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The International Framework for Court Excellence and therapeutic jurisprudence: Creating excellent courts and enhancing wellbeing

E Richardson, Magistrate P Spencer and Prof D Wexler*

There is a growing emphasis on the role of justice systems to improve the wellbeing of individuals and the communities that justice systems serve. This has been the argument of therapeutic jurisprudence scholars for decades and has recently been recognised by the Productivity Commission in Australia in 2014 in its report on Access to Justice Arrangements. This article discusses two important, but previously unrelated, tools that enable courts and tribunals to achieve this objective by improving the quality of justice and enhancing the wellbeing of individuals and communities in which those courts and tribunals operate: the International Framework for Court Excellence (IFCE or the Framework) and therapeutic jurisprudence (TJ). The IFCE, a quality management system for courts and tribunals, and TJ, an interdisciplinary discourse on the therapeutic and anti-therapeutic impact of the law and legal processes, are both aimed at improving the quality of justice. This article provides an outline of the Framework and TJ: the principles and methodologies that each entails and the various types of innovation and reform that have arisen through their application. The ways in which the two should work together is considered and it is suggested that there are benefits to be gained for courts and tribunals by incorporating principles of TJ into the Framework and by using the Framework to assess TJ reforms.

INTRODUCTION

There are two distinct and important tools available to judges, court administrators and staff, legal and other disciplines, professionals and academics, that have conceptual synergies and practical application in modern legal systems: the *International Framework for Court Excellence*¹ and therapeutic jurisprudence. The Framework, a quality management system for courts and tribunals, provides a specific methodology for reform and TJ is a broad field of interdisciplinary discourse consistent with the Framework, which involves the study of the law as a therapeutic agent. The argument made in this article is that the Framework and TJ are complementary in that both are aimed at improving legal systems, laws and legal processes. Both promote innovation and reform with the aim of creating excellent courts and tribunals that are fair, efficient, effective, impartial and that enable access to justice for their users. However, the promotion of wellbeing is another goal that excellent courts should ideally strive for and that this can be achieved using TJ and the Framework.

As this article outlines, TJ and the Framework each have something to offer the other: the Framework offers TJ, among other things, a tool which can be used to mainstream principles and practices of TJ into courts, including the problem-solving courts (or problem-oriented or

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¹ The International Framework for Court Excellence has been developed by the International Consortium for Court Excellence <<http://www.courtexcellence.com>>.

solution-focused courts as they are often referred to in Australia and New Zealand)² operating within them. Further, we argue in this article that the Framework will add rigour to the ongoing assessment and reform of problem-solving courts by incorporating them into the overall self-assessment process that courts undertake in implementing the Framework. Whereas, TJ offers the Framework an additional dimension that has the potential to further improve the experience of court users and promote wellbeing.

This article has been written from the viewpoint that those familiar with the Framework may not be familiar with the concept of TJ and that conversely those familiar with TJ may similarly not be familiar with the Framework. However, these two tools for court reform are unlikely to remain strangers for long. With the increasing emphasis on the relationship between a well-functioning justice system and the wellbeing of individuals and the community,³ the association between the Framework and TJ will grow at a fast pace. As the Productivity Commission in Australia has highlighted in its 2014 inquiry report on *Access to Justice Arrangements* the overriding objective of any civil justice system (and, we would argue, criminal justice system) is to enhance community wellbeing or quality of life.⁴ The Framework and TJ provide the analytical tools by which courts and tribunals can meet this objective.

INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE

In 2006, a consortium of courts and court-related organisations including the Australasian Institute of Judicial Administration (AIJA),⁵ the Federal Judicial Center (FJC) in the United States, the National Center for State Courts (NCSC) in the United States and the State Courts of Singapore came together to develop the *International Framework for Court Excellence*.⁶ The Framework provides “a framework of values, concepts and tools by which courts worldwide can voluntarily assess and improve the quality of justice and court administration they deliver”.⁷ The objective of the Framework is to provide courts and tribunals with a structured means to analyse existing court processes, policies and systems in order to identify areas for improvement and promote innovation. Since the launch in 2008 the Framework has been used by many courts and tribunals around the world.⁸

In contrast to business excellence frameworks that are not court specific, the Framework was developed with direct involvement of judicial officers and court and justice system administrators. As a result, judiciaries have embraced the Framework as a practical instrument that reflects the realities of court administration. Indeed, judicial officers and court administrators play a central role in the implementation of the Framework in each court. It is a tool that courts use to *internally* examine and rate their own performance and improvements in performance using the self-assessment questionnaire or the shorter checklist, as opposed to being externally imposed on courts by the executive arm of government. As Chief Justice Marilyn Warren from the Supreme Court of Victoria in Australia has noted, the Framework represents a form of *court-led* performance evaluation that benefits the public,

² M King, A Freiberg, B Batagol and R Hyams, *Non-adversarial Justice* (Federation Press, 2nd ed, Sydney, 2014), 20.

³ Productivity Commission of Australia, *Access to Justice Arrangements: Productivity Commission Inquiry Report Vol 1* (Commonwealth of Australia, Canberra, 2014), 6.

⁴ Productivity Commission of Australia, n 3.

⁵ The International Consortium for Court Excellence, consisting of the four founding members, is supported by a Secretariat based at the AIJA in Melbourne, Australia.

⁶ The first edition of the Framework was published in 2008 and a second edition in 2013. The second edition simplifies and modifies the first edition based on experiences from jurisdictions implementing the Framework. The Framework is a “living” document in so far that it is regularly reviewed and modified to reflect current practices and new initiatives. Assistance was also provided in developing the Framework by the European Commission for the Efficiency of Justice, Spring Singapore and the World Bank.

⁷ International Consortium for Court Excellence, *International Framework for Court Excellence* (2nd ed, International Consortium for Court Excellence, March 2013), 1.

⁸ A full list of members of the Consortium can be found on the Consortium website: <<http://www.courtexcellence.com/Members/Current-Members.aspx>>. Other jurisdictions that are not members of the Consortium have also utilised the Framework.

the institutions of government and the judiciary.⁹ The Framework contains a scoring system to provide courts with an internal benchmark to track the progress of the court, although the scoring system is not aimed at comparing courts against other courts.¹⁰

Implementing the Framework comprises a self-assessment process that involves an inventory of the various policies and practices across the entire court. This is referred to as a “health-check” for courts in the Framework.¹¹ A common experience in conducting self-assessment is that courts discover that there are many things they are already doing and doing well. On the other hand, gaps in policies and procedures may be identified. The Framework enables these various activities and initiatives, policies and procedures, and even the gaps, to be visualised and organised as elements of a broader picture of the court. Chief Justice Marilyn Warren has commented that in the Supreme Court of Victoria the Framework “has a unifying effect across the Court, allowing everyone to connect their work to a common goal and a coordinated strategy”.¹²

The Framework takes a holistic approach to court performance: shifting from measurement of a limited range of data to a process that incorporates quality of processes and outcomes.¹³ Court excellence is paramount to maintaining public confidence and trust in judicial institutions and thus the Framework can be instrumental in helping jurisdictions create positive relationships between the public and the courts.¹⁴ It represents a forward-looking rather than a reactive approach to court administration. It has been noted the Framework envisages an “ideal court” including the values and operations that such a court might entail.¹⁵ However, the Framework also recognises that each court will differ in its journey towards excellence, and as such, some courts may embrace the entire Framework while others will tackle smaller parts of the Framework at a time.

To this end, the Framework sets out fundamental court values that underpin excellence and guarantee due process and equal protection of the law:

- Equality before the law;
- Fairness;
- Impartiality;
- Independence of decision-making;
- Competence;
- Integrity;
- Transparency;
- Accessibility;
- Timeliness;
- Certainty.¹⁶

The Framework also provides for seven areas of court excellence over which the court’s performance is assessed. Each area is categorised as either a driver of court excellence; the systems and enablers for court excellence; and/or the results of court excellence:

⁹ M Warren, “From Evaluation to Improvement: A Chief Justice’s Perspective” (2014) 4(5) *Onāti Socio-legal Series* 953.

