



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

Joint Report to Convocation February 25, 2010

Professional Development & Competence Committee

PD&C Committee Members

Laurie Pawlitzka (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Larry Banack
Jack Braithwaite
Thomas Conway
Marshall Crowe
Aslam Daud
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Jennifer Halajian
Susan Hare
Paul Henderson
Laura Legge
Dow Marmur
Daniel Murphy
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Heather Ross
Catherine Strosberg
Gerald Swaye

Purpose of Report: Decision

Paralegal Standing Committee

Paralegal Standing Committee Members

Paul Dray (Chair)
Susan McGrath (Vice-Chair)
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Glenn Hainey
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Brian Lawrie
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Cathy Strosberg

**Prepared by the Policy Secretariat
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COMMITTEES' PROCESS

The Professional Development & Competence Committee (“PD&C Committee”) and the Paralegal Standing Committee (“PSC”) met together on January 27 and February 11, 2010. PD&C Committee members Laurie Pawlitza (Chair), Mary Louise Dickson (Vice-Chair), Alan Silverstein (Vice-Chair), Larry Banack, Jack Braithwaite, Thomas Conway, Marshall Crowe, Lawrence Eustace, Susan Hare, Paul Henderson, Daniel Murphy, Judith Potter, Nicholas Pustina, Jack Rabinovitch, Cathy Strosberg, and Gerald Swaye attended one or both meetings. Paralegal Standing Committee members Paul Dray (Chair), Susan McGrath (Vice-Chair), Marion Boyd, James Caskey, Seymour Epstein, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg attended one or both meetings. Staff members Julia Bass, Diana Miles and Sophia Sperdakos attended both meetings. Terry Knott and Elliot Spears attended the meeting on February 11, 2010.

OVERVIEW

Continuing professional development is a positive tool that benefits lawyers and paralegals and is an essential component of the commitment they make to the public to practise law or provide legal services competently and ethically.

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. This has resulted in favourable comments from lawyers and paralegals in the course of meeting their regulatory requirements.

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. In making this recommendation the Committees have developed an approach that will allow lawyers and paralegals to meet the CPD requirement in ways that are accessible, affordable and flexible.

Lawyers and paralegals will be able to choose their CPD hours from a wide range of eligible activities. They will be entitled to select the providers that offer the content most relevant to their continued learning, both within and outside Ontario, and without a requirement that they obtain approval from the Law Society. The Law Society will assume primary responsibility for the delivery of the portion of the requirement addressing ethics, professionalism and practice management content without charging program registration or materials fees.

The reporting mechanism will be simple and lawyers and paralegals will be provided with regular notices reminding them how many hours they have left to meet in the reporting year. There will be a fair and reasonable mechanism to address failure to comply with the requirement and a mechanism to permit exemptions from the requirement in a given year to address special circumstances. In the months leading up to the commencement of the program there will be frequent and straightforward communications with lawyers and paralegals to ensure they understand their obligations under the program.

The consultation process was helpful to the Committees. They have refined some recommendations and revised others. They believe the result successfully reconciles the Law Society's commitment to lawyer and paralegal competence with the needs of practitioners.

The report that follows details the recommendations and the considerations that underlie them.

Please note: Convocation made changes to Recommendation 1 and 19 during February Convocation. These changes are also reflected in paragraph 77. New or revised text is bolded and underlined.

CONTINUING PROFESSIONAL DEVELOPMENT (“CPD”) REQUIREMENT

MOTION

1. That Convocation approve the introduction of a continuing professional development (“CPD”) requirement commencing January 1, 2011 for lawyers who practise law and paralegals who provide legal services (those lawyers and paralegals in the 100% fee paying category) in accordance with the following:

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. 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~~ 12 hours of accredited programming.

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.

BACKGROUND

2. In October 2009 Convocation approved the Professional Development & Competence and Paralegal Standing Committees' motion for consultation on their joint report regarding a continuing professional development (CPD) requirement ("the consultation report"). A copy of the consultation report is set out at **Appendix 1**.
3. The consultation period ran from October 30, 2009 to January 15, 2010. **Appendix 2** sets out the steps taken to bring the consultation process to the attention of lawyers and paralegals.
4. The Committees received 48 responses from individuals and 28 from institutional groups or organizations. In addition, 72 paralegals and 46 lawyers participated in the teleseminars and a few sent in e-mail comments. **Appendix 3** sets out the names of individuals and organizations that made submissions.¹ At the conclusion of the consultation period the CPD working group² and both Committees considered the submissions.³
5. This report,
 - a. provides the results of the consultation, summarized at **Appendix 4**;
 - b. sets out the Committees' further consideration of the CPD issue; and
 - c. provides their final recommendations to Convocation.

¹ The submissions are available on request. Some submissions are anonymous. In a few instances submissions have not been made public beyond the committee level, at individuals' requests. A few organizations requested an extension beyond the January 15 deadline to provide their submissions. All requests were accommodated. One individual requested an extension, which was granted.

² The CPD working group members are: Laurie Pawlitz (Chair), Mary Louise Dickson (Vice-Chair), Larry Banack, Tom Conway, Dow Marmur and Stephen Parker. Diana Miles and Sophia Spurdakos are staff to the working group. Mr. Marmur was unavailable to participate in the working group's meetings on January 20 and 21st.

³ The PD&C Committee discussed the CPD issue and established a working group in June 2009 to more fully analyze the issue and report back. The CPD working group met five times in July, August and September, 2009. The PD&C Committee and the PSC Committee met jointly on September 25 and October 8, 2009 and presented their joint proposal to Convocation on October 29, 2009. The CPD working group met on January 20 and 21, 2010 to review and analyze the submissions. The Committees met jointly on January 27 and February 11, 2010 to consider their final recommendations to Convocation.

A CPD REQUIREMENT

The Proposal

6. In their October 2009 consultation report the Committees recommended the introduction of an annual CPD requirement of 12 hours for lawyers and paralegals who practise law or provide legal services, respectively, (those lawyers and paralegals in the 100% fee paying category) with 3 of the annual 12 hours⁴ being in topics that address ethics, professionalism and/or practice management.

The Definition

7. The Committees developed a proposed definition of CPD for the purposes of the requirement 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.
8. The proposed definition attracted minimal comment in the submissions. The Equity and Aboriginal Issues Committee notes that the definition is sufficiently broad to encompass a large scope of qualifying activities.
9. LAWPRO suggests that since providing competent professional service to clients includes competent law practice management the definition should be expanded to include this. The Committees' view of the importance of practice management is reflected in the requirement that 3 hours of a total of 12 hours (25%) of lawyers' and paralegals' annual requirement should be in topics related to ethics, professionalism and/or practice management. In the Committees' view the definition should remain generic, with the 3 hour requirement addressing specific content issues.
10. When lawyers and paralegals subject to the CPD requirement consider what annual CPD activities to undertake, the definition will provide the broad overview to their decision-making.

⁴ 25% of the annual 12 hour requirement

Whether to Introduce CPD – The Merits

11. Forty-eight individuals responded in writing to the invitation to consult. Of these, close to half do not comment on whether the requirement should be introduced, but instead ask questions or make specific suggestions on components of the proposed program. Of the remaining individuals there is a mixture of those who support the requirement outright, support it with qualifiers based on implementation concerns, or oppose it. In addition, those who attended the teleseminars generally did not oppose the requirement, but either support it or focus on implementation questions.
12. Twenty-eight organizations responded to the invitation to consult. Of these only one opposes the introduction of the program. The others either support the introduction directly or by expressing support for CPD generally and then making suggestions on implementation issues. These organizations reflect a broad array of groups⁵ representing diverse practice areas, geographic locations and size of practices and also representing perspectives of Aboriginal, Francophone and equity seeking communities.
13. For example, the County and District Law Presidents' Association supports the requirement. The Presidents represent law associations throughout the province, many of which are in locations remote from large centres where traditional live programming is most available. The Ontario Bar Association also supports the introduction of the requirement. It too speaks for lawyers situated throughout the province and includes representation from a broad membership base. The Law Society's Equity and Aboriginal Issues Committee⁶ considers that the requirement has the potential to reduce isolation of lawyers and paralegals from Aboriginal, Francophone and equity seeking communities and to increase mentoring opportunities.
14. In the Committees' views the minimal opposition to the introduction of the CPD requirement can fairly be interpreted as a general acceptance of going forward with the proposal. This may be reflective of any number of factors, including acceptance that has

⁵ Only one paralegal organization commented. Given that paralegal regulation is relatively recent, paralegal organizations may still be developing their approaches to consultation requests.

⁶ The Committee's comments also reflect the views of the Equity Advisory Group and the Aboriginal Working Group.

resulted from reporting minimum expectations for CLE since 2002 on the Lawyers Annual Report⁷, increased accessibility to CPD programming and innovative delivery over the last decade, or the flexibility of the proposed requirement.

15. Of the few submissions that oppose a CPD requirement the primary reasons given are those the Committees raise in their consultation report, namely,
 - a. that there is no evidence that the requirement results in a reduction of negligence actions or complaints; and
 - b. that a CPD *requirement* represents an overly broad regulatory brush, unnecessary for the vast majority of the profession that is competent, yet not sufficiently directive to improve the competence of those who are not.

16. LAWPRO's submission supports the implementation of a CPD requirement "as it believes CPD can increase professional competence and reduce malpractice claims." LAWPRO notes that it regularly receives personal comments from lawyers who state that information or resources LAWPRO provides has helped them recognize a potential claim and how to avoid it or has highlighted a risk of which they had not been previously aware. Moreover LAWPRO's submission notes that there is indirect empirical evidence from the LAWPRO CLE Premium Credit that attendance at CLE programs can reduce malpractice risks and costs. Data indicates that lawyers who have claimed one or more LAWPRO CLE Premium Credits have a lower average cost per claim than those who have not claimed a credit. They also have fewer claims resolved with an indemnity payment.⁸

17. A CPD requirement would constitute only one component of the Law Society's quality assurance and quality improvement mosaic of initiatives. The various components together comprise a regulatory template for lawyer and paralegal competence. The Committees continue to believe that such a 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.

⁷ To date paralegals have not yet been required to report CLE on the PAR.

⁸ LAWPRO submission, pp. 14 and 15.

18. As noted above, some of the submissions that raise concern about the requirement are in fact more focused on implementation issues than on the merits of a CPD requirement *per se*. In particular, they address concerns about affordability and accessibility. They also raise the concern that the requirement may have a disproportionate effect on sole practitioners and small firm lawyers and paralegals.
19. The Committees agree that these are important considerations. Some of the revised recommendations reflect a number of the comments made on these issues. In addition, however, the Committees are of the view that these issues can and should be addressed as part of the implementation process and of the assessment of the requirement that should take place after its initial years of operation. These issues are not a reason against introducing a CPD requirement. This report will comment on these concerns in more detail in subsequent sections.

To Whom the Requirement Should Apply

20. The Committees recommend that the CPD requirement apply to lawyers and paralegals who practise law or provide legal services, respectively (those in the 100% fee paying category). In some cases these lawyers and paralegals may practise law or provide legal services on behalf of a single employer, but it is the nature of their activities that determine which category they are in. Those lawyers and paralegals who do not practise law or provide legal services, but who are otherwise employed are in the 50% fee paying category. Depending upon the work they do, for example, lawyers in government or in corporations may be in either the 100% or 50% fee paying categories. Those in education will typically be in the 50% fee paying category. Paralegals and lawyers who do not engage in any remunerative work, are in fulltime attendance at a designated education institution, college or university or are on pregnancy or parental leave and do not practise law or provide legal services are in the 25% fee paying category.
21. Almost no submissions address the issue of to whom the requirement should apply. One or two disagree with exempting those in the 50% and 25% fee paying category on the

basis that they need CPD to keep them current in the event they return to the 100% fee paying category.

22. A few submissions suggest exemptions for additional categories such as those senior or other lawyers and paralegals working part-time; women during the 12 months after giving birth; corporate counsel, on the basis that they do not provide services to the general public and have narrow expertise not amenable to CPD; research lawyers and those in litigation support because they have no private clients, retainers or trust funds. In fact, lawyers and paralegals in these situations might be exempted on the basis of their fee category.
23. The Committees have considered whether those in the 50% and 25% fee categories should be included in the requirement as a condition of continued membership in the Law Society. 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 direction 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.
24. In the case of lawyers in the 50% category the average number who change their status annually from the 50% category to the 100% category is between 300 and 350. Most lawyers, once in the 50% category, tend to remain there. Lawyers in the 25% category tend to be more transitory, staying in the category for only finite, limited periods of time. There is as yet insufficient information on paralegals in these categories.

25. The Law Society has other quality assurance and quality improvement programs for those moving from the 50% and 25% categories to the 100% category, particularly where the absence has been lengthy.⁹ In addition, the CPD requirement would begin to apply on a pro rata basis as soon as a lawyer or paralegal enters the 100% category, and thereafter annually on the basis of the full requirement. The pro rata calculation would be made on the basis of one credit hour for each month the lawyer or paralegal is in the 100% fee category. The consultation process has not led the Committees to conclude that, at this time, the scope of the requirement should be expanded beyond the 100% fee paying category.
26. 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.
27. In addition to the category exemptions for those in the 50% and 25% categories, the Committees' proposal recommends exemptions based on individual circumstances. 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 Committee recommends that the basis for exemptions be those characteristics coming within the *Human Rights Code*.¹⁰ 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

⁹ Lawyer licensees who, for 80 percent or more of the five years immediately preceding the date of their application to enter private practice were not in private practice, and who intend to practise in firms of five or fewer lawyers are subject to the re-entry review requirements (the practice management review) within 12 months of their entry into private practice.

¹⁰ race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, same-sex partnership status, handicap.

must have discretion, as she currently does respecting licensing process issues, to consider additional circumstances for accommodation.¹¹

28. 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.¹²

The Number of Annually Required Hours and Required Content (professionalism, ethics, practice management)

29. The majority of the submissions, from both individuals and organizations, either agree with a 12 hour annual requirement or make no comment. One or two submissions suggest, in contradiction to each other, that the hours are too few to make a difference or too many to introduce all at once.
30. 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. In addition, the proposal takes guidance from the experience of many other jurisdictions, both in Canada and elsewhere, that have CPD requirements and have settled on and maintained 12 hours. This approach also recognizes that cost, time and accessibility issues need to be taken into account when developing a requirement.
31. Some submissions query whether those with highly specialized practices (some paralegals, lawyers with narrow practices), very senior practitioners and those with

¹¹ The Committees recommend that, *in the normal course*, exemptions should not be granted on the basis that the lawyer or paralegal does not have the time to complete the requirement. The purpose of the requirement is to encourage lawyers and paralegals to *make* time for CPD. At the same time, there may be unusual circumstances in a given year for which a lawyer or paralegal applies for exemption.

¹² Lawyers and paralegals in the 50% or 25% category will be automatically exempted without the requirement to apply, so long as they remain in these categories. If they return to the 100% fee category during the year they will be required to complete CPD hours on a pro rata basis of one hour per month during which they are in the 100% fee paying category. If at any time in the future additional fee paying categories become subject to the requirement, the exemptions will be adjusted accordingly.

specific needs (eg. requiring Francophone programming; programming for those with disabilities) will be able to find sufficient content each year. Availability of relevant programming is, of course very important to making the requirement a meaningful one. As will be described later in the report, the fact that lawyers and paralegals will be able to satisfy the requirement through a wide range of eligible activities and programming that best meet their professional development needs and choose providers within and outside Ontario, will go a long way to addressing this issue. The Committees consider this an important *implementation* issue that should be monitored and reported as part of the assessment of the requirement following the initial years of operation. The Committees discuss the assessment process later in this report.

32. The Committees are reassured by the significant support in the submissions for a requirement that 25% of the annual 12 hour requirement be taken in topics related to ethics, professionalism and/or practice management. The Committees agree that it is less confusing to refer to hours instead of percentages. The requirement should specify that 3 hours of the total 12 required hours of CPD annually should be in topics related to ethics, professionalism and/or practice management.
33. Although a few submissions disagree with this component on the basis that ethics cannot be taught, or that it will be difficult to find sufficient content year after year, the Committees are satisfied that lawyers and paralegals understand the importance of these topics and that incorporating them into the CPD requirement is in the public interest. The Committees reiterate that there is no obligation to take content in all three areas in a given year. Also, although 3 hours is the requirement, there would be nothing to preclude a lawyer or paralegal from taking all 12 hours in ethics, professionalism and/or practice management programs.
34. The manner in which lawyers and paralegals will fulfill the 3 hour component of ethics, professionalism and/or practice management will be discussed elsewhere in the report.

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.

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.

ACCREDITATION AND ELIGIBLE ACTIVITIES**Overview of the Consultation Report Approach**

35. In the consultation report the Committees proposed the following approach to accreditation and eligible activities:
- a. Lawyers and paralegals would satisfy their credit hours through a wide range of eligible activities that were specified in the consultation report. There was a short list of activities that the Committees proposed would not be eligible.
 - b. Lawyers and paralegals would be responsible for ensuring that they obtained the required 25% of content (3 hours) in ethics, professionalism or practice management out of their total 12 hour requirement.
 - c. Providers could apply to become accredited providers, but to be eligible to do so 25% of the content (3 hours) in each of their programs must address ethics, professionalism and/or practice management.

- d. Lawyer and paralegals would **not** be required to obtain their CPD hours, including their 25% of the content (3 hours) of ethics, professionalism and/or practice management content, from an accredited provider.
 - e. Lawyers and paralegals would **not** have to have any of their activities pre-approved by the Law Society, however, if they so wished they could seek approval from the Law Society for an individual program.
36. The greatest number of comments the Committees received during the consultation process arose from these components of the proposal. In particular the submissions addressed the following:
- a. Both individuals and providers raised questions about specific content eligibility. Would particular courses or activities be eligible?¹³
 - b. Both individuals and providers asked whether courses offered by specific providers would be eligible.¹⁴
 - c. Would becoming an accredited provider preclude that provider from offering any program that did not “embed” content in ethics, professionalism or practice management? Would this be a pedagogically sound approach?
 - d. If lawyers and paralegals were not *required* to obtain their 12 hours, including their ethics, professionalism and/or practice management content, through accredited activities and providers, what purpose would accreditation really serve?
 - e. Would the Law Society ensure sufficient content annually to satisfy the ethics, professionalism or practice management content requirement?
37. The Committees found these comments very useful for two reasons. They pointed out ways in which the proposal needs to be more clearly set out and they caused the Committees to rethink accreditation, “embedding” and delivery of the ethics, professionalism and practice management content.
38. The rationale for proposing that lawyers and paralegals were not required to obtain their CPD hours, including their 3 hours of ethics, professionalism and/or practice management content from an accredited provider, was to make the CPD requirement as

¹³Submissions referred to specific types of courses and asked whether they would qualify (e.g. Would a course in tax provided by other than lawyers qualify? Would a course originating outside of Ontario qualify? Would LL.M. programs qualify?)

¹⁴ e.g. Canadian Property Tax Association, Prosecutors Association of Ontario, Canadian National Association of Real Estate Appraisers, Canadian Tax Foundation, Canadian Institute of Chartered Accountant, American Bar Association, International Fiscal Association (UK), Legal Aid Ontario clinic programs, and many others.

flexible as possible and permit a broad range of activities to qualify to assist with issues such as accessibility and cost.

39. The rationale for requiring accredited providers to embed the ethics, professionalism and/or practice management content in all their programming was to emphasize the importance the Law Society places on this component of the program and to assist lawyers and paralegals to know that if they did take a program from an accredited provider it would have at least 25% content in ethics, professionalism or practice management.
40. Upon reflection, however, the Committees agree that while both rationales described in paragraphs 38 and 39 are valid, the mechanism the Committees proposed was not the most effective way to proceed. In fact, in the case of providers (of which there are many) who offer certain valuable programming that does not lend itself to meeting the 25% content requirement, it was unlikely they would apply for accreditation.
41. The Committees have also thought more about the underlying importance of the ethics, professionalism and practice management component of the CPD requirement and the most fair and effective way to deliver the content. As LAWPRO points out in its submission,

Most lawyers are surprised to learn that failures to know or apply substantive law account for a relatively small portion of LAWPRO claims. Over the last ten years, by both count and cost, law-related errors were only the fourth most common cause of claims. The biggest claims risk by count and cost – over one-half of LAWPRO’s claims in most areas of practice – involve basic lawyer/client communication/relationship issues and time/deadline management issues. Taking proactive steps to reduce these two types of claims is the biggest opportunity to reduce claims risks and costs.¹⁵
42. A number of submissions raise concerns about how lawyers and paralegals who do not take “embedded” content would be able to satisfy the requirement. They ask whether the Law Society would provide such programming and suggest that these programs should be

¹⁵ LAWPRO submission, p. 5.

free. These comments were often made by sole and small firm lawyers and paralegals who are concerned about the cost of the CPD requirement. These are valid questions.

Accreditation

43. The comments set out above have caused the Committees to reconsider whether a provider accreditation system is necessary. Having considered these various comments and thought further about the consultation report's recommendation that lawyers and paralegals not be required to meet their credit hours only through accredited activities, the Committees now consider that a system in which there are both accredited and unaccredited activities is confusing. In the Committees' view this conclusion leads to two alternatives:
- a. Accredite all activities in one of two ways: The Law Society pre-approves providers and the Law Society approves, before or after the event, individual courses and educational activities. This is essentially the model followed in British Columbia. It requires those subject to the requirement to obtain approval from that law society for each educational activity that is not from a pre-approved provider. The approval process is electronic and can be done without difficulty. This approach would require additional administrative support on the part of the regulator. This alternative would be a more stringent approach than the Committees recommend in the consultation report, but might provide comfort to lawyers and paralegals who want certainty about their choices.
 - b. Accredite no activities. In this alternative, lawyers and paralegals determine for themselves whether an activity is eligible based on a list provided by the Law Society. This list describes *types* of activities, **not** specific content. (e.g. live program, teleseminar, live web cast, discussion group, etc...) The lawyer or paralegal then determines whether the content comes within the CPD definition¹⁶ that the Law Society has approved. If the type of activity is eligible and the content comes within the CPD definition then the lawyer or paralegal is free to choose the activity. Providers do not have to be accredited.

This approach allows lawyers and paralegals to choose the content, delivery method and providers that are most relevant to their CPD needs. There is a slight risk to lawyers or paralegals that they will choose an ineligible activity or one that does not come within the CPD definition, but such risks are likely low and would in all likelihood be transitional in nature. If during a CPD audit it was discovered

¹⁶ "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."

that an activity had been ineligible or did not fit within the CPD definition, the lawyer or paralegal would be instructed on why the choice was a problem and his or her choices would simply be reviewed again the following year to ensure the issue had been addressed.

This alternative removes a provider accreditation process, but is otherwise closer to the Committee's original proposal.

44. The Committees recommend that, with two exceptions to be discussed below,¹⁷ the Law Society use alternative (b). In an effort to minimize the administrative burden on lawyers and paralegals the Committees continue to be of the view that lawyers and paralegals should be entitled to use their judgment in choosing their activities as described in alternative (b), without having to seek Law Society approval to do so. Given that view, a process of provider accreditation may be an unnecessary administrative step. Ontario is fortunate to have a significant number of quality CPD providers from law associations, not-for-profit providers, in-house law firms, government, Legal Aid Ontario, LAWPRO, and law schools, many of which groups made submissions. These entities will continue to provide excellent programming as their long history suggests. This is not to suggest lawyers and paralegals are restricted to Ontario providers under this alternative. As described above, an individual uses his or her judgment to determine that an activity is in the list of eligible activities and comes within the definition of CPD. If the activity and content is eligible then the lawyer or paralegal may choose the provider he or she wishes.
45. If chosen, the effectiveness of this alternative can be considered when the CPD requirement is assessed following the initial years of operation. This would allow further discussion of alternative (a) at that time, if necessary.

Ethics, Professionalism and Practice Management Content Requirement

46. On the issue of the ethics, professionalism and practice management content the Committees have paid particular attention to the comments about who will ensure such content is available.

¹⁷ Paragraphs 49-50 and 71-77.

47. As regulator the Law Society observes firsthand and must address the difficulties lawyers and paralegals encounter related to ethics, professionalism and practice management. It has developed numerous materials and programming to assist lawyers and paralegals in these areas. It conducts practice management and financial audits using standards against which to assess practices and focusing on a wide range of practice management issues such as operating a practice, bookkeeping, and managing conflicts. It provides training and material related to the Rules of Professional Conduct and on civility in legal practice. It deals with conduct, capacity and competence issues within the regulatory processes. It addresses issues related to wellness and stress management¹⁸ and their importance to maintaining professionalism and competence. It provides training and information on principles related to equity and diversity. All of these are within the scope of the ethical, professionalism, and practice management content requirement.
48. In the Committees' view the Law Society should assume primary responsibility for delivery of the ethics, professionalism and practice management content and should do so without charging program registration or materials fees. This would ensure that the content addresses those issues of primary regulatory concern, would free up other providers to focus on their core mandates, would further reinforce the recommendation not to require providers to "embed" this content and would address some of the cost issues that lawyers and paralegals have raised. The Committees intend that this Law Society programming would be designed specifically to meet the ethics, professionalism and/or practice management content requirement.
49. There may be other providers interested in developing stand alone programs or individual program content in the area of ethics, professionalism, and practice management. Nothing in this recommendation would preclude this and, in fact, the Committees hope that other providers will be interested in doing so. Some are already

¹⁸ In the consultation report programs on stress management and wellness were ineligible activities. The Committees agree that these are relevant within the ethics, professionalism and practice management content and should be eligible in that context.

doing so both generally and to qualify their programming for the LAWPRO Premium Credit.¹⁹

50. The Committees recommend that for such programming to qualify as containing ethics, professionalism or practice management content for the purposes of the CPD requirement it must be approved by the Law Society. Programs created to support the LAWPRO Premium Credit could also be submitted to the Law Society for approval for the CPD requirement.

Eligible Activities

51. In the consultation report the Committees set out proposed eligible and ineligible activities. A number of submissions ask whether certain types of activities would fit within the categories. Others comment on the proposed ineligible categories.
52. Having considered these comments, the Committees propose that the following constitute eligible activities. In accordance with the Committees' recommendation lawyers and paralegals will decide whether the activity they wish to claim comes within these categories. The course content will be eligible if it comes within the definition of CPD:
 - a. **Participation in CPD courses**

This will include attendance at live programs or participating in online "real time" courses, streaming video, web and or teleconference courses, provided there is an opportunity to ask and answer questions, viewing a previously recorded course with at least one other lawyer or paralegal. This includes programming offered by providers both in and outside Ontario. To qualify there must be the opportunity to interact with colleagues and/or instructors, for example in person, by e-mail or on the phone.
 - b. **Participation as a registrant in a college, university or other designated educational institution program, including distance education.** This will include LL.M programs.
 - c. **Teaching (to a maximum of 6 hours per year)**

One hour of teaching will equal three hours of credit to reflect preparation time. The teaching content must be law-related and within the CPD definition. There is

¹⁹ Approval will also be required for programming for newly called lawyers and newly licensed paralegals. See the discussion beginning at paragraph 71.

no limit on the audience. If the same content is taught more than once in a year credit is only available for the first time. Teaching credit will be available for volunteer or part-time teaching, not as part of full-time or regular employment.

Credit for chairing a program may apply, provided the chair does more than introduce speakers. Credit is as a facilitator of the program. Credit will be limited to time spent in the chair capacity.

- d. Acting as an Articling Principal or mentoring or being mentored or supervising a paralegal field placement (to a maximum of 6 hours per year)**
The Articling Principal, mentor, paralegal who is supervising a field placement and lawyer or paralegal being mentored may claim the hours spent on topics within the CPD definition.
- e. 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.
- f. Study Groups**
This will include attendance in a group setting at an educational session of two or more lawyers or paralegals the purpose of which is to consider content that comes within the CPD definition. This may include lawyers in the same firm, legal department, government agency, clinic, or other similar entity. File specific discussion is not eligible. No time may be claimed for preparation for the discussion group unless it comes within c. or e. above.
- g. Educational Components of bar and law association meetings**
Where lawyers or paralegals attend meetings that involve both business related to the association and substantive law content that comes within the CPD definition, the lawyer or paralegal may claim credits for the hours devoted to the substantive law content.

53. The Committees considered the comments that were made about their list of proposed *ineligible* activities. Activities are designated as ineligible not because they are without value, but because the CPD requirement is focused on more formal education and designed to encourage or at least provide the opportunity for interaction among members

of the profession in professional development endeavours. Similarly, while volunteer and pro bono activities are laudable they are not suitable for inclusion as activities in a CPD requirement.

54. Before setting out the proposed list of ineligible activities the Committees wish to comment on two areas on which they received comment: self-study and activities designed primarily for marketing to existing or potential clients.

Self-Study

55. The Committees have no doubt that lawyers and paralegals engage in self-study in significantly greater hours than the CPD envisioned in this requirement. This is an integral part of providing competent service and for many professionals is their preferred learning method. In a sense this may be described as the “private” form of education.
56. If self-study is the private form of education, the “public” form is participation in more formal forms of CPD, including courses, programs, seminars, and discussion groups. This form of professional development typically engages participants in more interactive learning in the broadest sense, namely providing them with the *opportunity* to consider and exchange ideas with others in their profession in a more formal context. In the Committees’ view, the CPD requirement should be directed at this “public” form of education. For this reason the Committees continue to recommend that self-study not be eligible for CPD credits.
57. The Committees note, that although there is currently no requirement to undertake a specified number of self-study hours, nor are they recommending there should be, there is a requirement that lawyers report on the Lawyers Annual Report (LAR) how much self-study they do, with 50 hours expressed as a “minimum expectation.” Currently, paralegals are not asked to report this on the Paralegal Annual Report (PAR). The Paralegal Standing Committee is of the view that if lawyers continue to be required to report on self-study, paralegals should also be required to do so.

58. The Committees recommend that the requirement to report self-study hours should continue for lawyers on the LAR and that beginning in 2011 paralegals should also be required to report self-study hours on the PAR. As for lawyers there is no required minimum number of hours of self-study, rather 50 hours would be the “minimum expectation.” What would be required on the PAR is the *reporting* of however many hours of self-study is undertaken, even if that number is zero.

Activities designed *primarily* for marketing to existing or potential clients.

59. The place where this type of activity will arise is in the context of the generally eligible activities of teaching or writing. In evaluating whether the activity is eligible or not the lawyer or paralegal will need to assess it in the context of the what constitutes an eligible activity and in the context of the definition of CPD. The ineligibility may arise more often for the presenter than for the recipient of the information, but this will not always be the case.
60. If the activity’s *primary* purpose is marketing the lawyer or paralegal or their firm to clients, the activity will be ineligible. Rather than “teaching” the presenter will be primarily “pitching” to the audience. The educational content will be minimal or basic, the presentation may be repeated with modest changes to a number of audiences, and the audience to whom it may be delivered may have no members who are themselves subject to the CPD requirement.
61. The Committees recognize that there may be a fine line between an educational product and a marketing one. The product may be both at once. The Committees include this as an ineligible activity and suggest that if a lawyer or paralegal is in doubt he or she contact the Law Society for advice. During the assessment process that will occur after the completion of the early years of the requirement, issues concerning eligible and ineligible activities may be raised and consideration given to whether changes are advisable.
62. The Committees propose that the following be ineligible activities:

- a. Any activity undertaken or developed primarily for purposes of updating or marketing to existing or potential clients.
- b. Self-study.
- c. Acting as an adjudicator for a tribunal or board.
- d. Working as a member of a review or other panel.
- e. Pro-bono work.
- f. Marking work for law school or college courses.
- g. Acting as the chair or member of a tribunal or other institution or board.
- h. Attendance,
 - i. by benchers at the business portion of Law Society meetings of Convocation or committees;
 - ii. at the business portion of meetings of a legal association's board or committees;
 - iii. at the business portion of Annual General Meetings; or
 - iv. at the launch of any form of legal materials.

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 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.

COMPLIANCE AND MONITORING

63. Only a few submissions comment on the compliance and monitoring proposal. A few emphasize that there should be flexibility to address circumstances in which the failure to meet the annual credits are for reasons enumerated within the *Human Rights Code*.
64. As discussed earlier in this report²⁰ lawyers and paralegals may apply for an exemption as soon as they become aware of the need. Those who qualify for exemptions under the *Human Rights Code*, as well as in additional circumstances that the Director of Professional Development and Competence, or her designate, determines appropriate, will be exempted. While in the normal course the lawyer or paralegal in need of an exemption will apply before the end of the year, the Committees recommend that in appropriate circumstance an exemption could be provided retroactively. The Committees recommend sufficient flexibility to address the issue before a suspension occurs.
65. One or two submissions suggest that there should be a period of grace before suspension occurs for failure to comply. The Committees reiterate that the proposal does not contemplate automatic suspension. It provides that no suspension will occur before the summary suspension bench reviews the relevant information and signs the order. In the normal course this will take anywhere from several weeks to a month. In the interval, if a lawyer or paralegal completes the required credits or seeks and obtains an exemption, the matter will not proceed to a summary suspension bench. If a member is suspended, the suspension will be lifted as soon as the credits have been completed or an exemption has been granted.
66. The compliance and monitoring mechanism set out in the Committees' consultation report balances compliance obligations with a process that is easy to use and provides

²⁰ Paragraphs 27-28

ample opportunity for lawyers and paralegals to be reminded of their status. In the proposal, reminders of status are to be sent regularly throughout the year. The breadth of eligible activities should also assist lawyers and paralegals to find the necessary content to allow them to comply. Suspension for failure to meet the credit requirement is not automatic, rather depends on the summary suspension benchler signing the order. In the Committees' view this approach, coupled with the frequent reminders lawyers and paralegals will receive throughout the year is fair and makes clear the importance of compliance within the required time frame.

