



TAB 3
Paralegal Standing Committee
Professional Development & Competence Committee
May 30, 2013

Joint Report to Convocation - CPD Two-Year Review

PD&C Members

Janet Minor (Chair)
Wendy Matheson (Vice-Chair)
Barbara Murchie (Vice-Chair)
Alan Silverstein (V-Chair)
Raj Anand
Jack Braithwaite
Robert Burd
Mary Louise Dickson
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Ross Earnshaw
Larry Eustace
Jacqueline Horvat
Vern Krishna
Michael Lerner
Dow Marmur
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Joseph Sullivan
Gerald Swaye
Robert Wadden
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PSC Members

Cathy Corsetti (Chair)
Susan McGrath (Vice-Chair)
Marion Boyd
Robert Burd
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Purpose of Report: Decision

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COMMITTEE PROCESS

1. The joint CPD working group met on five occasions: January 23, February 1 and 27 and April 11 and 24, 2013. The working group members are Wendy Matheson (Chair), Jack Braithwaite, Chris Brecht, Robert Burd, Cathy Corsetti, Michael Lerner, Susan McGrath, Judith Potter, and Robert Wadden. Staff members to the working group are Priya Bhatia, Diana Miles and Sophia Spurdakos.
2. The PD&C Committee and the PSC Committee met on May 8, 2013. PD&C Committee members in attendance were Janet Minor (Chair), Wendy Matheson (Vice-Chair), Barbara Murchie (Vice-Chair), Raj Anand, Jack Braithwaite, Robert Burd,* Mary Louise Dickson, Adriana Doyle, Ross Earnshaw,* Lawrence Eustace, Jacqueline Horvat,* Vern Krishna, Michael Lerner, Dow Marmur,* Judith Potter, Nicholas Pustina, Joseph Sullivan, Gerald Swaye and Brad Wright. Paralegal Standing Committee members in attendance were Cathy Corsetti (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Paul Dray and Michelle Haigh. Staff members Julia Bass, Diana Miles and Sophia Spurdakos also attended. PD&C Committee members whose names are noted with an asterisk (*) are also members of the Paralegal Standing Committee.

CONTINUING PROFESSIONAL DEVELOPMENT (“CPD”) REQUIREMENT – TWO-YEAR REVIEW EXECUTIVE SUMMARY

In February 2010 Convocation approved the introduction of a CPD requirement for lawyer and paralegal licensees. In doing so it noted that the Law Society has an important role to play in supporting lawyer and paralegal efforts to maintain and enhance competence. It also has a duty to ensure that all lawyers and paralegals in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide. In introducing a CPD requirement the Law Society’s intent was to further complement and support other competence-related preventive initiatives.

The CPD requirement is designed to be accessible, affordable and flexible. To monitor the effectiveness of the requirement in meeting its goals, Convocation approved annual staff information reports on the program in 2011 and 2012, as well as mandating that a more detailed review occur following two full years of the CPD requirement’s operation. In 2012, as part of a preliminary review of issues that had arisen during the first year of implementation, Convocation approved a number of changes to provide greater flexibility in satisfying the CPD requirement.

The Professional Development & Competence Committee and the Paralegal Standing Committee have now completed the mandated two-year review and are reporting on the requirement’s overall implementation to date. They have also considered ways in which to further enhance and streamline the requirement and its administration.

As a result of this two-year review, the Committees are satisfied that the requirement has been successfully implemented, with lawyer and paralegal licensees overwhelmingly adapting to its introduction. Feedback from legal organizations, law firms and licensees suggests that the introduction of the CPD requirement has enhanced the delivery, attendance and range of CPD opportunities available to licensees and increased the profession’s commitment to it.

At the same time, licensees have provided useful input on implementation issues and proposed changes over the last two years, including in response to the request for input that has accompanied the two-year review. Since implementation began, Law Society staff has also provided input to the CPD working groups and the Committees on ways in which to improve and streamline the requirement and its implementation without compromising the goals of the program.

In this two-year review report the Committees discuss the program’s overall implementation. In addition they propose a number of changes in response to the feedback they received. Included among their proposals are a simplified Portal reporting process, the introduction of an “accredited provider” process to streamline the approval of professionalism programming, expansion of professionalism accreditation criteria and the removal of the distinction between new licensees and all other licensees.

The Committees have concluded that these proposals will further enhance the program and its efficiency, while ensuring that its fundamental goals remain in place.

MOTION

- 3. That Convocation approve the following recommendations for changes to the Continuing Professional Development (CPD) requirement to come into effect beginning with the 2014 CPD year, except for the recommendations in subparagraphs b, c, and d, which will come into effect immediately following Convocation’s approval:**
- a. That the Law Society establish an Accredited Provider Framework (“APF”) for professionalism programs, substantially in the form set out at [TAB 3.1.9](#), while also continuing the current professionalism program accreditation for those who do not meet or do not apply for accredited provider status. The Director of Professional Development & Competence, or the Director’s designate, will have the authority to adjust the implementation of the APF in accordance with the policies set out in this report.**

 - b. That the requirement that a licensee seeking to claim credit for writing and editing books or articles must be the sole person who has prepared the book or article be removed.**

 - c. That the distinction between legal writing for a third party publication and legal writing for a firm publication be removed.**

 - d. That there be increased flexibility to expand the Professionalism Accreditation Criteria where appropriate. The criteria will be revised to be substantially in the form set out in [TAB 3.1.10](#). Going forward the Director of Professional Development & Competence, or the Director’s designate, will have the authority to adjust the criteria in accordance with the policies set out in this report.**

 - e. That the “new licensee” requirement be eliminated and new licensees be required to begin meeting their CPD requirement in the month following**

receipt of their license on a pro rata basis their first year and on the same calendar year basis as all licensees thereafter.

- f. That a fee be charged to licensees for failing to meet the annual CPD reporting deadline of December 31 and/or for failing to complete their annual CPD requirement by December 31.**
- g. That a fee be charged to licensees when they return from suspension for having failed to meet the annual CPD reporting deadline of December 31 and/or for failing to complete their annual CPD requirement by December 31.**
- h. That a simplified CPD reporting system for the Law Society Portal be implemented, including the introduction of a streamlined process of tracking CPD hours and inputting programs and activities. The Director of Professional Development & Competence, or the Director's designate, will have the authority to coordinate with Membership Services and Information Systems on any adjustments to the Portal in accordance with the policies set out in this report.**

Introduction and Background

- 4. In February 2010 Convocation approved the Joint Professional Development & Competence Committee and Paralegal Standing Committee Report (“the 2010 Joint Report”) recommending the introduction of a CPD requirement for lawyers and paralegal licensees who practise law or provide legal services, respectively (those in the 100% fee paying category). The requirement was to commence on January 1, 2011, with the first reporting of hours due on December 31, 2011. The approved recommendations are set out at [**TAB 3.1.1: 2010 Joint Report Recommendations**](#).
- 5. CPD is defined as follows:
 - Continuing professional development is the maintenance and enhancement of a lawyer or paralegal’s professional knowledge, skills, attitudes and ethics throughout the individual’s career.

6. In proposing the introduction of the requirement the 2010 Joint Report noted:

The Law Society has an important role to play in supporting lawyer and paralegal efforts to maintain and enhance that competence. It also has a duty to ensure that all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.

Over the last decade in particular, the Law Society has developed numerous competence enhancing tools for lawyers, and since 2008 for paralegals. It has also developed preventive monitoring requirements such as the spot audit and practice review programs. While these requirements have been developed in furtherance of the Law Society's mandate to regulate lawyers and paralegals in the public interest, they have at the same time been designed with the needs of lawyers and paralegals in mind, providing guidance on best practices while ensuring that deficiencies in quality of service are addressed.

In this report, the Professional Development & Competence Committee and the Paralegal Standing Committee ("the Committees") recommend that the Law Society introduce a continuing professional development requirement ("CPD requirement") to complement and support the other preventive requirements the Law Society has introduced.¹

7. The general CPD requirement specifies that those lawyer and paralegal licensees subject to it must fulfill 12 hours of CPD annually, from a list of eligible activities, set out at **TAB 3.1.2: CPD Eligible Activities**, with three of the 12 hours to be taken in topics related to ethics, professionalism and/or practice management ("professionalism"). Of the 12 hours only professionalism hours must be obtained from programs that the Law Society accredits.
8. The requirement for "new" lawyer and paralegal licensees originally stated that they were to take 12 hours per year of programming accredited by the Law Society, for the equivalent of two full years of practice or providing legal services, respectively. Each program or activity was to include a minimum of 25% of accredited content in ethics, professionalism and practice management. This requirement was modified in April 2012 to provide that new licensees may register for any program or alternative activity that is accredited for professionalism, without requiring that each program or alternative activity

¹ 2010 Joint Report, Introduction, page 3.

have a minimum of 25% professionalism content, and provided that, overall, new licensees obtain three hours of professionalism content annually. The minimum professionalism content required per program is 30 minutes.

9. As part of its decision in 2010, Convocation approved the provision of annual staff information reports to Committees and Convocation in 2011 and 2012 and a full review of the requirement following the first two years of operation.
10. A 2012 working group of the Professional Development & Competence Committee and the Paralegal Standing Committee considered five issues² related to the CPD requirement on which considerable feedback had been received in the first year of the requirement's operation. In April 2012 the working group and the Committees recommended, and Convocation approved, changes in response to two of the issues and recommended that consideration of the remaining issues form part of the two-year review. The approved recommendations are set out at **TAB 3.1.3: April 2012 Joint Report Approved Recommendations**.
11. In this two-year review report the Committees,
 - a. highlight feedback the Law Society received respecting the CPD requirement as part of the two-year review;
 - b. address the CPD requirement's overall implementation during the past two years, including,
 - i. an assessment of licensee compliance and monitoring; and
 - ii. consideration of the program's goal of accessibility, affordability and flexibility; and
 - c. consider specific and ongoing implementation and administrative issues and whether changes to the program are recommended to Convocation.
12. To develop this report the Committees established a joint working group to consider background information and to develop possible recommendations and options for the Committees' review.³

² (a) "Participation" in CPD courses requirement. (b) The new licensee integrated 25% professionalism requirement. (c) Limits on number of hours to be claimed under alternative activities. (d) The inability to carry over credits into another reporting year. (e) The number of professionalism hours required.

³ See paragraph 1 of this report for the members of the working group.

13. Since 2010 the Law Society has received licensee and legal organization input on the CPD requirement and its implementation. In addition, as part of the two-year review it provided a further opportunity for input, communicating its request to lawyer and paralegal licensees and legal organizations. The Request for Input Notice is set out at **TAB 3.1.4: Request for Input**. It was communicated in the following ways:
 - a. An on-line posting in the “latest news” section of the LSUC website from January 11 through to March 31.
 - b. A news item in the January, February and March *e-Bulletin Resources for Lawyers*.
 - c. A news item in the Winter/Spring *Paralegal Update*.
 - d. A letter from the Chair of the CPD Evaluation Working Group to those legal organizations that provided comments about the CPD Requirement during the Requirement’s initial 2009/2010 consultation phase.
14. As part of the two-year review request for input the Law Society received 85 submissions from individuals and 18 submissions from legal organizations, law schools and law firms. A list of organizational submissions is set out at **TAB 3.1.5: Submissions List**.

First Two Years of the Requirement

15. The introduction of a new regulatory program is a significant undertaking. The CPD requirement applies to approximately 34,400 lawyer and paralegal licensees. To properly implement a program that is flexible, accessible and affordable and that includes a specific professionalism component it was necessary to develop a detailed implementation process. In particular, the process has involved,
 - a. a multi-faceted communication plan;
 - b. the development of an on-line reporting mechanism capable of capturing the wide range of eligible activities;
 - c. an accreditation and program monitoring process;
 - d. regular compliance reminders, both before and after the reporting deadline; and
 - e. an ongoing assessment of implementation issues raised at both the staff and licensee level.

16. Accordingly, over the last two years implementation has involved significant staff resources necessary to create and monitor the required processes and to support the volume of licensee communications.
17. The PD&C Department Licensing and Accreditation unit has received a high volume of applications and inquiries related to accreditation of programs and activities since the CPD requirement took effect. By the end of December 2011, a total of 7,300 applications for accreditation were processed. As of the end of December 2012, 5,520 applications have been processed.
18. The 2012 figures include approximately 3,100 applications for program accreditation from education providers other than those offered by the Law Society’s CPD program unit and an additional 2,200 activity applications from licensees seeking accreditation of activities such as teaching, writing, mentoring and study groups. Applications for program accreditation have been received from a wide range of organizations, including major legal education providers, law firms and government departments developing in-house training and law associations at a provincial and national level.

Provider Category	2012 Program Applications Received	2012 Program Applications Accredited	2011 Program Applications Received	2011 Program Applications Accredited
Major Education Providers (OBA, Advocates’ Society, etc.)	638	578	660	627
Law Firms In-House	934	845	1552	1361
Law Associations	721	672	770	687
Government In-House	281	262	402	361
Colleges and Universities	67	55	91	63
Private Providers	410	349	387	309
TOTAL	3,051	2,761	3,862	3,408

19. The approximately 2,200 applications for accreditation of activities, as opposed to formal education programs, can be broken down as follows:

Activity Category	2012 Activity Applications Received	2012 Activity Applications Accredited	2011 Activity Applications Received	2011 Activity Applications Accredited
Teaching	1081	952	899	723
Writing/Editing	18	14	80	37
Mentoring/Articling Principal	618	617	705	664
Video Replays of accredited content	71	47	1087	1057
Study Groups	315	303	466	438
Other	31	30	22	14
Mixed Attendance ⁴	40	40	179	179
TOTAL	2,174	2,003	3,438	3,138

20. From April to August 2012, the PD&C Department conducted program visits at a random selection of 20 accredited programs to verify the delivery of professionalism content in accordance with the accreditation criteria. A cross-section of programs representing different provider categories, locations and attendance methods were selected to ensure an appropriate balance of contexts:

Provider Type	Major Provider	Law Association	Law Firm	Government Department	TOTAL
Number of Programs Visited	7	3	6	4	20

21. Programs were assessed according to a number of indicia, including, but not limited to, the scope and depth of discussions on professionalism issues, quality of instruction/facilitation, organization of the session, level of participant engagement, types of materials used, opportunity for participant interaction and physical space/use of

⁴ Mixed attendance refers to instances where a licensee seeks professionalism hours for teaching a portion of an accredited program that he or she also attended.

technology. The assessment criteria used at the program visits are set out at **TAB 3.1.6: Assessment Criteria**.