¹⁰ Not all courts implementing the Framework have used the scoring system.

¹¹ International Consortium for Court Excellence, n 7, 13; A Skellern and M MacKenzie, “Report from the District Courts of New Zealand” (2015) 5 *ICCE Newsletter* 4.

¹² M Warren, “Leadership and Culture Change in Implementing the International Framework for Court Excellence” (2015) 4 *ICCE Newsletter* 8, 8-9.

¹³ International Consortium for Court Excellence, n 7, 1.

¹⁴ International Consortium for Court Excellence, n 7, 3.

¹⁵ B Ostrom and R Hanson, *High Performance Court Framework – Achieving High Performance: A Framework for Courts* (National Center for State Courts, April 2010).

¹⁶ International Consortium for Court Excellence, n 7, 3.

Driver

1. Court leadership and management.

Systems and enablers

2. Court planning and policies.
3. Court resources (human, material and financial).
4. Court proceedings and processes.

Results

5. Client needs and satisfaction.
6. Affordable and accessible court services.
7. Public Trust and confidence.¹⁷

The Framework provides a model methodology for continuous evaluation and improvement that involves a four-step process of Assess, Plan, Implement and Evaluate, outlined in more detail later in the article. Short-term actions needed and intermediate or long-term goals aligned to the seven areas of excellence will be identified and prioritised by each court through the continuous improvement process.¹⁸ The Framework outlines two options to perform self-assessment: the Self-Assessment Questionnaire which uses the full quality management methodology that provides a more in-depth analysis of court performance or a simplified Self-Assessment Checklist which provides guidance on expectations of court performance.¹⁹ The Self-Assessment Checklist approach is outlined in the *Thinking of Implementing the International Framework for Court Excellence* document.²⁰ All judges and court personnel should be given the opportunity to participate in the self-assessment process. The court's professional partners and court users should also be consulted on services provided by the court.²¹

Courts and tribunals in small and large jurisdictions, in developed or developing countries, have used the Framework in different ways and each have a different path towards court excellence, even though many courts face similar problems such as increasingly heavy workloads and limited resources.²² Some jurisdictions have formed committees or employed personnel experienced in quality management to manage the implementation process. The Framework provides a tool that can be adapted to the individual jurisdiction, including those courts operating problem-solving courts. As part of implementation process some courts have tailored the self-assessment questionnaire to be more appropriate to the local jurisdiction. The adaptation process may also increase engagement or a sense of ownership over the whole process. The self-assessment process also provides a meaningful way for court staff and the judiciary to have their say about how the court operates and how it should operate. This may include participation in the development of the Improvement Plan in some jurisdictions.²³

Measurement of performance and progress is also emphasised in the Framework,²⁴ and the separate document "Global Measures of Court Performance" written on behalf of the consortium outlines 11 core court performance measures.²⁵ Performance measurement involves collecting and

¹⁷ International Consortium for Court Excellence, n 7, 12.

¹⁸ International Consortium for Court Excellence, n 7, 5, 16. The Improvement Plan should contain details of the actions to be taken, successful outcome to be achieved, steps required to achieve the outcome, personnel to be involved and responsible for the actions, timeframes and measures of success. Guidance on developing an Improvement Plan and a template is provided in the Framework: 24-26, Appendix B.

¹⁹ International Consortium for Court Excellence, n 7, 16.

²⁰ This can document can be found at <<http://www.courtexcellence.com/Implementation/Implementing-the-Framework.aspx>>.

²¹ International Consortium for Court Excellence, n 7, 15.

²² International Consortium for Court Excellence, n 7, 27.

²³ C Ingram, "The Judiciary of the Republic of the Marshall Islands: Interview with Chief Justice Carl Ingram" (2014) 3 *ICCE Newsletter* 9.

²⁴ International Consortium for Court Excellence, n 7, 27-28.

²⁵ D Hall and I Keilitz, *Global measures of court performance: Discussion Draft Version 3* (November 9, 2012) <http://www.courtexcellence.com/~media/Microsites/Files/ICCE/Global%20Measures_V3_11_2012.ashx>. The eleven core court performance measures are: court user satisfaction, access fees, case clearance rate, on-time case processing, pre-trial

maintaining accurate, reliable and comprehensive quantitative and qualitative data from a range of sources.²⁶ The Framework distinguishes between court performance *measurement* indicators and tools, and court performance *management* policies and tools,²⁷ but it is the “Global Measures of Court Performance” that identifies the specific performance indicators to be used.²⁸ Hall and Keilitz note that emphasis ideally should be placed on outcome measurement, that is, the “impact of services on the status or condition of those served” rather than focusing on outputs and inputs.²⁹ This issue is discussed later in this article.

The self-assessment process has led to numerous innovations and improvements in courts, including:

- The systemisation and entrenchment of court-user satisfaction surveys;³⁰
- Peer review and pastoral care programs for judges;³¹
- Measures to support health and wellbeing of judges and staff;³²
- New ways to manage divorce cases;³³
- Improvements to courts governance;³⁴
- Enhancing and expanding existing court access and inclusion frameworks for vulnerable and disadvantaged court users;³⁵
- Development of court strategic plans that place emphasis on the fundamental court values and emphasise procedural fairness, treating court users with fairness and respect;
- Consistent and systematic review of court policies, rules and procedures;³⁶
- Improving physical court facilities;³⁷
- Use of technology to increase access for court users;³⁸
- Improving communication with court users;³⁹ and
- Monitoring access to and use of court decisions.⁴⁰

custody, court file integrity, case backlog, trial date certainty, employee engagement, compliance with court orders and cost per case.

²⁶ International Consortium for Court Excellence, n 7, 28.

²⁷ International Consortium for Court Excellence, n 7, 28. Court performance measurement tools and indicators are set out in general terms in Appendix C of the Framework and court performance management policies and tools in Appendix D of the Framework.

²⁸ Other Court performance measure tools include CourTools and the NCSC have created other guides for specific jurisdictions and topics (including various problem solving courts, child protection, and trial courts) that have relevance to TJ: <<http://www.ncsc.org/Topics/Court-Management/Performance-Measurement/Resource-Guide.aspx>>. Other tools from Europe can be found on the Consortium website at <<http://www.courtexcellence.com/Resources/Other-Resources.aspx>>.

²⁹ Hall and Keilitz, n 25, 5.

³⁰ T Verteletskyy, “Report on Ukraine Court Performance Evaluation System” (2015) 4 *ICCE Newsletter* 5; Family Court of Australia, *Annual Report 2014-2015* (Commonwealth of Australia, 2015); The Judiciary of Republic of the Marshall Island, *Strategic Plan 2014-2018*; Federal Circuit Court of Australia, *Annual Report 2014-2015* (Commonwealth of Australia, 2015).

³¹ C Doherty, “Report from the District Courts of New Zealand” (2014) 3 *ICCE Newsletter* 6; Skellern and MacKenzie, n 11.

³² Federal Circuit Court of Australia, n 30.

³³ D Hall, “Applying the IFCE to the State Courts in the United States” (2015) 5 *ICCE Newsletter* 5.

³⁴ M Vallance, “Implementing the IFCE as a ‘Holistic’ Means for Achieving Excellence” (Paper presented at the AIIA Asia Pacific Conference, Auckland, March 2013).

³⁵ Family Court of Australia, n 30.

³⁶ The Judiciary of Republic of the Marshall Island, n 30; Federal Circuit Court of Australia, *Annual Report 2013-2014* (Commonwealth of Australia, 2014).