67. The consultation report discusses a monitoring mechanism²¹ consisting of CPD audits to be undertaken either as part of the current practice management review program or paralegal practice audit, and/or by random selection chosen from among all paralegals and lawyers subject to the requirement. The report proposes that the randomly selected audits take the form of a written request for proof of completion of the annual requirement.
68. Any CPD audit will be conducted the year following completion of the full 12 hours. There will be no "interim" audits as lawyers and paralegals are entitled to obtain all 12 hours in the final days of the year if they choose. The random CPD audit will not include a visit. As set out below, it will consist of a paper audit, thereby keeping to a minimum the time a lawyer or paralegal must spend in verifying CPD.
69. In this audit process lawyers and paralegals will be asked to provide proof that they have undertaken the activity claimed on the CPD portal. Typically proof will consist of proof of registration and/or evidence of payment for a course or program; list of topics canvassed in discussion groups and names of other participants; transcripts or other proof of registration in college, university or other designated educational institution program, including distance education; copies of articles for which credit is claimed, program agendas confirming that the lawyer or paralegal taught in the program for

²¹ Paragraphs 103 – 110.

which credit is claimed, etc. Lawyers and paralegals will be required to maintain proof for one year from December 31 of the year in which the credit is claimed.

70. As with other aspects of the program the Committees recommends that the assessment process that will be undertaken following the completion of the early years of implementation examine the effectiveness and impact of the compliance and monitoring approach.

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.

COORDINATING LAW SOCIETY CPD**CPD for those entering a practice category**

71. There are two other groups for whom Convocation has already approved a CPD requirement. These are lawyers in the first 24 months of practice following call to the bar and Certified Specialists.
72. 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 is scheduled to begin in January 2011. In its report to Convocation in 2008 the L&A Task Force described the requirement as follows:

The objective of this component of the training program is 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*. Law practice skills and professional responsibility issues will be integrated with substantive law programming.

The requirement will engage adult learners who have the professional capacity to make appropriate decisions about the direction and focus of their education. The Law Society will accredit specific courses to ensure that the content covers the requisite professional responsibility and practice management components. However, the Law Society will not dictate specific course structures or content requirements. The post-call instruction is designed to create a tighter nexus between learning and day-to-day practice requirements, permitting students to relate their educational materials directly to the events and issues that confront them in their own law practice. It also allows more diversity in the practice-based learning, permitting individuals to tailor the education to their specific needs when they choose among a range of approved courses. It inculcates in new lawyers the principle that legal education is a life-long enterprise, and that continuing legal education is an essential component of professional responsibility.

The post-call component will allow new lawyers to choose the accredited program and provider of their choice. A substantial proportion of the program content must cover defined professional responsibility and practice skills competencies. The balance of the program can address the substantive law that meets practice needs. To ensure that lawyers outside of city centers have access to these professional development opportunities without having to leave their communities multiple delivery methods will be used, including traditional live programming, webcasting, teleseminars, archived audio and video and others. In addition, efforts will be made to develop programming that accommodates the learning needs of different cultural and other groups within the profession.

73. The Committees are of the view that this focused approach to the CPD requirement for lawyers in the early years of entering a practice category (new lawyers) should continue for the reasons set out above. This focused approach would apply to satisfy these lawyers' total CPD requirement for the equivalent of their first two full years of practice.²² Thereafter, these lawyers would be free to choose from the same eligible activities as all other lawyers in the 100% fee paying category. The Committees recommend that during this two year period, 25% (3 hours) of the accredited programming requirement per year be taken in topics related to ethics, professionalism and practice management and that this content be integrated within the other 9 hours of accredited programming.
74. 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.
75. The compliance procedure will be the same as for all others subject to the CPD requirement. To enable there to be one compliance mechanism for all those subject to

²² "Equivalent" is used to make it clear that if, for example, someone takes a leave of absence from practice before the first 24 months of actual practice has occurred, whenever he or she returns to the 100% fee paying category he or she will be expected to complete this requirement.

CPD requirements the Committees recommend that instead of calculating the new lawyer requirement on the basis of 24 credit hours in the first 24 months of practice as was originally approved, it be calculated as 12 credit hours per year for the equivalent of the first two full years of practice. This will obviate the need for different tracking mechanisms and will save administrative costs. In addition, for ease of calculation, the requirement should begin on January 1 following call to the bar and continue until the subject lawyer has completed the equivalent of two full years of practice.

76. The Paralegal Standing Committee also considered whether newly licensed paralegals (new paralegals) should be subject to the same focused approach to CPD for the equivalent of the first two years of providing legal services. It agrees that they should for the same reasons that such a focused approach would benefit new lawyers. The PD&C Committee supports the Paralegal Standing Committee's view.
77. The Committees recommend 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~~ 12 hours of accredited programming.

Certified Specialists

78. Lawyers can only become Certified Specialists if they apply and meet specified practice standards, experience and continuing legal education requirements. In order to maintain their certification, Certified Specialists must demonstrate, on an annual basis, that a substantial percentage of their practice is devoted to their specialty area and that they participate in at least 12 hours of CLE per year. The Committees do not recommend that Certified Specialist be required to meet additional CPD hours. The Certified Specialist CPD requirement should be merged into the CPD requirement and they should be required to obtain 12 hours of CPD in total annually, with 3 of those hours to be taken in topics related to ethics, professionalism and/or practice management.

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.

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.

COST ISSUES

79. 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.
80. 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.
81. 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.
82. There is one cost related issue on which the Committees wish to comment further. A few submissions suggest that there should be an increase in the threshold income level at which lawyers and paralegals could be eligible to receive a subsidy on the cost of CPD programming. Currently, the Law Society provides a subsidy for those whose net income is \$35,000 or less. Some other providers also have bursary programs.

83. The Law Society's bursary program was introduced in 1986 with a threshold income of \$25,000. There is no information on how that figure was reached. In 1995 the amount was increased to \$35,000. Again, there is no information on how this figure was reached.
84. In the Committees' view this is an issue that should be explored further, but it would not be appropriate to continue the arbitrary choice of the threshold amount. There should be actuarial information on the appropriate threshold and information on the budgetary implications of going forward. This should form part of the discussions for the 2011 budget, which would allow this issue to be addressed before the requirement take effect on January 1, 2011.

Recommendation 21

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

BUDGET IMPLICATIONS

85. Assuming that Convocation ultimately approves a system of CPD requirements that mirrors the recommendations in this report, it is anticipated that the PD&C Department would require, in the first full year of implementation (2011), six additional full-time equivalent (FTE) staff.
86. The total increase in expenditures for the PD&C department for 2011 for staffing requirements is estimated at \$450,000. Activities will include,
- a. development and delivery of learning modules and programming to support lawyer and paralegal completion of the professional responsibility, ethics and practice management requirement of 3 hours per year offered to participants with no program fees or charges for materials;
 - b. development and delivery of accredited learning for new lawyers and paralegals in their first two years of practice and provision of legal services, respectively;
 - c. development and implementation of an accreditation system to review and manage program accreditation for professionalism content and programming for new lawyers and paralegals;
 - d. provision of assistance to members working in the portal; and

- e. review of applications for, and provision of assistance to, lawyers and paralegals seeking accommodation or exemption.
87. The PD&C Department will provide the professional responsibility, ethics and practice management content and programming to lawyers and paralegals without charge for program registration or materials fees. The cost of developing and providing programming throughout each year, in a variety of formats that allow for interaction, is anticipated to be approximately \$400,000.
88. Administrative Compliance and Membership divisions will require an increase in expenditures that will depend upon the level of interaction required with lawyers and paralegals during notification of failure to complete the requirement. Activities will include interaction with lawyers and paralegals respecting the portal and compliance processes. Assuming the process described in this Report, the estimated increase for 2011 is \$300,000.
89. Additional costs related to office space, supports and systems and indirect expenses are expected to be in the range of \$150,000.
90. The PD&C Department will also require additional staff in 2012 to support the CPD audit process that will begin at that time to monitor compliance with the requirements at an estimated cost of approximately \$100,000.
91. Total anticipated expenditures to develop and maintain the new CPD systems set out in this report are therefore expected to be in the range of \$1,400,000 or \$38 per lawyer and \$38 per paralegal.
92. An increase in attendance at the Law Society's CLE programs is expected. For instance, of the lawyers in practice who completed the MAR in 2008, 4,905 reported taking no CLE. However the exact impact of the CPD requirement on Law Society CLE attendance and revenues is difficult to predict primarily because,
- a. the Law Society will not be the sole provider of programs eligible for the CPD requirement; and

- b. the ethics, professionalism and practice management programming put on by the Law Society (comprising 3 hours of the CPD requirement) will be provided without charge for program registration or materials fees.
93. The current CPD requirement budget does not include any revenue projections. As noted above an accurate estimate is difficult. For budget purposes the anticipated increase in revenues will be offset by the anticipated increase in costs of holding the programs, such as course materials and bandwidth. Increases in these variable costs have not been included in the budget as they will be offset by increases in revenue.
94. Although it is feasible that Law Society programming for which there is a registration fee may continue to achieve full cost recovery and although the PD&C Department will continue to strive to achieve that goal, the expenses related to the development and delivery of the professionalism programming (no charge for attendance) is unlikely to be fully supportable within the current program fee/revenue generating structure. Therefore, on a go forward basis, the CPD/CLE system may no longer be a cost recovery program for the Society.

PROGRAM ASSESSMENT

95. A CPD requirement will be a new initiative and as such the year leading to the commencement of the requirement and the first several years of implementation will provide concrete examples of what is effective and what can be improved upon, the implications of the program on its participants and any issues that have arisen.
96. 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.

97. To allow the program sufficient implementation time to make its assessment meaningful, the Committees recommend that the assessment occur after completion of two full years of implementation. To the extent that there are any issues that require addressing before that date, whether in the developmental year of 2010 or during the first two years of implementation, they should be reported to the Committees. The Committees and Convocation should, in any event, receive regular information reports during 2010, 2011 and 2012.

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.

COMMUNICATION PLAN

98. The communication plan would take effect immediately upon approval of the requirement and continue throughout the transition period prior to implementation of CPD requirement and during the first and second year of implementation. Specifically, the Society will begin immediately to communicate with all members the policy and its implications. This lead up to the implementation date on January 1, 2011 will include information about the requirement, its goals and objectives and will also provide substantial supporting information in the form of Frequently Asked Questions and Answers (FAQs) that will address some of the themes and concerns that were expressed in the consultation process. The communications will continue into the first full year of implementation and beyond, and will include, but will not be restricted to, supporting information in,
- a. articles and notices in the Ontario Lawyers Gazette;
 - b. notices in the *Ontario Reports* at least monthly;
 - c. reminders in the monthly e-Bulletin;

- d. reminders in the monthly Paralegal Update;
 - e. information on the Society's web site outlining the program, the objectives, the requirements and the process of fulfillment; and
 - f. information to CPD providers on the nature of the requirement and rules.
99. This will be in addition to the automatic reminders that will be generated as part of the compliance portal, informing lawyers and paralegals regularly how many credit hours they have acquired and how many they still have to obtain.
100. Adjustments will be made to the communication plan as necessary on an ongoing basis. The assessment process will also consider communication issues that have arisen in the first two years.
101. Few submissions comment on the communication plan. EAIC suggests that the Law Society set out how it will implement the requirement in keeping with equity and diversity principles and suggests that the plan should include outreach to various groups through their community based media outlets. Some providers suggest that the Law Society engage the assistance of legal organizations to communicate the plan. The Committees agree that these suggestions are helpful to further facilitate effective communication of the requirement.

Recommendation 23

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

CONCLUSION

102. In their consultation report the Committees state that they are of the view that the time has now come to include a CPD requirement as part of the Law Society's competence mandate. Following the consultation process they continue to be of this view. 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 at paragraph 2 and repeated throughout this report balance professional obligations in this area with a reasonable requirement that is accessible and affordable.

Moreover, by requiring 3 hours of the total 12 hours annually to address topics in ethics, professionalism and practice management, the proposal addresses areas of particular concern to the Law Society as regulator.

103. The Committees thank those individuals and organizations and institutions that took the time to provide thoughtful and helpful submissions and to attend meetings and teleseminars at which the CPD issue was discussed.



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

Joint Report to Convocation October 29, 2009

Professional Development & Competence Committee

PD&C Committee Members

Laurie Pawlitzka (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Larry Banack
Jack Braithwaite
Thomas Conway
Marshall Crowe
Aslam Daud
Lawrence Eustace
Jennifer Halajian
Susan Hare
Paul Henderson
Laura Legge
Dow Marmur
Daniel Murphy
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Heather Ross
Catherine Strosberg
Gerald Swaye

**Purpose of Report: Decision
(Approval for
Consultation)**

Paralegal Standing Committee

Paralegal Standing Committee Members

Paul Dray (Chair)
Susan McGrath (Vice-Chair)
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Glenn Hainey
Paul Henderson
Brian Lawrie
Douglas Lewis
Margaret Louter
Stephen Parker
Cathy Strosberg

**Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. The Professional Development & Competence Committee (“PD&C Committee”) and the Paralegal Standing Committee (“PSC”) met together on September 25, 2009. PD&C Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice-Chair), Mary Louise Dickson (Vice-Chair), Alan Silverstein (Vice-Chair), Thomas Conway, Marshall Crowe, Lawrence Eustace, Paul Henderson, Dow Marmur, Dan Murphy, Judith Potter, Nicholas Pustina, Heather Ross, Cathy Strosberg and Gerald Swaye attended. PSC members, Paul Dray (Chair), Marion Boyd, James Caskey, Michelle Haigh, Paul Henderson, Brian Lawrie, Margaret Louter, Stephen Parker and Cathy Strosberg attended. Staff members Julia Bass, Diana Miles and Sophia Sperdakos also attended.
2. The PD&C Committee met on October 8, 2009. Committee members Laurie Pawlitza (Chair), Mary Louise Dickson (Vice-Chair), Alan Silverstein (Vice-Chair), Jack Braithwaite, Thomas Conway, Marshall Crowe, Lawrence Eustace, Jennifer Halajian, Dow Marmur, Judith Potter, Nicholas Pustina, Jack Rabinovitch, Cathy Strosberg and Gerald Swaye attended. Staff members Diana Miles and Sophia Sperdakos attended. Michael Lucas, Manager of Policy at the Law Society of British Columbia attended as a guest.
3. The PSC met on October 8, 2009. Committee members Paul Dray (Chair), Susan McGrath (Vice-Chair), Marion Boyd, James Caskey, Seymour Epstein, Michelle Haigh, Glenn Hainey, Brian Lawrie, Doug Lewis, Margaret Louter, Stephen Parker and Catherine Strosberg attended. The Chair of the Professional Development & Competence Committee, Laurie Pawlitza, joined the meeting for a discussion of the continuing professional development requirement. Staff members in attendance were Julia Bass, Katherine Corrick, Fred Grady, Terry Knott, Diana Miles, Elliot Spears, Sophia Sperdakos, Roy Thomas, Arwen Tillman, Sybila Valdivieso, and Sheena Weir. Michael Lucas, the Manager of Policy at the Law Society of British Columbia, attended as a guest.

DECISION

CONSULTATION ON CONTINUING PROFESSIONAL DEVELOPMENT (“CPD”) REQUIREMENT

MOTION

4. That Convocation approve for consultation with lawyers and paralegals the joint report of the Professional Development & Competence Committee and the Paralegal Standing Committee (“the Report”) regarding a continuing professional development requirement.
5. That Convocation approve a consultation period from October 30, 2009 to January 15, 2010.
6. That Convocation approve the following consultation plan:
 - a. The Law Society will provide notices to lawyers and paralegals in the *Ontario Reports*, the monthly e-Bulletin, the monthly Paralegal Update and the Law Society website advising of the Report, providing a link to it, and seeking written input by January 15, 2010.
 - b. The Law Society will undertake electronic communication with lawyers and paralegals in “Convocation Updates” and in 3 e-mail communications dedicated to the CPD issue and the Report, to be sent out to lawyers and paralegals on November 1, 2009, December 1, 2009 and January 4, 2010.
 - c. The Report will be sent to legal organizations and associations seeking their written submissions by January 15, 2010. If organizations/associations request, Law Society representatives may meet with them to answer questions on the Report.
 - d. The Law Society will conduct teleseminars on the Report during November and December, 2009 to elicit feedback directly from lawyers and paralegals, the dates and times to be included in the notices to lawyers and paralegals.
7. That following the completion of the consultation period the Committees will provide Convocation with a final Report on a proposed CPD requirement for consideration at February 2010 Convocation.

BACKGROUND

8. On May 28, 2009 the Treasurer advised Convocation that he had requested the PD&C Committee, through its Chair, to consider whether the Law Society should introduce a continuing professional development (CPD) requirement and, if so, how it would be developed. Subsequently the Treasurer and others, including the Chair of PSC agreed that it was appropriate to study the issue as it relates to lawyers and paralegals.
9. In outlining the reasons for his original request the Treasurer noted that on issues of lifelong learning and continuing professional development other law societies in Canada have now taken the lead, including the law societies of British Columbia, Saskatchewan, New Brunswick and the Barreau du Québec. The various law societies have published reports discussing continuing professional development and the details of the CPD requirement they have recommended or implemented.
10. For its June 2009 meeting the PD&C Committee read the reports of a number of other law societies discussing CPD. Cumulatively these reports and information address the significant policy issues relevant to consideration of a CPD requirement, regardless of the specific jurisdiction that might introduce it. Reports or bulletins from the law societies of British Columbia, New Brunswick, Saskatchewan and the Barreau du Québec are set out for information at **Appendix 1**.
11. The PD&C Committee Chair then appointed a working group to consider the issues relevant to a CPD requirement and report to the PD&C Committee. To reflect the expanded scope of the issue the PSC appointed a member to the join the working group. The working group members, Laurie Pawlitza (Chair), Mary Louise Dickson (Vice-Chair), Larry Banack, Tom Conway, Dow Marmur and Stephen Parker, met five times in July, August and September, 2009. It was agreed that the working group should consider the issues and report to both the PD&C Committee and PSC.
12. The PD&C Committee and PSC met in a joint meeting on September 25, 2009 to discuss the working group's analysis of the issues. The Committees considered the rationale for a CPD requirement and a possible model for implementing a requirement. The

Committees jointly agreed on a proposal and finalized it in their respective committee meetings on October 8, 2009.

13. The two Committees provide this as a joint report to Convocation on a CPD requirement. Both agree that the issue applies equally to lawyers and paralegals. The recommendations reflect the views of both Committees.
14. The Committees provide this Report to Convocation for approval to consult with lawyers and paralegals. Following the consultation process the Committees propose to return to Convocation in February 2010 with a final report.

WHY INTRODUCE A CPD REQUIREMENT?

15. No one disputes the importance of continued learning, regardless of the profession. What has been debated is whether a regulator should require that its members meet and report on a minimum number of hours of professional development annually to retain their right to practise.
16. In many jurisdictions and across many professions the debate around a CPD requirement is long since over. Minnesota was one of the first jurisdictions to introduce a CPD requirement for lawyers in the United States in 1975. Since then 45 American states have added a requirement for lawyers to complete an annual minimum of between 12 and 15 hours of CLE to retain their right to practise. Most jurisdictions in Australia require lawyers to meet CPD requirements as do England, Wales, Scotland and Hong Kong, to name a few.
17. Until recently no law societies in Canada required their members to meet continuing professional development requirements. This is in contrast to many other professions throughout Canada that have included CPD requirements for years.¹

¹ e.g. College of Family Physicians of Canada: a minimum of 250 credits in each five-year cycle; Institute of Chartered Accountants of Ontario: a minimum of 20 hours per calendar year, with at least one-half of this time in verifiable learning and a minimum of 120 hours in a 3-year period; Royal College of Dental Surgeons of Ontario: 90 credit points every 3 years; Royal College of Physicians and Surgeons of Canada: a minimum of 40 credits in each year of a five-year cycle and 400 credits during the span of the cycle; Ontario Association of Architects: licensed architects must obtain 15 core hours and 55 self-directed hours over each 2-year cycle.

18. The legal profession in Canada has debated CPD requirements repeatedly over a number of years. When the discussions first began law societies had a much different approach to their mandate, focusing more of their attention on reactive regulation through discipline, than on preventive regulation. In recent years law societies have begun developing systematic approaches (Quality Assurance and Quality Improvement measures) to assist members of the profession to maintain and enhance their competence. The Law Society has paid particular attention to providing supportive tools and introducing preventive requirements designed to assist practitioners, particularly those in sole and small firm practice, to maintain and enhance their competence.
19. Quality assurance (QA) is designed to determine whether a professional meets specified requirements or standards. Among its goals are increasing public confidence and professional credibility by improving work processes and efficiency. Quality assurance systems emphasize detecting deficiencies before they become entrenched as part of the product or service. Quality improvement (QI) measures involve continuous analysis and improvement of the components that make up professional practice or work. Together these quality initiatives interact to support a competent profession.
20. When the Law Society last debated a CPD requirement in 1996,
 - a. the 1999 amendments to the *Law Society Act* introducing consequences for failure to meet standards of professional competence had not yet been introduced;
 - b. the Law Society had not yet approved its competence mandate;
 - c. there was no minimum expectation for CLE, to be reported annually in the Member's Annual Report (the "MAR");
 - d. technological delivery methods for CLE were in their early development, making live attendance at CLE the primary source of delivery;
 - e. there were significant issues around the availability of sufficient programs to meet the needs of a CPD requirement province-wide;
 - f. there was less public scrutiny of the profession; and
 - g. no other law societies in Canada had implemented such a program.

21. In 1999 the *Law Society Act* was substantially amended to focus for the first time directly on lawyer competence.² It provided that a lawyer (now a lawyer or paralegal) fails to meet standards of professional competence if there are deficiencies in,
 - a. his or her knowledge, skill or judgment;
 - b. his or her attention to the interest of clients;
 - c. the records, systems or procedures of his or her professional business; or
 - d. other aspects of his or her professional business;and the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.
22. This direct legislative articulation speaks to the importance of practitioners maintaining their competence and to the Law Society's responsibility to ensure competence.
23. In March 2001, Convocation approved the PD&C Committee's recommendations for implementing the Law Society's competence mandate. The recommendations reflected a conscious policy commitment to competence - to the responsibility the profession has to maintain and enhance it and the regulator has to monitor it. The PD&C Committee recommended that there be a minimum expectation of continuing legal education for all lawyers in Ontario. The expectation is expressed as a minimum of 12 hours of professional development annually in addition to 50 hours of self-study. Although the recommendation did not require that members take CPD it did require that they report how much they took. This requirement has been in place for lawyers since 2002.
24. CPD opportunities for paralegals are developing. As a transitional matter, paralegals have not yet been required to report in the Paralegal's Annual Report (the "PAR") the annual number of hours of CPD they take.
25. Certified Specialists are required to take a minimum of 12 hours of CLE annually, including a specified number of hours in the area of their specialty. In addition, as of 2011 newly-called lawyers will be required to take 24 hours of professional development in the first 24 months they are in a practice category. For a number of years, LawPRO

² There was no paralegal regulation at the time.

has provided a premium reduction for those who take certain professional development activities designed to promote risk avoidance.

26. All of these initiatives and requirements demonstrate the regulatory view that CPD enhances competence, that there is a minimum amount of CPD that every lawyer and paralegal should take and that regulators have an interest in and duty to articulate the importance of CPD, requiring a minimum commitment. Moreover, they reflect a view that professional development is not a remedial measure aimed only at those who fall below certain competence standards, but a positive, preventive tool that benefits everyone.
27. Since the last time the Law Society considered a CPD requirement there has been a substantial increase in the accessibility and delivery of professional development programming, with significantly greater capacity for practitioners to receive their learning in flexible ways and closer to home. Technological delivery methods have increased and the definition of professional development has expanded to allow inclusion and support of wide range of approaches. These improvements benefit both lawyers and paralegals.
28. Recently the law societies of British Columbia, Saskatchewan and New Brunswick and the Barreau du Québec have approved and/or introduced CPD requirements.³ As law societies work to harmonize their processes to create national approaches wherever possible, it is important for the Law Society of Upper Canada to consider whether greater harmonization in this area is also in the public interest.
29. The Committees have considered the reasons traditionally given for not introducing a CPD requirement. These have typically included the following:
 - a. There is no empirical evidence that a CPD requirement results in fewer complaints or claims.

³ The Law Society of Alberta has chosen to require members to complete a CPD education plan annually, but has not mandated hours of CPD. The Law Society of Manitoba has a minimum expectation requirement similar to the Law Society's current approach. The Barristers' Society of Nova Scotia has a CPD requirement for lawyers in certain practice areas and a minimum expectation requirement more generally.

- b. Given (a) the requirement could be viewed as “window-dressing,” rather than having a positive effect on lawyer competence.
 - c. Most lawyers are competent. The regulator should not introduce a requirement for all, to address the incompetence of the few.
 - d. CPD is too expensive and too inaccessible and has a disproportionately negative effect on sole and small firm practitioners.
 - e. Given the need to develop substantially more programs, quality will suffer.
 - f. Lawyers and paralegals will resent the requirement. They are the best judge of their CPD needs. They should not be told what to do.
30. The Committees agree that there does not appear to be any empirical evidence of a *direct* link between a CPD requirement and reduced claims. They have considered whether this fact is fatal to introducing a requirement, but in the end they disagree that this resolves the issue. The impact of much of formal education on behaviours, abilities, and performance cannot truly be quantified and yet few dispute its importance. Moreover, by setting minimum expectations for CLE and requirements for CPD for Certified Specialists and newly-called lawyers, the Law Society has already accepted the value of CPD without empirical evidence that it “makes a difference.” It is not reasonable to argue that CPD is worth *encouraging* even though there is no empirical evidence, but not worth *requiring* for the same reason.
31. The introduction of a CPD requirement could only properly be seen as “window-dressing” if one accepts that it has no role in the development and maintenance of competence. Few people have argued this and, once again, the Law Society’s own policy decisions militate against acceptance of this view.
32. A CPD requirement is a preventive policy choice, not a reactive one. Its goal is to make a minimum amount of professional development a central component of what goes into making a competent lawyer. It is not a response to “bad apples,” but rather a profession-wide commitment that should be part of a self-regulatory environment. A CPD requirement is about learning, not about testing. There is no evidence that other jurisdictions have used the requirement as a first step to competency testing and the Committees agree that this is not the purpose of such a requirement.

33. The Committees have paid particular attention to issues relating to quality and to accessibility and cost, particularly as they affect sole and small firm practitioners. These issues are fundamental to the implementation and fairness of any CPD requirement, but in the Committees' view they do not speak to the merits of the requirement *per se*. The type of model adopted has a significant effect on issues of accessibility and cost, as discussed below.
34. There have been many changes to the cost, availability and delivery of CPD since the Law Society last considered the issue in depth. In addition to this a number of other factors are relevant to the development of a reasonable requirement:
- a. The activities that qualify to satisfy the requirement should be flexible and reflect the importance of fairness to all those who must meet it.
 - b. The increase in the number of people required to take CPD will inevitably result in greater availability and content.
 - c. Ontario has many reputable not-for-profit providers who deliver excellent programming. There is no basis on which to suppose that they will cease to do so in a different environment. Moreover, a flexible approach to what are eligible activities will lessen the pressure on providers.
 - d. If availability and accessibility were to become an issue during the transition period leading up to implementation, the Law Society would be in a position to adjust the program to reflect this.
35. The Law Society regulates in the public interest. While, many of its requirements affect lawyers and paralegals' practices through additional regulation or cost, or both, they are introduced to further the Law Society's mandate. The Law Society should not introduce additional requirements without a public interest reason, but once that interest is identified, it cannot decline to do so because the profession may not wish to have the requirement imposed.
36. The Committees are aware of at least some anecdotal evidence that lawyers overall are no longer opposed to the requirement, as they may have been 12 years ago. Lawyers are now used to reporting to the Law Society their annual participation in CPD. Their major concern is not "whether" the Law Society should introduce a CPD requirement, but

rather the reasonableness of any requirement that is introduced. Moreover, a number of providers have established CPD committees to consider the logistics of meeting the demand for additional programming.

37. In the case of paralegals, the majority of those currently licensed were grandparented. This means many have had little or no formal education in their areas of practice and are interested in obtaining regular CPD to enhance their competence.
38. While there will always be those who resent the regulator imposing a CPD requirement the Committees believe that the concern will be minimized if the requirement is reasonable.
39. The Law Society has addressed many of its quality assurance gaps in the past five to seven years, increasing the amount of proactive competence assessment within the profession by adding to and enhancing its well-received Spot Audit and Practice Review programs. These programs apply to both lawyers and paralegals.
40. The one noticeable gap that remains in the Ontario quality improvement and quality assurance regulatory model is the post-call professional development requirement. It is difficult to assert that the regulator for lawyers in Ontario is meeting its full mandate when it exercises little oversight for competence maintenance and development in the post-call professional development landscape. Although the majority of lawyers in practice who completed the MAR in 2008 (27,924) reported taking some CLE, 18% or 4,905 reported taking **no** CLE. This is simply unacceptable for a profession that provides services to the public.⁴
41. For the reasons, set out here, the Committees have concluded that the time has come to introduce a CPD requirement for lawyers and paralegals in Ontario. They believe that such a requirement is a necessary component of self-regulation and will further demonstrate the Law Society's commitment to professional competence for lawyers and paralegals. Provided the model chosen is fair, transparent and reasonable the Committees

⁴ For information on the 2008 member responses on CLE in the MAR see **Appendix 2**. There is no formal information respecting paralegals.

believes that lawyers and paralegals will recognize and accept the requirement as part of their responsibility to the public and to their own maintenance and enhancement of competence.

Recommendation

42. That the Law Society introduce a CPD requirement for lawyers and paralegals.

THE MODEL

Definition of CPD

43. In considering how to define CPD for the purposes of the requirement the Committees concluded that the definition should,

- a. be flexible;
- b. be directed primarily at the development of a lawyer or paralegal's career;
- c. be directed at enhancing competence in substantive knowledge and skills;
- d. include reference to professional development in ethics; and
- e. be directed at both maintaining and enhancing professional competence.

44. The Committees are of the view that the following definition meets these considerations:

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.⁵

Recommendation

45. That the definition of CPD for the purposes of the Law Society's requirement be,

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.

TO WHOM THE REQUIREMENT SHOULD APPLY

Applicability

46. The Committees agree that any CPD requirement should apply to both lawyers and paralegals. Within their respective scopes of practice paralegals and lawyers must be competent and ethical. The reasons for which the Committees concluded that a CPD

⁵ The definition draws on information and approaches from other professions and law societies.

requirement is properly within the Law Society's mandate apply equally to both groups. Further, most current paralegal licensees entered through grandparenting provisions and have varied educational backgrounds. A CPD requirement can provide added benefit to these licensees.

47. The Committees have concluded that the CPD requirement should apply to only *practising* lawyers and paralegals. This is defined in the Law Society's environment as lawyers and paralegals who are in the 100% fee paying category. Lawyers and paralegals who are not in this fee category (i.e. 50% or 25%) will not be required to meet this requirement.⁶ A change of status to the practising category will result in a requirement to fulfill the CPD hours. A change of status out of a practising category will result in the hiatus of that requirement.
48. So for example,
 - a. if a lawyer or paralegal, normally in the 100% fee category, is on parental leave or unable to work due to illness, or not working for other reasons, the "clock" will stop running on the annual requirement;
 - b. if a lawyer or paralegal, normally in the 100% fee category, takes a sabbatical from practice to do work that does not come within the 100% fee category, upon advising the Law Society of this, the "clock" will stop running and will not be started again until the practitioner returns to the 100% category; and
 - c. if the lawyer or paralegal returns to the 100% fee category during the calendar year, the requirement will be prorated to reflect the proportion of the year in which the lawyer or paralegal is in the 100% fee paying category.
49. In the Committees' view it would not be a wise use of resources to require lawyers and paralegals in all fee categories to meet the requirement. The program is primarily intended for the maintenance and enhancement of the competence of those who practise and provide services to the public. By limiting the requirement to those who pay 100%, the Law Society will focus attention where it is most effectively placed and reduce the amount of programming that must be developed.

⁶ 100% fee applies to those who practise law or provide legal services; 50% fee applies to those who do not practise law or provide legal services, including those employed in education, in government or in a corporation in a position where he or she is not required to practise law or provide legal services; 25% fee applies to those who do not engage in any remunerative work or are in full-time attendance at a university, college or designated educational institution or are on pregnancy or parental leave and do not practise law or provide legal services.

Exemptions

50. The main exempted category is lawyers and paralegals who are not in the 100% fee paying category. They will be exempt for the relevant period, with pro rata determinations for periods of less than a calendar year.
51. Beyond this, there should be criteria for eligibility for exemption from the CPD requirement. A formal application will be made in writing to the Law Society detailing extenuating circumstances. The exemptions will generally speak to personal circumstances or exigencies that interfere with the lawyer or paralegal's ability to fulfill the requirement. They will generally reflect circumstances that the Law Society already deals with on a regular basis in the PD&C and other departments when processing accommodations and special needs requests. Typically, these will relate to health and other personal difficulties or impecuniosity. Being too busy to meet the requirements should not, in the normal course, be considered an acceptable reason for an exemption request. Exemption requests will be considered on an individual basis.