22. The results of the program visits indicate that overall, providers are successfully delivering professionalism content in accordance with the accreditation criteria. No major deficiencies have emerged. In-house presentations delivered in law firms were particularly effective, often including well-researched, contextually relevant discussions of professional responsibility and ethics issues. Law Association programs that incorporated “professionalism case studies,” which the Law Society developed to assist licensees in obtaining their professionalism hours, were also well received.
23. Major education providers, who are often managing large numbers of participants simultaneously viewing on-line and in person and have the additional challenge of maintaining a connection with remote audiences, did a similarly acceptable job covering professionalism content.

a. Feedback on the CPD Requirement’s Introduction

24. Throughout the two-year period that this review addresses, the Law Society has received significant feedback by correspondence and telephone, the vast majority of which has raised technical issues on such topics as,
 - a. initially, clarification on which programs must be accredited;⁵
 - b. clarification of “eligible” activities and the number of available hours for certain activities;
 - c. navigation and completion of information on the Portal;
 - d. understanding the professionalism requirement and eligible content; and
 - e. whether credits might be carried over into a subsequent year.
25. The more substantive comments raised were predominantly in the area of the applicability of the requirement to certain categories of licensees (part-time, senior

⁵ These questions have diminished significantly as licensees have become familiar with the program and understand more fully that only professionalism programming must be approved.

practitioners, those engaged solely in *pro bono* work) and concerns with the “new” licensee requirement. Some of these issues have been dealt with at an operational level; some were addressed in the April 2012 Joint Report. Others are addressed in this report.

26. The input received during the two years of implementation has demonstrated the profession’s engagement in the process and licensees’ willingness to raise issues with the Law Society. In the Committees’ view the degree to which the input has been focused predominantly on compliance and other technical questions rather than on the substantive issues or merits of the requirement is noteworthy in a program that is only two years old.
27. As set out above, a number of individuals, organizations and law firms also took the opportunity to provide input as part of the two-year review. While most used the occasion to provide comments about specific aspects of the program with suggestions for enhancing implementation, some also added their views of the requirement overall. This feedback points to the positive benefits of the CPD requirement on the profession’s learning culture.
28. Legal organizations generally pointed to their members’ acceptance and approval of the requirement and its value. The Ontario Bar Association (OBA) noted that the comments it received from its members on the requirement itself were very positive.

The mandatory requirement for CPD received resounding support. Members from various practice areas and from our Young Lawyers’ Divisions felt that it is a reasonable and important requirement that ensures the profession remains aligned with other respected professions and helps to protect the public.⁶

29. Similarly, the County and District Law Presidents’ Association (“CDLPA”), whose members are often sole and small firm practitioners, noted that the feedback from lawyers had been “remarkably consistent in its message.” Among other feedback CDLPA concluded that,

Mandatory CPD has been relatively well received by lawyers and positive changes have already been made by the Law Society. Both the public and the practicing bar benefit from ensuring lawyers and paralegals are

⁶ Ontario Bar Association. Submission, April 2, 2013 at 3.

competent within their practice areas and are professional in their dealings with clients, colleagues and the courts.⁷

30. The Association of Law Officers of the Crown (“ALOC”) noted,
- The introduction of CPD requirements has generally been viewed favourably by our members, most of whom have always had a strong commitment to attending continuing legal education programs in order to develop and maintain their knowledge and skills.⁸
31. LawPRO also indicated its support for CPD, as the insurer of lawyers in Ontario. In particular it noted,
- LawPRO supports the continuation of the Continuing Professional Development (“CPD”) Requirement as we believe that continuing professional development can help improve lawyer competence, and in particular, help lawyers appreciate where and why malpractice claims occur, and help them learn the proactive steps they can take to reduce their exposure to malpractice claims.⁹
32. A number of law firms also provided input on the requirement and, overall, were consistent in their comments about the requirement. For example, they have observed,
- a. a “notable increase” in attendance at in-firm training sessions, not just among associates but among partners, resulting in increased mentoring opportunities and cross-pollination within firms;
 - b. increased “teaching” by subject experts;
 - c. more concentrated and direct discussions of legal ethics; and
 - d. a more coherent and systematic approach to professional development.
33. Examples of law firm comments include the following:
- a. The introduction of the CPD requirement by the Law Society has resulted in a significant increase in attendance at internal CPD programs; lawyers who might not otherwise take time away from their practices to participate in such programs are now entering the training room. The benefit of increased attendance is that practitioners are engaging in knowledge sharing and skills development more frequently. In particular we have noted increased attendance at professional skills development sessions, which we believe are equally as vital to a lawyer’s development as substantive or technical skills training.

⁷ CDLPA. Submission, March 27, 2013 at 5.

⁸ ALOC. Submission, April 8, 2013 at 2.

⁹ LawPro. Submission. March 31, 2013 at 14.

- b. Partners not only attend our programs regularly, they willingly contribute their knowledge and experience. This contribution, in turn, enhances the learning experience for our younger associates. While many partners previously took the view that “only associates need training,” I believe that now many of them actually welcome the “excuse” to refresh their knowledge and update their practice techniques.
 - c. I see a concurrent increase in the willingness of partners to teach our internal PD sessions...Having a variety of partners involved in our internal programs results in junior lawyer training that is both practical and pertinent...The passing on of knowledge from senior to junior lawyers has always been a basic tenet of legal education, but in today’s super-busy practices the on-the-job teaching can get overlooked. The increase in PD programs and participation by partners now goes some distance in filling that gap.
 - d. Overall, our experience is that mandatory CPD significantly improves continuous learning in law firms, with particular benefit for legal ethics and practice management training.
34. Some in-house providers have noted that the eligibility of alternative activities to programming has expanded the reach of their programs.
- The additional credit given for preparation and instruction of a program means that, as providers, we are now tapping into a wider spectrum of internal resources and making “teachers” out of our subject matter experts who may not have necessarily felt compelled to lead programs prior to the requirement coming into effect.
35. Of the 85 individuals who sent in comments,
- a. a number were of the view that the requirement itself is valuable,¹⁰ but also provided suggestions for improvement;
 - b. a number disapproved of the requirement, but also registered specific areas for improvement;¹¹ and
 - c. a majority made no comment about the requirement overall, but made suggestions for improvement.

¹⁰ “I am grateful to have the CPD requirement, I really enjoy the courses offered.” “I have no issue with mandatory CPD - at all.” “The idea of CPD is great. In fact, an increase in the number of hours than what is presently mandated is fine.”

¹¹ “I want to register my disapproval both with the requirement and especially the portal.” “The CPD requirement is simply an extra fee for keeping my licence. I’m forced to pay for, and attend, courses irrelevant to my work or LSUC will suspend my licence.”

36. The Committees note that general acceptance of the requirement is in keeping with the comments the Law Society received in 2010 when the profession's input was sought on whether to introduce a CPD requirement. At that time most submissions commented on the specifics of any requirement, rather than opposing its introduction generally.
37. The 2013 feedback points to general agreement with the number of annual CPD hours, the flexibility of the requirement and with the overall value of continuing professional development. While the Law Society has addressed implementation issues to date and the Committees recommend a number of additional improvements in this report, the Committees are of the view that the input received overall, the extremely high compliance rate for CPD in the first two years and the evidence the Law Society has acquired through the CPD audits of the seriousness with which licensees take the requirement all point to its acceptance by lawyers and paralegals and the legal organizations in which they participate.
38. The Committees are aware that the impact of a quality improvement program like the CPD requirement may not be as easily assessed as a quality assurance program such as practice audits. The Committees do note, however, the comments received in the LawPRO submission on this issue:

In the past it has been difficult to get empirical evidence of a direct link between continuing legal education and reduced claims for several reasons, including lack of data and the very complex factors to be considered and quantified. In addition, proving a negative (i.e., a claim didn't happen) is always more difficult than proving a positive (i.e. a claim occurred). However, despite the lack of direct empirical evidence, from its claims handling statistics and experience, LAWPRO has some evidence that it believes indicates continuing professional development can increase professional competence and reduce malpractice claims...Several times a year we get direct evidence in personal comments and emails to us that the information or resources we provided lawyers helped them recognize they had a potential claim and that they took steps to avoid it...We take this as direct evidence that information provided to lawyers in a CPD setting can help with claims prevention or avoidance.¹²

¹² LawPRO *supra* note 9 at 14.

b. Overall Implementation

i. Licensee Compliance and Monitoring

39. Convocation was concerned that in the initial years of the CPD requirement, until licensees were familiar with the rules of the requirement and with the mechanics of the Law Society Portal (“the Portal”), they be provided extra notification and assistance to meet their obligation and record their CPD hours before suspensions occur.
40. To ensure licensees understood their obligations the Law Society has sent focused communications as well as regular notices to lawyer and paralegal licensees through a variety of channels. Licensees with outstanding hours receive quarterly reminder letters about their CPD status by mail (one notice) and email (three notices), as well as reminder notices via mail (one notice) and email (two additional notices) at shorter intervals during the months of November and December for a total of up to seven reminders. In addition, a substantial information campaign has appeared in the *Ontario Reports* and reminders have been regularly included in the monthly e-Bulletin and Paralegal Updates. Feature articles profiling convenient and cost free ways to obtain CPD hours have also been included in the on-line and print versions of the Gazette. For a summary of CPD Communications in 2011 and 2012 see [TAB 3.1.7: CPD Communication Summary](#).
41. In the first and second years of the CPD requirement, almost all licensees fulfilled their obligation. On April 20, 2012, only 115 licensees were administratively suspended for failure to complete the requirement. This represents approximately .03% of the total practising lawyer and paralegal licensees subject to the requirement. Of these, 59 subsequently complied with the requirement and were reinstated. As a point of comparison the Committees note that for the 2011 reporting year, 418 licensees were suspended for failure to file annual reports. On April 17, 2013 only 180 licensees were administratively suspended for failure to complete the 2012 CPD requirement. This represents approximately .052% of the total practising lawyer and paralegal licensees subject to the requirement.

Licensees Suspended for failure to complete CPD in 2011

Licensee	Sole Practice	Partner/Associate in firm	Employed outside of law/not working	TOTAL
Lawyer	31	8	34	73
Paralegal	19	3	20	42
TOTAL	50	11	54	115

Licensees Suspended for failure to complete CPD in 2012

Licensee	Sole Practice	Partner/Associate in firm	Employed outside of law/not working	TOTAL
Lawyer	49	18	57	124
Paralegal	29	10	17	56
TOTAL	78	28	74	180

42. In the 2010 Joint Report Convocation approved provision for random annual CPD audits to monitor compliance with the requirement, to be undertaken as part of a practice management review or paralegal practice audit as well as by random selection chosen from among all paralegals and lawyers subject to the requirement. There were to be a total of 500 audits of lawyers and 25 audits of paralegals annually respecting CPD compliance through practice reviews and an additional 500 desk audits requiring the licensees to submit documentation confirming completion of the requirement.
43. In 2012, the Professional Development & Competence Department completed 1,021 CPD audits of practising lawyers and paralegals to assess compliance with the CPD requirement policies. Three hundred and seventy-five (375) CPD audits were conducted in the context of a practice management review, and 646 were performed via the CPD desk audit process. Licensees are required to demonstrate compliance with the CPD requirement policies and provide documentation of their educational activities in support of the CPD hours reported to the Law Society.
44. The results confirm high rates of compliance in 2011 with the CPD requirement by both lawyers and paralegals with the policies related to “eligible” educational activities.

Lawyer Compliance Based on CPD Audit - 2011

Compliance Status - Lawyer	Audits	Percentage of Total Audits
Yes	797	94.4%
No	3	0.4%
Partial	44	5.2%
TOTAL	844	100.0%

Paralegal Compliance Based on CPD Audit – 2011

Compliance Status - Paralegal	Audits	Percentage of Total Audits
Yes	103	86.6%
No	1	0.8%
Partial	15	12.6%
TOTAL	119	100.0%

Lawyer Compliance Based on CPD Audit - 2012

Compliance Status - Lawyer	Audits	Percentage of Total Audits
Yes	844	94.2%
No	4	0.45%
Partial	48	5.36%
TOTAL	896	100.0%

Paralegal Compliance Based on CPD Audit – 2012

Compliance Status - Paralegal	Audits	Percentage of Total Audits
Yes	105	84%
No	2	1.6%
Partial	18	14.4%
TOTAL	125	100.0%

45. Partial compliance may result from any of the following deficiencies:
 - a. Weak or insufficient documentation for programs/activities listed.
 - b. Duplication of programs/activities.

- c. Failure to comply with policies regarding viewing archived or recorded content.
46. Generally, those licensees who were assessed as non-compliant could not provide supporting documentation for some or all of the courses or activities listed. Reasons for the lack of documentation included having moved practices or “just did not keep the documents.” Licensees falling into the partial and non-compliance categories are provided with remedial direction and guidance from PD&C staff to clarify CPD requirement policies and encourage completion of eligible programs and activities in the future. Non-compliant licensees will be audited once again the following year.
47. The Committees agree that intensive monitoring processes are essential in the initial implementation of a new program, particularly where non-compliance can lead to administrative suspension and further when the reporting mechanism involves using a new on-line system, as is the case with the CPD requirement.
48. The Committees are satisfied that over the last two years licensees have been heavily supported in completing the requirement, have been reminded regularly throughout the reporting year of their unfulfilled hours and been prompted and facilitated as much as possible to rectify their non-compliance, even following the December 31 deadline.
49. The Committees are further satisfied that the relatively few cases of non-compliance over the last two years that have ultimately led to administrative suspension cannot reasonably be attributed to the requirement’s rules or provisions or to insufficient programming, ignorance of or confusion about the requirement, or the existence of any other unreasonable barriers to compliance. In most instances they have either been the result of a conscious refusal to meet the requirement or a complete lack of attention to the many reminders.
50. While there have been many questions about the operation of the Portal and a number of complexities that may have caused confusion, the Committees are satisfied that staff has provided ample guidance to licensees to assist them with questions and reporting difficulties. The failure of the very few to complete the requirement and/or report their

credits must be attributed to their own behaviour and not to the requirement or its administrative processes.

51. There are significant cost and resource implications to the kind of follow-up processes that have been in existence in the first two years of the program. The Committees are satisfied that through this staff-intensive process Convocation's goal that licensees be well assisted in their compliance during the initial period has been fully met.
52. At the same time the Committees are of the view that the reasonable transition period necessitating that the Law Society assume a significant "hands-on" role in facilitating compliance should now be considered complete. Although the Law Society should continue to support compliance, in this report the Committees propose some changes to the compliance mechanism on a going forward basis to reflect the importance of individual responsibility for compliance and the reality that compliance becomes easier as licensees become accustomed to the CPD requirement.

ii. Accomplishment of Convocation's Goal of a Flexible, Accessible and Affordable Program

53. With respect to its goal to provide a flexible, accessible and affordable program, Convocation's primary concerns were to ensure that,
 - a. the required hours could be met through a range of activities, in addition to traditional CPD live programming;
 - b. there would be sufficient programming, both generally and for specific groups (e.g. paralegals; francophone);
 - c. those licensees practising in more remote parts of the province would be able to access CPD without having to travel great distances to do so;
 - d. the program would not have a disproportionate impact on certain groups (e.g. sole or small firm practitioners, equity-seeking groups); and
 - e. the cost of meeting the requirement, both in terms of registration costs and time out of the office, would be reasonable.

