



Agenda

Benchers

Date: Friday, October 27, 2017

Time: **7:30 am** Continental breakfast
8:30 am Call to order

Location: Bencher Room, 9th Floor, Law Society Building

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

CONSENT AGENDA:

The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda <ul style="list-style-type: none"> Minutes of September 29, 2017 meeting (regular session) Minutes of September 29, 2017 meeting (<i>in camera</i> session) Temporary Articled Students and Prehearing Conferences Ombudsperson Rule 2018 Fee Schedules Federation National Law Degree Requirement Amendments 	1	President	Tab 1.1 Tab 1.2 Tab 1.3 Tab 1.4 Tab 1.5 Tab 1.6	Approval Approval Approval Approval Approval Approval

GUEST PRESENTATIONS

2	Intercultural Fluency: The Need for Cultural Literacy for BC Lawyers	20	Alden Habacon		Presentation
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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
3	Consideration of Strategic Plan Initiatives	10	President / CEO	Tab 3	Discussion
4	CPD Review Final Report	20	Dean Lawton, QC	Tab 4	Discussion
5	Governance Committee: Approval of Revised Annual Bencher Survey	10	Steven McKoen	Tab 5	Discussion/ Decision
6	Financial Matters:				
	<ul style="list-style-type: none"> Financial Report - September YTD 2017 Accountability Policy for External Funding 	10 10	Miriam Kresivo, QC / Jeanette McPhee Miriam Kresivo, QC	Tab 6.1 Tab 6.2	Briefing Discussion/ Decision
EXECUTIVE REPORTS					
7	President's Report	15	President		Briefing
	<ul style="list-style-type: none"> TRC Advisory Committee Update 				
	<ul style="list-style-type: none"> Bencher Calendar 				Briefing
	<ul style="list-style-type: none"> Briefing by the Law Society's Member of the Federation Council Report on Outstanding Hearing & Review Decisions 			(To be circulated at the meeting)	Briefing



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
8	CEO's Report	10	CEO	<i>(To be circulated electronically before the meeting)</i>	Briefing
FOR INFORMATION					
9	Three Month Benchers Calendar – November to January			Tab 9	Information
IN CAMERA					
10	Approval of Awards Recipients: <ul style="list-style-type: none"> Legal Aid Award Family Law Award Diversity and Inclusion Award 	5		Tab 10	Discussion/ Decision
11	<i>In camera</i> <ul style="list-style-type: none"> Benchers concerns Other business 	20	President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, September 29, 2017

Present:

Herman Van Ommen, QC, President	Jamie Maclaren
Miriam Kresivo, QC, 1 st Vice-President	Sharon Matthews, QC
Nancy Merrill, QC, 2 nd Vice-President	Steven McKoen
Jasmin Ahmad	Christopher McPherson
Pinder Cheema, QC	Lee Ongman
Barbara Cromarty	Greg Petrisor
Jeevyn Dhaliwal	Claude Richmond
Thomas Fellhauer	Elizabeth Rowbotham
Craig Ferris, QC	Mark Rushton
Martin Finch, QC	Carolynn Ryan
Brook Greenberg	Daniel P. Smith
Lisa Hamilton	Michelle Stanford
J.S. (Woody) Hayes, FCPA, FCA	Sarah Westwood
Dean P.J. Lawton, QC	Tony Wilson, QC

Unable to Attend:

- Satwinder Bains
- Jeff Campbell, QC
- Phil Riddell

Staff Present:

Adam Whitcombe	Michael Lucas
Deborah Armour	Alison Luke
Renee Collins	Jeanette McPhee
Margrett George	Lesley Small
Andrea Hilland	Alan Treleaven
Jeffrey Hoskins, QC	Vinnie Yuen
David Jordan	

<p>Guests: Dom Bautista Dr. Catherine Dauvergne The Honourable David Eby, QC Kensi Gounden Derek LaCroix, QC Caroline Nevin Wayne Robertson, QC Linda Russell Bill Veenstra Prof. Jeremy Webber</p>	<p>Executive Director, Law Courts Center Dean of Law, University of British Columbia Attorney General and Minister responsible for ICBC, Liquor, and Gaming CEO, Courthouse Libraries BC Executive Director, Lawyers Assistance Program Executive Director, Canadian Bar Association, BC Branch Executive Director, Law Foundation of BC CEO, Continuing Legal Education Society of BC President, Canadian Bar Association, BC Branch Dean of Law, University of Victoria</p>
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GUEST PRESENTATION

1. Presentation of Law Society Gold Medal

President Van Ommen provided a brief background of the Law Society Gold Medal, noting that it was first awarded in 1948 at UBC, and that the first female recipient was Constance Holmes (now Isherwood). It was first awarded to a UVic student in 1978, and in the intervening 33 years has been awarded to a woman 22 times.

He then congratulated Madeline Reid, the UVic recipient of the 2017 Law Society Gold Medal. Before law school Ms. Reid earned her Bachelor of Music in violin performance. She received her J.D. from UVic in June of this year, and after completing a clerkship at the BC Court of Appeal, will article at the Ministry of Justice.

UVic Dean Jeremy Webber was also on hand to present Ms. Reid with a commemorative plaque and to recognize her all around contributions of academic excellence and commitment to her community.

2. Honourable David Eby, QC Attorney General and Minister responsible for ICBC, Liquor, and Gaming

Attorney General David Eby attended to address Benchers for the first time. He expressed his gratitude for the invitation to attend, and noted his commitment to fighting for access to justice. He also recognized the Law Society's commitment and meaningful contributions to this area that has long been neglected. He also acknowledged that the challenges of access are not limited to the criminal law, but extend to family issues, the legal aid tariff, civil matters and self-represented litigants. He characterized these challenges as the most critical of our time and pledged to work with the Chief Justice, the Law Society and other legal organizations to ensure public confidence in access to justice in BC.

Specifically, he cited an increased focus on delay and case timelines, in the wake of the Supreme Court of Canada decision in Jordan. He highlighted the need for family law rule reform, and the need to address the increasing number of people forced to represent themselves in the justice system.

Mr. Van Ommen thanked the Minister and noted that the Law Society is also looking forward to working with the government in the pursuit of increased access to justice.

The Minister in turn noted his awareness of legislative amendments being sought by the Law Society to advance access to justice initiatives and looked forward to working together to address those priorities. He then invited questions from Benchers.

In response to a question regarding legal aid funding, the Minister noted a \$20 million provision in the budget to focus on sheriffs and legal aid, and advised that the next budget will contain a legal aid package to address a broader range of issues, including the tariff. He recognized that it would not be an amount sufficient to address 16 years of neglect, but noted it was a start. He also pledged to advocate on BC's behalf for increased federal funding to ensure the vulnerable, such as refugees, continue to have access to legal aid.

One Bencher expressed gratitude for the government's increased focus on access to justice, and recommended a review of the social services tax, originally intended as a funding source for justice needs, as a means of increasing resources in this regard.

Citing a recent Supreme Court of Canada case focused on the constitutionality of hearing fees, another Bencher suggested a review of such fees, particularly in family cases where court fees can have prohibitive effects on a litigant's access to the justice system.

The Minister noted in response that there are many hidden fees and costs in the system which amount to taxation and have not received sufficient attention.

3. Consent Agenda

a. Minutes

The minutes of the meeting held on July 7, 2017 were approved as circulated.

The *in camera* minutes of the meeting held on July 7, 2017 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

ELECTRONIC DOCUMENTS

BE IT RESOLVED to amend the Law Society Rules as follows:

1. *In Rule 3-64, by rescinding subrule (8) and substituting the following:*

- (8) *A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the electronic filing system of the land title office for the purpose of the payment of property transfer tax on behalf of a client, provided that the lawyer*
 - (a) *retains in the lawyer's records a copy of*
 - (i) *all electronic payment authorization forms submitted to the electronic filing system,*
 - (ii) *the property transfer tax return, and*

- (iii) *the transaction receipt provided by the electronic filing system,*
- (b) *digitally signs the property transfer tax return in accordance with the requirements of the electronic filing system, and*
- (c) *verifies that the money was drawn from the trust account as specified in the property transfer tax return.*

2. *By adding the following rule:*

Electronic submission of documents

3-96.1 A lawyer authorized to access and use the electronic filing system of the land title office for the electronic submission or registration of documents must not

- (a) disclose the lawyer's password associated with an electronic signature to another person, or
- (b) permit another person, including a non-lawyer employee
 - (i) to use the lawyer's password to gain such access, or
 - (ii) to affix an electronic signature to any document or gain access to the electronic filing system unless otherwise authorized to do so.

PRACTICE MANAGEMENT COURSE

BE IT RESOLVED to amend the Law Society Rules as follows:

1. ***In Rule 1, by inserting the following definition:***

“practice management course” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study.;

2. ***By rescinding Rule 2-76 and substituting the following:***

Call and admission

2-76 (1) To qualify for call and admission, an articulated student must complete the following satisfactorily:

- (a) the articling term;
- (b) the training course;
- (b.1) the practice management course;
- (c) any other requirements of the Act or these rules imposed by the Credentials Committee or the Benchers.

- (2) Subrule (1) (b.1) applies to articulated students enrolled in the admission program on or after January 1, 2018.;

3. In Rule 3-26, by rescinding the definition of “small firm course”; and

4. In Rule 3-28,

(a) by rescinding the heading and substituting:

Practice Management Course; and

(b) in subrule (1) (a) and (b), by striking “the small firm course” and substituting “the practice management course”.

FORMER JUDGES AND MASTERS

BE IT RESOLVED to amend Rule 2-87 of the Law Society Rules as follows:

1. By striking the heading and substituting “Former judge or master”;

2. By rescinding subrule (1) and substituting the following:

(1) Subject to subrules (2) and (3), a lawyer who was a judge or a master must restrict his or her practice of law as follows:

(a) a former judge of a federally-appointed court must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;

(b) a former judge of a provincial or territorial court in Canada must not appear as counsel in the Provincial Court of British Columbia for 3 years after ceasing to be a judge;

(c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.

3. By adding the following subrule:

(7) This rule applies to a lawyer who has served as a master or the equivalent officer of a superior court in Canada as it does to a former master of the Supreme Court of British Columbia.

QC ADVISORY APPOINTMENTS COMMITTEE

BE IT RESOLVED that the Benchers appoint President Herman Van Ommen, QC and First Vice-President Miriam Kresivo, QC as the Law Society’s representatives on the 2017 QC Appointments Advisory Committee.

APPOINTED BENCHER AND NON-LAWYER HEARING PANELIST PER DIEM RATES

BE IT RESOLVED THAT:

The Law Society's current policy for per diem rates for Appointed Benchers and Non-Lawyer Hearing Panelists shall be replaced by the following per diem rates, effective January 1, 2018.

- **Appointed Bencher and Non-Lawyer Hearing Panelists Full Day Event Per Diem – \$350**

All Appointed Benchers and Non-Lawyer Hearing Panelists are eligible to receive \$350 for every full day (more than 4 hours) during which they attend any meeting, hearing or other event, at the request of the Law Society, inclusive of preparation ("Law Society Full Day Event").

- **Appointed Bencher and Non-Lawyer Hearing Panelists Half Day Event Per Diem - \$200**

All Appointed Benchers and Non-Lawyer Hearing Panelists are eligible to receive \$200 for every half day (4 hours or less) during which they attend any meeting, hearing or other event, at the request of the Law Society, inclusive of preparation ("Law Society Half Day Event").

- **Appointed Bencher and Non-Lawyer Hearing Panelists Travel Event Per Diem – \$150**

In addition, any out-of-town Appointed Benchers and Non-Lawyer Hearing Panelists are eligible to receive \$150 when they must travel for an extended period of time, from their residence to the Law Society, or from the Law Society to their residence, for the purpose of attending a Full Day Event or Half Day Event ("Law Society Travel Event").

DISCUSSION/DECISION

4. Presentation of 2018 Budget & Fees

First Vice-President and Finance and Audit Committee Chair Miriam Kresivo, QC presented the proposed budget for 2018 and briefed Benchers on the process involved in its development. She also thanked the committee members, as well as Chief Financial Officer Jeanette McPhee and her staff for their considerable efforts and hard work. The total 2018 Annual Practice Fee being recommended for full time practice is \$2139.72, which is based on operating expenses and

funding for external organizations. The recommended Insurance Fee is \$1800 for full time practice.

Ms. Kresivo began with a review of the \$1754 proposed fee associated with the Law Society operations, which reflects a recommended increase of \$8.45 (or .5%) as compared with the 2017 fee. The amount is based upon our operating expenses of approximately \$24 million, which have undergone rigorous scrutiny and have also increased year over year by approximately 3.9%. Specific areas of increase include PLTC, education and practice, regulation and Bencher governance expenses. Our commitment to increase our voice in the community regarding access to justice and legal aid has resulted in increased expense. There has been a market-based staff compensation adjustment, as well as the addition of 5.5 new positions to assist with an increase in regulatory demands. Enrollment in PLTC is also up, creating additional demand on the system. She noted that there is a proposed increase to the student PLTC fee of \$100, to fund new software that will provide benefits to the students and the program, but she did note that the overall PLTC program continues to be subsidized by the practice fee to ensure the PLTC fees remain competitive and in line with other jurisdictions.

The planned capital costs of \$1.7 million relate to building capital projects, along with hardware and software updates. Increases are projected for the Trust Assurance program, including the addition of staff to assist with the completion of an increasing number of audits, as well as the increasing scope and complexity of files and their associated documentation.

She also noted that increased expenses are offset somewhat by an increase in revenue from additional membership, PLTC fees, and electronic filing fees. Revenue associated with the trust program has also been on the rise given the increase in real estate unit sales. The level of the trust administration fee was discussed, however, real estate sales are expected to decline in the remainder of 2017 and in 2018; given how markets can fluctuate, this is a difficult issue to assess and it was determined the fee will remain the same. The Executive limitation on the TAF reserve recommends that the reserve level be up to 12 months of operating expenses, which is \$3 million, and any additional revenue be allocated to the Insurance (Part B) fund, which will be done by the end of 2017.

The remainder of the Annual Practice Fee is based upon funds allocated to external organizations. The following amounts are allocated to these organizations:

- Federation of Law Societies: \$28.12
- CanLII: \$39.24
- CLBC: \$195
- The Advocate: \$27.50
- LAP: \$65.60

- Access Pro Bono: \$28.15
- REAL: \$2.11

The committee is recommending two changes in approach to external funding. Firstly, it is creating an external funding accountability policy and guidelines, to be recommended to Benchers at the October meeting. This policy will cover such issues how to address funding when and at what level reserves exist. The policy and guidelines will be based on the Law Foundation's guidelines, and will recommend providing a year's notice to funded organizations.

Secondly, the committee recommends a change to the method of funding. Currently, funding is allocated based on a per member amount. Given fluctuations in membership, going forward the committee is recommending funded organizations express their requests as a fixed monetary amount, based on their needs, rather than a per member amount. We will then calculate the cost per member accordingly. This will prevent unintended windfall amounts if membership numbers increase.

Ms. Kresivo then briefed Benchers on the Insurance fee which is recommended at \$1800 (\$900 for part time). Actuarial analysis indicates that assets are adequate, and our investment returns at 7.1% are higher than the benchmark of 6%. However, the number of insurance reports is up from 2016, as are annual payments, and additional projected future risks are putting pressure on costs. For the first time in 7 years there is a recommended increase to the insurance fee of \$50 (or 2.9%), and \$25 for part time practice, to ensure consistency and stability, and avoid potential large increases in any given year.

Second Vice-President and committee member Nancy Merrill, QC moved (seconded by committee member Craig Ferris, QC) the following motion:

Be it resolved that:

- Effective January 1, 2018, the practice fee be set at \$2,139.72, pursuant to section 23(1)(a) of the Legal Profession Act.

After calling for discussion, and hearing none, Mr. Van Ommen called for a vote. The motion was passed unanimously.

Committee member Steve McKoen moved (seconded by Ms. Merrill) the following motion:

Be it resolved that:

- Effective May 1, 2018, the training course registration fee be set at \$2,600, pursuant to Rule 2-72(4)(a).
- Effective May 1, 2018, the registration fee for repeating the training course be set at \$4,000, pursuant to Rule 2-72(4)(a).

After calling for discussion, and hearing none, Mr. Van Ommen called for a vote. The motion was passed unanimously.

Sarah Westwood moved (seconded by Tom Fellhauer) the following motion:

Be it resolved that:

- The insurance fee for 2018 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,800;
- The part-time insurance fee for 2018 pursuant to Rule 3-40(2) be set at \$900; and
- The insurance surcharge for 2018 pursuant to Rule 3-44(2) be set at \$1,000.

After calling for discussion, and hearing none, Mr. Van Ommen called for a vote. The motion was passed unanimously.

5. Law Firm Regulation Task Force: Second Interim Report

Mr. Van Ommen provided an outline of the anticipated process for implementation of the first phases of law firm regulation. Next year, law firms will be expected to register, which involves confirming a pre-populated form identifying firm lawyers and designating a firm representative. Sole practitioners may choose to register as a firm themselves, or as a space-sharing group.

After completion of the registration process, firms will be asked to do the self-assessment, which Mr. Van Ommen identified as a core process for law firm regulation. A working draft is provided in the materials, but the Task Force is seeking input from other committees, as well as other law societies across the country to try to achieve consistency of language. This tool has undergone significant change since its last iteration; now under element one of the self-assessment, only 8 questions are required. These questions will be used as an information-gathering tool only, and will help determine what help firms may need with developing policies and procedures. At this stage, there will be no expectation on firms to change behavior.

Following completion of the self-assessment tool, it will be the Law Society's task to develop model policies based on the self-assessment findings and then consult with discussion groups for feedback. Assistance will be sought from both Courthouse Libraries BC (CLBC) and Continuing Legal Education (CLE) to develop policies for different types and sizes of firms. This process may take up to a year, following which firms will again be asked to complete the self-assessment, this time in accordance with new policies.

The only mandatory aspect of the process will be the development of policies in place. It will remain up to firms to decide how best to achieve this objective, whether that be through formal written policies or oral understandings.

It is likely the process described above will not be completed until 2019. He reiterated that the components of the 8 headings of the self-assessment tool will be refined over the next year and a half; the objective at this stage is a commitment to the process. He acknowledged that concern has been expressed with the Equity component, but noted that diversity policies are already encouraged through the civil rights code and through our own Justicia project. He also noted that every other jurisdiction will include some form of equity component.

Before inviting questions, he thanked the Task Force, and particularly Policy and Legal Services staff lawyer Alison Luke, Policy and Legal Services Manager Michael Lucas and Chief Legal Officer Deb Armour for their many hours of hard work.

During discussion, the comment was made that the inclusion of an equity component was welcomed, followed by the suggestion that similar inclusion could be considered for access to justice elements such as pro bono or ‘low bono’ activities. Others noted that it may be appropriate to consider pro bono activities on the Annual Practice declaration, rather than in this process.

Several Benchers expressed concerns with the inclusion of sole practitioners in the process, noting that the administrative commitment was onerous, the applicability limited, and the potential for a negative effect on access to legal services a possibility. Suggestion was made to exempt sole practitioners from the process. Others encouraged the inclusion of sole practitioners, regarding the program as a valuable educational resource.

It was also suggested that the program be tested before being widely implemented, as was done in Alberta. Mr. Van Ommen noted that there has been extensive consultation with specific focus groups such as sole practitioners and small firms, who have had the opportunity to vet the proposed self-assessment tool. He also noted that the aim of the program was not to burden firms with additional administrative bureaucracy, but to raise awareness of issues and to provide resource tools.

A concern was also expressed that the development and implementation of model policies could have the unintended result of being seen as regulation, and providing a ‘standard of care’ that could be used against firms in negligence litigation. It was stressed that any policies created should be approved first by the Benchers. Also queried were any penalties for non-compliance.

Mr. Van Ommen noted that the request for model policies originally came from members themselves in consultation, as a means of reducing the administrative work involved. He also noted that the objective was to create a ‘data base’ of policies from which firms could choose those most applicable. However, to respond to this concern, he suggested a change in language from “model policies” to resources. In response to the question regarding penalties, he also noted

that this plan represents the first stage of registration; the regulatory aspects have not yet been developed.

Others noted that successful implementation of the program should include effective communication with the profession of the resources available to assist, which should also include resources for Benchers to effectively respond to questions. It was also suggested that perhaps software solutions could be explored that would provide for easier completion of forms.

A committee member addressed the concerns being expressed, noting that the committee gave extensive consideration to the balance between imposition of standards and the potential administrative burden, particularly on small firms and sole practitioners. While it remained mindful of the types of concerns being expressed here, it also acknowledged the importance of ensuring all members of our profession are informed and aware of adequate standards of care applicable to their practices, which ultimately is in the public interest, and provided the tools and resources with which to achieve those standards.

Mr. Van Ommen thanked the Benchers for their comments, and proposed to have the Task Force review the materials in light of concerns and suggestions made with the aim of returning to Benchers again at a future meeting.

6. Consideration of Strategic Plan Initiatives

Mr. Van Ommen reviewed the material outlining the various proposed strategic planning initiatives presented for Benchers' consideration. He noted that the list contained far more than could reasonably be completed in three years, and may also be missing initiatives Benchers consider a priority. The task will be to identify items that are a priority, and achievable, in the next three years. The outline is being provided today to initiate discussion and invite consideration of its prioritization. Benchers are also invited to provide any additional items to Mr. Whitcombe and Mr. Lucas before the Executive meeting in October.

Following that, we will be holding a dedicated strategic planning session in the evening of Thursday, October 26, prior to the October Bencher meeting, with the aim of providing comment and suggestions on the goals and initiatives to the Executive Committee for its consideration of priorities and the resources available. The final list will be presented to Benchers for consideration and approval at the December Bencher meeting.

Mr. Van Ommen then invited initial discussion of the proposed initiatives. A number of Benchers suggested the prioritization of mental health and wellness issues and access to justice issues. It was noted that both subjects were broad in scope and encompassed several issues. Specifically, it was noted that a review of mental health issues should include more than just

consideration of a mechanism like diversion, could include a review of our hearing processes, and is an urgent, pervasive problem that may require a dedicated task force to address. It was also suggested that access to justice include a review of our regulations through the access to justice lens, a focus on delay in our systems and an educational program aimed at educating the public on the services lawyers already provide.

Also noted was the importance of a review of the admissions program, including the availability of articling positions and the issue of unpaid articles, and the possibility of organizing the plan according to themes, such as proactive regulation, access and truth and reconciliation.

Mr. Van Ommen thanked Benchers for their contributions, and closed the discussion with a reminder to come forward with any additional ideas or priorities which will be circulated prior to the October discussions.

7. Vision Statement for Lawyers' Responsibility to Promote Access to Justice and legal services

Chair Martin Finch, QC presented to Benchers for approval the Access to Legal Services Committee's draft vision statement on lawyers' responsibility to promote access to justice and legal services, which arose in part from a Bencher discussion last November. At that time, the Committee had posed the question: do lawyers have a legal responsibility to advance access to justice and legal services? Though such a duty was not confirmed, it was agreed that the profession should hold high aspirational goals. The Committee was tasked with furthering those goals.

To that end, work has been done to try to ascertain what is currently being done by the profession to advance access to justice. The statement being offered for approval today is a general statement of what the Committee suggests as a vision for how lawyers can work to advance access to justice individually. Mr. Finch noted that a revised version of the statement in the Agenda materials has been handed out in hard copy today.

The statement itself is driven by the recognition of the need to foster a view of world and the role of lawyers in it. The Committee was fortunate to have the example of the Legal Aid Advisory Committee's strong and effective statement, and has adopted similar language. It speaks of encouragement, rather than duty, and seeks to commit to lawyers to a view of our profession and who we should aspire to be as lawyers.

Various Benchers thanked Mr. Finch and the Committee for their excellent work. The question was also raised about the distinction between duty and encouragement. Mr. Finch noted the Committee's struggle to find language that forcefully challenged lawyers but stopped short of imposing any degree of regulation. He acknowledged the tension, and noted that this language

aims to be more aspirational, in keeping with encouragement, than contractual, which is more in keeping with a duty. Another Bencher noted this statement also provided an excellent frame for discussions on law firm regulation.

