 See e.g. Kendall & Sorkin, *supra* note 33 (for its discussion of three organizations—the Law and Economics Center, the Foundation for Research on Economics and the Environment, and the Liberty Fund—and evidence suggesting these organizations and those who fund them are "breeding a new conservative judicial activism" (at 406)).

72 See the discussion on this aspect of judicial education on pages 7–8 of this article and notes 35 and 38 for additional references.

73 Eeshan Chaturvedi, "Green Courts: The Way Forward?" (2017) Cornell Pol'y Rev 1 at 3.

74 Hudzik, *supra* note 16.

75 Michael Collins, *Adult Education as Vocation: A Critical Role for the Adult Educator* (New York, NY: Routledge, 1991) at 58–60.

76 Donna S. Queeney, *Assessing Needs in Continuing Education: An Essential Tool for Quality Improvement*, 1st ed (San Francisco: Jossey-Bass, 1995).

77 Janet Grant, "Learning Needs Assessment: Assessing the Need" (2002) 324:7330 BMJ 156–159.

78 Livingston Armytage, "Judges as Learners: Reflections on Principle and Practice" (Paper delivered at the 2nd International Conference on the Training of the Judiciary, Ottawa, 4 November 2004), online: <biblioteca.cejamericas.org/bitstream/handle/2015/2244/nji-ca-judges-learners.pdf> at 18 (section 'e' which discusses needs assessment methodology); Thomas, *supra* note 22 at 36 gives an overview of training needs and needs assessment programs.

or discrepancy.[79] He notes that in judicial education, and more broadly in adult education, discrepancy is perhaps the best approach to take in defining *needs*.[80] The difference between discrepancy and deficiency, in this situation, is important because it has ramifications for the design of curricula. Both look to identify the missing piece between the current situation and what ought to be happening, but in using the lens of discrepancy there is also a developmental component, which includes consideration of future desirable conditions.[81]

The general method of going through a needs assessment, as outlined by Hudzik, is a process of "gathering and analyzing information which identifies problems and opportunities that can be addressed through education and training."[82] The major steps include: (1) considering the scale at which to assess needs (broad or narrow); (1b) considering the necessity of forming an advisory body or a needs assessment task force;[83] (2) thinking about the questions to ask in the needs assessment; (3) collecting information; (4) identifying performance gaps and opportunities; (5) identifying related knowledge, skills, abilities, and competency (KSAC) gaps; and (6) identifying topics/programs which address KSAC gaps.[84] This paper employs a modified needs assessment focused on sustainability knowledge for the judiciary.

As explained below, exploring the need for educating the judiciary on sustainability does not need to proceed through a full assessment.[85] In particular, the reason that the first three stages of this process are not necessary is because they focus on establishing a generalized process to evaluate global needs. For example, establishing an advisory body is an important step in institutionalizing a permanent process of judicial education. However, it is not necessary in the context of this research, as the recommendations are about one specific issue, rather than a general system of education. Further, steps two and three focus on designing questionnaires and collecting data on what topics members of the judiciary believe they need to be educated on. Collecting such data can be quite difficult, is beyond the scope of this study, and most importantly, it is not clear that this would provide useful answers on the need for sustainability education. That is, the current lack of education related to sustainability may well make judges (at least those who are not part of ECTs) unaware of the importance of this topic. Judges not faced with a large number of purely environmental cases may also be unaware of the significant impacts that other decisions (for example, those related to tort law) can have on the environment and other aspects of sustainability. Therefore, targeted survey data could prove somewhat uninformative. Instead, evidence of the need to educate the judiciary on sustainability has been gathered in other ways, as discussed below. However, at a later point, perhaps when designing a more detailed curriculum, it may be useful to gather information from judges directly; this, though, is beyond the scope of the current article.

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79 Armytage, "The Need," *supra* note 26 at 538–539.

80 *Ibid.*

81 *Ibid.*

82 Hudzik, *supra* note 16 at 8.

83 This is not always done nor is it necessary for the assessment to move forward, but if it is created, the body or task force provides feedback throughout the remainder of the stages. See *ibid* at A-4.

84 This is a modified excerpt from *ibid*.

85 Hudzik himself raises the possibility of using such a modified process (*supra* note 16 at 14).

Based upon the reasons discussed above, instead of moving through the preliminary stages of Hudzik's framework (stages one to three),[86] this article demonstrates the need for judicial education on sustainability through the use of international statements made by members of the judiciary, past and present case law, as well as legislation, regulation, and government directives.

3.1.1. Case Law

Courts are increasingly being asked to adjudicate cases in which sustainability, its principles, and its tools are used. Here, I discuss several cases, demonstrating three important points. First, sustainability principles are already being used by courts, and so this is a topic relevant to the law. Further, sustainability (and its principles and tools) are increasingly being more clearly written into law,[87] which means courts will be required to interpret these ideas and commitments in the future. Second, judicial education on sustainability should be widespread. Many of the cases discussed here are from countries that have specialized ECTs and/or environmental rights engrained in their constitutions,[88] yet the cases are actually from general courts. This shows that the existence of specialized courts does not remove a need for judges on general courts to understand sustainability. Third, the principles of sustainability are, at times, applied inconsistently or incorrectly, sometimes by the same court, illustrating the need for education on these principles. In the following sections, I provide a discussion of two well-known international decisions, cases from four different countries with constitutional environmental rights or ECTs (India, Philippines, Sri Lanka, and Kenya), and also several examples in the Canadian context to demonstrate these points.