Recommendations

52. **That all lawyers and paralegals in the 100% fee paying category be required to meet an annual CPD requirement, subject to exemptions to accommodate special needs and circumstances.**

SCOPE OF ACTIVITIES TO FULFIL THE REQUIREMENT

53. In considering an appropriate model the Committees paid particular attention to cost issues. Professional development is a fundamental component of professional competence, but it has time and cost implications that cannot be ignored. These factors cannot, however, be used as an excuse for not implementing an appropriate competence program.
54. The model being proposed pays attention to the fact that many of those lawyers and paralegals who will be required to comply with the requirement are sole or small firm practitioners who may not be situated in locations close to "live" programming and whose professional development budget is limited.

55. At the same time the Committees believe that the very fact that so many lawyers and paralegals practise alone or in very small firms makes it that much more essential that they dedicate a certain number of hours a year to CPD, particularly in settings that allow them to interact with others.
56. The Law Society has detailed information about the potential isolation of sole and small practice on lawyers, stemming from its Sole and Small Firm Task Force. In its 2005 report the Task Force noted:
- ...the research illustrates the extent to which survey respondents who identified themselves as “sole practitioners who practise alone without other lawyers in the same office space” report that isolation affects their sense of satisfaction and practice viability. Isolation from other lawyers is a significant complaint of sole practitioners alone.⁷
57. Given this, the Law Society should be concerned that of 7400 sole practice law firms in the province approximately 27% or 2000 reported in 2008 that they took **no** CLE.
58. Although the Law Society does not yet have information on the CPD habits of paralegals, the fact that approximately 98% of them are in sole or small firm practice makes it likely that they too will face similar issues to those expressed in the Sole and Small Firm Task Force Report.
59. The key to a fair and meaningful CPD requirement is to permit a wide range of eligible activities. This reflects a number of factors including,
- a. lawyers and paralegals learn in variety of ways and maintain and enhance their competence according to their specific context. Traditional live attendance at a CLE program is only one way to do this. Provided the activity complies with the definition of CPD effort should be made to allow it;
 - b. the more options lawyers and paralegals have the more likely they are to be able to approach the requirement as an integral part of their practices, reflecting learning they may already be undertaking; and
 - c. from a practical perspective it is only fair to permit latitude in compliance, to reflect accessibility and cost implications of the requirement. Provided the activity

⁷ Final Report of the Sole Practitioner and Small Firm Task Force, March 24, 2005. p. 40.

complies with the definition of CPD, attention to practical considerations is appropriate.

60. At the same time there are activities that, though valuable, do not come within the CPD definition and should not be eligible activities for the purpose of fulfilling the CPD requirement.

61. The following should be *eligible* activities for the CPD requirement:

- a. Attendance in person, online or by telephone, at continuing education programs and courses, either original or archived:
 - i. To qualify, there must be an opportunity to interact with colleagues and instructors – this may include the ability to ask questions directly or indirectly. For instance, the ability to email a question to the content provider during the online presentation.
 - ii. To fulfill the interaction requirement, two or more participants must be involved at the same time.
 - iii. Includes but is not restricted to,
 - legal organization/association programs;
 - in-house programming provided in,
 - government;
 - corporate or other non-private legal employment environments; and
 - private law firms;
 - Law Society CLE programs;
 - participation in a study group of two or more participants; and
 - mentoring – both the mentor and the recipient of the mentoring are entitled to claim the hours spent on matters related specifically to substantive law, practice management or professionalism and ethics, and skills development to a maximum of 6 hours of the requirement.
- b. Completion of an online or self-study course (distance learning)
 - i. For an on-line or self-study course to be eligible, a formal assessment must be conducted at the conclusion of the course.
 - ii. Formal assessment results must be made available to the Law Society, if requested.

- c. Teaching law-related* content (to a maximum of 6 hours of the annual requirement)
 - i. One hour of teaching will equal three hours of reporting credit to take into account preparation time.
 - ii. The audience can consist of a variety of attendees, not exclusively lawyers or paralegals.
 - iii. Chairing a program or course is an eligible activity (maximum allowable credit equals the total hours spent in Chair capacity only)
- d. Writing law-related* books or articles (to a maximum of 6 hours of the annual requirement)
 - i. Must be intended for other than personal use (e.g. for publication, paper for CPD program)

*Law-related means in furtherance of the definition of CPD and would not generally include presentations to clients.

62. The following should be *ineligible* activities for the CPD requirement:
- a. Wellness programs: stress management, etc.
 - b. Any activity undertaken or developed primarily for purposes of updating or marketing to existing or potential clients.
 - c. Acting as an adjudicator for a tribunal or board.
 - d. Working as a member of a review or other panel.
 - e. Pro-bono work.
 - f. Marking work for law school or college courses.
 - g. Acting as the chair or member of a tribunal or other institution or board.
 - h. Attendance at Law Society meetings of Convocation or committees.
 - i. Attendance at meetings of a legal association's board or committees.
 - j. Attendance at the business portion of Annual General Meetings
 - k. Attendance at the launch of any form of legal materials.
63. The Committees are satisfied that by permitting a very broad array of activities to qualify for the required hours, the Law Society can accomplish the goals of a CPD requirement, while respecting and balancing the practical issues that lawyers and

paralegals face, particularly those in sole and small firm practice. So, for example, with a little forethought a lawyer or paralegal could satisfy the entire requirement, or most of it, without spending a significant amount, or indeed any, additional money.

64. Most lawyers and paralegals could reasonably afford at least some additional expense to participate in CPD programming led by experts in the field. This kind of learning should be encouraged whenever possible or accessible. The eligible activities recommended here do, however, allow for a variety of approaches.⁸

Recommendation

- 65. That the activities described in paragraph 61 of this Report be considered “eligible” activities for the CPD requirement. That the activities described in paragraph 62 of this Report be considered “ineligible” activities for the CPD requirement.**

ANNUAL CREDIT HOUR REQUIREMENT

(a) General Requirement

66. The determination of how many hours should be specified in a CPD requirement varies somewhat from jurisdiction to jurisdiction, but in most cases ranges from between 10 and 20 hours annually, with the most common choice being 12 hours.⁹ There does not appear to be literature that points to any pedagogical rationale for one choice or another, rather the choice probably reflects a somewhat pragmatic decision to articulate the requirement as a minimum, which in traditional CLE delivery terms represents the equivalent of two full days of learning. The number of hours also seeks to balance time and cost pressures, particularly on sole and small firm practitioners.
67. The Committees considered a number of possible credit hour requirements. They recommend that the requirement be for **12 hours** annually of CPD in eligible activities for the following reasons:

⁸ For examples of ways to satisfy the requirement at a reasonable cost see the next section under “annual credit requirement.”

⁹ British Columbia – 12 hours per year; Saskatchewan – 36 hours over 3 years; New Brunswick – 12 hours per year; Barreau du Québec – 30 hours over two years.

- a. This number of hours dovetails with the most common approach of many other jurisdictions, including other Canadian law societies and American and Australian jurisdictions. Other than Quebec, each of the British Columbia, Saskatchewan, and New Brunswick requirements is for the equivalent of 12 hours per year. Given the inability to justify one requirement over another (no empirical evidence) there is some comfort in consistency across jurisdictions. This choice also addresses concerns that the Competition Bureau of Canada has raised when law societies have different requirements with no justification.
 - b. The Law Society has already approved 12 hours as an appropriate amount in its minimum expectations for CLE reporting requirement, its Certified Specialist requirement and indirectly its 24/24 requirement for newly called lawyers (24 credits over 2 years – amounts to 12 hours a year).
 - c. Given familiarity among lawyers of a 12 hour requirement, there will be less adjustment if Convocation approves a 12 hour requirement across the lawyer membership. For paralegals, of course, the 12 hour requirement will be new.
68. Both paralegals and lawyers should have to meet the same hourly requirement. As stated above, within their respective scopes of practice they have the same duties to be competent and ethical.
69. Certified Specialists are currently required to take 12 hours of continuing professional development annually, with 6 of the 12 hours to be taken in the substantive area in which the specialist is certified. The Committees recommend that this continue under the CPD requirement. Thus Certified Specialists will come under the general CPD requirement, but they will continue to meet a targeted substantive law learning requirement for 6 of their 12 hours.
70. As with the current “minimum expectation” 12 hours is the required amount. Lawyers and paralegals are free and indeed encouraged to undertake more hours if they choose.

(b) Ethics, Professionalism, Practice Management Component

71. In most jurisdictions that require CPD there is a specific requirement that a portion of the hours be devoted to a basket of topics that include ethics, professionalism and/or practice management. This approach reflects a common understanding of the importance of these issues. Traditionally, CLE programming has not included these topics in substantive law

courses and CLE attendees have not tended to sign up for programs focusing only on these issues.

72. Yet, there is evidence to suggest that lawyers and paralegals require additional exposure to learning in both ethics and professionalism and in practice management. For example, complaints and LawPRO statistics both regularly reveal that the primary areas of concern relate more to client and practice management than they do to weakness in knowledge of substantive law. Further, ethical issues are becoming increasingly complex and require continuous consideration both generally and in relation to the specific practice context within which lawyers and paralegals work.
73. The Law Society has highlighted the importance of ethics, professionalism and practice management training and learning on previous occasions, reflecting its commitment to increasing education and support in this area through policy decisions. These include the introduction and development of the Spot Audit and Practice Review programs, the integration of a professional responsibility component within the articling term, the 24/24 professional development requirement for newly-called lawyers and the development of voluntary learning supports provided through the Law Society's Professional Development and Competence ("PD&C") department.
74. To ensure that all paralegals and lawyers have some annual exposure in these areas the Committees recommend that a minimum of 25% of the 12 hour requirement be taken in the basket of topics that includes ethics, professionalism and/or practice management. Given the difficulty in attracting the profession to programs devoted solely to professionalism, ethics and practice management, this basket of topics should be integrated into programming, wherever possible. The ultimate responsibility for obtaining the 25% must lie with the individual lawyer or paralegal. Since the 25% is a minimum requirement a lawyer or paralegal would be entitled to take the entire 12 hour annual requirement in one or all of these topics.

Examples of Ways to Satisfy the Annual Requirement

75. A few examples of ways to satisfy the annual requirement at a reasonable cost illustrate the ability for lawyers and paralegal to develop plans that best suit their needs and address affordability and accessibility issues:
- a. Two (or more) lawyers or paralegals establish a bi-monthly two hour CPD session to discuss recent case law developments in their practice area. They take turns “developing” the program, one taking responsibility to determine the case (s) or the other issues to discuss. They consider ethics, professionalism and/or practice management issues for 25% of each of those sessions. They could, for example, use the materials the Professional Development and Competence department includes regularly in the *Ontario Reports* on practice management or ethics or articles the OBA includes in its *Briefly Speaking*. They keep a record of the issues discussed. (6 CPD sessions x 2 = 12 hours with 25% requirement met).
 - b. A lawyer in a firm with an in-house CPD program meets the 12 hour requirement by attending 12 one hour lunchtime sessions, to address issues coming within the CPD definition. Provided the sessions embed professionalism, ethics or practice management in 25% of the content, the CPD requirement is likely met at no cost.
 - c. Three sole practitioner or small firms in one community combine to develop a CPD curriculum. They each “host” two two-hour events per year held, for example, at the end of the work day or on a Saturday morning. (This could happen across communities, using SKYPE (a free internet-enabled phone service to connect them). They embed the required 25% in their discussions.
 - d. A senior practitioner teaches in 2 CPD programs for one hour each for a total of 6 credit hours (maximum allowable for this category) (one hour of teaching is three hours of credit to take into account preparation time); for the balance of the required 12 hours the practitioner attends one all day CPD program. These two components would need to meet the 25% requirement.
 - e. A junior practitioner seeks out a senior practitioner in the community and asks if she or she will act as a mentor to discuss issues related to substantive law and ethics, professionalism and/or practice management. They meet bi-monthly for at least 30 minutes. Each can claim the mentoring time that comes within the definition to a maximum of 6 hours. Both then each attend one live all day program or, if travelling to live CLE is difficult, participate in a few shorter telephone programs.
 - f. A senior lawyer satisfies 6 hours of “mentoring” in his or her role as an articling principal.
 - g. A practitioner who is also is a part-time small claims court judge, adjudicator, tribunal or board member or appears before administrative tribunals or boards

attends annual professional development sessions related to this work. Provided these sessions come within the definition of CPD recommended in this Report the hours would count toward the annual requirement.

76. To assist sole and small firm practitioners who wish to meet in small groups, as described above, the Law Society could develop modules in a variety of topics that practitioners could use as the basis for their discussion, including components that address ethics, professionalism and/or practice management.

Recommendations

77. **That the annual credit hours for the CPD requirement be 12 hours for each lawyer and paralegal to whom the requirement applies.**
78. **That a minimum of 25% of the annual 12 hour CPD requirement for lawyers and paralegals be taken in ethics, professionalism and/or practice management.**

PROGRAM/PROVIDER APPROVAL

79. The eligible activities described above fit within two broad categories. The first is programming developed and delivered by CPD/CLE providers, such as the Ontario Bar Association, the Criminal Lawyers Association, the Law Society, the Paralegal Society of Ontario and many other groups and in-house providers. The other types of eligible activities reflect more personalized approaches to learning and a wide variety of ways to meet the requirement.
80. Lawyers and paralegals will be entitled to meet their CPD hours through either of these two groups of activities, provided that the activity is eligible for inclusion.
81. The Committees recommend that in the case of providers of CPD, a pre-approval system be implemented that will determine whether their programming meets the CPD requirements. Typically, there are two methods used for determining whether an activity meets the CPD requirement of eligibility: approving individual programs or approving providers of programs. Under the second approach, approval for individual activities is also used as a supplement to the main approach.

82. In determining which approach makes the most sense for the Ontario environment the Committees considered the current provider landscape for paralegal and lawyer programming, the importance of keeping the process simple and cost efficient and the need to ensure quality control.
83. Ontario has a highly developed, sophisticated CPD environment with a number of professional development providers who have been delivering high quality programming for lawyers for many years. In the not-for-profit environment, in particular, there is a similar approach to professional development programming that is geared to quality and which increasingly has begun to integrate or embed more and more ethics, professionalism and practice management content.
84. Generally, provider approval makes more sense in this environment and can be fashioned to ensure that the approved providers conform to the goals and requirements of the CPD system. The advantage of this approach is that it provides a level of certainty as to CPD expectations that will make it easier for the providers to operate and for lawyers and paralegals to know without further inquiry that the activities of these providers qualify for the requirement. This approach reduces the resources necessary for the approval process. To follow an individual program approval process in all cases would result in a much more expensive administrative process that is not generally necessary in Ontario.
85. At the same time, however, individual program approval should also be permitted, to be used in the following circumstances:
- a. Where a provider does not qualify for provider approval, it should still be entitled to submit individual programs for approval. This might be the case for a new provider (particularly in the area of paralegal programming since this is still a developing area) that is still establishing itself and whose content quality and consistency is evolving. It might also be the case for a provider whose programs typically are more about networking than they are about the content contemplated in the CPD definition, but might have a number of programs that could qualify as eligible activities.
 - b. A lawyer or paralegal wants to attend a program outside Ontario and wants to know if the hours will count toward the required 12. In this case the individual program description could be examined to make a determination of eligibility.

86. The Law Society will reserve the right to audit approved providers or programs to ensure that they continue to meet the objectives of the CPD requirements.
87. If the Committees' recommendation that the CPD requirement include a provision that a minimum of 25% of the 12 hours be in ethics, professionalism and/or practice management is accepted, in a "provider approval" approach this would mean that providers would be required to integrate or "embed" 25% of this content in every program. Many providers are already including this kind of content and with the necessary understanding of what is expected of them providers will be able to integrate this learning without difficulty. Moreover, those who do not wish to do this for all their programs will still be able to seek program by program approval.
88. This embedding requirement will assist lawyers and paralegals to know that any program they take from an approved provider will include an ethics, professionalism and/or practice management component that will count toward their required 25%. This is an easy and sure way for lawyers and paralegals to accumulate their credits.
89. This approval system would only apply to programming developed and delivered by CPD/CLE providers. As has been described under eligible activities, lawyers and paralegals will not be required to obtain their CPD hours through these providers. To the extent that they do, however, they will be assured that their program is both eligible and addresses the 25% requirement. To the extent they meet their requirements through other eligible activities they will need to pay closer attention to whether they have accumulated the required 25%. This will be discussed further under compliance.
90. Introduction of a CPD requirement will necessitate an increase in program offerings. This may be particularly true in the case of the paralegal community, given that the number of providers is still developing. There will be an incentive for providers to increase their programming to meet these increased needs. At the same time, however, the recommendations keep the increase reasonable by,
- a. limiting the requirement to those lawyers and paralegals in the 100% fee category;
 - b. permitting a wide range of activities to qualify that go beyond traditional programming and providers; and

- c. requiring 12 hours instead of a higher number.
91. A reasonable transition period before implementation will be necessary to allow providers time to adapt their processes for the new system. This will be particularly true in the case of paralegals who are still developing programming, but the Committees note, for example, that the Licensed Paralegals Association and the Paralegal Society of Ontario already include a CLE component in their annual meetings.

Recommendation

92. **That as part of the CPD system,**
- a. **CPD providers may apply for “provider approval” for all their programs based on meeting certain criteria, including the integration in all their programs of a minimum of 25% of the content in ethics, professionalism and/or practice management; and**
 - b. **The Law Society will adopt criteria for individual program approval where the provider does not qualify for, or does not seek, provider approval status.**

COMPLIANCE AND MONITORING

(a) Compliance

93. To ensure compliance with the CPD requirement lawyers and paralegals subject to it would be required to report annually to the Law Society that they have fulfilled the requirement. In the normal course, if at the completion of the reporting period a lawyer or paralegal has not completed the required 12 hours, a minimum of 25% of which is in professionalism, ethics, and/or practice management, he or she would be subject to administrative suspension.
94. This suspension provision is an essential component, recognizing that compliance with this competence initiative is not a recommendation, but rather a requirement for continued entitlement to practise. Legislative authority to introduce such a requirement and to suspend for failure to meet it is established in the *Law Society Act*. Section 49 (1) provides that,

a person appointed for the purpose by Convocation may make an order suspending a licensee’s licence if the licensee has failed to

comply with the requirements of the by-laws with respect to continuing legal education.

Section 62(0.1) of the *Act* specifies that Convocation may make by-laws,
24. ...prescribing continuing legal education requirements that must be met by licensees, subject to such exemptions as may be provided for by the by-laws;

95. As with the other *Law Society Act* provisions that provide for administrative suspension (failure to meet specified requirements such as payment of fees or levies, failure to file or failure to comply with indemnity requirements) the key is to ensure that the requirements are implemented in such a way that suspensions are limited and can be easily rectified.
96. The Law Society is currently developing a “portal” that lawyers and paralegals will be able to access securely through the Law Society website to address many of the interactions they have with the Law Society (e.g. completing the MAR and PAR; advising of status changes). The system will assign a secure password to each lawyer and paralegal and establish rules governing access.
97. Provision has already been made for the 24/24 CPD requirement for newly-called lawyers to be tracked through the portal and this will also be an effective approach for any CPD requirement for lawyers and paralegals in the 100% fee paying category.
98. Although it appears that approximately 95 % of lawyers and paralegals already have electronic access that will enable them to use the portal, for those who do not the Law Society will accommodate a reporting system (as it currently does) in which such paralegals and lawyers may call and speak to a Law Society operator who will assist.
99. Under the portal system each lawyer or paralegal will input their CPD hours onto the system. The page will be pre-populated with a list of approved providers, as well as a list of other eligible activities for the member to check off, indicating the number of hours. The system will automatically tally the hours, so it will be most effective for lawyers and paralegals if they update the portal each time they undertake an eligible activity.

100. The system will automatically communicate with the member at regular intervals throughout the year advising of the number of hours taken/remaining and providing constant reminders of consequences of failure to comply. The exemption system will interact with the portal so that someone who has been excused from compliance will not find themselves suspended. The “clock” will cease to run during the period of exemption. Reminders will be provided with sufficient time to meet the requirement (at least 60 days).
101. At the completion of each calendar year, the summary suspension benchers will be provided with the names and information concerning lawyers and paralegals who have failed to comply with the requirement and who are subject to be administratively suspended from practice. At this point, they will have received at least 4, if not more, notices of achievement and remaining requirements, including multiple warnings of the consequences of failing to complete the requirement.
102. Once administratively suspended the lawyer or paralegal will remain suspended until he or she has fulfilled the previous year’s requirement. The lawyer or paralegal will still be required to obtain an additional 12 CPD credits for the following year, regardless of number of hours spent fulfilling the previous year’s requirement in order to remove the suspension. CPD activities may only be counted once as against the calendar year in which they should have been completed.

(b) Monitoring

103. The CPD requirement is based, in large part, on the honour system. There are many eligible activities which do not require lawyers and paralegals to seek pre-approval. Rather lawyers and paralegals determine for themselves what is an eligible activity and then undertake it.
104. The Committees have emphasized their belief that through the inclusion of a wide range of activities in addition to approved provider programming, lawyers and paralegals will be in a better position to meet the CPD requirements at little or no cost and close to home. At the same time, however, what this means is that in choosing activities other than those that have been pre-approved, lawyers and paralegals are responsible for

ensuring that the chosen activities are eligible, that they have met their 25% requirement of ethics, professionalism and/or practice management and that they accurately report.

105. The Committees recommend that each year, the Law Society verify compliance with the CPD requirement by random selection of lawyers and paralegals for a CPD audit, to be conducted the year following the completion of the full 12 hours. The Committees have considered ways in which to conduct the CPD audit.
106. The Spot Audit program does not have the authority to audit beyond financial books and records matters at this time. In addition, spot audits are conducted on law firms, not individual lawyers, and occur only once every 5 years. Even if this program could be used, once audited, the lawyer or paralegal would know that the firm may not receive a visit for another 5 years, assuming there are no issues in the interim. This would be a significant gap in the CPD audit process.
107. The Practice Management Review program and the Paralegal Practice Audit program are appropriate programs within which to conduct an assessment of CPD hours. Practice Management program reviewers and Paralegal Practice auditors could include an assessment of a lawyer or paralegal's previous year of CPD information in the normal course of a practice review. It is important to note, however, that the program for lawyers only reviews practitioners in their first 8 years of practice – leaving out a significant portion of the practising lawyer population.
108. In order to ensure that a truly random CPD audit is conducted and that all practising lawyers and paralegals may be the subject of such an audit, the Committees recommend that the PD&C Department's CPD division also randomly select members for audit, in addition to any audits that are "piggy-backed" onto the programs discussed above.
109. Any audit of CPD will be conducted the year following the completion of the full 12 hours. There will be no "interim" audits conducted as lawyers and paralegals are free to obtain all 12 hours in the final days of the year if they so choose. The CPD audit will not entail a visit. There will simply be a request for proof of completion, including

submission of copies (electronically or hard copy) of invoices and other supporting information. So, for example, lawyers and paralegals who,

- a. obtain their CPD hours through a discussion group should be able to provide documentation of the topics discussed and the extent to which ethics, professionalism and/or practice management were included;
- b. act as the chair of a program should be able to provide a copy of the program brochure; or
- c. take an online or self-study course should be able to provide their formal assessment results.

110. The Committees recommend that the Law Society randomly conduct CPD audits on approximately 500 practising lawyers and 25 paralegals, per year. If the audit is also conducted as a part of the Practice Management Review and Practice Audits processes, that would result in an additional 400 lawyers and 75 paralegals receiving a CPD compliance check, for a total of approximately 900 lawyers and 100 paralegals receiving a CPD compliance check every year (approximately 3% of practising lawyers and paralegals as at the end of 2009).
111. As set out elsewhere in this Report, the Committees also recommend that the Law Society reserve the right to audit approved CPD providers to ensure that they continue to comply with the objectives of the requirement on which their provider approval is based.

Recommendations

112. **That to ensure compliance with the CPD requirement each lawyer and paralegal subject to it be required to report annually to the Law Society that he or she has fulfilled the requirement. In the normal course, if at the completion of the reporting period a lawyer or paralegal has not completed the required 12 hours, a minimum of 25% of which is in professionalism, ethics, and/or practice management he or she will be subject to administrative suspension.**
113. **That each year, the Law Society verify compliance with the CPD requirement by random selection of lawyers and paralegals for an audit, to be conducted the year following the completion of the full 12 hours through,**

- a. the Practice Management Review program and the Paralegal Practice Audit program; and
- b. random “paper” CPD audits.

114. That the Law Society reserve the right to audit approved providers to ensure that they continue to comply with the objectives of the requirement on which their provider approval is based.

COMMUNICATION PLAN

115. If following the consultation process Convocation approves a CPD requirement the Law Society should immediately implement a communication plan that will continue all through the transition period prior to the CPD requirement commencing and during the first year of implementation.

116. The communications plan will include,

- a. articles and notices in the Ontario Lawyers Gazette;
- b. notices in the *Ontario Reports* at least monthly;
- c. reminders in the monthly e-Bulletin;
- d. reminders in the monthly Paralegal Update;
- e. information on the Society’s web site outlining the program, the objectives, the requirements and the process of fulfillment; and
- f. information packages for providers seeking approval, including approval policies, protocols and forms (to be available in June 2010 so that the approval process for providers and individual programs may commence).

117. This is in addition to the automatic reminders that will be generated as part of the compliance portal, informing lawyers and paralegals regularly how many credit hours they have acquired and how many they still have to obtain.

Recommendation

118. That upon approval of a CPD requirement the Law Society implement a communication plan as set out in paragraph 116.

BUDGET IMPLICATIONS

119. Assuming that Convocation ultimately approves a system of CPD requirements that mirrors the recommendations in this report, it is anticipated that the PD&C Department would require, in the first full year of implementation, four additional full-time equivalent (FTE) staff to support exemption and special accommodations processing, random auditing, program development, approval activities for providers and individual sessions, and general administration of the portal system and program registrations.
120. The total increase in expenditures for the PD&C department for 2011 is estimated at \$300,000 or approximately \$9 per lawyer and \$9 per paralegal. Activities will include,
- a. development of learning modules and prototypes to assist and support lawyers and paralegals to facilitate their own professional development activities in small groups;
 - b. formal program development;
 - c. assistance provided to members working in the portal;
 - d. accommodation and exemption requests; and
 - e. the development of implementation of the compliance (audit) process.

It is anticipated that most, if not all, of this additional expenditure may be recovered in registration fees for programs and learning activities, as is the case with the current CLE program.

121. Administrative Compliance and Membership divisions will require an increase in expenditures that will depend upon the level of interaction required with lawyers and paralegals during notification of failure to complete the requirement. Activities will include interaction with lawyers and paralegals respecting the portal and compliance processes. Assuming the process described in this Report, the estimated increase is \$250,000 for 2011, or approximately \$7 per lawyer and \$7 per paralegal.

CONCLUSION

122. The Committees are of the view that the time has now come to include a CPD requirement as part of the Law Society's competence mandate, for the reasons discussed in this report. They are convinced that this is a preventive tool that benefits lawyers and

paralegals and is part of a commitment they should make to the public they serve. The recommendations set out throughout this Report (and repeated together in the following section) balance professional obligations in this area with a reasonable requirement that is accessible and affordable. Moreover, by requiring the inclusion of professionalism, ethics and practice management in the learning, the proposal addresses areas of particular concern to the Law Society as regulator.

123. The Committees agree that the Law Society should consult on this Report to obtain lawyer and paralegal input. There should be a series of print and electronic communications seeking input by January 15, 2010, with notices to lawyers and paralegals provided at regular intervals throughout the consultation period.
124. In addition, there should be an interactive discussion on the Report with lawyers and paralegals through the use of teleseminars. In November and December, teleseminars will be scheduled as a means to obtain direct feedback from lawyers and paralegals, to hear their comments about delivery of content and completion of the requirement. The Committees recommend that two teleseminars be scheduled for lawyers and one teleseminar for paralegals during this time.
125. This consultation approach reflects the importance of engaging both lawyer and paralegal organizations and individual lawyers and paralegals in the process to obtain feedback in a cost effective manner. The consultation proposal is contained in the Motion to Convocation as follows:
 - a. **That Convocation approve for consultation with lawyers and paralegals the joint report of the Professional Development & Competence Committee and the Paralegal Standing Committee (“the Report”) regarding a continuing professional development requirement.**
 - b. **That Convocation a consultation period from October 30, 2009 to January 15, 2010.**

- c. **That Convocation approve the following consultation plan:**
- i. **The Law Society will provide notices to lawyers and paralegals in the *Ontario Reports*, the monthly e-Bulletin, the monthly Paralegal Update and the Law Society website advising of the Report, providing a link to it, and seeking written input by January 15, 2010.**
 - ii. **The Law Society will undertake electronic communication with lawyers and paralegals in “Convocation Updates” and in 3 e-mail communications dedicated to the CPD issue and the Report, to be sent out to lawyers and paralegals on November 1, 2009, December 1, 2009 and January 4, 2010.**
 - iii. **The Report will be sent to legal organizations and associations seeking their written submissions by January 15, 2010. If organizations/associations request, Law Society representatives may meet with them to answer questions on the Report.**
 - iv. **The Law Society will conduct teleseminars on the Report during November and December, 2009 to elicit feedback directly from lawyers and paralegals, the dates and times to be included in the notices to lawyers and paralegals.**

126. The Committees look forward to receiving input on their recommendations. They propose to return to Convocation in February 2010 with their final Report.

COMMITTEES’ CPD RECOMMENDATIONS

- (a) That the Law Society introduce a CPD requirement for lawyers and paralegals.
- (b) That the definition of CPD for the purposes of the Law Society’s requirement be, 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.
- (c) That all lawyers and paralegals in the 100% fee paying category be required to meet an annual CPD requirement, subject to exemptions to accommodate special needs and circumstances.
- (d) That the activities described in paragraph 61 of this Report be considered “eligible” activities for the CPD requirement. That the activities described in paragraph 62 be considered “ineligible” activities for the CPD requirement.
- (e) That the annual credit hours for the CPD requirement be 12 hours for each lawyer and paralegal to whom the requirement applies.

- (f) That a minimum of 25% of the annual 12 hour CPD requirement for lawyers and paralegals be taken in ethics, professionalism and/or practice management.
- (g) That as part of the CPD system,
 - a. CPD providers may apply for “provider approval” for all their programs based on meeting certain criteria, including the integration in all their programs of a minimum of 25% of the content in ethics, professionalism and/or practice management; and
 - b. the Law Society will adopt criteria for individual program approval where the provider does not qualify for, or does not seek, provider approval status.
- (h) That to ensure compliance with the CPD requirement each lawyer and paralegal subject to it be required to report annually to the Law Society that he or she has fulfilled the requirement. In the normal course, if at the completion of the reporting period a lawyer or paralegal has not completed the required 12 hours, a minimum of 25% of which is in professionalism, ethics, and/or practice management he or she will be subject to administrative suspension.
- (i) That each year, the Law Society verify compliance with the CPD requirement by random selection of lawyers and paralegals for an audit, to be conducted the year following the completion of the full 12 hours through,
 - a. the Practice Management Review program and the Paralegal Practice Audit program; and
 - b. random “paper” CPD audits.
- (j) That the Law Society reserve the right to audit approved providers to ensure that they continue to comply with the objectives of the requirement on which their provider approval is based.
- (k) That upon approval of a CPD requirement the Law Society implement a communication as set out in paragraph 116.

The Law Society of British Columbia



Preliminary Report of the Lawyer Education Task Force On Mandatory Continuing Professional Development

For: The Benchers

Date: November 15, 2006

Prepared on behalf of:

Michael

**Lawyer Education Task Force
Policy and Legal Services Department**

Lucas 604-443-5777

Preliminary Report of the Lawyer Education Task Force On Mandatory Continuing Professional Development

Executive Summary

The Lawyer Education Task Force (the “Task Force”) has concluded that the time has come for the introduction of mandatory continual professional development in British Columbia that, amongst other things,

- serves as a basis for a comprehensive post-call education programme;
- provides for the development of skills as well as knowledge about developments in the law;
- provides resources that are relevant to lawyers at various stages of their careers;
- is based on criteria (or “credits”) that are broadly categorized and will therefore be easily obtainable by lawyers irrespective of their practice location;
- will be able to ensure that subjects that the Law Society considers to be important to a lawyer’s professional development are addressed, irrespective of market considerations.

The Task Force is not convinced that simply requiring lawyers to take a certain number of hours of courses offered through current education providers will materially advance the quality of legal services provided. Therefore, the form of a mandatory programme, how that programme is to be developed, and which organization or organizations should offer it still needs some consideration. However, the Task Force has reached a consensus that four options warrant further consideration;

- i. A programme requiring a certain number of hours of study, of which a portion requires the study of certain subjects;
- ii. A programme of required courses for all lawyers, with the remainder of hours to be made up of courses chosen by lawyers;
- iii. A programme of required courses for certain areas of practice;
- iv. A programme requiring a certain number of hours of study through approved activities.