54. The 2010 Joint Report suggested that these issues were among the topics that might be addressed in the two-year review along with information on monitoring and compliance,¹³ communications, and exemptions.¹⁴

iii. Sufficiency of Programming and Accessibility

55. Sufficiency of programming has not been a significant issue during the two years that the requirement has been in place. The introduction of the requirement has resulted in a significant expansion of available formal programming from not only the Law Society, but also organizations, associations, law firms and law schools.
56. CPD providers had from February 2010 when Convocation approved the requirement until January 2011 to prepare for the increased demand for programming, giving lead time to develop expanded and accredited programming. In addition, by permitting a wide range of activities such as mentoring, teaching, writing, and discussion groups to be “eligible” for credit hours the Law Society reduced the amount of live programming that was necessary in the first year while implementation was in its early stage. In the Committee’s view the sufficiency of available programming is also evidenced by the fact that the extensive feedback received in the course of this two-year review did not suggest insufficient programming.
57. In addition, the Law Society has offered free programming for the required professionalism hours. The Law Society’s free registration has allowed lawyers and

¹³ Discussed above, beginning at paragraph 39.

¹⁴ The 2010 Joint Report noted:

The Committees have identified a number of issues that may form part of the program assessment, including,

- a. sufficiency of programming generally;*
- b. sufficiency of certain types of programming including, Francophone programming, programming for those with disabilities; specialized substantive programs and programming for paralegals;*
- c. whether the requirement has a disproportionate impact on sole practitioners, small firm lawyers and paralegals, and lawyers and paralegals from Aboriginal, Francophone and equity seeking groups;*
- d. the quality and viability of education in discussion groups;*
- e. cost issues;*
- f. communication issues; and*
- g. information related to exemptions, compliance and monitoring.*

paralegals seeking to keep their CPD costs down, to do so. There is nothing to preclude a licensee from satisfying all 12 hours from free Law Society professionalism programming should they wish to do so in a given year. Other providers have offered accredited professionalism programming as well as general programming without charge, although this programming is often directed at a specific audience and therefore not open to all licensees.

58. In 2012 the Law Society alone put on 145 programs with 31,256 attendees at paid programming and 38,641 attendees at free programming. Of the programs offered, 78 were live with attendance of 9,566. One hundred and thirty-seven programs were webcast with attendance of 60,331. It is clear from the attendance statistics that licensees have taken great advantage of the webcast flexibility.
59. As stated above, only a very small percentage of licensees have been suspended for failure to meet the requirement in 2011 and 2012. Approximately 34,400 licensees per year have found sufficient programming and activities to satisfy the cumulative 412,800 CPD hours required in each of those two years.
60. In 2012 the Society further increased eligible activities by permitting the viewing or listening to archived or recorded CPD programs or courses without a colleague, or participation in asynchronous, on-line CPD courses that prompt responses throughout the learning process, for a maximum of six hours per year.
61. This afforded those licensees in remote locations or unable to attend or participate in programming during regular office hours the freedom to access programming at their convenience and on their own.
62. The wide range of eligible activities available to satisfy the CPD requirement, including, as set out above, free programming, the eligibility of viewing or listening to archived or recorded CPD programs without a colleague at any convenient time and the eligibility to participate in webcasts from one's office or home, rather than by attending in person, have made the CPD requirement highly accessible.

63. Other providers in Ontario are also offering programming comparable to the Law Society, in proportion to their size and program focus with a wide range of topics and delivery methods.
64. Programming has also been made available that addresses specific needs for diverse groups. An examination of the Law Society and other providers' websites points to programs with a wide and varied range of topics, including programs that address Aboriginal, sole and small firm, sexual orientation, disability and equity issues. This does not take into account the other eligible activities such as writing, teaching, mentoring, judging at moots, acting as an articling principal, mentoring or being mentored, supervising a paralegal placement and participating in discussion groups through which a wide range of issues may also be addressed. The extensive feedback received by the Law Society does not suggest that there is an issue with the sufficiency, content or accessibility of programming.
65. The Committees have also noted that with respect to French language programming, a Law Society program on "Linguistic Rights in the Courtroom," was presented in French in 2012, in cooperation with l'Association des juristes d'expression française de l'Ontario, the Ontario Bar Association and The Advocates' Society with a registration of 263. Similarly, the Canadian Bar Association has a number of on-line and live programs in French that Ontario licensees may complete.
66. The Committees conclude that during the first two years of implementation the providers have done well in providing sufficient and varied programming. There will nonetheless always be room to create further diverse and specialized programming on a going forward basis. As providers make forays into specialized programming their success will hopefully engender more such initiatives. In the Committees' view there will continue to be opportunities for creativity and diversity in CPD activities.
67. The Committees are satisfied that Convocation's 2010 goal that the CPD requirement be flexible and accessible is being met and that the breadth of programming will continue to evolve and grow in the coming years.

iv. Fairness and Cost

68. In reaching the conclusions they have about sufficiency of programming and accessibility the Committees have at the same time considered Convocation's concern that the requirement not have a disproportionate impact on certain groups, such as sole and small firm practitioners, and that the cost of meeting the requirement, both in terms of registration costs and time out of the office, be reasonable.
69. In approving the requirement in 2010 Convocation took into consideration the consultation input it received from sole and small firm practitioners and equity-seeking groups urging that the cost of programming and the way in which it was to be satisfied not have a disproportionate impact on such groups. These groups commented on the administrative burdens already faced by soles and small practitioners, of the income and time challenges many licensees in these groups faced and on the impact that time out of the office would have on their ability to earn income.
70. The 2010 Joint Report noted:
- Some submissions raise cost concerns for the lawyers and paralegals subject to the requirement, particularly those in sole practices and small firms. In developing its array of eligible activities and in proposing that the Law Society assume primary responsibility for delivery of the ethics, professionalism and practice management content, without charging program registration or materials fees, the Committees have developed the final recommendations with cost issues in mind.¹⁵
71. As discussed above, Convocation's approval of a wide range of eligible activities, many of which have no cost (mentoring, teaching, writing) or are low cost (law association programs) or free (Law Society professionalism programming, in-house), has positively addressed many of the concerns about disproportionate impact.
72. In its submission, CDLPA noted,
- The number and scope of available CPD programs is adequate and the cost of such programs reasonable. Lawyers expressed a strong desire to

¹⁵ 2010 Joint Report, paragraph 79.

continue to have CPD programs available through the county library system.¹⁶

73. In the 2010 Joint Report participation in study groups was also put forward as an eligible activity. The premise was that, through this collective learning in groups that lawyers and paralegals established and organized themselves, they could meet the CPD requirement without having to leave their communities and at minimal cost. To assist this approach they could make use of Law Society materials. The 2010 Joint Report noted the concerns that had been raised about this approach:

A few comments suggest that study groups are an impractical expectation on sole and small firm lawyers and paralegals already burdened with the administration of their practices. One or two comments suggest that while assisting with cost issues this approach runs the risk of creating two tiered learning where those who can afford it go to live programming and those who cannot teach themselves.

These observations may apply to some, but the Committees are hopeful that the discussion group opportunities may result in greater interaction as well as development of innovative ways to learn at low cost and despite distance. The Committees agree, however, that these are issues to monitor as part of the assessment of the requirement.¹⁷

74. It has been difficult to monitor precisely activity in this area because, unless a study group applies for professionalism hours accreditation, the Law Society would have little information on the extent to which study groups are being used. It is possible that the need for study groups has been minimized because of the breadth and reasonable cost (including free programming) of satisfying the annual requirement. The Law Society is aware, however, that at least some law associations have created successful study group programs using the Law Society's professionalism case studies that were developed to support this type of activity and are available on-line, at no charge to licensees. While study groups in general may not be used by a significant proportion of the profession, in the Committees' view they should continue to be eligible for credit for those who desire to use them. One comment received from an individual noted the value of the study group in one of the counties:

¹⁶ CDLPA, *supra* note 7 at 1.

¹⁷ 2010 Joint Report, paragraphs 80-81.

We...started a fruitful study group which meets monthly and frankly I get far more out of these meetings than I might out of a presentation...from a large law firm in Toronto.¹⁸

75. One other issue related to cost was raised in the 2010 Joint Report. Prior to the introduction of the CPD requirement, the Law Society and some other providers had bursary programs for licensees whose annual net income was \$35,000 or less. The 2010 Joint Report proposed future consideration of this issue, with possible actuarial consideration, of the appropriate bursary threshold. In April 2011 the Committees reported that it was premature to consider whether a change to the bursary approach was necessary or appropriate before the requirement had been in place for some time and did not address the issue.
76. The Committees note that the number of applications for bursaries since the CPD requirement came into operation has been relatively low. In 2009 and 2010, the two years before the requirement was introduced, there were 199 and 172 requests and approvals for bursaries. In 2011 and 2012 the numbers were 273 and 231, respectively. Most requests have been granted.
77. In the Committees' view it is not coincidental that the number of requests for bursaries has not increased more. The reasonableness of the requirement and the breadth of ways, including at low or no cost, in which to satisfy it, has made the cost of compliance manageable. In the Committees' view there is little reason for undertaking a significant examination of the bursary issue given the low level of demand.

v. Exemptions

78. In 2010 Convocation provided those licensees who had exceptional reasons for not being able to meet the annual requirement the opportunity to be exempted for some or all of a year. The 2010 Joint Report noted:

The purpose of such exemptions is to recognize isolated or individual events or conditions that preclude a lawyer or paralegal from completing the credits *in a particular year*. The Equity and Aboriginal Issues

¹⁸ The individual did express concern about the red tape involved in getting approval for professionalism hours.

Committee recommends that the basis for exemptions be those characteristics coming within the *Human Rights Code*.¹⁹ The Committees agree, but also consider that there may be other relevant circumstances deserving exemption, in addition to those coming within the *Human Rights Code*. The Committees are of the view that the Director of Professional Development and Competence or her designate must have discretion, as she currently does respecting licensing process issues, to consider additional circumstances for accommodation.

The onus will be on lawyers and paralegals seeking the individual exemption to apply for it as soon as they become aware that they will or may be unable to complete the credit hours. There will be exceptional circumstances in which the request may come at the end of the reporting period. This is discussed further under the compliance section of this report, but in general terms the Director should have discretion to consider them.²⁰

79. Pursuant to the 2010 Report lawyers or paralegals subject to the requirement may seek an exemption from the requirement in circumstances coming within the *Human Rights Code* and/or such other or additional circumstances as the Director of Professional Development and Competence, or her designate, deems appropriate. Typically, the requests have been made by those in ill health or with serious family and other personal difficulties who are temporarily not practising.
80. Lawyers and paralegals that fulfill the exemption criteria are granted an abridgment of the CPD requirement on the basis of each month or partial month for which the exemption is granted. In 2011 189 exemptions were granted.²¹ In 2012 168 exemptions were granted.²²
81. Given the low number of exemption applications and the high percentage of acceptance of applications received, the Committees are satisfied that the need for exemptions has been minimal and requests have been reasonably addressed.

¹⁹ race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, same-sex partnership status, handicap.

²⁰ 2010 Joint Report, paragraphs 27 and 28.

²¹ PD&C Department Resource and Program Report. January 2012, p. 11. There were 264 exemption applications. Forty-eight were withdrawn, 27 were denied, 1 decision was pending at the time of reporting and 189 were granted.

²² PD&C Department Resource and Program Report. January 2013, p.11.

vi. Communications

82. Communication is the key to the success of any new program, particularly one with regulatory consequences. Since the program was approved in February 2010 the Law Society has been communicating with licensees in print and on-line and been adjusting its approaches to reflect the volume of feedback it has received. A number of enhancements were made in 2011 and 2012 to reflect that feedback including,
- a. expanded definitions of key terms and reorganization of information on the CPD requirement and CPD accreditation process web pages;
 - b. updated accreditation criteria, application forms, sample program agendas and more detailed notices of accreditation;
 - c. process improvements to allow more flexibility around popular delivery formats such as video replays and archived webcasts and teaching applications;
 - d. introduction of a monthly update for education providers containing tips for obtaining accreditation of programs and addressing frequently asked questions; and
 - e. CPD Reporting Platform (“the Portal”): new licensee self-edit function, added flexibility regarding professionalism entries, and a more robust search/sorting tool.²³
83. The Law Society has continued to receive feedback in 2012, particularly relating to the Portal, which is addressed in this report. In the Committees’ views the high level of compliance with the requirement clearly demonstrates that the profession is fully aware of the requirement and its components.

c. Ongoing Implementation of the CPD Requirement

84. In addition to having considered the overarching review issues that the 2010 Joint Report highlighted, the Committees have also considered eight specific areas on which the Law Society has either received substantial comment over the past two years or has itself raised for consideration. These are as follows:
- a. Program and Activity Accreditation Process.

²³ PD&C Department Resource and Program Report. January 2012, p. 11.

- b. Carryover Privileges and Timing.
 - c. Limits on Alternative Activities.
 - d. CPD Hours for Senior Practitioners, those working *Pro Bono* and part-time Licensees.
 - e. Professionalism Requirement
 - i. Scope of Eligible Professionalism Activities.
 - ii. Number of hours
 - f. New Licensee Requirement.
 - g. Failure to Report CPD Hours by December 31.
 - h. CPD Reporting Platform (The Portal).
85. In this report the Committees recommend enhancements to the operation of the CPD requirement. A number of the proposed enhancements will require substantive changes to CPD administrative structures, including to the Portal. In the Committees' view, it is important to ensure that sufficient time is afforded to enable the new administrative structures to be properly designed and implemented and licensees to be properly notified of the changes. For these enhancements, discussed below, the Committees recommend that they come into effect beginning with the 2014 CPD year.
86. Three of the Committees' recommendations, discussed below, do not require major substantive administrative changes. They may be viewed more as refinements of a current approach. In the Committees' view these can be easily communicated and implemented forthwith. The Committees' recommendation respecting these is that they come into effect immediately following Convocation's approval.
- (a) Program and Activity Accreditation Process**
87. For substantive CPD content hours, the Law Society chose not to require licensees to attend only those programs that had been pre-approved or accredited. The general goal was to avoid creating an administrative burden on licensees and to permit lawyers and paralegals to choose educational activities based on their particular needs and interests.