While sustainability may still be an emerging legal principle, we already have some cases where sustainability or its principles have factored into judicial rulings. In the examples provided below, the main principles that have been used include the precautionary principle, the polluter pays principle, and the principle of intergenerational equity.[89] At the international

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86 *Ibid* at A-4.

87 See Natasha Affolder, "The Legal Concept of Sustainability" (Paper delivered at A Symposium on Environment in the Courtroom: Key Environmental Concepts and the Unique Nature of Environmental Damage, Calgary, 23–24 May 2012), online: <www.cirl.ca/files/cirl/natasha_affolder-en.pdf> at Appendix 1 for a list of places in Canadian legislation that refer to sustainability or sustainable development.

88 *Constitution of India,* 2007, c IV, s 48A (stating that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country," note that India has a National Environmental Tribunal); *Sri Lankan Constitution*, 1978, c VI, s 27(14) and 28(f) (relating to the environment and nature). In addition, according to Supreme Court Justice Saleem Marsoof, Sri Lanka has "a specialized bench [of the Supreme Court] that receives environmental cases" (Irum Ahsan & Gregorio Rafael P. Bueta, eds, *Proceedings of the Third South Asia Judicial Roundtable on Environmental Justice for Sustainable Green Development, Colombo, 2014* (Manila: Asian Development Bank, 2015) at 13); *Administrative Order Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases*, SC, No. 23-2008 (2008) (Phil) created 117 "green courts" in the Philippines; *Philippines Constitution,* 1987, c 17, s 2 ("The State shall protect and advance the right of people to a balanced and healthful ecology in accord with the rhythm and harmony of nature"); *Kenya Constitution,* 2010, c 2 (on the environment and natural resources, and Kenya has both The Environment and Land Court as well as the National Environmental Tribunal).

89 The Rio Declaration lays out these and other principles: *1992 Rio Declaration on Environment and Development (Rio Declaration),* 14 June 1992, 31 ILM 874, UN Doc A/CONF.151/ at Principle 15 [Rio

level, the International Court of Justice (ICJ) and the Appellate Body of the World Trade Organization (WTO) have both grappled with sustainability. In the *Gabčikovo-Nagymaros Project (Hungary v Slovakia),* the legal concept of sustainable development was used in the reasoning of the decision.[90] This case arose due to a bilateral treaty between Hungary and Slovakia regarding a joint investment on the Danube River that was intended to protect against flooding, improve navigation, and produce hydropower.[91] Hungary subsequently suspended work on the project citing, in part, environmental concerns. Slovakia decided to proceed unilaterally by creating a diversion of the river which the court, ultimately, said was not acceptable; they therefore restored the joint cooperative regime.[92] Importantly, this was the first case where the principle of sustainable development was used by the ICJ—it did so by stating the increasing importance of considering the effects of projects on the environment and consequently the balance between economic development and environmental protection.[93] The Court suggested that Hungary and Slovakia re-examine the environmental impacts of the Gabčikovo from this perspective.[94] The important *Shrimp Turtle-I*[95] dispute forced the WTO Appellate Body to consider what "exhaustible resources" meant; it turned to a definition of sustainable development from the *1995 WTO Agreement*[96] to aid in its understanding.

In India, the justices presiding over *Vellore Citizens Welfare Forum v Union of India* made use of two important principles of sustainability, the precautionary principle and the polluter pays principle, in their decision related to pollution control of tanneries.[97] They discuss the large environmental impact that tanneries are having, specifically as it relates to water pollution, but they also note the significant economic benefits that this industry provides the country.[98] In considering these two impacts of the industry, they accurately consider sustainable development as a goal in noting "[t]he traditional concept that development and ecology are opposed to each [other], is no longer acceptable. […] Sustainable Development is the answer."[99]

Declaration]. The precautionary principle states that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"; the polluter pays principle is based upon the idea that "the polluter should, in principle, bear the cost of pollution"; the principle of intergenerational equity states that "[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."

90 *Case Concerning the Gabcikovo-Nagymaros Project (Hungary v Slovkakia)*, [1997] ICJ Rep 7 at para 140.

91 *Ibid* at para 15.

92 *Ibid* at paras 22–23.

93 *Ibid* at para 140.

94 *Ibid.*

95 *United States — Import Prohibition of Certain Shrimp and Shrimp Products* (1999), WTO Doc WT/DS58/AB/R (Appellate Body Report), online: WTO <http://docsonline.wto.org>.

96 *Ibid* at para 153.

97 *Vellore Citizens Welfare Forum v Union of India,* [1996] 5 SCC 647 (specifically referenced at 12–133, discussed in concept throughout).

98 *Ibid* at 11.

99 *Ibid* at 9.

The Sri Lankan Supreme Court relied on a number of principles of sustainability—polluter pays, precaution, intergenerational equity, among others—in rendering its decision in *Bulankulama v Secretary, Ministry of Industrial Development*,[100] a case about infringement of rights of local residents by a foreign company who held a Mineral Investment Agreement over a deposit of phosphate rock. The local residents believed the agreement would have negative implications both environmentally and economically. The decision stated explicitly that "[t]he inter-generational principle … should be regarded as axiomatic in the decision making process in relation to matters concerning the natural resources and the environment of Sri Lanka in general, and particularly in the case before us." The decision went on at length about sustainable development and the need to balance economic and environmental concerns over the long term, including for future generations.[101] This understanding factored into the decision to stay further contracts relating to the phosphate deposit until certain conditions (including investigations involving the Central Environmental Authority) were met.[102]