If the Benchers agree in principle with the recommendation that a mandatory continuing professional development programme be established, the Task Force asks that the issue be returned to it for the purpose of making recommendations about which option to develop, how a lawyer may obtain credit toward the programme, and over what period of time or stage of one’s career the credits need to be obtained as well as programme

enforcement, the consequences of non-compliance, and the staff required to run the programme.

1. Purpose of this Report

The Lawyer Education Task Force has reached a consensus to recommend to the Benchers that the Law Society develop a programme of mandatory continuing professional development. This Report has been prepared to outline the reasons for the Task Force's recommendation, as well as to outline preferred options for further consideration.

The Task Force asks the Benchers to agree in principle with the recommendations made in this Report, and to return the issue to the Task Force to discuss and develop the options further and return with a recommendation concerning how the programme should be structured.

2. Introduction

In December 2004, the Benchers considered five proposed policy objectives identified by the Task Force. The Benchers resolved that the Task Force examine the proposed objectives and return with recommendations to the Benchers. One of the proposed objectives was "mandatory continuing legal education."

The Task Force has spent a considerable amount of time reviewing mandatory education programmes from other jurisdictions in the United States, Australia and England, as well as discussing whether there is a need for a mandatory programme of education in British Columbia, and if so, what such a programme should look like.

(a) Quality Assurance

Much of the focus of the Law Society has historically been on discipline and setting standards of ethics and professional conduct. These remain of crucial importance to the Law Society, as a regulator, in protecting the public interest. However, more recently the legal profession's regulators in Canada and in other Commonwealth jurisdictions have been placing increased importance on how to establish a standard of quality in how lawyers practise law.

Part of the Law Society's responsibility in protecting the public interest in the administration of justice is to establish standards for the education of lawyers. Section 28 of the *Legal Profession Act* (found in Part 3 of that *Act* under the heading "Protection of the Public) allows the Benchers to take any steps they consider advisable to promote and improve the standard of practice of lawyers. The use of this section allows the Benchers to establish "quality assurance" in the way lawyers practise law.

The Law Society currently has programmes targeted at quality assurance, including its Practice Standards Programme and Committee, its Practice Advice Programme and its recently created Trust Assurance Programme. The Small Firm Practice Course will be operational as of January 1, 2007 and will provide valuable practice management

education and resources. The Law Society is currently engaged, as we understand are other law societies in Canada, in determining what else is necessary in order to ensure a standard of quality in the way lawyers practise law.

Establishing a programme of post call education for all lawyers is part of the overall enhancement of “quality assurance.” A programme of mandatory education as a condition of permitting a lawyer to continue to practise law is an important part of that enhancement.

(b) A Note on Terminology

“Mandatory continuing professional development” and “mandatory continuing legal education” are often used interchangeably. They denote a programme of continuing education requirements required of lawyers in order to maintain a licence to practise law. This Report uses the phrase “mandatory continuing professional development.” In British Columbia, the phrase “continuing legal education” or “CLE” is closely associated with the Continuing Legal Education Society of British Columbia. “Mandatory continuing legal education” may be read by some as a determination by the Task Force that lawyers will be required to take a certain number of courses offered through the Continuing Legal Education Society. While that Society may become an important part of a mandatory continual professional development programme, the Task Force wants readers to understand that “continuing professional development” can be undertaken in a variety of ways.

(c) Definition of the Issue

The issue, simply put, is should the Law Society implement a programme requiring a lawyer to partake in a certain defined amount of professional development activity on a periodic basis as a condition of that lawyer’s continued ability to practise law, and if so, what options are available for consideration?

(d) Background

The debate on mandatory continuing professional development British Columbia goes back to the 1970s. In 1975, Minnesota became the first jurisdiction in North America to require lawyers to take education programmes. Not long afterwards, mandatory continuing professional development was debated in British Columbia. It has been the subject of reports and discussion by the Benchers through the late 1970s and early 1980s, and appears to have last come to the Benchers at their February 1985 meeting. Full “mandatory continuing legal education” was not sought at that meeting, rather motions were approved (1) to collect data about lawyers’ continuing legal education activity; and (2) to consult the membership about implementing an education “tax” of \$75 per year, \$25 of which would be a grant to the Continuing Legal Education Society and \$50 of which would be a credit for lawyers against courses offered by that Society.

“Mandatory continuing legal education” was also discussed in the Report to the Law Society of British Columbia on Professional Legal Education and Competence prepared by James Taylor in September 1983 (the “Taylor Report”). The Taylor Report did not

recommend mandatory continuing legal education. It instead recommended steps to encourage voluntary participation.

The topic was also one of the subjects of discussion by the Post Call Curriculum Planning Committee in the early 1990s. There is a useful review of the arguments for and against mandatory continuing legal education in the report, but the focus of the report as it relates to continuing legal education activity is directed at broader issues, including how lawyers might be better motivated to participate in continuing legal education activities. The index of Benchers' Minutes does not refer to any minutes of Benchers' debate on mandatory continuing legal education as a result of that Committee's work.

In many ways, the debate on mandatory continuing professional development in British Columbia has remained quite stagnant over the past 25 – 30 years. Each time it is raised, it seems to get about as far as the stage of suggesting ways to improve access to educational activities, seeking further information from the profession, or trying to find ways to motivate lawyers to take courses. The debate then seems to fade away. Mandatory continuing professional development has never been approved by the Benchers when it reached them for decision, although at least one Benchers, as long ago as 1985, is recorded as having expressed the view that some form of mandatory education was long overdue.

3. The Arguments in Favour of and Against Mandatory Continuing Professional Development

The Task Force reviewed the arguments for and against mandatory continuing professional development, and noted that there does not appear to be any conclusive answer militating in favour of or against such a programme. To a large extent, there seems to be a bit of a "leap of faith" that implementing a regime will improve the competency of lawyers. On the other side, the argument seems to be that if there is no empirical evidence that it improves competence, then why do it? This might be described as an "absence of faith." Objective science plays no part in this debate. Instead, more vague concepts such as how decision makers gauge public interest, member reaction, and public confidence in the profession come into play.

The arguments in favour of and against the programme have to be understood in order to decide what might be done. They are as follows:

(a) In Favour

- Mandatory continuing professional development raises professional competence by exposing lawyers to new developments and renewing basic knowledge and skills. Law is in constant flux – the reform requiring lawyers to take continuing education is necessary to ensure lawyers keep up with the law and remain competent;
- All lawyers would benefit from exposure to new developments in theory and practice contained in well-designed programmes;

- Mandatory continuing professional development programmes demonstrate to the public that the legal profession is resolved to combat competency concerns;
- For lawyers who find practice pressures deter them from taking continuing education programmes (even for those who enjoy them when they can find the time to take them), mandatory continuing professional development will provide a positive incentive;
- Extra funds from mandatory continuing professional development programmes would improve the quality and quantity of continuing education programmes and would assist providers of such programmes to devote more time and resources to develop more effective programmes;
- Recertification based on continuing professional development is preferable to periodic re-examination;
- Some evidence that lawyers in jurisdictions with mandatory continuing professional development *believe* it increases competency;
- Online and technology based continuing education is expanding quickly throughout the Province, thereby enhancing access by reducing geographic and time barriers.
- Many other jurisdictions and most, if not all, other professions in British Columbia have mandatory continuing professional development programmes – how do we explain to the public why we do not?

(b) Against

- There does not appear to be any empirical evidence proving that participation in mandatory continuing professional development actually *improves* lawyer competence;
- It may be expected that lawyers will resent the requirement. Forcing people to take courses may interfere with their desire to learn;
- Only a small percentage of lawyers are truly incompetent – it is therefore unfair to force all lawyers to comply with a programme designed to remedy the problems of a few;
- Mandatory continuing professional development may simply be a facile response to public concern, and therefore be no more than superficial window-dressing that does not actually address lawyers with serious competency problems. It is very difficult to teach practical skills, proper management and good judgment. Mandatory continuing professional development may therefore actually mislead the public into believing that all lawyers are current and competent in their field of practice, which may not be the case;

- Standard mandatory continuing professional development programmes do not differentiate between types or modes of learning;
- Mandatory continuing professional development plans are expensive, both for the regulator in administering, and for the practitioner in attending due to programme fees, travel, and lost productivity;
- The quality of continuing professional development courses will be reduced due to the massive increase in time.

It has been suggested that the true problem with mandatory continuing professional development is not with the concept, but with the programmes of simply requiring a prescribed number of credits over a prescribed period of time – often resulting in a rush to take *anything* as the time is running out. There is criticism that, from lecture-style courses, most information is not applied and is indeed forgotten not long after the course unless it is immediately applicable. The Task Force generally agrees with these concerns and criticisms and believes that any implementation of a mandatory education programme must be tailored to address them. Otherwise, the programme simply becomes a requirement to take a certain number of hours of study in an unstructured way, which the Task Force does not believe will lead to an optimal result.

4. Examining Statistics from the Mandatory Reporting of Post Call Education Activity

In March 2004, the Benchers approved a recommendation of the Task Force requiring lawyers to report annually the amount of continuing education taken, both through course study and through self-study. The Benchers endorsed the recommendation that minimum expectations should be set for each category – 12 hours for course study and 50 hours for self-study.

The Task Force obtained a report from the Chief Information Officer on the Mandatory Reporting statistics based on responses for the 2005 year. Rather alarmingly, the statistics disclosed that just over one-third of respondents reported *no* hours of “formal” course study. While it was heartening to see that just over 50% of respondents took 12 or more hours, the one-third number suggests that a significant number of lawyers currently take no formal education activity at all. This number seems to increase with length of call. For example, the report discloses that 19% of lawyers with less than 5 years call reported no formal study, while 54% of those with 30 or more years at the bar did so.

Just over 19% of respondents (almost 1 out of every 5) also reported no self-study hours for 2005. Again, the percentage of lawyers reporting no self-study hours increased with length of call.

For each of formal study and self-study reporting, the statistics show that women and insurance-exempt lawyers (those not in private practice) were more likely to report engaging above the recommended level of 12 and 50 hours respectively. It is unclear what conclusions can be drawn about why women tended to partake in more activity.

One possible explanation about why insurance exempt lawyers tended to report above the minimum expectation *might* have to do with different practice pressures.

There was nothing that showed a significant relationship between hours of formal study and claims or complaints, although lawyers of 15 – 20 years of call tended to have made one or more reports of claims or possible claims if they had reported no formal study hours. The overall analysis, however, showed that the amount of formal study hours reported is unrelated to a lawyer's claims or complaint record. The report *did* note, however:

...having undertaken some formal study is related, at least with respect to the likelihood that the lawyer will have experienced one or more complaints. This result indicates that there may be an underlying factor related to both the likelihood of claims and complaints and the tendency to engage in some formal study. For example, it may be that lawyers who undertake some formal study are more careful and conscientious than those who do not.

With respect to self-study reporting, the report noted no significant relationship between the amount of reported self-study hours and the claims or complaints ratio. The report also noted no significant relationship between those who engaged in no self-study and the likelihood of experiencing one or more complaints.

5. The Policy Considerations

(a) General Considerations Debated by the Task Force

Throughout one's legal career, a lawyer must continue to develop his or her knowledge, skills, and professionalism. Moreover, a lawyer's understanding of, and ability to apply, ethical considerations to his or her work also continues to develop. This knowledge and skill can be developed in a number of ways, both formal and informal. However, it *must* be developed. A lawyer cannot ignore the need for continuous learning and development.

However, the Task Force was mindful of the lack of empirical evidence that competence is actually improved by taking continuing education courses. While this lack of evidence may not be the determining factor in deciding whether to implement a mandatory education program, it has caused the Task Force to think hard about whether an unstructured programme of education is the best way to generate learning in lawyers.

Opportunities for learning present themselves frequently in practice, and the Task Force expects that most lawyers seize those opportunities. Opportunities for "formal" education are also available through courses offered by programme providers. Lawyers in the Lower Mainland can, apart from cost considerations, easily access these courses as the vast majority are offered in Vancouver or its suburbs. They are, however, less easy to access for lawyers in other areas of the Province. This is a complaint that the Task Force has heard repeatedly from the profession.

Moreover, the Task Force is concerned that the courses offered by continuing education providers are driven by market-based considerations. The Task Force does not blame the

course providers for this – it is to be expected. Courses must be provided in areas that will generate enrolments, even for organizations that operate on a non-profit basis. The result, however, is that subjects that historically receive poor registrations are rarely, if ever, the primary subject matter of a course. Unfortunately, the Task Force notes that ethics and practice management courses fall into this category.

Further, currently available courses tend to focus on knowledge rather than skills. Knowledge is an important component of being a lawyer, but the application of knowledge is also crucial to gaining competence as a lawyer. Skills may be picked up through practice, although there is a danger that if proper skills are not established early on, a lawyer will only end up continuing to develop poor skills. The lack of “performance evaluation” in most current post-call education courses in British Columbia also means lawyers are unable to gauge how much they have taken away from the activity. Some ability to provide for a common denominator of skills development thorough education would, the Task Force believes, do much to promote “quality assurance.”

The Task Force was also concerned to note that registrations for course study decreased markedly for senior lawyers. The Task Force concluded that senior lawyers either did not find that the courses currently offered were sufficiently relevant for their purposes, or were otherwise unmotivated to take courses.

There is no comprehensive post-call education programme for the legal profession in British Columbia. Lawyers who have gone through an established pre-call education and who have been called to the Bar have developed a set of knowledge, skills and behaviours expected of a newly-called lawyer.¹ Once a lawyer has been called to the Bar, however, the Law Society provides no education programme that the lawyer may follow to guide his or her development. The Task Force was concerned that this too often results in the pursuit of a haphazard continuing education programme, which seems to tail off as a lawyer becomes older. What education activity there is may be focused heavily on lecture-style courses with little, if any, performance evaluation. There are many activities besides courses that could be incorporated into a planned continuing education programme if one were developed.

(b) Policy Objectives to be Served

Section 3 of the *Legal Profession Act* requires the Law Society to uphold and protect the public interest in the administration of justice by, amongst other things, establishing the standards for the education of its members. Section 28 permits the Benchers to take any steps they consider advisable to promote and improve the standard of practice by lawyers.

The “Ends” of the Law Society are set out in Part 1 of the Benchers Policies. Ends relevant to this discussion are as follows:

End 2 Lawyers provide services competently after call to the Bar

¹ See the “Competency Profile” at Appendix “C” of the Report of the Admission Programme Task Force, June 28, 2002

- (b) post call legal education that is relevant and of appropriate quality is available and voluntarily consumed.

End 10 The public has confidence in the legal profession

- (b) the public, government and the media have confidence that lawyers are honest, ethical and competent and that the Law Society does a good job regulating the profession.

Implementation of a mandatory continuing professional development programme would obviously not be a “voluntary consumption” of post call legal education. The statistics from the report of the Chief Information Officer referred to above, however, indicate that there are problems with the current voluntary consumption of post call education activity. The statistics indicate to the Task Force that lawyers either aren’t voluntarily taking the recommended minimum amounts of course study, or that the resources offered are not sufficiently relevant or available.

The Task Force believes that the implementation of a mandatory programme that aims to improve the availability of professional development resources and the relevance of those resources to individual practitioners best meets the post call education component of the Ends of the Law Society in ensuring that lawyers provide competent services. It will also demonstrate to the public that it may have confidence that lawyers are competent (as well as honest and ethical) and that the Law Society takes steps to ensure a continued level of competence after the lawyer is called to the Bar.

(c) Goals of a Mandatory Continuing Professional Development Programme

The Task Force considered that a mandatory continuing professional development programme ought not to form part only of an overall programme of learning that lawyers should expect to take, but, more importantly, that lawyers would want to take because it would be useful to their practice and to their development as a lawyer.

In order to become a lawyer, a prescribed course of legal education is required, first through law school and later through articles and PLTC. Part of being a member of a profession, however, includes a commitment to continuous learning. The Task Force believes that call to the Bar ought not to be seen as an end of a lawyer’s formal education.

Day-to-day practice is currently expected to provide much of a lawyer’s learning, and the Task Force agrees that “learning on the job” can be an excellent means to develop knowledge and skills, provided it is done in the right environment. However, opportunities to learn and what is available to be learned vary widely from practice setting to practice setting and from place to place. In any event, on-the-job learning is only one form of education, and ought to be supplemented by learning through other environments. A formal, continuing programme of education would be a standard to ensure that, throughout the stages of one’s career, a lawyer is continuing to upgrade and augment his or her skills and knowledge. This result will not only help lawyers, but will help the Law Society meet public expectations that it is doing all it can to ensure that lawyers are competent in the areas of law in which they practise, consistent with its

statutory mandate. This, in turn, is expected to enhance the quality of services provided by lawyers, and thereby improve the standing of the profession in the community.

The goal of a mandatory continuing professional development programme is to provide education resources that are easily available and relevant to lawyers at all stages of their practices, and to ensure that the resources are consumed in order to be able to assure the public that there is a commitment within the profession to establishing, promoting and improving the standards of practice in the Province.

(d) Key Comparisons

No other law society in Canada has mandatory post call education requirements with the exception of Nova Scotia, which requires lawyers who wish to work in land registrations to complete a certain course. The Task Force has looked at the mandatory continuing professional development programmes of several of the United States, as well as those in England and Wales and the larger Australian states. In addition, the programmes of several of the other professions in British Columbia – particularly, those required by the College of Physicians and Surgeons, the British Columbia Dentist College, and the Institute of Chartered Accountants – were reviewed. It is worth noting that, apart from mid-wives, lawyers are the only professional body in British Columbia that are not required to participate in continuing professional education requirements by their governing body.

The type and requirements of the different mandatory education programmes vary considerably. Some are simply a requirement that lawyers take a certain number of credits which they can obtain by registering in a course offered by an approved provider. Usually one unit of credit amounts to one hour of course study. Other programmes are more intricate, and, while most are still based on obtaining a certain number of credits over a prescribed period of time, the manner in which the credit can be earned is varied. “Work-shadowing”, mentoring, or teaching can generate credits in some jurisdictions. Still other jurisdictions require certain credits to be obtained in certain areas of study. The Task Force unanimously favoured programmes that offered more varied ways of obtaining credits.

(e) Policy Considerations

(i) Public Interest

How would implementing or not implementing a mandatory continuing professional development programme affect the public interest? The Law Society’s mandate is to protect the public interest in the administration of justice in a number of ways, including by establishing standards for education, professional responsibility and competence. Would the public interest therefore be enhanced by mandatory continuing professional development? There is no doubt it would be if there were empirical evidence that allowed one to connect improvement in competence with post call education activity. This may lead some observers to suggest that the Law Society may be able to effectively

discharge its mandate through the encouragements it has given toward voluntary consumption of post call education activity.

(ii) Member Relations

Member relations have figured prominently in the past as an argument against mandatory continuing professional development, as there is a presumption that lawyers will resent the requirement and that forcing members to take courses may interfere with their desire to learn. On the other hand, mandatory continuing professional development may be viewed as a positive inducement for busy lawyers to take time out to engage in post call education activity that they may not otherwise undertake. Some studies also suggest that while there is initial resentment to the imposition, that dissipates relatively quickly and that the mandatory continuing professional development requirement soon becomes an accepted norm of the requirements of being a lawyer. In any event, the public interest must prevail over member preferences.

(iii) Public Relations

There seems to be a presumption that mandatory continuing professional education will improve the legal profession's standing with the public. It is one way of demonstrating publicly that the profession (and its regulator, the Law Society) takes the issue of competence seriously. It would bring the legal profession in British Columbia into line with other professions in the Province. How important this is may be a matter of debate if there is no real evidence to support that it produces a better quality of lawyer and may, depending on the cost of the programme, increase the cost of legal services.

(iv) Financial Implications

The cost of implementing a mandatory continuing professional development depends, of course, on what type of programme is implemented. Depending on the form of implementation, some standardization or vetting of course providers, and approval of courses will be required. A programme of mandatory education will require regulation through the tracking of the reporting of hours taken, and will require a consideration of what disciplinary consequences will follow if the mandatory requirements are not met, as well as the cost of imposing those sanctions where required. On the members' side, cost of participating in courses, travel, and lost productivity will no doubt be raised. As mentioned above, it is at least possible that the cost of legal services might increase, depending on the increase in Law Society fees, if any, and the cost of mandatory participation in courses.

(v) Programme Effectiveness

How would mandatory continuing professional development affect the effectiveness of the post-call education programme and mandate of the Law Society?

The Small Firm Practice Course is a form of mandatory continuing professional development for a designated group, and the Benchers, by approving it, have obviously considered it an effective way of ensuring a standard of education within a discrete category. Broader forms of mandatory continuing professional development in other categories (advocacy, ethics, professional responsibility) might do likewise, and might create a market for courses where there is none now. Doing so would require the Law Society to conclude that the current absence of a market is a *bad* thing in the public interest, and that the lack of such a market is an abdication by lawyers in discharging their responsibilities in this area.

On the other hand, if implementing mandatory continuing professional development were to discourage lawyers in education and learning, and make them reluctant participants instead of enthusiastic or well-motivated ones, the effectiveness of post call education might be adversely affected.

(vi) Government Relations

As far as the Task Force is aware, there is no discussion at the government level about legislating mandatory continuing legal professional development, nor is it aware of any negative comments by the government about the legal profession's lack of mandatory continuing professional development. The Task Force suspects that the government would not view the imposition of such a programme negatively.

(vii) Equity and Diversity

If there were to be a mandatory continuing professional development programme, the Task Force believes that there would be renewed calls for a bursary to ensure that economically disadvantaged lawyers were accommodated². There might also be a call to ensure that mandatory continuing professional development addressed areas such as discrimination, substance abuse, and eliminating bias. California, for example, has mandatory continuing professional development requirements in each of these areas.

(viii) Legal Implications

Section 28(a)(ii) of the *Legal Profession Act* ought to give the Law Society the statutory authority to introduce a mandatory continuing professional development programme.

There was a challenge a few years ago to the California programme by a lawyer who was involuntarily enrolled as an inactive member of the State Bar (and therefore unable to practise law) for failing to comply with its requirements. He challenged the constitutionality of the programme on the basis that it exempted certain groups of members (law school professors, retired judges, elected officials

² The Continuing Legal Education Society of BC currently provides a bursary programme that provides for a 50% discount on courses for any lawyer identifying a financial need. That Society also allows for payments on an instalment programme.

and state officers) on the grounds that this violated equal protection. The California Court of Appeal agreed. However, the Supreme Court of California overturned the Court of Appeal's decision, holding that the programme did not violate equal protection principles. It did comment that the wisdom of some or all of the exemptions may be debatable as a matter of policy, however. See *Warden v. State Bar of California* 21 Cal.4th 628 (1999).

6. Options

The Task Force has identified six options for the implementation of a mandatory continuing professional development programme, four of which the Task Force recommends for further discussion, and two of which the Task Force recommends no further consideration be given.

The four options recommended for further consideration by the Task Force are:

i. **A programme requiring a certain number of hours of study, of which a portion requires the study of certain subjects.**

Many of the American states have adopted a mandatory continuing professional development education programme that requires a given number of hours of study per year, a portion of which must be devoted to certain subjects. Most usually require study of legal ethics and/or professionalism. Still others require courses in the study of harassment and discrimination. Some states have certain requirements for courses in skills development for newly admitted lawyers, which is likely an effort to address the lack of practice experience faced by young American lawyers - experience that BC lawyers are supposed to receive through articles and PLTC.

The Task Force believes that this may be an attractive option because it allows the Law Society to determine what subjects or skills it considers lawyers *need* to study – in other words to regulate the profession about the requirements that the Law Society, in its role as regulator, sees are not being met well by lawyers, or where there is a real, or even perceived, lack of knowledge of an issue. It could allow the Law Society to ensure that lawyers understood the Society's perspective on certain topics or issues, and allow the Society to prescribe the form of the education activity. On the other hand, it also allows a proportion of continuing education activity to be chosen by the lawyer with respect to the needs that the lawyer has identified for him or herself. It allows the lawyer some control in the direction of his or her continuing education by allowing the lawyer to make up the balance of required credits from courses or activities of a lawyer's own choosing.

The Task Force has, in the course of its work, debated requirements for a number of hours in courses on ethics and professionalism. There are, generally speaking, no such courses available, however, and would therefore either require the Law Society to develop and offer them, or to expect that commercial course providers will recognize the opportunity of a captive audience and offer the courses

themselves. If this were to occur, it would be likely that the Law Society would have to pre-approve the course or other activity. There would be little purpose in requiring study in a given area without ensuring that the form of education offered met the need the Law Society considered was currently not being met. Otherwise, the requirement would be only for the sake of the requirement itself.

ii. A programme of required courses for all lawyers, with the remainder of hours to be made up of activities chosen by lawyers.

This is a variation of option 1. Rather than require that lawyers devote a certain number of hours on a certain subject, the Law Society could require a lawyer to take a certain *course* that would cover one or more subjects. The remainder of courses or activities needed to meet mandatory education requirements would be left to the lawyer. Again, this would permit the Law Society to prescribe the form of the course. It would continue to allow the lawyer some choice in courses or activities to make up the balance of required credits.

The Law Society of England and Wales has a variation of this option. For example, all solicitors in England and Wales are required to take the Law Society Management Course Stage 1³ between the date of admission and the third year of their mandatory continuing legal education reporting requirements. The 7 hours of that course counts toward the lawyer's mandatory continuing legal education requirement. Solicitors in their first year of reporting requirements must also take the Client Care and Professional Standards and Financial and Business Skills modules of the Professional Skills Course, unless exempted.

The points in favour of this option are similar to Option 1, with the added benefit to the Law Society of a simpler form of administration. The Society would only have to ensure that a particular course was taken, rather than having to check that courses or activities taken met the Society's requirements that prescribed subjects had been included in courses taken by a lawyer over the course of the reporting period. The course or courses contemplated by this option needn't be offered through the Law Society. They can be contracted out, provided they meet Society standards.

iii. A programme of required courses for certain areas of practice.

This option would require a lawyer to participate in a programme of study prescribed by the Law Society if the lawyer wants to practise in a particular area

³ The Course itself covers the following subjects, of which three must be studied:

- Managing finance
- Managing the firm
- Managing client relations
- Managing information
- Managing people

of law. The Law Society has started down this road with the Small Firm Practice Course which will require all lawyers who wish to offer legal services after January 1, 2007 through a firm of four or fewer lawyers to take a particular on-line course prepared and offered by the Law Society.

This option requires the Law Society to identify what areas of law are amenable to the option and to ensure that it was satisfied with the courses or other education activities available. It means that the Law Society would have to take considerable care in defining the area of law affected and the concomitant education requirement(s). The programme could open up the option of developing a limited licensing programme on areas of law, or a specialization programme.

The Law Society could, through this option, also prescribe the form of the course or activity. These could be focused on skills enhancements useful to practice in the given area of law, as well as on developments in the law. It is doubtful that the lawyer would be required to take the prescribed form of education every year. Moreover, the courses or other education activities could be aimed at various stages of a lawyer's career. This, the Task Force believes, would allow the Law Society to focus requirements on skills and knowledge, in different practice areas, that would be useful at various stages of a lawyer's practice. It would also allow the use of senior practitioners as teachers, if credit were given at the senior level for teaching younger lawyers necessary skills and knowledge in various practice areas.

The prescribed form of education and the providers of the education would have to be accredited or alternatively the Law Society would have to develop and operate some or perhaps all of the education itself, to ensure a standard of quality. This would add administrative burdens to the option.

Standard mandatory continuing professional development programmes require credits to be earned annually, or require a certain number of credits be earned over a period of years, allowing the lawyer to take more or fewer credits in any given year provided the required number is met at the end of the period. An alternative method of delivering the programme would be to divide a lawyer's career into defined periods, and to require certain activities or courses to be taken at each stage of one's career. The Task Force has obviously not yet determined what it would recommend if any of these three options were pursued. Each of the options described could be developed in either fashion.

iv. A programme requiring a certain number of hours of study through approved activities.

Rather than having the Law Society identify particular subjects or courses that each lawyer will be required to take over certain periods of time, this option would leave it to each lawyer to identify the subjects and modes of education that he or she wishes to take during the reporting period. The option would permit "approved activities" of education that would extend beyond courses offered by

continuing legal education providers. Examples of such activities (which the Task Force considers can be extended to all options under consideration) are set out in Part 7 below. The Task Force believes that an expansion of the forms of study will improve the accessibility of education, especially to lawyers in rural areas.

The lawyer will be left to determine the relevance of the subject and form of study to his or her practice and/or career or educational goals. This option therefore risks the development of haphazard education activity referred to above, but that concern may be alleviated if lawyers are reminded to give consideration to continuing education requirements each year. The mandatory aspect of the programme should assist in encouraging lawyers to consider the form and content of their education requirements on an on-going basis.

The options that the Task Force does not recommend are:

v. A requirement that lawyers simply take a certain number of hours of courses already available.

The Law Society could simply require that lawyers take a certain number of hours of courses already available through current course providers, such as the Continuing Legal Education Society, Trial Lawyers Association, Canadian Bar Association or the Federation of Law Societies. While this would be the simplest option to implement, the Task Force considers that it would be the least desirable option from the point of view of programme effectiveness.

vi. A professional development programme created by lawyers themselves.

Some firms and government agencies require lawyers to submit an annual plan outlining their intended professional development activities. The Law Society could emulate such a programme by requiring each lawyer to submit a plan of professional development annually. The Task Force does not support this option. While it has the benefit of engaging each lawyer to actively think about his or her professional education and development, the Task Force considers that this option would be too difficult and expensive to administer and monitor.

7. Forms of Education Activity

The Task Force believes that credit for mandatory continuing professional development activity should be based on a broad range of activities, and not limited simply to course study. After discussion, it recommends that the following activities be included for credit in any programme developed:

- Accredited courses. The time spent can be for *attending* courses, and for *preparing* and *delivering* courses. Review of video repeats can be permitted. Some consideration could be given to whether such review in a group setting,

facilitating discussion, ought to be required for credit under this heading. If not, credit might still be available under another heading.

- Non-accredited courses. Some programmes permit credit for time spent in non-accredited courses if they are of particular relevance to a lawyer's area of work. Time for preparing and delivering such courses can also be credited.
- Coaching and mentoring. The Law Society of England and Wales, for example, allows actual time to be claimed for structured coaching and structured mentoring sessions involving professional development of 30 minutes or more, as long as they have written aims and objectives, a documented showing an outcome, and are accredited under an authorization agreement. The same Law Society also permits credit for "work shadowing" if it has clear aims and objectives and feedback or reflection.
- In-house programmes. Credit can be offered for courses offered by a law firm or other employer on legal topics relevant to a lawyer's practice. Debate may be necessary to determine the criteria on which the quality of the programme would be judged, as there would have to be some standard against which to measure the programme. Credit for in-house programmes is available in other jurisdictions, so there are precedents which we may draw from. Teaching and preparation time can also be available for credit.
- Professional group attendance, if an educational component is part of the meeting. Attendance at meetings of CBA sections is available currently to lawyers for the purpose of their reporting requirements. However, other professional group attendance can be available for credit. For example, rural bar associations could, as a group, bring in a speaker to address substantive or practice issues. This would allow lawyers in less densely populated areas to obtain credits for mandatory continuing professional development purposes without the need to travel to Vancouver.
- Study groups. Formal or informal study groups can be established amongst members. This method of professional development is common in dentistry and accounting. To qualify, the group probably ought to develop some objectives and, perhaps, report on some form of "outcome."
- Writing. Credit can be given for hours spent on writing on law or practice for law books, journals, or newspapers.
- Teaching PLTC. Actual time spent teaching (and, if necessary, preparation for teaching) articling students at PLTC can be available for credit.
- Research. At present, lawyers are not permitted to claim credit for hours spent researching legal topics on client matters. Not all research is client oriented, however. Some programmes permit credit for actual time spent researching legal

topics or matters relevant to the practice of law, if the research results in a memorandum, written document, precedent, or survey.

- Post-graduate study/preparation of a dissertation. Study for a post-graduate degree on a matter relevant to law is available for credit in some jurisdictions.

In developing a programme, there are still a number of issues that would need to be addressed beyond the nature of the credits, such as the period over which the credit must be earned, how many credits are necessary, and whether credits may be carried over, to name a few.

8. Conclusion

The Task Force has concluded that it is time for the Law Society to develop a mandatory continuing professional development programme, provided that the programme is one designed to meet the goals and general considerations described in Part 5 above. The Task Force generally does *not* support or recommend the development of a simplistic programme requiring lawyers to take a certain number of hours of course study based upon the current availability of programmes.

Instead, a programme of education should be developed that, amongst other things

- serves as a basis for a comprehensive post-call education programme;
- provides for the development of skills as well as knowledge about developments in the law;
- provides resources that are relevant to lawyers at various stages of their careers;
- is based on criteria (or “credits”) that are broadly categorized and will therefore be easily obtainable by lawyers irrespective of their practice location;
- will be able to ensure that subjects that the Law Society considers to be important to a lawyer’s professional development are addressed, irrespective of market considerations.

While the Task Force has reached a consensus that the time has come to create a mandatory continuing professional development programme, it has not reached a consensus on which of the four options outlined in Part 6 (i), (ii), (iii) and (iv) should be preferred. The Task Force has reached a consensus that, whatever option is ultimately pursued, credit toward the programme should be as broadly based as possible from the list outlined in Part 7 above.

The Task Force has prepared this Report to determine if the Benchers agree in principle with the recommendations made. If so, the Task Force will discuss and develop the options further and return with a recommendation concerning how the programme should be structured. The Task Force plans to accomplish this by July, 2007.