³⁷ D Hall, “Report on Regional Forum in Bangladesh” (2014) 3 *ICCE Newsletter* 8.

³⁸ D Hall, “Report on Regional Forum in Bhutan” (2014) 3 *ICCE Newsletter* 8.

³⁹ Hall, n 37; Federal Circuit Court of Australia, n 32; Land and Environment Court of New South Wales, *Annual Review 2013* (State of New South Wales, 2014).

⁴⁰ Land and Environment Court of New South Wales, *Annual Review 2014* (State of New South Wales, 2015).

Aside from using the Framework as a self-assessment tool, different jurisdictions use the Framework for a range of purposes. The Supreme Court of Victoria in Australia uses the Framework as its foundational management model⁴¹ and as a means of communication with Treasury departments about the improvements and successes made by the court, which are then tied to funding needs.⁴² The Framework has also been used to develop jurisdiction specific frameworks such as the High Performance Courts Framework in the United States, a version of the Framework developed by the NCSC to use in the United States state courts.⁴³ Further, the Framework has been used to answer explicit questions about the operations of a court such as whether adjudication and case management methods provide access to justice and procedural fairness?⁴⁴ Founding Consortium members, the NCSC and the State Courts of Singapore, have consistently played a role in educating developing nations about the Framework and conducting workshops around the world that train judiciaries in conducting the self-assessment process.⁴⁵

THERAPEUTIC JURISPRUDENCE

Therapeutic jurisprudence is described as the “interdisciplinary study of the law’s effect on physical and psychological wellbeing” and as an “intellectual discourse” that has “significant practical implications in the daily work of the judiciary, lawyers, legal educators and behavioural science professionals involved in the work of the legal system”.⁴⁶ TJ therefore involves the study of the role of the law as a therapeutic agent. The concept was developed in the 1980s by American law professors David Wexler and Bruce Winick who argued that the law had not benefited from “truly interdisciplinary cooperation and interchange – from having the knowledge, theories, and insights of the mental health disciplines help shape the law, the legal system, and the behaviour of legal actors”.⁴⁷ TJ regards the law as a social force that produces behaviours and consequences. Sometimes these consequences fall within the realm of what is therapeutic (beneficial to wellbeing); at other times anti-therapeutic consequences are produced.⁴⁸

Like the Framework, TJ aims to improve the quality of the law and legal processes including court and tribunal performance. Moreover, as outlined below, TJ has developed a methodology for assessing and improving the therapeutic dimension of the law on an ongoing, continual basis. Through the lens of TJ, courts and tribunals can seek to maximise therapeutic consequences and minimise anti-therapeutic consequences of the law and legal processes in so far as other values, such as justice and due process, can be fully respected.⁴⁹ In doing so, TJ draws on fields such as psychology, behavioural sciences, social work and criminology to inform court innovation.

TJ is said to underpin a range of court programs or procedures across the world, including but not limited to, specialist or problem-solving courts such as drug courts, mental health courts, veteran’s courts and family violence courts.⁵⁰ However, the connection between drug courts and TJ was

⁴¹ Warren, n 12; Vallance n 34.

⁴² D Hall, “Report on the United States” (2014) 3 *ICCE Newsletter* 5; Warren, n 12; Vallance n 34.

⁴³ Hall, n 42; Ostrom and Hanson, n 15; B Ostrom, M Kleiman, and R Hanson, “The High Performance Court Framework” (2011) *Future Trends in State Courts* 140. See also the NCSC website for more information and tools with respect to the *High Performance Court Framework*: <<http://www.ncsc.org/Information-and-Resources/High-Performance-Courts/High-performance-court-resources.aspx>>.

⁴⁴ Hall, n 42.

⁴⁵ Information about these workshops are detailed in the International Consortium for Court Excellence newsletter, which can be found at <<http://www.courtexcellence.com/News.aspx>>.

⁴⁶ King et al, n 2.

⁴⁷ DB Wexler and BJ Winick, *Essays in Therapeutic Jurisprudence* (Carolina Academic Press, Durham, North Carolina, 1991), 17.

⁴⁸ For an introduction to TJ see resources at <<https://mainstreamtj.wordpress.com/what-is-tj/>>.

⁴⁹ DB Wexler and BJ Winick (eds), *Law in a Therapeutic Key* (Carolina Academic Press, Durham, North Carolina, 1996).

⁵⁰ A search of the term “courts” in the International Network on Therapeutic Jurisprudence Bibliography will find hundreds of articles on TJ and its applications in Courts <https://law2.arizona.edu/depts/upr-intj/bibliography/biblio_searchform.cfm>.

retrospective and made some 10 years after drug courts and TJ each arose independently of each other in the late 1980s.⁵¹ This provides an example where the TJ lens was applied to an existing law or legal process to highlight or explain the ways in which its operation was consistent with TJ principles.

There is also a worldwide movement towards using TJ to drive innovation in mainstream courts and tribunal settings.⁵² Examples of innovations said to be underpinned by TJ principles in mainstream court settings include:

- Improved court processes such as criminal settlement conferences;⁵³
- Innovations in court programs such as supervised court bail treatment programs⁵⁴ and collaboration between courts and community agencies;⁵⁵
- Improved practices of legal actors, namely judges, through professional development in TJ techniques;⁵⁶
- Improved practices of legal actors, for example, judges in writing legal decisions⁵⁷ or how defence lawyers approach the representation of their clients in court;⁵⁸
- Innovations in the ways mainstream courts and tribunals respond to people with particular needs such as people experiencing poor mental health;⁵⁹
- Innovations in the way courts and tribunals respond to particular legal issues. Some examples include TJ techniques being used to improve responses to problem tenants in housing courts in the Netherlands, residential school abuse claims in Canada or improved court responses to sexual offending in Australia.⁶⁰

The similarities with the list of innovations brought about by the Framework are evident. Casey and Rottman in their consideration of the ways TJ enhances court performance have highlighted numerous other examples of court applications of TJ in various court settings.⁶¹

⁵¹ P Fulton Hora, W Schma and J Rosenthal, "Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America" (1998-1999) 74 *NDLR* 439.

⁵² The International TJ in the Mainstream project is supported by academics, lawyers, social science practitioners and judicial officers in 18 different countries: <<https://mainstreamtj.wordpress.com/about>>.

⁵³ M Jones and D Wexler, "Employing the 'Last Best Offer' Approach in Criminal Settlement Conferences: The Therapeutic Application of an Arbitration Technique in Judicial Mediation" (2013) 6 *Phoenix L Rev* 843 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2208050>.

⁵⁴ An example of such a program is the Magistrates' Court of Victoria Court Integrated Service Program (CISP) <https://www.magistratescourt.vic.gov.au/sites/default/files/Default/CISP_Evaluation_Report.pdf>.

⁵⁵ MS King, "What Can Mainstream Courts Learn From Problem-Solving Courts?" (2007) 32(2) *Alt LJ* 91, <<http://www5.austlii.edu.au/au/journals/AltLawJl/2007/17.html>>; M King, *New Directions in the Courts' Response to Drug and Alcohol Related Legal Problems: Interdisciplinary Collaboration* (Monash University - Faculty of Law, 2012), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2130343>.

⁵⁶ MS King, *Solutions-Focused Judging Bench Book* (Australasian Institute of Judicial Administration, 2009) <<http://www.aija.org.au/Solution%20Focused%20BB/SFJ%20BB.pdf>>.

⁵⁷ S Murray, "'A Letter to the Loser'? Public Law and the Empowering Role of the Judgment" (2014) 23(4) *Griffith LR* 545.

⁵⁸ D Segev, "Therapeutic Jurisprudence for Defence Lawyers", *Therapeutic Jurisprudence in the Mainstream* blog <<https://mainstreamtj.wordpress.com/2015/04/18/therapeutic-jurisprudence-for-defence-lawyers>>.