Intergenerational equity was also recognized in the Philippines case, *Oposa v Factoran*,[103] a class action suit filed on behalf of minors who sought to cancel timber license agreements (and to prevent new licenses from being issued) as they violated section 16 of the Philippines Constitution—that is, the right to a balanced and healthful ecology. In this case, the Court found for the petitioners; it applied the intergenerational equity principle in a somewhat progressive way, as it stated that the petitioners were not only able to file a class action suit for their own generation, but also for generations yet to come.[104]

Further, in deciding on a case dealing with the discharge of raw sewage into a public water source, the High Court of Kenya found that all future development must be sustainable.[105] Interestingly, the concept of sustainable development was used by the judges in this case despite the fact that "counsel from both sides chose not to touch on it although it goes to the heart of the matter before us."[106] This demonstrates an awareness of the concept of sustainability on the part of the judges, and an understanding of how such ideas should be applied, regardless of whether such points are put forth by counsel.

In a specifically Canadian context, a number of cases have applied principles or concepts related to sustainability in their decisions. For example, in *114957 Canada Ltée (Spraytech Société d'arrosage) v Hudson (Town*), the Supreme Court drew on the precautionary principle in their ruling;[107] a by-law passed by the town of Hudson, which restricted the use of pesticides, was found to fit within the municipality's jurisdiction.[108] In this decision, the judges relied

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100 *Bulankulama v Secretary, Ministry of Industrial Development* (2000), 3 Sri LR 243.

101 *Ibid* at paras 274–278.

102 *Ibid* at para 320.

103 *Minors Oposa v Secretary of the Department of Environment and Natural Resources (DENR)*, 33 ILM (1994) 173 (30 July 1993) (Phil).

104 *Ibid* at s 22, para 7.

105 *Peter K Waweru v Republic* (2007), AHRLR 149 (KeHC 2006).

106 *Ibid* at 7 (Findings, s 4).

107 *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town),* 2001 SCC 40 at para 31, [2001] 2 SCR 241 [*Spraytech*].

108 *Ibid* at para 27.

heavily upon interpretations of this principle from international law.[109] In *Imperial Oil v Quebec (Minister of the Environment),* the Supreme Court invoked the polluter pays principle in relation to sustainable development as part of its unanimous judgement regarding site contamination.[110] This was less of an innovative use, though, because this principle is actually engrained within Quebec's environmental legislation.[111] *R v Bata Industries Ltd* highlighted the precautionary principle in finding directors liable for not taking all due diligence to prevent contamination to groundwater and soil.[112]

The above examples illustrate the ways in which sustainability and its various principles have already been used in court decisions. They also demonstrate that some courts and judges have begun to apply principles of sustainability and have at least some existing knowledge of these concepts. Additionally, as mentioned earlier, the judiciary can also play an important role in ensuring sustainability is applied in a proactive way. This is often referred to as *progressive adjudication*, where courts hold governments accountable for commitments they have made at both domestic and international levels, as well as general obligations that stem from, amongst other principles, the public trust doctrine.[113] For example, at the core of a number of recent climate change cases around the world—the *Urgenda*,[114] *Klimaatzaak*,[115] and *Our Children's Trust* cases[116]—are people and organizations asking the courts to oblige governments to do more to reduce greenhouse gas emissions. This is in contrast to typical court cases where governments are taken to court for violations, that is, for undertaking a harmful action, as opposed to *failing* to act. It may be here, in situations where courts are being used as vehicles to force positive government action on issues related to sustainability, that specific principles, tools, and concepts will be first presented to the courts. Together, these cases are further evidence of the importance of educating judges on sustainability and the tools being put forth in legislation and regulation to achieve sustainability goals.[117]

Interestingly, the principles of sustainability are often inconsistently applied. As has been shown, Canadian courts have at times applied the principles of precaution and polluter pays, and yet at other times decisions by Canadian courts are clear demonstrations that there is still a great need to more broadly educate the judiciary on sustainability and its principles. In a case dealing with remediation orders for environmental clean-up and insolvency law, the Supreme Court found these orders to be no different from financial claims in specific circumstances,[118] thereby failing to ensure that remediation would be done by the polluting

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109 *Ibid* at paras 30–31.

110 *Imperial Oil Ltd v Quebec (Minister of the Environment),* 2003 SCC 58 at para 24, [2003] 2 SCR 624.

111 *Environmental Quality Act,* CQLR 1990, C Q-2, s 31.43.

112 *R v Bata Industries Ltd* (1992), 9 OR (3d) 329, 70 CCC (3d) 394 (ON CJ).

113 Collins, *supra* note 8 at 310.

114 *Urgenda*, *supra* note 13.

115 *VZW Klimaatzaak v Kingdom of Belgium, et al.* (Court of First Instance, Brussels, 2015).

116 See e.g. *Juliana, et al v United States of America,* 46 ELR 20072.

117 An Cliquet, "Activism in the courtroom: judges telling governments to act now!" (Paper delivered at the IUCN AEL Colloquium, Oslo, 22 June 2016) [unpublished].