Before moving the motion to approve the statement, Mr. Finch acknowledged and thanked both the Committee and staff for their hard work. He then moved that Bencher adopt the vision statement as revised, and was seconded by Ms. Merrill. The motion was passed unanimously.

REPORTS

8. Progress Update from Legal Aid Advisory Committee

Second Vice-President and Legal Aid Advisory Committee Chair Nancy Merrill, QC briefed Benchers on the progress of the committee. She noted it has partnered with the Legal Services Society and the World Bank on researching the economics of legal aid and the social cost of not funding it adequately, has worked with PLTC on revising its curriculum to include relevant issues, has reached out to law schools and the Criminal Advocacy Society, has increased its social media presence with a new Facebook page and Twitter account to raise awareness on topical issues, and has begun work on the next colloquium which will again feature Justice Cohen as chair.

Additionally, Bencher approval for the first Award for Excellence in Legal Aid will be sought in October, to be awarded at a dinner event in December.

EXECUTIVE REPORTS

9. President's Report

Mr. Van Ommen briefed the Benchers on various Law Society matters to which he has attended since the last meeting. He shared with Benchers his receipt of news that morning that past President David Crossin, QC had been appointed a judge of the Supreme Court of BC.

He also updated Benchers on the progress being made towards the first TRC symposium, the focus of which will be to explore what the Law Society can do to address the calls to action. One meaningful piece of the symposium will be a video compiling the stories of indigenous lawyers today and the discrimination they continue to experience in our courthouses. He stressed how important it is for Benchers to come hear these stories and participate in the discussions.

He also noted that Benchers will have a presentation at their next meeting on cultural competency generally, as a first step towards cultural competency training. He himself participated in the first cultural competency training session of PLTC students, and Law Society staff recently participated a blanket exercise designed to encourage awareness and empathy. He

also noted the importance of continuing to participate in exercises such as these at the Bencher table.

Reporting on Federation matters, he briefed Benchers on a recent meeting of the Federation's Truth and Reconciliation working group, noting that with Mr. Crossin's appointment to the Bench, the Law Society will need to appoint a new representative to that committee. He also reminded Benchers of the upcoming Federation Conference in Victoria in a couple of weeks, the focus of which is the review of the National Committee on Accreditation process. The results of a recent consultant's report suggest a move towards competency-based assessment; the conference will focus on this report, its recommendations and what they may mean for the Federation and law societies across the country.

As Tribunal Chair he reported that the process is underway to replenish the hearing pools. In response to our earlier calls, we have received 90 applicants for the lawyer pool, from which we will choose 8, and 77 applications for the public pool, from which we will choose 4. Given the volume of applications, we have hired a consultant to help narrow the field based on prescribed criteria. A selection committee chaired by Mr. Van Ommen will make selections based on shortlisted lawyer application material, and interview of the shortlisted public applicants. The committee's recommendations will go to the Executive Committee for approval. Following the recent tribunal hearing refresher course, he is mindful of the need to include considerations of both gender and geographical diversity.

Finally, Mr. Van Ommen reviewed upcoming events on the Bencher Calendar and, among other events, encouraged Benchers to attend the Bench and Bar dinner November 7.

10. CEO's Report

Mr. Whitcombe provided highlights of his monthly written report to the Benchers. He noted that the Annual General Meeting will take place Tuesday, October, and the confirmed date for the TRC Symposium is November 23.

He also took the opportunity to thank Ms. McPhee, current and past Law Society Controllers Andrea Langille and Aaron Griffith and all the staff in the Financial Services department for their hard work in completing the budget for 2018.

REDACTED MATERIALS

REDACTED MATERIALS

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: September 29, 2017
Subject: **Temporary articulated students and prehearing conferences**

1. The Act and Rules Committee recommends a minor clarification to the rules. A past amendment to the rules governing the court appearances that temporary articulated students are allowed to make has resulted in some ambiguity in the rules.
2. The provision in question is Rule 2-71, which is as follows:

Court and tribunal appearances by temporary articulated students

2-71 (1) Despite Rule 2-60 [Legal services by articulated students], a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

- (a) in the Supreme Court of British Columbia in Chambers on any
 - (i) uncontested matter, or
 - (ii) contested application for
 - (A) time to plead,
 - (B) leave to amend pleadings, or
 - (C) discovery and production of documents, or
 - (iii) other procedural application relating to the conduct of a cause or matter,
- (b) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,
- (c) in the Provincial Court of British Columbia
 - (i) on any summary conviction proceeding,
 - (ii) on any matter that is within the absolute jurisdiction of a provincial court judge,

- (iii) on any matter in the Family Division or the Small Claims Division, or
 - (iv) when the Crown is proceeding by indictment or under the Youth Criminal Justice Act (Canada) in respect of an indictable offence, only on
 - (A) an application for an adjournment,
 - (B) setting a date for preliminary inquiry or trial,
 - (C) an application for judicial interim release,
 - (D) an application to vacate a release or detention order and to make a different order, or
 - (E) an election or entry of a plea of Not Guilty on a date before the trial date,
 - (d) on an examination of a debtor,
 - (e) on an examination for discovery in aid of execution, or
 - (f) before an administrative tribunal.
- (2) A person enrolled in temporary articles is not permitted to do any of the following under any circumstances:
- (a) conduct an examination for discovery;
 - (b) represent a party who is being examined for discovery;
 - (c) represent a party at a case planning conference, trial management conference or settlement conference.
3. On its face, Rule 2-71(1)(c) appears to allow summer students to do “anything” in small claims court, which is how many firms have interpreted and applied it. However, the reference to “settlement conferences” in rule 2-71(2)(c), amongst a list of things that are otherwise Supreme Court matters, raises a question as to whether students with temporary articles are in fact allowed to represent parties at the most frequent small claims court proceeding.
 4. In my view, the general rule in Rule 2-71(1)(c) would govern. That provision permits temporary articulated students to conduct provincial court trials in many matters. The Benchers did not intend to preclude them from pre-trial conferences. Subrule (2)(c) should be taken as pertaining to the superior courts only, which is consistent with (a) and (b).
 5. Subrule (1)(c) has been in place since 1998. The previous rule clearly indicated that it applied in the Supreme Court only, and the Benchers did not intend to make a substantive change when the wording was changed.

6. I understand that students appear at Provincial Court pre-trial conferences with some regularity without anyone questioning their ability to do so. I think that this is the first inquiry.
7. In order to clarify that the subrule (2) restrictions apply only to Supreme Court actions, the Act and Rules Committee recommends the change below:
 - (2) A person enrolled in temporary articles is not permitted under any circumstances to do any of the following in a Supreme Court proceeding~~under any circumstances:~~
 - (a) conduct an examination for discovery;
 - (b) represent a party who is being examined for discovery;
 - (c) represent a party at a case planning conference, trial management conference or settlement conference.
8. The Committee recommends the following resolution to effect that change:

BE IT RESOLVED to amend Rule 2-71(2) of the Law Society Rules by rescinding the preamble and substituting the following:

 - (2) A person enrolled in temporary articles is not permitted under any circumstances to do any of the following in a Supreme Court proceeding:.

JGH

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: September 29, 2017
Subject: **Ombudsperson rule**

1. A recent change in the employment relationship with the Equity Ombudsperson requires a minor amendment to the rules.
2. The position of Equity Ombudsperson was created about 20 years ago to assist lawyers, students and others who have discrimination issues in the legal community. In order to ensure its actual and perceived independence from the Law Society disciplinary process, until recently, the position was filled with an independent contractor located outside the Law Society structure.
3. To ensure the confidentiality of communication with the Ombudsperson, a rule was adopted to require the Ombudsperson to keep confidences and making confidential communications inadmissible in Law Society proceedings. This is the rule:

Communication with Ombudsperson confidential

- 5-7** (1) This rule is to be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.
- (2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.
 - (3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.
 - (4) In a proceeding
 - (a) no one is permitted to give evidence about any discussion or other communication with the Ombudsperson in that capacity, and

- (b) no record can be admitted in evidence or disclosed under Rule 4-34 [*Demand for disclosure of evidence*] or 4-35 [*Application for details of the circumstances*] if it was produced
 - (i) by or under the direction of the Ombudsperson in that capacity, or
 - (ii) by another person while receiving or seeking assistance from the Ombudsperson, unless the record would otherwise be admissible or subject to disclosure under Rule 4-34 [*Demand for disclosure of evidence*] or 4-35 [*Application for details of the circumstances*].

4. The term “Ombudsperson” is also defined in Rule 1:

“**Ombudsperson**” means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age, and includes anyone employed by the Ombudsperson to assist in that capacity;

- 5. It was recently decided to make the Ombudsperson position into a Law Society staff position, retaining the confidentiality aspect, much like the existing Practice Advisers.
- 6. The Act and Rules Committee reviewed Rule 5-7 and the definition, and concluded that most of those provisions still apply in the new arrangement. The exception is the final phrase in the definition, which assumes that the Ombudsperson is an independent contractor who would hire her own staff. In the present arrangement, Law Society staff may well be employed to assist the Ombudsperson, and the provisions of Rule 5-7 should continue to maintain confidentiality of communications with staff assisting the Ombudsperson.
- 7. The Committee recommends the following small change:

and includes anyone employed ~~by the Ombudsperson~~ to assist the Ombudsperson in that capacity;

- 8. The Committee recommends that the Benchers approve the following resolution:

BE IT RESOLVED to amend the definition of “Ombudsperson” in Rule 1 of the Law Society Rules by striking “anyone employed by the Ombudsperson to assist in that capacity” and substituting “anyone employed to assist the Ombudsperson in that capacity”.

JGH



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: October 2, 2017
Subject: **2018 Fee Schedules**

1. Before the end of each calendar year, the Benchers must revise the fee schedules, which appear as schedules to the Law Society Rules, to reflect changes taking effect on the following January 1.
2. Under section 23(1)(a) of the *Legal Profession Act*, the Benchers have approved a practice fee of \$2,139.72 for 2018. The insurance fee was also approved at \$1,800 for lawyers in full-time practice, \$900 for those in part-time practice and liability insurance surcharge.
3. In addition, effective May 1, 2018, the Benchers approved increased fees for PLTC registration of \$2,600 for first registration and \$4,000 for repeating the course.
4. Other fees remain unchanged.
5. I attach a suggested resolution that will give effect to the change.

JGH

Attachments: resolution

2018 FEE SCHEDULES

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2018, as follows:

1. *In Schedule 1,*
 - (a) *by striking “\$2,125.57” at the end of item A 1 and substituting “\$2,139.72”,*
 - (b) *by striking “\$1,750.00” at the end of item A 2(a) and substituting “\$1,800.00”,*
 - (c) *by striking “\$875.00” at the end of item A 2(b) and substituting “\$900.00”, and*
 - (d) *by rescinding items D 4 and 5 and substituting the following:*
 4. Training course registration (Rule 2-72 (4) (a) [Training course])

until April 30, 2018	2,500.00
effective May 1, 2018	2,600.00
 5. Remedial work (Rule 2-74 (8) [Review by Credentials Committee]):
 - (a) for each piece of work 50.00
 - (b) for repeating the training course

until April 30, 2018	3,900.00
effective May 1, 2018	4,000.00;
2. *In Schedule 2, by revising the prorated figures in each column accordingly; and*
3. *In the headings of schedules 1, 2 and 3, by striking the year “2017” and substituting “2018”.*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Credentials Committee
Date: October 4, 2017
Subject: **Federation National Law Degree Requirement Amendments**

The Benchers are asked to approve amendments to the Federation National Law Degree Requirements on behalf of the Law Society of British Columbia.

Background

The National Law Degree requirement was approved by Canadian law societies in 2010 (the “National Requirement”). It specifies the competencies and skills graduates must have attained in the law school academic program and learning resources law schools must have in place. The National Requirement applies to both new and existing law school programs and to internationally trained candidates whose qualifications are assessed by the National Committee on Accreditation.

The law societies also approved a recommendation that the National Requirement be reviewed no less often than every five years with the first review to be completed no later than 2018. Accordingly, the National Requirement Review Committee (“NRRC”) was established by the Council of the Federation to conduct an initial review of National Requirements.

Discussion

The Council of the Federation of Law Societies of Canada has voted to approve two minor amendments to the National Requirement proposed by the NRRC. When the National Requirement was first adopted in 2011 it was subject to approval by each law society (although as the standard applies to common law programs only, the express approval of the Barreau and the Chambre was not required). Any amendments to the standard must also be approved by the law societies before coming into effect.

This matter was referred to the Credentials Committee for consideration and recommendations. The Credentials Committee considered the proposed amendments to the National Requirement at its meeting of September 28, 2017.

Recommendations of the NRRC

The NRRC issued a report on its review in April 2017 which was considered by the Council of the Federation. Council approved two minor amendments. The first amendment to the National Requirement removes “legal and fiduciary concepts in commercial relationships” from the list of private law principles that law school graduates are required to learn. The second amendment clarifies the required course credits for academic programs.

With respect to the first amendment, the NRRC noted that the proposal to include this competency in the National Requirement was controversial from the outset. To address concerns that the provision is poorly understood and that the law schools are capturing it correctly in their course offering, the NRRC discussed the possibility of restating rather than deleting. The NRRC noted that the challenge proved to be in the defining the competency with sufficient clarity while avoiding narrowing it in such a way as to effectively require law schools to make mandatory a course in business organizations. The NCCA concluded that the appropriate response to the difficulties that have been experienced in applying the fiduciary concepts competency requirement is to remove it.

With respect to the second amendment, the issue considered by the NRRC was whether the term “three-year law degree – presumptively 90 course credits” required clarification. The NRRC concluded that as 90 course credits is intended to be the minimum, it is important to eliminate any ambiguity created by the term “presumptively”.

The NRRC also recommended that its mandate be clarified to confirm that it has jurisdiction over its own processes to address any issues that are identified between the periodic reviews that have been set.

Accordingly, law societies have been asked to consider the following recommendations:

- a. Amend the National Requirement effective January 1, 2018 by:
 - i. Deleting the reference to “legal and fiduciary concepts in commercial relationships” from the list of required private law principles set out in paragraph 3.3(b) of Section B. Competency Requirements; and
 - ii. Remove the words “presumptively”, from paragraph 1.1 of section C Academic Program.
- b. Confirm that the mandate of the Approval Committee gives it control over its own process, including the timing of the review cycle, and the power to make such

recommendations to Council, including changes to the National Requirement, as it deems appropriate.

Attachments

1. Memorandum from the Federation of Law Societies Executive attaching the National Requirement Review Committee Final Report June 2017

Recommendation

The Credentials Committee accepts the recommendations of the National Requirement Review Committee and refers this matter to the Benchers with the following proposed resolution for adoption by the Benchers:

Be it resolved that:

The Law Society of British Columbia approves the following recommendations as set out in the NRRC's final report:

- i. *The National Requirement be amended as follows effective January 1, 2018 by:*
 - a. *deleting the reference to “legal and fiduciary concepts in commercial relationships” from the list of required private law principles set out in paragraph 3.3(b) of Section B. Competency Requirements; and*
 - b. *remove the words “presumptively”, from paragraph 1.1 of section C Academic Program.*
- ii. *Council of the Federation should confirm that the mandate of the Approval Committee gives it control over its own process, including the timing of the review cycle, and the power to make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.*

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

MEMORANDUM

FROM: Federation Executive

TO: Council of the Federation
Law society Presidents, CEOs (for information)

DATE: May 29, 2017

SUBJECT: National Requirement Review Committee Final Report / Amendments to the National Requirement

ACTION REQUIRED: DECISION OF COUNCIL

DRAFT MOTION:

WHEREAS in 2010 the law societies approved a uniform national requirement to come into force in 2015 specifying the competencies and skills graduates of Canadian common law programs must have for entry into law society admission programs and the law school academic program and learning resources law schools must have in place (the “National Requirement”);

WHEREAS the law societies also approved a recommendation that the National Requirement be reviewed no less often than every five years with the first review to be completed no later than 2018;

WHEREAS the National Requirement Review Committee (“NRRC”) was established by the Council of the Federation to conduct an initial review of National Requirement;

WHEREAS in April 2017 the NRRC issued a report on its review of the National Requirement and invited feedback on proposed amendments to the National Requirement;

WHEREAS the NRRC’s final report on the initial review, attached as Appendix “A” to this memorandum, makes the following recommendations:

- i. The National Requirement be amended as follows effective January 1, 2018:
 - a. delete the reference to “legal and fiduciary concepts in commercial relationships” from the list of required private law principles set out in paragraph 3.3(b) of Section B. Competency Requirements; and

- b. remove the word “presumptively,” from paragraph 1.1 of section C. Academic Program.
- ii. Council of the Federation should confirm that the mandate of the Approval Committee gives it control over its own process, including the timing of the review cycle, and the power to make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.

WHEREAS the proposed amendments to the National Requirement must be approved by the law societies;

RESOLVED THAT Council approve the recommendations and submit the proposed amendments to the National Requirement to the law societies for review and approval.

ISSUE

1. The NRRC has completed its initial review of the National Requirement and has made three recommendations, including two that call for amendments to the National Requirement. Council will be asked at its June 21, 2017 meeting to approve the recommendations and to submit the proposed amendments to the law societies for their approval.

BACKGROUND

2. The NRRC was established by the Council with a two-fold mandate: to consider whether the National Requirement should be amended to add a non-discrimination provision, and to conduct an initial review of the standard. Work on the first aspect of its mandate was suspended at the request of Council in October 2016. The NRRC has now completed work on the second part of its mandate, the review of the National Requirement, and has issued a comprehensive final report (“Final Report”) (attached as Appendix “A”).

NRRC FINAL REPORT

3. The Final Report details the NRRC’s conclusions on all of the issues before it for consideration and sets out the rationale for the following three recommendations:

- a. Amend the National Requirement effective January 1, 2018 by
 - i. deleting the reference to “legal and fiduciary concepts in commercial relationships” from the list of required private law principles set out in paragraph 3.3(b) of Section B. Competency Requirement.
 - ii. removing the word “presumptively,” from paragraph 1.1 of section C. Academic Program.

- b. Confirm that the mandate of the Approval Committee gives it control over its own process, including the timing of the review cycle, and the power to make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.

4. As part of its review process, the NRRC issued a report on its work in April 2017, inviting feedback from a wide range of stakeholders on the proposed recommendations. The consultation period closed on May 27, 2017. As of the end of the consultation period no feedback on the proposed amendments had been received from any of the stakeholders consulted.

RECOMMENDATION

5. The Executive recommends that the motion on pages 1 and 2 of this memorandum be adopted.



*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

National Requirement Review Committee

Final Report

June 2017

Introduction

1. The National Requirement Review Committee (“NRRC” or the “Committee”) was established by the Council of the Federation of Law societies of Canada (“Federation”) with a two-pronged mandate: to consider whether a non-discrimination provision should be added to the National Requirement (the standard that graduates of Canadian common law programs must meet to be eligible for entry to law society bar admission programs), and to conduct an initial review of the National Requirement. A copy of the Terms of Reference of the Committee is attached as Appendix “A” to this report.
2. The NRRC began its work in May 2015. Consistent with the directions of the Council, the Committee initially prioritized the first aspect of its mandate, concentrating its efforts on the non-discrimination issue. In October 2016, however, the Committee was asked to suspend work on the non-discrimination issue in view of the ongoing litigation between the law societies in Ontario and British Columbia and TWU. Since then the Committee has focused on completing its review of the National Requirement and is now ready to provide its final report on this work.

Background

3. The National Requirement was adopted by the Council of the Federation in 2009 and was approved by Canada’s law societies in 2010. Developed by the Task Force on the Common Law Degree (“Task Force”),¹ the National Requirement specifies the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place. It applies to both new and existing law school programs and to internationally trained candidates whose qualifications are assessed by the National Committee on Accreditation (“NCA”).
4. To facilitate the development of a transparent and flexible process that would effectively implement the National Requirement, the Common Law Degree Implementation Committee (“Implementation Committee”) was established in 2010. It completed its report in 2011. The recommendations of the Implementation Committee led to some refinement of the National Requirement and to the development of a process for assessing law school compliance with the national standard. A copy of the National Requirement as amended in 2011 is attached as Appendix “B” to this report.
5. In 2012 the Council established the Canadian Common Law Program Approval Committee (“Approval Committee”) with a mandate to assess whether law school programs meet the National Requirement. Although the National Requirement did not come into force until 2015, Canadian common law programs were required to begin submitting annual reports in 2012 detailing their compliance with the national standard. The intention was to give the Approval Committee time to work with the law schools to

¹ Established in 2007, it presented its final report in 2009.

ensure that their programs would meet the National Requirement when it came into force.

6. In addition to refining the National Requirement to ensure that the specific elements were clear, and developing a recommendation for the approval process, the Implementation Committee recommended that the National Requirement be subject to periodic review. Pursuant to the Implementation Committee's recommendations the national standard is to be reviewed no less frequently than every five years with the first review completed by 2018.
7. When the NRRC began its work the National Requirement had been in force for only a few months and a comprehensive review of the standard was not contemplated. Rather, the Committee was asked to "focus on identifying and addressing immediate issues that have become evident as part of early implementation." In particular, the NRRC was asked to
 - a. identify and address issues that have arisen to date in applying the National Requirement;
 - b. consider components of the National Requirement that require more definition or variation to enable implementation to occur more effectively;
 - c. consider aspects of the recommendations that have not yet been implemented and how to advance those components; and
 - d. identify for Council's information and future planning emerging issues relevant to the National Requirement.

Overview of issues

8. Working with the Approval Committee, the NRRC generated a comprehensive list of issues that have arisen during the early experience with the National Requirement. A number of additional issues were added to the list in the course of the Committee's work. A copy of the complete list of issues is attached as Appendix "C" to this report.
9. The issues identified in this initial review fall into the following four general categories:
 - i. issues within the mandate of the Approval Committee to resolve;
 - ii. issues on which the NRRC was asked by the Approval Committee to provide input and/or guidance;
 - iii. issues the NRRC was required to resolve including those resulting in specific recommendations; and
 - iv. issues related to the application of the National Requirement by the National Committee on Accreditation to internationally trained candidates.

10. This report sets out the NRRC's findings and recommendations on these issues. In addition, as suggested in the report of the Working Group on the National Requirement Review Committee, the body charged with developing the terms of reference and recommended composition of the NRRC, the Committee also identified emerging issues for future consideration. Those issues are described at the end of this report.
11. There were also some issues on the original list that, upon reflection, the NRRC and the Approval Committee determined did not require further consideration. As a consequence those issues were removed from the list. The issues falling into this category are identified on the list but are not discussed in this report.
12. For the most part the issues that have arisen in the early years of implementation of the National Requirement can be addressed without making any changes to the standard itself. The NRRC is, however, recommending the following two amendments to the National Requirement (discussed in detail below at paragraphs 34-43):
 - i. Delete "legal and fiduciary concepts in commercial relationships" from the list of required private law principles set out in B. Competency Requirements Paragraph 3.3(b).
 - ii. Amend C. Academic Program, paragraph 1.1 to remove the word "presumptively," so that the paragraph would read, *"The law school's academic program for the study of law consists of three full-time academic years or equivalent which is 90 course credits."*

National Requirement — general observations

13. In considering and developing a response to the issues identified for the initial review of the National Requirement, the Committee concluded that it is important to understand the approach to approval of law school programs that was endorsed by the Federation and its member law societies when they adopted the national standard.
14. The Committee notes that the Task Force considered and rejected a resource-intensive accreditation process, opting instead for what the NRRC considers to be a "light touch" approval process. The process outlined in the final report of the Task Force and further elaborated upon by the Implementation Committee relies not on site visits and other more intrusive measures, but rather on information provided by the law schools themselves. Recognition of this approach has guided the NRRC in its assessment and resolution, or proposed resolution, of the issues that have arisen in the early years of the National Requirement.
15. Another feature of the approval process that is relevant to the initial review of the National Requirement is the specific mandate given to the Approval Committee. The recommendations of the Implementation Committee were quite prescriptive in terms of

the compliance process, dictating that the approval process be based on annual reports from the law schools, and including the form of the annual report and a draft timetable for the annual assessments. The Implementation Committee did recommend that the Approval Committee be given the authority to make changes to the annual report form and the draft reporting timeline as well as “any other reporting timelines as it determines necessary,” but otherwise limited the Approval Committee’s mandate to assessing compliance with the National Requirement. The Approval Committee does not have the mandate to address policy matters or to alter the prescribed approval process.