⁵⁹ Mental Health Tribunal, *A Guide to Solutions-Focused Hearings in the Mental Health Tribunal* (Victoria, Australia, 2014) <<http://www.mht.vic.gov.au/wp-content/uploads/2014/07/Solution-focused-hearings-guide-PDF-online-searchable.pdf>>;

M Edgley, "Mental Health Courts Informing Mainstream Courts" *Therapeutic Jurisprudence in the Mainstream* blog <<https://mainstreamtj.wordpress.com/2015/01/09/mental-health-courts-informing-mainstream-courts>>.

⁶⁰ M Vols, "Problem Tenants Therapeutic Jurisprudence and Mainstream Housing Courts", *Therapeutic Jurisprudence in the Mainstream* blog <<https://mainstreamtj.wordpress.com/2014/08/24/problem-tenants-therapeutic-jurisprudence-and-mainstream-housing-courts>>; Centre for Innovative Justice, "Innovative Responses to Sexual Offending" *Therapeutic Jurisprudence in the Mainstream* blog <<https://mainstreamtj.wordpress.com/2014/09/04/innovative-justice-responses-to-sexual-offending>>; S Trevethan, "Resolving Indian Residential School Abuse Claims Using Therapeutic Jurisprudence Techniques", *Therapeutic Jurisprudence in the Mainstream* blog <<https://mainstreamtj.wordpress.com/2015/01/15/resolving-indian-residential-school-abuse-claims-using-therapeutic-jurisprudence-techniques>>.

⁶¹ P Casey and DB Rottman, "Therapeutic Jurisprudence in the Courts" (2000) 18 *Behav Sci Law* 445.

TJ is a significant and truly international field of legal scholarship. TJ principles underpin other fields of legal scholarship and practice such as restorative justice and procedural justice. It provides a lens through which particular laws and legal processes can be examined to identify areas for continuous improvement, in a way that is not prescriptive. Its non-prescriptive nature not only reflects the ethos of the Framework but the TJ analysis can also be incorporated into the self-assessment process under the Framework. Accordingly, the particular circumstances of a court can be taken into account while at the same time striving for improvements to the wellbeing of individual court users and communities. This is in line with the recommendation by the Productivity Commission in Australia noted earlier that the overriding objective of a justice system should be to improve the wellbeing of its citizens.⁶²

TJ provides a range of useful resources for court administrators and judicial officers who are considering innovation. Much has been written on TJ, the law and courts. A range of TJ networks exist including the International Network on TJ.⁶³ There are also a range of resources including a searchable bibliography hosting resources in a range of languages and legal areas,⁶⁴ the Australasian TJ Clearinghouse,⁶⁵ bench books and other tools for court administrators and judicial officers.⁶⁶ Academics and practitioners also regularly come together at TJ conferences to discuss court innovations and research based in TJ.⁶⁷

Just as the Framework provides a model methodology for continuous evaluation and improvement, TJ provides a methodology for facilitating (and ultimately evaluating) the therapeutic design and application of the law in mainstream court settings. TJ works across two areas:

- The therapeutic design of the law (TDL); and
- The therapeutic application of the law – legal practices and techniques of the legal actors (TAL).

From its inception, TJ has been interested in the therapeutic and anti-therapeutic consequences of laws and legal processes – which may be thought of as the relevant “legal structures” or “bottles” – as well as the practices and techniques used by legal actors (judges, lawyers, mental health and criminal justice professionals), which may be thought of as “liquid” or “wine”. The emerging methodology for bringing TJ into the mainstream legal/judicial system is to examine carefully the various stages of the relevant legal structure – the “bottles” – and to see whether the TJ practices and techniques (the “liquid”) can be poured in.⁶⁸

If the bottles, in theory, permit the introduction of TJ practices and techniques, the next step is to then consider how this could happen, for example, through education and training of lawyers, prosecutors or judges. This is the TAL. Sometimes the “bottles” will be such that they do not easily permit the use of TJ techniques, in which case actual law reform might be necessary. This is the TDL. Given that the focus of this article is on court excellence, TDL inquiries will be far less important for present purposes than will TAL. It is important to note, however, that there is an important relationship between TDL and TAL; in assessing whether TAL is able to flourish in certain legal stages or

⁶² Productivity Commission of Australia, n 3.

⁶³ International Network on Therapeutic Jurisprudence <<https://law2.arizona.edu/depts/upr-intj>>.

⁶⁴ International Network on Therapeutic Jurisprudence, n 63.

⁶⁵ See <<http://www.aija.org.au/index.php/research/australasian-therapeutic-jurisprudence-clearinghouse?task=view&id=206>>.

⁶⁶ A range of resources can be found at <<https://mainstreamtj.wordpress.com/resources>>.

⁶⁷ The 4th International TJ Conference was held in Auckland, New Zealand, in September, 2015 <<http://tjaotearoa.org.nz>>.

⁶⁸ For an explanation of DB Wexler, “Wine and Bottles” methodology see <<https://mainstreamtj.wordpress.com/resources/new-wine-in-new-bottles>>; DB Wexler, “New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence ‘Code’ of Proposed Criminal Processes and Practices” (2014) 7 *Arizona Summit LR* 463; Arizona Legal Studies Discussion Paper No 12-16. Available at SSRN: <<http://ssrn.com/abstract=2065454>> or <<http://dx.doi.org/10.2139/ssrn.2065454>>; DB Wexler, “Moving Forward on Mainstreaming Therapeutic Jurisprudence: An Ongoing Process to Facilitate the Therapeutic Design and Application of the Law” in Brookbanks W (ed), *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomson Reuters, New Zealand, 2015); Arizona Legal Studies Discussion Paper No 15-10. Available at SSRN: <<http://ssrn.com/abstract=2564613>>.

proceedings, some TDL inquiries would need to be asked, for example: Are judges permitted under local law to facilitate plea negotiations? Can courts hold follow-up hearings to engage in judicial monitoring of community corrections orders?

All courts and tribunals will be involved in the application of the law through a range of legal processes from the forms a person needs to fill out through to procedures in the courtroom. A range of legal actors are involved in courts including court staff, lawyers, judges and support/treatment staff working in a legal context. All these aspects are amenable to be viewed through a TJ lens with a view to improving wellbeing of those who are in contact with the court.

This emerging TJ methodology could be used in conjunction with the Framework either as a parallel process that informs self-assessment (and in particular informs the TJ items of the Self-Assessment Checklist identified in Appendix C) or the self-assessment process under the Framework might identify discrete gaps or problems to which the TJ methodology could be applied to assist with creating the Improvement Plan that arises out of implementation of the Framework. The ways in which TJ might be incorporated into the seven areas of court excellence are elaborated upon further below.

THERAPEUTIC JURISPRUDENCE, THE FRAMEWORK AND COURT EXCELLENCE

There are important synergies between TJ and the Framework found in the court values and the seven areas of court excellence.

Court values

The Framework acknowledges the role of a sound justice system not only for positive economic growth but also for healthy social development.⁶⁹ TJ's core value – the maximisation of the wellbeing of individuals and communities – has the potential to further the role of a justice system in healthy social development. The role of the justice system in social and economic development is also the focus of the Productivity Commission inquiry report on *Access to Justice Arrangements*.⁷⁰ The importance of a well-functioning civil justice system is highlighted by the following statement:

The civil justice system shapes social and economic activity by establishing and enforcing legal rules. As Genn said:

The civil justice system provides the legal architecture for the economy to operate effectively, for agreements to be honoured and for the power of government to be scrutinised and limited. (2010, p 3)

Much of what Australians value about a well-functioning justice system takes place “behind the scenes”. When the justice system functions well, it allows Australians to determine their rights and responsibilities and provides an incentive for individuals and businesses to comply with laws and regulations. For example, a well-functioning system gives people the confidence to enter into personal and business relationships, to enter into contracts, and to invest. This, in turn, contributes to Australia's economic performance.