If the Benchers agree in principle to create a programme of mandatory continuing professional development, the Task Force believes that a reasonable date for its introduction would be January 1, 2009, and will work toward that schedule.

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The Law Society of British Columbia



Report of the Lawyer Education Advisory Committee on Continuing Professional Development

For: The Benchers

Date: July 4, 2008

The Committee's Final Report was approved by the Benchers, in a slightly amended manner, on July 4, 2008. This version of the Report reflects the Benchers' final decisions.

Prepared on behalf of: Lawyer Education Advisory Committee

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Report of the Lawyer Education Advisory Committee on Continuing Professional Development

I. Background

On November 16, 2007, the Benchers approved the former Lawyer Education Committee's recommendations for a continuing professional development ("CPD") program as outlined in the November 6, 2007 *Report of the Lawyer Education Committee on Continuing Professional Development*, to begin on January 1, 2009. This decision was the culmination of a periodic debate on the subject that had been ongoing for over 30 years.

First and foremost, the introduction of CPD is premised on assuring both the public and the profession that the Law Society is committed to the establishing, maintaining and enhancing standards of legal practice in the province.

Although CPD requirements for lawyers exist in many other jurisdictions, including England, Wales, Australia and 43 American states, the Benchers' decision marked the first time in Canada that a law society had introduced a CPD program. Until that decision, Nova Scotia was the only Canadian jurisdiction that had any compulsory legal education requirements, and those were limited to lawyers engaging in land registration work. In early 2008 the *Chambre des Notaires du Québec* introduced a CPD requirement, and the *Barreau du Québec* is expected to implement a CPD requirement in early 2009, shortly after the Law Society of British Columbia implements its program.

II. Purpose of this Report

This Report outlines the program by which the Lawyer Education Advisory Committee recommends the CPD requirement (approved last November) be implemented. As will be recalled, last November the Lawyer Education Committee (as it then was) made a series of recommendations outlining broad requirements concerning CPD. Those recommendations (as approved on November 16, 2007) are contained in Appendix 1 to this Report.

At the time the recommendations were approved, the Benchers referred the issue back to the Committee to consult with the profession and legal organizations in order to determine the best way to implement the proposed CPD requirement. The Benchers required the Committee to report by July 2008 with final recommendations for implementation of the program effective January 1, 2009.

The Lawyer Education Advisory Committee, as successor to the Lawyer Education Committee, outlines its conclusions in this Report. It recommends Bencher approval of the program, together with the draft Rules included in the Report at Appendix B.

III. Consultation

The Lawyer Education Committee, and later, the Lawyer Education Advisory Committee has, since the recommendations were approved last November, sought and received input from members and law-related organizations. The Law Society provided the information outlined in Appendix C by email bulletin and through the website seeking such consultation.

Responses from the profession and legal organizations have been largely positive. In fact, the Law Society's initiative into CPD has been lauded nationally in the legal media. For example, an article in the Canadian Bar Association's *National* magazine entitled *The Dawn of MCPD* (March 2008, Vol. 17, No. 2) spoke positively about CPD requirements and approved the Law Society's initiative as a necessary one at this time. In the same edition, an editorial entitled *Exploding the Classroom* spoke favourably of the Benchers' decision to offer a broad range of CPD activities beyond standard courses.

Where concerns have been raised, they arise mostly in connection with questions relating to approved subject-matter, geographic barriers, and cost. Once some context is given to the proposed program, many of the concerns are often (although not always) alleviated. Some organizations endorse the concept of CPD requirements, but disagree with where the Committee proposes to "draw the line" concerning what counts toward CPD activity, and what does not.

IV. Committee Conclusions

Although the Committee has encountered and considered a number of complexities and potential options, the Committee has been guided by the need to implement a program that will be as straight-forward and stream-lined as reasonably possible for lawyers, legal education providers, and the Law Society. The Committee has come to the following detailed conclusions relating to the new CPD program.

(a) Overall Subject Matter Requirement

The subject matter of all accredited learning modes, including courses, will satisfy the following criteria provided the subject matter contains:

1. Significant, intellectual, or practical content, with the primary objective of increasing lawyers' professional competence;
2. Material dealing primarily with substantive, procedural, ethical, or practice management (including client care and relations) matters relating to the practice of law;
3. Material primarily designed and focused for lawyers, not for other professions (such as courses for business leaders, including leadership skills, management skills, project management, facilitation, how to run an effective meeting, marketing skills).

Learning activities will not be limited to subject matter dealing with primarily BC or Canadian law. Credits will be available for the study of the law of other provinces and foreign law or practice that is related to the conduct of the lawyer's practice.

The following activities will not be accredited:

1. Any activity designed for or targeted at clients;
2. Topics relating to law firm marketing or profit maximization;
3. Lawyer wellness topics.

(b) Credit Available for Participation in Courses

Courses will be accredited based on the following criteria:

1. Generally, credit will be given for actual time in attendance at a course;
2. Two or more lawyers reviewing together a previously recorded course will be able to obtain credit;
3. Credit will be available for the actual time participating in online "real time" courses, streaming video, web and /or teleconference courses, provided there is an opportunity to ask and answer questions.

(c) Credit Available for Education Activities other than Courses

Education other than courses will be available for credit, based on the following criteria:

(i) Teaching

1. The teaching must be to an audience that is primarily composed of lawyers, paralegals, articling students and /or law school students. Accreditation for teaching will not be available if it is targeted primarily at clients, the public, other professions, or students other than law students;
2. Three hours of credit will be available for each hour taught. If the lawyer is "chairing" a program, however, the actual time spent chairing the program is all that may be reported (not 3 hours per hour of chairing);

3. Credit will only be available for the first time the teaching activity is performed in the reporting year. Credit will not be available for repeat teaching of substantially the same subject matter within the same reporting year;
4. Credit will be available for volunteer or part-time teaching only, not as part of full-time or regular employment;
5. Credit will be available for the teaching of legal skills training courses;
6. For 2009, credit will not be available for mentoring. Mentoring will be the subject of further Committee investigation.

(ii) Writing

Credit will be available for writing as follows:

1. Writing law books or articles that are intended for publication or to be included in course materials;
2. Credit will be based on actual time to produce the final product, to a maximum of 6 hours per writing project;
3. Credit will be available for volunteer or part-time writing only, not as a part of full-time or regular employment;
4. The available credit will be in addition to credit available for teaching and preparation for teaching;
5. No credit will be available for time spent producing PowerPoint materials.

(iii) Study Groups

Credit for study group activity will be available as follows:

1. Attendance in a group setting at an educational session in a law firm, legal department, governmental agency or similar entity, provided that at least two lawyers are together (including by telephone) at the same time;
2. Attendance at editorial advisory board meetings for legal publications;

3. The hours available for credit will be the actual time spent at the study group meeting, excluding any time that is not related to educational activities;
4. Credit will not be available for activity that is file specific;
5. A lawyer must have overall administrative responsibility for each meeting, and a lawyer must chair each meeting;
6. No credit will be available for time spent reading materials, handouts or PowerPoint, whether before or after the study group session.

(iv) Local Bar and CBA Section Meetings

1. Credit will be available for the actual time spent attending at an educational program provided by a local or county bar association in British Columbia, as well as for section meetings of the Canadian Bar Association, excluding any portion of the meeting that is not devoted to educational activities;
2. To qualify, at least two lawyers must participate in the activity at the same time, including by telephone.

(v) Online Education

A Group Event

1. Credit will be available for the actual time spent by the lawyer participating in online “real time” courses, streaming video, web and/or teleconference courses, but only if, through the course offering, there is an opportunity to ask and answer questions;
2. The credit available will include a study group’s review of a previously recorded course.

B Self-Study

1. Credit will be available up to a pre-accredited limit per on-line course, as well as for completing an audio, video or web course, provided the course includes the following characteristics:
 - (a) a quiz component (where questions are to be answered, and where an answer guide is provided to the lawyer after the lawyer completes the course and quiz. It is not necessary for the lawyer to submit the quiz for review);

- (b) the quiz can be at the end of the course or interspersed throughout the course;
- (c) there is an ability for the lawyer taking the course to email or telephone a designated moderator with questions, and a timely reply;
- (d) there is no requirement for a “listserv;”
- (e) there is no requirement for reading materials, handouts or PowerPoint to be included in the course.

C Listserv/forum /network site

- 1. These forms of learning call for further Committee consideration, and will not be available for credit for the 2009 calendar year.

(d) Accreditation Process

- 1. All reportable credits will be approved by the Law Society in either of two ways:
 - (i) by pre-approval of the provider; or
 - (ii) approval (before or after the event) of individual courses and other educational activities.
- 2. An individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
- 3. Providers are pre-approved and remain pre-approved if they maintain integrity and quality according to standards;
- 4. Lawyers can individually apply for approval of courses, either before or after the course or other educational activity takes place, where the course has not otherwise been approved;
- 5. All applications by providers and lawyers will be submitted electronically;
- 6. Approvals will be made by Law Society staff.

(e) Compliance and Reporting Requirements

- 1. The CPD requirement will be based on the calendar year, with the first compliance date to be December 31, 2009 for the 2009 year;
- 2. Lawyers will login to the Law Society website and click on to a link to the program, where they will be shown their individual credits and time remaining to comply with the CPD requirement

for the given calendar year. After completing a course or other accredited learning activity, lawyers can make that addition to their record;

3. The lawyer will be notified electronically by the Law Society of the approaching calendar deadline and, if the deadline is not met, will be given an extension of 90 days to complete the necessary requirement (in which case a late fee will be charged). The lawyer will be suspended from practice for failure to comply within the extended 90 day time limit. Rules will include provisions and grounds for applying for further extensions;
4. The twelve hour requirement is subject to adjustment for entering or re-entering practice mid-year. Members who have been exempt during the reporting year, but who resume practising law within the reporting year, must complete one credit hour for each full or partial calendar month in the practice of law;
5. Embedded ethical, practice management, and client care and relations content will comply with the two hour requirement. Providers will also be encouraged to offer non-embedded content.

(f) Exemptions

1. All members of the Law Society with a practicing certificate, whether full or part-time, are subject to the requirement, with the following exemptions:
 - (a) Members with a current practicing certificate who submit a declaration that they are not practising law. Examples of members who might submit a declaration that they are not practising law could include:
 - inactive members;
 - members on medical or maternity leave;
 - members taking a sabbatical;
 - (b) New members who have completed the bar admission program of a Canadian law society during the reporting year;
 - (c) A partial exemption will be available to members who resume practising law within the reporting year after having been exempt, and new members by way of transfer (subject to b, above). These members must complete one credit

hour for each full or partial calendar month in the practice of law;

- (d) No exemption will be available for
- being too busy (such as a long trial);
 - practice of law having been in another jurisdiction.

V. Budget

In the 2008 Law Society General Fund budget, \$25,000 is allocated for developing and determining how to implement the CPD program. The information and compliance systems will be online, and accessible to members and providers through the Law Society website, which will require modification to the Law Society's website. These modifications are being made by Law Society staff during the current budget year.

The 2009 Law Society General Fund budget, subject to Bencher consideration and approval, includes up to \$50,000 for administration of the CPD program. A new Member Services Representative position will be largely dedicated to administration of the CPD program, including responding to member and provider questions and requests for approvals, and handling the approvals and compliance process. Overall management supervision will be handled by current managerial staff.

VI. Proposed Rules for the Continuing Professional Development Program

Rules will be necessary to implement the CPD requirement. The proposed Rules, attached as Appendix B to this Report, have been reviewed and endorsed by the Act and Rules Subcommittee.

The proposed Rules accomplish two main purposes:

1. they require lawyers to complete the required amount of CPD on an annual basis;
2. they provide for consequences if the required amount is not completed.

(a) Requirement to Complete Continuing Professional Development

Rule 3-18.3(3) will require lawyers to complete the prescribed CPD program, and certify its completion to the Executive Director. Rule 3-18.3(1) requires the benchers, each year, to set the required number of hours of required continuing education.

The Rule permits exemption of lawyers from the requirement. Two specific exemptions are included in Rules 3-18.3(4) and (5). Subrule (4) ensures that newly called lawyers, who have just completed a structured program of bar admission training, will have that training recognized and will not be required to complete more education activity in the year they qualify. Subrule (5) recognizes that, just as non-practising members are not

subject to the requirement, members with practicing status but who are not actually practising should also be exempt. Subrule (6) provides for a pro rata reduction of the requirement for the amount of time that a practicing member, seeking exemption under subrule (5), has not been engaged in the practice of law during the reporting year.

Subrule (2) will permit the Practice Standards Committee to prescribe additional circumstances in which a class of lawyers might be excused from completing the requirement during a reporting year. The Rule is drafted to avoid as much as reasonably possible a number of “one off” applications by lawyers for exemption from the requirement.

The Practice Standards Committee is the Committee designated with assigned responsibilities under the Rules rather than the Lawyer Education Advisory Committee, because the Practice Standards Committee is required by statute, unlike the Lawyer Education Advisory Committee, which could be disbanded by Benchers motion.

(b) Consequences of Not Completing the Continuing Professional Development Requirement

Rules 3-18.4 and 3-18.5 deal with what happens if a lawyer fails to complete the requirement for the year.

Failure to complete the requirement each year would mean that the lawyer is in breach of the Rules. The proposed rules permit a lawyer to complete the requirement after the end of the year, if the requirement is completed prior to April 1 of the following year. The lawyer will then be deemed to have complied with the requirement. Time spent on completing the requirement during this three month extension period will be accredited toward only the prior year’s requirement, not the current year’s requirement. A late fee of \$200.00 must also be paid.

If the requirement is not completed by April 1, the expiry date of the extension period, the lawyer is automatically suspended. However, the lawyer will be given at least 60 days’ notice that the lawyer is about to be suspended for non-completion of the requirement, and will be able to apply to the Practice Standards Committee, which, in its discretion where there are special circumstances, may order that the lawyer not be suspended, or may delay the suspension. As this notice will be given during the period of time in which the lawyer may still complete the requirement and be deemed to have complied with the rule, the Committee anticipates that most, and ideally all, lawyers will simply complete the requirement rather than face suspension.

The Committee notes that there is no specifically worded authority in the *Legal Profession Act* permitting the Benchers to create rules to suspend a lawyer in these circumstances, and compares this with the power to create rules to suspend a lawyer who fails to meet standards of financial responsibility under s. 32 of the *Act*. The Committee has determined that the combination of s. 28, which authorizes the Benchers to establish and maintain a system of continuing legal education, and s. 11, which authorizes the Benchers to make rules for the carrying out of the *Act*, ought to be read to permit the

Benchers to create a system of CPD that can be enforced in the most effective manner possible, if the approach is principled and fair.

The Committee has considered different methods by which to ensure compliance, and concludes that the “suspension” route is the most effective and principled. It is effective, because a suspension from practice is a considerable consequence that most lawyers will want to avoid. It is principled because the goal of the rules ought to be to ensure that lawyers complete the requirement. On the other hand, a monetary penalty or fine would simply enable lawyers to pay a sum of money to the Law Society rather than complete the continuing professional development requirement, which the Committee concludes is neither an appropriate nor principled outcome. The “suspension” consequence, as drafted, is also fair because the lawyer is given ample notice of a suspension, may complete the requirement in the meantime and be deemed to have complied with the rule or, if necessary, be able to apply to the Practice Standards Committee to seek relief from the suspension if there are special circumstances to justify such relief.

VII. Recommendation

The Lawyer Education Advisory Committee recommends that the Benchers approve the proposed program outlined by the Committee, including the proposed rule amendments attached as Appendix B to this Report.

APPENDIX A

Lawyer Education Committee Recommendations, approved by the Benchers on
November 16, 2007

1. Each practising member of the Law Society of British Columbia must complete not fewer than 12 hours per year of CPD undertaken in approved educational activities that deal primarily with the study of law or matters related to the practice of law.

2. Approved educational activities include:

(a) Traditional courses and activities:

- Attendance, in person, at a course offered by a provider approved by the Law Society;
- Participation in online “real time” courses, streaming video, web and/or teleconference courses offered by a provider approved by the Law Society where there is an opportunity to ask and answer questions;
- Review, in a group with one or more other lawyer(s) of a video repeat of a course offered by a provider approved by the Law Society;
- Completion of an interactive, self study online course offered by a provider approved by the Law Society, provided that a testing component is included in the course;
- Teaching at a course related to law or to the practice of law. In the case of teaching, the lawyer is entitled to a credit of three hours of reporting for each one hour taught.

“Course offered by a provider approved by the Law Society” includes:

- any course offered by the Continuing Legal Education Society of British Columbia, the Trial Lawyers’ Association of British Columbia, the Canadian Corporate Counsel Association, the Canadian Bar Association, the Federation of Law Societies of Canada, or the Law Society of British Columbia;
- any course offered by Canadian law schools dealing primarily with the study of law or matters related to the practice of law;

- any other course, or provider who offers courses, dealing primarily with the study of law or matters related to the practice of law, provided that the attendee has obtained prior approval from the Law Society of British Columbia.
- (b) Non-traditional activities:
- Attendance at CBA section meetings;
 - Attendance at a course or other education-related activity offered by a local or county bar association;
 - Participation in (including teaching at) an education program offered by a lawyer's firm, corporate legal department, governmental agency or similar entity, provided that the program is offered in a group setting;
 - Participation in a study group of two or more provided that the group's study focuses on law related activities;
 - Writing law books or articles relating to the study or practice of law for publication.
3. Not less than two hours of the required 12 hours of CPD must pertain to any one or any combination of the following topics:
- professional responsibility and ethics;
 - client care and relations;
 - practice management.
4. Each lawyer must report to the Law Society the number of hours of approved professional development activity completed over the previous 12 month period. Failure to complete and report the minimum number of required hours will result in a breach of a Law Society Rule, and may subject the lawyer to sanctions.

APPENDIX B

[Note: Insert the draft rules after approval by Act and Rules Subcommittee.]

APPENDIX C

Consultation Communication to the Profession and Legal Organizations

Over the past 6 months the Lawyer Education Advisory Committee has sought and received input from members and law-related organizations. The Law Society provided the following information by email bulletin and through the website.

Frequently Asked Questions

Why do we need a continuing professional development program?

- Implementation of a continuing professional development program recognizes that the *Legal Profession Act* requires the Law Society to establish educational standards for lawyers as part of its duty to protect the public interest.
- The mandatory reporting information reveals some problematic trends:
 - Almost one-third of the profession has reported no formal course study.
 - Nearly one-fifth has reported no self-study.
 - The number of lawyers reporting no professional development increases with age: 19 per cent of lawyers of less than five years call reported no formal study while 54 per cent of lawyers with 30 or more years at the bar reported no formal study.
- Making participation in a program of continuing professional development as a condition of practice would demonstrate to the public and to the provincial government the Law Society's commitment to ensuring that BC lawyers maintain a continued level of competence after their call to the bar.

What are the requirements?

- All practising lawyers — full time and part time — must complete a minimum of 12 hours of approved educational activities annually.
- At least two hours must pertain to any combination of professional responsibility and ethics, client relations, and practice management.

Do I have to take CLE courses?

- Continuing professional development does not mean only being in a classroom attending courses. The Law Society's goal is to ensure lawyers can meet the requirements of the new program through a variety of educational opportunities. The Law Society wants lawyers to be able to select the type of learning that suits them and their practices best.

How will I report my educational activities?

- It will be done in a way that is quick and efficient, as an online form. The administrative mechanisms will be quite simple with modern technology.

Will I still be required to report my self-study?

- The current requirement to report voluntary self-study, such as reading legal texts and articles and reviewing recorded material on one's own, will continue. The recommended minimum will continue to be 50 hours annually.

What are other professions doing?

- Most other professions in BC and Canada have mandatory, continuing professional development programs.

Approved Educational Activities

The Benchers have already approved a wide variety of educational activities for the continuing professional development program, and will be considering other activities as well.

- Attendance in person, as well as online or by telephone, if there is an opportunity to ask questions, at courses offered by educational providers, including the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the Canadian Corporate Counsel Association, the Canadian Bar Association, the Federation of Law Societies of Canada, the Law Society of BC, and Canadian law schools. As the Law Society continues to consult with course providers and local Bar associations, this list of course providers will expand.
- Attendance in person, as well as online or by telephone, if there is an opportunity to ask questions.
- Video repeats of an approved course provided if there is participation by one or more other lawyers, so there is opportunity for discussion.
- Completion of an online self-study course, if a testing or self-assessment quiz component is included in the course.

- Teaching a law-related course (one hour of teaching will count as up to three hours of reporting credit, to account for preparation time).
- Attending CBA section meetings or education-related activities offered by a local or county Bar association.
- Participation in (including teaching at) a legal education program offered by a lawyer's firm or employer, if the program takes place in a group setting.
- Participation in a study group of two or more people if the group's study focuses on law-related activities.
- Writing law books or articles relating to the study or practice of law.



HAS THE TIME ARRIVED FOR MANDATORY CONTINUING PROFESSIONAL DEVELOPMENT IN NEW BRUNSWICK?

Date: January 26, 2009

Prepared by: Crystal D. Critch
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**HAS THE TIME ARRIVED FOR MANDATORY CONTINUING
PROFESSIONAL DEVELOPMENT IN NEW BRUNSWICK?**

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EXECUTIVE SUMMARY

There is an increasing trend of concern regarding the accountability of all organizations that serve the public, and of professions in particular. Globally, there is an ever-increasing emphasis on promoting professional quality. While other self-regulating professions have had mandatory continuing education programs, otherwise known as “mandatory continuing professional development” (“MCPD”), in place for quite some time, the Law Society of New Brunswick (like many of our counterparts across the country) has come to realize that our obligations to the public require us to implement such a program for the New Brunswick bar.

Part of being a member of a profession includes the commitment to continuous learning. Lawyers must continue to enhance their competency by continuing to develop their knowledge and skills throughout their careers.

Mandatory continuing professional development initiatives seek to support and expand upon this culture of life-long learning, of continuous self-improvement. For most lawyers who are conscientious about keeping their knowledge and skills current, they would find that MCPD does not create additional learning requirements. For these lawyers a mandatory program will only entail an added reporting obligation. Mandatory continuing professional development is not only about making the incompetent better, but increasing the competence of all lawyers.

The introduction of MCPD is premised on assuring both the public and the profession that the Law Society is committed to establishing, maintaining and enhancing standards of legal practice in the Province. At the same time, we want to implement a program that will be as straightforward and streamlined as reasonably possible for lawyers, legal education providers and the Law Society, wherein lawyers will be able to select the type of learning that best suits them and their practices.

The primary recommendations for the New Brunswick MCPD program are as follows:

- Twelve (12) hours of mandatory continuing education/ professional development annually (January 1 – December 31) is a reasonable expectation of lawyers given the important and serious tasks and roles with which we are entrusted by our clients and/or employers. Twelve hours equates to roughly two full days of education or professional development per year.
- It may be possible to carry over some or all of the hours earned in excess of 12 annually to the following year, with the following year’s requirement being reduced accordingly.
- The Law Society, at this time, will not implement mandatory areas or topics which must be undertaken, which allows members more leeway or control in the direction of their educational activities, allowing them to choose the areas which they feel would be most relevant or beneficial to their individual practices. It is possible that mandatory education may be required in the future when there is significant legislative change in an area of

practice, or when there are significant areas of risk identified which may require protection of the public, for example, for members opening trust accounts for the first time or opening a practice as a sole practitioner.

- Several provinces recommend lawyers undertake 50 hours annually of self-study, exclusive of structured educational activities, simply to stay current with the law. Self-study would be counted toward the mandatory 12 hours, up to a maximum of two (2) hours annually, with the exception of specific publications, articles or reports that the Law Society of New Brunswick encourages members to read, wherein it would be possible to specify a “credit hour” allowance for that piece, which could be counted over and above the standard maximum two hours for self-study. Members will report, at year end, how many hours of self-study they have completed; with fifty (50) hours being the recommended amount.
- The MCPD program will be based on a broad range of educational activity, extending beyond courses currently offered by CLE providers. The subject matter of these activities will be eligible for “credit hours” provided that the subject matter of the activity contains sufficient intellectual or practical content, with the primary objective of increasing lawyers’ professional competence: substantive/procedural knowledge; lawyering skills (advocacy, research, communication, etc.); and survival skills (practice management, time management, wellness, etc.). Credit hours will be available for:
 - Participation in courses:
 - In person, teleconference, or online “real-time” courses, streaming video and web courses (provided there is an opportunity to ask questions);
 - Two or more lawyers reviewing together a previously recorded course;
 - Post-LLB degree programs
 - Teaching:
 - To audience primarily composed of lawyers, paralegals, or law/articling students;
 - 3 hours of credit for each hour taught (no credit for repeat teaching of content);
 - Credit available only for volunteer/part-time teaching, not regular employment;
 - Includes teaching legal skills training courses
 - Writing:
 - Law books/articles for publication or use in course materials (i.e., Bar Course);

- Credit based on actual time to produce final product, to max 6 hours per product;
 - Credit available only for volunteer/ part-time writing, not regular employment;
 - Credit in addition to teaching
 - Study Groups:
 - Attendance in group setting at educational session in law firm, legal department, government agency or “in-house” activities with at least 2 participants – may be by telephone- credit hours are actual time spent at meeting, excluding time unrelated to MCPD educational activities;
 - Attendance at editorial advisory board meetings for legal publications;
 - Does not include file-specific activity as part of regular practice;
 - Lawyer has administrative responsibility for meeting and lawyer chairs meeting;
 - No credit for time spent reading materials, handouts, before or after session;
 - No credit where predominate a social gathering without educational purpose;
 - Includes “Lunch and Learns”
 - Local Bar and Other Meetings with an Educational Purpose:
 - Credit hours given for actual time spent on educational activities;
 - At least 2 lawyers participating, including by telephone
 - On-line:
 - Time spent participating in online “real time” courses, streaming video and web courses
 - Self Study:
 - Maximum 2 hours of credit out of 12, unless subject to above-noted exception;
 - Includes reading legal journals, publications, newsletters, etc.;
 - Includes audio, video or online courses, viewing listservs, online databases or media such as CD Roms
- Mandatory annual reporting by members of MCPD activities undertaken. A new Law Society database component should be in place which will allow members, through a confidential website link, to log on to their own member page to update their personal information, including their MCPD profile, allowing members to track their progress and

remaining required hours. This database add-on is expected to have the capability to send reminders to members regarding their remaining requirements. Paper reporting will be available for those members who do not wish to use electronic means.

- Failure to complete MCPD requirements by December 31 of the calendar year would mean that the member is in breach of the Rules. Member could be granted an extension to complete the requirements by April 1 of the following year, upon payment of \$200 late fee. Time spent on completing the requirements during this three month extension period will be accredited toward only the prior year's requirements, not the current year's requirements.
- If member does not meet requirements by April 1, could be suspended for non-compliance. Before suspension issued, member would receive 60 day notice of impending suspension and could apply to Law Society or MCPD Committee, which in its discretion, where special circumstances exist, may order that member not be suspended or delay suspension.
- Exemptions given for members not practicing (i.e., parental / medical leave), for members who completed the Bar Admission Course during that calendar year, and any additional exceptions as granted by the Law Society of MCPD Committee or on a case by case basis.
- Requirements are pro-rated for months in which member is not practicing (1 credit hour required per month or partial month member is in practice per calendar year)

The Law Society has a commitment to ensuring that lawyers treat their continuing education responsibilities seriously and to encourage lawyers to engage in career-long learning. MCPD will permit the Law Society of New Brunswick to develop a comprehensive, strategic approach to promoting the excellence and competence of lawyers through post-call learning and information support.

HAS THE TIME ARRIVED FOR MANDATORY CONTINUING PROFESSIONAL DEVELOPMENT IN NEW BRUNSWICK?

BACKGROUND

The topic of Mandatory Continuing Education or Mandatory Continuing Professional Development has been at the forefront of many debates in recent years amongst numerous professions. Mandatory Continuing Education or Continuing Professional Development (“MCE/PD”) denotes a program of continuing education requirements, the completion of which is compulsory in order for professionals to be authorized to continue to practice their profession. Many professions, in New Brunswick and throughout the country, have well established mandatory continuing education or professional development regimes in place.

There is an increasing trend of concern regarding the accountability of all organizations that serve the public, and of professions in particular. Some previously self-regulated professions have become subject to standards legislated by provincial governments, including mandatory continuing education or professional development. Governments are advising professions that continuing education is a necessary part of their mandate.

In addition to increasing scrutiny from governments, there is a growing tendency across Canada for the public to question why the legal profession does not require MCE/PD, particularly when so many other professions do. Globally, there is an ever-increasing emphasis on promoting professional quality.

Nationally, the legal profession, to date, has seemingly lagged behind other professions in terms of determining the requirements for continuing education or professional development, and in implementing appropriate regimes.

Scrutiny of the legal profession’s inaction in this regard will only increase over time. Our options remain two-fold: do nothing until we are told what to do, thereby potentially jeopardizing some of our rights to self-govern; or deal with the situation upfront, on our own terms, with an appropriate regime designed for and by lawyers.

The Law Society of New Brunswick is committed to the continued self-regulation of the legal profession while establishing the highest of standards to uphold and protect the public interest in the administration of justice and to ensure the greatest competence in its members.

In its first strategic planning session, undertaken by the Law Society and its Council in January 2007, Quality Improvement, more particularly, Continuing Legal Education and Quality Assurance was highlighted as the number one priority to be addressed by the Society in the next several years.

Developing a program of post-call education for all lawyers was seen as the next logical step in promoting overall enhancement of quality in the practice of law. A program of mandatory continuing education/ professional development as a condition of permitting lawyers to continue to practice law is an important aspect of that enhancement. The purpose of this paper is to explore the idea of Mandatory Continuing Education / Professional Development, “MCE/PD”, including outlining the available options for the development of such a program, ideas regarding the difficulties such a program may pose, as well as some recommendations to be discussed by Council. Ultimately, the determining factor will likely be whether it is in the public interest that such a program be implemented in New Brunswick.

For the remainder of this paper the term Mandatory Continuing Professional Development (“MCPD”) will be used to describe a program consisting not only of additional education requirements, but of a myriad of possible activities, all of which contribute to one’s professional development.

POLICY CONSIDERATIONS

Once a lawyer is called to the Bar, the Law Society provides no education program that the lawyer may follow to guide his or her development. The application of knowledge is crucial to gaining competence. Skills may be picked up through practice, though there is a danger that if proper skills are not established early on, a lawyer will only continue to develop poor skills.

Part of being a member of a profession includes the commitment to continuous learning. On the job learning is only one form of education and ought to be supplemented by learning through other environments.

Most lawyers currently avail of the numerous opportunities for professional development within their fields. The vast majority of lawyers understand the value of undertaking continuing professional development activities, formal or informal, whether they are subject to reporting requirements or simply for their own benefit. MCPD initiatives seek to support and expand upon this culture of life-long learning, of continuous self improvement.

Lawyers must contribute to the protection of the administration of justice by continuing to enhance their competency, by continuing to develop their knowledge and skills throughout their careers, so they can do an increasingly better job representing their clients.

The law sometimes changes very rapidly. There can be a substantial overhaul of an entire legal regime based on a single case. It can be very easy to fall behind and, as a result, provide a disservice to yourself as a professional as well as to your clients. It is vital for lawyers to keep up with changes in the legal world, to keep fully educated and knowledgeable. Lawyers must accept that continuing their education is not an option, but an obligation to maintain and enhance their

competence, both as a matter of professional responsibility and as a marketplace necessity. Lawyers should seek to improve their competence on an ongoing basis in order to facilitate optimum performance in each matter.

It is vital that lawyers meet their ongoing obligation of continuing education and professional development. For most lawyers who are conscientious about keeping their knowledge and skills current, they would find that MCPD does not create additional learning requirements. For these lawyers a mandatory program will only entail an added reporting obligation. For those who do not undertake professional development through a broad range of educational activity, they may not be providing themselves with sufficient professional development to remain current or on the cutting edge of new developments in the law.

Part of the Law Society's responsibility in protecting the public interest in the administration of justice is to establish standards for the education of lawyers. Quality of work is not something the Law Society tends to see until it becomes incompetence, as competence is not regularly monitored. Entry level competence is tested, but after that there is no competence testing. However, a MCPD regime is not intended to measure competence. The goal is to provide professional development tools for improvement so marginal lawyers can become good lawyers and good lawyers can become excellent lawyers. MCPD is not only about making the incompetent better, but increasing the competence of all lawyers.

The Law Society has a commitment to ensuring that lawyers treat their continuing education responsibilities seriously and to encourage lawyers to engage in career-long learning. We are all now life-long learners. MCPD will permit the Law Society of New Brunswick to develop a comprehensive, strategic approach to promoting the excellence and competence of lawyers through post-call learning and information support.

Implementing MCPD, which aims to improve the availability of educational and professional development resources and the relevance of those resources to individual practitioners, best meets the post-call education component of the goals of the Law Society in ensuring lawyers provide competent services. Implementing such a program should demonstrate to the public that it may have confidence that lawyers are competent, honest & ethical, and will also help the Law Society meet public expectations that it is doing all it can to ensure lawyers are competent in areas of the law in which they practice, consistent with its statutory mandate. This, in turn, is expected to enhance the quality of services provided by lawyers and therefore improve the standing of the profession in the community. At the same time, it will bring itself more in line with what other self-governing professionals do within the province.