118 *Newfoundland and Labrador v AbitibiBowater Inc*, 2012 SCC 67, [2012] 3 SCR 443 [*AbitibiBowater*].

company and consequently failing to enforce the polluter pays principle in insolvency law.[119] A further example of a case calling out for the use of sustainability principles is *Ontario Power Generation v Greenpeace Canada,*[120] a case decided by the Federal Court of Appeal. This case involves the expansion of the Darlington Nuclear Plant in Ontario. One question at hand was whether the assessment was reasonable in its exclusion of both severe low probability nuclear accidents and long-term off-site management of nuclear waste.[121] The court ruled that it was reasonable and therefore the responsible authority was not required to consider these factors.[122] It seems that a consideration of the precautionary principle (specifically as it relates to nuclear accidents) and intergenerational equity (in the context of long-term management of nuclear waste) would be warranted in this case. For example, a lack of consideration of the potential for catastrophic accidents involving existing and new reactors does appear to violate the precautionary principle, even though nuclear accidents are highly improbable.[123] Had the judges on the court been part of a judicial education program with sustainability content, it is more likely that we might have seen consideration of this principle in the decision. Ecojustice lawyers Kaitlyn Mitchell and Laura Bowman concur that there was a failure to consider the precautionary principle and that this may have serious ramifications for the future of Canadian environmental assessment law.[124]

The above cases illustrate that principles of sustainability are relevant to and can be effectively applied by the legal system. On the other hand, as two of the cases from Canada demonstrate, there are other situations where the principles of sustainability are used inconsistently, if at all. This illustrates the important role that judicial education on sustainability can play in ensuring continued and more consistent application of these ideas.

3.1.2. International Statements, Symposia & Reports

The content of a number of decisions and declarations also highlights the need for incorporating sustainability and/or environmental knowledge into judicial education programs. As has been previously mentioned, the *Declaration on Justice, Governance and Law for Environmental Sustainability* very clearly indicates that there is a need to educate the judiciary on issues related to sustainability.[125] In fact, the signatories to this declaration stated: "States should cooperate to build and support the capacity of courts and tribunals … *to achieve environmental sustainability by encouraging relevant institutions, such as judicial institutes, to*

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119 William A. Amos & Hugh S. Wilkins, "The Taxpayer Pays Principle? The Supreme Court of Canada's Findings in Newfoundland v. AbitibiBowater", *Slaw* (10 January 2013), online: <www.slaw.ca/2013/01/10/the-taxpayer-pays-principle-the-supreme-court-of-canadas-findings-in-newfoundland-v-abitibibowater/>.

120 *Ontario Power Generation Inc v Greenpeace Canada*, 2015 FCA 186, 388 DLR (4th) 685.

121 *Ibid* at paras 31, 55–56.

122 *Ibid* at para 157.

123 Rio Declaration, *supra* note 89.

124 Kaitlyn Mitchell & Laura Bowman, "Breaking: Supreme Court of Canada asked to weigh in on the future of environmental assessment law" (10 November 2015), *Ecojustice* (blog), online: <www.ecojustice.ca/were-taking-the-fight-for-better-environmental-assessments-all-the-way-to-the-supreme-court-of-canada/>.

125 Rio+20 Declaration, *supra* note 15 at Section I.

provide continued education [emphasis added]."[126] The 2002 *Johannesburg Principles on the Role of Law and Sustainable Development* also highlight the importance of the judiciary in dealing with the environment and, specifically, Principle 3 states that "[i]n the field of environmental law there is an urgent need for a concerted and sustained programme of work focused on education, training and dissemination of information, including regional and sub-regional judicial colloquia."[127] Principle 10 of the *Rio Declaration* is also evidence of a need for sustainability education for judges as it relates to environmental issues and effective access to justice.[128] Further, in 2001, the Governing Council of the United Nations Environment Programme highlighted this need; it specifically pointed to improving capacity in developing countries by "[a]rrang[ing] seminars, workshops and exchange programmes … on environmental law and policy, including on the implementation of international environmental instruments" for a variety of groups involved in environmental law, including the judiciary.[129] It also highlighted the need to improve training for the judiciary in relation to environmental dispute avoidance and settlement.[130]

In addition, the need for sustainability education for judges has been identified and highlighted through other meetings attended by members of the judiciary, as well as reports from different jurisdictions, each pointing to the importance of this type of learning program. The law division of the United Nations Environment Programme has a variety of resources available for members of the judiciary that all emphasize the important role of educating the judiciary on the environment and sustainable development. These resources include the *Judicial Handbook on Environmental Law*[131] and training modules,[132] among others. The European Union Forum of Judges for the Environment holds annual conferences relating to law and the environment and was created "with a view to raising the awareness of judges of the key role of the judicial function in the effectiveness of sustainable development."[133] The European Commission also aims to facilitate better implementation of environmental law by national judges in the European Union by providing communications, seminars, and training resources.[134] Further, the Pacific Islands Judges Symposium on Sustainable Development

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126 *Ibid* at Section I.

127 The Johannesburg Principles on the Role of Law and Sustainable Development at Principle 3, online: <www.unep.org/Documents.Multilingual/Default.asp?ArticleID=3115&DocumentID=259>.

128 Rio Declaration, *supra* note 89 at Principle 10.

129 *The Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century*, Governing Council, Dec 21/23, UNEP (2001) at Principle 2(b).

130 *Ibid* at 4(e).

131 Dinah Shelton & Alexandre Kiss, *Judicial Handbook on Environmental Law* (Nairobi: UNEP, 2005), online: <http://wedocs.unep.org/bitstream/handle/20.500.11822/8606/JUDICIAL_HBOOK_ENV_LAW.pdf>.

132 *Application of Environmental Law by National Courts and Tribunals*, Judicial Training Modules on Environmental Law (UNEP Law Division, n.d.), online: <www.unenvironment.org/resources/report/judicial-training-modules-environmental-law-introduction>.

133 European Union Forum for Judges of the Environment, "Presentation" (22 October 2014), online: <www.eufje.org/index.php/en/>.