16. It is evident that the approach to program approval adopted by the law societies has created a number of challenges for the Approval Committee, particularly for assessing the adequacy of a program’s learning resources. The NRRC has nonetheless concluded that the approval process is running effectively and that the Approval Committee members possess the collective expertise to critically examine the information provided by each program to make a fair assessment of whether the program meets the National Requirement.

Issues within the mandate of the Approval Committee

17. The NRRC concluded that a number of the issues identified for consideration in the initial review were within the mandate of the Approval Committee to resolve and did not require any input from the NRRC. These issues, together with details of their disposition are described below.

Ethics Requirement

Issue 2a: is the 2017-18 academic year a reasonable date for implementation of the increase of the ethics course hour requirement from 24 to 36? Does the Approval Committee have jurisdiction to fix an implementation date?

18. The increase in the credit hours required for the stand-alone ethics course was contemplated when the requirement was adopted. The NRRC agrees with the Approval Committee’s assessment that determining the timing of the increase was a matter within its jurisdiction. We note that the date for the increase in the required hours was discussed with the law schools prior to its implementation.

Compliance

Issue 14: should there be different consequences for “deficiency” respecting a prospective school vs. an established school?

19. In the case of both existing and proposed law school programs, a finding that the program does not comply with one or more elements of the National Requirement may lead to a finding of a deficiency with the result that the program may not be approved. In both cases, the Approval Committee works closely with the schools through its iterative

process to try to ensure that potential deficiencies are addressed and that potential prejudice to students is minimized. The NRRC is satisfied that this is an appropriate approach.

Process

Issue 28: should an approach be developed for capturing “emerging issues” (i.e. matters not within contemplation of the National Requirement)? Should this include an annual meeting of the Approval Committee and the Law Deans to discuss emerging issues?

20. The mandate of the Approval Committee makes specific reference to a role in enhancing “the institutional relationship between law societies and law schools at a national level.” In the view of the NRRC determining what form such efforts might take is a matter within the jurisdiction of the Approval Committee. We note, however, that it is important for the Approval Committee to advise the Federation Council of any such efforts and to coordinate those efforts and activities with others that may be undertaken by the Federation to sustain and enhance the positive relationship that exists with the legal academy.

Issues on which the NRRC was asked by the Approval Committee to provide input and/or guidance

21. Engagement with the Approval Committee was an essential element of the process adopted by the NRRC for its initial review of the National Requirement. The NRRC sought the views of the members of the Approval Committee on each of the issues under consideration (except those relating uniquely to the National Committee on Accreditation). On some issues, although the Approval Committee had reached its own conclusions about whether or how to address the specific issue, it sought the input of the NRRC rather than suggesting that the issue be removed from consideration.

Competencies

Issue 2b: consider questions/issues with the required ethics course content and approach.

- i. **Is the definition of “course” relating to the ethics and professionalism requirement appropriate/adequate?**
- ii. **Is it within the Review Committee’s mandate to consider whether the requirement for a stand-alone course for ethics should be reviewed or is an emerging issue?**

22. The Committee considered several issues related to the ethics requirement, including whether the requirement for a stand-alone ethics course should be reconsidered. After conferring with the Approval Committee, the NRRC concluded that no changes are required at this time.

Issue 3: In determining whether a school is meeting the required competencies, does the Approval Committee have the mandate to consider the method of evaluation used in the course (e.g. Pass/fail versus letter/mark grading)? If not, should it?

23. This issue was first raised by the Approval Committee itself, but members of the Approval Committee subsequently advised the NRRC that they had concluded that consideration of the evaluation method used by the various law programs for their respective ethics courses would be inappropriate. The members of the NRRC agree with this conclusion.

Process – Mandate

Issue 17: is completion of an annual report form to assess compliance the appropriate approach? Are there any improvements to the reporting form that should be made that go beyond the Approval Committee's mandate to introduce?

24. The assessment of law program compliance with all aspects of the National Requirement is based on the review of information received from the schools. The Implementation Committee directed that this information be provided through an annual report for each law school program. The NRRC considers that turning to other sources of information, whether instead of or in addition to the annual report would be a significant shift in the approach to Law program approval recommended by the Task Force and approved by the Federation Council and the law societies. It was suggested by the Approval Committee that relying on other sources of information might also be perceived negatively by the legal academy as it could suggest a lack of confidence in the information provided by the law schools.
25. The approval process as currently structured is an iterative one involving a back-and-forth dialogue between the Approval Committee and each individual law school as necessary. The Approval Committee can and has made changes to the annual law school report form both in the interests of clarity and to improve the quality of information it receives. As mentioned above and discussed in more detail below, the members of the NRRC recognize that the decision to adopt a process based on information provided by the law programs themselves, rather than one using more objective sources of information such as site visits, presents challenges for those doing the assessments. We do not believe, however, that it would be appropriate at this time to make fundamental changes to the approval process.

Additional Issue: would it be appropriate for the Approval Committee to review pass/fail rates from licensing exams as part of its approval process?

26. During the course of the NRRC's review of the National Requirement, the Approval Committee expressed an interest in obtaining information from the law societies (where available) on the pass/fail rates of students from the various law school programs across the country. Members of the Approval Committee advised that they were concerned that the annual reports upon which assessments are based do not provide sufficient information on the strengths, weaknesses or overall effectiveness of the law programs. They suggested that a review of pass/fail data from law society bar admission assessments might provide objective, supplementary information.
27. Members of the NRRC have concerns about what would be revealed by data from exams that are not necessarily intended to assess the competencies in the National Requirement. In discussions with the Approval Committee, however, it was suggested that the real value in the data would be as a tool to help the Approval Committee assess whether it is asking the right questions of the law schools. On the understanding that pass/fail rate data would not be used to assess program compliance with the National Requirement, but rather for the limited purpose of assessing the Approval Committee's own processes, the members of the NRRC ultimately concluded that using pass/fail rate data would not be outside the mandate of the Approval Committee.

Issue 21: are the types of matters within the Approval Committee's mandate articulated clearly enough in the Task Force and Implementation Committee reports?

- a. **Is the Approval Committee's mandate with respect to general admission requirements clear?**

Issue 22: how should questions the Approval Committee does not have the authority to answer itself be resolved?

Issue 23: is there an appropriate mechanism through which the Approval Committee may seek assistance with urgent issues? If not, how can one be designed to be nimble enough to respond effectively and expeditiously to urgent issues?

28. As it does with all Federation committees, the Council plays a supervisory role over the Approval Committee and in that role has the power to interpret the Approval Committee's mandate. Council's oversight role also suggests that it is an appropriate forum for the Approval Committee to address issues that may arise between the periodic reviews. While it has been suggested that the Council is not a sufficiently nimble forum for this purpose, the Council meets a minimum of four times per year and can and does meet outside of the usual schedule to address urgent or pressing matters as required. The NRRC is persuaded that the Council is the appropriate forum for the Approval Committee to raise issues, including those it considers urgent, between the prescribed periodic reviews of the National Requirement.

29. In the view of the NRRC, although specific questions were posed about aspects of the mandate of the Approval Committee, the nature of the questions suggests that more general guidance would also be helpful. The NRRC is not proposing that the mandate of the Approval Committee be changed, but we have concluded that clarification of the committee's mandate is required. While we consider that the power to make recommendations is inherent in the mandates of all Federation committees, we recommend that the Council of the Federation confirm that the Approval Committee may raise matters on its own initiative and make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.
30. It may be that in recommending that the National Requirement be subject to regular review, both the Task Force and the Implementation Committee intended that those periodic reviews would be sufficient to address any issues in the application or content of the national standard that might arise. The members of the NRRC recognize that amendments to the National Requirement require the approval of both the Federation Council and the individual law societies. We also believe that it is important to engage the legal academy in Canada before making changes to the standard that common law programs are required to meet. These factors suggest that amendments to the national standard should be infrequent and considered only after an appropriate consultation process. It is our understanding that the members of the Approval Committee would agree with this approach. In suggesting that the Federation confirm that the Approval Committee has the power to recommend changes we are simply acknowledging that with their collective expertise the members of the committee responsible for assessing compliance with the National Requirement are well placed to identify issues that should be addressed between the periodic reviews of the standard.
31. The NRRC recommends an additional clarification of the mandate of the Approval Committee to confirm that it has jurisdiction over its own processes.
32. The mandate grants the committee the specific power to make changes and revisions to the annual law school report and also permits it to "make any necessary changes, additions or improvements to its processes as it determines necessary to ensure the effective implementation of the national requirement, provided these reflect the purposes described in [the Implementation Committee] report." We also noted that in recommending that there be periodic reviews of the national standard, the Implementation Committee stated that these reviews would not preclude "adjustments and changes to the compliance process in the years between evaluations."² In indicating that the Approval Committee could make changes to the compliance process between periodic reviews, the Implementation Committee added the words "as set out in the mandate" of the Approval Committee. It is the view of the NRRC that, notwithstanding this reference, read together these provisions should be understood to give the Approval Committee jurisdiction over its processes, including determining the appropriate

² Common Law Degree Implementation Committee Final Report ("Implementation Committee Report"), recommendation 17.

frequency with which law school programs are assessed. As noted above, this does not require an amendment to the mandate of the committee. In our view Council's confirmation of this interpretation would be sufficient.

Issues the NRRC was required to resolve including those resulting in specific recommendations

33. While many of the issues identified for the initial review of the National Requirement were resolved by the Approval Committee on its own or with input from the NRRC, others were either more challenging or require consideration of possible amendments to the national standard. These include issues related to specific competencies, law program learning resources, and the frequency of the approval process. The Committee's conclusions and recommendations on these issues follow.

Competencies

Issue 1: does the competency currently stated as “legal and fiduciary concepts in commercial relationships” require clarification? If so, how should it be stated? Should this continue to be required competency?

34. The NRRC recommends that the competency “legal and fiduciary concepts and commercial relationships” (3.3 b.) be deleted from the National Requirement.
35. The fiduciary concepts competency is one of the Substantive Legal Knowledge competencies. The full provision reads

3.3 Private Law Principles

The applicant must demonstrate an understanding of the principles that apply to private relationships, including:

a. contracts, torts and property law; and

b. legal and fiduciary concepts in commercial relationships.

36. The proposal to include this competency in the National Requirement was controversial from the outset as noted in the final report of the Task Force:

The Task Force has received the most comment on the inclusion of the competency now described as “legal and fiduciary principles in commercial relationships.” The concern has been raised that unlike the other requirements that simply restate current components of the curricula or are more generic in their description, this competency appears to reflect a more specific content choice. The suggestion has been that this opens up a potentially endless debate on why other areas such as family law, estates, or labour law have not been included.

37. In its report the Implementation Committee included the following explanation of the competency:

This competency contemplates a conceptual overview of business organizations, including fiduciary relationships in a commercial context. It is open to schools to address this competency through a course in corporate law or in other ways.

38. Members of the Approval Committee advised that the provision is poorly understood and that law schools have struggled to ensure that they are capturing it correctly in their various course offerings. To address this issue the NRRC discussed with the Approval Committee the possibility of restating rather than deleting the competency. The challenge however proved to be in defining the competency with sufficient clarity while avoiding narrowing it in such a way as to effectively require law schools to make mandatory a course in business organizations.
39. Although we recognize that an understanding of fiduciary obligations is important for the practice of law, the members of the NRRC consider it equally important to ensure that the provisions in the National Requirement are clear and that compliance can be easily determined. In addition, the members of the Committee are mindful of the overall approach of the National Requirement which focuses on competencies rather than on specific course requirements. This led the NRRC to conclude that the appropriate response to the difficulties that have been experienced in applying the fiduciary concepts competency requirement is to amend the National Requirement to remove it. We note that the National Requirement is intended to ensure that graduates of Canadian common law programs acquire certain core knowledge competencies, but that the competencies included in the national standard do not represent an exhaustive list of all those that are useful.

Academic Program

Issue 4: does the term “three-year law degree – presumptively 90 course credits” require further clarification beyond the Approval Committee’s explanation and application of it in the context of the joint degrees? The use of the term “presumptive” suggests a different and lower number of course credits could apply in exceptional circumstances. There also remains uncertainty about the meaning of a “credit” and what definition will capture practices across faculties within a university and across faculties in different universities.

40. Section C 1 of the National Requirement sets out the academic program criteria that must be met by approved Canadian law programs. It includes the following requirement for the length of the academic program

1. Academic Program

1.1 The law school's academic program for the study of law consists of three full-time academic years or equivalent, which presumptively, is 90 course credits.

41. The qualifier “presumptively” was added to the National Requirement by the Implementation Committee as a clarification of the course credits that would be required to be considered equivalent to three-full time academic years of study. In its report the Implementation Committee indicated that “in law schools currently offering the common law degree the ‘equivalent in course credits’ to three full-time academic years presumptively means 90 credit hours.”³
42. The Approval Committee advised, however, that the qualifier has proven unhelpful and contributes to a lack of clarity in how a three-year degree is defined. The members of the Approval Committee suggested that the word “presumptively” could lead to an interpretation that fewer than 90 course credits might be acceptable. We note that the members of the Approval Committee considered the question of the minimum number of course credits when it developed guidelines for the application of the National Requirement to joint and dual degree programs and concluded that 90 credits was the appropriate minimum.
43. The members of the NRRC agree with the Approval Committee that it is important that the provisions of the National Requirement be as clear as possible. As 90 course credits is intended to be the minimum, the NRRC has concluded that it is important to eliminate any ambiguity created by the term “presumptively.” We therefore recommend that the provision be amended to read as follows

1. Academic Program

1.1 The law school's academic program for the study of law consists of three full-time academic years or equivalent, which is 90 course credits.

Learning Resources

Issue 8: as currently framed, is [the learning resources category] a useful category to be included in the National Requirement? If not, why not?

Issue 9: is the information currently sought within each learning resource category appropriate and useful? If not, why not and what information should be sought? For example,

- a. **What is the purpose behind asking for the student/professor ratio? Is there a better way to gather information?**
- b. **Libraries – Is it necessary to have bricks and mortar?**
- c. **What is the impact of insufficient budgets or deficits or increased budget pressures beyond law school’s control on determination of learning resources compliance?**
 - i. **Specifically, how might the following be taken into account?**
 1. **Reduced government funding.**

³ Implementation Committee Report pages 19-20.

2. caps on tuition or government approval required for tuition increases.
- ii. Could the impact of these factors be evaluated through an examination of budget dollars to student ratios?
- iii. Is this something the Approval Committee could proactively address with law schools to understand the issues for individual schools?

Issue 10: consider the following issues:

- a. What is meant by “irreducible minima?” Is this an absolute or relative assessment?
- b. How can resource requirements be assessed in the context of a school’s particular objectives and still allow for some objective criteria across schools?

Issue 11: is there room for the Approval Committee to monitor learning resources reporting requirements by considering the total number of students in the context of student to faculty ratio and budget to student ratio? If there is, is it necessary to consider benchmarks for what constitute appropriate ratios?

Additional issue: is a requirement that faculty members be engaged in research implicit in the National Requirement? Is it reasonable to conclude that there must be a minimum of 12 tenured or tenure-track faculty in every law program?

Issue 12: in assessing compliance with learning resource requirements, should the considerations continue to be the same for established schools and proposed new schools?

Additional issue: what options should be available for graduates of programs that are not approved due to deficiencies in learning resources?

44. As noted above, the learning resources requirements have proven to be the most difficult components of the National Requirement for the Approval Committee to apply. The basic requirement is that each law school program be “adequately resourced to enable it to meet its objectives.” The full text of the provision reads:

2. Learning Resources:

2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.

2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.

2.3 The law school has adequate information and communication technology to support its academic program.

2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

45. This provision was included in the National Requirement in response to submissions made by the Council of Canadian Law Deans (“CCLD”) to the Task Force. In accepting the CCLD’s suggestion that the National Requirement should make reference to learning resources in addition to identifying knowledge and skills competencies, the Task Force emphasized that evaluating each school’s compliance with the learning resources requirement would be linked to a program’s specific “educational mission.” The Implementation Committee agreed with this approach, noting that it allowed “different schools to exist that require different levels of resources.”⁴
46. Although the Task Force suggested that “certain irreducible minima” are required to give law societies the confidence that graduates of a program have acquired the specified competencies, both the Task Force and the Implementation Committee declined to be prescriptive in specifying the resources required. The Implementation Committee report focused on the information that law schools would need to provide, noting that the “goal is that law schools provide sufficient information to allow the Approval Committee to understand the learning resources context within which the national requirement is being met in each school.”⁵
47. This open-ended approach to identifying the required learning resources presents challenges for the Approval Committee. However, the NRRC has concluded (concurring with the members of the Approval Committee) that despite the challenges there is value in continuing to assess law program compliance with the requirement that the programs have adequate resources.
48. Members of the Committee considered different approaches to resolving the challenges associated with the learning resources requirement, including the development and application of benchmarks (minimum standards) and reliance on provincial regulation of degree granting programs.
49. As noted above, neither the Task Force nor the Implementation Committee elected to set specific standards for learning resources, but the Task Force did conclude “that there are certain irreducible minima that must be maintained if law societies are to accept the law degree as evidence that the competency requirements are being achieved.”⁶ This reference to “irreducible minima” led the Approval Committee to consider developing benchmarks to use in the assessment of a program’s learning resources. To date this

⁴ Implementation Committee report, page 26

⁵ Implementation Committee report, page 27

⁶ Task Force report, page 42

has involved looking at the ratios of students to faculty, library resources, budget dollars etc. to determine whether it is possible to establish minimum benchmarks for these learning resources. The only specific benchmark suggested by the Approval Committee was a requirement for a minimum of 12 tenured or tenure-track faculty.

50. In considering whether the use of benchmarks would be appropriate, members of the NRRC noted the focus in this section of the National Requirement on a program's specific objectives and needs. It is the view of the Committee that in light of the references to the objectives of the school, the needs of its academic program, and its teaching, learning and research objectives, the learning resources requirement must be seen as a subjective, relative standard that does not lend itself to defined benchmarks.
51. The NRRC is also of the view that the learning resources requirement must be interpreted in a manner consistent with the mandate and resources of the Approval Committee. The Approval Committee's mandate does not contemplate a resource-intensive accreditation process. Rather, as is also clear from the reports of the Task Force and the Implementation Committee, what was contemplated was a light-touch process that relies on information provided by the schools. This factor lends support to the NRRC's conclusion that the adequacy of a program's learning resources ought not to be measured by reference to benchmarks or minimum standards.
52. The members of the NRRC considered the possible merits of replacing the learning resources requirement with a provision stipulating that only those law programs offered by universities regulated by a Canadian provincial or territorial government are eligible for approval.
53. A number of possible advantages of such an approach were identified, foremost among them the promise that relying on government regulation would relieve the Approval Committee of the difficult task of assessing the adequacy of the resources of the various law programs across the country. Other potential advantages identified included avoiding problems that might arise should a program be denied approval due to a finding that its resources were insufficient, including potential legal challenges and what to do with graduates. It was also suggested that such an approach would address concerns raised by members of the Approval Committee about the possibility of requests for approval from offshore schools for Canadian common law programs.
54. An examination of provincial regulation of university degree-granting programs across Canada revealed that every jurisdiction has some sort of approval process or government oversight, supplemented by a system of cyclical reviews administered by the universities themselves. There is, however, considerable variation from jurisdiction to jurisdiction. It is also unclear how much focus there is on learning resources in either the initial approval process or subsequent cyclical reviews.

55. The NRRC noted that replacing the learning resources requirement with a requirement that programs be offered in provincially regulated universities would be a significant change in approach. Combined with concerns about whether provincial oversight is either sufficiently consistent or sufficiently focused on learning resources this factor led the NRRC to conclude that it would not be an appropriate replacement for the existing requirement. (The question of applications for approval from offshore law schools was identified as an emerging issue and so was not on the list of issues to be directly addressed by the NRRC. As such, the Committee takes no position on whether a provision requiring programs to be offered through universities regulated by a Canadian provincial or territorial government would be an appropriate response to that issue.)
56. The Committee is of the view that it is important to understand the assessment of compliance with the learning resources requirement as a contextual exercise based on the specific objectives of each program. Notwithstanding the reference in the Task Force report to “irreducible minima” the overall language of the learning resources provisions makes it clear that rather than having to meet certain defined or absolute criteria, programs must be required to demonstrate to the Approval Committee that their learning resources are sufficient for them to meet their objectives. As a result, the members of the NRRC have concluded that the development and use of benchmarks or minimum standards, for example the suggestion of a required minimum number of tenured or tenure-track faculty, is not consistent with the overall approach to program approval established by the Task Force and the Implementation Committee.
57. The NRRC recognizes that the members of the Approval Committee have found the assessment of learning resources difficult. We are of the view that some of the difficulty experienced by the Approval Committee may be related to its search for objective criteria against which to measure the resources available to individual law programs. Both the language of the requirement and the different ways in which programs understand and describe their resources make it very difficult to articulate meaningful minimum requirements. As noted above, the NRRC has concluded that it is neither necessary nor appropriate to do so.
58. The members of the NRRC believe that the Approval Committee members possess the collective expertise to critically examine the information provided by each program to make a fair assessment of whether the resources available to a program are sufficient for it to meet its specific objectives while also ensuring that graduates acquire the competencies set out in the National Requirement.
59. The conclusions of the NRRC set out above effectively answer most of the specific questions related to learning resources that were before the committee for consideration. However one question – the consequences of a finding of a learning resources deficiency – needs to be addressed directly.

60. While it is possible to remedy a deficiency related to any of the competencies set out in the National Requirement by requiring graduates to demonstrate competence through the NCA process, it is less clear what remedy might exist in the event that a program is not approved due to a learning resources deficiency. The NRRC recognizes that a finding by the Approval Committee that a program is deficient due to issues related to learning resources would have a profound impact on graduates even though such a deficiency is, by its nature, beyond the control of individual graduates to either avoid or remedy. To be fair to the programs and their students, before refusing to approve a program due to a learning resources deficiency the Approval Committee must provide clear notice to the program of the precise nature of the deficiency, the action required to rectify the problem, and the deadline for doing so. Ensuring that a school understands the nature of the deficiency and how to fix it, and that sufficient time is given to permit the program to remedy the problem will serve the interests of fairness and will also minimize potential prejudice to students enrolled in the program.

Issues related to the NCA

61. The list of issues generated for the NRRC to consider included the following two related to the application of the National Requirement to the assessment of the credentials of internationally trained lawyers and law graduates.

Issue 18: how should the NCA assess the competencies that cannot be satisfactorily tested by the NCA's written examinations, including legal research skills?

Issue 19: to what extent is the learning resources requirement practically applicable in the NCA context? If it is not, what are the implications for the National Requirement, if any?

62. The NRRC sought the views of the members of the NCA on these issues. We were informed that the NCA revised its assessment policy in anticipation of the National Requirement coming into force in January 2015. The relevant provisions of the policy are set out below:

1.3.2.2.1 Institutional Requirement

An Applicant must have obtained his or her legal education at an institution that is approved, recognized, accredited or otherwise accepted by the authority, or its delegate, responsible for the regulation of the legal profession in the Relevant Jurisdiction.

...

1.3.2.3.2 Legal Research

The Applicant must have demonstrated the ability to carry out legal research by doing the following:

- (a) identifying legal issues;*
- (b) selecting sources and methods and conduct legal research relevant to Canadian Common Law;*
- (c) using techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues in a Canadian Common Law context;*
- (d) identifying, interpreting and applying results of research; and*
- (e) effectively communicating the results of research.*

Applicants given credit for their legal education will be deemed to satisfy this requirement.

1.3.2.3.3. Oral and Written Communications

An Applicant must demonstrate the ability to communicate clearly in English or French. In particular, the Applicant must demonstrate the ability to:

- (a) identify the purpose of the proposed communication;*
- (b) use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and*
- (c) effectively formulate and present well-reasoned and accurate legal argument, analysis, advice or submissions.*

The NCA will consider the Applicant to have demonstrated the required competence in English or French and will not require the Applicant to complete the test prescribed below if:

- (a) the language of instruction of the Applicant's legal academic qualifications was English or French, and*
- (b) such qualifications were obtained in a country where English or French is an official language.*

In the event that an Applicant does not meet the requirement set out above, the Applicant will be required to complete one of the following:

- (a) For English, the International English Language Testing System (IELTS) test, and obtain a minimum score of 7.0 across all of the following elements: writing, speaking, reading and listening.*
- (b) For French, TESTCan, and obtain a minimum score of 4.5 across all of the following elements: writing, speaking, reading and listening.*

The Managing Director will, upon receipt of satisfactory evidence, grant an Applicant an exemption from the English or French language competency requirement if the Applicant can establish that the Applicant has completed the prescribed test within the two years immediately preceding the NCA's receipt of the application and has obtained the minimum scores set out above.