88. The Law Society did create a more structured process respecting professionalism hours so that it could assess the quality of professionalism learning content, given the importance of these offerings. A further intent was to place the main responsibility for delivering professionalism content onto the Law Society, which would be providing it for free. In fact, significant provider interest in offering professional hours has occurred and licensees have been willing to pay for it in many cases as part of the cost of substantive programming.
89. Under the partial accreditation framework Convocation established in 2010, providers seeking to offer programs and content in the area of professionalism must have their content for each program accredited by the Law Society for professionalism hours. Similarly, licensees seeking professionalism hours for activities such as teaching, writing and mentoring must apply for accreditation.
90. The accreditation criteria include a range of professional responsibility principles related to the *Rules of Professional Conduct/Paralegal Rules of Conduct* and By-Laws, a variety of practice management topics, as well as content related to work/life balance, ethical business development and career and profile management. The current Accreditation Criteria are set out at **TAB 3.1.8: Current Professionalism Accreditation Criteria**.
91. While the substantial amount of professionalism programming has been a positive result, it has significantly driven up the number of applications for accreditation with a large variety of professionalism program opportunities available to licensees.²⁴ Processing applications for accreditation is a labour intensive exercise that has required a dedicated team of four administrative staff to individually assess each agenda or session or activity against the criteria, perform necessary administrative tasks and communicate with applicants. In addition to administrative staff, legal counsel in PD&C is required to review applications on a regular basis.

²⁴ See paragraphs 18-19.

92. If the continued use of this approach were essential to ensuring quality control over the professionalism component of the CPD requirement the Committees would not hesitate to recommend it. In the Committees' view, however, the accreditation requirement can be continued in a simplified manner that preserves quality control while saving time, resources and cost.
93. The Committees therefore propose an Accredited Provider Framework. This process would allow accreditation of major education providers, law association, law firm and government providers of in-house training and other such established organizations that could then deliver professionalism content without requiring an individual application for each session. The proposed Accredited Provider Framework is set out at **TAB 3.1.9: Accredited Provider Framework**.²⁵
94. In the Committees' proposal, providers would only achieve accredited status if and when they had proven their ability to provide consistent and high-quality programming. The proposed Accredited Provider Framework will,
- a. maintain the quality control over professionalism content that Convocation desired;
 - b. reduce unnecessary administrative complexity and use of resources; and
 - c. maintain oversight that is proportional and balanced.
95. An Accredited Provider Framework would maintain the original goal of facilitating licensee access to a variety of relevant programs without unnecessary cost as well as reduce the workload and attendant costs incurred by the Law Society in processing applications. A large percentage of the applications are currently received from a list of established education providers that will likely apply for and be accredited providers.

²⁵ The Law Society of British Columbia has had an accredited provider framework in place since mandatory education came into effect in that province over five years ago. Similarly, many major U.S. jurisdictions have accredited provider systems.

96. Nothing in the Accredited Provider Framework would oblige an accredited provider to include professionalism content in every program. Whether a program offers professionalism hours will be addressed on the individual program information.
97. In addition, this change would not eliminate the process for accreditation for a single program or activity that an individual or non-accredited provider submits. In those circumstances, the individual or provider would submit a program accreditation request using the same process that has been in place since inception of the CPD requirement. However, the process of accrediting established providers would recognize the proven suitability of professionalism content that is being delivered by experienced education providers.
98. Also, individual licensees would continue to submit applications for accreditation of non-program-based activities such as teaching, writing, mentoring and so on.
99. The delivery of professionalism content by accredited providers would be monitored by the Law Society, which would conduct rotating program visits and random requests for program agendas and supporting materials to ensure alignment with the accreditation criteria.
100. The change to an accredited provider model of CPD will require a change in processes and systems tracking and communications to providers. As such, if approved, the Committees recommend it come into effect beginning with the 2014 CPD year.

Recommendation

101. **That the Law Society establish an Accredited Provider Framework (“APF”) for professionalism programs substantially in the form set out at [TAB 3.1.9](#), while also continuing the current professionalism program accreditation for those who do not meet or do not apply for accredited provider status. The Director of Professional Development & Competence, or the Director’s designate, will have the authority to adjust the implementation of the APF in accordance with the policies set out in this report.**

(b) Carryover Privileges and Timing

102. The feedback the Law Society has received included requests from licensees for the introduction of an option to carry CPD hours over into the following calendar year. In general the requests have come from a small minority of the licensees subject to the requirement. The issue has also been mentioned by some organizations.
103. The proposals for a carryover of CPD hours focus on these main points:
- a. Some licensees wish to take programming that is scheduled toward the end of the calendar year because it is relevant to their practice area or offers training in a niche area. They have expressed frustration that they may not apply the hours spent at these programs toward their CPD requirement for the following calendar year, when they have fulfilled their CPD hours for the current year.
 - b. Some licensees exceed the 12 hour requirement in a particular year due to enrolment in a specialized program. They have expressed frustration at being unable to carry over these extra hours. They see the limitation as a disincentive to engaging in more than the minimum CPD requirement. In particular, licensees have suggested that carryover should be permitted for certificate programs or graduate degree programs that involve a substantial time commitment, well above 12 hours a year.
 - c. Some licensees suggest that where a single activity, such as writing a book, requires a considerable time investment, they should be able to carry over hours.
104. Convocation's original reason for not permitting carryover stemmed from the view that licensees should be demonstrably engaged in the enhancement of their knowledge, skills and professionalism in each year of practice. Given that the yearly requirement is only 12 hours and the hours may be met through a wide range of programming and activities, Convocation was of the view that it is not unreasonable to require a yearly minimum requirement.
105. If carryover were permitted it could send the message that is acceptable to take no CPD in a given year. This would undermine one of the main objectives of the CPD requirement, which is to incorporate a culture of learning on a yearly basis.

106. Moreover, in the Committees' view the absence of a carryover provision does not appear to be interfering with the ability of licensees to obtain relevant and timely programming, as evidenced by the high rates of licensee compliance and high registration numbers at Law Society, in-house and other provider programs.
107. The Committees note that the 12-hour requirement is a minimum requirement and that quite apart from this new obligation, many licenses spend considerably more time each year on their professional development. These activities have many benefits for lawyers and paralegals, including enhancing their professional status and their ability to market their skills and expertise. Decisions to exceed the minimum number of hours are commendable, but are not responsive to Convocation's goal that licensees meet a minimum number of hours each and every year.
108. The Committees also note that under the current CPD reporting system, creating a program to record carryover credits would be complex and expensive. A carryover policy would likely require significant manual inputting of data and involve a licensee-driven request process, which would in turn involve significant administrative staff time and resources.
109. If the change were justified to significantly improve the program's goals or implementation, administrative complexity might not be a factor in rejecting the change. In the Committees' view, however, this is not the case. The Committees therefore make no recommendation for change to the current requirement that CPD hours may not be carried over from one year into the next.

(c) Limits on Alternative Activities

110. Current CPD policies restrict the number of total hours a licensee is allowed to claim for certain activities that are not program-based. Those alternative activities include mentoring, teaching and writing and are capped at a total of six hours per activity, per year. The focus of the policy is to promote variety in the learning experiences of licensees as a means of enhancing competence.

111. Some licensees have complained that the cap of six hours for alternative activities prevents them from receiving CPD hours for valuable contributions they have made to the profession. Some suggest that these limits discourage their continued involvement in these activities. Some experienced licensees have expressed frustration with the inability to find structured learning programs that cater to their particular needs and who feel that they add tremendous value by teaching or mentoring, but cannot claim the entirety of their time doing so.
112. Other provinces place no cap on such activities. In those jurisdictions, to ensure some variety in learning content, licensees are required to complete the hours through two separate “projects.” For example, they allow two different preparation and teaching efforts, preparation of two different publishable writings, or mentoring two different mentees at separate times – for a total of all 12 hours, including the professionalism hours if that type of content has been included in the activity and accredited.
113. The Committees recognize the value of mentoring, writing and teaching, which are recognized in the CPD requirements. They believe, however, that there are valid reasons for requiring that licensees obtain the annual hours from more than one activity that would also foster the goals of CPD regarding remaining current in substantive areas, interacting with others and meeting the requirement for professionalism content.
114. The Committees question those who suggest that the cap would deter them from continuing with these activities. Since they presumably engaged in these activities before there was a CPD requirement, there must be other reasons licensees undertake these activities. There are many licensees, including senior licensees, who have and will continue to devote much more than 12 hours of their time to these types of activities and they are commended for this. However, the CPD requirement was never intended to be the maximum number of professional development hours licensees undertake, nor should it be perceived in that way. Indeed the 2010 Joint Report noted,

The Committees reiterate that their proposal seeks to create a balanced program that mandates a minimum commitment, while recognizing the

likelihood that most lawyers and paralegals will voluntarily pursue CPD over and above the minimum.²⁶

115. The Committees have concluded that no recommendation should be made to change the number of hours that may be claimed for alternative activities.
116. The Committees are of the view, however, that some adjustment should be made to the criteria that enable a licensee to claim credit for legal writing. The 2010 Joint Report provided as follows with respect to eligibility for writing credit:

Writing and Editing Books or articles (to a maximum of 6 hours per year)

The content must be law-related and within the CPD definition, must have been prepared solely by the person seeking the credit, and intended for publication or use in course materials, rather than for personal use or purposes or primarily for marketing purposes. Credit for an article or book may only be claimed once. The credit may also be claimed for editing legal texts or case reports and for preparing case headnotes, with the same restrictions as set out for writing. There is no limitation on the audience for whom the work is written.

Credit is only available for volunteer or part-time writing, not as part of full-time or regular employment.²⁷

117. Concern has been raised about certain limitations to claiming writing credit as follows:
- a. A licensee may only claim the credit if he or she is the sole author.
 - b. The writing must be for intended for publication or use in course materials rather than for personal use or primarily for marketing purposes.
 - c. Legal writing that is part of a licensee's employment cannot be claimed.
118. The Committees conclude that the requirement that a licensee be the sole author to claim CPD credit should be removed. Indeed, co-authorship is often a way for a senior and junior licensee to collaborate on a publication allowing the less experienced licensee to benefit from such interaction. The key is simply to ensure that each author is able to verify the number of hours he or she spends on the writing, to a maximum of six hours. As this recommendation does not necessitate major administrative changes the Committees' recommend it come into effect immediately following Convocation's approval.

²⁶ 2010 Joint Report, paragraph 30.

²⁷ Ibid. paragraph 52(e).

119. The Committees are also of the view that there should be some expansion of what type of writing is eligible for credit. While writing firm bulletins is no doubt done for marketing purposes, it is artificial to suggest that licensees writing for third party publications are not also often doing so to market their expertise. There are effective and educational in-house writings that are well-researched and enhance the knowledge of those who write and ultimately read the document. These writings should be eligible for the writing credit. The Committees therefore recommend that the distinction between legal writing for a third party publication and legal writing for a firm publication be removed. As this recommendation does not necessitate major administrative changes the Committees recommend it come into effect immediately following Convocation's approval.
120. The Committees are of the view that they should be somewhat more cautious in expanding the eligibility to include those writings done for "personal" use. The original caution in this area was directed primarily at blogs, which were less developed even three years ago than they are today when they are becoming an increasingly more present part of the legal landscape.
121. At the same time there is a vast range of blog postings, some largely anecdotal others more analytical and rigorous. This may be an area worthy of greater consideration and input, but in the Committees' view it is premature to simply remove the limitation on "personal" writing at this time. The role of blogs may be explored on a going forward basis for possible inclusion as an eligible activity in the future.
122. Lastly, the Committees are not recommending a change to the exclusion of legal writing where the licensee is employed as a writer, rather than engaging in legal writing as an adjunction to practice.

Recommendation

123. That the requirement that a licensee seeking to claim credit for writing and editing books or articles must be the sole person who has prepared the book or article be removed.

124. That the distinction between legal writing for a third party publication and legal writing for a firm publication be removed.

(d) CPD for Senior Practitioners, Those Working *Pro Bono* And Licensees Working Part-Time

125. In the 2010 Joint Report the Committees set out the main focus of the CPD requirement:

In developing the CPD proposal the Committees sought a balanced approach that would focus the CPD requirement where it could be most effective. Those who practise law or provide legal services are the focus of the greatest regulatory attention. There is a heightened public interest in their competence, ethical behaviour and ability to manage their practices. While all lawyers and paralegals must be competent and maintain that competence in whatever work they do, the regulatory imperative for competence is at its highest for those in the 100% category. They have [direct] interaction with clients, providing legal advice and opinions upon which those clients rely. In contrast, those who have chosen to transfer to the 50% or 25% fee paying category are not practising law or providing legal services; they are not providing legal advice or opinions.

The Committees also agree that the level of competence required is the same regardless of whether the lawyer or paralegal practises full or part time. LawPRO levies differentiate between part time and full time practice, but this is premised on a risk-based assessment that provides a link between the number of hours of practice yearly and the risk of errors. In the Committees' view there should be no reduction in the yearly hours of CPD. Maintenance and enhancement of competence are not tied to hours practised.²⁸

126. Some categories of licensees have suggested that their particular circumstances make it unfair to require them to fulfill the annual 12 hours CPD requirement because they are not practising full time, are providing only limited *pro bono* services or have sufficient

²⁸ 2010 Joint Report, paragraph 23 and 26.

expertise as a result of their length of time in practice. In some cases they have described their situation as combining these factors. The concerns raised by these licensees can be divided into the following major areas:

- a. **Senior Practitioners (including those working *pro bono* and part-time)** Some licensees in this group contend that, given their years of experience in practice, CPD is of little or no benefit to them. The comments often reflect a certain dismay that the requirement seems to be challenging their competence after a long career. Some are retired and providing legal advice on a voluntary basis and feel that the CPD requirement causes them inconvenience and hardship.
- b. **Licensees Practising Part-time.** Licensees in this group have taken issue with the Law Society's approach to requiring all licensees who practise law, even on a part time basis, to complete a full 12 hours of CPD annually. Some have suggested a prorated CPD requirement based on the number of hours worked in a month or year. For some, the argument is that reduced working hours to accommodate parental responsibilities should be taken into account.

127. The Committees have considered these requests for waiver or reduction of the CPD requirement. They are of the view that in both cases the requests are not in keeping with the implementation of Convocation's goals for its competence-based program. The 12-hour requirement is a small commitment of time balanced against the importance of protecting the public interest through licensees who meet high standards of learning. Committees affirm the views expressed in the 2010 Joint Report as set out in paragraph 125 above.
128. The Committees respect the experience senior practitioners bring to practice whether it be full-time, part-time or *pro bono*. There are many outstanding senior practitioners who continue to make invaluable contributions to the profession and the public they serve. The CPD requirement is in no way intended to minimize or challenge their career accomplishments.
129. The CPD requirement was specifically designed with a wide variety of ways to meet the annual hours to provide a range of CPD activities appropriate for various levels of experience and knowledge among practitioners. Senior practitioners could, for example, teach or mentor more junior licensees of the profession and in doing so provide the benefit of their expertise to others while obtaining CPD hours.