When people are confident that returns from engaging in activities are protected, economic growth is promoted and innovation encouraged.

...

Well-functioning justice systems can also promote social order and facilitate the peaceful resolution of disputes. To the extent that the law reflects the community's expectations and desires, the courts communicate and reinforce civic values and norms in making and promulgating their decisions.⁷¹

The core court values identified in the Framework of equality before the law, fairness, impartiality, independence of decision-making, competence, integrity, transparency, accessibility, timeliness and certainty are also aspects of the justice system that encourage social and economic growth. These values enhance the wellbeing of those who come in contact with the court and the community in which a court sits. In addition, TJ approaches touch on many, if not all, of the

⁶⁹ International Consortium for Court Excellence, n 7, 3.

⁷⁰ Productivity Commission of Australia, n 3.

⁷¹ Productivity Commission of Australia, n 3, 138-139.

Framework's current values. A justice system's role in healthy social development could be further enhanced if the TJ value of maximising wellbeing of individuals and communities were itself explicitly included as a core value of court excellence.

King has argued in a similar fashion in his discussion of judicial values that an "ethic of care" should be added to the traditional values of judicial conduct of independence, impartiality, integrity. An ethic of care is described as "an approach that is mindful of the effect of judicial action on the wellbeing of those taking part in or otherwise affected by judicial processes".⁷² An ethic of care is important in problem-solving courts and indigenous courts but should be integral to all forms of judging.⁷³ An ethic of care, as King notes, does not mean:

judicial officers becomes social workers, only that as people in authority who exercise power over citizens there is need for judicial officers to take the wellbeing of those people into account in determining how they conduct court processes and in how they render their decisions.⁷⁴

The current Framework values provide for procedural fairness or procedural justice as being fundamental and standard to court excellence, not as innovative. Looking through a TJ lens, the expectations of procedural justice – voice, neutrality/transparency, respectful treatment and trustworthy authorities – are tools for maximising therapeutic outcomes.⁷⁵ However, TJ goes beyond procedural justice drawing on fields such as psychology, behavioural sciences, social work and criminology to inform court innovation.⁷⁶

Take, for example, a criminal court where offenders are sentenced for crimes that have resulted from drug addiction. A procedurally fair approach would comprise of offenders having an opportunity to put to the court their personal mitigating circumstances, the judge listening and taking into account these circumstances and providing a reasoned decision on sentence that is explained to the offender in a respectful way. A TJ approach would not only demonstrate procedural fairness but also draw on behavior science and addiction medicine and consider whether the legal process could be further improved to maximise the wellbeing of an offender and the broader community. A TJ approach may lead not only to fairness of process in the court proceedings but to the development of a court support program where an offender is able to undertake a drug rehabilitation program while being supervised by the judge who encourages behavioural change. This example illustrates how the TJ's core value of maximising wellbeing can underpin court innovation.

In a similar vein, many jurisdictions grapple with the challenges posed by increasingly high numbers of defendants with mental impairments appearing before the courts. These defendants, for whom the criminal justice process is both difficult to understand and confusing, often have poorer outcomes when compared to defendants without mental impairment.⁷⁷ A TJ approach looks to ways that enhance the wellbeing of these defendants by improving the procedural fairness of the court experience and increasing access to justice. This can be achieved in numerous ways, including implementing procedures and publishing information that help defendants with mental impairment to understand court procedures, explaining the information or providing time and support to defendants

⁷² MS King, "Judging, Judicial Values and Judicial Conduct in Problem-Solving Courts, Indigenous Sentencing Courts and Mainstream Courts" (2010) 19 JJA 133, 151, citing K Auty, "We all Teach Hearts to Break but can we Mend them?" (2006) 1 E LAW 101 and RK Warren, "Public Trust and Procedural Justice" (2000) 37(3) *Court Rev* 12, 15.

⁷³ King, n 72.

⁷⁴ King, n 72, 152.

⁷⁵ K Burke and S Leben, "Procedural Fairness: A Key Ingredient in Public Satisfaction. White Paper of the American Justice Association" (2007) 44 *Court Rev* 4

<http://www.proceduralfairness.org/~media/Microsites/Files/procedural-fairness/Burke_Leben.ashx>.

⁷⁶ D Wexler, Adding Color to the White Paper: Time for Robust Reciprocal Relationship between Procedural Justice and Therapeutic Jurisprudence (2008) <<http://ssrn.com/abstract=1131768>>; DB Wexler, "Guiding Court Conversation Along Pathways Conducive to Rehabilitation: Integrating Procedural Justice and Therapeutic Jurisprudence" (2016, forthcoming) 1 International Journal of Therapeutic Jurisprudence; Arizona Legal Studies Discussion Paper No 15-33. Available at SSRN: <<http://ssrn.com/abstract=2677431>> or <<http://dx.doi.org/10.2139/ssrn.2677431>>.

⁷⁷ E Richardson and B McSherry, "Diversion Down Under – Programs for Offenders with Mental Illnesses in Australia" (2010) 33(4) *Int J Law Psychiat* 249.

to understand the information, using less adversarial procedures in the court room, taking more time in the courtroom to understand the defendant's circumstances and being cognisant of issues such as oral competence⁷⁸ and communication difficulties.⁷⁹ It may also involve facilitating access to treatment and services where appropriate, creating screening and assessment processes to identify those defendants with mental illness who are appropriate for diversion away from the criminal justice system or into a court-based diversion program that operates within the criminal justice system that seeks to address the criminogenic needs of defendants to break the cycle of offending.⁸⁰

Court excellence drivers: Leadership and management

The Framework acknowledges the role of judicial officers as leaders of change. The role of the judicial officer as a leader is also well recognised in TJ.⁸¹ As the Canadian TJ manual puts it:

Therapeutic jurisprudence asks all judges to recognize they can be important agents of change, and to acknowledge that their words, actions, and demeanour will invariably affect the people who come before them in the courtroom. Judges who recognize their potential impact, and who consciously strive to develop the interpersonal skills and empathy that are the foundation of therapeutic judging, are likely to become confident, more effective judges with improved outcome.⁸²

The Framework encourages the use of vision and mission statements as a tool for leadership and management to drive court excellence. The use of TJ mission statements, vision statements and resolutions has driven important changes in courts, especially in Canada, the US, and Australia. Such statements have been developed on a national, regional and local level and also in relation to particular types of courts such as problem-solving courts. (For examples of TJ vision statements see Appendix A.)

Court excellence systems and enablers

The Framework identifies the following systems and enablers for court excellence:

- Court planning and policies;
- Court resources (human, material and financial);
- Court proceedings and processes.

Applying a TJ lens to court planning processes, the following simple questions might be asked:

1. Who are the people interacting with the court and in what way?
2. How might the law be applied in a way that maximises therapeutic outcomes and minimises anti-therapeutic effects?
 - (a) What are the legal procedures or processes that might be able to be changed to improve their wellbeing?
 - (b) Are there ways that legal actors – judges, lawyers, prosecutors, registry/court staff, security staff – can do their role differently to improve wellbeing of people coming before the court?

The answer to these questions will be informed by other disciplines, for example, psychology, social science or addiction medicine. The answers will differ depending on the type of cases coming before the court and the size and nature of the court.

A planning process that includes these considerations may result in a range of innovations, which may be as simple as improvement of a court form to make it more understandable, or it may involve referral pathways being established to a support service in the community or something more extensive such as the establishment of a specialist list within the court to deal with particular social issues. An example might be the creation of a homelessness list where local homeless support services can attend to connect with people coming before the court. Many of the examples cited earlier in

⁷⁸ L Bartels and K Richards, "Talking the Talk: Therapeutic Jurisprudence and Oral Competence" (2013) 38(1) *Alt LJ* 31.