63. NCA members noted that the assessment policy addresses communication and research skills, and includes a specific standard for measuring communication skills. At present, however, the policies do not provide for meaningful assessment of research skills, which cannot be satisfactorily addressed through the examinations that NCA candidates must pass to address gaps in their substantive legal knowledge.
64. It is the consensus of the members of the NCA that it would be possible to design an on-line module to assess research skills. The development of such a module is, however, on hold pending the outcome of a comprehensive review of the NCA that is currently underway.
65. While the outcome of the NCA review cannot be known, it is expected to result in recommendations to address the underlying question of how best to ensure that NCA applicants are successful in the bar admission processes and in legal practice. In the circumstances the NRRC concluded that the question of how the NCA should assess such skills as research and communications should be deferred pending the outcome of the review process.
66. The members of the NCA suggested that the learning resources requirement is appropriately addressed through the NCA policy of recognizing only those law degrees “approved, recognized, accredited or otherwise accepted by the authority, or its delegate, responsible for the regulation of the legal profession in the Relevant Jurisdiction” (see section 1.3.2.2.1 above). The NRRC agrees with the view of the members of the NCA that where application of the National Requirement to the NCA poses practical limitations some flexibility is required. We are satisfied that the NCA policy of relying on the approval, recognition, or accreditation processes in the jurisdiction in which the candidate obtained their legal training is a reasonable substitute for the learning resources requirement.

Emerging issues

67. The NRRC’s Terms of Reference include a requirement for the committee to “identify for Council’s information and future planning emerging issues relevant to the National Requirement.” The NRRC was not tasked with the job of considering or providing recommendations on those issues; our role is limited to their identification.
68. With input from the members the Approval Committee, the NRRC has identified the following issues, many of which are already being explored by some law schools, that, in our view, the Federation and the law societies will need to consider in the future:

Institutional Structures:

- Would there be merit in establishing a forum for discussing emerging issues and fostering collaboration and cooperation between the regulators and the legal academy and other justice system stakeholders?

Relationship between the National Requirement and the Content of Legal Education:

- In what ways might the National Requirement and the approval process respond to innovations in pedagogy and evaluation?
- In what ways might the National Requirement respond to the education-related recommendations of the Truth and Reconciliation Commission Report?
- Can or should the National Requirement address competing and coexisting legal traditions, in particular indigenous legal traditions?
- Can or should the National Requirement include additional competencies (for example, cultural, linguistic, technology-related)?

Relationship between the National Requirement and Delivery of Legal Education:

- In what ways might the National Requirement respond to technology-supported learning? Should the requirement that two thirds of instruction must be in person be reconsidered? If the requirement remains, should face-to-face instruction be understood to include the use of interactive (synchronous) digital instruction methods, for example video conferencing?
- Can or should the National Requirement accommodate legal education via distance learning?
- Are there particular issues associated with “Flex-time programs” that are relevant to the National Requirement?

Approval and Compliance:

- Should the Approval Committee be able to consider “exceptions” to what would otherwise be a non-compliant program, in cases, for example, of innovation or experimentation? If so, should criteria be developed and approved by the Federation and the law societies to govern such exceptions? If not how should applications for approval of innovative and/experimental programs be addressed?
- How should potential applications for approval from freestanding law programs (i.e. those not associated with a university), off shore law schools, specialized law schools and/or for-profit law schools be handled? Does the National Requirement need to be clarified or amended in anticipation of such applications?

- What impact is the reduction in funding for Canadian law schools having on the ability of law programs to meet the National Requirement?

Recommendations

69. As noted earlier in this report, when the NRRC was established the National Requirement had only recently come into force. In the circumstances, the NRRC was not asked to undertake a comprehensive review of the national standard, but rather was asked to focus on those issues that had arisen in the early implementation period. Most of those issues related not to the content of the National Requirement, but to its implementation. Many of the issues identified for consideration in the NRRC's initial review were within the jurisdiction of the Approval Committee to resolve on its own. Others required advice from the NRRC or a decision of the Committee. Our consideration of the issues has, however, led the NRRC to conclude that two amendments to the National Requirement are required:

- deletion of "legal and fiduciary concepts in commercial relationships" from the list of required private law principles set out in B. Competency Requirements Paragraph 3.3(b); and
- removal of the word "presumptively," from paragraph 1.1 of section C. Academic Program so that the provision would read, *"The law school's academic program for the study of law consists of three full-time academic years or equivalent which is 90 course credits."*

70. In addition, as discussed at paragraphs 28-32 above, the NRRC is recommending that the Council of the Federation confirm that the mandate of the Approval Committee gives it control over its own process, including the timing of the review cycle, and the power to make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.

71. Although the proposed changes to the National Requirement are not extensive and do not add to the requirements that graduates of common law programs must meet, the members of the NRRC considered it important to provide an opportunity for interested stakeholders to comment on the proposed amendments. We therefore circulated the report to the law societies, the CCLD, the Canadian Association of Law Teachers and the Canadian Association for Legal Ethics inviting written comments on the two amendments set out above until May 27, 2017. No feedback was received.

72. The NRRC will be submitting its final recommendations to the Council of the Federation for approval at its June 21, 2017 meeting. To ensure that the academy and the Approval Committee have sufficient time to adapt as necessary, the NRRC recommends that the amendments be implemented no sooner than January 2018.

TERMS OF REFERENCE FOR THE NATIONAL REQUIREMENT REVIEW COMMITTEE

1. A Federation of Law Societies of Canada Committee is established to be known as the National Requirement Review Committee (“the Review Committee”).
 - a) Consideration of a Possible Non-Discrimination Provision**
2. The Review Committee will consider and make recommendations to Federation Council on whether to include a non-discrimination provision in the National Requirement and if so in what form. The Review Committee will use its best efforts to complete its report with recommendations by the last quarter of 2015.
3. As part of its process, the Review Committee will report to Council no later than May 2015 with a proposed strategy and work plan for accomplishing its mandate on the non-discrimination provision, including ,
 - a. a broad outline of the questions/issues it proposes to address and in what manner;
 - b. an estimate of the financial and other resources it requires to accomplish its work plan and mandate;
 - c. plans for ongoing engagement with representatives of Trinity Western University, the Canadian Bar Association, the Council of Canadian Law Deans, the legal academy and other key stakeholders;
 - d. a proposed consultation process, including,
 - i. whether it will prepare a consultation report to facilitate the process;
 - ii. whether the Committee will consult in person, by written submission or both;
 - iii. with whom it plans to consult how it will accomplish that goal given time and other constraints; and
 - iv. a timeline for the consultation process.
 - e. a proposed schedule of substantive interim progress reports to be provided to Council throughout 2015 leading up to the delivery of the Review Committee’s final report.

b) National Requirement Initial Evaluation

4. The Review Committee will undertake an initial evaluation of the National Requirement with a focus on identifying and addressing immediate issues that have become evident as part of early implementation
5. As part of its process, the Review Committee will report to Council no later than May 2015 with a proposed outline for the initial evaluation, including the timeline, process and resource requirements for the review. In developing the work plan, the Review Committee will consider the input of the Approval Committee.
6. The Review Committee will provide interim progress reports to Council. To the extent issues arise on which the Review Committee recommends prompt action, recommendations may be brought to Council as part of the Review Committee's interim reports.
7. Without limiting the nature of the Review Committee's final report on the initial evaluation, the report should,
 - a. identify and address issues that have arisen to date in applying the National Requirement;
 - b. consider components of the National Requirement that require more definition or variation to enable implementation to occur more effectively;
 - c. consider aspects of the recommendations that have not yet been implemented and how to advance those components; and
 - d. identify for Council's information and future planning emerging issues relevant to the National Requirement.

Review Committee Structure

8. The Review Committee will have eight members as follows:
 - a. One member with experience in law society regulation who shall be the Chair and who shall not act in a representative capacity for any law society.
 - b. Four members with experience in law society regulation, four of whom shall be appointed to represent law societies in common law jurisdictions served by at least one law school that offers a common law program. One such member shall be named in respect of each of the following regions; British Columbia, the Prairie region, Ontario and the Atlantic region.
 - c. Two members with experience in the legal academy in Canada.
 - d. One member who is a law society senior staff member with specific expertise in admissions-related issues.

9. The Chairs of the Approval Committee and the National Committee on Accreditation or his or her respective designates will be appointed to the Committee ex officio without voting rights, to ensure that there is ongoing communication and advice between the Approval Committee, the National Committee on Accreditation and the Review Committee.
10. The Chair of the Review Committee will be one of the four law society members. The Federation Executive will appoint the Review Committee members and name the Chair.
11. To facilitate the Review Committee's accomplishment of its mandate its membership should include those with a range of experience with the issues under consideration as well as those who bring fresh perspectives to the discussion. The following qualifications should be represented on the Review Committee, although it is not necessary that each member possess all the qualifications:
 - a. Institutional knowledge respecting law societies and the Federation and an understanding of regulation of the legal profession and law society mandates.
 - b. Involvement with and understanding of the issues relevant to the National Requirement.
 - c. Experience in the legal academy.
 - d. Familiarity with and an understanding of issues related to legal education.
 - e. Familiarity with and an understanding of the competencies required upon entry to the legal profession.
 - f. Experience in developing strategic plans and policy.
 - g. Experience in developing and conducting reviews and evaluations.
 - h. Bilingualism and diversity.
12. Subject to the Federation Executive's approval, the Review Committee is entitled and encouraged to seek assistance and additional expertise beyond its membership to assist it in accomplishing its mandate, including from within law societies, law schools, the profession, legal organizations, the public and from other subject matter experts.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

NATIONAL REQUIREMENT

2011



National Requirement

A. STATEMENT OF STANDARD

1. Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.

2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either;

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or
- b. possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.

B. COMPETENCY REQUIREMENTS

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to:

- a. identify relevant facts;
- b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;
- c. analyze the results of research;
- d. apply the law to the facts; and
- e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.

National Requirement

1.2 Legal Research

The applicant must have demonstrated the ability to:

- a. identify legal issues;
- b. select sources and methods and conduct legal research relevant to Canadian law;
- c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;
- d. identify, interpret and apply results of research; and
- e. effectively communicate the results of research.

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to:

- a. communicate clearly in the English or French language;
- b. identify the purpose of the proposed communication;
- c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and
- d. effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes:

2.1 Knowledge of:

- a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with:
 1. circumstances that give rise to ethical problems
 2. the fiduciary nature of the lawyer's relationship with the client;
 3. conflicts of interest;
 4. the administration of justice;
 5. duties relating to confidentiality, lawyer-client privilege and disclosure;
 6. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and members of the public; and
 7. the importance and value of serving and promoting the public interest in the administration of justice.

National Requirement

- b. the nature and scope of a lawyer's duties including to clients, the courts, other legal professionals, law societies, and the public;
- c. the range of legal responses to unethical conduct and professional incompetence; and
- d. the different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.

2.2 Skills to;

- a. identify and make informed and reasoned decisions about ethical problems in practice; and
- b. identify and engage in critical thinking about ethical issues in legal practice.

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including:

- a. principles of common law and equity;
- b. the process of statutory construction and analysis; and
- c. the administration of the law in Canada.

3.2 Public Law of Canada

The applicant must have an understanding of the principles of public law in Canada, including:

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;
- b. Canadian criminal law; and
- c. the principles of Canadian administrative law.

3.3 Private Law Principles

The applicant must demonstrate an understanding of the principles that apply to private relationships, including:

- a. contracts, torts and property law; and
- b. legal and fiduciary concepts in commercial relationships.

National Requirement

C. APPROVED CANADIAN LAW DEGREE

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. Academic Program

- 1.1 The law school's academic program for the study of law consists of three full-time academic years or equivalent, which presumptively, is 90 course credits.
- 1.2 The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.
- 1.3 Holders of the degree have met the competency requirements.
- 1.4 The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.
- 1.5 Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of post-secondary education at a recognized university or CEGEP.

2. Learning Resources

- 2.1 The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.
- 2.2 The law school has adequate physical resources for both faculty and students to permit effective student learning.
- 2.3 The law school has adequate information and communication technology to support its academic program.
- 2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.

NATIONAL REQUIREMENT REVIEW COMMITTEE

ISSUES FOR COMMITTEE'S POSSIBLE CONSIDERATION

DISCUSSION OF SPECIFIC COMPONENTS OF THE NATIONAL REQUIREMENT

Competencies

1. Does the competency currently stated as “legal and fiduciary concepts in commercial relationships” require clarification? If so, how should it be stated? Should this continue to be a required competency? *
2. Ethics Requirement
 - a. Is the 2017-18 academic year a reasonable date for implementation of the increase of the ethics course hour requirement from 24 to 36 and does the Approval Committee have jurisdiction to fix an implementation date?
 - b. Consider questions/issues with the required ethics course content and approach.
 - i. Is the definition of “course” relating to the ethics and professionalism requirement appropriate/adequate?
 - ii. Is it within the Review Committee's mandate to consider whether the requirement for a stand-alone course for ethics should be reviewed or is this an emerging issue?
3. In determining whether a school is meeting the required competencies, does the Approval Committee have the mandate to consider the method of evaluation used in the course? (eg. Pass/fail versus letter/mark grading). If not, should it?

Academic Program

4. Does the term “three year law degree – presumptively 90 course credits” require further clarification beyond the Approval Committee's explanation and application of it in the context of the joint degrees? The use of the term “presumptive” suggests a different and lower number of course credits could apply in exceptional circumstances. There also remains uncertainty about the meaning of a “credit” and what definition will capture practices across faculties within a university and across faculties in different universities.*
5. Is it within the Approval Committee's mandate to consider how many of the credits should be required to be taken in the law school? (in contrast to co-ops, transfers, etc.)
6. The current requirement respecting law school instruction states that “presumptively a minimum of two-thirds of instruction over the course of the law degree program must be face-to-face instruction conducted with the instructor and students in the same classroom.” The Implementation Committee's 2011 report stated that as “legal education

and delivery methods continue to evolve, the re-examination of this requirement will be appropriate and advisable.”

- a. Should the role of technology-supported learning be put on the emerging issues list or should it be left to the law schools to identify the point at which it is time to reconsider this issue?
 - b. If the presumption remains relevant, does “face-to-face” include video-conferencing/video presence or only in-person, live instruction?
7. Does the Approval Committee require further guidance to apply the provisions respecting admission requirements, which reads, “Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP?”

Learning Resources *

8. As currently framed, is this a useful category to be included in the National Requirement? If not why not?
9. Is the information currently sought within each learning resource category appropriate and useful? If not, why not and what information should be sought? For example,
 - a. What is the purpose behind asking for the student/professor ratio? Is there a better way to gather information?
 - b. Libraries – Is it necessary to have bricks and mortar?
 - c. What is the impact of insufficient budgets or deficits or increased budget pressures beyond law school’s control on determination of learning resources compliance?
 - i. Specifically, how might the following be taken into account?
 1. Reduced government funding.
 2. caps on tuition or government approval required for tuition increases.
 - ii. Could the impact of these factors be evaluated through an examination of budget dollars to student ratios?
 - iii. Is this something the Approval Committee could proactively address with law schools to understand the issues for individual schools?
10. Consider the following issues:
 - a. What is meant by “irreducible minima?” Is this an absolute or relative assessment?
 - b. How can resource requirements be assessed in the context of a school’s particular objectives and still allow for some objective criteria across schools?
11. Is there room for the Approval Committee to monitor learning resources reporting requirements by considering the total number of students in the context of student to

faculty ratio and budget to student ratio? If there is, is it necessary to consider benchmarks for what constitute appropriate ratios?

12. In assessing compliance with learning resource requirements, should the considerations continue to be the same for established schools and proposed new schools?

Compliance

13. Are the categories of “deficiency,” “concern” and “comment” sufficient for the approval process?
14. Should there be different consequences for “deficiency” respecting a prospective school vs. an established school?*
15. If the Approval Committee is encountering difficulty with a particular school’s cooperation, etc. is there a mechanism for “elevating” the issue and/or resolution of a disagreement/dispute?*
16. If a school is not approved, is the Approval Committee’s decision final? Is this clear in the Committee’s current mandate?*
17. Is completion of an annual report form to assess compliance the appropriate approach? Are there any improvements to the reporting form that should be made that go beyond the Approval Committee’s mandate to introduce? *¹

NATIONAL COMMITTEE ON ACCREDITATION (“NCA”) AND NATIONAL REQUIREMENT

18. How should the NCA assess the competencies that cannot be satisfactorily tested by the NCA’s written examinations, including legal research skills?”
19. To what extent is the learning resources requirement practically applicable in the NCA context? If it is not, what are the implications for the National Requirement, if any?
20. Should the Review Committee wait for the NCA to address questions 17 and 18 and make recommendations before it does so?

¹ The Approval Committee may “make any changes, revisions or additions to the annual law school report as it determines necessary, provided the changes, revisions or additions conform to the approved national requirement and reflect the purposes described in [the Implementation Committee] report.” Recommendation 16, Implementation Committee Report.

APPROVAL COMMITTEE PROCESS

21. Are the types of matters within the Approval Committee's mandate articulated clearly enough in the Task Force and Implementation Committee Reports?
 - a. Is the Approval Committee's mandate with respect to general admission requirements clear?
22. How should questions the Approval Committee does not have authority to answer itself be resolved?
23. Is there an appropriate mechanism through which the Approval Committee may seek assistance with urgent issues? If not, how can one be designed to be nimble enough to respond effectively and expeditiously to urgent issues?
24. Is there an appropriate process for addressing issue-specific conflicts of interest on the Approval Committee? If not, how should it be designed?
25. Given that the Approval Committee includes CCLD and Federation appointments, how are potential conflicts of interest to be addressed where the Federation and/or CCLD have stated positions on issues relevant to Approval Committee determinations?
26. In the specific case of the TWU application, if the application is re-activated, what steps would be required for the law school nominees on the Approval Committee to be able to participate? (This is in light of the previous letter from the President of the Federation indicating a perceived conflict of interest from the CCLD representatives to participate in the TWU program approval consideration.)
27. Once a school's program has received approval, should further approvals become a staff role unless there has been a change or an issue raised, in which case the Approval Committee would become involved? In the alternative, once a school is approved should there be a multi-year cycle in which, if the Dean affirms annually in writing that there have been no material changes to the program, completion of the form is not required?
28. Should an approach be developed for capturing "emerging issues?" (ie. matters not within contemplation of the National Requirement)? Should this include an annual meeting of the Approval Committee and Law Deans to discuss emerging issues?
29. How should the issue of whether a law school operating outside Canada could be considered eligible to seek program approval pursuant to the National Requirement be addressed? Is this an emerging issue?



Memo

To: The Benchers
From: Michael Lucas
Date: October 19, 2017
Subject: Strategic Plan 2018 – 2020

Attached is the material that was before the Benchers at the September meeting that outlines what the Strategic Plan aims to achieve, together with an outline of the draft Plan incorporating a series of outcomes and initiatives that can be considered for the plan. Further issues, outcomes and initiatives that have been raised will be incorporated into a further document that will be circulated at the upcoming meeting.

MDL/al

Attachments.

The Law Society

of British Columbia



Strategic Plan **2018 - 2020**

Mandate

Section 3 of the *Legal Profession Act* establishes the mandate of the Law Society

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,*
- (b) ensuring the independence, integrity, honour and competence of lawyers,*
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,*
- (d) regulating the practice of law, and*
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.*

The Law Society fulfills its mandate and implements its vision through its day-to-day operations and through its strategic initiatives.

Law Society Vision

The Law Society of British Columbia protects the public interest in the administration of justice. It does this by ensuring the public is well served by legal professionals who are honourable and competent, and brings a voice to issues affecting the justice system and the delivery of legal services.

Our Strategic Plan

This draft plan is prepared for the purposes of discussion, not approval. Items on the list may not ultimately be included in the final plan. Conversely, there may be initiatives that can be identified that are not on this list that should be included. The Law Society does not have enough resources to do everything on this draft plan.

The initiatives identified in this Plan are intended to advance the mandate of the Law Society. They represent opportunities to initiate or improve Law Society policies, visions or positions on various issues of importance facing the justice system and the legal profession.

1. Preserving and Protecting the Rights and Freedoms of All Persons

The Law Society's duty to preserve and protect the rights and freedoms of all people recognizes the Law Society's role extends beyond ensuring that individuals are well served by their lawyers. The Law Society has an obligation to speak out on issues affecting the administration of justice and to champion the rule of the law and the rights and freedoms of Canadians generally.

One of the most significant challenges in Canadian society today is ensuring that the public has adequate access to legal advice and services. In preserving and protecting the rights and freedoms of all people, the Law Society must work to find ways to make accessing legal advice more affordable and more generally available.

For too long, the justice system has been viewed as a colonial system promoting assimilation. The Law Society has to obligation to work towards the reconciliation of Indigenous societies with the Canadian justice system.

The rule of law, supported by an effective justice system, is essential to preserving and protecting the rights and freedoms of all people. The Law Society has an obligation to maintain public confidence in both the rule of law and the administration of justice by educating the public about the rule of law, the role of the Law Society and the legal profession in the justice system and the fundamental importance of the administration of justice.

In order to fulfill these obligations, the Law Society will

- Enhance **Access to Justice** and improvements to **legal aid**.

Initiatives:

- Licensing of alternate legal service providers (and obtaining the necessary legislative amendments to do so).
- Legal Aid Advisory Committee initiatives to follow up on the Law Society Vision on legal aid.

- Identifying issues within the justice system, such as document disclosure, mega trials, and advocacy skills and training that could be addressed to improve the delivery of legal services.
- Identifying alternative models through which legal services could be delivered.
- Develop initiatives concerning the **economic analysis** necessary to evaluate the cost of accessing justice and considerations relating to the cost of providing legal services.

Initiatives:

- Survey profession on cost of providing legal services
- Identify and implement **Calls to Action** relating to the legal profession from the Report of the Truth and Reconciliation Commission

Initiatives

- Truth and Reconciliation Advisory Committee work on implementing Calls to Action
- Symposium “From Truth to Reconciliation: Transforming the Law from a Tool of Assimilation into a Tool of Reconciliation” scheduled for November 23, 2017.
- Improve **public confidence in the rule of law and justice system** (including public education)

Initiatives

- Engage the Ministry of Education on high school core curriculum to include substantive education on the justice system (The Justice Education Society is doing work on this)
- Identify opportunities for publication or public education on these topics
- Strategic Litigation (Interventions and other) and government engagement.

2. Ensuring the Independence, Integrity, Honour and Competence of Lawyers

The Law Society's obligation to ensure the independence, integrity, honour and competence of lawyers is essential to the effective provision of legal advice and service.

Without independence, the public cannot be assured that lawyers are acting only in their clients' interests.

Without integrity and honour, the public cannot be assured that lawyers are discharging their role in the justice system with time-honored values of probity, honesty, and diligence.

Without competence, the public cannot be assured that the services provided by lawyers will meet clients' needs or provide value. Moreover, public confidence in the justice system would falter if the Law Society could not establish professional standards of competence for lawyers.

In order to fulfill these obligations, the Law Society will

- Set standards for effective operation of law firms and the practice of law within the firms

Initiatives

- Implement recommendations of the Law Firm Regulation Task Force

- Maintain **Effective Professional Education** programs.

Initiatives:

- Review of Continuing Professional Development requirements
 - Development of particular programs aimed at reducing prevalent ethical or misconduct concerns.

- Maintain **Effective Practice Standards** and **Practice Advice** Programs

Initiatives

- These are operational programs, but could be included as examples of what the Law Society is doing to discharge this mandate item.

- Identify ways to educate the public and the profession about the **benefits of the public's right to an independent legal profession.**

Initiatives

- Enhanced communication strategy on subjects of rule of law and lawyer independence.