The Law Society must ensure that lawyers are not only competent to practice law, but that they also do so ethically and that they are able to manage their practices. A solid ability to manage one's practice is a key component of a lawyer's ability to practice law competently and effectively. While keeping up with changes in the law is important, it is equally as important for

lawyers to have good practice management skills and an understanding of professional responsibility issues. Most complaints made against lawyers are of professional misconduct. Lack of knowledge of these areas can give rise to serious regulatory consequences and can affect the public's confidence in lawyers and in the administration of justice overall.

In implementing such a program it is imperative to foster the feeling of necessity of MCPD among the members so they do not simply consider such a regime as the Law Society forcing more and more upon the membership. Lawyers must be encouraged to desire to take a program because it would be useful to their practice and to their development as a lawyer, not simply because they must.

The experience in other jurisdictions that have implemented MCPD is that the initial resentment on the part of the members dissipates quickly and MCPD soon becomes an accepted norm of the requirements of being a lawyer.

The nature of the requirements of a MCPD regime should be modest enough that lawyers will view them as reasonable and, furthermore, as not likely to increase the cost of legal services overall (as most lawyers already undertake at least 12 hours of continuing education or professional development annually).

In order to articulate, implement and evaluate a MCPD regime, the Law Society must turn its attention to providing members with ways to assess their own level of competence, as well as providing them with increased educational opportunities.

It is vital to make such a program accessible and valuable to all lawyers, including:

- Lawyers in large firms;
- Newly admitted lawyers;
- 10 – 15 year lawyers (it is largely knowing what these lawyers are undertaking for their education that allows the Law Society to identify what type(s) of education would enhance and maintain member competence);
- Those who practice in specialized areas (i.e., real property, tax, family, etc.);
- Those who handle trust accounts;
- Sole practitioners; and
- Lawyers in small to medium sized firms

The majority of problems that lawyers encounter are related more to their ability, or inability, to manage their practice than not knowing the law. Examples include:

- Dealing with client expectations;
- Managing the retainer and accounts/invoices (the business of law);
- Communicating effectively and in a timely manner (with clients and colleagues);
- Professional conduct; and

- Ethics

The MCPD regime must therefore:

- Foster a regular reflective practice of self assessment for lawyers;
- Offer education to enhance skills and expose lawyers to new ways of doing/ managing their practice; and
- Create a framework for monitoring for risk to ensure quality within the legal profession.

Learning is accomplished in a variety of ways and at a variety of levels . What is important is that the lawyer continues to develop his or her knowledge and skills throughout his or her career. Education must be thought of as a continuum. Lawyers must take time to consider and plan their professional development. In fact, the MCPD program is designed to promote excellence in the profession by requiring lawyers to turn their minds to their own continuing development.

We want education/ professional development activities to be:

- Relevant to the professional needs of lawyers;
- Pertinent to long term career interests as a lawyer;
- In the interests of the employer and the lawyer;
- Related to the professional ethics and responsibilities of the lawyer; and
- To contain significant substantive, technical, practical or intellectual content

The Law Society does not support or recommend the development of a simplistic program requiring lawyers to take a certain number of hours of course study based only upon the current availability of CLE programs. Education takes many forms and is offered by many providers. Education will continue to be offered by a diverse group of providers and must be offered in increasingly diverse delivery methods.

The Law Society believes that a MCPD program can accomplish the goal of ensuring a wider variety of professional education resources that are easily available & relevant to lawyers at all stages of their practices. Such a program will also ensure that lawyers use education resources. Lawyers will benefit by having a wider array of resources available to assist them in their practice. The public will benefit by being assured that there is a commitment within the profession to the establishment, promotion and improvement of the standards of legal practice in the Province by ensuring that, throughout the stages of one's career, a lawyer is continuing to upgrade and augment his or her skills and knowledge.

In short, the introduction of MCPD is premised on assuring both the public and the profession that the Law Society is committed to establishing, maintaining and enhancing standards of legal practice in the Province . At the same time, we want to implement a program that will be as straightforward and streamlined as reasonably possible for lawyers, legal education providers

and the Law Society, wherein lawyers will be able to select the type of learning that best suits them and their practices.

ARGUMENTS IN FAVOUR AND AGAINST MCPD

There are many who do not feel that MCPD programs are necessary or worthwhile. The arguments in favour and against MCPD are the same nationally and must be understood in order to decide what might be done in terms of implementing a program. They are as follows:

(a) Arguments in Favour of MCPD:

- Mandatory continuing professional development raises professional competence by exposing lawyers to new developments and renewing basic knowledge and skills. Law is in constant flux – therefore requiring lawyers to take continuing education is necessary to ensure lawyers keep up with the law and remain competent;
- All lawyers would benefit from exposure to new developments in theory and practice contained in well-designed programs;
- Mandatory continuing professional development programs demonstrate to the public that the legal profession is resolved to combat competency concerns and that it is committed to uphold and protect the public interest in the administration of justice by establishing standards for education;
- For lawyers who find practice pressures deter them from taking continuing education programs (even for those who enjoy them when they can find the time to take them), mandatory continuing professional development will provide a positive incentive to take time out to engage in post-call education/ professional development activity that they may not otherwise undertake;
- Young lawyers, tasked with large volumes of work, will not feel uncomfortable asking firms for time off to attend educational or professional development activities or requesting that their firms cover their cost, given that MCPD is mandatory;
- Extra funds from mandatory continuing professional development programs would improve the quality and quantity of continuing education programs and would assist providers of such programs to devote more time and resources to develop more effective programs;
- Recertification based on continuing professional development is preferable to periodic re-examination;
- Some evidence that lawyers in jurisdictions with mandatory continuing professional development *believe* it increases competency;

- The Law Society will clearly articulate its expectations to lawyers and the public concerning MCPD which will further emphasize the importance that such education plays in assuring competence in its members;
- Online and technology-based continuing education is expanding quickly throughout the Province, thereby enhancing access by reducing geographic and time barriers;
- The regime is based on credits broadly categorized and therefore readily attainable by lawyers regardless of their location;
- Many other jurisdictions and most, if not all, other professions in New Brunswick have mandatory continuing professional development programs – how do we explain to the public why we do not?

(b) Arguments Against MCPD:

- There does not appear to be any empirical evidence proving that participation in mandatory continuing professional development actually *improves* lawyer competence;
- It may be expected that lawyers will resent the requirement. Forcing people to take courses may interfere with their desire to learn;
- Only a small percentage of lawyers are truly incompetent – it is therefore unfair to force all lawyers to comply with a program designed to remedy the problems of a few;
- Mandatory continuing professional development may simply be a facile response to public concern, and therefore be no more than superficial window-dressing that does not actually address lawyers with serious competency problems. It is very difficult to teach practical skills, proper management and good judgment. Mandatory continuing professional development may therefore actually mislead the public into believing that all lawyers are current and competent in their field of practice, which may not be the case;
- Standard mandatory continuing professional development programs do not differentiate between types or modes of learning;
- Mandatory continuing professional development plans are expensive, both for the regulator in administering, and for the practitioner in attending due to program fees, travel costs, and lost productivity resulting from time spent away from the office;
- The cost of legal services might increase depending upon the increase, if any, of Law Society fees and cost of mandatory participation in courses.

AUTHORITY FOR MANDATORY CONTINUING PROFESSIONAL DEVELOPMENT

It is part of the Law Society's responsibility in protecting the public interest in the administration of justice to establish standards for the education of lawyers.

Section 5 of the *Law Society Act, 1996*, c. 89 (1996) states:

PART 2

Objects

5. It is the object and duty of the Society
 - a. **to uphold and protect the public interest in the administration of justice,**
 - b. to preserve and protect the rights and freedoms of all persons,
 - c. to ensure independence, integrity and honor of its members,
 - d. **to establish standards of education, professional responsibility and competence of its members and applicants to membership,**
 - e. **to regulate the legal profession, and**
 - f. subject to paragraphs (a) to (d), to uphold and protect the interests of its members.

Many are of the opinion that in order to fulfill these objects and duties, a system to ensure that all lawyers continue to learn, increase their overall knowledge and expand upon their professional development is required. As previously noted, the Law Society of New Brunswick, with its Council, considered this subject in their strategic planning session in 2007 and identified Continuing Legal Education and Quality Assurance as worthy of in-depth examination.

A continuing legal education or professional development program is, in fact, already contemplated by the *Law Society Act, 1996*, at sections 16 and 31:

PART 4

Powers of Council

16(1) Council shall govern and administer the affairs of the Society.

16(2) Without limiting the generality of the foregoing, Council may

...

(n) establish, administer, maintain and operate a system of legal education, including

- (i) the setting of academic requirements for the enrolment of students-at-law and the admission of members,
- (ii) the operation of a bar admission course,
- (iii) the operation of a system of continuing legal education,
- (iv) the operation of a system of compulsory continuing legal education and require that every member, unless exempted in writing by the Executive Director in accordance with the rules, attend and successfully complete a course of study approved by Council as a condition of the right to practise law,**
- (v) the operation of a program of remedial legal education, and
- (vi) the operation of a program of loss prevention and quality assurance

It was further contemplated that participation in such a program be mandated upon lawyers as a condition precedent to continued membership in the New Brunswick Law Society:

Continuing legal education

31(1) Practising and non-practising members shall complete such mandatory continuing legal education programs as prescribed by the rules as a condition of maintaining membership in the Society.

PROGRAM OPTIONS

There are a vast array of possible regimes to promote the goals, objects and duties of the Law Society. Options which may foster competence in the areas in which lawyers practise and encourage ongoing learning include:

A. Mandatory Periodic Retesting

This could entail periodic retesting of all lawyers on certain topics (i.e., legislation and rules of civil procedure/court; ethics; and professional conduct); or

The periodic retesting of a particular group of lawyers on limited topics (i.e., real property law; family law; corporate law; etc.).

B. Limited Licensing Provisions

This could entail limiting a member's licence to practice when called to the Bar to certain situations. In order to remove these limitations on practice a lawyer would have to take certain courses or complete certain activities or programs of study prescribed by the Law Society, and/or pass an examination on a certain area of law. The Law Society would have to decide what areas of law are amenable to this option and ensure it is satisfied with the courses and educational activities available. For example, all lawyers registered as subscribers to the Land Titles system must take and pass a Land Titles course.

C. Specialist Certification

Lawyers would be designated specialists in various areas of law by meeting prescribed lawyer education standards and/or examinations. No lawyers would be restricted from practicing in these areas, but only those who had completed the additional educational requirements would receive Law Society designation as specialists.

D. Mandatory Reporting of Voluntary Completion of Continuing Education/Professional Development

There would be no requirement to complete ongoing education activities, however there may be a recommended number of activities that lawyers are encouraged to engage in, and a requirement to report, annually, the educational and/or professional development activities actually undertaken. There would be no consequences for not meeting the recommended

amount of educational and/or professional development activities. This is the middle ground solution, lying between the laissez-faire approach of relying on lawyers to meet their professional obligations to keep up to date in the law, and a more interventionist approach of imposing a regulatory requirement that lawyers must undertake a certain amount of education annually.

E. Mandatory Continuing Education/ Professional Development

There is an established guideline for the types and/or amount of continuing education or professional development activities required to be undertaken by lawyers, annually or over some greater period of time. It may be left to the lawyers to decide upon or identify subjects and modes of education they wish to take, subjects may be specified, or there may be a combination of both. There would be mandatory reporting and there may be consequences for not meeting the prescribed requirements in the allotted time. Even within mandatory continuing education, this can encompass numerous components: formal educational programs; experiential learning; self-study as well as many other formats of learning. There is considerable leeway for the number of hours required and the types of activities that meet the criteria to qualify for inclusion in the program.

Some Canadian provinces have instituted variations of these regimes, while other provinces and territories have yet to take any action. Mandatory continuing education/ professional development, however, is a relatively new program which is currently being considered by multiple provinces. In the next section we will examine several of these MCPD regimes in greater detail. For a summary of MCPD programs by province/ territory see Appendix 2.

THE BRITISH COLUMBIA MODEL

The most structured MCPD program is the newly instituted program in British Columbia, which came into effect on January 1, 2009.

British Columbia originally introduced a program of mandatory reporting of voluntary continuing education in 2004. However, the Law Society of British Columbia discovered from the mandatory reports that approximately one third of all lawyers in the province reported no continuing education/ professional development. This was particularly true of senior members of the Bar. This was of great concern to the Law Society of British Columbia.

As a result, the Law Society of British Columbia set out to develop a program which would, among other things:

- Serve as a basis for a comprehensive post-call education program;

- Provide for the development of skills as well as knowledge about developments in the law;
- Provide resources that are relevant to lawyers at various stages of their careers;
- Be based on criteria (or “credits”) that are broadly categorized and will therefore be easily attainable by lawyers irrespective of their practice location; and
- Be able to ensure that the subjects that the Law Society considers to be important to the lawyer’s professional development are addressed, irrespective of market consideration.

The Law Society of British Columbia initially considered four broad options:

1. A program requiring a certain number of hours of study, of which a portion requires the study of certain subjects;
2. A program of required courses for all lawyers, with the remainder of hours to be made up of activities individually chosen by lawyers;
3. A program of required courses for certain areas of practice; and
4. A program requiring a certain number of hours of study through approved activities, with credit for professional development activity not to be limited to course study, but to be extended to a broad range of activities.

Of these options, the primary characteristics of the British Columbia model, as adopted, are as follows:

1. Each practising member of the Law Society of British Columbia must complete not fewer than 12 hours per year of CPD undertaken in approved educational activities that deal primarily with the study of law or matters related to the practice of law.

2. **Approved educational activities include:**

(a) Traditional Courses and Activities:

- Attendance, in person, at a course offered by a provider approved by the Law Society;
- Participation in online “real time” courses, streaming video, web and/or teleconference courses offered by a provider approved by the Law Society where there is an opportunity to ask and answer questions;
- Review, in a group with one or more other lawyers, of a video repeat of a course offered by a provider approved by the Law Society;
- Completion of an interactive, self study online course offered by a provider approved by the Law Society, provided that a quiz/testing component is included in the course (it is not necessary for the lawyer to submit the quiz for review);

- Teaching at a course related to law or to the practice of law (including the Bar Admission Course or CLEs). In the case of teaching, the lawyer is entitled to a credit of three hours of reporting for each hour taught. Credit is not available for repeat teaching of substantially the same subject matter within the same reporting year and credit is not available as part of full-time or regular employment;
- “Course offered by a provider approved by the Law Society” includes: any course offered by the Continuing Legal Education Society of British Columbia, the Trial Lawyers’ Association of British Columbia, the Canadian Corporate Counsel Association, the Canadian Bar Association, the Federation of Law Societies of Canada, or the Law Society of British Columbia;
- Any course offered by Canadian law schools dealing primarily with the study of law or matters related to the practice of law;
- Any other course, or provider who offers courses, dealing primarily with the study of law or matters related to the practice of law, provided that the attendee has obtained prior approval from the Law Society of British Columbia.

(b) Non-Traditional Activities:

- Attendance at CBA section meetings;
 - Attendance at a course or other education-related activity offered by a local or county bar association;
 - Participation in (including teaching at) an education program offered by a lawyer’s firm, corporate legal department, governmental agency or similar entity, provided that the program is offered in a group setting;
 - Participation in a study group of two or more provided that the group’s study focuses on law related activities (including by telephone), provided that a lawyer has overall administrative responsibility for each meeting, a lawyer chairs each meeting, the activity is not file specific, and credit is not given for gatherings in a social setting;
 - Writing law books or articles relating to the study or practice of law for publication or to be included in course materials. Credit is based on actual time to produce the final product, to a maximum of six hours per writing project (and is in addition to credit for teaching);
3. Not less than two hours of the required 12 hours of CPD must pertain to any one or any combination of the following topics:
- professional responsibility and ethics;

- client care and relations;
 - practice management.
4. Each lawyer must report to the Law Society the number of hours of approved professional development activity completed over the previous 12 month period. Failure to complete and report the minimum number of required hours will result in a breach of a Law Society Rule, and may subject the lawyer to sanctions.

Self-Study

A number of groups commented that lawyers are very good at independent learning and independent self-study should therefore be sufficient for MCPD purposes. The Law Society of British Columbia agreed that self-study is important but for purposes of the program it recommended education where a lawyer is more likely to be engaged with others is more preferable for the minimum 12 hours requirement. Self-study is expected to be undertaken in addition to the MCPD program, and therefore self-study does not count towards the 12 hours unless undertaken in connection with interactive online courses with a testing component.

The Law Society of British Columbia does not discount the general importance of lawyers engaging in self-study and feel this should be encouraged, and members are asked to report the number of hours per year spent on voluntary self-study (reading, participating in Listservs, review of course video, other archived material etc.); with 50 hours stated to be the recommended norm.

British Columbia Accreditation Process

1. All reportable credits will be approved by the Law Society in either of two ways:
 - (i) by pre-approval of the provider; or
 - (ii) approval (before or after the event) of individual courses and other educational activities;
2. An individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
3. Providers are pre-approved and remain pre-approved if they maintain integrity and quality according to the Law Society standards;
4. Lawyers can individually apply for approval of courses, either before or after the course or other educational activity takes place, where the course has not otherwise been approved;

5. All applications by providers and lawyers will be submitted electronically; and
6. Approvals will be made by Law Society staff.

The Law Society of British Columbia recommends courses offered by any of the current CLE providers be recognized, and courses relating to law offered by universities be recognized. Other courses by other educators could be available for credit, if they have a substantial connection to legal issues. Lawyers should check whether the course meets the requirements before they enroll.

Recognizing courses in this manner avoids having to create a full accreditation system for courses & course providers, as the Law Society of British Columbia is not convinced that a full accreditation system is necessary at this stage.

Compliance and Reporting Requirements

The Law Society of British Columbia determined that:

1. The CPD requirement will be based on the calendar year, with the first compliance date to be December 31, 2009 for the 2009 year;
2. Lawyers will log in to the Law Society website and click on a link to the program, where they will be shown their individual credits and time remaining to comply with the CPD requirement for the given calendar year. After completing a course or other accredited learning activity, lawyers can make that addition to their record;
3. The lawyer will be notified electronically by the Law Society of the approaching calendar deadline and, if the deadline is not met, will be given an extension of 90 days to complete the necessary requirement (in which case a late fee will be charged). The lawyer will be suspended from practice for failure to comply within the extended 90 day time limit. Rules will include provisions and grounds for applying for further extensions;
4. The twelve hour requirement is subject to adjustment for entering or re-entering practice mid-year. Members who have been exempt during the reporting year, but who resume practising law within the reporting year, must complete one credit hour for each full or partial calendar month in the practice of law;
5. Embedded ethical, practice management, and client care and relations content will comply with the two hour requirement. Providers will also be encouraged to offer non-embedded content.

Exemptions

1. All members of the Law Society with a practicing certificate, whether full or part-time, are subject to the requirement, with the following exemptions:

- (a) Members with a current practicing certificate who submit a declaration that they are not practising law. Examples of members who might submit a declaration that they are not practising law could include:
 - inactive members;
 - members on medical or maternity leave;
 - members taking a sabbatical;
- (b) New members who have completed the bar admission program of a Canadian law society during the reporting year;
- (c) A partial exemption will be available to members who resume practising law within the reporting year after having been exempt, and new members by way of transfer (subject to b, above). These members must complete one credit hour for each full or partial calendar month engaged in the practice of law;
- (d) No exemption will be available for being too busy (such as a long trial); or practice of law having been in another jurisdiction.

Consequences of Not Completing the Continuing Professional Development Requirement

British Columbia's amended Rules deal with the consequences if a lawyer fails to complete the requirement for the year.

Failure to complete the requirement for the year would mean that the lawyer is in breach of the Rules. The Rules permit a lawyer to complete the requirement after the end of the year, if the requirement is completed prior to April 1 of the following year. The lawyer will then be deemed to have complied with the requirement. Time spent on completing the requirement during this three month extension period will be accredited toward only the prior year's requirement, not the current year's requirement. A late fee of \$200.00 must also be paid.

If the requirement is not completed by April 1, the expiry date of the extension period, the lawyer is automatically suspended. However, the lawyer will be given at least 60 days notice that the lawyer is about to be suspended for non-completion of the requirement, and will be able to apply to the Practice Standards Committee, which, in its discretion where there are special circumstances, may order that the lawyer not be suspended, or may delay the suspension. As this notice will be given during the period of time in which the lawyer may still complete the

requirement and be deemed to have complied with the rule, the Committee anticipates that most, and ideally all, lawyers will simply complete the requirement rather than face suspension.

There is no specifically worded authority in the British Columbia Legal Profession Act permitting the Benchers to create rules to suspend a lawyer in these circumstances, and the Law Society of British Columbia compares this with the power to create rules to suspend a lawyer who fails to meet standards of financial responsibility under the Act (i.e., membership fees). The Law Society of British Columbia has determined that the combination of the rule which authorizes the Benchers to establish and maintain a system of continuing legal education, and the rule which authorizes the Benchers to make rules for the carrying out of the Act, ought to be read to permit the Benchers to create a system of CPD that can be enforced in the most effective manner possible, if the approach is principled and fair.

The Law Society of British Columbia has considered different methods by which to ensure compliance, and concluded that the “suspension” route is the most effective and principled. It is effective because a suspension from practice is a considerable consequence that most lawyers will want to avoid. It is principled because the goal of the rules ought to be to ensure that lawyers complete the requirement. On the other hand, a monetary penalty or fine would simply enable lawyers to pay a sum of money to the Law Society rather than complete the continuing professional development requirement, which the Committee concludes is neither an appropriate nor principled outcome. The “suspension” consequence, as drafted, is also fair because the lawyer is given ample notice of a suspension, may complete the requirement in the meantime and be deemed to have complied with the rule or, if necessary, be able to apply to the Practice Standards Committee to seek relief from the suspension if there are special circumstances to justify such relief.

The British Columbia program was designed to accomplish two desired outcomes:

1. Introduce MCPD for lawyers that meets the goals outlined above; and
2. Ensure that lawyers may meet MCPD requirements in a variety of ways, recognizing that traditional CLEs can be expensive and courses do not always meet the learning needs of all practitioners (either due to subject matter or level of experience the course is aimed at), the Law Society of British Columbia has worked to identify & include non-traditional activities through which lawyers may meet the CPD requirements.

The combination of two hours of specific topics required of the 12 recognized the Law Society’s responsibility to ensure lawyers receive, annually, at least some education in areas important to the regulatory responsibilities that the Law Society must promote - topics that the Committee considers have not been routinely addressed in the voluntary CLE programs.

The Law Society of British Columbia feels that such a program is advantageous for those in remote areas but feels that the relatively modest 12 hours of CPD requirements is attainable, especially if course providers will have most of their programs available through live webcasts.

THE ONTARIO MODEL

The Law Society of Upper Canada has no MCPD program for lawyers already called to the Bar. There is, however, mandatory reporting of any professional development undertaken. Voluntary minimum expectations are recommended of 12 hours of CLE and 50 hours of self-study annually.

The Law Society of Upper Canada has updated its licensing process to include a new professional responsibility and practice course to be integrated with its articling program. Furthermore, beginning in 2010, all new lawyers called to the Bar in Ontario will be required to complete 24 hours of compulsory professional development during their first two years of practice.

The necessity for CLE/CPD in Ontario is tempered somewhat by their Certified Specialist Program, which requires compliance with specified professional development requirements in order to obtain a specialist designation, comprised of the completion of no less than 12 hours of CLE per year, in two years immediately preceding the date of application and one additional year within the past five years. This requirement may be met through participation in CLE programs or alternative methods such as, but not limited to: teaching or lecturing in a course, authoring of books or articles for publication, post-graduate or other studies, participating in the development and/or presentation of CLE programs related to the specialty area, or involvement in the development of policy related to the specialty area.

THE NOVA SCOTIA MODEL

A Continuing Competency Task Force was created in 2006 to make recommendations about how a continuing competence regime could be provided to the Nova Scotia Members of the Barristers' Society. This Task Force examined continuing professional development and determined that a comprehensive competence regime would require attention to three areas: self assessment, education and quality assurance.

Self Assessment

The Barristers' Society started from the assumption that lawyers are competent, and that at their call to the Bar, new lawyers are competent to the degree they should be. The question then becomes how to ensure that lawyers continue to be competent. One of the ways, and certainly

the least intrusive way, is to provide lawyers with the tools, standards and other information that they can use to assess themselves. What is required here is self-reflection. The individual lawyer must make use of the information the Society provides to assess for themselves whether they are maintaining and/or enhancing their competence.

The Task Force outlined numerous options to help lawyers self-assess:

- On-line self assessments that make use of already existing tools in Quebec and Ontario;
- A template for a professional development plan for lawyers to use;
- Additional questions on the annual member report to find out about member plans for professional development (thereby planting the seed that it is important and checking in as the report is an already existing mandatory requirement);
- Offer examples of self-assessment that allow people to see how they are already self-assessing in their work (i.e. feedback);
- Begin to capture annual member report data by individual, not anonymously;
- NSBS can actively educate lawyers how to self-assess (i.e. easy to offer a session outside the metro area where small firms can come together for a joint session);
- Change the role of educators at the Nova Scotia Barristers' Society from front line training to facilitators for reflective practice and/or "train the trainer"; and
- The Nova Scotia Barristers' Society could play the role of enabling other educators (CBA, APTLA) in this function

Education

The Task Force was adamant that education takes many forms and is offered by many providers. As such, it would not recommend that all education be offered by the Society alone, nor would it support a narrow view of what constituted education. It recommended that education be offered by a diverse group of providers and be offered in increasingly diverse delivery methods.

The Task Force proffered:

- Educational offerings should be based on some form of self assessment in order to ensure that the sessions be based on learner needs and are therefore relevant;
- Openness to different forms of learning, use a variety of techniques/models not just lecture and classroom setting. (i.e. BC model includes in-house training, mentoring, on-line, etc);
- Tailor activities to individual learning needs;
- Mandatory as needed, i.e., for a new area of law like the Land Registration Act;
- Establish and publish a continuous learning curriculum that is developmental in nature and that addresses the issues that arise for lawyers throughout their practice life; and

- Create a marketplace in which others could offer education. The Society could offer expertise and assistance to identify what is needed rather than necessarily being the deliverer of the education.

Quality Assurance

With respect to Quality Assurance, the Task Force recommended the following:

- Establish law office standards with two components:
 - Lawyer/client component
 - Law office management component;
- Give tools to lawyers at the time of the Annual Member's Report;
- Adapt Quebec/Ontario Quality Assurance checklist for NS and begin to use it in the PRPRS (professional responsibility practice reviews) to develop a consistent format for reports and give us some comfort using it;
- Ensure the quality assurance approach is incorporated into the new Land Registration Act audits; and
- In 5 years consider whether a comprehensive quality assurance system is required, which would include some form of peer review or mandatory audit as seen in Ontario and Quebec.

The Nova Scotia Task Force chose not to require Mandatory Continuing Education/ Professional Development, rather to recommend that all members of the Society participate in at least 12 hours of structured CPD annually, and at least 50 self-study hours annually. Structured activity includes preparation and teaching of courses as well as attending courses, including teleconferences, and other on-line technologies.

There is mandatory reporting of the continuing education or professional development on an annual basis.

The Task Force recommended that continuing professional development activities be broad-based and include:

- Live CLE programs, workshops, conferences, in-house programs;
- Telephone CLEs;
- Interactive On-line CLEs;
- Reading of journals and printed material;
- Audio and video tapes and DVDs;
- Writing published texts, articles, or licensing process/ CLE materials;
- Preparation for and instructing in CLE, law school programs and in-house training;
- Organized discussion groups such as CBA subsection meetings;
- General education relevant to the member's practice; and
- Participation in post-LLB education programs.

The Task Force did not favour a wide spread program of mandatory education. Instead, it believed the Society should continue to collect data and monitor lawyers use of current opportunities, leaving it open to implementing any changes, as necessary, based up on the data collected. The Task Force offered the following principles for consideration:

- **The Society should give serious consideration to implementing mandatory education when there is significant legislative change that will overhaul an area of practice**, as with the Land Registration Act. Mandatory education during these times will ease the learning curve and protect the integrity of the system and the public interest. Looking forward, a complete overhaul of the current civil procedure rules is one area where mandatory education would likely be required.
- **The Society also needs to consider implementing mandatory education when there are significant areas of risk that require it to protect the public interest**. One area where this has already been done is when a member wants to open a trust account for the first time. In addition, this might be required when members wish to change from public to private practice or to go back into practice after a lengthy absence. In both Ontario and British Columbia courses have been created for these situations. A member wishing to go into private practice from public or to return after an absence is required to take and pass a course prior to their return. The Society may also wish to require members who have multiple complaints that result in discipline to take professional responsibility education or to take some type of remedial education if the issue is member competence.
- **The Society may want to consider requiring mandatory education when/if statistical data from both professional responsibility and/or claims indicates that education is needed to protect the public interest**. Studies and the statistics gathered by the Society support the fact that the majority of problems lawyers encounter are related more to their ability or inability to manage their practice than not knowing the law. Dealing with client expectations, managing the retainer, communicating effectively and in a timely manner are all things that result in complaints and law suits. While it is important that lawyers keep up with the law it is equally important to ensure that they have good practice management skills. These skills would include professional responsibility and legal accounting skills. It is common across Canada for lawyers to avoid taking these kinds of “soft” courses. If the Society were to determine that members do not engage in this type of education and continue to have difficulty in this regard there may be a case for requiring this type of education.

Since 2006, Nova Scotia has made certain courses mandatory for lawyers practicing in certain areas of law, as a result of the recent implementation of new Nova Scotia Civil Procedure Rules. All practicing members and articled clerks must take Tier I Civil Procedure Rules training, and those who reported 20% or more (combined) of civil litigation, administrative, or family law on their 2008 annual members report and all articled clerks must take Tier II training. There is also a mandatory course pertaining to the *Land Registration Act* for those who practice in the area of real property.

THE ALBERTA MODEL

In Alberta, Council of the Law Society agreed that most lawyers are competent – that only about five percent pose a risk to the public or an embarrassment to the profession, therefore a continuing professional development program should not make the 95 percent, the vast majority of competent lawyers, pay for the other five percent.

After an extensive review and engaging the services of educational consultants, the consultants introduced the idea of the Professional Development Plans ("PDP"). Professional Development Plans do not focus on counting hours of programming or mandatory hours. PDPs focus on the professional development needs of each individual lawyer and, to that extent, are lawyer-centered.

The Law Society of Alberta came up with three basic categories of skills that were integral to professional competence:

- Substantive /Procedural knowledge;
- Lawyering Skills; and
- "Survival Skills" (e.g. practice management, time management).

The Law Society of Alberta developed a basic list of continuing professional development activities which would fall within each of the first three categories and identified the following activities:

Substantive/ Procedural Knowledge

- Attending seminars (including in-house seminars)
- Attending CBA subsection meetings
- Any committee work involved in studying the common law, legislation, law reform, etc.
- Publishing
- Teaching
- General reading (law reports, articles, etc.)
- File-specific reading of a non-routine nature

Lawyering Skills

- Advocacy
- Research
- Writing/drafting
- Negotiation, ADR skills
- Ethical decision-making skills
- Mentoring
- Advising/counseling
- Client communication
- Interpersonal skills

- Facilitation skills
- Leadership and firm management skills
- Presentation skills
- Computer /technology skills

Survival Skills

- Time management
- Marketing
- File management
- Stress management
- Personal practice management
- Law firm management

The Alberta Self-Assessment and Planning Process

The Law Society of Alberta developed a 4 -stage approach to the creation of Professional Development Plans:

1. Review by the lawyer of the Law Society of Alberta MCPD requirements;
2. Performance by the lawyer of a self-assessment process. The lawyer will reflect on how to improve their practice, and review their educational needs on various aspects of their practice including communication, practice management, etc. The self-assessment could be a series of questions or statements to assist in reflections on accessing the appropriate learning opportunities and resources;
3. The lawyer will develop a professional development plan. They will be asked to develop a plan on how they will improve in the areas identified in their self-assessment and provide a plan for the resources they will access to complete their learning such as: CBA sections; practitioner groups; self-study; courses; etc. This will lead to the development of action items and the creation of a general plan to meet self-improvement goals;
4. At the end of the year, and before the next year's CPD filing requirement, the lawyer would assess the past year and whether they have met their articulated goals in the previous year. A new professional development plan would then be created for the next year.

Both the self-assessment tool and the professional plan tool were designed to be accessed online (although they could be printed off and worked on in hard copy by those who are uncomfortable using technology). The plan brings forward information from the self-assessment tool, and includes drop-down menus with all the relevant learning possibilities, including non-courses.

The Law Society of Alberta reached a consensus on the following with respect to how to regulate this initiative:

- This initiative applies to all active members resident in Alberta;
- The plan needs to be completed annually, in writing. Most lawyers will complete the Self-Assessment tool and professional development plan and access the Resource Bank Online. However, the process should be able to be translated to a written (hard copy) form for those who are not comfortable using technology;
- The professional development plan need not be filed with the Law Society of Alberta or any other agency; however, a copy must be kept by the member for some period of time and produced on demand;
- The professional development plan that is completed and kept will **not** include the self-assessment tool worksheet;
- The lawyer will check a box on one of the annual filing forms to the effect that the annual professional development plan is completed;
- In the second and subsequent year, there will be a box (or a declaration) to the effect that all or some of last year's professional development activities were completed. The report on the preceding year will in effect become part of the professional development plan for the next year;
- Plans will be reviewed on a risk basis – that is, if a member's competence or conduct is under any kind of review, the plans may be demanded and reviewed
- There will be no spot audits on professional development plans other than what occurs through existing Law Society reviews (Practice Review, complaints or conduct, or any other review process the Law Society may adopt, e.g. practice assessments); and
- There might be a fine in the future for failure to declare.