⁷⁹ E Richardson, *Mental Health Courts: Turning Rhetoric into Reality* (Doctoral dissertation, forthcoming).

⁸⁰ Richardson, n 79.

⁸¹ MS King, "Problem-Solving Court Judging, Therapeutic Jurisprudence and Transformational Leadership" (2008) 17 *JJA* 155.

⁸² National Judicial Institute, *Problem-Solving in Canada's Courtrooms: A guide to Therapeutic Justice* (Canada, 2011), 22 <<https://mainstreamtj.wordpress.com/resources/for-judges/>>.

relation to defendants with mental impairments are changes that could be made to court proceedings and processes that may arise out of a specific court planning process which might be strategically targeted at improving responses for vulnerable court users. The need for such a planning process may be identified as part of the self-assessment process (such as under Area 6 of the Framework: Affordable and Accessible Court Services) and form part of the Improvement Plan under the Framework.

The roles of legal actors may also change. For example, staff may be trained in family violence so that they can provide a more supportive service to victims of family violence or a judge may use behavioural change techniques when supervising a criminal offender on bail. Further, judicial officers and court staff may work more collaboratively with professionals from the health and welfare sectors with respect to particular programs operating within a court or adopt a more open approach to seeking input from external health and welfare agencies that may be supporting defendants appearing before the courts.⁸³ The TJ lens does not limit the innovation to “one size” fits all but allows for innovations that are grounded in the needs and reality of the particular court. The Framework also is a flexible document that can be adapted to the needs of each jurisdiction and courts and tribunals may choose to focus on particular aspects of their policies and procedures in the self-assessment process.

Then, with the answers to the questions above in mind, the court would consider what are the human, material and financial resources required to improve the wellbeing of persons coming before the court. This might involve reprioritising existing court resources, training and education or other development of existing resources, obtaining additional resources or seeking to improve partnerships/ collaboration with external resources such as community support agencies.

Court excellence results

The Framework seeks to embed the court values across the seven areas for court excellence – the drivers, systems and enablers and results. In terms of results, the Framework focuses on three areas:

- Client needs and satisfaction;
- Affordable and accessible court services;
- Public trust and confidence.

Given the importance of psychological wellbeing to the people who are engaged in court process, a TJ lens would play an integral role in achieving the results sought in all these result areas.

TJ thinking provides recommended practices when dealing with persons experiencing mental illness, drug and alcohol problems, the impacts of trauma and dealing with vulnerable groups including victims, youth, cultural and linguistically diverse people.

Informed by psychology and behavioural change, giving voice to, and providing validation of, people coming before the court is regarded important to maximising wellbeing. A TJ approach would seek to give voice to court client groups through regular consultation and feedback mechanisms with the people themselves and/or the agencies and support services that are working with these groups. Such consultations would inform results across client needs and satisfaction, affordable and accessible court services and public trust and confidence.

Psychology and behavioral science indicates that it is not only what is done but how it is done that can drive satisfaction and ultimately public trust and confidence and compliance with the law.⁸⁴ A TJ approach therefore would look at how court processes operate and how the various legal actors do their jobs. An example of this may be the application of procedural fairness principles by a court – voice (allowing litigants to be heard), neutrality (making decisions based on neutral, transparent

⁸³ An example of this is exemplified by the approach of Magistrate David Fanning from the Neighbourhood Justice Centre in Collingwood, Victoria as detailed in Australian Centre for Justice Innovation (Principal Author: E Richardson), *Innovative Approaches to Justice: the NJC Experience* (Australian Centre for Justice Innovation and the Neighbourhood Justice Centre, 2013) <<http://www.civiljustice.info/njc>>.

⁸⁴ Tyler, *Why People Obey the Law* (Yale University Press, 1990).

principles), respectful treatment, and trust (the perception that the judge is sincere and caring).⁸⁵ Another example of this TJ practice is “form reform” whereby a court works to shorten and simplify forms, official letters, judicial orders, as well as to provide court users with understandable guides to what will be expected of them at upcoming court hearings.⁸⁶ Such reform would also result in greater levels of accessibility.

IMBEDDING TJ INTO THE JOURNEY TOWARDS COURT EXCELLENCE

Continuous improvement process

The Framework is “a continuous improvement methodology” rather than a single one-off reform effort and provides a path for a court to continuously review its performance and seek ways to improve performance.⁸⁷ This process is participatory: involving judges, administrators and other court employees and also other stakeholders and the broader community.

The process is as follows:

- Assess – Self-assessment across all seven areas for court excellence (this should be done periodically);
- Plan – In-depth analysis of the self-assessment to identify areas capable of improvement and development of an improvement plan;
- Implement – Implement the improvement plan;
- Evaluate – A review and refinement process where improvements are monitored.⁸⁸

The four steps are repeated on a continuous basis to assess the court’s progress in improving its performance. The Framework suggests an annual cycle, but courts may choose to undertake the process on a less frequent basis such as every two or three years.⁸⁹ This type of process is ideal for considering, implementing and evaluating TJ reforms and in fact reflects the approach that has been used in TJ to evaluate laws. TJ specific questions can be easily integrated into the self-assessment process using the Self-Assessment Questionnaire or Checklist discussed above (see Appendix C). Links between the continuous improvement of the Framework and the constantly evolving international TJ scholarship and thinking would ensure that courts keep abreast of innovative approaches to justice that are more likely to enhance wellbeing of individuals and communities.

Measurement of performance and progress

As noted above, the Framework acknowledges that reliable measurement of performance and progress is a foundation stone to excellent court planning and performance.⁹⁰ The Framework provides that “excellent courts systematically measure the quality as well as the efficiency and effectiveness of the services they deliver”.⁹¹ To this end, the Framework identifies that “excellent courts aim at shifting their data focus from simple inputs and outputs to court user satisfaction, quality of service and quality of justice”.⁹²

Importantly the Framework observes:

court performance from a quantitative perspective tends to distort the full picture as in the example of “justice hurried” being in some cases “justice buried”. It is therefore important to take qualitative aspects of the function of courts into account as well since aspects that are not measured are aspects that

⁸⁵ For more on procedural fairness see <www.proceduralfairness.org>.

⁸⁶ For examples of forms given to offenders to assist them to participate in the sentencing process see: <<http://www.law2.arizona.edu/depts/upr-intj/pdf/Leniency%20Questions%20Revised.pdf>> and <<http://www.law2.arizona.edu/depts/upr-intj/pdf/Solution%20Focused%20Sentencing.pdf>>.

⁸⁷ International Consortium for Court Excellence, n 7, 13.

⁸⁸ International Consortium for Court Excellence, n 7, 13-14.

⁸⁹ International Consortium for Court Excellence, n 7, 13.

⁹⁰ International Consortium for Court Excellence, n 7, 28.

⁹¹ International Consortium for Court Excellence, n 7, 29.

⁹² International Consortium for Court Excellence, n 7, 29.

are rarely fixed. The challenge is that it is easier to quantify efficiency than it is to measure the kind of quality justice that transcends purer efficiency. Measuring these quality aspects may require more innovative quality measurements, which may be more difficult and costly to obtain (such as surveys). The relative ease of measuring efficiency alone cannot be allowed to cover the need for constant reflection on the broader quality of justice.⁹³

This discussion in the Framework is important to those who subscribe to TJ thinking. Too often efficiency driven by measurement of throughput⁹⁴ is at odds with interventions that may be more effective in the long run but may take more time. In the case of criminal sentencing, an efficient result may involve one hearing for sentencing and disposition but a more effective result may require a person to attend the court multiple times for a rehabilitation plan to be developed and that rehabilitation plan overseen by the court to ensure accountability and encourage behavioural change. In such a case the balance between efficiency and effectiveness can be achieved through the careful targeting of such a TJ approach.