134 It appears, though, that the last conference or seminar was held in 2012. Still, there are online materials available. See European Commission, "EU Environmental Law Training Package" (2016), online: <ec.europa.eu/environment/legal/law/judges.htm>.

provided an opportunity for judges to gather with environmental law experts and discuss the judiciary in relation to sustainable development.[135]

Importantly, these meetings and reports are not only attended or authored by judges involved in specialized ECTs, but also involve judges from courts of general jurisdiction as well. For example, the 2002 Global Judges Symposium on Sustainable Development and the Role of Law was hosted by the Chief Justice of South Africa.[136] Additionally, the Asian Judges Symposium, held in 2010 and attended by "around 120 senior judges, environment ministry officials, members of civil society, and experts in environmental law",[137] recognized the need for a specialized network focused on the environment, and thus the Asian Judges Environmental Network was formed. The initial symposium was hosted (in part) not by an ECT judge, but by the Chief Justice of the Philippines.[138]

Further, some prominent members of the judiciary have explicitly acknowledged a connection between sustainability or its principles and cases that come before the courts. A senior judge in Brazil pointed out that despite the lack of explicit references to sustainable development in key national legislation, there are references to similar principles and concepts, even if different words are used.[139] I would argue that judicial education on sustainability is important to help such connections to be made (whether the terminology is the same or not, though arguably consistency in terminology would make application easier). In addition, Charles D. Gonthier, former judge of the Supreme Court of Canada, highlighted the importance of sustainable development to other areas of law, stating that "[s]ustainable development law seeks to bring together, rationalize, reconcile and harmonize the various strands of the law."[140] This connection, though, may be hard to see unless the judiciary is educated regarding concepts related to sustainability and sustainable development.

As demonstrated above, it is not only those who expect to immediately adjudicate on issues related to sustainability that need to be educated, but it is also those who are on the bench of a general court. Judges on general courts may be faced with having to pass judgement on cases with connections (direct or indirect) to issues related to sustainability, and so they may need judicial education programs to fill gaps in their knowledge. Further, even judges of ECTs, for example, though they may have chosen to emphasize environmental/sustainability law in their legal education, could benefit from education on new developments in the area and the tools being used by governments in legislating targets or actions to meet targets. What is particularly

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135 G.L. Rose, "Report on Pacific Islands Judges Symposium on Sustainable Development" (2003) 7:1 J South Pac L 1 at 1.

136 Global Judges Symposium, *The Johannesburg Principles on the Role of Law and Sustainable Development Symposium* (Johannesburg: UNEP, 2002) online: <www.eufje.org/images/DocDivers/Johannesburg%20Principles.pdf>.

137 Asian Judges Network on Environment, "About AJNE" (2016), online: <www.ajne.org/about/asian-judges-network-environment>.

138 *Ibid.*

139 Comment made by the Hon. Justice Vladimir Passos De Freitas, President, Federal Court, Brazil; see UNEP, "Role of the Judiciary in Promoting the Rule of Law in the Area of Sustainable Development" (Presentation, UNEP Global Judges Programme) at slide 32, online: <wedocs.unep.org/bitstream/handle/20.500.11822/20270/Role-Judiciary.pdf?sequence=1&isAllowed=y>.

140 Justice C. Gonthier, "Sustainable Development and the Law" (2005) 1:1 JSDLP 11 at 11.

interesting is that the majority of these examples of sustainability and/or environmental education connected to the judiciary come from reports, statements, or one-off (or even annual) conferences and symposia.[141] Few, if any, examples involve sustainability curricula for the judiciary that are repeatedly delivered as part of a general judicial education program. This is further evidence of the need for new curricula to be developed and implemented.

3.2. Scope of Delivery

Following the identification of a need for judicial education, determining the scope of delivery of the learning program is important. In the case of judicial education on sustainability, one question is likely to be whether such education should only be delivered to judges who sit on ECTs or whether it should be something all judges receive. Another question is whether this content should only be pursued if judges are open to the idea. This section addresses both concerns and argues that education on sustainability should be delivered to the *entire* judiciary, whether they are currently aware and interested in the topic or not. However, there is reason to think that the specific content of sustainability-focused judicial education should vary depending on the context.

3.2.1. Judicial Education and Specialized Environmental Courts & Tribunals

The development of courts and tribunals specializing in environmental issues is important in the context of considering the need for judicial education related to sustainability. The presence of ECTs raises questions of whether it is necessary for general courts to be educated on principles of sustainability, or if this type of education should only be delivered to ECT judges. I argue that the presence of ECTs in a jurisdiction does not eliminate the need for wider judicial education on sustainability, but the content of educational programs should vary based on the context.

In a comprehensive analysis, Pring and Pring found that as of 2010, there were at least 354 ECTs[142] in 41 countries.[143] Though these courts exist in a variety of different countries, generally speaking, they are more common in developing countries.[144] This is likely, as Amirante notes, due to the different histories of environmental law and constitutional frameworks in the various countries.[145] Countries such as Canada, the United States, or those in Western Europe saw environmental law emerge as an additional type of law—an "add-on"; in fact, there is often no direct reference to the environment in their constitutional frameworks.[146] Indeed,

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141 See e.g. notes 128–139.

142 George Pring & Catherine Pring, *Greening Justice: Creating and Improving Environmental Courts and Tribunals* (Washington, D.C.: The Access Initiative, 2009) at 3 define ECTs as "judicial or administrative bodies of government empowered to specialize in resolving environmental, natural resources, land use development, and related disputes."

143 *Ibid* at 1.