The Law Society of Alberta contemplates a very light regulatory scheme. It is designed to be easy and inexpensive to maintain, and to be minimally intrusive for members. The lack of measurement is intentional. Hours can be measured, but that does not measure learning, and learning is not equivalent to competence. The Law Society of Alberta feels that the administrative cost of accreditation, measurement and enforcement of MCPD is not the best use of the Law Society's resources.

The Law Society of Alberta decided not to adopt a mandatory attendance at continuing legal education courses. The Law Society of Alberta is of the opinion that most lawyers do a remarkable job of keeping on top of the law and practice in their particular fields by reading relevant journals and papers, subscribing to web-based update services, researching the law for particular client files, participating in their local bar association activities and programs, and attending online or in-person continuing legal education programs.

The Law Society of Alberta believes that the vast majority of lawyers understand the value of undertaking continuing professional development activities, whether formal or informal, whether subject to reporting requirements or simply for their own benefit. The MCPD initiative seeks to support and expand upon this culture of continuing professional development, continuous self-improvement. The MCPD initiative also creates an accountability regime so that the Law Society of Alberta, as the regulator of the legal profession, can satisfactorily answer the question: “What is the Law Society doing to ensure that lawyers continue to deliver high quality legal services”?

The Law Society of Alberta considers that the Alberta process has two advantages over the current process where a lawyer chooses courses from brochures that show up in the mail from time to time:

- It is intentional as opposed to a response to CLE brochures, and adults learn better when learning is self-directed; and
- Lawyers have a huge range of options to choose from in terms of courses and non-course activities

RECOMMENDATIONS

A. WHICH OPTION TO DEVELOP?

There are two main purposes of the MCPD:

1. Accountability; and
2. The enhancement and strengthening of the culture of continuous learning

It is the opinion of the author that MCPD programs contribute to lawyer competence and benefit the public and the profession by assuring that lawyers remain current with respect to the law, the obligations and standards of the profession, and the management of their practices.

In reality, most lawyers understand the necessity of MCLE/PD programs in achieving these purposes, and want to do their part in the promotion of these two purposes.

The Law Society of New Brunswick must therefore consider what can be done to address the wants and needs of the majority of lawyers who are competent but who wish to enhance their skill and proficiency and, at the same time, do what is necessary to enhance the competency of those lawyers who either do not realize that their level of competency is insufficient or those who do nothing, although they realize their skills and knowledge require improvement.

Of all the regimes examined, the author is of the view that the British Columbia model would be the regime most suited to the attainment of the objects and duties of the Law Society of New Brunswick, in conjunction with the above noted purposes.

No matter how much we know, how good we are at what we do and how long we have been good at it, all members still need to learn and grow- not just because law and practice are always changing, but because we need to keep growing and learning to stay interested and mentally sharp.

For a summary of the recommendations for a mandatory continuing professional development program in New Brunswick see Appendix 3.

- **MCPD Time Requirements**

Twelve (12) hours of mandatory continuing education/ professional development annually is a reasonable expectation of lawyers given the important and serious tasks and roles with which we are entrusted by our clients and/ or employers. Twelve hours equates to roughly two full days of education or professional development per year. That is surely not too much to ask of a group of professionals afforded the respect and recognition such as lawyers expect to be afforded.

- **Mandatory Areas/ Topics**

Is there a necessity to make certain areas or topics mandatory? For example, do we want to implement British Columbia's requirement that at least two hours must pertain to a combination of professional responsibility and ethics; client care and relations ; and/or practice management? Do we want to mandate certain skills development for newly admitted lawyers? Do we want to mandate specific courses for specific practice areas, or for certain situations such as opening a sole practice or opening a first trust account?

This would allow the Law Society to determine which skills and subjects it considers lawyers need to study (i.e., ones not met well by lawyers or where there is real or perceived lack of knowledge of an issue). Judges and senior practitioners could provide feedback to the Law Society of areas where they feel lawyers need to improve their skills and/or competence. Such programs would also allow the use of judges and/or senior practitioners as teachers, where credit is given for teaching younger lawyers the necessary skills and knowledge in various practice areas.

We must first examine what professional development services and materials are currently available to lawyers. At present, there appear to be few CLEs offered on the subject of ethics and professionalism. As such, it would likely be necessary for the LSNB to either develop and offer such courses or request others to do so, in which case the LSNB would likely be required to approve or accredit the course or activity.

A lack of mandatory areas of study would also allow lawyers more leeway or control in the direction of their educational activities, allowing them to choose the areas which they feel would be most relevant or beneficial to their individual practices.

The author is of the opinion that until the educational activities have increased, no mandatory areas or topics be included in the required hours. This would, of course, be subject to amendment as the MCPD program develops and evolves. For example, if statistics show a higher risk for incompetence in specific areas, it may be necessary to develop mandatory courses for those who practice in that area of law in order to protect the public interest. Mandatory education may be required when there is significant legislative change that will essentially overhaul an area of practice. Eventually, mandatory courses may be developed if considered to be in the public interest in specific instances, i.e., for lawyers opening a sole practice or lawyers opening trust accounts for the first time.

The Law Society of New Brunswick must prioritize the areas in which MCPD is needed to support the public interest and the membership, and identify these for Council (i.e., from a risk-analysis standpoint). It is equally important to ensure that members have good practice management skills, including professional responsibility and accounting skills. It is reported nationally that it is common to avoid taking these types of courses.

If, after review, concerns develop regarding the nature or usefulness of the education taken or offered, or it becomes evident that there are better ways to ensure competence, reforms to the program may have to be considered.

- **Self-Study**

Should self-study be included in the requisite 12 hours of continuing education or professional development? Several provinces suggest a recommended amount of 50 hours annually of self-study, in addition to structured educational activities, simply to stay current of developments in the law. This amount would be comprised of only one hour of study per week. It is doubtful if there are any lawyers who do not spend at least this amount of time on self-study, whether by virtue of reading texts, caselaw, print materials and publications such as the *National, Canadian Lawyer, The Lawyers Weekly*, or other legal journals and publications, or by viewing listservs, on-line databases or media such as CD Roms, videotapes and audiotapes. The entire purpose of

the MCPD program could be compromised if every lawyer simply fulfilled his or her annual requirements by declaring that they spent 12 hours in self-study.

Consequently, the author would recommend that self-study be counted toward the mandatory 12 hours, up to a maximum of two (2) hours annually.

However, if there are specific publications, articles or reports that the Law Society of New Brunswick encourages members to read, it could be possible to specify a “credit” allowance for that piece, which could then be counted over and above the standard maximum two hours for self-study.

Members will report, at year end, how many hours of self-study they have completed; with fifty (50) hours being the recommended amount.

- Professional Development Plans

Should individual professional development plans be mandated and, if so, should they be required to be submitted to the Law Society? Self-reflection is a necessary part of one’s professional development. Without reflection upon one’s goals, expectations and desires it becomes very difficult to move forward towards these ideals.

Every member should, of their own accord, already have a professional development plan, whether it is outlined in their head, on paper or neatly scheduled into their PDA. There are self assessment tools available to assist in the creation of a professional development plan, which should be made available to the members to help them decide in which areas of their practice they would like to increase their competency, knowledge and skills, and how to go about doing so.

Creation of a professional development plan, although suggested, will not be mandatory. The Law Society of New Brunswick’s website should be updated to include templates for a professional development plan, as well as self-assessment tools to assist in the creation of same.

B. OVER WHAT PERIOD OF TIME MAY CREDITS BE OBTAINED?

Based on the requirement of 12 hours of continuing education/ professional development, one year seems a more than adequate reporting period in which to amass the requisite educational activity. Twelve hours of educational activity represents approximately two full days per year involved in continuing education/ professional development.

There may be times when a member undertakes in excess of 12 hours of continuing education/professional development annually. In such a case it may be possible to carry over some or all of the hours earned in excess of 12 annually to the following year, with the following year's requirement being reduced accordingly.

However, there may arise from time to time unforeseen circumstances that prevent a member from completing the requisite amount of education/professional development within one year. What should be the result in such a case? In such a case, for example, an extended illness, it may be possible to grant an extension in order to permit the additional hours of educational activity to be undertaken. We will deal with this in more detail in section D.

C. HOW LAWYERS MAY OBTAIN CREDIT (INCLUDED ACTIVITIES)

In most cases the focus for MCPD becomes mandatory attendance at CLEs, which is easily demonstrated and quantified. We want to avoid this. The goal is to have more meaningful professional development initiatives: extending beyond courses currently offered by CLE providers, and not limited only to legal studies, but extending to other areas of professional development such as communications courses and language training.

Most Law Societies are also abandoning the notion that MCPD means exclusively classroom learning. Many now recognize a broad range of activities, from teaching and writing to in-house educational sessions and professional seminars. At present, it is not simply traditional lawyering skills such as trial advocacy and research that lawyers are being urged to study. Many Law Societies are now pushing practice survival skills such as time management and client relations.

The list of included activities shall generally fall within the three (3) basic categories of skills integral to professional competence:

- Substantive/procedural knowledge;
- Lawyering skills (advocacy, research, etc.); and
- Survival skills (practice management, time management, wellness, etc.)

It is vital to expand the types of activities through which members can obtain credit, and to have offerings from all three areas. CLEs are only one way of learning and there are many other professional activities that can generate learning. The MCPD program should therefore be based on a broad range of educational activity.

It is important to continue to ask: what other kinds of education can and should be offered to enhance and maintain lawyer competence? Law Societies must offer a wide range of education and continue to work toward increasing the number and type of educational activity offerings.

That being said, there is an increasing necessity for more skill-based educational activities, as opposed to simply substantive information.

A new, broader educational activity approach must be more sophisticated in its appreciation of how adults actually learn and more cognizant of lawyers' lives. For example, the benefit of online/ telephone seminars, tutorials, and courses mean a lawyer never has to leave the office to attend a CLE, thereby resulting not only in less cost, but allowing the lawyer to join in with people from many different places, thereby being exposed to a diverse set of experiences and opinions. We are all enriched by the exchange of such knowledge.

Not only are new methods of delivery required, but educational activities also must not be limited to substantive legal topic CLEs, but also to perfecting member competency, which may include language training, communication courses and writing courses.

It should be possible to have a link on the Law Society of New Brunswick website which would list upcoming events that meet the educational activity criteria, ideally with a link to online registration and payment, for increased convenience to members. It is essential to increase, as much as possible, the online and financial accessibility of MCPD services.

It would be beneficial for the Law Society of New Brunswick to collaborate with the other Law Societies so that programs offered in another jurisdiction that would be beneficial to New Brunswick members could be listed on the Law Society of New Brunswick's website.

The subject matter of educational activities will meet the goals of the MCPD regime, and be eligible for hours or "credits" provided the subject matter of the activity contains significant intellectual or practical content, with the primary objective of increasing lawyers' professional competence: material dealing primarily with substantive, procedural, ethical, or practice management (including client care and relations) matters relating to the practice of law; or other material which may be primarily designed and focused for lawyers, although it may also be applicable to other professions (such as language training, communications courses, and writing courses), although the overall goal must relate to increasing professional competence, and not profit maximization. Activities designed for or targeted towards clients, or topics relating to law firm marketing or profit maximization will not qualify towards the required 12 hours of educational activity. However, programs on lawyer wellness, as it is inextricably linked with professional competence, should be counted towards the required 12 hours.

Credits should also be awarded for educational activities undertaken in other provinces and foreign law or practice that is directly related to the member's practice, provided the subject matter is as outlined above.

The following is a non-exhaustive list of activities that will qualify for credit in the MCPD regime:

Credit Available for Participation in Courses

Courses will be accredited based on the following criteria:

1. Generally, credit will be given for actual time in attendance at a course;
2. Two or more lawyers reviewing together a previously recorded course will be able to obtain credit;
3. Credit will be available for the actual time participating in online “real time” courses, streaming video, web and /or teleconference courses, provided there is an opportunity to ask and answer questions.
4. Credit may also be earned for participation in post-LLB degree programs.

Credit Available for Education Activities other than Courses

Education other than courses will be available for credit, based on the following criteria:

(i) Teaching

1. The teaching must be to an audience that is primarily composed of lawyers, para legals, articling students and /or law school students. Accreditation for teaching will not be available if it is targeted primarily at clients, the public, other professions, or students other than law students;
2. Three hours of credit will be available for each hour taught. If the lawyer is “chairing” a program, however, the actual time spent chairing the program is all that may be reported (not 3 hours per hour of chairing);
3. Credit will only be available if for the first time the teaching activity is performed in the reporting year. Credit will not be available for repeat teaching of substantially the same subject matter within the same reporting year;
4. Credit will be available for volunteer or part-time teaching only, not as part of full-time or regular employment;
5. Credit will be available for the teaching of legal skills training courses;

(ii) Writing

Credit will be available for writing as follows:

1. Writing law books or articles that are intended for publication or to be included in course materials (including Bar Admission Course);
2. Credit will be based on actual time to produce the final product, to a maximum of 6 hours per writing project;
3. Credit will be available for volunteer or part-time writing only, not as a part of full-time or regular employment;
4. The available credit will be in addition to credit available for teaching;
5. No credit will be available for time spent producing PowerPoint materials.

(iii) Study Groups

Credit for study group activity will be available as follows:

1. Attendance in a group setting at an educational session in a law firm, legal department, governmental agency or similar entity, provided that at least two lawyers are together (including by telephone) at the same time (“in-house” educational activities);
2. Attendance at editorial advisory board meetings for legal publications;
3. The hours available for credit will be the actual time spent at the study group meeting, excluding any time that is not related to educational activities, such as time spent merely socializing;
4. Credit will not be available for activity that is file specific;
5. A lawyer must have overall administrative responsibility for each meeting, and a lawyer must chair each meeting;
6. No credit will be available for time spent reading materials, handouts or PowerPoint, whether before or after the study group session;
7. Study groups must be structured. No credit will be given for “study groups” transpiring in an informal gathering in a social setting;
8. In-house “lunch and learns” or roundtables are an easy and inexpensive way to earn credits. For example, a lunch hour could be dedicated to a firm-wide or in-house (in the case of lawyers outside private practice) training seminar, covering a mix of topics such as updates on caselaw or

legislation, strategies in advocacy, practice management or client relation skills. Senior lawyers could lead most of the seminar presentations on legal topics with research and preparation support by junior lawyers. It would also be possible to bring in outside speakers, such as from the Law Society, to address issues such as legal ethics and professionalism.

(iv) Local Bar and Other Meetings with an Educational Purpose

1. Credit will be available for the actual time spent attending at an educational program provided by a local or county Law Society, as well as for other meetings with an educational purpose, excluding any portion of the meeting that is not devoted to educational activities;
2. To qualify, at least two lawyers must participate in the activity at the same time, including by telephone.

(v) Online Education

A. Group Event

1. Credit will be available for the actual time spent by the lawyer participating in online “real time” courses, streaming video, web and/or teleconference courses, but only if, through the course offering, there is an opportunity to ask and answer questions;
2. The credit available will include a study group’s review of a previously recorded course.

(vi) Self-Study

1. Credit will be available up to a maximum of 2 hours out of 12 per on-line course, or for completing an audio, video or web course;
2. Reading texts, caselaw, legal journals, publications, newsletters, etc; and
3. Viewing listservs, on-line databases or media such as CD Roms.

D. CONSEQUENCES OF NON-COMPLIANCE WITH THE MCPD REGIME

New Rules would have to be adopted to make provisions for the MCPD program and issues arising therefrom, such as consequences of non-compliance.

Failure to complete the requirement each year would mean that the lawyer is in breach of the Rules. A lawyer would be permitted to complete the requirement after the end of the year, if the requirement is completed prior to April 1 of the following year. The lawyer will then be deemed to have complied with the requirement. Time spent on completing the requirement during this three month extension period will be accredited toward only the prior year’s requirement, not the current year’s requirement. A late fee of \$200.00 must also be paid. If the requirement is not

completed by April 1, the expiry date of the extension period, the lawyer may be suspended. However, the lawyer will be given at least 60 days' notice that the lawyer is about to be suspended for non-completion of the requirement, and will be able to apply to the Law Society or a MCPD Committee which, in its discretion where there are special circumstances, may order that the lawyer not be suspended, or may delay the suspension. As this notice will be given during the period of time in which the lawyer may still complete the requirement and be deemed to have complied with the rule, it is anticipated that most, and ideally all, lawyers will simply complete the requirement rather than face suspension.

The "suspension" consequence is fair because the lawyer is given ample notice of a suspension, may complete the requirement in the meantime and be deemed to have complied with the rule or, if necessary, be able to apply to the Law Society to seek relief from the suspension if there are special circumstances to justify such relief.

E. METHODS OF PROGRAM ENFORCEMENT

It may be uncomplicated for both members and the Law Society to monitor members' individual progress and remaining required hours/credits, depending upon the capabilities of the new database currently being implemented by the Law Society. This new database will enable members to log on to their own member page to update their personal information. It may be possible to allow a confidential link to allow members to update their own MCPD profile, listing the credits they have obtained thus far. Those who are uncomfortable with such technology could report in paper format.

Law Societies vary greatly in the proof, if any, required of completion of educational activities. It is possible to operate on the honour system, whereby members are responsible to include all educational activities undertaken, along with the hours/"credits" accumulated. In the alternative, it is possible to have forms verifying participation in a professional development activity, required to be signed by the member and the professional development activity provider. This becomes more difficult in web-based activities, however, confirmation of receipt of payment may suffice in that situation, as long as it specifically refers to the member by name.

Unless any cause for concern arises, the author recommends that members be responsible to verify their participation, while cogizant that attendance or sign in lists will be required at educational activities and that proof of attendance may be required by the Law Society (i.e.-verification of registration and/or payment for the educational activity).

F. SPECIAL CONSIDERATIONS/ PROBLEMS

Before addressing special considerations or problems facing a MCPD regime it is important to consider the following:

What educational resources are offered to lawyers?

Who offers them?

At what cost?

How do we determine what education is needed?

How are resources assessed?

How can access problems be ameliorated?

We must also consider fundamental problems such as whether the issue is that lawyers simply are not voluntarily taking the recommended amounts of course study or that the members perceive that the resources offered are not sufficiently relevant or accessible.

Often repeated potential and/or perceived problems with MCPD programs are:

- Bureaucracy involved in the accreditation of educational activity providers. This might be avoided by providing upfront accreditation to groups or institutions who already provide the majority of educational activities: CBA, APTLA, Universities, etc. and accredit others on an individual basis, at the request of the provider or the member;
- Bureaucracy involved to enforce compliance by the profession. This should be more easily managed with the new membership database, where lawyers can self-report the educational activities undertaken, or non-electronically via one simple form, filed annually;
- Unwilling seminar participants bringing files, iPods, Blackberries, or laptops to educational sessions because the only measure arising from the activity is of attendance. Just as there is no requirement to check class attendance at law school prior to admitting members to the Bar, there are no means by which to measure who pays attention at educational activities. This is where the members' sense of professionalism comes into play.
- Such a regime makes CLEs a joyless, externally driven obligation, focused on putting in an appearance, rather than self-directed learning on the part of lawyers. Again, a

member's sense of professionalism ought to lead him or her to stay current with the law and seek out ways to benefit the member's practice, which many members already do. Members will continue to have the selection of which programs they feel are most beneficial to that individual, and for most an MCE/PD regime will involve only an added reporting requirement;

- A prescribed number of credits over a period of time often results in a rush to take any available course as time runs out. While that may arise as a result of failure to make a professional development plan in advance, this will still contribute to the overall competence of the profession, as these members likely would not otherwise undertake any continuing education;
- For lecture style courses, most information is not applied and is likely forgotten, unless applied immediately. While this is true of most information we learn, such courses usually also give relevant and up to date reference materials and also allow members to make contacts to whom they can turn for guidance or assistance in applying the information at a later date.

It will be necessary to establish a new Mandatory Continuing Professional Development Committee to address concerns such as those noted herein, as well as to assist with issues relating to the administration and implementation of the program itself, such as whether a formal accreditation system is required and what types of professional development would be most beneficial to the members.

How will we address concerns regarding members of multiple bars with conflicting MCPD requirements? A simple solution would be to permit activities from one jurisdiction or the other to meet both or multiple sets of requirements (i.e., a CLE taken in British Columbia by a New Brunswick lawyer could be used to count towards the required hours in both British Columbia and New Brunswick.

If a member primarily practices in another jurisdiction with no MCPD requirements perhaps there could be a partial requirement, for example, depending on the percentage of time spent practicing in New Brunswick, with an ongoing duty to report in New Brunswick both the percent of time engaged in practice in New Brunswick and the number of hours of educational activities undertaken, with particulars provided.

How do we address the resentment against MCPD? There are arguments that the focus of MCPD is not on a culture of self-directed self-improvement, but on a culture of compliance. The role of the Law Society is to deal with the profession collectively. As professionals, lawyers have both an individual and a collective obligation to ensure their ongoing competency and that they remain current with the law. If, as a profession, members do not take an individual initiative to ensure this happens, then the Law Society must step in to regulate the situation for

the collective. Most lawyers will already easily meet the MCPD requirements, and will likely not take issue with the added reporting requirement. For the most part, the lawyers who will oppose MCPD are the individuals who do not currently fulfill their professional continuing education obligations, and are therefore the members who most need such a program – these are the members who, from a perception of ongoing competency perspective, necessitate the implementation of such a program. Such a program, although mandated, continues to be self-directed when lawyers choose their own educational activities which they see as most beneficial to their personal situation and needs.

Larger provinces often have many more professional development activities and lecture series than smaller provinces such as New Brunswick. How do we address the decreased availability of such programs? This issue may become moot with the implementation of MCPD, as there will almost certainly be an increased market for such offerings. With the increased participation of members, it is very likely that they will not only share opinions and ideas for more educational activities, but more senior members will likely want to participate by teaching such sessions and preparing updated and valuable materials. Another option is to bring in the speakers from other provinces to repeat their educational activities here, or set up activities by videoconference or webcast with these individuals. Furthermore, there should be cooperation with other Law Societies to ensure that we advertise good quality CLEs from other provinces that would be beneficial to lawyers of all jurisdictions.

Many lawyers, primarily sole practitioners, or those in small firms, state that CLEs are too expensive. This is where technology will play a large role in permitting all lawyers access to good quality professional development activities. Webcasts allow an affordable alternative to the cost, monetarily and in terms of time taken for attendance and travel to educational activities, as well as lost productivity, as lawyers do not have to leave their offices. They can avail of those professional development activities from the comfort of their own office with technology they already utilize in their practice, via webcasts and tele-seminars, thereby substantially reducing the associated cost.

There may be options available such as bursaries for economically disadvantaged lawyers. Such lawyers could complete an application and qualify for a discount towards professional development activities that they would not be able to attend without financial assistance. It may be possible to start a bursary fund to which members may donate voluntarily or, alternatively, there may be a small fee charged on each educational activity, the proceeds of which are placed in a bursary fund.

There may be concerns raised from lawyers subject to externally controlled budgets to which they must apply for funding to attend educational activities, for example, those who work for various government departments, Crown corporations, or Legal Aid. Possible solutions for such circumstances include group viewing of videotaped CLEs or webcasts, as well as study groups to discuss recent caselaw or topics relevant to that particular group.

Some in-house counsel and public sector lawyers criticize that the majority of CLEs available are not relevant to the nature of their work. However, all lawyers have a professional need to grow, to learn and to stay current. The more specialized or unusual a member's practice is, the more difficult and less likely they are to find courses that work for them. However, MCPD is broadly defined to include educational activities that are relevant to lawyers no matter where they are employed. These members often have access to conventions and in-house sessions that pertain precisely to their field of work which will meet the MCPD requirements. Nonetheless, we must be cognizant that there are many members engaged in the practice of law outside private practice, and we must seek to make the program as relevant, meaningful and beneficial to these varied groups as to lawyers engaged in private practice.

We wish to ensure that the quality of programs offered justifies the costs incurred. We must ensure good quality educational activities. For example, it may be necessary, in the event that there are not sufficient members volunteering to compile materials and present the activities, to offer a per diem for instructors and/or fee credit for them towards another professional development activity. Of utmost importance is that sufficient professional development activities are offered in both French and English.

G. IMPLEMENTATION

Accreditation Process

Depending on the form of implementation of MCPD, some standardization or vetting of course providers and approval of courses will be required.

1. All reportable credits will be approved by the Law Society in either of two ways:
 - (i) by pre-approval of the provider; or
 - (ii) approval (before or after the event) of individual courses and other educational activities (at the request of the member or the provider).
2. An individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
3. Providers are pre-approved and remain pre-approved if they maintain integrity and quality according to the standards of the Law Society;
4. Members can individually apply for approval of courses, either before or after the course or other educational activity takes place, where the course has not otherwise been approved;
5. Applications by providers and members may be submitted electronically or the method which is most convenient for members;

6. All requests for approval should be forwarded to one designated individual. Approvals will be made by Law Society staff.

Compliance and Reporting Requirements

1. The MCPD requirement will be based on the calendar year, with the first compliance date to be December 31, 2010 for the 2010 year;
2. If supported by the new database, members could use online resources to track individual progress. Lawyers will login to the Law Society website and click on a link to the program, where they will be shown their individual credits and time remaining to comply with the MCE/PD requirement for the given calendar year. After completing a course or other accredited learning activity, lawyers could record and report their professional development online;
3. The lawyer will be notified by the Law Society of the approaching calendar deadline and, if the deadline is not met, will be given an extension of 90 days to complete the necessary requirement (in which case a late fee will be charged). The lawyer will be suspended from practice for failure to comply within the extended 90 day time limit. Rules will include provisions and grounds for applying for further extensions;
4. The twelve hour requirement is subject to adjustment for entering or re-entering practice mid-year. Members who have been exempt during the reporting year, but who resume practising law within the reporting year, must complete one credit hour for each full or partial calendar month engaged in the practice of law in the reporting year;
5. Members will be reminded quarterly of the MCPD requirements and, if reporting is done via the new member database, to remind them to log on to review their progress.

Exemptions

1. All practicing members of the Law Society, whether full or part-time, are subject to the requirement, with the following exemptions:
 - (a) Members who submit a declaration that they are not practising law. Examples of members who might submit a declaration that they are not practising law could include:
 - members on medical or parental leave;
 - members taking a sabbatical;
 - (b) New members who have completed the Bar Admission Program of a Canadian Law Society during the reporting year;

- (c) A partial exemption will be available to members who resume practising law within the reporting year after having been exempt, and new members by way of transfer (subject to b, above). These members must complete one credit hour for each full or partial calendar month engaged in the practice of law in the reporting year; and
- (d) Any other exemptions as granted by the Law Society or MCPD Committee or on a case by case basis.

Proposed Rules for the Mandatory Continuing Education/ Professional Development Program

Rules will be necessary to implement the CPD requirement and to accomplish two main purposes:

1. To require lawyers to complete the required amount of CPD on an annual basis; and
2. To provide for consequences if the required amount is not completed.

Additional Costs to be Incurred

Depending upon the role of the Law Society in the development and provision of educational activities or programs, there could be additional costs incurred for:

- speakers and presenters at professional development activities (for their time, travel costs and accommodations);
- rental of appropriate venues for professional development activities;
- potential cost of Law Society staff to attend at professional development activities, subject to a availability of a Section Chair or other volunteer to attend on the Law Society's behalf, as necessary;
- the development of certain online learning technologies or for the use of technology, such as that required for webcasting, etc.; and
- the development of courses and materials on specific topics (i.e., professionalism and ethics, trust accounts, Land Titles System), if necessary to ensure members' competence.

Costs should be kept to a minimum, where possible, in order to avoid increases in member fees arising from the implementation of MCPD.

H. CONCLUSION

With the wealth of legal knowledge available, in New Brunswick and abroad, and the vast array of technological means by which to access this knowledge quickly, conveniently and economically, the Law Society is confident that the MCPD program will be relevant, meaningful and beneficial to each member. The self-reflection necessitated by this program will provide the opportunity for each member to contemplate the state and quality of the member's practice and will provide numerous opportunities to assist members in the amelioration of the quality of their practices and in their professional development.

SUGGESTED TIMELINES

Provide Discussion Paper to Council:	March 27, 2009
Solicit comments from the Bar:	April 29 – June 15, 2009
Provide collected comments to Council:	June 16, 2009
Make decision regarding program:	July 10, 2009 (at Council meeting)
Prepare FAQs & Amend Rules:	July-September, 2009
Work with CBA re delivery of courses to:	
- increase quality	July 2009 –onward
- increase access	
- increase number of programs available	
Program Implementation:	January 1, 2010
Follow up re revisions/ amendments:	February- March, 2011

Appendix 1: MCPD PROGRAMS OF PROFESSIONALS IN NEW BRUNSWICK

Pharmacists

- 15 units annually from two or more sources to qualify for licensing the next year
- 1 hour of activity time = 1 unit
- Continuing education is normally determined in increments of .25 units
- Certain percentage of members audited annually to verify correctness of form filed
- If not compliant may be referred to Complaints Committee for possible disciplinary action, including sanctions of fines, requirement to complete additional continuing education activities, suspension of license, or combination thereof
- Right to appeal within 30 days

Architects

- 100 points (20 professional renewal and 80 self-directed) per two year cycle
- Full day activity attracts 10 points
- Half day activity attracts 5 points
- Two hours attracts 2 points

Chiropractors

- 20 credit hours of approved continuing education seminars over a two year period
- One hour activity = 1 credit hour
- Credit hours cannot be banked in period over the 2 years in which obtained, except seminars upon the approval of Committee
- Seminars must be pre-approved for credit
- Registration will not be renewed if requirements not met
- May apply in writing to the Board for extension for extraordinary reasons

Dentists & Licensed Dental Hygienists

- Dentists - 60 credits over 3 year period
- Dental Hygienists – 36 credit hours over 3 year period
- 4 credits for full day attendance Board of Directors meetings

- Hour per hour credit (max 3) for regional meetings
- Hour per hour credit (max 6) for national meetings
- .5 credit per hour for self-study courses not accompanied by sponsor corrected quiz (max 5 hours every 3 years)
- Credit allowed for preparation/development of course and credits associated with course (2 hours per hour of instruction, to maximum of 8 hours)
- Audiotapes and videotapes, not accompanied by quiz qualify for credits as approved by the Board
- If pre-approval of course not sought, will receive only 1/3 of regular continuing education credit amount for that course
- Specialists must take 50% of required credits pertaining to their specialty
- Falsification of reporting records constitutes professional misconduct
- Cannot carry over credits beyond 3 years, unless exemption by Committee/ Registrar's Office
- Completed reports MUST be filed
- Failure to file report will result in non-renewal of license

Appendix 2: SUMMARY OF MCPD PROGRAMS BY PROVINCE/ TERRITORY

Yukon

- No mandatory MCPD regime

Northwest Territories

- No mandatory MCPD regime

Nunavut

- No mandatory MCPD regime

British Columbia

- Mandatory 12 hours / year with at least 2 hours in professionalism/ ethics
- Mandatory annual reporting
- Broad base of educational activities, traditional and non-traditional, are applicable
- Exemptions exist, and there is a mechanism by which to permit additional time to complete the requirements, where appropriate
- Membership may be suspended for non-compliance

Alberta

- Must make a professional development plan
- Not required to submit plan, unless asked for it by Law Society
- Not required to report what CPD actually completed
- No minimum amount of time/ specific type of activities mandated
- Recommend 12 structured hours of CPD and 50 hours of self-study

Saskatchewan (Commencing January 1, 2010)

- At least 36 hours CPD in approved educational activities related to the practice of law in 3 year period
- Not less than 6 hours must be related to professional responsibility, ethics, client care & practice management
- Mandatory annual reporting
- Failing to report or meet 36 hours could result in administrative suspension

Manitoba

- No mandatory MCPD regime
- Suggested “minimum expectation” for CLE is 12 hours/ year
- Mandatory reporting

Ontario

- No mandatory MCPD regime
- Mandatory to report any self-study & CLE activities in which one participates
- Voluntary minimum expectation for self-study : 50 hours annually (includes file related research)
- Voluntary minimum expectation for CLE: 12 hours annually (about 2 full day programs/ year)
- MCPD program is less necessary to make mandatory in light of the Certified Specialist Program
- New professional responsibility and practice course in articling program
- Mandatory 24 hours of education/ professional development in first two years after called to the Bar

Québec

- Mandatory 30 education/ professional development hours within 2 years
- No mandatory activities, is up to the member to choose what educational activities to undertake that will be relevant to his/her practice
- Activities will be provided by other education providers, in addition to the Barreau (i.e. CBA, Canadian Institute, Montreal Young Lawyers’ Association, etc.)
- Participation in educational activities can be in person or via electronic means
- Accredited educational activities will be listed on the Barreau website
- Other activities may be submitted to the Barreau for accreditation
- No carry-over of hours is permitted from one reporting period to the next
- Self-study does not count towards the mandatory 30 hours

Prince Edward Island

- No mandatory MCPD regime

Nova Scotia

- Mandatory education program for the Nova Scotia Bar regarding introduction of new Civil Procedure Rules in 2009
- Also mandatory course for Land Registration Act
- All practicing lawyers & articling clerks must complete Tier 1 of Society's Training Program & pass online multiple choice test – no fee
- Lawyers whose practices consist of 20% or more in combined areas of civil litigation; family and admin law (as reported in 2008 Annual Member Report) and articled clerks must complete Tier 2 (minimum 7 hours in person training) No testing - \$325 / person, can do the training in-house
- Recommended 12 hours structured CPD and 50 hours self-study annually
- Mandatory annual reporting of CPD undertaken

Newfoundland and Labrador

- No mandatory MCPD regime

Appendix 3: SUMMARY OF RECOMMENDATIONS FOR NEW BRUNSWICK MCPD

- 12 “credit” hours MCPD annually
- No mandatory areas/ topics in professional development offerings
- Self-study counts to a maximum of 2 hours annually (unless specific publication permits credit over and above 2 hours maximum)
- Members will report, at year end, how many hours of self-study completed ; 50 hours being the recommended amount
- May be possible to carry over some or all of the hours earned in excess of 12 annually to the following year, with the following year’s requirement being reduced accordingly
- Credit available for broad range of professional development activities, including participation in courses , teaching, writing, study groups and meetings, and online education
- Mandatory annual reporting of CPD activities undertaken
- Members could be granted extension to April 1 of following year to complete requirements, will result in \$200 late fee
- If do not meet requirements by April 1, could be suspended for non-compliance
- Exemptions given for members not practicing (i.e., parental/ medical leave), new members having completed the Bar Admission Program of a Canadian Law Society during the reporting year, and any other exemptions granted by the Law Society or MCPD Committee or on a case by case basis
- Requirements pro-rated for months in which not practicing (1 “credit” hour per month)

LAW SOCIETY OF SASKATCHEWAN

MANDATORY LEGAL EDUCATION POLICY

1. PURPOSE

The Law Society of Saskatchewan regulates the Legal Profession in the public interest by ensuring its members meet and maintain high standards of integrity and competency. The purpose of Minimum Legal Education requirements is to ensure that members of the Law Society of Saskatchewan meet and maintain these requirements by undertaking legal education throughout their careers.