Applying a TJ lens, the focus of court innovation should be on developing and trialling approaches that are informed by evidence/research from other disciplines with a view to improving the quality of justice and the effectiveness of outcome. The Framework supports this approach.

Benefits for TJ from the Framework

In addition to the benefits that a TJ approach may offer the Framework, reciprocally the Framework offers those courts that are operating specific programs such as (but not limited to) problem-solving courts the means to ensure that those programs are operating in line with the Framework and incorporated into the overall court strategy. This could be perceived as one means of mainstreaming different innovations operating within courts. There is occasionally a perception that problem-solving courts, or specialist lists or other innovative TJ programs operating within larger courts, are outliers or anomalies. The Framework provides a way for these programs to be brought into the fold of the wider court, to provide consistency, structure and rigour to these courts, lists and programs without diminishing the less-adversarial model but strengthening and aligning and integrating these programs within the broader operations of the court and strategic visions. For problem-solving courts, the Framework (and the *High Performance Court Framework*) is a complement to performance measures that have been developed for Drug Courts, Mental Health Courts and other problem-solving courts by the National Center for State Courts⁹⁵ and other organisations. Further, problem-solving courts and other reforms said to be underpinned by TJ, should engage in continuous improvement and reform on an ongoing basis and the Framework provides the means by which to do this.

CONCLUSION

The *International Framework for Court Excellence* is an international project aimed at improving court performance. Therapeutic jurisprudence is an international field of research and practice that can drive court innovation. This article has identified the commonalities between the two different endeavours and the ways in which each can inform the other. These tools will become increasingly important to courts and tribunals around the globe that are seeking to improve the quality of justice and enhance the wellbeing of the people who appear before them and the community in which these courts and tribunals operate.

⁹³ International Consortium for Court Excellence, n 7, 30.

⁹⁴ Throughput refers to “The amount of material or items passing through a system or process”: *Oxford English Dictionary* <<http://www.oxforddictionaries.com/definition/english/throughput>>.

⁹⁵ Waters N et al, *Mental Health Court Performance Measures: Implementation and User’s Guide* (National Center for State Courts, 2010) <<http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Problem-solving-courts/Mental-Health-Court-Performance-Measures.aspx>>; Rubio D et al, “Performance Measurement of Drug Courts: The State of the Art” (2008) 6 Statewide Technical Assistance Bulletin <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/spets/id/171>>.

APPENDIX A

TJ vision statements

Canada

On the national level, in April 2011, the Canadian Council of Chief Judges released the following resolution:⁹⁶

Therapeutic justice resolution

Whereas, judges are expected to deal not only with disputed issues of fact and law but are also being asked to resolve a variety of human and social problems that contribute to offending behaviour,

Whereas, Therapeutic Justice is characterized by active judicial involvement and the explicit use of judicial authority to motivate individuals to accept needed services and to monitor their compliance and progress in addressing the underlying criminogenic factors which brought them into conflict with the law,

Whereas, it is desirable that judges apply the principles of Therapeutic Justice whenever it is appropriate to do so, including but not limited to, within the context of Problem Solving Courts,

Whereas, education of judges is necessary in order to deliver Therapeutic Justice,

And whereas, it is necessary to develop best practices and to effectively evaluate the results of Therapeutic Justice,

It is therefore moved:

1. That the Canadian Council of Chief Judges endorses the principles and purposes of Therapeutic Justice as set out above and encourages their application in the courts whenever it is appropriate and feasible.
2. That the Canadian Council of Chief Judges provides leadership in the understanding and promotion of the principles and purposes of Therapeutic Justice.
3. That the Canadian Council of Chief Judges considers it necessary that education in Therapeutic Justice be made available to all judges with particular emphasis on the education of new judges.
4. That the Canadian Council of Chief Judges supports the development of evidence-based best practices in Therapeutic Justice and the dissemination of that information to all judges.
5. That the Canadian Council of Chief Judges supports the development of a standardized and effective evaluation mechanism in respect to Therapeutic Justice.

Western Australia

On a regional level, in 2005 Western Australian Country Magistrates' adopted the following resolution on TJ:⁹⁷

1. The Western Australian country magistrates endorse and adopt principles of therapeutic jurisprudence.
2. In adopting therapeutic jurisprudence, the magistrates seek a more comprehensive resolution of legal problems coming before the court for the greater benefit of litigants and the communities served by the court. A more comprehensive resolution of legal problems may require addressing health, educational, relationship, financial, cultural or other underlying issues.
3. In using therapeutic jurisprudence, the magistrates seek to use the authority and standing of the court to minimise any negative effect of court processes and as far as possible to promote the wellbeing of those affected by court process be they victim of crime, defendant, other party to court proceedings, witness, counsel or court staff. This can be done consistent with traditional juridical principles such as independence, impartiality, fairness and integrity.
4. The magistrates seek to apply therapeutic jurisprudence within the context of statute and the common law.
5. A more comprehensive resolution of legal problems requires country magistrates to consult with local stakeholders and to meaningfully include professionals from other disciplines in the therapeutic jurisprudence-related projects that they operate.

⁹⁶ National Judicial Institute, *Problem-solving in Canada's Courtrooms: A Guide to Therapeutic Justice* (National Judicial Institute, Ottawa, September 2011) <<https://www.nji-inm.ca/index.cfm/publications>>.

⁹⁷ M King and K Auty, "Therapeutic Jurisprudence: An Emerging Trend in Courts of Summary Jurisdiction" (2006) 30(2) *Alt LJ* 69.

6. The magistrates believe it is important to consult with each other in relation to therapeutic jurisprudence projects so that best practice may be promoted throughout the state.
 7. Country magistrates, court stakeholders and relevant local agencies should be included in the design and implementation of therapeutic jurisprudence-related court projects in country magistrates' courts.
 8. For these purposes, the country magistrates have formed a reference group to monitor the implementation of therapeutic jurisprudence-related court projects in country magistrates' courts.
- ...

Clark County, Washington USA

On a local level, the District Court of Clark County, Washington, USA adopted a TJ vision statement as follows:⁹⁸

The judges of Clark County District Court envision that the Court may make a positive difference in people's lives by intervening before irreversible damage occurs to the person or the community.

Judges' perception of their role

We perceive ourselves as having the opportunity, as nowhere else in the criminal justice system, to save lives and make a positive difference in people's lives before it's too late.

We have the ability to craft individual solutions that are compatible with the high standard of justice. We make decisions in the context of people's lives and the need of the community not just in the context of crime or a civil dispute.

In our efforts to make positive change in the lives of people who come before the court we will be guided by the principles of *Therapeutic Jurisprudence*.

Guiding values

1. We have a strong belief in individual responsibility and accountability.
2. We also believe individuals are not condemned to a life of crime or despair by mental condition or substance abuse and that everyone can achieve a fulfilling and responsible life.
3. We believe that everyone, no matter whom, has something positive within their makeup that can be built upon.
4. We understand our role and that it is interactive with the community services that are at our disposal such as treatment providers, emergency housing, education, and transportation.
5. We are committed to dealing with the root causes of community safety issues rather than simply using incarceration as a temporary solution.
6. We incorporate in our process checks and balances that protect people's options and constitutional rights.
7. We respect cultural, family, linguistic and educational backgrounds and take individual differences into account when clients appear before the court.
8. We strongly consider the person's life as a whole and his/her family and community context.
9. We are willing to step out of the traditional roles of an adversarial court system to facilitate a more positive, more effective outcome for the person who has committed a crime or wishes to resolve a dispute.

United States

Various resolutions in support of problem-solving courts show how TJ vision statements can drive court innovation. In this regard, in 2000 the US Conference of Chief Justices adopted the following resolution:⁹⁹

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators appointed a Joint Task Force to consider the policy and administrative implications of the courts and special calendars that utilize the principles of therapeutic jurisprudence and to advance strategies, policies and recommendations on the future of these courts; and

⁹⁸ BJ Winick and DB Wexler, *Judging in a Therapeutic Key* (Carolina Academic Press, 2003), 112-114.