3. Establishing Standards and Programs for the Education, Professional responsibility and Competence of Lawyers and of Applicants for Call and Admission

We recognize that the public expects and deserves effective regulation of the legal profession. Proper regulation of the legal profession requires setting effective standards and enforcement mechanisms to ensure applicants are properly qualified, and those who practise law do so competently, professionally and ethically. To meet that expectation, we will seek out and encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body.

In order to fulfill these obligations, the Law Society will

- Ensure the **Admission Program** remains appropriate and relevant.

Initiatives

- Examination of availability of Articling and developing a Policy and proposals on access to Articling positions and remuneration
- Examination of the effectiveness of Articling and developing proposals for the enhancement of Articling as a student training and evaluation program
- Examination of Alternatives to Articling
- Engage with universities to address **legal education needs for applicants.**

Initiatives

- Engagement with Federation of Law Societies or directly with Universities over curricula requirements for a law degree.
- Ensure lawyers receive appropriate cultural competency training (**Implementing TRC Call to Action 27**).

Initiatives:

- Establishment of TRC Advisory Committee involving recommendations to effect cultural competency training for Benchers and lawyers
- Review on cultural competency training at PLTC.

4. Regulating the Practice of Law

The regulation of the practice of law is a key function of the Law Society and reflects how the public interest in the administration of justice is protected through setting standards for the competence and conduct of lawyers. Handling of concerns and complaints made about lawyers in British Columbia, together with the operation of a fair disciplinary process for adjudicating matters and meting out, where necessary, sanctions for conduct that does not meet the standards that have been set, is an integral operational function that will continue to be met by Law Society staff and by the Hearing Panels appointed under the *Legal Profession Act* and Law Society Rules.

Beyond the operational function, however, lies important policy considerations about the nature of the standards, how and to whom are they applied and whether any new policy approaches to regulation need, as a matter of principle to be adopted and implemented through Rule changes or changes to the *Code for Professional Conduct*.

In order to fulfill these obligations, the Law Society will

- Implement **Law Firm Regulation**.

Initiatives

- Implement recommendations of the Law Firm Regulation Task Force

- Identify **regulatory initiatives to mitigate risk and prevent misconduct** and to **improve effective regulatory outcomes**

Initiatives:

- Development of a Diversion program for mental health issues
- Development of Practice Audits/Reviews
- Examination of other pro-active or outcomes focused methods of regulation

- Develop **innovation in legal services delivery** (including MDPs and ABSs and other legal service providers).

Initiatives

- Consider whether to permit ABSs and, if so, to propose a framework for regulation
- (see pro-active/outcomes focused regulation, above)
- Review 5. processes to balance **Disclosure and Privacy**

Initiatives

- Undertake an examination of Disclosure and Privacy issues relating to Law Society core functions and consider recommendations to update current practices.

5. Supporting and Assisting Lawyers, Articled Students, and Lawyers of other Jurisdictions who are Permitted to Practise Law In British Columbia in Fulfilling their Duties in the Practice of Law.

While the public interest is the focus of the work of the Law Society, the public interest is best served where, as relevant, the Law Society can support assist students and lawyers to meet the standards the Law Society has established. Disciplining those who fail in meeting standards will always be important, but such processes address after-the fact results. On the other hand, providing resources to assist lawyers and students in meeting the standards can lead to better and healthier lawyers and reduce the likelihood of incidents that will lead to a regulatory outcome.

In order to fulfill these obligations, the Law Society will

- Develop **initiatives to improve Mental Health** in the legal profession

Initiative

- Develop an integrated mental health issues review concerning regulatory approaches to discipline and admissions.
- Develop **initiatives to improve the retention rate of lawyers** in the profession, including in particular Indigenous and women lawyers.

(Past Initiatives

- Establishment of Indigenous Lawyer Mentoring Program

- Establishment of Justicia Project

DRAFT



Final CPD Review Report of the Lawyer Education Advisory Committee

Lawyer Education Advisory Committee

Dean Lawton, QC (Chair)

Sarah Westwood (Vice-Chair)

Jasmin Ahmad

Tom Fellhauer

Brook Greenberg

Micah Rankin

Phil Riddell

Tony Wilson, QC

October 18, 2017

Prepared for: Benchers

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Purpose: Discussion

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Executive Summary

Over the course of the past two years, the Lawyer Education Advisory Committee has examined and evaluated every aspect of BC’s continuing professional development (“CPD”) program. The Committee now presents its Final Report, which outlines the Committee’s consideration of the various features of the current CPD scheme and presents a set of 26 key recommendations designed to improve the overall quality of continuing professional development in BC.

As reflected throughout the Final Report, the Committee supports maintaining many of the core features of the current CPD scheme, including: the accreditation model; the 12 credit-hour requirement; existing subject matters, topics and learning modes; exemption criteria; and compliance and enforcement measures.

The Committee also proposes a number of modifications to the program. In general, these changes will result in an expansion of eligible learning activities and greater flexibility regarding how and when lawyers can satisfy their CPD credits.

Specific recommendations include: the addition of two new subject matters, including Professional Wellness, an increase in the number and type of eligible Practice Management and Lawyering Skills topics, amendments to the criteria governing CPD learning modes, and the introduction of new reporting requirements in which a portion of a lawyer’s annual credits can be carried-over to satisfy the following year’s CPD requirements.

Collectively, the recommendations contained in the Final Report reflect a more inclusive, responsive and flexible approach to CPD, and represent a new and exciting chapter for continuing legal education in BC.

Introduction

1. Over the past two years, the Lawyer Education Advisory Committee (the “Committee”) has undertaken a comprehensive review of BC’s Continuing Professional Development (“CPD”) program. The length and detail of the Final Report is reflective of the enormity

of this task, which has spanned two consecutive Committees and engaged more than one thousand lawyers in consultation.

2. In the course of the review process, the Committee addressed and evaluated every aspect of BC's CPD program. The Final Report provides a detailed examination of the various features of the current scheme and presents a set of 26 recommendations designed to improve the overall quality of the CPD program.
3. Following a brief summary of the history of CPD in BC and a general overview of the review process, program objectives and foundational design features are discussed. The Final Report then shifts to the substantive elements of the CPD program, examining eligible and ineligible subject matters and topics, before moving to an evaluation of the learning mode criteria. The Final Report concludes by addressing reporting requirements, compliance and enforcement measures and the relationship between CPD and the Truth and Reconciliation Commission's Call to Action #27.
4. Throughout the review process, the Committee has taken care to avoid the over-regulation of the CPD program and has favoured modifications that increase reliance on, and trust in lawyers to make wise CPD choices.
5. Many of the recommendations support maintaining the core elements of the current CPD program. Other recommendations propose changes that represent a more liberalized approach to continuing legal education by expanding the scope of eligible CPD activities and delivery modes and providing lawyers with more flexibility as to when and how they may satisfy their CPD requirements.
6. These 26 recommendations are now before the Benchers for discussion and decision. If adopted, the proposed changes will set the course for a new chapter of CPD in BC, one that is responsive to the evolving nature of the practice of law and what it means to be a competent and professional lawyer.

Background

History of CPD in British Columbia

7. Continuing professional development has been the subject of Benchers discussions at various junctures over the past forty years. It was not until 2006, however, that the Lawyer Education Task Force began formally considering the merits of introducing some form of mandatory professional development program in British Columbia.

8. The Task Force's work on this issue culminated in a Preliminary Report recommending the establishment of a mandatory continuing legal education program in BC.¹
9. Recognizing that the development and monitoring of education-based initiatives would be an ongoing task, the Law Society subsequently created the Lawyer Education Committee, which further refined the options for the proposed CPD program.
10. In 2007, the Lawyer Education Committee issued a detailed report recommending that each practising member of the Law Society must complete "not fewer than 12 hours per year of continuing professional development undertaken in approved educational activities that deal primarily with the study of law or matters related to the practice of law." The report included a list of approved activities that established the initial parameters of what would "count" for CPD in BC.²
11. In 2009 the Law Society of BC became the first Canadian law society to implement a mandatory CPD program.
12. The first review of the CPD program occurred in 2011, leading to a number of modifications that came into effect in 2012.³ Over the past five years, no additional changes have been made to the CPD scheme.

The 2016-2017 review process

13. In early 2016, the Lawyer Education Advisory Committee commenced a second review of the CPD program. This work has been guided by the Law Society's statutory object and duty and the initiatives set out in the Strategic Plan.
14. Section 3 of the *Legal Profession Act* (the "*LPA*") requires the Law Society to uphold and protect the public interest in the administration of justice by, amongst other things, establishing standards for the education of its members. Section 28 of the *LPA* specifically permits the Benchers to maintain and support the CPD program:

¹ This recommendation was adopted by the Benchers in November 2006. See Preliminary Report of the Lawyer Education Task Force on Mandatory Continuing Professional Development (November 2006), online at: law20society.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd_2006.pdf

² See Report of the Lawyer Education Committee on Continuing Professional Development (November 2007), online at: www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd_2007.pdf

³ Report of the Lawyer Education Advisory Committee: Continuing Professional Development Review and Recommendations (September 2011), online at: www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd-CPD_2011.pdf

Education

28 The benchers may take any steps they consider advisable to promote and improve the standard of practice by lawyers, including but not limited to the following:

(a) establishing and maintaining or otherwise supporting a system of legal education, including but not limited to the following programs:

(ii) continuing legal education;

15. Initiative 2-1(c) of the Strategic Plan identifies the review of the CPD program as an organizational priority for 2015-2017.
16. As discussed below, the 2016/2017 review process comprised three main elements: consideration of issues by the Lawyer Education Advisory Committee at regular meetings, *ad hoc* engagement with other law societies, and a two-phase consultation process.
17. The Committee utilized these forums to explore, on an issue-by-issue basis, every aspect of the current CPD scheme. Analysis of these issues is described throughout the body of the Report, and the Committee's suggested approaches are distilled into 26 key recommendations.
18. Importantly, the recommendations address both changes to the CPD scheme and proposals to maintain existing elements of the program. Several of the more detailed and operational aspects of the program – for example, the numerous criteria associated with the accreditation of different modes of CPD delivery (e.g. courses) or the procedural steps to which a lawyer must adhere in order to obtain credit (e.g. all applications for credit must be submitted through the website) – are not discussed where changes are not proposed.
19. More generally, where no modification to the program is recommended, the criteria and conditions set out in the current CPD Guidelines at **Appendix A** remain in place.

Committee meetings

20. Spanning the course of two consecutive Committees, the review process has been both lengthy and comprehensive. Supported by detailed policy analysis from the Policy and Legal Services department and input from the program's administrators, the Committee has examined every facet of the existing scheme and canvassed possible alternatives to CPD content, format, delivery and reporting.
21. Throughout, the Committee's deliberations have been lively, thought-provoking, respectful and, in some instances, divergent. Importantly, with the exception of Recommendation 22B, the Report's recommendations represent the majority view of the

Committee. On a number of issues, Committee members held opposing views. Several particularly controversial issues required the Committee to resort to a vote.

22. Where Committee members have expressed strong support for a particular minority view, dissenting opinions are highlighted in this Report.

Engagement with other jurisdictions

23. In 2009, BC became the first Canadian jurisdiction to implement a mandatory CPD requirement for its lawyers. Eight years later, every Canadian law society requires members to engage in continuing professional development activities as a condition of practice. This expansion and diversification of CPD models across the country has produced a range of approaches against which to compare and evaluate the merits of BC's CPD program.
24. Accordingly, Law Society staff have engaged in *ad hoc* discussions with other provinces and territories, as well as looking to mandatory continuing legal education ("MCLE") requirements in the United States. Many of the Final Report's recommendations are informed by this comparative analysis. For example, discussions relating to accrediting wellness activities were greatly enhanced by consideration of how other legal regulators have incorporated this subject matter into their CPD and MCLE schemes.

Consultation with the profession

25. The third prong of the review process involved extensive consultation with the profession.
26. In June 2016, the Committee developed an email survey administered to all practising members of the Law Society (the "2016 Survey"). The goal of the survey was to elicit feedback about the value of, and potential changes to the current CPD program.
27. The 2016 Survey was completed by 1,237 members, making it statistically valid [see **Appendix B**]. Thousands of individual comments were provided to both specific and general questions. For example, there were over 700 written comments in response to the broad question of how CPD could be improved and over 350 comments in response to the question addressing the accreditation of learning activities related to lawyer wellness. The survey results were an important element of the Committee's discussions and helped shape a number of the recommendations presented in the Final Report.
28. A second round of consultation occurred over the summer of 2017 (the "2017 Consultation") focusing on over 60 institutions and organizations with potential interest in changes to the CPD program. Stakeholders were asked their views on the proposed

changes and for general suggestions as to how the CPD program could be improved [see **Appendix C**]. Stakeholders were also invited to request an “in person” meeting with the members of the Lawyer Education Advisory Committee and Law Society staff.

29. Twenty-three of these stakeholder groups provided the Law Society with written comments and one participated in a face-to-face meeting. Collectively, the feedback in the 2017 Consultation indicated widespread support for the proposed changes and assisted the Committee in finalizing its recommendations.
30. References to the feedback provided through both phases of the consultation process are provided at various points throughout this Report.

Purpose of the Final Report

31. The purpose of the Final Report is two-fold. First, it aims to provide the Benchers with an overview of the issues and considerations that have shaped the Committee’s review of the CPD program over the past two years. Second, the Report presents a series of recommendations, which are designed to improve the overall quality of the program. Each recommendation is underpinned by detailed policy analysis and accompanied by supporting rationale.
32. Collectively, the 26 recommendations create a roadmap for the CPD program moving forward, one that recognizes both the value and necessity of the Law Society providing accessible, flexible, relevant and innovative CPD options to BC’s lawyers.

Program objectives and key design features

Continuation of the CPD program

33. The Committee began by considering the threshold issue of whether the CPD program should be continued. As part of these early deliberations, past Law Society reports and academic commentary presenting arguments for and against mandatory continuing professional development were reviewed.⁴ The Committee also noted that every Canadian law society has adopted of some form of CPD program.

⁴*Supra* note 1-3. See also, Lalla Shishkevish, “A Little Background on Mandatory Continuing Legal Education Through the Lens of the US MCLE Experience” (August 2015) and Chris Zielger and Justin Kuhn, “IS MCLE a Good Thing? An Inquiry into MCLE and Attorney Discipline”, online at: www.clereg.org/assets/pdf/Is_MCLE_A_Good_Thing.pdf

34. Although there is limited empirical evidence of a direct correlation between CPD participation and improved lawyer competence, many of the arguments in favour of mandatory continuing legal education resonated with the Committee. Key amongst these is the notion that CPD raises competence by exposing lawyers to new developments in theory and practice and renewing basic knowledge and skills. Given that law is constantly in flux, ensuring education is of a continuing nature is vital to lawyers remaining competent over the long-term.
35. The Committee also recognizes the relationship between the CPD program and the Law Society's duty to protect the public interest by establishing standards of education for its members.⁵ The CPD program is an important part of upholding this statutory mandate and sends a strong message to both the profession and the public that the Law Society is committed to establishing, maintaining and enhancing standards of legal practice in the province.
36. Notably, 83% of respondents to the 2016 Survey indicated they are in favour of continuing the requirement to complete CPD.
37. Based on these considerations, the Committee recommends that the CPD program be continued in British Columbia.

Recommendation 1: The Law Society will maintain a continuing professional development requirement that must be satisfied by all practising BC lawyers.

Purpose statement

38. Before engaging in a review of the structure and content of the CPD program, the Committee revisited the CPD purpose statement, which has not been re-evaluated since the introduction of the program. The current purpose statement reads:

The goal of a mandatory continuing professional development program 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

39. Reconsideration of the purpose statement is warranted for a number of reasons. First, the purpose statement serves as an important point of reflection when considering

⁵ See the *Legal Profession Act*, s. 3.

modifications to the current CPD scheme. Establishing clear goals and objectives should, in significant measure, drive recommendations regarding changes to the program.

40. Second, a clear purpose statement improves understanding of the rationale for CPD within the profession and for the general public, and as such is an important communication tool. Third, a clear purpose statement assists with monitoring and evaluating the success of the program.
41. The Committee is of the view that the current purpose statement does not address the full set of objectives that the CPD program seeks to achieve. In drafting a new purpose statement, the Committee identified the primary goals of continuing legal education, aided by a review of the CPD and MCLE purpose statements of more than a dozen legal regulators within Canada and across the United States. The Committee also referred to the Law Society's statutory mandate under s. 3 of the *LPA*.
42. The proposed new purpose statement reflects the program's primary objectives, highlighting the key ways in which continuing legal education protects the public interest: by achieving and maintaining high standards of lawyer competency, professionalism and learning in the practice of law.

Recommendation 2: The Law Society will adopt the following CPD purpose statement:

The purpose of the mandatory CPD program is to uphold and protect the public interest in the administration of justice by actively supporting the Law Society's members in achieving and maintaining high standards of competency, professionalism and learning in the practice of law.

Key design features

Accreditation model

43. Under an accreditation model, the regulator evaluates the nature, content and length of a professional development activity, and specifies whether, how much and what type of CPD credit lawyers will receive. For example, credit may be provided for pre-approved activities or courses presented by particular providers. Alternatively, lawyers can seek accreditation of programs that have not been pre-approved by the regulator.

44. Within Canada, the accreditation model has been adopted in BC, Saskatchewan, Quebec and New Brunswick. Ontario has a partial accreditation model, in which the Law Society of Upper Canada accredits ethics, professional responsibility and practice management content, but does not accredit other subject areas.
45. In contrast, Manitoba, Newfoundland, Prince Edward Island and all three territories have non-accreditation models. Under this approach, responsibility lies with the lawyer, not the law society, to determine whether a learning activity meets the CPD criteria and therefore qualifies for continuing professional development credit.
46. The Committee reviewed the particulars of several of these non-accreditation models and compared them to BC's scheme.
47. The Committee observes that the Law Society of BC's accreditation model is effectively administered and well understood by lawyers. In addition to taking the burden off practitioners to repeatedly assess whether learning activities are eligible for credit, accreditation also provides the Law Society with a level of assurance that lawyers are engaged in programming that meets established criteria.
48. The Committee concludes that replacing the accreditation model with an approach in which lawyers are required to self-evaluate whether an activity qualifies for credit would not improve the overall design, functionality or quality of the CPD program. Therefore, the continuation of the accreditation model is recommended.

Recommendation 3: The Law Society will continue to accredit all eligible CPD programming.

Linkages to practice areas and testing

49. The Committee considered whether lawyers should be required to demonstrate a link between their individual practice areas and their continuing professional development activities. Currently, there is no such requirement.
50. To inform this analysis, the Committee considered the linkage requirement in Newfoundland. Under that program, eligible activities must be relevant to the lawyer's present or perceived future professional needs, or directly related to the lawyer's current or anticipated practice areas.
51. The majority of the Committee is of the view that lawyer competence, professionalism and learning are supported even in circumstances where practitioners complete CPD outside their primary area of expertise. Accordingly, the Law Society should not impose

a new requirement that lawyers demonstrate a nexus between their practice area and their CPD activities.

Recommendation 4: Lawyers will not be required to demonstrate a nexus between their practice area and their CPD activities.

52. The CPD program already relies on numerous criteria to establish subject matter and learning mode eligibility. These criteria serve as an effective mechanism to ensure that accredited programs meet basic standards of quality and relevance to the practice of law. The Committee concludes that an additional practice linkage requirement would be both unnecessary and unnecessarily onerous for lawyers.
53. Restricting CPD in such a fashion may also disadvantage particular groups of lawyers, including those practising in specialized areas with fewer CPD offerings, and lawyers in small or remote communities who have limited access to the full range of CPD opportunities.
54. From an operational perspective, such a requirement would be difficult to enforce given that the Law Society does not collect comprehensive information about lawyers' practice areas. Even if such information were available, staff would be required to exercise a high degree of discretion as to whether the linkage requirement is met. The Committee is of the view that this would be an inefficient use of staff resources, particularly in light of the robust accreditation model already in place.
55. Operational constraints also preclude the introduction of testing as a mandatory component of the CPD program. Given the wide range of practice areas, the multitude of providers, the varied means of satisfying CPD requirements and the disparate nature of CPD subject matters and associated topics, the Committee concludes that a universal testing requirement is not viable.

Recommendation 5: The Law Society will not introduce mandatory testing as part of the CPD program.

Learning plans

56. The Committee discussed the benefits and drawbacks of the learning plan model, which has been adopted by four other law societies - Alberta, Nova Scotia and, in a modified fashion, Newfoundland and the Northwest Territories.

57. Under this approach, lawyers identify particular goals and objectives and are responsible for creating and documenting their progress in a learning plan. Typically, there are no minimum hours, no mandatory subjects and no limits on the types of eligible learning activities. The plan is not submitted to the law society, but must be retained on record and is potentially subject to audit.⁶
58. In contrast, most law societies do not utilize learning plans, and instead require lawyers to complete and report a minimum number of CPD hours to within a defined reporting period.
59. The Committee reviewed the learning plan models in Alberta, Nova Scotia and Newfoundland, and concluded that they create an additional, time consuming step for lawyers who are required not only to complete and report their CPD, but also to create a plan and make declarations to the law society to this effect. The Committee also notes that jurisdictions adopting the learning plan model generally do not follow an accreditation model or institute a minimum number of mandatory hours.
60. For these reasons, the Committee recommends against the inclusion of learning plans as an element of the CPD program.

Recommendation 6: The Law Society will not introduce a requirement for lawyers to complete a learning plan as part of their CPD obligations.

Content of the CPD program: subject matters

61. In the legal profession, change is upon us. Increased interconnectivity and interdependency, rapid advances in technology and pressures to reduce costs while maintaining competitiveness are transforming the way in which legal services are delivered. Shifting demographics are also poised to impact who provides and consumes legal services in the coming years.
62. To stay current and relevant, CPD programming must address an increasingly diverse set of subjects, issues and skills. As Dean Holloway observes:

Tomorrow's lawyer — which, of course, actually means today's lawyer — still needs to know the law and how to navigate the legal system. She needs to be able to communicate with brevity and effect — though now also with cultural nuance that was alien to most of us a generation ago. But knowledge of the law and procedure

⁶ This is the approach taken by the Law Society of Alberta and the Nova Scotia Barristers' Society.

— our traditional stock in trade and the thing that for centuries has conferred on us the stature of a “learned profession” — is no longer enough. Tomorrow’s lawyer also — at least if he wants to be successful — needs to have a solid level of business acumen and a firm grounding in exotic topics with foreign-sounding names such as project management and lean six sigma.

[..]

Tech-savviness, business acumen, cultural sensitivity, solution oriented design thinking . . . without these skills, and probably many others, a lawyer in private practice today will either flounder or end up before a discipline panel — or both. So, it’s up to those of us who are training the next generation of the profession to make sure that we nurture these skills among our progeny.⁷

63. Many of the recommendations outlined in this Report are proposed as a means of ensuring that the CPD program stays current against the backdrop of a rapidly evolving and, in many ways, transforming profession.
64. The recommendations also reflect the Committee’s view that a CPD scheme characterized by flexibility, choice and trust will be of greatest benefit to legal practitioners and by extension, the public, in maximizing opportunities for lawyers to engage in programming that will enhance their competence, professionalism and learning. Many other CPD programs in Canada and the U.S. are following a similar path, with a near-universal trend toward greater flexibility and inclusiveness.

Subject matters

65. The following subject matters are currently eligible for CPD credit: substantive law, procedural law, professional ethics, practice management, and lawyering skills [see the CPD Guidelines at **Appendix A**].
66. These subject matters are foundational elements of competent and professional legal practice, and the Committee supports their continued inclusion in the CPD program. Accordingly, the Committee’s primary focus has been the set of *ineligible* subject matters, as well as ineligible topics within the above noted subject matters.

Professional Wellness

67. The Law Society of BC is one of only two Canadian law societies that will not provide lawyers CPD credit for educational activities related to lawyer well-being.⁸

⁷ Ian Holloway, “Training Lawyers for Tomorrow” Canadian Lawyer Magazine (August 8, 2017).

⁸ Northwest Territories is the only other Canadian jurisdiction that does not accredit wellness courses. No province or territory *requires* lawyers to take wellness courses.