144 Gitanjali Gill, "A Green Tribunal for India" (2010) 22:3 J Envtl L 461 at 461–462.

145 Domenico Amirante, "Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India" (2012) 29 Pace Envtl L Rev 441 at 444–448.

146 *Ibid* at 447.

coupled with other factors,[147] this perspective has seemed to mean there is less of an appetite to create specialized ECTs. Nonetheless, environmental courts have emerged in developed countries as well. For example, Australia and New Zealand are considered, in many ways, the homes of the "original" environmental courts. The Land and Environment Court of New South Wales and the New Zealand Environmental Court are significant players in the world of ECTs and are often looked to as examples when new countries are considering designing their own environmental court system.[148] Sweden also has an environmental court,[149] and there are some examples in Canada (the Ontario Environmental Review Tribunal) and the United States (State of Vermont Environmental Court; the Hawaii Environmental Court).

Some might argue we should simply move towards legal systems with specialized courts, and that this would largely eliminate the need for broader judicial education on topics such as sustainability. Despite the success of ECTs and the good examples that exist from which other countries could learn, a large-scale shift to ECTs dominating environmentally related cases around the world seems unlikely to be a complete solution for a number of reasons. First, some countries will find it difficult to create such specialized systems due to the administrative and legal complexities noted above,[150] and in these cases creating ECTs through a systemic reform of the judicial system is perhaps unlikely. In addition, even in places where ECTs exist, the final court of appeal is often a general court (e.g. the national or sub-national Supreme Court),[151] meaning that if programs were only delivered to specialized environmental judges, the ultimate decision makers could be lacking this education.

Perhaps most importantly, in many situations, cases that relate to sustainability may not fall squarely within the realm of the specialized courts, and yet they may have a considerable impact on issues of the environment and sustainability. For example, cases brought based on legislation over which specialized courts have not been given jurisdiction[152] would again mean that the decision-making power would sit with judges who have not received education on sustainability. An example from Canada is the 2012 Supreme Court decision in *Newfoundland and Labrador v AbitibiBowater Inc.*[153] This case was primarily categorized as a bankruptcy and insolvency case, but it is likely to have widespread effects on environmental protection orders. The province argued that environmental orders were different than claims under the *Companies' Creditors Arrangements Act* and therefore that AbitibiBowater should still be

147 *Ibid* also references a reluctance to reassess and create new court systems as well as the "myth of the generalist judge."

148 M.L. Pearlman, "The Land and Environment Court of New South Wales: A Model for Environmental Protection" (2000) 123 Water, Air, & Soil Pollution 395.

149 Jan Darpo, "Environmental Justice Through Environmental Courts? Lessons Learned from the Swedish Experience" in Jonas Ebbesson & Phoebe Okowa, eds, *Environmental Law and Justice in Context* (Cambridge: Cambridge University Press, 2009) 176 at 178.

150 Such as constitutional realities, a reluctance to create new court systems and other factors; see Amirante, *supra* note 145 and associated text.

151 See e.g. the Swedish case as highlighted in *supra* note 149 at 180. See also Chaturvedi, *supra* note 73 at 18–19 for a discussion of jurisdiction of the National Green Tribunal in India.

152 For example, the NSW Land and Environment Court was created by the *Land and Environment Court Act, 1979* and is only given authority over violations related to environment and planning law (see Part 3, Division 1, Section 17).

153 *AbitibiBowater*, *supra* note 118.

required to submit site remediation plans and to complete the remediation actions, despite its bankruptcy. Though environmental content was at the center of this case, the focus was on the definition of claims under the legislation, and despite considering the polluter pays principle, the ultimate decision was that environmental orders are the same as other claims and therefore get no precedence in terms of being paid. Though no ECT exists in the jurisdiction where this case arose, even in a situation where an ECT did exist, it is unlikely this case would have been heard by the environmentally educated judges; although the environment is front and center in the case, the legislation being considered —the *Companies' Creditors Arrangements Act*—is not environmental in nature.

Furthermore, even where ECTs are empowered to act, forms of sustainability education still need to be put in place. Presumably, judges appointed to the ECTs do not need to be taught introductory content, but since sustainability challenges are constantly evolving, continual refreshers seem especially important to keep these experts up to date. General courts are likely to have different kinds of cases, as well as a much lower base knowledge of these issues, and so a different curriculum would be appropriate. In other words, the presence of ECTs does not imply that judicial education on sustainability is not needed, but rather that different members of the judiciary need context-specific judicial education on this topic.

3.2.2. Openness

Another factor often considered important as part of a needs assessment process is whether the judiciary is receptive and convinced that something can and should be done to improve judicial knowledge in a particular area.[154] While it may be true that a lack of openness to, or interest in, the subject of sustainability is an obstacle to judicial education, it does not necessarily demonstrate that this type of education is unnecessary. In fact, especially amongst members of the judiciary not regularly involved in cases that have clear connections to sustainability, lack of interest in this concept and how it could be applied in their reasoning would not be surprising. This is not the same as saying such education is irrelevant—perhaps this lack of knowledge actually demonstrates the opposite, that such curricula is even more pressing.

Nonetheless, there is some recognition by members of the judiciary that sustainability education is important. The *Declaration on Justice, Governance and Law for Environmental Sustainability*, which came out of the Rio+20 meetings in 2012, is clear evidence of an acknowledgement by the global judiciary that there is a need for programs to improve judicial knowledge of topics, concepts, and ideas related to sustainability. This declaration begins with a list of those attending the World Congress on Justice, Governance and Law for Environmental Sustainability, including "Chief Justices, Heads of Jurisdiction, Attorneys General, Auditors General, Chief Prosecutors, and other high-ranking representatives of the judicial, legal and auditing professions,"[155] which indicates the breadth of support for the statement.