⁹⁹ Accessible online <<http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Resolution-PSC-Aug-00.ashx>>. Updated in 2004 <<http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Resolution-Natl%20Agenda-Final-Aug-04.ashx>>.

WHEREAS, these courts and special calendars have been referred to by various names, including problem-solving, accountability, behavioural justice, therapeutic, problem oriented, collaborative justice, outcome oriented and constructive intervention courts; and

WHEREAS, the findings of the Joint Task Force include the following:

- The public and other branches of government are looking to courts to address certain complex social issues and problems, such as recidivism, that they feel are not most effectively addressed by the traditional legal process;
- A set of procedures and processes are required to address these issues and problems that are distinct from traditional civil and criminal adjudication;
- A focus on remedies is required to address these issues and problems in addition to the determination of fact and issues of law;
- The unique nature of the procedures and processes encourages the establishment of dedicated court calendars;
- There has been a rapid proliferation of drug courts and calendars throughout most of the various states;
- There is now evidence of broad community and political support and increasing state and local government funding for these initiatives;
- There are principles and methods grounded in therapeutic jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behaviour, multidisciplinary involvement, and collaboration with community-based and government organisations. These principles and methods are now being employed in these newly arising courts and calendars, and they advance the application of the trial court performance standards and the public trust and confidence initiative; and
- Well-functioning drug courts represent the best practice of these principles and methods;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators hereby agree to:

1. Call these new courts and calendars “Problem-Solving Courts”, recognising that courts have always been involved in attempting to resolve disputes and problems in society, but understanding that the collaborative nature of these new efforts deserves recognition.
2. Take steps, nationally and locally, to expand and better integrate the principles and methods of well-functioning drug courts into ongoing court operations.
3. Advance the careful study and evaluation of the principles and methods employed in problem-solving courts and their application to other significant issues facing state courts.
4. Encourage, where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and the community.
5. Support national and local education and training on the principles and methods employed in problem-solving courts and on collaboration with other community and government agencies and organisations.
6. Advocate for the resources necessary to advance and apply the principles and methods of problem-solving courts in the general court systems of the various states.
7. Establish a National Agenda consistent with this resolution that includes the following actions:
 - (a) Request that the CCJ/COSCA Government Affairs Committee work with the Department of Health and Human Services to direct treatment funds to the state courts.
 - (b) Request that the National Center for State Courts initiate with other organisations and associations a collaborative process to develop principles and methods for other types of courts and calendars similar to the *10 Key Drug Court Components*, published by the Drug Courts Program Office, which define effective drug courts.
 - (c) Encourage the National Center for State Courts Best Practices Institute to examine the principles and methods of these problem-solving courts.
 - (d) Convene a national conference or regional conferences to educate the Conference of Chief Justices and Conference of State Court.
 - (e) Administrators and, if appropriate, other policy leaders on the issues raised by the growing problem-solving court movement.
 - (f) Continue a Task Force to oversee and advise on the implementation of this resolution, suggest action steps, and model the collaborative process by including other associations and interested groups.

APPENDIX B

TJ resources for court excellence

Therapeutic jurisprudence resources include:

Online resources and blogs:

- www.mainstreamtj.wordpress.com
- www.proceduralfairness.org
- <http://www.courtinnovation.org>
- Various practice manuals including from Canada, USA and Australia. Links to these manuals all available via <https://mainstreamtj.wordpress.com/resources/for-judges>.

A range of other resources can be accessed via:

- the Australasian Therapeutic Jurisprudence Clearinghouse <http://www.aija.org.au/index.php/research/australasian-therapeutic-jurisprudence-clearinghouse>.
- the website and searchable bibliography of International Network on Therapeutic Jurisprudence (including a range of resources in languages other than English), www.therapeuticjurisprudence.org.

Key books on this topic:

- Winick B and Wexler D, *Judging in a Therapeutic Key* (Carolina Academic Press, 2003) (also available as an ebook – Amazon).
- Wexler DB, *Rehabilitating Lawyers: Principles of Therapeutic Jurisprudence for Criminal Law Practice* (Carolina Academic Press, 2008) (also available as an ebook – Amazon).

International Consortium for Court Excellence Resources are available via www.courtexcellence.com.

APPENDIX C

TJ questions for Self-Assessment Questionnaire/Checklist

Looking at the current *International Framework for Court Excellence Self-Assessment Questionnaire*, the following additional considerations are suggested to drive improvements of “TJ outcomes”. TJ outcomes are those that maximise the wellbeing of people coming in contact with the court and minimise the anti-therapeutic impacts. TJ outcomes are informed by the evolving knowledge of non-legal fields such as psychology and health, social and behavioural sciences.

Court leadership and management

- Court has a published statement of its TJ vision and mission with details as to how it will endeavour to improve TJ outcomes (see Appendix A of this article for examples of vision and mission statements).
- Court leadership ensures that service standards include quantitative and qualitative measures against which TJ outcomes can be monitored.
- Court holds regular meetings with court users to provide information on the court and seek feedback including consideration of how the court process and the roles of all legal actors could change to improve TJ outcomes.
- Data that is kept and published on key aspects of the court’s work includes quantitative and qualitative data that tracks TJ outcomes.

Court planning and policies

- Court strategic plan includes goals, targets and plans for improvement to achieve TJ outcomes.
- Court has a court innovation strategy as an integral part of its strategic planning and this includes innovations aimed at improving TJ outcomes including drawing on other disciplines such as psychology, health sciences and social work to inform the evidence base of such innovations.
- Court actively involves judges, staff, other legal actors (eg prosecution, defence lawyers) and external community service agencies in planning and problem solving to improve TJ outcomes.

- Court regularly reviews the plan and its performance against its targets including targets to improve TJ outcomes.

Court resources (human, material and financial)

- Professional development of staff, judges and other legal actors includes education and training on issues of TJ and other disciplines that might inform evidence-based practice in court settings (eg mental health, addiction, behavioural change).
- Court builds internal and external multidisciplinary teams to improve TJ outcomes (eg internal court support programs or external partnerships with mental health or addiction agencies or victim counselling services).
- Court facilities are adequate, safe and enhance TJ outcomes (eg separate waiting areas for victims and offenders, alternative means of giving evidence for victims).

Court proceedings and processes

- Efficiency of court proceedings and processes is balanced with considerations of quality of decision-making, effectiveness of outcome and maximisation of TJ outcomes.
- Court has a system for identifying TJ needs of court users through screening and assessment and matching the right level of intervention to meet identified needs.
- Court proceedings and processes maximise accessibility, procedural justice and broader TJ outcomes.
- Court undertakes a review of TDL – the design of the applicable law – to see if feasible law reform measures might be recommended to allow for a more robust therapeutic application of the law (TAL).

Client needs and satisfaction

- Court surveys and seeks regular feedback from all court users including questions about the wellbeing of court users and how such wellbeing might be enhanced.
- Court implements changes identified by surveys and feedback.
- Court reports publicly and regularly on changes made in response to surveys and feedback.
- Court surveys its users on their satisfaction with its process, procedures and services.

Affordable and accessible court services

- Court has processes in place that promote affordable court proceedings.
- Court publishes information on court services and access.
- Physical access to court buildings is easy.
- Court provides support for people with disabilities to ensure easy access to its services.
- Court has policies to ensure equal treatment for all court users and to enhance the wellbeing of court users.
- Court uses plain language to assist all court users and interpreters and translators where required.

Public trust and confidence

- Court ensures that all court users understand the court's processes, services and any decisions made. That such matters are communicated in a way that maximises wellbeing.