130. The CPD requirement reflects Convocation's belief in the importance of continued career-long learning no matter how experienced the practitioner. It is for this reason that Convocation did not link the requirement to years of practice or expertise but to all those providing legal services.

131. Some of the input received from law firms noted the following, as among the benefits of the requirement:

While many partners previously took the view that "only associates need training," I believe that now many of them actually welcome the "excuse" to refresh their knowledge and update their practice techniques.

132. In considering this issue, the Committees have noted, as well, that there is information that indicates that licensees who have been in practice for a lengthy period continue to be actively represented in LawPRO claims. In its submission in support of the proposition that CPD is useful throughout a careers, LawPRO notes,

...based on LawPRO's data, there is evidence to suggest that lawyers who have progressed further in their careers constitute a greater risk to the primary professional liability program in terms of claims costs.²⁹

133. In the Committee's view to exempt senior lawyers as a category from the requirement or to reduce the number of hours required of them is not in keeping with the requirement's underlying premise that professional development is a career-long commitment. There is important value to a profession demonstrating its public commitment to this learning through a required program for all those who practise law or provider legal services. It would undermine the competence-based imperative to excuse senior practitioners.

134. Similarly, the Committees are of the view that the goals of the CPD requirement are equally applicable to part-time and *pro bono* practice. Whether providing services to clients on a *pro bono* and/or part-time basis or as a practitioner who has extensive experience, the ultimate responsibility for competence remains the same. Indeed CPD

²⁹ LawPRO *supra* note 9 at 17.

hours may be even more important to those in part-time practice as a means of remaining current.

135. In the Committees' view, moreover, the low number of required hours, the wide range of ways in which to satisfy the requirement, the availability of free and low cost CPD and the ability to obtain credits by watching live webcasts and to listen to or view video-play repeats for up to six hours of the annual requirement, all contradict the suggestion that the requirement results in hardship to part-time practitioners.
136. The Committees do not recommend any change to the CPD requirement as it applies to senior practitioners, those doing *pro bono* or those in part-time practice.

(e) Professionalism Requirement

137. Under the current policies, all licensees are required to obtain three of their 12 annual hours of CPD in professionalism-related endeavours. In addition, all professionalism-related endeavours must be accredited by the Law Society as fulfilling the expected professionalism competencies. As set out in **TAB 3.1.8**, those competencies are specified and available to all licensees and external providers for use in developing content or learning activities.
138. The Committees have received a number of comments on the positive effects of the requirement, particularly from a number of law firms that have identified the increased value now placed on discussions on ethics:

Mandatory CPD focuses new attention on legal ethics and professionalism and inspires wide-ranging discussions of both. Every big firm has a few internal ethics experts and the CPD rules encourage these experts to share their analysis and thinking with a broader audience than they might previously. It's now "cool" for lawyers to discuss ethics...The CPD Rules encourage us all to take a more principled and organized approach to teaching lawyers how to run their practices. While we have always offered practice management programs for junior associates, we now open these programs to the senior lawyers as well. We find that many partners attend and that they say that they are learning new practice techniques and improved processes that didn't exist when they were younger lawyers.

139. In its submission LawPRO “strongly supports the continuation of the requirement” and notes:

LawPRO endorses the importance of ethics, professionalism and practice management from a professional competence point of view, and with respect to claims prevention and risk management.... The vast majority of LawPRO claims result from short-comings or mistakes with respect to professionalism (in particular related to lawyer/client communication and relationship issues) and basic practice and time management issues.³⁰

140. The Law Society has also received input on the professionalism requirement that focuses on two areas:
- a. Scope of Professionalism Activities
 - b. The number of professionalism hours.

Scope of Professionalism Activities

141. The professionalism content of both the Law Society and external providers draws on the competency profile and outlines provided by the Society, as set out in **TAB 3.1.8**. These Professionalism Accreditation Criteria were approved by Convocation, with little flexibility left to operational staff to vary or expand on them.
142. Some of the comments have highlighted that one of the implications of a rigid set of criteria is that there is strikingly similar content in all programs offered in Ontario, which is beginning to result in concerns that content is repetitive and, in the case of integrated content, that it fails to be properly aligned with the context of the program, providing little perceived value for learners. Maintaining the integrity of the learning content is as important as time spent on that content. Licensees and providers have complained that professionalism content is being “forced” into programs and fails to achieve a level of relevance that is useful.
143. In the Committees’ view there is a need for added flexibility to broaden the criteria where appropriate, however, some of the proposals for expansion of the criteria would undermine the purpose of the professionalism requirement. For example, permitting general advocacy and negotiation skills programming to satisfy the professionalism

³⁰ LawPRO *supra* note 9 at 15.

requirement would go beyond the intended scope. While skills training is important to the ongoing development of competent licensees, the professionalism requirement was intended to focus on more particular issues related to ethics and practice management. A program that addresses tools for ethical advocacy or negotiation would properly come within the scope of the professionalism requirement, whereas all aspects of advocacy skills, such as cross-examination or addressing a jury, would not.

144. The Committees have also noted that some of the comments that the criteria preclude programs on certain topics reflect a lack of understanding of the criteria. This communications objective can be improved by providing more explanatory information.
145. The Committees have concluded that the current criteria (**TAB 3.1.8**) can be improved by,
 - a. clarifying some of the descriptions;
 - b. expressing them with somewhat more flexibility; and
 - c. including direct reference in the criteria to areas that are intended to be included, such as in-house and government programming.³¹
146. The Committees propose revised Professionalism Accreditation Criteria to be substantially in the form set out at **TAB 3.1.10: Revised Professionalism Accreditation Criteria**.
147. Further in the Committees' view, on a going forward basis, the criteria should be seen as guidelines in a living document that can be adapted operationally to reflect changing implementation needs. There should be increased operational flexibility to expand the Professionalism Accreditation Criteria where appropriate. Going forward the Director of Professional Development & Competence, or the Director's designate, will have the authority to adjust the criteria in accordance with the policies set out in this report.

³¹ Inclusion of this programming has always been intended, but a literal reading of the criteria might lead to confusion as they appear focused on private practice.

148. This recommendation does not necessitate major administrative changes, but is rather a refinement of the current approach. The Committees recommend that it come into effect immediately following Convocation's approval.

Recommendation

149. **That there be increased flexibility to expand the Professionalism Accreditation Criteria where appropriate. The criteria will be revised to be substantially in the form set out in TAB 3.1.10. Going forward the Director of Professional Development & Competence, or the Director's designate, will have the authority to adjust the criteria in accordance with the policies set out in this report.**

Number of Professionalism Hours

150. The Committees also considered whether the Law Society should reduce the number of professionalism hours from three to two. The Law Society's requirement for professionalism hours is higher than that of a number of other jurisdictions whose required professionalism hours range between none and two as follows:

- Northwest Territories, British Columbia, Nova Scotia = 2 out of 12 hours per year
- Saskatchewan = 6 out of 36 hours across 3 years
- Manitoba = 1.5 out of 12 hours per year
- PEI = 4 out of 24 hours across 2 years
- Quebec = 0 professionalism hours
- New Brunswick = 0 professionalism hours
- Yukon = 0 professionalism hours

151. Although the difference in hours from other jurisdictions in and of itself is not a reason for the Law Society to change its requirement, it has been suggested that as law societies across the country build national competency standards, uniformity where appropriate is a worthwhile pursuit.

152. National law firms and federal institutions, such as the Department of Justice, must administer complex CPD requirements across the country. Feedback has been received suggesting that a more uniform approach would assist in this. The different requirements can be frustrating for licensees who are licensed in multiple Canadian jurisdictions. For

organizations or law firms providing professional development courses, the different requirements and definitions result in both duplication of effort and additional cost in seeking accreditation of their courses from the law societies.

153. While national consistency is a laudable goal and the Law Society supports and participates in many national initiatives through the Federation of Law Societies of Canada, the Committees do not consider that there is an adequate basis now to reduce the professionalism hours requirement. Moreover, although the Committees' comments in this report and their recommendations reflect a concern for easing unnecessary administrative burdens and costs this cannot be the driving force of a competence-based program.
154. In the Committees' view, after only two years in operation, the only reason to reduce the number of professionalism hours would be if it is difficult to provide sufficient content that is of high quality and readily available without being repetitive. Concerns have been raised about repetitiveness of content, as discussed in the previous section of this report. In the Committees' view, however, the proposed improvements recommended above should also have a positive effect on concerns about repetitiveness in programming and the number of hours. Moreover, after only two years it is premature to make such a change without more careful consideration.
155. The Committees therefore make no recommendation to reduce the number of professionalism hours.

(f) The "New Licensee" Requirement

156. In September 2008 Convocation approved the introduction of a requirement that new lawyers must take 24 hours of continuing professional development within the first 24 months of practice. The requirement was scheduled to begin in January 2011 and was part of the reform of the licensing process. The objective of the component was to ensure that candidates receive the practical training they need during their first 24 months of practice to serve their clients in accordance with the expectations of lawyers prescribed

in the *Rules of Professional Conduct*. It is important to note that at the time this requirement was introduced there was no CPD requirement for licensees generally.

157. As part of the new licensee requirement the Law Society would accredit specific courses to ensure that the content covered the requisite professional responsibility and practice management components to assist new licensees. The post-call component was meant to allow new lawyers to choose the accredited program and provider of their choice. A substantial proportion of the program content was required to cover defined professional responsibility and practice skills competencies. The balance of the program could address the substantive law that meets practice needs.
158. By the time the program was scheduled to begin the CPD requirement for all licensees had been approved and was also scheduled to begin in January 2011. Convocation continued to be of the view that this focused approach to the CPD requirement for lawyers³² in the early years of entering a practice category should continue. The 2010 Joint Report stated:
- Since the programs that new lawyers will take must be accredited, providers who develop programs for this group will be required to include, as 25% of the content of each program, topics in ethics, professionalism and/or practice management. Only programs that the Law Society approves to address learning in the early years of practice will fulfill the requirement. The Law Society will accredit individual programs of other providers for this purpose. Only programs that have integrated professionalism concepts as 25% or more of the learning will be accepted for accreditation.³³
159. New licensees licensed mid-year were not required to begin meeting the requirement until January of the calendar year following their licensing, although any credits they accumulated in that partial year could be counted toward that following year.
160. In the first year of the CPD requirement many licensees raised concerns that the 25% content requirement was too restrictive and, in particular, the limitations it imposed on

³² When this was originally approved paralegal regulation had not come into effect. The 'new' licensee requirement currently applies to both lawyer and paralegal licensees.

³³ 2010 Joint Report, paragraph 74.

new licensees precluded them from taking substantive CPD that was most useful to their practices and professional development. In the April 2012 Joint Report PD&C Committee and PSC considered the concerns new licensees had raised as follows:

- a. Because new licensees are restricted to attending only accredited programming that meets the requirement to embed 25% ethics, professionalism or practice management content, licensees cannot obtain credit for many substantive law programs that may be more relevant to their learning needs, because they do not comply with the 25% requirement.
- b. The complexity of the new licensee requirement has caused confusion among licensees.
- c. The Law Society has tended to be the primary provider of new licensee programming. With a significant number of licensees required to take the accredited programming it is difficult to develop courses that focus on more specialized areas of practice. Licensees are often frustrated by “general” programming. The concern, moreover, is that there is diminishing return to attending programming that is not more specifically tied to particular practice areas.
- d. One of the benefits of CPD for new licensees is interacting with more senior practitioners. If new licensees continue to attend different, more generalized programming they may miss this opportunity.³⁴

161. The April 2012 Joint Report recommended changes to the new licensee program, which Convocation approved as follows:

That Convocation approve a change to the new licensee requirement to provide that new licensees may register for any program or alternative activity that is accredited for professionalism, without requiring that each program or alternative activity have 25% professionalism content, and provided that, overall, new licensees obtain three hours of professionalism content annually.³⁵

162. New licensees and providers have expressed strong support for these improvements to the new licensee requirement, but continue to express the view that the new licensee requirement is creating unhelpful restrictions on eligible programming. As well, the time frame within which to complete the new licensee requirement has the unintended effect of permitting a potentially long delay before licensees must commence CPD.

³⁴ April 2012 Joint Report, paragraph 26.

³⁵ See TAB 3.1.3.

163. The Committees agree that it is important for new licensees to be exposed to professional development in the areas of professionalism, ethics and practice management. In their view, however, the need for the new licensee requirement was for all practical purposes rendered unnecessary by the introduction of the general CPD requirement in 2011. The new licensee requirement is cumbersome and prescriptive without actually providing any more hours of professionalism programming than all licensees are required to meet (three hours).
164. By requiring every program a new licensee takes to include a professionalism component, new licensees continue to be hamstrung from developing a professional development plan that best meets their professional needs. They may be led to choose programming not because it is relevant and useful, but because it contains the necessary professionalism component. This requirement also causes confusion among new licensees as one of the firms pointed out in its comments:
- We have had several instances of new members mistakenly thinking, owing to the way their hours are tracked and indicated on the LSUC Member Portal, that they have completed their annual requirement when in fact they have not done so.
- They tend to forget that every single one of their programs must be accredited, and the situation becomes even more challenging when they see on the Portal that they have completed 3.0 professionalism hours.
165. The requirement also places a burden on providers to create special programs for new licensees and they may not always be in a position to do so. This means new licensees may have to take what is available rather than what is beneficial.
166. Moreover, by restricting the programming new licensees must take to those that are accredited, new licensees may be less likely to meet and interact with senior practitioners who will not take this programming. In the Committees' view this is an unintended and unwelcome consequence of the new licensee requirement.
167. Under the new licensee requirement a licensee is not obliged to begin meeting the CPD requirement until January 1 following the date of licensing. It then continues until the

new lawyer or paralegal has completed the equivalent of two full years of practice. A person licensed in February, for example, is not obliged to do any CPD until January of the following year. While this approach was implemented in recognition of the intensity of the first months of establishing a practice and also for administrative ease of calculating hours on a calendar year basis, in the Committees' view it is not in keeping with the very policy behind the new licensee requirement.

168. The new licensee requirement was originally introduced before there was a general CPD requirement. The rationale was to ensure these licensees received ethical training even if there was no general CPD requirement. The number of hours of professionalism new licensees must acquire is now no different from that of more experienced licensees. What once made sense as a stand-alone requirement when there was no other seems to be unnecessary when there is a coherent general CPD requirement that all licensees must meet. In the Committees' view, the sooner new licensees become integrated into the profession at large, benefit from interaction with mentors and senior practitioners and have access to programming that best meets their professional development needs, the better.
169. Accordingly the Committees recommend the elimination of the new licensee requirement. They recommend that licensees be required to begin meeting their CPD requirement in the month following receipt of their license on a pro rata basis for their first year and on the calendar year basis of all licensees thereafter. So, for example, a person who is licensed in June would be required to have six hours of CPD in that year, of which 1.5 hours would be in professionalism topics.
170. This recommendation will require substantive changes to CPD administrative structures, including to the Portal. To ensure that sufficient time is afforded to enable the new administrative structures to be properly designed and implemented and licensees to be properly notified of the changes, the Committees recommend that the recommendation come into effect beginning with the 2014 CPD year.