68. In considering whether this ineligibility is still warranted, the Committee's discussions were informed by numerous memoranda, articles and reports on the issue of lawyer wellness, and benefited from feedback from the Lawyers Assistance Program.
69. The Committee also observed that 60% of the respondents in the 2016 Survey are in favour of extending accreditation to wellness courses that support the mental and physical well-being of lawyers in the practice of law.
70. As described in greater detail in below, the Committee recommends that a new subject matter entitled "Professional Wellness" be added to BC's CPD program.

Recommendation 7: The Law Society will recognize Professional Wellness as a subject matter that is eligible for CPD credit.

Wellness in the legal profession

71. Over the past decade, wellness—or lack thereof—amongst members of the legal profession has received increasing attention from law societies, bar associations, academics and the media.⁹
72. The statistics speak for themselves. A recent landmark study conducted by the Hazelden Betty Ford Foundation and the American Bar Association (the "ABA Study") reveals substantial and widespread levels of problem drinking and other behavioral health problems in the legal profession.¹⁰
73. The ABA Study found that problem drinking among lawyers is between two and three times higher than for other highly educated professionals. As many as 36% of lawyers

⁹ For example, the CBA recently launched its "Mental Health and Wellness in the Legal Profession" CPD module (online at: <http://www.cba.org/CBA-Wellness/Professional-Development/MENTAL-HEALTH-AND-WELLNESS-IN-THE-LEGAL-PROFESSION>) and the Ontario Bar Association introduced its "Mindful Lawyer CPD Series" (online at : <http://www.oba.org/openingremarks/MindfulLawyer>). The Law Society of Upper Canada also completed an in-depth study of this issue and released a series of key recommendations. See "Mental Health Strategy Task Force Final Report to Convocation", online at: lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/convocation-april-2016-mental-health.pdf

¹⁰ P. R. Krill, R. Johnson, & L. Albert, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," (2016) 10 J. Addiction Med. 46, online at: http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx

qualify as problem drinkers. Twenty-eight percent are experiencing some level of depression while 19% and 23% are struggling with anxiety and stress, respectively.

74. Other research estimates rates of addiction and depression for lawyers to be three times that of the general population. Similarly, anxiety disorders affect 20% to 30% of lawyers as compared to only 4% of the general population.¹¹
75. Drug use also appears to be rampant.¹² Notably, the ABA's Commission on Lawyer Assistance Programs recently identified abuse of prescription drugs as second only to alcohol as the leading substance-use problem for lawyers.¹³ Other difficulties facing legal practitioners include social alienation, work addiction, sleep deprivation and low levels of well-being.¹⁴

Support for accrediting Professional Wellness content

76. These statistics paint a picture of a profession in crisis. As the U.S. National Task Force on Lawyer Well-Being succinctly states in the foreword to its report *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* ("the Task Force Report")¹⁵:

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust.

¹¹ See Ontario Lawyers' Assistance Program, "2010 Annual Report", online at: www.olap.ca/olap-annual-reports.html and Megan Seto, "Killing Ourselves: Depression as an Institutional, Workplace and Professionalism Problem" (2012) 2:2 UWO J Legal Stud 5.

¹² For an insightful and moving account of drug use in the profession see Eilene Zimmerman, "The Lawyer, the Addict" New York Times (July 15, 2017), online at: www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html

¹³ Commission on Lawyer Assistance Programs, "2014 Comprehensive Survey of Lawyer Assistance Programs," online at: www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_2014_comprehensive_survey_of_1aps.authcheckdam.pdf

¹⁴ National Task Force on Lawyer Well-Being, "*The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*" (August 2017), online at: <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf> at p. 7.

¹⁵ *Ibid.*

We are at a crossroads... to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.

77. The link between lawyer competence, professionalism and wellness is emphasized throughout the Task Force Report:

Lawyer well-being influences ethics and professionalism. Minimum competence is critical to protecting clients and allows lawyers to avoid discipline [...]

Troubled lawyers can struggle with even minimum competence...[l]awyer well-being is a part of a lawyer's ethical duty of competence. It includes lawyers' ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients.¹⁶

78. The Task Force Report also underscores the value of educational initiatives focusing on mental health and substance use disorders, as well as those that address how to navigate the profession in a healthy manner. In this vein, one of the Task Force's key recommendations is that regulators recognize wellness courses for continuing legal education credit.¹⁷

79. The Task Force Report characterizes accreditation as a small but important step in addressing the wellness crisis in the profession and beginning the process of placing health, resilience and self-care at the forefront of what it means to be a lawyer. This learning also has the additional benefit of dismantling the stigma that is often a major barrier to seeking help for these types of issues.¹⁸

80. Notably, the ABA Model Rule has recently been amended to promote *mandatory* mental health and substance abuse programming for lawyers. This is in addition to encouraging legal regulators to accredit non-mandatory "lawyer well-being" learning activities that include a broader set of wellness topics.¹⁹

¹⁶ *Ibid.* at pp.8-9.

¹⁷ *Ibid.* at p. 11.

¹⁸ The ABA Study identified the two most common barriers to lawyers seeking treatment for a substance use disorder as not wanting others to find out they needed help and concerns regarding privacy or confidentiality. Consequently, many lawyers wait until their symptoms are so severe that they interfere with daily functioning before seeking assistance.

¹⁹ American Bar Association, "Access Resolution 106: ABA Model Rule for Continuing Legal Education" (February 2017), online at:

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A proposed approach to Professional Wellness

81. As noted previously, most Canadian law societies provide CPD credit for wellness topics. Many US states also approve wellness topics for MCLE credit, including Missouri, Kansas, Virginia, Rhode Island, North Carolina, Arkansas, Mississippi, Alabama, Georgia, Nevada, Iowa, Oklahoma, Montana, Minnesota, Illinois, Tennessee, New York, West Virginia, Alaska and Hawaii.²⁰
82. Within Canada, most law societies recognize CPD courses that tackle a wide range of wellness topics related to substance use disorders, stress management, work-life balance, anxiety and depression. Typically, to be eligible for credit, wellness topics must address issues that arise within the legal context.
83. The Committee is of the view that carefully defining the nature and scope of Professional Wellness is a necessary condition of its inclusion in the CPD scheme. This is to ensure that Professional Wellness does not become a “catch-all” for a variety of topics that do not directly support or enhance lawyer competence, professionalism and learning related to the practice of law. For example, the Committee agreed that yoga and courses on healthy eating are too indirectly linked to the objectives of the CPD program to be eligible for credit.
84. Many of the 2016 Survey respondents also commented that their support for the inclusion of wellness in the CPD program was contingent on placing some restrictions on the list of eligible topics. The Lawyers Assistance Program provided similar feedback.
85. Following a review of wellness definitions in other jurisdictions and a consideration of the objectives of the CPD program, the Committee recommends the following definition for the new Professional Wellness subject matter:

Recommendation 8: The Law Society will define Professional Wellness as:

“Approved educational programs designed to help lawyers detect, prevent or respond to substance use problems, mental health or stress-related issues that can affect professional competence and the ability to fulfill a lawyer’s ethical and professional

www.americanbar.org/content/dam/aba/images/abanews/2017%20Midyear%20Meeting%20Resolutions/106.pdf . See especially Comment 4 at p. 6.

²⁰ Most states embed wellness content within professionalism or ethics subject matter, while others (Washington and Georgia) have established a separate subject category pertaining to mental health. Within Canada, wellness programming is generally recognized as falling within ethics, practice management or professional responsibility subject matter rather than being identified as a “stand-alone” subject matter.

duties. Such educational programs must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public.”

86. To further assist lawyers, the Committee developed detailed guidance material to support this newly defined subject matter (the “Professional Wellness Guidance Material”). In undertaking this task, the Committee reviewed a host of wellness topics that are currently accredited by US and Canadian jurisdictions, and considered which of these should be eligible (or ineligible) for credit in BC.²¹
87. As outlined in the Professional Wellness Guidance Material, below, the Committee proposes that to qualify for credit, Professional Wellness activities must be part of an approved educational program in the form of in-person programs, real time programs delivered through technology, reviewing previously recorded courses, interactive online study programs, writing or teaching. Group study and mentoring on Professional Wellness subject matter would not be eligible for credit. Additionally, the instructional materials must be specifically directed at lawyers and topics must be discussed in the context of the legal profession.
88. The Professional Wellness Guidance Material includes a non-exhaustive list of eligible topics including: substance use problems and mental health issues, addictive or self-harming behaviours, anxiety and depression, and stress and stress-related issues. Other programming may be eligible for credit if it meets the established criteria.
89. The Professional Wellness Guidance Material also lists those topics and activities that are not eligible for credit, namely: yoga, breathing exercises and meditation, healthy eating, exercise, re-evaluating personal career decisions, navigating career transitions, counselling sessions, treatment programs, and topics that focus on personal life events.

Recommendation 9: The Law Society will adopt the criteria outlined in the Professional Wellness Guidance Material as a basis for accrediting Professional Wellness subject matter.

²¹ Note that other CPD subject matter (e.g. Practice Management and Lawyering Skills) is similarly defined by a list of topics that are eligible and ineligible for credit.

Professional Wellness Guidance Material

The Law Society of BC is concerned about the effects of substance use, mental health issues and stress on legal professionals in BC and the impact they have on the quality of legal services provided to the public.

The Law Society of Upper Canada Mental Health Strategy Task Force noted in its April 28, 2016 Report:

Mental illness and addictions issues are present in significant numbers within the general Canadian population. There is increasing evidence suggesting that legal professionals may be at an even higher risk than the general population of experiencing life challenges and struggles with mental illness and addictions.

The Law Society of BC concludes that education on these topics may be beneficial in addressing these issues, raising awareness and diminishing stigma. As a result, Professional Wellness education will contribute to the CPD program's goal of supporting lawyer competence and the protection of the public interest.

Accordingly, the Law Society of BC will recognize Professional Wellness as a subject matter for which lawyers are eligible to receive CPD credits under certain circumstances.

Professional Wellness is defined as:

Approved educational programs designed to help lawyers detect, prevent or respond to substance use problems, mental health or stress-related issues that can affect professional competence and the ability to fulfill a lawyer's ethical and professional duties. Such educational programs must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public.

The following material is intended to provide additional guidance as to the types of educational programs the Law Society will recognize for Professional Wellness credits. Note that Professional Wellness CPD is not mandatory.

i. Learning Format

To qualify for credit, Professional Wellness subject matter must be part of an approved educational program, which includes the following learning modes: in-person programs; real time programs delivered through technology; reviewing previously recorded courses; interactive online study programs; writing; and teaching. Group study and mentoring on Professional Wellness subject matter will not be eligible for credit.

The presentation and instructional materials must be specifically directed at lawyers. The topics must be discussed in the context of the legal profession and in relation to the quality of legal services provided to the public.

ii. Eligible topics

Substance use problems and mental health issues

Educational programs that focus on developing awareness of substance use problems and mental health issues in the practice of law are eligible for approval. Examples of topics include alcohol and drug dependencies, addictive or self-harming behaviours, anxiety and depression.

The content of these educational programs may focus on any or all of the following: recognizing the signs and symptoms of substance use problems or mental health issues in oneself or one's colleagues, preventive measures; coping techniques, the effects of impairment, intervention strategies, reducing stigmatizing behaviours and attitudes, and the availability of the Lawyers Assistance Program (LAP) to help face these issues.

Educational programs will only receive credit if the presentation of material includes a component that addresses the risks substance use problems and mental health issues pose to lawyers' ability to meet their obligations under the Law Society Rules, the *Code of Professional Conduct* and the *Legal Profession Act*.

Stress and stress-related issues

Educational programs that focus on developing awareness of stress and stress-related issues in the practice of law are also eligible for approval. Examples of topics include procrastination, isolation, boundary setting and "burnout".

The content of these educational programs may focus on any or all of the following: recognizing the signs and symptoms of stress in oneself or ones colleagues; preventive measures; coping techniques; the effects of stress or stress-related problems; intervention strategies; reducing stigmatizing behaviours and attitudes; and the availability of the Lawyers Assistance Program (LAP) to help face these issues.

Educational programs will only receive credit if the presentation of material includes a component that addresses the risks that stress and stress-related issues pose to lawyers' ability to meet their obligations under the Law Society Rules, the *Code of Professional Conduct* and the *Legal Profession Act*.

iii. Ineligible topics

Educational programs that are not eligible for Professional Wellness credit include:

- a. yoga courses,
- b. breathing exercises and meditation courses,
- c. healthy eating courses,
- d. exercise classes,
- e. courses addressing reevaluating personal career decisions or navigating career transitions,
- f. counselling sessions and treatment programs, and
- g. learning activities that focus on personal life events and associated issues (e.g. personal trauma, grief and bereavement).

90. As discussed toward the end of the Final Report, the majority of the Committee recommends that lawyers not be limited as to how many Professional Wellness credits will count toward the annual 12 credit CPR requirement.
91. At this juncture, the Committee also recommends against imposing a mandatory requirement for lawyers to engage in Professional Wellness CPD programming.²² However, as noted above, it is observed that the American Bar Association recently amended its Model Rule for Minimum Continuing Legal Education to include a requirement for lawyers to receive at least one hour of *mandatory* “mental health or substance use disorder programming” every three years.²³

Pro bono and legal aid

92. During the 2011 CPD review, the Lawyer Education Advisory Committee determined that pro bono and legal aid work should not be recognized for CPD credit, on the basis that it is fundamentally the “practice of law,” not professional development.
93. The 2016 and 2017 Committees considered numerous arguments for and against accreditation,²⁴ and came to a similar conclusion, ultimately recommending against the accreditation of pro bono and legal aid work.

Recommendation 10: The Law Society will not recognize pro bono and legal aid work as eligible for CPD credit.

94. Proponents of accreditation argue that pro bono activities provide unique learning opportunities not available to lawyers in the course of their paid work, both in relation to skill and knowledge development and in gaining a deeper understanding of access to

²² No Canadian law society currently has mandatory wellness-related CPD requirements.

²³ *Supra* note 19.

²⁴ The Committee reviewed a number of relevant articles on this issue, including: Jason Wesoky and Christopher Bryan, “Receiving CLE Credit for *Pro Bono* Service” 41 The Colorado Lawyer 115 (August 2012), online at: http://www.garfieldhecht.com/wp-content/uploads/2012/08/Aug2012TCL_PointCounterpoint.pdf; Brian J. Murray “The Importance of Pro Bono Work in Professional Development” (2009) 23:3 Verdict, online at: <http://www.jonesday.com/files/Publication/adc22e68-c7f5-44d2-a043-94709677480a/Presentation/PublicationAttachment/d2593229-ad83-428c-8023-a7afce3f3b62/Murray.pdf> ; Esther Lardent, “Solving the Professional Development Puzzle” (2012) National Law Journal.

justice issues. Pro bono and legal aid work may also contribute to enhancing professional responsibility and ethics.

95. Others have suggested that pro bono work is comparable to mentoring or teaching the general public in that it is “service learning” that integrates meaningful community service with skill development. Similar arguments can be made to support the accreditation of legal aid work.
96. The Committee is, however, troubled by the prospect of accrediting pro bono and legal aid work for a number of reasons. Importantly, file specific legal work is not eligible for CPD credit. In the Committee’s view, no exception should be made for free, but nevertheless file specific legal work.
97. The Committee also observes that although some American jurisdictions recognize pro bono work for a limited amount of MCLE credit, no Canadian law society currently grants CPD credit for pro bono activities.
98. Further, half of the respondents to the 2016 Survey were not in favour of including pro bono work in the CPD scheme and 64% were against providing credit for legal aid work. Examples of the comments provided include the following:

“This conflates the differing objectives of CPD. If mandatory CPD training is necessary in order to ensure ongoing substantive competency then it should be used for that. If you allow CPD for pro- bono - why not allow it [for] file work? How is the learning different if the work is done for free vs. being paid?”

“If the purpose of the CPD is professional development and given that lawyers are expected to provide the same level of service and skill to paying and pro bono clients giving credit for work on pro bono files suggests that a lower level of skill is required when a person takes on these files and that pro bono files are a chance to learn about areas of the law that the lawyer is not skilled in. In my view this would violate the ethical obligations lawyers have to provide competent service.”

99. Notwithstanding the recommendation against accreditation, the Committee views this type of work as a professional duty and expresses support for initiatives that encourage lawyers to take on pro bono and legal aid files as part of ongoing efforts to improve access to justice.

Knowledge primarily within the practice scope of other professions and disciplines

100. The Committee examined the issue of whether knowledge that is primarily within the practice scope of other professions and disciplines but that is nevertheless relevant to the

practice of law should be eligible for CPD credit.²⁵ Law Society staff receive many requests from lawyers for this type of credit.

101. To frame the discussion, the Committee considered a number of examples: a personal injury lawyer taking a human anatomy course to improve understanding of the nature of a client's injuries, a lawyer representing a client suffering from mental illness attending a lecture for physicians on the DSM-V, and a criminal defence lawyer taking a course in forensic pathology in preparation for a murder case.
102. These examples demonstrate the varied ways in which a lawyer's learning, competence and professionalism —the objectives of the CPD program— can be enhanced by learning activities that fall outside the ambit of law, but are still relevant to a lawyer's practice.
103. The Committee also observes that the Law Society of Upper Canada provides credit for non-legal subjects if they are relevant to the lawyer's practice and development as a practitioner.
104. The Committee concludes that there is no principled basis for maintaining the blanket exclusion on all non-legal programming, and recommends that CPD credit be provided for learning activities addressing skills and knowledge within the scope of other professions and disciplines if the subject matter is sufficiently connected to the practice of law.

Recommendation 11: The Law Society will recognize educational programs that address knowledge primarily within the practice scope of other professions and disciplines, but are sufficiently connected to the practice of law as a subject matter that is eligible for CPD credit.

105. Program administrators will be required to evaluate whether the content of such programming is “sufficiently connected” to the practice of law. This is not dissimilar to the discretion staff already exercise in accrediting other types of programming.
106. The Committee also recommends against a requirement for lawyers to establish a nexus between their specific practice area and a non-legal learning activity for two key reasons. First, no other aspect of the CPD scheme requires lawyers to take CPD in their practice area; they are at liberty to take any type of accredited programming they wish.

²⁵ Knowledge that is primarily in the practice scope of other professions and disciplines is currently listed as ineligible under the Lawyering Skills subject matter. The Committee suggests that it is more appropriate to consider this as a new, independent subject matter.

Second, as noted throughout this Report, the Committee is wary of “over-regulating” the CPD program, including by way of creating additional conditions for accreditation. Rather, trust and respect should be extended to lawyers to select programming that they feel is valuable to their professional development.

Practice Management

107. The Committee’s evaluation of the Practice Management subject matter was informed by a comparative review of the practice management topics recognized by other Canadian law societies, the feedback provided in the 2016 Survey and 2017 Consultation, and a consideration of emerging issues in the profession. The finalized list of eligible and ineligible topics, as discussed in more detail below, is found at **Appendix D**.

Eligible topics

108. The Committee recommends the continued eligibility of the current set of Practice Management topics on the basis of their ongoing relevance to lawyer learning, competence and professionalism. In a few instances, the Committee proposes slightly modified wording for improved clarity or inclusiveness; however, the substantive content of these topics remains the same.

109. The Committee is also of the view that changes to the social and economic milieu in which law is practised warrants the accreditation of two new Practice Management topics that are currently ineligible for credit, namely: understanding the business of law, and multicultural and diversity issues that arise in the legal context.

Understanding the business of law

110. In probing the issue of whether topics relating to the business of law should continue to be ineligible for Practice Management credit, the Committee was briefed by a Law Society practice advisor on the types of business-related issues for which advice and support are frequently sought. The Committee also reviewed Ontario’s CPD program, which recognizes both marketing and business law related activities for CPD credit, and canvassed various arguments for and against the accreditation of such topics.

111. This analysis resulted in the identification five “pillars” underpinning the business of law, all of which the Committee recommends becoming eligible for CPD credit:

- i. *Marketing a law practice in accordance with professional obligations:* Accreditation of this topic recognizes the value of lawyer learning in relation to the professional and ethical standards for marketing activities. For example, a course addressing lawyers' professional obligations to ensure that marketing activities do not take advantage of client vulnerability or create unjustified client expectations supports both competence and professionalism and, as such, should be eligible for credit.²⁶
- ii. *Strategic business planning:* Strategic planning requires lawyers to engage in a process of determining the overall direction of their practices, identifying specific strategies that will facilitate the achievement of the defined direction and determining how those strategies will be implemented. Effective strategic planning can result in improvements in productivity, risk management, project management, client relationships and lawyer professional development, and should therefore be eligible for credit.
- iii. *Management and running of a law practice:* As reflected by the support for law firm regulation by a number of Canadian law societies, the effective management of a legal practice is an essential component of ensuring the professional and competent delivery of legal services. Learning activities that support firms in meeting professional and ethical standards in key practice areas should therefore be eligible for credit.²⁷ A number of the currently ineligible Practice Management topics related to managing a legal practice would also become eligible for credit, including: "attracting and retaining law firm talent," "business case for the retention of lawyers and staff," "alternative work arrangements in a law firm," and "handling interpersonal differences within your law firm."
- iv. *Technological systems incorporated into running a law practice:* Technology training has become increasingly important for lawyers. However, many practitioners fail to adequately understand the use of technological systems and their relationship to the delivery of legal services. As Richard Susskind observes, lawyers must understand developing technology to stay relevant:

In the 2020s we will see technologies that change the way we work – you are no longer face-to-face advisers, you are a person putting in systems and

²⁶ See Rule 4.2 *Code of Professional Conduct*.

²⁷ The Law Firm Regulation Task Force suggests the Law Society provide CPD credit for designing firm policies that address eight key Professional Infrastructure Elements. See Law Society of BC, *Second Interim Report of the Law Firm Regulation Task Force* (June 29, 2017) at p. 29, online at: www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirmRegulationSecondInterimReport2017.pdf

processes [...] we as a profession have about five years to reinvent ourselves to move from being world-class legal advisers to world-class legal technologists.²⁸

Accordingly, educational activities that improve lawyers' understanding of the technological systems underpinning legal practice should be accredited. The Committee also recommends removing "basic technology and office systems" from the list of ineligible Practice Management topics, given that at a very minimum lawyers require a basic understanding of such systems to run a functional practice.

- v. *Financial systems incorporated into running a law practice:* Financial planning and management are critical to the success of any law practice. Poor financial management can adversely affect client service, impact a lawyer's competence and have serious professional and ethical implications.²⁹ Consequently, education in this area should be recognized for CPD credit.

112. The Committee distinguishes the "business of law" from marketing in the form of advertising. Advertising, which is essentially marketing directly to clients, focuses on self-promotion for profit maximization, and should therefore not be eligible for CPD credit. The "business of law," however, encompasses a broad range of activities with a different set of motivations, many of which the Law Society has an interest in promoting. For example, the accreditation of business-related courses that support lawyers in running more efficient practices may increase their availability to clients and thereby improve access to justice.

113. A similar distinction is made in Ontario, where the Law Society of Upper Canada accredits "marketing legal services in accordance with professional obligations" and "understanding the business of law, including financial considerations, client development and strategic planning," but excludes "any activity undertaken or developed primarily for the purposes of marketing to existing or potential clients." As discussed in the next section, the Committee recommends that any activities primarily focusing on marketing to clients remain ineligible for credit.

²⁸ John Hyde, The Law Gazette, April 27 2016 "Susskind: 'you have five years to reinvent the legal profession'", online at: www.lawgazette.co.uk/law/susskind-you-have-five-years-to-reinvent-the-legal-profession/5054990.article

²⁹ The Ontario Bar Assistance Program estimates that up to half of lawyers seeking their help have money management issues that have escalated to the point where these problems adversely affect their practice and their personal lives. See LawPro Magazine "Dealing with Dollars : Why financial planning and management are as important as lawyering" (March 2003), online at: http://www.practicepro.ca/LawPROmag/march2003_financial.pdf
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Recommendation 12: The Law Society will recognize “understanding the business of law” as an eligible Practice Management topic.