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[154] Positive reception by the judicial profession as well as having convinced the "right" people ("those who shape and control judicial education and those who are its recipients") are both identified as being important for a successful needs assessment; see Hudzik, *supra* note 16 at 9.

[155] Rio+20 Declaration, *supra* note 15.

The declaration includes statements such as:

> [S]tates should cooperate to build and support the capacity of courts and tribunals … *to achieve environmental sustainability by encouraging relevant institutions, such as judicial institutes, to provide continued education* [emphasis added][156]

Further, it states that "[t]his international institutional network may promote the achievement of: … (d) improved education, capacity-building, technology transfer and technical assistance, including with the aim of strengthening effective national environmental governance."[157] In addition, the annual national environmental law symposium hosted by the Canadian Institute of Resources Law[158] is a good indication of the acknowledged need for judicial learning on ideas related to the environment and sustainability, as are the other programs, such as the Asian Judges Symposium.

As demonstrated, there are knowledge, skill, ability, and competency gaps related to sustainability that should be filled by programs developed in the final stage of the needs assessment approach. There is a need for judicial education on sustainability issues in order to respond to the growing legal importance of sustainability and to the lack of current educational resources for the judiciary. Moreover, there is at least some evidence that this need is recognized by the judiciary, even if this openness should not be taken as a strict requirement for moving forward with developing judicial education programs on sustainability. The rest of this paper will focus on identifying suggestions for what curriculum content could begin to fill these identified gaps.

3.3. Content and the Importance of Context

Determining precisely what content should be included in judicial education curricula on sustainability is beyond the scope of this article, but it is useful to provide some suggestions of how curricula might differ based on context. There is a reasonable level of agreement on core principles of sustainability which have been specified at the international level, for example in the 27 principles written into the *Rio Declaration on Environment and Development*,[159] so the inclusion of some (or all) of these as primary starting points seems reasonable. Importantly, however, there is also great tension between the environmental, social, and economic dimensions of sustainability,[160] as well as the various types of sustainability (e.g. strong versus weak),[161] which might cause some important challenges to judicial education, especially depending on who is delivering the educational programs.[162] Therefore, it is very clear that within the

156 *Ibid* at Section I.

157 *Ibid* at Section III.

158 Canadian Institute of Resources Law, "Environmental Education for Court Practitioners" (2018), online: <https://cirl.ca/symposium>.

159 Rio Declaration, *supra* note 89.

160 See note 14 for references to research that has tackled the issue of conflicting aspects of sustainability (for example, economic versus environmental sustainability, among others).

161 See e.g. Eric Neumayer, *Weak versus Strong Sustainability: Exploring the Limits of Two Opposing Paradigms* (Cheltenham, UK: Edward Elgar Publishing Limited, 2003) at 1.

162 See discussion above (pages 7–8, notes 28–34) on some of the potential complications with different types of organizations providing and funding judicial education and consequently choosing topics for curricula.

confines of judicial education focused on sustainability, the content of the curricula is likely to depend on the context of the jurisdiction, how the judicial education programs are typically delivered, and the level of existing awareness of the issues by members of the judiciary. The idea that context is essential is regularly highlighted in the literature on judicial education.[163] A few examples may help clarify the different areas of focus that may be incorporated in curricula for judges in different jurisdictions.

Countries that have committed to the protection of the environment in their constitution or which have an active section of the judiciary engaged in ECTs may find that education programs need to be more advanced, since much of their judiciary is already familiar with the basics of sustainability. In contrast, countries that have no (or very limited) specialized courts may need a more introductory approach to sustainability education for the judiciary. It is also possible, though, that a given jurisdiction could develop a two-tiered approach to educating the judiciary on sustainability, where those already familiar with the concept and its principles are given more advanced training and others are provided with basic introductory content.

The stage of development of a country is part of the context that could condition the focus of judicial education for sustainability. For example, developing countries may find educating the judiciary on common but differentiated responsibility[164] to be an important principle. This principle is regularly advocated at international meetings to discuss such things as how the global community can deal with climate change.[165] Therefore, members of the judiciary in countries whose governments tend to emphasize the different responsibilities of developed versus developing countries, should probably be particularly knowledgeable about the principle of common but differentiated responsibility and how it relates to broader discussions of sustainability. Similarly, countries with emerging economies where environmental laws may be underenforced may find education on principles such as polluter pays to be very relevant.

Context in terms of what different countries are doing to implement sustainability goals is also important to consider when designing content for judicial education. For example, ideas such as green or clean growth have permeated discussions on sustainability in recent years,[166]

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163 *Meeting of US Based Organizations and Entities Working on Environmental Courts, Rule of Law, and Access to Justice* (Washington, DC: Pace Law School and World Resources Institute, 2010), online: <https://law.pace.edu/sites/default/files/Judicial_Institute/WRIPaceFinalreport.pdf> at 3–4.

164 Rio Declaration, *supra* note 89.

165 See e.g. *Adoption of the Paris Agreement, Proposal by the President, Annex: Paris Agreement,* Draft Dec, UNFCCC, 21st Sess, Annex Agenda Item 4(b), FCCC/CP/2015/L 9/Rev 1 (2015) article 2.