171. In conclusion, in the Committees' view the benefits of the elimination of the new licensee requirement would include,
- a. a broader selection of programming for new licensees;
 - b. removal of the gap in new licensees commencing CPD;
 - c. greater possibility of mentoring in the course of meeting the CPD requirement; and
 - d. administrative efficiencies.

Recommendation

- 172. That the “new licensee” requirement be eliminated and new licensees be required to begin meeting their CPD requirement in the month following receipt of their license on a pro rata basis their first year and on the same calendar year basis as all licensees thereafter.**

Compliance and Reporting

(g) Late Filing Fee for Failure to Report CPD Hours by December 31

173. While the level of licensee compliance with the CPD requirement has been exceptional, late completion and/or reporting of the CPD requirement will be an issue to some extent going forward as it is on all annual requirements. In pursuit of Convocation's goal of ensuring that the Law Society supports licensee compliance, each failure to complete or report CPD by the reporting deadline has had significant cost and resource implications for the Law Society.
174. As at December 31, 2011, 33,543 practising licensees were subject to the CPD requirement for 2011. By the end of 2011, 31,036 licensees had fulfilled the requirement, while 2,507 had not. The process of bringing these licensees into compliance during the first quarter of 2012 resulted in a significant workload in the Membership Services, Portal Support, Call Centre and Licensing and Accreditation areas during a very active business period for the organization. The first quarter of each year is a time of significant licensee reporting activity including status changes, licensee fees and e-filing.

175. The process of managing CPD non-compliance involved placing hundreds of telephone calls to licensees, sending registered letters, email correspondence and manual assessment of individual licensee accounts to determine their CPD status over many months.
176. At the end of the second full year of CPD, fewer licensees had logged completion of their CPD Hours into the Portal as compared to the previous year at the same time. As of January 1, 2013 there were 3,468 licensees who had not yet met their CPD requirement, compared to 2,507 licensees on January 1, 2012. This is a significant number of non-compliant licensees and suggests that late completion and/or reporting of CPD may increasingly become the norm if steps are not taken to discourage this practice.
177. The creation of a disincentive in the form of a late fee and/or a reinstatement fee may reduce the number of licensees who delay completion of their CPD or its reporting. This approach would be consistent with the recent decision Convocation made to impose late fees for annual fee payments and annual report filings that are not completed on time.³⁶
178. Further, it may strengthen the Law Society's quality assurance mandate by providing tangible consequences for a failure to engage in timely annual professional development.
179. The fee for late payment of the annual fee is currently \$100. The fee for reinstatement following suspension is \$150.
180. While the Committees agree that the Law Society should continue to provide reasonable support to licensees in the compliance process, it is also true that by now the reporting requirements and consequences should be clear to all licensees who are subject to them. The costs of staff follow-up should not be borne by the profession generally, most of which complies. Rather some financial responsibility should be placed on those whose failure to comply results in administrative costs.

³⁶ Report to Convocation. Professional Regulation Committee, September 27, 2012 and October 25, 2012.

181. The Committees recommend that a fee be charged to licensees for failure to meet the annual reporting deadline of December 31 and/or failing to complete their annual CPD requirement. They further recommend that they pay a fee for reinstatement.
182. In their view, to provide ample opportunity for licensees to become familiar with the late fee and reinstatement fee requirements these provisions should apply beginning with the 2014 CPD year, payable beginning in 2015.
183. Necessary by-law provisions and other implementation issues will be brought to the PD&C and PSC Committees for their consideration and, where required, to Convocation for approval.

Recommendation

184. **That a fee be charged to licensees for failing to meet the annual CPD reporting deadline of December 31 and/or for failing to complete their annual CPD requirement by December 31.**
 185. **That a fee be charged to licensees when they return from suspension for having failed to meet the annual CPD reporting deadline of December 31 and/or for failing to complete their annual CPD requirement by December 31.**
- (h) CPD Portal**
186. In the two years of implementation of the CPD requirement one of the areas receiving substantial and ongoing questions and concerns has been the process of entering CPD hours using the Portal.
 187. All licensees are required to log their CPD hours in the Portal. Professionalism programs that have been accredited by the Law Society are entered in one area. Substantive hours for programs and activities are entered in two separate areas. Professionalism hours for non-program based activities are granted through an application process outside of the Portal and entered into the licensee's account by PD&C staff.

188. Since the Portal was launched in January 2011, a number of significant improvements have been made to the navigation and functionality. These include,
- a. an enhanced search function;
 - b. licensee self-edit function; and
 - c. the ability to modify time and date of attendance at professionalism programs.
189. In addition, several adjustments to the applications that support the Portal have been introduced to facilitate easier entry and retrieval of data and adjustments to licensee accounts by staff.
190. A number of user guides have also been created to assist licensees with entering their CPD hours, including the “Portal Functionality Guide for CPD” and the “Step-by-Step Guide for Entering Professionalism Program Hours on the LSUC Portal.” Both guides are readily available on-line in both French and English.
191. However, lawyers and paralegals continue to express frustration with the process for logging CPD hours in the Portal. Recent results from the Portal survey include the following feedback, suggesting that licensees are looking for a simpler method for reporting their CPD:
- The Portal is extremely difficult to navigate and use.
 - I have never been able to enter the CPD professional hours I have completed. Therefore it still reads that I have 2.75 professionalism hours to complete when I have in fact, surpassed this 2.75 hours requirement in April 2012.
 - The interface is very difficult to use. It should be easier to enter the information.
 - The portal does not function properly. I cannot enter my CPD hours. The portal is now off-line. The portal is, generally, substandard.
 - A simple and more straightforward way of entering the professionalism hours of a CPD program whether the program is conducted by LSUC or any other organization recognized by the LSUC, would be greatly appreciated.
 - Every time I try to enter CPD credits I end up wasting a vast amount of time trying to figure out your portal. It is not user friendly at all. The search function never seems to locate the program I attended and, as for in-house types of programs, it remains a mystery to me as to how to enter

those credits. I fully support the CPD requirement. I just see no reason why the Portal has to be so very difficult to deal with.

- This is the most difficult web site I have ever used. It is completely not user friendly.
- This is the least user friendly piece of technology I have experienced in a very long time. It is cumbersome and frustrating and a huge waste of time.

192. Supporting the Portal has proven to be extremely resource intensive for the Law Society, requiring a unit of four staff licensees in the Membership Services group dedicated to dealing with Portal related inquiries from licensees. Together, the Portal Support Team and Membership Services have received and responded to 12,827 emails in 2011 and 6,687 emails in 2012.
193. Telephone calls received in Membership Services in November and December 2012 increased by 82% from the same time period in 2010 as a result of questions respecting CPD, in particular the Portal. Similarly, the four CPD accreditation staff in the Licensing and Accreditation area spending a significant amount of time managing the entry of approved program and activity data into the Portal on behalf of licensees who were unable or unwilling to do so.
194. The Committees have considered whether a system could be developed that would continue to support effective monitoring of compliance while instituting a more streamlined reporting approach that would engender fewer licensee questions and concerns and reduced staff involvement.
195. They considered whether a minimal on-line declaration by licensees in which they attest to completion of the requirement would be sufficient. Under such an approach licensees would continue to be subject to random audits in which they would be required to provide proof of completion of the required hours. Failure to file a declaration would trigger the suspension process.
196. Another option would be to have licensees enter all their CPD using a “fill-in” form from a variety of drop-down menus specifying the eligible activities. The member would fill in the name of the program or activity with an area on the form for indicating the

number of substantive and professionalism hours claimed. As is the case currently, the Portal would provide an updated tally of the total number of credit hours accumulated over the year in both categories. The current audit and suspension processes would continue.

197. In the Committees' view the on-line declaration is an insufficiently meaningful means to demonstrate compliance with a required program such as CPD. In the Committees' view there is value to requiring licensees to itemize the activities they have undertaken in pursuit of satisfaction of the requirement. It also serves as a reminder of what they have undertaken and what remains to be done and would be of significant assistance to them if they are audited.
198. The Committees' recommendation earlier in this report to introduce an Accredited Provider Framework respecting professionalism programming, also means that the Portal will no longer provide a pre-populated list of accredited professionalism programming. As such, in the Committees' view it is important that in the streamlined Portal licensees itemize their professionalism activities.
199. An illustration of how this simplified Portal may appear is set out at **TAB 3.1.11: Portal Proposal**. The Committees recommend that Convocation approve the introduction of a streamlined reporting approach using the Law Society Portal, along the lines illustrated in **TAB 3.1.11**. The Director of Professional Development & Competence, or the Director's designate, will have the authority to coordinate with Membership Services and Information Systems on any adjustments to the Portal in accordance with the policies set out in this report.
200. This recommendation will require substantive changes to CPD administrative structures and the Portal. To ensure that sufficient time is afforded to enable the new administrative structures to be properly designed and implemented and licensees to be properly notified of the changes, the Committees recommend that the recommendation come into effect beginning with the 2014 CPD year.

Recommendation

- 201. That a simplified CPD reporting system for the Law Society Portal be implemented, including the introduction of a streamlined process of tracking CPD hours and inputting programs and activities. The Director of Professional Development & Competence, or the Director's designate, will have the authority to coordinate with Membership Services and Information Systems on any adjustments to the Portal in accordance with the policies set out in this report.**

CONCLUSION

202. The 2010 Joint Report concluded that,
- A CPD requirement is a positive tool that benefits lawyers and paralegals and is part of a commitment they should make to the public they serve. The recommendations set out in the motion...and repeated throughout this report balance professional obligations in this area with a reasonable requirement that is accessible and affordable.³⁷
203. The purpose of the two-year review was to consider whether the implementation of Convocation's CPD policy met the original policy goals of a flexibility, affordable and accessible requirement that contributes to the Law Society's competence goals for the profession in the public interest.
204. The Committees conclude that after only two years the CPD requirement is well-established and increasingly accepted as part of the profession's obligations to serve the public both competently and ethically. Although adjustments may continue to be made to the requirement to respond to input and enhance the program, as they have been made in 2012 and as proposed here, overall the requirement's implementation has proven to be well thought out and in keeping with the goals Convocation established for the policy. The 2010 Joint Report noted:
- The Committees continue to believe that such a [CPD] requirement, properly and fairly implemented, will provide greater opportunity for those subject to it to reflect and act upon their professional development needs, all in pursuit of better service to the public.³⁸

³⁷ 2010 Joint Report, paragraph 102.

³⁸ Ibid. paragraph 17.

205. The Committees continue to agree with this statement and consider that the CPD requirement's implementation to date reveals a program that is in the public interest and beneficial to licensees.

TAB 3.1.1

**2010 JOINT PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE
AND PARALEGAL STANDING COMMITTEE JOINT REPORT**

RECOMMENDED CPD PROGRAM

Recommendation 1

That the Law Society introduce a CPD requirement for lawyers and paralegals who practise law and provide legal services, respectively, (those in the 100% fee paying category) commencing on January 1, 2011, with the first reporting of hours due on December 31, 2011. [AMENDED AT CONVOCAION BY ADDING “Lawyers who are excused from paying fees who practise law will also be subject to the requirement.]

Recommendation 2

That for the purposes of the requirement CPD is defined as follows:
Continuing professional development is the maintenance and enhancement of a lawyer or paralegal’s professional knowledge, skills, attitudes and ethics throughout the individual’s career.

Recommendation 3

That lawyers and paralegals subject to the requirement be required to fulfill 12 hours of CPD annually, with 3 of the 12 hours to be taken in topics related to ethics, professionalism and/or practice management.

Recommendation 4

That lawyers or paralegals subject to the requirement may seek an exemption from the requirement in circumstances coming within the *Human Rights Code* and/or such other or additional circumstances as the Director of Professional Development and Competence, or her designate, deems appropriate.

Recommendation 5

That in calculating the exemption a lawyer or paralegal will be exempted from the requirement on the basis of one credit hour for each month for which the exemption is granted.

Recommendation 6

That the activities in paragraph 52 be considered eligible activities for the CPD requirement. That the activities set out in paragraph 62 be considered ineligible activities for the CPD requirement.

Recommendation 7

That lawyers and paralegals fulfill their CPD requirements from the list of eligible activities and in compliance with the definition of CPD set out at Recommendation 2. Subject to Recommendation 9 and 19 there is no program or provider accreditation.

Recommendation 8

That the Law Society assume primary responsibility for delivery of the required ethics, professionalism and practice management content that those subject to the CPD requirement must meet, without charging program registration or materials fees.

Recommendation 9

That providers other than the Law Society that wish to provide stand-alone programs or program content in ethics, professionalism and practice management must apply for and obtain program approval.

Recommendation 10

That lawyers continue to report annually on the Lawyers Annual Report the number of self-study hours they complete and that commencing in 2011 paralegals report annually on the Paralegal Annual Report the number of self-study hours they complete. The number of hours is not mandatory, but reporting is. This reporting is not part of the CPD requirement.

Recommendation 11

That lawyers and paralegals who are not otherwise exempted from the CPD requirement report their CPD activities annually by December 31 on the lawyer and paralegal portal, commencing December 31, 2011. They may not carry over credits from one year into the next.

Recommendation 12

That lawyers and paralegals be entitled to report their eligible activities at any time on or before December 31.

Recommendation 13

That lawyers and paralegals be provided with notices at regular intervals throughout the calendar year advising them how many credits they have obtained and how many credits remain outstanding.

Recommendation 14

That if a lawyer or paralegal is exempted from the requirement at any time during the year compliance will be calculated on a pro rata basis of one hour for each month in the year during which he or she is not exempted. He or she will be exempted from the balance of hours and will not be required to make them up when the exemption ends.

Recommendation 15

That following the completion of the calendar year the summary suspension benchers will be provided with the names of the lawyers and paralegals who have failed to comply with the requirement and who are subject to administrative suspension from practice. If administratively suspended the lawyer or paralegal may be re-instated by completing the missing credit hours.

Recommendation 16

That there be provision for random annual CPD audits to monitor compliance with the CPD requirement, to be undertaken as part of a practice management review or paralegal practice audit; and by random selection chosen from among all paralegals and lawyers subject to the requirement.

Recommendation 17

That the randomly selected CPD audits take the form of a written request for proof of completion.