Multicultural and diversity issues that arise within the legal context

114. Multiculturalism and diversity related topics are currently ineligible for CPD credit in BC. Specific exclusions include programming that addresses the retention of lawyers and staff relating to gender, Aboriginal identity, cultural diversity and gender identity, as well as cultural sensitivity in working with law firm staff.
115. The Committee is concerned that denying credit for programs that relate to cultural sensitivity and the retention of culturally diverse lawyers is not reflective of the Law Society’s commitment to addressing the Truth and Reconciliation Commission’s Call to Action #27.³⁰
116. The absence of any affirmative recognition of multiculturalism and diversity programming within the Practice Management topics is also concerning and sets the Law Society of BC apart from the approach of other regulators. For example, the Law Society of Upper Canada accredits educational programs “respecting multicultural issues and diversity, if the topic addresses issues and opportunities that arise within the legal context.” The ABA also recently adopted a resolution that encourages all state regulators to have two *mandatory* CLE credits specifically related to diversity and inclusion in the legal profession and the elimination of bias.³¹
117. Moving forward, the Committee supports the accreditation of equity, diversity and cultural competency related programming for a number of reasons. Most notably, these issues represent an important component of professional legal practice.³² As noted in the Law Society of BC’s 2012 Report *Towards a More Representative Legal Profession*:

³⁰ The Committee’s consideration of Call to Action #27 is discussed more fully at p. 44 of this report.

³¹ The ABA Model Rule of Continuing Legal Education was amended to suggest that all lawyers should be required (either through a separate credit or through existing ethics and professionalism credits) to complete programs related to the promotion of racial and ethnic diversity in the legal profession, the promotion of full and equal participation in the profession of women and persons with disabilities, and the elimination of all forms of bias in the profession. See the ABA Model Rule, online at:

https://www.americanbar.org/content/dam/aba/administrative/cle/aba_model_rule_cle.authcheckdam.pdf

³² For example, equity, diversity and inclusion is one of the eight Professional Infrastructure Elements proposed as part of the Law Firm Regulation scheme.

Better practices, better workplaces, better results,³³ (the “Law Society of BC Report”) although overt discrimination based on race and gender is less prevalent than it once was, it still occurs and demands an appropriate response. Women, visible minority lawyers and Indigenous lawyers continue to face systemic barriers in the profession created by unconscious bias, resulting in forms of discrimination that, while unintended, are no less real.

118. The Law Society of BC Report also recognizes equity and diversity in the legal profession as being in the public interest:

the Law Society of BC is committed the principles of equity and diversity and believes the public is best served by a more inclusive and representative profession [...] [n]ot just because it’s the right thing to do, but because everyone benefits from it. We all have an interest in ensuring the legal profession continues its long-held tradition of striving to serve the public the best way it can.

119. Improving lawyer understanding of equity and diversity issues in the legal profession is also important from a client-service perspective. As the CBA highlights in its 2014 Report *Futures: Transforming the Delivery of Legal Services in Canada*:³⁴

It will be particularly important in the future for the demographics of the Canadian legal profession to reflect the diversity of the Canadian population at large. Clients want to connect with legal service providers with whom they share common values and experiences. Clients also want varied, creative, and diversified advice; it is not in their interests to receive legal services from a team comprised of lawyers whose life perspectives are homogeneous.

120. On this basis, the Committee recommends removing all topics related to multiculturalism, equity and diversity from the list of ineligible Practice Management topics, and adding “addressing multicultural issues and diversity within the legal context” to the list of eligible topics.

Recommendation 13: The Law Society will recognize “multicultural and diversity issues that arise within the legal context” as an eligible Practice Management topic.

³³ The Law Society of BC, *Towards a More Representative Legal Profession: Better practices, better workplaces, better results* (June 2012), online at: www.lawsociety.bc.ca/docs/publications/reports/Diversity_2012.pdf.

³⁴ Canadian Bar Association, online at:

www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf

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Ineligible topics

121. The Committee recommends that Practice Management topics that are primarily profit focused remain ineligible for credit on the basis that these topics do not promote the type of learning that upholds and protects the public interest, particularly in light of the rising costs of legal services and corresponding access to justice issues. These topics include profit maximization, commoditization of legal services, any activity developed primarily for the purpose of marketing to existing or potential clients, and surviving a recession.

Lawyering Skills

Eligible topics

122. The Committee determined that the current set of Lawyering Skills topics continues to promote the objectives of the CPD program by supporting lawyer learning, competence and professionalism, and should therefore remain eligible for credit.
123. The Committee does, however, recommend minor changes to the wording of several of the topics for greater clarity and inclusiveness. These changes are reflected in the revised list of Lawyering Skills topics at **Appendix D**.
124. The Committee also proposes four new eligible Lawyering Skills topics: mentoring best practices for lawyers, training to be a principal, governance issues, and leadership for legal professionals, as discussed below.

Recommendation 14: The Law Society will recognize mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals as eligible Lawyering Skills topics.

Mentoring best practices for lawyers

125. Lawyers can currently obtain CPD credit for mentoring another lawyer. The Committee recommends that educational programs focused on *training* lawyers for

mentorship also be eligible for credit, as they are in Ontario.³⁵ Accrediting such programs may assist in improving the number and quality of mentorship relationships.³⁶

Training to be a principal

126. The relationship between articling students and their principals can have a profound impact on the development of a junior lawyer.³⁷ Given the responsibilities associated with this role and the value of this relationship to professional development, the Committee recommends that learning activities that provide lawyers with the necessary skills to be an effective principal be recognized for CPD credit.

Governance issues

127. The Committee is of the view that learning activities that assist lawyers in developing governance-related skills should be eligible for credit.

128. Although time spent *serving* on boards or committees is not eligible for credit, many of the skills that support these types of service activities are relevant and transferrable to the practice of law. Examples of eligible courses might include those that address how to chair a meeting, the use of Robert’s Rules of Order and understanding the duties and obligations of directors.

Leadership for legal professionals

129. The Committee recommends that learning activities addressing “leadership within the legal profession” be eligible for credit, as is the case in Ontario.

130. Leadership in law is not simply about attaining partnership. Rather, leadership is a quality that can be developed by all lawyers who have an interest in influencing and motivating others to achieve positive outcomes. Leaders are often visionaries and change-makers who exhibit high levels of trustworthiness, confidence, competence and resilience. These are also the hallmarks of a highly competent and professional lawyer.

³⁵ The Law Society of Upper Canada recognizes “mentoring best practices for lawyers and paralegals” for credit, provided it addresses issues and opportunities that arise in the legal context.

³⁶ Mentoring is the least popular form of CPD consumption in BC, with only several dozen lawyers seeking accreditation each year for mentoring activities.

³⁷ Under the section 6.2-2 of the *Code*, a principal is tasked with providing the student with meaningful training and exposure to and involvement in work that will provide the student with legal knowledge and experience as well as an appreciation of the traditions and ethics of the profession.

Accordingly, lawyers should be supported and encouraged to develop these skills through continuing professional development.

131. Eligible programming might include learning activities that address organizational strategy and processes, change management, leadership styles and models, ethical responsibilities associated with leadership roles, creating and managing effective teams, and leadership skills for women.

Ineligible topics

132. The Committee recommends maintaining the current list of ineligible Lawyering Skills topics, including educational activities that focus on general business leadership, general project management, chairing and conducting meetings, and serving on a board of directors.
133. The issue of whether “general business leadership” programs should be accredited generated considerable discussion. The Committee concluded that “leadership for legal professionals” was sufficient to capture pertinent leadership courses. Similarly, given the extent to which “legal project management” encompasses relevant programming, learning activities that focus on “general project management” should remain ineligible for credit.
134. The Committee also recommends that chairing, conducting and participating in committees or board meetings and serving on a boards of directors or a tribunal remain ineligible for credit. Although these are important service-related activities, time spent performing these roles is not fundamentally about lawyer learning.

Delivery of the CPD program: Learning modes

135. Currently, the CPD program recognizes seven different "learning modes," or delivery mechanisms for CPD, namely: courses, online interactive programs, local bar and CBA section meetings, study groups, teaching, writing, and mentoring. The CPD Guidelines set out the criteria for eligible activities under each learning mode. [See **Appendix A.**]
136. Following a review of CPD engagement for 2016 and an analysis of the results of the 2016 Survey, the Committee concludes that the existing learning modes provide practitioners with sufficiently varied means of satisfying their CPD requirements and should therefore be maintained.
137. The Committee also reviewed the accreditation criteria associated with each learning mode and recommends several changes, as discussed below. Unless a change is

recommended, the Committee proposes maintaining the existing conditions and criteria governing learning mode eligibility, as defined in the CPD Guidelines at **Appendix A**.

Courses

138. Currently, lawyers can obtain credit for attending a live course, participating in an online “real time” course and reviewing a previously recorded course with at least one other lawyer or articling student.
139. Given the popularity of this mode of CPD delivery,³⁸ the Committee considered how courses could be made more accessible to lawyers. In particular, the Committee focused on whether the requirement to watch a pre-recorded course with another lawyer should be relaxed. Notably, in Ontario lawyers can earn up to six credits per year for viewing or listening to archived or recorded CPD programs without a colleague.
140. Although co-attendance promotes accountability, participation and engagement, the Committee is of the view that *requiring* another lawyer to be present while watching a pre-recorded course does not guarantee these goals are achieved. Further, this restriction may make it more difficult for sole practitioners, including those in remote communities, to access pre-recorded CPD programming simply because there may not be another lawyer available with whom they can watch a recorded program.
141. Accordingly, the Committee recommends that BC adopt Ontario’s approach and permit lawyers to receive credit for watching a pre-recorded course *without* the presence of another lawyer or articling student. The Committee also recommends against imposing a limit on the number of CPD hours that can be satisfied in this manner.

Recommendation 15: Lawyers may receive CPD credit for viewing a pre-recorded course without the presence of another lawyer or articling student.

Online interactive courses, local bar and CBA section meetings and study groups

142. Following a review of the accreditation criteria for online courses with a testing component (interactive webinars), local bar and CBA section meetings and study

³⁸ Courses remain extremely popular with lawyers, with over 46% of the respondents in the 2016 Survey citing “live courses” as their preferred mode of CPD consumption. Online programming follows closely behind, with approximately 31% indicating this as their most preferred learning mode.

groups, the Committee concludes that these learning modes should continue to eligible for credit.

143. Although few lawyers satisfy their CPD credit by taking online interactive programs,³⁹ this learning mode provides practitioners with a range of free or low cost options to improve their professional competence. The Law Society's online Practice Management Course is an example of this type of programming.
144. Local bar association meetings, CBA section meetings and study groups continue to provide excellent forums for lawyers to discuss a wide range of legal topics in a group setting, and are an effective mode of continuing legal education.
145. As previously discussed, the Committee supports the continuing ineligibility of study group credit for serving on committees, boards and tribunals. Any group study activity that is file specific, as well as time spent reading materials before or after a study group session, should also remain ineligible for credit.

Teaching

146. Teaching plays an important role the transmission of knowledge and skills within and beyond the profession, and should continue to be recognized for credit at a ratio of three hours of credit for every hour taught.⁴⁰
147. The Committee proposes a minor modification to the teaching accreditation criteria, namely that lawyers are eligible to receive credit for the first *two* times a subject matter is taught within the year. Currently, credit is only granted for the first instance of teaching a particular subject matter within the year.
148. This recommendation stems from a recognition that even in instances of repeat teaching, instructors are required to re-engage with the material and modify aspects of their presentations; for example, if the instruction is for a different audience or occurs in a different geographic region.
149. The Committee also received feedback that it can be difficult to secure repeat guest instructors for the PLTC program. Permitting CPD credit for the second instance of

³⁹ In 2016, approximately 2% of the submissions for CPD accreditation were for "online courses with testing."

⁴⁰For each hour of teaching, lawyers may claim up to two hours of preparation for teaching if the instruction is directed at an audience comprising lawyers, paralegals, articling students, law school or post-secondary students, or teaching that targets the continuing professional education or licensing program of another profession. If the teaching is directed at the general public, credit is only available for teaching time, not preparation time.

teaching the same subject matter within the year may have the added benefit of alleviating the shortage of lecturers.

Recommendation 16: Lawyers may receive CPD credit for teaching the same subject matter no more than twice in a calendar year.

Writing

150. Currently, writing for law books, articles and course materials is eligible for CPD credit to a maximum of six hours per writing project. There is no overall cap on writing credit hours.
151. Although the criteria associated with writing credits impacts a small number of lawyers,⁴¹ changes in technology, including the widespread use of electronic media to disseminate information, warrant a detailed review of this learning mode.
152. The Committee focused on three activities that are currently ineligible for credit: preparation of PowerPoint presentations, writing for law firm websites, and writing on blogs and wikis.
153. With respect to PowerPoint presentations, the majority of the Committee is of the view that because these presentations are typically done in conjunction with teaching (that is, they are rarely stand-alone projects) and can be counted toward teaching preparation time, time spent preparing a PowerPoint presentation should not also be eligible for writing credit.
154. In relation to writing for law firm websites, Law Society staff indicate they receive numerous requests for credit for this type of activity, which are currently denied.
155. The Committee observes that firm websites are becoming increasingly valuable communication tools for educating lawyers within a firm as well as legal professionals outside the firm and the general public. Many of the educational publications populating firm websites reflect a high calibre of research and writing and offer insightful analysis and commentary on a wide array of legal issues. The same can be said for the writing on many non-firm websites that provide legal resources to the public.
156. The Law Society of Upper Canada has recently eliminated the distinction between legal writing for a third party publication and legal writing for a firm publication, including a website. The Committee recommends that the Law Society of BC adopt a

⁴¹ In 2016, less than 1% of lawyers sought credit for writing.

similar approach and accredit writing for firm and non-firm websites, provided the writing is related to law or legal education and is not primarily for marketing purposes.

Recommendation 17: Lawyers may receive CPD credit for writing for law firm or other websites if the content is substantially related to law or legal education. Material that is developed primarily for the purpose of marketing to existing or potential clients will not be eligible for credit.

157. The Committee also reviewed the issue of accrediting writing for blogs and wikis. The Committee observes that some wiki sites, including those that provide valuable public legal resources, subject their contributors to fairly rigorous selection criteria and require submissions to be reviewed by editors. Others, however, do not.
158. Based on concerns about quality control, the Committee recommends that unless lawyers can demonstrate that writing for wikis and blogs is subject to editorial oversight prior to posting, contributions to blogs and wikis remain ineligible for CPD credit.

Recommendation 18: Lawyers will not receive CPD credit for writing for blogs and wikis unless they can demonstrate that submissions are subject to editorial oversight.

Mentoring

159. Currently, to qualify for mentoring credit a mentor must have engaged in legal practice in Canada for 7 of the 10 years immediately preceding the current calendar year. Until earlier this year, this requirement mirrored the requirements for eligibility to be a principal to an articling student under of Rule 2-57.
160. Rule 2-57 has since been amended, reducing the period of time a lawyer must practice to qualify as a principal to five of the past six years.⁴² To maintain consistency between mentoring and principal requirements, the Committee recommends that the mentoring criteria become “a lawyer that has engaged in five years of full-time practice or part-time equivalent, where part-time practice is counted at a rate of 50% of full-time practice.”

⁴² This amendment responded to the Credential Committee’s experience that many excellent principals do not meet the seven year threshold to be a principal and were frequently being granted exemptions from Rule 2-57 on the basis of special circumstances.

161. This amendment may also encourage more lawyers to satisfy their CPD through mentoring.

Recommendation 19: Lawyers may receive mentoring credit for mentoring another lawyer if they have engaged in five years of full-time practice or part-time equivalent immediately preceding the current calendar year, where part-time practice is counted at a rate of 50% of full-time practice.

162. As noted earlier in this report, the Committee recommends against providing credit for mentoring in the area of Professional Wellness. This exclusion is designed to ensure that Professional Wellness credit is not sought for any form of counselling activities.
163. Mentoring one's own articling student, mentoring a law school student and mentoring a paralegal will all remain ineligible for credit as they are not sufficiently connected to the objectives of enhancing the mentor's learning, competence or professionalism. Mentoring that is file specific should also remain ineligible for CPD credit.

Self-study

164. The Committee gave considerable attention to the issue of whether CPD credit should be granted for self-study. Specifically, the Committee explored the issue of whether credit for time spent reading articles, cases, legal publications and other materials should be accredited.
165. The majority of the Committee concluded that accreditation of self-study in the form of independent reading should not be permitted for two key reasons. First, the Committee's recommended changes to the CPD program expand the types of subject matters, topics and learning modes that will become eligible for credit. If these recommendations are adopted, lawyers will have many more options to obtain their CPD credits, including activities that are akin to self-study; for example, watching pre-recorded courses without the presence of another lawyer.
166. Second, as reflected in the current CPD Guidelines, lawyers are expected (but not required) to complete 50 hours of self-study *outside* their accredited CPD hours. The majority of the Committee supports the continuation of the 50 hour non-mandatory continuing professional development goal, and is concerned that granting credit for independent reading would erode the message that lawyers are expected to complete considerably more than the "required" 12 hours of CPD each year.

Recommendation 20: Lawyers are recommended to complete a minimum of 50 hours of self-study per year in addition to the 12 hour credit requirement. Self-study activities, including independent reading, will not be eligible for CPD credit.

Reporting requirements

167. The Committee examined possible changes to the CPD reporting requirements, including instituting caps on particular subject matters and learning modes, expanding the current list of exemptions and modifying the annual reporting cycle.

Credit-hour requirement

168. With the exception of Alberta and Nova Scotia,⁴³ all Canadian law societies establish a minimum amount of CPD that lawyers must complete during the reporting period. On average, Canadian lawyers must fulfill 12 hours of CPD per year.

- Saskatchewan: 36 hours over 3 years, including 6 hours of ethics and practice management
- Manitoba: 12 hours annually, including 1.5 hours of ethics, professional responsibility or practice management
- Ontario: 12 hours annually, including 3 hours of ethics, professional responsibility and practice management
- Quebec: 30 hours every 2 years
- Nova Scotia: no mandatory minimum, but 12 hours is “expected”
- PEI: 24 hours every 2 years
- Newfoundland and Labrador: 15 hours annually
- Yukon: 12 hours annually
- Northwest Territories: 12 hours annually, including 2 hours of ethics and practice management
- Nunavut: 12 hours annually, including 1 credit of ethics

169. Currently, BC lawyers are required to complete 12 hours of CPD annually, including two hours of ethics and practice management.

⁴³ In Alberta and Nova Scotia, there is no mandatory minimum amount of CPD. Rather than being required to complete a set amount of hours, lawyers must create learning plans outlining their goals for the year, and are expected to fulfill these plans. Nova Scotia “expects” but does not mandate 12 hours per year.

170. The 2016 Survey revealed that the 12 hour requirement is widely supported by BC lawyers: 55% of respondents felt 12 hours of CPD was “about right” as compared to only 10% of respondents that felt it was not enough. Similarly, 56% of respondents felt the two hour ethics and practice management requirement was “about right” with only 10% indicating it was insufficient.
171. There is no empirical evidence of a correlation between increased CPD hours and improved lawyer competence. The Committee is also aware that increasing the number of CPD hours could disproportionately impact lawyers who find it difficult to access CPD programming, including those in more remote communities and those operating with minimal profit margins, for example, legal aid practitioners.
172. Additionally, the Committee is concerned that simultaneously increasing the required number of hours and introducing new subject matters might suggest to lawyers and the public that new subject matters — for example, Professional Wellness — are less valuable forms of professional development. That is, an increase in the total number of CPD hours is required to “compensate” for these additions. The view of the majority of the Committee is that there is no hierarchy of CPD subject matters, and that the expansion of eligible subject matters does not demand an increase in mandatory CPD consumption.

Recommendation 21: The Law Society will maintain the 12 hour annual CPD credit requirement, including two hours of ethics and practice management.

Imposing caps on credit-hours

173. One of the most challenging issues for the Committee to consider during the review process was whether lawyers should be subject to limits — or caps — on the number of credits from particular subject areas or topics within those subject areas that can “count” toward the 12 hour annual CPD requirement. That is, although the Committee agreed on *what* should be accredited, views diverged as to *how much* credit should be recognized outside the more traditional subject matters and topics.
174. Arguments for and against establishing caps were exchanged at both the Committee table and throughout the consultation process. Much of this dialogue unfolded in the context of Professional Wellness. However, the discussion of caps was revisited on numerous occasions when new subject matter and topics were considered.

Majority recommendation

175. Following considerable discussion and debate, the majority of the Committee concludes that there should be no limits imposed on the amount of credit that can be earned for any particular type of CPD. This position is based on the concern that restricting CPD consumption for certain subject matters or topics may send the message that capped areas are a less valuable form of continuing legal education.
176. With respect to Professional Wellness, specifically, the majority of the Committee holds the view that the goal of CPD is not only to keep lawyers up to date on the law; it is also about ensuring lawyers are practising well. Mandatory annual professional ethics and practice management requirements are illustrative of the broader purpose of CPD in promoting lawyer competence.
177. As discussed throughout the aforementioned report of the National Task Force on Lawyer Well-Being,⁴⁴ basic competency is threatened if lawyers are unable to achieve or maintain minimum levels of mental and physical wellness. A number of the comments in the 2016 Survey echo this sentiment:

“If the LSBC takes seriously the health and wellbeing of lawyers, it should support lawyers in their efforts to take care of their health. This could be achieved by providing accreditation for programs that have well-being as their topic. I accept that black letter law is an important part of my ongoing professional development, but if my health and wellbeing suffer, no amount of black letter law courses will make up for it.”

“It is well established that physical and mental well-being are critical issues for lawyers practicing in BC. Mental and physical well-being is a neglected but vital component to the healthy practice of law. Sometimes these issues impact a lawyer/law firm well-being more than substantive legal courses or training. I don’t see why these types of courses would not be included in the CPD accreditation.”

178. Responses to the Committee’s 2017 Consultation included similar observations:

“Lawyer wellness is of fundamental importance to the delivery of competent legal services... Our wellness platform is likely the most important CPD related program we run.”

⁴⁴ *Supra* note 14.

179. The Committee also observes that many of the conduct and competency issues before the Law Society originate from lawyers' struggles with wellness issues. As another 2016 Survey respondent notes:

“Difficulties with mental health and substance abuse are amongst the main causes of breaches of professional duties. The point of CPD is to inform lawyers with the hopes of fewer breaches of professional duties.”

180. Professional Wellness learning is not only important for those struggling with mental health and substance use, but also for their colleagues who may not recognize or know how best to assist partners, associates or employees in distress.

181. Further, restricting the amount of Professional Wellness that can count toward the annual 12 hour CPD requirement may reinforce stigma surrounding these issues.

182. To limit the scope of what will qualify for Professional Wellness credit, the Committee has taken steps to carefully define the topics that will be eligible for accreditation. As outlined in the Professional Wellness definition and Guidance, only educational programs that help lawyers detect, prevent and respond to mental health or stress-related issues that can affect professional competence will be accredited.

183. These programs must focus on these issues in the context of the practice of law and their impact on the quality of legal services provided to the public. Courses focusing on yoga, meditation, counselling, treatment, exercise, career changes and personal life events will not be accredited. This restricted scope will ensure that only programming that is of direct relevance to lawyer competence can be “counted” toward a lawyer’s 12 hour annual CPD requirement.

184. The majority of the Committee is also of the view that imposing caps on new subject matter and topics is not consistent with the broader theme that has permeated the review process: trusting lawyers to make wise CPD choices for themselves. For example, if a litigator feels that six hours of education on how to manage stress in the courtroom will have a greater impact on their professional competence than a six hour course on cross-examination skills, the option to pursue the former should be available.

185. Accordingly, the majority of the Committee supports relying on lawyers to exercise their discretion in judging how much CPD they ought to take in any particular area to bolster their competence.

186. If, in time, the Law Society observes that a significant number of lawyers are accruing a substantial amount of their CPD credits in the area of Professional Wellness or other subject areas or topics and there are outstanding concerns about learning in substantive or procedural areas of law, the issue of caps could be revisited.