2. DEFINITIONS

- i. “Accredited Educational Activities” means either educational activities supplied by an Approved Provider or approved by the Law Society pursuant to Section 9.
- ii. “Approved Provider” means an individual or organization accredited by the Law Society to provide educational activities pursuant to Section 10.
- iii. “Director of Education” means a person appointed by the Executive Director of the Law Society to perform the duties described herein.
- iv. “Law Society” means, unless otherwise stated, the Law Society of Saskatchewan.
- v. “Minimum Education Requirements” means the number of hours in Approved Educational Activities required by the Law Society pursuant to Section 4.
- vi. “Provider” means an individual or organization which is not accredited by the Law Society to provide legal education.
- vii. “Term” means each three year period to complete minimum requirements pursuant to Section 5.

3. SCOPE AND EXEMPTIONS TO MINIMUM REQUIREMENTS

- i. Active Members

Members with current practicing certificates are required to achieve Minimum Educational Requirements in order to maintain practicing status.

ii. Inactive Members

Inactive members are not required to achieve Minimum Educational Requirements in order to maintain inactive status. However, inactive members who apply for active membership will be required to report all Approved Education Activities taken between December 31, 2009 and the date of application for re-admission. If the hours do not meet the Minimum Education Requirement, the inactive member will be required to provide a remedial education plan for approval by the Director of Education.

iii. Members of Other Law Societies

Members of other Law Societies, who also hold membership in the Law Society, are required to comply with the Minimum Educational Requirements.

iv. Suspended Members

Suspended members are required to maintain Minimum Education Requirements or to submit a remedial education plan to the Director for approval before reinstatement.

v. New Members

Minimum Education Requirements will be adjusted to require one credit hour for each full or partial calendar month for the remainder of the Term, including the proportionate number of hours required for professional responsibility.

4. MINIMUM EDUCATION REQUIREMENTS

- i. Minimum Education Requirements are the completion of 36 hours of Approved Educational Activities in the three-year Term referenced in paragraph 5 of this policy.
- ii. Not less than six hours of the required 36 hours must pertain primarily to any one or any combination of the following topics:
 - Professional responsibility;
 - Ethics;
 - Practice standards;
 - *The Code of Professional Conduct*;
 - Conflict of Interest;
 - Rules of the Law Society;
 - Client care and relations;
 - Practice management.

5. TERM

- i. The first Term will commence on January 1, 2010 and end on December 31, 2012. Immediately thereafter, all Terms will run for consecutive three year periods.

6. OVERALL SUBJECT MATTER REQUIREMENTS

- i. The subject matter of all educational activities will satisfy the following criteria:
 - a. The content must have significant intellectual or practical content with the primary objective of increasing lawyers' professional competence.
 - b. The content should deal with all or any of the following:
 - substantive legal issues
 - procedural issues
 - the ethical obligations of lawyers
 - practice management
 - client care and relations
 - c. The content should be designed primarily for lawyers and not for other professions. Courses for business, including leadership skills, project management, marketing skills etc., will not qualify.
 - d. The content should be designed and presented primarily by members of the legal profession.
 - e. The Law Society recognizes and encourages the diversity of legal practice. Credits will be available for content which does not strictly comply with the above criteria if the lawyer can demonstrate that it is directly related to improving professional competence in the lawyer's practice.

7. APPROVED EDUCATIONAL ACTIVITIES

- i. Law Society policy is to accommodate the educational needs of all members by providing a wide range of educational opportunities. Subject to all other terms and conditions of this policy and Section 9, educational activities include:
 - a. Attendance at traditional courses and activities;
 - b. Attendance at a legal education program offered by:

- a law firm;
- corporate legal department;
- government agency or department;
- local bar association;
- CBA sections;

or similar entity, provided that the program is offered in a group setting.

- c. Participation in online “real time” courses, streaming video, web and/or teleconference courses where there is an opportunity to ask and answer questions;
- d. Review, in a group with one or more other lawyer(s), a video repeat of a course;
- e. Completion of an interactive self-study online course provided that a testing component is included in the course;
- f. Teaching at a course related to law or to the practice of law;
- g. Participation in a study group of two or more, provided that the group’s study focuses on law related activities;
- h. Writing and publishing books or articles relating to the study or practice of law.

8. ACTIVITIES AND CONTENT WHICH ARE NOT APPROVED

- i. Content and activities designed for or targeted at clients;
- ii. Content and activities relating to law firm marketing or maximizing profit;
- iii. Content and activities prepared and delivered in the ordinary and usual course of practice.

9. ACCREDITATION OF ACTIVITIES

- i. All credits will be approved by the Law Society in any of three ways:
 - a. By pre-approval of the Provider as referenced in Paragraph ten of this policy;
 - b. By an application by a member for approval of individual courses or other educational activities; or
 - c. By an application by a Provider for approval of an educational activity.

- ii. All applications by providers and lawyers must demonstrate compliance with the approved subject matter requirements, approved educational activity requirements and the overall objectives of Law Society education policy. Applications will be submitted for approval by the Director of Education 30 days prior to the activity, although in exceptional circumstances, credit may be approved retroactively. Credits will not be provided after the expiration of the Term.

10. APPROVED EDUCATIONAL PROVIDERS

- i. Approved Educational Providers, with pre-approval to provide accredited education, are as follows;
 - Saskatchewan Trial Lawyers' Association;
 - Canadian Bar Association;
 - Canadian Corporate Counsel Association;
 - Federation of Law Societies of Canada;
 - The Law Society of Saskatchewan;
 - Any provincial or territorial Law Society in Canada and any educational organization affiliated with such a Law Society;
 - Any College of Law in Canada which is recognized by the admission rules of the Law Society.

11. APPROVAL OF PROVIDERS

- i. To be approved as a Provider, and to continue to be approved as a Provider, individuals and organizations must demonstrate:
 - Substantial recent experience in offering high quality continuing legal education;
 - An ability to organize and effectively present continuing legal education;
 - The ability to promote the policy and the educational objectives of the Law Society;
 - Integrity.
- ii. Approved Providers must agree to the following:
 - To refrain from advertising or encouraging the use of their products or services during accredited activities.
 - To provide an Attendance Declaration for Law Society members who attend the activity to the Director of Education.
 - Approved providers for courses offered in Saskatchewan must provide a copy of any published material provided to those who attend an Educational Activity to the Law Society of Saskatchewan without

charge and to waive any copyright to the extent necessary to allow the Law Society to index the publication and make it available on the Law Society website one year after the final date of publication.

- iii. Any provider not approved in Paragraph 10 of this policy may apply to be designated as an Approved Provider by applying to the Director of Education.

12. CALCULATION OF CREDITS

Courses will be accredited based on the following criteria:

1. Generally, credit will be given for the actual time of the educational session excluding social breaks. For participating in online “real time” courses, streaming video, web and/or teleconference courses, the actual time of participation. Partial hours shall be rounded up or down to the closest whole number.
2. Approved Educational Providers or providers of Accredited Educational Activities must seek approval of credit hours prior to advertising or promoting the event.
3. Education other than courses will be available for credit, based on the following criteria:

(i) Teaching

1. The teaching must be in compliance with the overall subject matter requirements and must be designed for an audience that is primarily composed of lawyers, paralegals, articling students and/or law school students. Credit for teaching will not be available if it is targeted primarily at clients, the public, other professions, or students other than law students;
2. Three hours of credit will be available for each hour taught. If the lawyer is “chairing” a program, however, the actual time spent chairing the program is all that may be reported (not 3 hours of credit for each hour of chairing);
3. Credit will only be available for the first time the teaching activity is performed in the reporting year. Credit will not be available for repeat teaching of substantially the same subject matter within the same reporting year;

(ii) Writing

Credit will be available for writing as follows:

1. Credit is available for writing law books or articles that are intended for publication or to be included in course materials;
2. Credit will be based on actual time to produce the final product, to a maximum of 6 hours per writing project;
3. Credit will be available for volunteer or part-time writing only, not as a part of full-time or regular employment;
4. The available credit will be in addition to credit available for teaching and preparation for teaching;
5. No credit will be available for time spent producing PowerPoint materials.

(iii) Study Groups

Credit for study group activity will be available as follows:

1. The hours available for credit will be the actual time spent at the study group meeting, excluding any time that is not related to educational activities;
2. Credit will not be available for activity that is file specific;
3. A lawyer must have overall administrative responsibility for each study group meeting and a lawyer must chair each meeting;
4. No credit will be available for time spent reading materials, handouts or PowerPoint, whether before or after the study group session.

(iv) Local Bar and Canadian Bar Association Section Meetings

1. Credit will be available for the actual time spent attending an educational program provided by a local bar association, as well as for section meetings of the Canadian Bar Association, excluding any portion of the meeting that is not devoted to educational activities.

(v) Online Education

A. Group Event

1. Credit will be available for the actual time spent by the lawyer participating in online “real time” courses, streaming video, web and/or teleconference courses, but only if there is an opportunity to ask and answer questions through the course offering;
2. The credit available will include the actual time of a study group’s review of a previously recorded course.

B. Self-Study

1. Credit will be available up to a pre-approved limit for on-line courses, as well as for completing an audio, video or web course, provided the course includes the following characteristics:
 - (a) a quiz component (where questions are to be answered and where an answer guide is provided to the lawyer after the lawyer completes the course and quiz. It is not necessary for the lawyer to submit the quiz for review);
 - (b) there is an ability for the lawyer taking the course to email or telephone a designated moderator with questions and receive a timely reply;
 - (c) there is no requirement for a “listserv”;
 - (d) there is no requirement for reading materials, handouts or PowerPoint to be included in the course.

13. REPORTING

Lawyers will be responsible for ensuring that they comply with educational policies and for reporting educational activities to the Law Society. Lawyers will be required to report their own credits in one of two means as follows:

1. By completing a Law Society Attendance Declaration at an Accredited Educational Activity.
2. By logging onto the Law Society website and following the form required by the Director of Education.

14. CREDITS CARRIED FORWARD

Credits may not be carried forward past the end of the Term.

15. AUDIT

Lawyers are responsible for retaining records of educational activities and to make the records immediately available to the Law Society upon request.

16. NON COMPLIANCE

A lawyer who does not complete Minimum Education Requirements by the end of the Term is subject to administrative suspension, pursuant to Rule 251.

A lawyer who does not complete Minimum Education Requirements prior to the end of the Term may submit a remedial education plan, along with the prescribed fees in part 8 of the Rules for review and approval by the Education Director. All remedial educational activities must be completed by April 1st of the year following the end of the Term.

Under special circumstances, the Executive Director may recommend that the suspension be delayed for a specified period of time.

17. REINSTATEMENT

A member that has been suspended pursuant to Rule 251 may apply for reinstatement pursuant to Rule 252.

18. GENERAL

In the absence of policy or where there has been substantial compliance with this policy, the Executive Director of the Law Society is authorized to make rulings which are consistent with the objectives of this policy.

19. APPEAL

Decisions of the Director of Education may be appealed to the Chair of the Admissions & Education Committee of the Law Society, along with the prescribed fee in part 8 of the Rules. The Chair may either dispose of the application or order a hearing pursuant to Rule 230.

20. NOTICE

Any notice required to be given a member shall be deemed effective when sent to the member at the address the member maintains on the Law Society membership database.

The Lawyers Weekly
Governing Barreau in Quebec adopts mandatory continuing legal education
By Luis Millan
Montreal
April 24, 2009 Issue

Following in the footsteps of the Law Society of British Columbia, the Barreau du Québec is compelling all of its 23,000 practising lawyers to go back to school as of this month and complete no fewer than 30 hours of approved continuing legal education courses every two calendar years to remain in good standing.

The subject of debate over the past three years, the mandatory educational requirement is a preventative measure aimed at establishing, promoting and improving the standards of legal practice in the province to help ensure the protection of the public, according to a motion that was approved by the General Council of the Bar.

"I have 40 years of practice under my belt, and it is not a natural reflex for me to contemplate sitting behind a school desk," admitted Gérald Tremblay, the Barreau's batonnier, in an interview with *The Lawyers Weekly*. "But the more one thinks about it, the more one realizes that things are changing so quickly that it seems to me to be absolutely normal that all lawyers should maintain and bolster their intellect as much as possible. And when I saw that other bars too demand continuing professional development, I embarked on the project with enthusiasm."

Like similar requirements in England, Wales, Australia and 42 American states, the Law Society of British Columbia (LSBC) introduced a continuing professional development program in January. The LSBC now requires its 11,000 members to complete at least 12 hours of accredited educational activities per year, with no less than two of the hours pertaining to any combination of professional responsibility and ethics, client care and relations, and practice management. Nova Scotia is the other Canadian jurisdiction that has compulsory legal education requirements, but it is limited to lawyers engaging in land registration work.

Unlike in B.C. where failure to meet the continuing education requirements can lead to suspension, the Barreau has taken it one step further — disbarment.

"Law is an evolving discipline, and it is important that people stay up-to-date," said Stuart Cobbett, the managing partner of the Montreal office at Stikeman Elliott. "But life being what it is, some people just don't pay attention to it. Therefore it is a good idea for any self-regulatory body to establish certain minimum continuing education requirements."

The Barreau already has a 22-page list of approved educational activities, which range from lectures to presentations to workshops delivered through a host of different vehicles, be it conferences, seminars and so-called webinars or through the Internet. Some 30-odd presentations and workshops that will be offered at the Barreau's annual convention next month in Montreal have already been given the nod as approved educational activities. Lawyers attending the convention can fulfill up to nine hours of their requirements, which is why it is widely expected that there will be increased attendance at the convention.

The Barreau, besides encouraging smaller firms and sole practitioners to band together in small groups to share costs and resources to cover the costs of accredited training, is also in the midst of negotiating agreements over accrediting in-house training with law firms. Stikeman Elliott is a case in point. At least two training seminars, "Managing Your Staff in Tough Economic Times" and "The New Quebec Derivatives Act: Spotlight on the Issues," that the firm will be offering in the near future, have been accredited by the Barreau.

"If the Barreau was the only provider of continuing legal education activities, it would have been an onerous project," said Tremblay, adding that the Barreau has budgeted between \$300,000 and \$500,000 to launch the program. "This project is supposed to be self-supporting — we'll see. But we want to encourage all organizations who provide continuing education to do even more. We want the net to be as wide as possible."

While lauding the initiative, insisting that it is a lawyer's obligation to the public to keep up-to-date, David Collier of Ogilvy Renault believes that the Barreau will have to demonstrate flexibility in the way it administers and manages the program for it to achieve wide acceptance.

? A lot will depend on the way the program will be administered, and the flexibility the Barreau shows in accrediting various activities,? said Collier, a partner with the Montreal law firm who practices in all areas of intellectual property law, with an emphasis on litigation. ? With some flexibility and creativity it shouldn't be onerous.?

**Self-Reported Continuing Legal Education Activities
2008 Members' Annual Report**

Practising lawyers¹ who do not report taking any form of CLE: 18% (4,905)

Practising lawyers who report taking some form of CLE: 82% (23,173)

Average number of CLE hours taken by all (including those reporting zero hours):32 hours

Average number of CLE hours taken by all (NOT including those reporting zero hours):40 hours

Average number of CLE hours for those who report taking CLE:

Number of CLE hours	Number of lawyers	Percentage
0	4,905	18%
1-5	853	3%
6-10	2,195	8%
11-15	3,594	13%
16-20	4,044	14%
21-25	2,192	8%
26-30	1,924	7%
>30	8,217	29%
TOTAL	27,924	100%

Most popular delivery method/format of CLE:

Format	Hours Taken	Percentage
Live Programs	13,965	41%
Discussion Group	4,375	13%
Writing Published Texts	4,167	12%
Telephone CLE	3,561	10%
Interactive Online CLE	3,468	10%
Video Replay	1,954	6%
Prep and Teach CLE	1,469	4%
Other	1,167	3%
Participation in Degree Programs	305	1%
TOTAL	34,431	100%

Average number of CLE hours reported by year of call

¹ Practising lawyers are those who pay 100% fees and are in private practice, employed in education, government or other or are corporate counsel. The total number of lawyers in this group is 30,416. Of those, 27,924 submitted their MAR so therefore sample size is 27,924.

Years since call	Number of CLE hours								
	0	1-5	6-10	11-15	16-20	21-25	26-30	>30	Total
1-5	702	176	412	736	831	411	411	1,522	5,201
6- 10	567	140	350	724	796	443	387	1,563	4,970
11-15	493	105	293	498	538	292	276	1,252	3,747
16-20	589	94	263	419	487	268	220	1,144	3,484
21-25	547	76	235	383	454	283	237	994	3,209
26-30	640	89	240	353	393	217	185	856	2,973
>30	1,367	173	402	481	545	278	208	886	4,340
TOTAL 4,905		853	2,195	3,594	4,044	2,192	1,924	8,217	27,924

Average number of CLE hours reported by practice area

Practice Area	Number of hours	Percentage
ADR 219		1%
Administrative 1,101		3%
Bankruptcy 677		2%
Civil Defendant	5,057	12%
Civil Plaintiff	4,466	11%
Construction 445		1%
Corporate 6,004		14%
Criminal 2,579		6%
Employment 2,299		6%
Environmental 266		1%
Family 4,095		10%
Immigration 671		2%
Intellectual Property	1,635	4%
Real Estate	5,551	13%
Securities 1,592		4%
Tax 1,112		3%
Wills 1,979		5%
Workplace 151		0
Other 1,542		4%

APPENDIX 2

CONSULTATION PROCESS

The following steps were taken to bring the CPD consultation report to the attention of lawyers and paralegals.

- On October 30, 2009 and December 4, 2009 the Convocation Newsletter which is sent to approximately 32,000 lawyers and 2,600 paralegals for whom the Law Society has an e-mail address, contained information on the CPD consultation.
- The Law Society highlighted the report and consultation process on the latest news section of its website at <http://www.lsuc.on.ca/latest-news/a/consultation-on-continuing-professional-development-requirement/>
- The Law Society placed a Notice to the Profession in the *Ontario Reports* in English and French on November 13, 2009, November 20, 2009 and December 4, 2009 and January 8, 2010 advising of the consultation process and (where applicable) the teleseminars.
- The approximately 32,000 lawyers for whom the Law Society has an e-mail address received information on the CPD Report and consultation in the November e-Bulletin.
- The approximately 2600 paralegals for whom the Law Society has an e-mail address received information on the CPD Report and consultation in the November 19, 2009 Paralegal Update.
- The *Ontario Lawyers Gazette*, Winter 2009, included an article on the CPD proposal and consultation process.
- The Law Society sent the Consultation Report to over 50 legal organizations and parties and another 61 people/organizations received the report in their capacity as members of the Equity Advisory Group or the Aboriginal Working Group.

- The Director of Professional Development & Competence, Diana Miles, attended a meeting of the Ontario Bar Association Council to discuss the Report and answer questions.
- The Treasurer addressed the CDLPA annual meeting on the CPD Report.
- Three teleseminars were held on November 30, 2009 (paralegals), December 2, 2009 (lawyers) and December 7, 2009 (lawyers). A total of 72 paralegals and 46 lawyers registered for the seminar, which was free of charge.
- A number of legal publications and blogs also reported on the consultation process, further bringing it to the attention of the lawyers and paralegals.

LIST OF SUBMISSIONS

INDIVIDUAL COMMENTS¹

Sent by e-mail

Harry Blaier
Ken Chasse
Maria De Angelis-Pater
Albert Frank
William Grimmett
Jane Hegney
Kate Henderson
Dean Ian Holloway – individual capacity
Joan Kosmenko
Scott McEachran
Gordon McKechnie
J. Noonan
Robert Patchett
Mark Quail
Bev Seney
David M. Sherman
Jonathan Spiegel
Carolyn Weafer

Teleseminar comments

Individual Comments - Letter

Paul Calarco
Jason R. Cherniak
Joseph A. De Sommer
Phil Downes
David Fernandes
Philip Friedlan
Peter Kirby
Benjamin Levinter
John Morrissey
Alan Wheable
J. Sebastian Winny
Marshall Yarmus

Article sent by Eugene Meehan

¹ Of the 48 individuals who made comments 11 requested that their comments not be made public and six requested that their submissions be anonymous if made available publicly. These anonymous submissions are signified in the public copy of the submissions by the reference “Lawyer.” There were no anonymous comments from paralegals.

INSTITUTIONAL/ORGANIZATIONAL COMMENTS

Advocates' Society
Aird Berlis
L'AJEFO (and translation)
Borden, Ladner Gervais
Cambridge Law Association
Canadian Environmental Law Association
County and District Law Presidents' Association
Davies
Equity and Aboriginal Issues Committee (LSUC)
Family Lawyers Association
Goodmans
Gowlings
LawPRO
Law Society of British Columbia
Legal Aid Ontario
Legal Aid Ontario (Clinic Resource Office)
Legal Aid Ontario (Provincial Learning Action Committee –on behalf of
Community Legal Clinics
McCarthy Tétrault
McMillan
Miller Thomson
Ontario Bar Association
Ontario Trial Lawyers Association
Osgoode Hall Law School
Osler
Prosecutors' Association of Ontario
Stikeman Elliott
Toronto Lawyers Association
University of Toronto Faculty of Law

SUMMARY OF SUBMISSIONS

SHOULD A CPD REQUIREMENT BE INTRODUCED

Forty-eight individuals responded in writing to the invitation to consult. Of these, close to half do not comment on whether the requirement should be introduced, but instead ask questions or make specific suggestions on components of the proposed program. Of the remaining individuals there is a mixture of those who support the requirement outright, support it with qualifiers based on implementation concerns, or oppose it. In addition, those who attended the teleseminars generally did not oppose the requirement, but either support it or focus on implementation questions.

Twenty-eight organizations responded to the invitation to consult. Of these only one opposes the introduction of the program. The others either support the introduction directly or by expressing support for CPD generally and then making suggestions on implementation issues. These organizations reflect a broad array of groups representing diverse practice areas, geographic locations and size of practices and also representing perspectives of Aboriginal, Francophone and equity seeking communities.

The Law Society's Equity and Aboriginal Issues Committee considers that the requirement has the potential to reduce isolation of lawyers and paralegals from Aboriginal, Francophone and equity seeking communities and to increase mentoring opportunities.

PROPOSED DEFINITION OF CPD

There are almost no comments on the definition of CPD. The Equity and Aboriginal Issues Committee's submission is satisfied that the definition is sufficiently broad to encompass a large scope of activities to qualify. For those from Aboriginal, Francophone and equity seeking communities it "can encompass areas of law and legal theory such as Aboriginal law, linguistic rights and critical race theory."

LAWPRO suggests expanding the definition to include practice management.

TO WHOM THE REQUIREMENT SHOULD APPLY AND EXEMPTIONS

There are few comments on to whom the requirement should apply. To the extent there are comments they suggest either that the requirement is under inclusive or the exemptions should be broader.

In the former group the comments suggest that the requirement should be expanded to include those in the 50% or 25% category on the basis that if these categories return to the 100% category they will need to be up to speed in their practice area.

Those comments concerning additional exemptions are as follows:

- a. In-house counsel should be exempted because they do not provide services to the general public and because they have narrow expertise not amenable to CPD.

- b. There should be an exemption for women for 12 months after giving birth (due to difficulty of attending CPD when breast-feeding.)
- c. There should be accommodation for senior practitioners who are semi-retired. There should be a pro rata requirement for those working part time.
- d. Those working in research/litigation support should be exempted because they have no private clients, no retainers, no trust funds.

EIAC suggests the need for more precision in how the pro rata exemptions would operate. It also suggests that that the wording around exemptions for special circumstances be clarified to say “subject to exemptions provided because of accommodation under the *Human Rights Code*.”

NUMBER OF CREDIT HOURS

There is very little disagreement with the number of hours, *per se*, including from EAIC, which considers the number reasonable. The few concerns are of the following type:

- a. The number of hours should vary with the level of experience. The more experience the lower the number.
- b. The number of hours should be phased in over three years as 12 is too many all at once.
- c. 12 hours is not enough to stay current. The requirement should be higher and should begin sooner than 2011.
- d. For those in specialized areas of practice or providing legal services in narrow area it may be difficult to find 12 hours. What is the remedy for a lawyer or paralegal who cannot find “relevant” CPD in a given year? Must he or she take irrelevant programs just to meet the requirement? Examples of those who express concern are entertainment lawyers, those practising mining law, paralegals specializing in narrow areas of practice; those in need of programming in French; senior counsel.

SCOPE OF ACTIVITIES TO FULFILL THE REQUIREMENT

This engendered a fair amount of comment. The main issues identified in this topic are as follows:

- a. Concerns and questions about whether specific programs would “qualify.” (e.g. part-time LLM programs; international programs, specialized CLE, Canadian Tax Foundation program, programs that qualify for CPD requirement in other jurisdictions should qualify for Ontario).
- b. A number of people raise concerns about the fact that self-study is not an eligible activity. The argument is that educational research shows that people learn differently. Some absorb more through lecture or other “public” learning process; other by self-study. In those CPD regimes that allow only in-person accredited provider CLE to qualify the

argument against permitting self-study is that while there are a variety of ways to learn and all are important the CLE requirement is directed at the ensuring that everyone obtains a minimum of CLE that is done in public, through organized providers and taught by experts. The proposed regime for Ontario is so broad that it is more difficult to make an argument against self-study. Is it really that much more “valuable” when 2 people discuss a case than when 1 person reads it and considers it? The self-study argument is also raised,

- to address cost and accessibility issues.
 - In the context of senior practitioners who have difficulty finding required programs that are meaningful.
- c. Legal editing should count as well as legal writing.
 - d. Make clear that although attendance at meetings of a legal association board or committee is not an eligible activity, to the extent that there is a substantive component it would count.
 - e. Make clear that if members of LSUC Committees are non-benchers and there are discussions about ethics, professionalism or practice management at meetings they attend these can be counted toward the 25%.
 - f. The exclusion of programming with a “marketing” focus is a mistake. There is often significant content in such programs. Law firms will often undertake such programming to in-house counsel to obtain company’s business – doesn’t make the education any less valid.
 - g. Clarify the confusion over paragraph 61(b) on-line courses.
 - h. Why cap the number of hours for mentoring, writing, teaching? For those who are senior lawyers who have difficulty finding programs this may be a compromise of sorts on self-study.
 - i. Difficult for paralegals to find hours particularly those out of Toronto. Are local law associations prepared to include paralegals in their associations or allow them to attend educational activities?
 - j. Unrealistic to expect sole and small firm practitioners to meet and organize their own CPD programs. Nice idea but not manageable especially for those already trying to run their practices and make money in this economy.

ETHICS, PROFESSIONALISM AND PRACTICE MANAGEMENT COMPONENT

There is little opposition to this component of the requirement. One or two submissions suggest frustration at constantly hearing how unethical the profession is since the actual number of people who act without civility or are otherwise unprofessional is still the minority. One comment says it is impossible to “teach” ethics. One or two submissions suggest the 25% requirement is irrelevant to in-house counsel.

Of those who comment on the details of the 25% component the following are most often noted:

- a. There is some misunderstanding about the way in which the component can be satisfied and the number of hours required.
- b. Some suggest the category seems somewhat amorphous and would like more detail on the kind of content that would satisfy the component.
- c. Some ask if the Law Society will develop specialized topics so that lawyers and paralegals can learn with materials relevant to their practice area. Will they have sufficient programs that one won't repeat the same thing each year?
- d. EAIC suggests that the final report make clear that it will include subjects and principles related to equity and diversity. (e.g. cultural sensitivity to people with disabilities, members of equity seeking groups, delivery of services to immigrants and those whose primary language is not English or French, linguistic rights and other topics that promote inclusion, equity and diversity with the profession and client communities.)
- e. Will LSUC packages be free?

PROGRAM/PROVIDER APPROVAL

The comments suggest misunderstanding around,

- a. whether lawyers and paralegals must have their choices of activities pre-approved by the LSUC,
- b. whether an approved provider must only provide approved programming (must all contain 25%) or can provide approved and unapproved programming; and
- c. whether lawyers/paralegals who set up courses with peers must have them approved; whether law society approves providers outside Ontario.

EAIC expresses a number of points:

- a. The provider approval process be transparent and cognizant of the limited resources that Francophone, Aboriginal and equity providers have.
- b. Make accessibility of courses and materials a condition of approval including physical access to programs, use of alternative delivery methods such as webcasting at reduced cost, language of delivery and costs.

COMPLIANCE AND MONITORING

There are only a few comments on this issue as follows:

- a. On the issue of suspension for failure to meet hours there should be some flexibility for those who fail to meet for reasons within the grounds enumerated in the Ontario Human Rights Code.
- b. There should be a formal grace period before suspending or for allowing people to make up credits into the next year.
- c. Clarify when the year begins.
- d. Provide some further information on kind of verification one needs to keep,
 - i. if lawyer or paralegal, to be prepared for CPD audit
 - ii. if provider, on required documentation.
- e. Will providers be subject to documentary audits; attendance audits or both?
- f. How long will the professional or provider be required to keep documentation (12 months?)
- g. Will the audits have a disproportionate impact on sole practitioners and small firm lawyers?

COMMUNICATION PLAN

There are only a few comments on the proposed communication plan as follows:

- a. The Law Society should explain and highlight how it would implement the requirement in accordance with equity and diversity principles.
- b. The plan should include outreach to various groups through their community based media outlets.
- c. The Law Society should seek the assistance of legal organizations to communicate the plan.

BUDGET IMPLICATIONS

There are no comments.

COST CONSEQUENCES TO PARALEGALS AND LAWYERS

This was the second most commented upon issue. Those who comment on this topic are not necessarily opposed to the introduction of the CPD requirement, although there is that connection for some.

The main comments are along these lines:

- a. There should be an increase in the threshold for qualifying for a bursary. It has not been changed in many years (LSUC threshold is \$35,000). There will be serious pressure on sole and small firm lawyers and paralegals. Financial

burdens are already present. Large firm lawyers will be able to get quality CPD for free in-house. While it is good that small group discussion group activities will count there is a risk of two-tier CPD system – higher quality for those who can afford it; lower quality for those who can't. At least with increased bursary level some may have access to CPD when wouldn't otherwise. Suggestions that threshold should be increased to \$50,000; some suggest \$70,000.

- b. CPD should be offered at minimal cost or free. This comment takes a variety of forms, including,
 - i. There should be CPD discounts for new sole and small firm practitioners.
 - ii. LSUC should offer free interactive seminars on the website.
 - iii. Make “BAC” materials available free on the website.
 - iv. Free annual conference to meet 25% component.
 - v. LSUC should offer distance education course of study requiring on-line submission to qualify for this component.
 - vi. Define part-time category for CPD to reduce burden to part-time practitioners.
 - vii. Too far to drive to Toronto for CLE – will if have to, but make it free.
- c. CPD will simply be a boon or providers; inelastic demand created; prices could easily go up because of this; should go down.
- d. Cost will be a problem for sole and small firm practitioners

OTHER

There are a few miscellaneous comments, as follows:

- a. There is currently a lack of CPD programming geared to sole and small firm practitioners and those in community clinics; LSUC should identify areas where more programming needed and encourage providers to offer more in these areas.
- b. There should be some quality assurance or other measurement of the program to assess whether it has had any disproportionate effect on practitioners from particular groups.