Recommendation 18

That there be a total of 500 audits of lawyers and 25 audits of paralegals annually respecting CPD compliance.

Recommendation 19

That beginning in January 2011 new lawyers and paralegals be required to take 12 hours per year (for the equivalent of two full years of practice or providing legal services, respectively) of programming accredited by the Law Society, 3 hours of which per year will be in topics of ethics, professionalism, and practice management and will be integrated within the other 9 hours of accredited programming. [AMENDED AT CONVOCATION by deleting “other 9” above and inserting “12 hours.”]

Recommendation 20

That Certified Specialists be required to obtain a total of 12 hours of CPD annually, with 3 of those hours to be taken in topics related to ethics, professionalism and/or practice management.

Recommendation 21

That the Law Society further investigate the issue of CPD registration subsidies for inclusion in discussions of the 2011 Law Society budget.

Recommendation 22

At regular intervals in 2010, the PD&C Committee and the PSC should receive reports on the implementation process. An annual information report should be provided to the Committees and Convocation in 2011 and 2012. An assessment report should be provided to the Committees and Convocation by the end of April 2013 addressing the first two years of operation, including but not limited to the issues set out in paragraph 96.

Recommendation 23

That the Law Society implement a communications plan in accordance with paragraphs 98-101 of this report.

TAB 3.1.2

TYPES OF EDUCATIONAL ACTIVITIES CURRENTLY ELIGIBLE FOR CPD

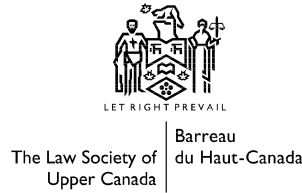
HOURS:

1. Attendance in person, online or by telephone, at live CPD programs and courses that provide an opportunity to interact with colleagues and/or instructors. This must include the ability to ask questions, directly or indirectly, e.g., the ability to email a question to the content provider during the online presentation.
2. Viewing or listening to recorded or archived CPD programs and courses with at least one colleague.
3. Viewing or listening to archived or recorded CPD programs or courses without a colleague, or participation in asynchronous, online CPD courses that prompt responses throughout the learning process, such as requiring participants to respond to questions before they can move to the next module or section, for a maximum of six hours per year.
4. Participation as a registrant in a college, university or other designated educational institution program, including interactive distance education.
5. Teaching, to a maximum of six hours per year. Actual teaching time will be multiplied by a factor of three to reflect preparation time.
6. Acting as a judge or coach in a mooting competition at the law school level.
7. Acting as an Articling Principal or mentoring or being mentored or supervising a paralegal field placement to a maximum of six hours per year.
8. Writing and editing books or articles to a maximum of 6 hours per year.
9. Participation in study groups of two or more colleagues.
10. Educational components of bar and law association meetings.

The following activities are ineligible for CPD Hours because their primary focus is not educative, or because they do not provide the requisite level of interactivity to meet the definition of CPD:

1. Any activity undertaken or developed primarily for purposes of updating or marketing to existing or potential clients.
2. Self-study.
3. Acting as an adjudicator for a tribunal or board.
4. Working as a member of a review or other panel.
5. Pro-bono work.
6. Marking work for law school or college courses.

7. Acting as the chair or member of a tribunal or other institution or board.
8. Attendance
 - o by benchers at the business portion of Law Society meetings of Convocation or committees;
 - o at the business portion of meetings of a legal association's board or committees;
 - o at the business portion of Annual General Meetings; or
 - o at the launch of any form of legal materials.



TAB 3.1.3

**2012 JOINT PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE
AND PARALEGAL STANDING COMMITTEE JOINT REPORT**

APPROVED CHANGES TO CPD PROGRAM

- 1. That Convocation approve increased flexibility in the application of the interactive nature of CPD learning hours by allowing licensees to participate in the following interactive program-types for 6 out of the required 12 hours of learning:**
 - a. Archived video and audio webcasts of previously held learning programs.**
 - b. Completion of online programs that require the licensee to respond to questions and other prompts in order to progress through the learning modules.**



- 2. That Convocation approve a change to the new licensee requirement to provide that new licensees may register for any program or alternative activity that is accredited for professionalism, without requiring that each program or alternative activity have 25% professionalism content, and provided that, overall, new licensees obtain three hours of professionalism content annually.**



The Law Society
of Upper Canada

Barreau du
Haut-Canada

The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West,
Toronto, Ontario, M5H 2N6
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Toll Free: 1-800-668-7380
Fax: 416-947-5263
Web: <http://www.lsuc.on.ca>

 Print  Close

In the coming months, the Law Society will be conducting an evaluation of the first two years of the CPD Requirement.

In April of 2012, one year after the implementation of the requirement, and based on feedback from members, the Law Society proactively engaged in an interim evaluation process which led to a number of changes.

In support of the upcoming two-year evaluation, the Law Society is interested in receiving any further input that members may wish to provide.

If you have comments about the CPD Requirement, please send an email with your input to: rc@lsuc.on.ca.

Comments must be received no later than **March 31, 2013**.



The Law Society of
Upper Canada | Barreau
du Haut-Canada

TAB 3.1.5

CPD TWO-YEAR REVIEW

SUBMISSIONS LIST

Law Firms

Borden Ladner Gervais
Fasken Martineau
Goodmans
Gowlings
McCarthy Tetrault
McMillan
Miller Thompson
Norton Rose
Oslers
Torys

Law Schools

Osgoode Hall Law School
University of Toronto Faculty of Law

Legal Organizations

Association of Law Officers of the Crown
County and District Law Presidents' Association
LawPRO
Ministry of the Attorney General
Ontario Bar Association
Ontario Trial Lawyers Association
Toronto Lawyers Association

In addition, there were 85 submissions from individual licensees.

Accredited CPD Program Document Review and On-site Visit

Auditor Name			
Date		Time Observed	

Observation Method In-person Webcast Teleconference

Program Particulars

Provider Name			
Provider Category			
Target Audience		Program Cost	
Program Length		Location	

Program Type In-person Webcast Teleconference

Document Review (Application, Materials, and Marketing)

Application Date		Accreditation Date	
Accredited Hours			

Materials Format		Evaluation (Y/N)ⁱ	
Materials Type			
Are the materials relevant, helpful and up-to-date? (Y/N)			
Additional Comments	<ul style="list-style-type: none"> • • 		

Was program marketing consistent with program content? (Y/N)	
Additional Comments	<ul style="list-style-type: none"> • •

Facility/Broadcast Quality

Overall impression of the facility/broadcast on a scale of 1 to 5 (5 being the highest):	
Acoustics/Audio Quality	
Lighting/Video Quality	
Seating	
Sightlines	
AV Equipment	
Learning Environment	
Accessibility (facility/portal)	

Check-in Procedures and Attendance Numbers

Monitored Reg. Desk (Y/N)			
Number of Registrants		Number in Attendance	
Additional Comments	<ul style="list-style-type: none"> • • • 		

Administration, Faculty, and Program Content

Overall impressions of program administration, faculty, and content (Y/N)	
Did the administrators/Chair actively direct the program?	
Did the administrators/Chair keep to agenda timelines?	
Did the administrators/Chair manage faculty appropriately?	
Did faculty appear prepared?	
Did attendees appear to be engaged?	
Did attendees actively participate in the discussion?	
Was sufficient time allotted to audience questions?	
Was professionalism content delivered as represented in the application?	
Did the program content accurately reflect the agenda?	
Was the program content relevant, up-to-date and helpful?	

Additional Comments	<ul style="list-style-type: none">•••••
--------------------------------	---

Methods of Instruction

PowerPoint

Video

Demonstration

Panel discussion

Lecture

Debate

Additional Comments	<ul style="list-style-type: none">••••
--------------------------------	---

CPD Requirement Communications Summary

CPD GENERAL COMMUNICATIONS TO PROFESSIONS

2011

ORs - Interior	January to August - ad in one issue per month - 8 total	French and English
ORs - Cover	January to March - ads on cover of 5 issues	English
ORs - Interior	September to December - ads in 16 issues	French and English
ORs - Cover	September to December - ads on cover of 9 issues	English
Print Gazette articles	Article in each of two 2011 OLG issues	English
Web banners/Law Society home page presence	Regular banner ads on Law Society website throughout 2011, particularly in first three months of year and final four months of year	French and English
CPD Brochure	For distribution at Call to Bar and other events	French and English
Paralegal Update	Articles and/or reminders in all three 2011 issues	French and English
ABCs of CPD	Electronic handout distributed to lawyer and paralegal organizations for distribution to membership	French and English
Convocation e-newsletters	Reminders in 7 issues	French and English

2012

ORs - Interior	March to December - one to two ads per month - 14 total	French and English
Print Gazette articles	Article in two 2012 OLG issues	English
Web banners/Law Society home page presence	Regular banner ads on Law Society website throughout 2012, particularly in final months of the year	French and English
CPD Brochure	For distribution at Call to Bar and other events - updated following changes to requirement	French and English
Paralegal Update	Reminder in one 2011 issue, mention of CPD programs in all three issues	French and English

Convocation news	Item on amendments to requirement in April Convocation e-newsletter, also on website and in print Gazette	French and English
Email to all members	Focussed email to all members regarding changes to requirement	French and English
Online Gazette	Six articles in online Gazette	English
Twitter	Four tweets	English

CPD PROVIDER-SPECIFIC COMMUNICATIONS

The Law Society publishes the Accreditation Update for CPD Providers to keep Providers up to date on changes to, information about and tools and resources related to the Law Society's CPD Accreditation Process.

The *Updates* are sent electronically to approximately 390 providers – all those who have submitted an application for accreditation to the Law Society. The *Updates* are posted on the website in the CPD Accreditation Process section.

The *Updates* include information about:

- New policies
- Tools to help incorporate professionalism content into programs
- Best practices for obtaining accreditation for programs
- Accrediting mentoring activities
- Application forms
- Program Visits
- FAQs

Updates were published in the following months:

- November 2011
- December 2011
- February 2012
- April 2012
- May 2012 (As a result of Convocation's decisions on April 26, 2012)
 - **May 1, 2012 e-mail communication to all CPD Providers** about the new policy changes and introducing the new Application for Accreditation of Programs and Sample Applications and Program Agendas.
 - **May 14, 2012 Live Accreditation Update for CPD Providers.** This free webcast was open to all CPD providers and discussed best practices for incorporating professionalism content into programs, latest developments in the accreditation process, and updates on CPD policies. The webcast was then posted online in the CPD Accreditation Process page.
- June 2012
- October 2012

- January 2013

Provider Survey

The provider survey was sent to 326 CPD Program Providers on January 18, 2012. There was a 33% response rate to the survey (109 responses).

A number of process enhancements have been made in response to feedback from providers through the survey:

- Introduction of a live accreditation telephone queue to process inquiries more efficiently;
- Modification of the program application to allow for easier completion and provider account numbers;
- Optional bundling of teaching application with program applications;
- Creation of sample applications and agendas;
- Notices of Accreditation contain more detailed information;
- Extension of accreditation period for Repeat Programs reduce unnecessary paperwork



2013 REPORTING YEAR

CONTINUING PROFESSIONAL DEVELOPMENT (CPD) REQUIREMENT ACCREDITATION CRITERIA FOR PROFESSIONALISM HOURS

A. General Criteria

Professionalism Hours

In order to qualify for accreditation for **Professionalism Hours**, programs and content must address topics of professional responsibility, ethics and/or practice management. **Substantive law, procedural and/or skills related programs and content that do not address specific professionalism issues do not need to be accredited and may be applied toward Substantive Hours for experienced members.**

New Members

New members may now apply any programs or activities that contain a minimum of 0.5 Professionalism Hours toward their CPD requirement. The overall content of the program or activity must have at least 0.5 hours of subject matter related to professional responsibility, ethics and/or practice management and that professionalism content must be reasonably connected to the substantive or procedural law content of the program.

New Member Information Updated April 26, 2012

Education providers and members are encouraged to refer to the following **primary sources** of professionalism principles for topics that may be relevant to their particular instructional or learning context:

- [Rules of Professional Conduct](#)
- [Paralegal Rules of Conduct](#)
- [By-Laws 7, 7.1, 8, 9, and 14](#)
- [Practice Management Guidelines](#)

The following factors will be considered in the assessment of programs or activities for accreditation:

- Relevance of topics in the session or activity to core professionalism principles
- Time allocated to professionalism content (minimum 30 minutes required)

- Learning level of subject matter and target audience
- Overall learning context

B. Criteria Specific to CPD Programs

In order to be eligible for CPD Hours, programs may be delivered in a variety of flexible formats that provide an opportunity for real time interaction with colleagues and/or instructors. Eligible learning formats include live lecture, discussion, demonstration or small group workshop, audio, and interactive videoconference or webcast. Archived audio, video or webcast may be viewed without a colleague for a maximum of 6 hours per calendar year. Participation in asynchronous, online courses that prompt responses throughout the learning process, such as requiring participants to respond to questions before they can move to the next module or section is included as an approved method of archived viewing. Any archived programs viewed beyond the maximum 6 hours must be viewed simultaneously with at least one other colleague in order to satisfy the interactivity requirement. Self-study activities are not eligible for CPD Hours.

Program speakers may include lawyers, paralegals, members of the judiciary, and non-legal professionals, provided that the content they present addresses topics related to professionalism in a legal context and enhances lawyer and paralegal competence.

C. Professionalism Topics

In addition to the primary sources of professionalism principles provided above, programs or activities that include one or more of the concepts listed below may qualify for accreditation. As this is not a closed list, topics not included below that address a lawyer's or paralegal's professional responsibilities to clients and/or practice management obligations may qualify for accreditation.