166 See e.g. OECD, *Towards Green Growth* (Paris: OECD Publishing, 2011), online: <www.oecd.org/env/towards-green-growth-9789264111318-en.htm>; United Nations, *Sustainable Development Knowledge Platform: Green Growth* (New York: United Nations Department of Economic and Social Affairs, n.d.), online: <sustainabledevelopment.un.org/index.php?menu=1447>; The World Bank, *Inclusive Green Growth: The Pathway to Sustainable Development* (Washington, D.C.: International Bank for Reconstruction and Development/International Development Association of the World Bank, 2012), online: <siteresources.worldbank.org/EXTSDNET/Resources/Inclusive_Green_Growth_May_2012.pdf>; Green Growth Knowledge Platform, "About GGKP" (2017), online: <www.greengrowthknowledge.org/about-us>; ministers representing 34 countries on the 2009 Green Growth Declaration (Declaration on Green Growth Adopted at the Meeting of the Council at Ministerial Level on 25 June 2009 [C/MIN(2009)5/ADD1/FINAL]); also, the European Union has a focus on resource productivity, EC, European Resource Efficiency Platform, *Manifesto & Policy Recommendations* (17 December 2012),

and so nations that are targeting green growth are perhaps more likely to see principles and tools of sustainability related to these ideas come before the judiciary. Therefore, designing an education program for judges that focuses on these areas may be important.

The above examples emphasize that context matters greatly in the development of curricula for judicial education on sustainability. Specifically, the precise content ought to depend on the circumstances of the court and legal system where the education is being delivered. In fact, I would suggest that attempting to define the specifics of curricula will require on-the-ground data collection. Therefore, stages two and three of the needs assessment[167] should be undertaken in future research that aims to more clearly define curricular content.

4. CONCLUSION

This research makes an argument for introducing sustainability into judicial learning programs. It makes use of a needs assessment to help make this argument, paying special attention to the fact that members of the judiciary may not know that they are lacking knowledge on sustainability and the law. Yet, given the potential sustainability impacts from an increasing number of cases, there is an urgency to implement this type of education. The article also provided some short examples of what sustainability-focused curricula for judges might look like. Sustainability, its principles and concepts, as well as the tools used by government to achieve these goals, are increasingly becoming written within the law and used by governments. Therefore, even without speculating about the importance of these issues on their own, or how they may be used by legal counsel in court cases aiming to force positive environmental actions by governments, or other progressive scenarios, it is clear that the judiciary will be, at some point, faced with interpreting these terms and ideas. This makes it even more crucial to address some of the clear challenges with the way sustainability education is offered, in the somewhat limited situations when it is. For example, these education programs are piecemeal and certainly not part of the general learning program for judges, which means it is likely to be primarily those already engaged or interested in this area who are attending. This is particularly concerning because members of the judiciary who need to be educated may be the least likely to attend, as they are perhaps unaware of the connection between the cases they decide and sustainability. Therefore, even basic education about the background of sustainability and how its main principles can relate to one another and have already been applied, will increasingly become important.

Finally, it is important to note what components go into building a successful judicial education program. These include such things as determining the appropriate process and delivery approach, what developmental approach makes the most sense,[168] and program

online: <ec.europa.eu/environment/resource_efficiency/documents/erep_manifesto_and_policy_recommendations_31-03-2014.pdf>; and the Ontario government has instilled ideas of resource productivity within their *Resource Recovery and Circular Economy Act*, SO 2016, c 12, Sched 1, Part III.

167 Hudzik *supra* note 16 at A-4: (2) initial thinking about the questions to ask in the needs assessment, (3) collect information.

168 Diane E. Cowdrey, "Educating into the Future: Creating an Effective System of Judicial Education" (2009–2010) 51 S Tex L Rev 885 at 890 discusses the three core principles that form the basis for an effective judicial education program: appropriate content, appropriate process and delivery, and developmental approach. Each of these are important to research, but this article is focused upon the

evaluation. Though these are important to consider when a program is actually deployed, the purpose of this article was to demonstrate a pressing need for incorporating sustainability into judicial education, and not providing recommendations on the final details of how such a program would operate. That said, the design and delivery methods of new judicial education programs should draw on best practices and principles from both continuing adult education and experimental learning.[169] For example, one such practice that seems well aligned with educating the judiciary is active engagement, a tenant of experiential learning that recognizes the importance of involving a person's "thoughts, feelings and physical activities" as well as the external environment in the learning process.[170] This approach fits well with judicial education because judges have a lot of existing knowledge that should be incorporated into any continuing education offering. In addition, once an education program regarding sustainability has been put into place, it is important to determine whether what was identified in the needs assessment is, in fact, being conducted and whether the material being delivered is filling those identified needs—this is called a retrospective assessment.[171] In conclusion, sustainability matters a great deal, as evidenced by its central place on the global agenda,[172] which means it will increasingly be relevant to the judiciary. Therefore, education programs should be developed to help fill the gap that currently exists in the knowledge base of the judiciary on sustainability.

first—appropriate content—and therefore only mentions the other two in passing. Future research should investigate these other principles in relation to sustainability and judicial education.

169 See Dawson, *supra* note 35 for a discussion of one model of judicial education based upon adult education and experiential learning; Armytage, "Educating Judges," *supra* note 41 at 169 discusses the importance of using adult and professional education principles as a foundation for judicial education, but that there is also a need to recognize the distinct nature of the judiciary in the design and delivery of programs.

170 Colin Beard & John Wilson, *Experiential Learning: A Best Practice Handbook for Educators and Trainers*, 2nd ed (Philadelphia: Kogan Page, 2006) at 2.

171 Hudzik, *supra* note 16 at 2.

172 SDGs, *supra* note 5.