1. Relationship to Clients

- Determining who the client is (institutional clients, lawful representatives of clients under disabilities)
- Complying with client identification and verification requirements
- Recognizing and being sensitive to clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language, gender, socioeconomic status, demeanour)
- Drafting effective retainer agreements, engagement letters and non-engagement letters
- Understanding and managing obligations related to joint retainers
- Avoiding and managing conflicts of interest
- Managing client expectations related to fees and disbursements
- Dealing effectively with unrepresented persons
- Avoiding barriers to effective communication
- Drafting reporting letters, legal opinions and legal memos in plain language
- Conducting effective client interviews and client meetings

- Understanding the difference between the evidentiary principle of solicitor and client privilege and the professional duty of confidentiality
- Responding appropriately to client dishonesty or fraud (e.g., mortgage fraud, money laundering, perjury)
- Recognizing and fulfilling fiduciary obligations
- Confirming changes to the terms of engagement
- Withdrawing from representation (e.g., optional and mandatory withdrawals)

2. Practice Management

- Making legal services available
- Complying with Legal Aid Ontario provisions and procedures
- Marketing legal services in accordance with professional obligations (e.g., advertising nature of practice, advertising fees)
- Understanding practice arrangements, including partnerships, multi-discipline practices or partnerships, limited liability partnerships, affiliations, inter-provincial law firms, professional corporations
- Opening and operating a legal practice
- Using conflicts checking systems
- Maintaining reminder or tickler systems
- Using effective time management systems
- Maintaining proper books and records
- Implementing systems for file organization, retention, and disposal
- Using law office technology in a competent manner (e.g., adopting adequate security measures, employing back-up and disaster recovery plans, considering obsolescence)
- Meeting financial obligations to third parties
- Managing undertakings
- Training and delegating to staff
- Respecting multi-cultural issues
- Reporting to the Law Society professional misconduct, conduct unbecoming, unauthorized practice, and other offences
- Notifying the client or insurer of errors and omissions
- Making public appearances and public statements
- Managing outside interests and the practice of law
- Closing down a legal practice
- Succession planning
- Managing risk and planning for contingencies

3. Ethical Advocacy

- Practising with civility
- Treating the court or tribunal with courtesy and respect
- Understanding the parameters for acting as a witness
- Communicating with witnesses giving evidence

- Communicating with jurors
- Encouraging respect for legal institutions or authorities

4. Other Opportunities Related to Practice Management

Sessions on the following topics must address issues and opportunities that arise within a legal context in order to be eligible for accreditation.

- Project management and leadership skills for legal professionals
- Ethical business and client relationship development
- Career and profile management in the legal profession
- Mentoring best practices for lawyers and paralegals
- Work/life balance and wellness strategies for lawyers and paralegals

TAB 3.1.9

Proposed 'Accredited Provider' Framework

Purpose:

1. To recognize that a number of established legal education providers, law firms and in-house legal departments, law associations and other legal organizations have a demonstrated track record for delivering high quality professionalism training that aligns with the Law Society's Accreditation Criteria for Professionalism Hours.
2. To streamline the accreditation process and create administrative efficiencies by presumptively approving content from established providers for Professionalism Hours, subject to the Law Society's ability to audit and verify delivery of program content.
3. To maintain the existing application process for the accreditation of professionalism content offered by new or occasional education providers to ensure such training meets the Law Society's Accreditation Criteria.
4. To continue to support the fulfillment of the CPD requirement through a range of eligible education activities by accreditation of individual member efforts (e.g. teaching, writing, mentoring, and study groups) for Professionalism Hours.

Criteria for Established Provider Status:

Education providers will be required to apply for Established Provider status, which will be granted based on the following criteria:

- Proven history in and a primary focus on delivering quality legal training and education to lawyers and/or paralegals;
- Demonstrated understanding of the Accreditation Criteria and professionalism principles as evidenced by a portfolio of programs accredited by the Law Society within the last two years;
- Presence of lawyer or paralegal faculty or other qualified industry experts as appropriate to the subject matter;
- Use of appropriate delivery methods reflective of current best practices in adult education, including a meaningful opportunity for participant interaction with instructors and/or other attendees; and

- Opportunity for participant feedback by way of program evaluations, surveys or other similar channels.

Obligations of Established Providers:

Established Providers will be required to fulfill the following obligations in order to maintain their status:

- Ensure that professionalism content is squarely aligned with the relevant ethics, professional responsibility and/or practice management concepts and principles expressed in the Accreditation Criteria for Professionalism Hours;
- Ensure that program promotional materials comply with the Law Society's prescribed communication guidelines for Professionalism Hours;
- Submit an annual listing of all offerings containing Professionalism Hours to the Law Society at the end of each calendar year;
- Retain copies of agendas and materials for all programs containing Professionalism Hours for a specified period of time following the program; and
- Participate in random requests for program materials and/or in person program audits by Law Society staff to ensure alignment with the Accreditation Criteria.

The Law Society will implement the appropriate policies and processes related to revocation of Established Provider status where it is determined that a provider has failed to fulfill some or all of the obligations listed above.

Overall Impact:

- Result is likely a significant drop in the volume of accreditation applications and an opportunity to reduce workload and staffing;¹
- Minimizes the administrative burden on education providers, which reflects one of the original goals expressed by Convocation when introducing the CPD requirement;

¹ Of the approximately 3200 applications for program accreditation received in 2012, over 680 applications were received from major education providers and 960 applications were received from law firms doing in-house training. Approximately 2900 applications demonstrated alignment with the accreditation criteria and were approved for Professionalism Hours. A significant number of these requests were received from applicants who would likely qualify for Established Provider status.

- Together with recommended changes to the LSUC Portal, members are able to report all CPD programs and activities, including Substantive Hours and Professionalism Hours, in a single area within the Portal. There is no longer a need to search for pre-populated professionalism content in the Portal; and
- The Law Society's quality assurance processes will continue to verify member compliance with CPD requirement through random in person and paper audits.



2013 REPORTING YEAR

Release date: May 30, 2013

Continuing Professional Development (CPD) Requirement Accreditation Criteria for Professionalism Hours

A. Overview

Under the Law Society's Continuing Professional Development (CPD) requirement, lawyers and paralegals practising law or providing legal services must complete at least 12 CPD Hours every year, consisting of a minimum of 3 Professionalism Hours and up to 9 Substantive Hours annually.

Professionalism Hours include content related to ethics, professional responsibility and/or practice management. Based on feedback received from providers and members during the two-year review of the CPD requirement, the Law Society has broadened the accreditation criteria to acknowledge the range of professionalism issues that may arise in different practice areas and practice contexts. Professionalism Hours must be accredited by the Law Society of Upper Canada. The remaining 9 Substantive Hours are not subject to accreditation. Substantive Hours may address substantive or procedural law topics and/or law related subjects that are relevant to the lawyer's or paralegal's practice and professional development.

Note: Content submitted for accreditation **on or after** the release date of May 30, 2013 will be assessed according to the revised Accreditation Criteria.

B. General Principles

Professionalism Hours

In order to qualify for accreditation for **Professionalism Hours**, programs and content must address topics related to professional responsibility, ethics and/or practice management.

The following factors will be considered in the assessment of programs or activities for accreditation:

- Relevance of topics in the session or activity to core professionalism principles
- Time allocated to professionalism content (minimum 15 minutes required)
- Learning level of subject matter and target audience

- Overall learning context

C. Criteria Specific to CPD Programs

In order to be eligible for CPD Hours, programs may be delivered in a variety of flexible formats that provide an opportunity for real time interaction with colleagues and/or instructors. Eligible learning formats include live lecture, discussion, demonstration or small group workshop, audio, and interactive videoconference or webcast. Archived audio, video or webcast may be viewed without a colleague for a maximum of 6 hours per calendar year. Participation in asynchronous, online courses that prompt responses throughout the learning process, such as requiring participants to respond to questions before they can move to the next module or section is included as an approved method of archived viewing. Any archived programs viewed beyond the maximum 6 hours must be viewed simultaneously with at least one other colleague in order to satisfy the interactivity requirement. Self-study activities are not eligible for CPD Hours.

Program speakers may include lawyers, paralegals, members of the judiciary, and non-legal professionals, provided that the content they present addresses topics related to professionalism in a legal context and enhances lawyer and paralegal competence.

D. Professionalism Topics

Programs or activities that include one or more of the concepts listed below may qualify for accreditation. Topics not included below that address a lawyer's or paralegal's ethical duties, client service best practices, practice management concepts and/or related professionalism principles may also qualify for accreditation. Members and education providers are encouraged to contact the Law Society at cpdacc@lsuc.on.ca for guidance regarding interpretation and application of the accreditation criteria.

1. Ethics and Professional Responsibility

Content that deals with the obligations set out in the *Rules of Professional Conduct* and *Paralegal Rules of Conduct, By-Laws 7, 7.1, 8, 9 and 14* and related professional responsibility principles. Examples include:

- Duty to maintain confidentiality, including justified and permitted disclosure (may include discussion of privilege)
- Duty to avoid and manage conflicts of interest
- Responding appropriately to client dishonesty or fraud (e.g. mortgage fraud, money laundering, perjury)
- Duty to act in good faith and avoid sharp practice
- Obligations when making public statements and public appearances
- Duties related to advocacy (not to abuse the tribunal process, mislead the tribunal, parameters around communication with witnesses, need for full disclosure, etc.)
- Requirements related to fees and billing
- Trust accounting and financial record keeping requirements
- Duty to report lawyer or paralegal misconduct to the Law Society
- Obligation to notify the client or insurer of errors or omissions

- Duty to assist in prevention of unauthorized practice/provision of legal services
- Optional and mandatory withdrawal from representation
- Ethical considerations for lawyers or paralegals employed in-house
- Ethical considerations for lawyers or paralegals employed in public service
- Required conduct of lawyers or paralegals arising from statute, legislation or other legal authorities
- Best practices for analyzing ethical dilemmas

2. Client Service

- Making legal services available to the public and related access to justice principles
- Determining who the client is (institutional clients, lawful representatives of clients under disabilities, avoiding “phantom” clients)
- Complying with client identification and verification requirements
- Recognizing and being sensitive to clients’ circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language, gender, socioeconomic status, demeanour)
- Managing difficult clients
- Best practices for retainer agreements, engagement letters and non-engagement letters
- Timely and effective client communication, including theory and practical application
- Drafting reporting letters, legal opinions and legal memoranda in plain language, including theory and practical application
- Conducting effective client interviews and client meetings, including theory and practical application
- Confirming changes to the terms of engagement
- Understanding and managing obligations related to joint retainers
- Managing client expectations related to fees and disbursements
- Handling client property and money appropriately
- Dealing effectively with unrepresented persons
- Recognizing and fulfilling fiduciary obligations

3. Practice Management

- Marketing legal services in accordance with professional obligations (e.g., advertising nature of practice, advertising fees)
- Understanding practice arrangements, including partnerships, multi-discipline practices or partnerships, limited liability partnerships, affiliations, inter-provincial law firms, professional corporations
- Opening a legal practice or law firm
- Using conflicts checking systems
- Maintaining reminder or tickler systems
- Using effective time management systems
- Maintaining proper books and records
- Implementing systems for file organization, retention, and disposal
- Meeting financial obligations to third parties

- Managing undertakings
- Training, supervising and delegating to staff
- Closing down a legal practice or law firm
- Succession planning
- Contingency planning
- Risk management best practices
- Understanding the business of law, including financial considerations, client development and strategic planning
- Technology in a law or legal services practice, including considerations related to security of information, productivity and efficiency
- Complying with Legal Aid Ontario provisions and procedures

4. Ethical Advocacy

- Practising with civility in the courtroom or the boardroom
- Treating the court, tribunal, opposing counsel, parties and others with courtesy and respect
- Refraining from sharp practice
- Encouraging respect for legal institutions or authorities
- Complying with parameters for acting as a witness
- Complying with parameters for communicating with witnesses giving evidence
- Complying with parameters for communicating with jurors

5. Other Opportunities Related to Practice Management

Sessions on the following topics must address issues and opportunities that arise within a legal context in order to be eligible for accreditation.

- Legal project management
- Respecting multicultural issues and diversity
- Leadership for legal professionals, excluding law firm or other organization-specific standards for promotion and/or partnership
- Best practices for career and profile management as a legal professional
- Mentoring best practices for lawyers and paralegals
- Work/life balance and wellness principles for lawyers and paralegals, excluding training in yoga, meditation, and nutrition



[Home](#)
[Change of Information](#)
[Manage My Profile](#)
[CPD](#)
[Annual Report](#)

Jane Smith, LSUC Number 12345A | Thursday July 5, 2014 | Last Visit July 1, 2014

My CPD

[Update My CPD](#)

Current **Prior**

Licensee Details:

Licensee: **12345A – Jane Smith** CPD Type: **Experienced**
 Status: **1J - In-House Lawyer or Paralegal** Period Start Date: **January 1, 2014**
 Period End Date: **December 31, 2014**

Current CPD:

Substantive Hours Required: **9.00** Professionalism Hours Required: **3.00**
 Substantive Hours Completed: **8.25** Professionalism Hours Completed: **1.25**
 Substantive Hours Remaining: **0.75** Professionalism Hours Remaining: **1.75**

Delete	Date	Activity Type	Subs Hours	Prof Hours
<input type="checkbox"/>	02/11/2014	Attendance at a Program	1.00	0.25
<input type="checkbox"/>	02/03/2014	Teaching	5.25	.50
<input type="checkbox"/>	01/31/2014	Writing & Editing	1.00	0.50
<input type="checkbox"/>	01/03/2014	Attendance at a Program	1.00	0.00
<input type="checkbox"/>	01/01/2014	Study Groups	0.00	0.50



- Home
- Change of Information
- Manage My Profile
- CPD
- Annual Report

Jane Smith, LSUC Number 12345A | Thursday July 5, 2014 | Last Visit July 1, 2014

My CPD

Update My CPD

CPD Reporting Period 01/01/2014 – 31/12/2014

NEW! Log all your CPD hours in one easy place. CPD activities include a broad range of learning methods including participation in CPD programs or courses, teaching, writing, mentoring and participation in study groups of two or more colleagues. For more information, please refer to [CPD Requirement](#).

Activity Type:

Program Name:

Location:

Start Date:

Substantive Hours:

Realism:

Hours:

Submit



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Jane Smith, LSUC Number 12345A | Thursday July 5, 2014 | Last Visit July 1, 2014

My CPD

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Activity Type:

Program Name:

Location: **Provider:**

Start Date: **End Date:**

Substantive Hours: **Professionalism Hours:**

Submit



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Activity Type:

-- Please select an activity type --
-- Please select an activity type --
Attendance at CPD Program
Articling Principal/Mentoring
College/University program
Educational Component (of meetings)
Study Groups
Teaching
Writing & Editing

Program Name:

Location:

Start Date:

Substantive Hours

nalism

[Empty text area for activity description]

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Activity Type:	<input type="text" value="Teaching"/>		
Program Name:	<input type="text" value="Legal Expo"/>		
Location:	<input type="text" value="Toronto"/>	Provider:	<input type="text" value="CBA"/>
Start Date:	<input type="text" value="February 03, 2014"/>	End Date:	<input type="text" value="February 03, 2014"/>
Substantive Hours:	<input type="text" value="5.25"/>	Professionalism Hours:	<input type="text" value="0.50"/>

To teaching the civility & ethics portion of the "Legal Expo" on Feb 3/14.

Submit



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Activity Type: ~ Please Select ~

Program Name: ~ Please Select ~

Location: Attendance at a CPD Program

Start Date: Articling Principal/Mentoring

Substantive Hour: College / University Program

Hours: Educational Component of Meetings

Study Groups

Teaching

Writing and Editing

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Activity Type:

Program Name:

Location: **Provider:**

Start Date: **End Date:**

Substantive Hours: **Professionalism Hours:**

Johnson LLP Monthly Brown Bag session.

Submit