Minority recommendation

187. Several Committee members remain strongly opposed to the majority's proposal not to impose a caps on new subject matters and new topics, including Professional Wellness.
188. The minority is in favour of imposing a two hour credit limit on all new subject matters and topics proposed in this Report. This includes the new subject matters of Professional Wellness and "educational activities that address knowledge primarily within the scope of other professions and disciplines, but are sufficiently connected to the practice of law", the new Practice Management topics of understanding the business of law, multicultural and diversity issues that arise within the legal context; and the new Lawyering Skills topics of mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals.
189. The minority's concern is that permitting lawyers to receive an unlimited amount of credit in these new subject areas and topics may result in the displacement of learning in areas of substantive and procedural law and lawyering skills, which these Committee members regard as the original basis for mandatory continuing professional development. Given the critical role legal knowledge and skills play in developing and maintaining competence, ensuring lawyers complete at least 10 hours of CPD in these areas is important to practitioners, the Law Society and the public.
190. The minority is also concerned about the public's perception of lawyers being permitted to take unlimited amounts of CPD in new subject areas and topics that are not directly linked to maintaining or upgrading their legal skills and knowledge.
191. With respect to Professional Wellness, the minority view recommends that credit for this new subject matter also be limited to two credits per year.
192. A number of the comments provided in the 2016 Survey similarly support imposing a cap on the amount of Professional Wellness credits. For example:

"For wellness courses, I would set a limit of say 2 hours per year of the 12. It is important to encourage lawyers to avail themselves of these types of courses, but it should not derogate from the requirement to obtain ongoing updated legal education on an annual basis."

"Wellness is of course important, and a professional obligation, but should not supplant ongoing substantive professional development."

“I believe that wellness is an important component of effective practice. However, I think it would be prudent to incorporate a limit to ensure that lawyers are continuing to achieve certain thresholds of substantive knowledge.”

193. The minority view is not that wellness issues are irrelevant to legal practice or that Professional Wellness is an inappropriate form of CPD. The opposition is largely related to the *amount* of Professional Wellness programming that is recognized for credit each year. Even if capped, lawyers could be encouraged to engage in more than two hours of wellness programming and count this toward the 50 hours of continuing legal education that lawyers are expected to do outside the annual 12 hour CPD requirement.
194. The minority suggests that once there has been an opportunity to assess attitudes toward, and utilization of these new CPD subject areas and topics, a future Lawyer Education Advisory Committee will be in a stronger position to make informed decisions as to whether changes to this credit-hour restriction are warranted, based on analysis and discussions with the profession.
195. In light of these opposing opinions, the Committee ultimately resorted to a vote, which resulted in a narrow majority favouring no imposition of caps on Professional Wellness or other new subject matter and topics at this time.⁴⁵
196. Given the divergence of views on this issue, the Benchers are asked to determine which of the following two recommendations to adopt.

Recommendation 22A: The Law Society will not introduce additional caps on the number of credit-hours that can be satisfied with particular subject matters or topics.

Or, alternatively:

Recommendation 22B: The Law Society will introduce a cap of two credit hours per year on new subject matters and topics. This cap will be reviewed within three years, following an analysis of the impact of the inclusion of these new areas on the CPD program.

⁴⁵ This includes the new subject matters of Professional Wellness and “educational activities that address knowledge primarily within the scope of other professions and disciplines, but are sufficiently connected to the practice of law”; the new Practice Management topics of understanding the business of law and multicultural and diversity issues that arise within the legal context; and the new Lawyering Skills topics of mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals.

Exemptions

197. Under the current CPD Guidelines, a lawyer is required to fulfill the annual 12 hour CPD requirement unless the lawyer is non-practising (e.g. inactive, on maternity leave, on sabbatical), or is a new member who has completed the bar admission program of a Canadian law society during the reporting year.⁴⁶
198. The Committee recommends against expanding this set of exemptions to include senior lawyers or judges returning to practice. The Committee also recommends against reducing the credit-hour requirement for part-time practitioners, on the basis that supporting competence and professionalism through ongoing learning is important for *all* practising lawyers, regardless of experience.
199. This recommendation is supported by the 2016 Survey results, in which the majority of respondents indicated that exceptions to the 12 hour requirement should not be created for different categories of practising lawyers.
200. The Committee also considered introducing an exemption based on what is frequently referred to as “interjurisdictional reciprocity.” Under this arrangement, lawyers may claim an exemption from their BC CPD requirements if they satisfy another province’s CPD requirements in the same year. For example, if a lawyer is called in both Ontario and BC and completes the Law Society of Upper Canada’s CPD requirements, the Law Society of BC would recognize those credits and exempt the lawyer from completing CPD in BC for that year.
201. Most provinces, including BC, do not recognize satisfaction of another law society’s CPD requirements as a basis for exemption. Program administrators note that interjurisdictional reciprocity creates administrative complexities, and that it may be difficult to monitor and evaluate equivalencies between CPD programs over time.
202. In BC, lawyers currently benefit from several other forms of reciprocity. For example, a lawyer may report having completed a course to both the Law Society of Upper Canada and the Law Society of BC, and receive CPD credit in both jurisdictions. A lawyer may also complete CPD programming offered by, or presented in another jurisdiction, and receive credit in BC, if the educational activity is independently accredited by the Law Society of BC.

⁴⁶ Lawyers who resume practising law within the reporting year after having been exempt and new members by way of transfer must complete one credit hour for each full or partial calendar month in the practice of law.

203. The Committee concludes that existing forms of reciprocity are sufficient and that exemptions based on interjurisdictional reciprocity should not be introduced at this time.

Recommendation 23: The Law Society will not introduce changes to the criteria governing exemptions from the 12 hour annual CPD credit requirement.

Carry-over

204. Currently, lawyers must fulfill their CPD requirements within the calendar year and meet the December 31st reporting deadline. Failure to do so results in a late fee and, if non-compliance persists, an administrative suspension.
205. The 2016 Survey indicated substantial membership support for changing the annual reporting model, with 75% of respondents supporting some form of carry-over of credits from year to year.
206. Additionally, the Committee observes that a number of other jurisdictions have successfully adopted multi-year reporting periods. For example, Saskatchewan requires 36 hours of CPD over three years; Quebec requires 30 hours over two years; and Prince Edward Island requires 24 hours every two years.
207. The primary advantage of introducing a more flexible reporting model is that it enables lawyers to take CPD at a time that best meets their professional and learning needs. In some years, lawyers may find it challenging to fulfill their credit-hour requirements as a result of any number of factors. For example, in some practice areas the most valuable CPD programming takes the form of a multi-day conference that occurs once every two years. Alternatively, a lawyer may be involved in a lengthy trial that creates scheduling conflicts with desired CPD activities.
208. The Committee examined a number of different approaches to creating a more flexible reporting model. These included a carry-over option, in which lawyers are permitted to carry over excess CPD credits to the following year, and variations on a two and three year reporting cycle in which lawyers are given a longer time period to complete their CPD. Each approach was tested with hypotheticals to evaluate how the scheme would work in practice.
209. The Committee rejected both the two and three year reporting models on the basis that they had the potential to create long gaps between CPD experiences. For example, a three year reporting cycle could result in a lawyer taking no CPD for 35 months and fulfilling all their requirements in the final month of the reporting period.

210. The multi-year reporting cycle also has the potential to create a CPD “crunch” for lawyers at the end of a lengthy reporting period. A lawyer who completes minimal CPD in year one and two of the reporting cycle may face significant challenges in satisfying a large outstanding credit requirement in a short timeframe.
211. In an effort to balance increased flexibility with the risks of creating inconsistent CPD consumption, the Committee determined that a carry-over model is the optimal approach.⁴⁷ Under this model, the annual reporting structure remains, such that lawyers are required to report their CPD by December 31st of each year, but are permitted to carry-over up to a maximum of six credits from one year to the next.
212. In limiting the amount of permissible carry-over, all lawyers will be required to fulfill at least six CPD requirements every year. That is, carry-over may not exceed six credits and is not permitted beyond the next calendar year.
213. The Committee also recommends that the carry-over of the annual two hour ethics and practice management requirements not be permitted; this requirement must be satisfied each year.

Recommendation 24: The Law Society will introduce a carry-over model in which lawyers are permitted to carry-over up to six CPD credits from one year to the next. The two hour ethics and practice management CPD requirement cannot be carried over to the following year.

214. The examples below demonstrate how the carry-over model operates.

	CPD recorded in Year 1	Carry over	CPD recorded in Year 2	Total hours recorded over 2 years
Lawyer A	18 hrs	6 hrs (max.)	6 hrs [+ 6 hrs carry over]	24
Lawyer B	15 hrs	3 hrs	9 hrs [+ 3 hrs carry over]	24
Lawyer C	12 hrs	0 hrs	12 hrs [+ no carry over]	24

215. Law Society staff advise that introducing a carry-over model is not expected to add significant complexity or cost to the administration of the CPD program.

⁴⁷ The ABA Model Rule also endorses a carry-over approach. See s. 3(A)(3) of the ABA Model Rule, *supra* note 19.
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Compliance and enforcement measures

216. The Law Society has a formalized process for following-up with lawyers who have not completed their CPD requirements. This involves escalating action that includes sending email reminders at regular intervals during the year and issuing fines. Continued failure to satisfy the CPD requirements results in suspension from practice. Lawyers must complete and report obtaining the outstanding CPD credits before the suspension is lifted.
217. As prescribed in Schedule 1 of the Rules, lawyers who complete their CPD hours by December 31st but do not report completion by this deadline are levied a late fee of \$200. Lawyers who do not complete the required CPD hours by December 31st are levied a late fee of \$500.
218. The Committee does not propose any changes to these monetary penalties on the basis that the current amounts are in line with the penalties issued for non-compliance by other law societies.
219. The Committee also reviewed the Supreme Court of Canada's recent decision in *Green v. Law Society of Manitoba* 2017 SCC 20, which supports administrative suspensions in response to failing to complete CPD. The Court held that this was a reasonable consequence for non-compliance, and an effective way to ensure consistency of legal service across the province and to guarantee that all lawyers meet expected educational standards.
220. Accordingly, the Committee does not recommend any changes to Rule 3-32(1), which governs suspensions.

Recommendation 25: The Law Society will continue to issue fines and administrative suspensions in response to a lawyer's failure to satisfy their CPD requirements.

TRC Calls to Action

221. The Lawyer Education Advisory Committee supports, in principle, granting CPD credit for programming that reflects the content of Truth and Reconciliation Commission's Call to Action #27:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

222. The Law Society’s Truth and Reconciliation Commission Advisory Committee is tasked with developing the Law Society’s approach to the Calls to Action. The Lawyer Education Advisory Committee welcomes engagement with that Committee in the coming months to further explore the role of CPD in educating and training the profession on the content of the Calls to Action.
223. A number of the topics identified in Call to Action #27 are already eligible for CPD credit, including substantive law courses that focus on Indigenous law and human rights law.
224. If adopted, the recommendations in this Report will result in the accreditation of additional TRC-related programming. For example, the new subject matter “educational activities that address knowledge primarily within the practice scope of other professions and disciplines, but are sufficiently connected to the practice of law,” will enable lawyers to earn CPD credit for interdisciplinary topics such as the legacy of residential schools and the history of Aboriginal-Crown relations.
225. The proposed Practice Management topic, “multicultural and diversity issues that arise within the legal context,” also captures some of the issues identified in Call to Action #27, including cultural competency and anti-racism.
226. Although these are small steps toward actualizing Call to Action #27, they represent an important starting place. The Committee looks forward to partnering with the Truth and Reconciliation Commission Advisory Committee in moving forward with this important work.

Recommendation 26: The Lawyer Education Advisory Committee will continue to work with the Truth and Reconciliation Commission Advisory Committee to define the role of CPD in educating and training the profession on the content of TRC Call to Action #27.

Summary of recommendations

227. The recommendations outlined in this Report are listed below. For ease of reference, the recommendations that represent *changes* to the CPD program are highlighted. Non-highlighted recommendations indicate a proposal to maintain existing elements or approaches of the current CPD program.

Recommendation 1: The Law Society will maintain a continuing professional development requirement that must be satisfied by all practising BC lawyers.

Recommendation 2: The Law Society will adopt the following CPD purpose statement: *The purpose of the mandatory CPD program is to uphold and protect the public interest in the administration of justice by actively supporting the Law Society's members in achieving and maintaining high standards of competency, professionalism and learning in the practice of law*

Recommendation 3: The Law Society will continue to accredit all eligible CPD programming.

Recommendation 4: Lawyers will not be required to demonstrate a nexus between their practice area and their CPD activities.

Recommendation 5: The Law Society will not introduce mandatory testing as part of the CPD program.

Recommendation 6: The Law Society will not introduce a requirement for lawyers to complete a learning plan as part of their CPD obligations.

Recommendation 7: The Law Society will recognize Professional Wellness as a subject matter that is eligible for CPD credit.

Recommendation 8: The Law Society will define Professional Wellness as:

“Approved educational programs designed to help lawyers detect, prevent or respond to substance use problems, mental health or stress-related issues that can affect professional competence and the ability to fulfill a lawyer’s ethical and professional duties. Such educational programs must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public.”

Recommendation 9: The Law Society will adopt the criteria outlined in the Professional Wellness Guidance Material as a basis for accrediting Professional Wellness subject matter.

Recommendation 10: The Law Society will not recognize pro bono and legal aid work as eligible for CPD credit.

Recommendation 11: The Law Society will recognize educational programs that address knowledge primarily within the practice scope of other professions and disciplines, but are sufficiently connected to the practice of law as a subject matter that is eligible for CPD credit.

Recommendation 12: The Law Society will recognize “understanding the business of law” as an eligible Practice Management topic.

Recommendation 13: The Law Society will recognize "multicultural and diversity issues that arise within the legal context” as an eligible Practice Management topic.

Recommendation 14: The Law Society will recognize mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals as eligible Lawyering Skills topics.

Recommendation 15: Lawyers may receive CPD credit for viewing a pre-recorded course without the presence of another lawyer or articling student.

Recommendation 16: Lawyers may receive CPD credit for teaching the same subject matter no more than twice in a calendar year.

Recommendation 17: Lawyers may receive CPD credit for writing for law firm or other websites if the content is substantially related to law or legal education. Material that is developed primarily for the purpose of marketing to existing or potential clients will not be eligible for credit.

Recommendation 18: Lawyers will not receive CPD credit for writing for blogs and wikis unless they can demonstrate that submissions are subject to editorial oversight.

Recommendation 19: Lawyers may receive mentoring credit for mentoring another lawyer if they have engaged in five years of full-time practice or part-time equivalent immediately preceding the current calendar year, where part-time practice is counted at a rate of 50% of full-time practice.

Recommendation 20: Lawyers are recommended to complete a minimum of 50 hours of self-study per year in addition to the 12 hour credit requirement. Self-study activities, including independent reading, will not be eligible for CPD credit.

Recommendation 21: The Law Society will maintain the 12 hour annual CPD credit requirement, including two hours of ethics and practice management.

Recommendation 22A: The Law Society will not introduce additional caps on the number of credit-hours that can be satisfied with particular subject matters or topics.

Or, alternatively:

Recommendation 22B: The Law Society will introduce a cap of two credit hours per year on new subject matters and topics. This cap will be reviewed within three years, following an analysis of the impact of the inclusion of these new areas on the CPD program.

Recommendation 23: The Law Society will not introduce changes to the criteria governing exemptions from the 12 hour annual CPD credit requirement.

Recommendation 24: The Law Society will introduce a carry-over model in which lawyers are permitted to carry-over up to six CPD credits from one year to the next. The two hour ethics and practice management CPD requirement cannot be carried over to the following year.

Recommendation 25: The Law Society will continue to issue fines and administrative suspensions in response to a lawyer's failure to satisfy their CPD requirements.

Recommendation 26: The Lawyer Education Advisory Committee will continue to work with the Truth and Reconciliation Commission Advisory Committee to define the role of CPD in educating and training the profession on the content of TRC Call to Action #27.

Next Steps

228. The 26 recommendations outlined in the Final Report are before the Benchers for discussion and decision. If adopted, these proposals will serve as the roadmap for implementing changes to the CPD program over the next two years.

229. Phase 1 will involve the introduction the new CPD purpose statement and the two new subject matters of Professional Wellness and educational programs that address knowledge primarily within the practice scope of other professions and disciplines, but sufficiently connected to the practice of law. The proposed new Practice Management and Lawyering Skills topics will also become eligible for credit.

230. If these new subject matters and topics are *not* subject to a cap (see Recommendation 22A), these changes will be in place in time for lawyers to obtain credit for these new CPD areas during the 2018 reporting year.
231. Phase 2 of the implementation process will take effect January 2019 and will include the new learning mode criteria and the introduction of the carry-over option. As such, lawyers will be permitted to carry-over up to six excess CPD credits from the 2018 reporting year to meet their 2019 reporting requirements.
232. If the Benchers determine that caps will be imposed on the new subject matters and topics, given technical and administrative complexity of making the necessary changes to the reporting system to accommodate caps, lawyers may not be eligible to receive credit for these new CPD areas until 2019.
233. Whereas Phase 1 largely relates to accreditation, the changes marked for Phase 2 have a significant impact on reporting and, as such, additional time may be required to ensure internal systems are operational.
234. In advance of both Phase 1 and Phase 2, the Law Society will develop a communications strategy to ensure that lawyers, CPD providers and the public are well-informed about the upcoming changes to the CPD program. Information will be disseminated using a variety of media, including the Law Society website, a Notice to the Profession, and the *Benchers' Bulletin*. The CPD Guidelines will also be redrafted.
235. From a budgetary perspective, the recommended changes to the CPD program to implement the Phase 1 modifications ought not to require additional funding, as existing resourcing should be sufficient to complete the required policy and operational work.
236. Discussions with the IT department regarding the necessary system modifications to include the new learning mode criteria and accommodate the carry-over model and an imposition of caps (if any) slated for Phase 2 of implementation are ongoing, but preliminary estimates for IT, communication and operation resources are in the range of \$7,000 - \$10,000.

Conclusion

237. Over the past two years, the Lawyer Education Advisory Committee has undertaken the difficult and complex task of reviewing all aspects of BC's CPD program.
238. Throughout, the level of engagement in this review exercise by Committee members has been exceptional. The 2016 Survey and 2017 Consultation also represents tremendous efforts on behalf of both Law Society staff and the many lawyers and organizations that participated in this process.

239. Cumulatively, this work has resulted in 26 key recommendations designed to improve the effectiveness and relevance of the CPD program.
240. Many of the foundational elements of Law Society of BC's current CPD scheme remain unchanged, including the accreditation model, the 12 hour credit requirement, core subject matters, topics and learning modes, criteria governing exemptions and compliance, and enforcement measures.
241. Numerous modifications to the program have also been proposed. In general, these changes tend toward an expansion of eligible CPD programming and increased flexibility as to how and when lawyers can satisfy their CPD requirements.
242. Specifically, the Committee recommends the addition of two new subject matters, a reduction in the number of ineligible Practice Management and Lawyering Skills topics, and a corresponding increase in the range of eligible topics. The criteria governing learning modes have also been relaxed.
243. Other key changes include the adoption of a new purpose statement and the introduction of a carry-over of 6 credits from one year to the next. Future consultation with the Truth and Reconciliation Commission Advisory Committee may result in additional changes to the program as is necessary to address Call to Action #27.
244. The Committee is of the view that collectively, these 26 recommendations represent an innovative, responsive and flexible approach to continuing professional development, one that actively supports lawyer learning, competence and professionalism and, in doing so, enhance the provision of legal services to the public.

BC Lawyers' Continuing Professional Development, effective January 1, 2012

BC lawyers, on January 1, 2009, became the first in Canada to be subject to a comprehensive continuing professional development (CPD) requirement. A thorough review of the CPD program was completed in 2011 following extensive consultation, with the Benchers approving revisions effective January 1, 2012.

BC practising lawyers, both full-time and part-time, must complete 12 hours of accredited CPD within the calendar year. At least two of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, and practice management.

While the Law Society continues to encourage self-study, the 12 hour requirement does not include self-study, such as reading or reviewing recorded material on one's own, subject to the exceptions for writing and some online programs outlined in the summary below.

Lawyers record their accredited CPD activities online at the Law Society website. The system is paperless. Application for accreditation of courses and other professional development activities can be made both by education providers and individual lawyers, either before or after the event. Application for accreditation before rather than after the event is strongly recommended.

The Law Society has endeavored to implement a program with sufficient flexibility to permit lawyers to meet the requirement in a way that matches their own professional goals and learning preferences, and that is as straightforward as reasonably possible for lawyers and education providers. The details of the program are outlined below.

Questions and suggestions may be directed to the Member Services Department, 6th Floor, 845 Cambie Street, Vancouver, BC V6B 4Z9, at cpd@lsbc.org, or (604) 605-5311 or 1 (800) 903-5300, local 5311 (toll-free in BC).

1. CPD Requirement for Practicing Lawyers

- a. 12 hours of accredited continuing professional development within the calendar year
- b. At least 2 of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, and practice management. Stand

alone, as well as embedded professional responsibility and ethics, client care and relations, and practice management content satisfy the 2 hour requirement.

- c. While the Law Society continues to encourage self-study, the 12 hour requirement does not include self-study, such as reading or reviewing recorded material on one's own, subject to the exceptions for writing and some online programs listed below.

2. Overall Subject Matter Requirement for all Accredited Learning Modes

The subject matter of all accredited learning modes, including courses, must deal primarily with one or more of:

- i) substantive law
- ii) procedural law
- iii) professional ethics
- iv) practice management (including client care and relations)
- v) lawyering skills.

Accredited learning activities are not limited to subject matter dealing primarily with BC or Canadian law. Credit is available for subject matter related to the law of other provinces and countries.

The following activities will not be accredited:

- lawyer wellness topics
- topics relating to law firm marketing or profit maximization
- activity designed for or targeted primarily at clients
- pro bono activities

(See Appendix A for descriptions of Professional Ethics, Practice Management and Lawyering Skills, including further detail on excluded subject matter.)

3. Credit for Different Types of CPD Activity

a. Courses

Courses will be accredited on the following criteria:

- i. attending a course;

- ii. participating in online “real time” courses, streaming video, web and / or teleconference courses, if there is an opportunity to ask and answer questions; or
- iii. reviewing a previously recorded course with at least one other lawyer or an articling student, including by telephone or other real time communications technology
- iv. reviewing a previously recorded course, if at least two lawyers review it together, including by telephone or other real time communications technology.

b. Online Interactive Programs

A lawyer may apply for credit for individually completing an online program, including an audio, video or web program, for up to a pre-accredited limit per online program, if the program has the following characteristics:

- i. a quiz component, where questions are to be answered, and where either the correct answer is provided after the question is answered, or an answer guide is provided after the lawyer completes the quiz;
- ii. the quiz is at the end of or interspersed throughout the program;
- iii. the lawyer can email or telephone a designated moderator with questions, and receive a timely reply.

c. Listserv/forum /network site

Credit is not available for these forms of activity.

d. Local Bar and Canadian Bar Association Section Meetings

A lawyer may apply for credit for the actual time spent attending an educational program provided by a local or county bar association, as well as for section meetings of the Canadian Bar Association, excluding any portion of a meeting not devoted to educational activities.

To qualify, at least two lawyers or a lawyer and an articling student must participate in the activity at the same time, including by telephone or other real time communications technology.

e. Study Groups

Credit will be given for study group attendance at a meeting

- i. if at least two lawyers or a lawyer and articling student are together for educational purposes (including reviewing a recorded program) at the same time (including by telephone or other real time communications technology),
- ii. of an editorial advisory board for legal publications, but not as a part of regular employment, or
- iii. of a law reform body or group, but not as a part of regular employment,
- iv. if a lawyer chairs or has overall administrative responsibility for the meeting.

Credit will be not given for

- i. participation on committees, boards and tribunals,
- ii. any time that is not related to educational activity,
- iii. activity that is file specific,
- iv. time spent reading materials, handouts or PowerPoint, whether before or after the study group session.

f. Teaching

Lawyers may claim up to three hours of credit for each hour taught if the teaching is for

- i. an audience that includes as a principal component, lawyers, paralegals, articling students and / or law school students,
- ii. (a continuing professional education or licensing program for another profession, or
- iii. a post-secondary educational program,

but not if the teaching is targeted primarily at clients or is file specific.

If teaching is directed to an audience not listed in i. to iii. above, such as the general public, one hour of credit for each hour taught, but not if targeted primarily at clients or is file specific.

The following conditions apply:

- i. credit for volunteer or part-time teaching only, not as part of full-time or regular employment;
- ii. if the lawyer only chairs a program, the time spent chairing the program is all that may be reported, not three hours for each hour of chairing;
- iii. credit only for the first time in the year, and not for repeat teaching of substantially the same subject matter within the year
- iv. credit may be claimed for the same course year to year, whether or not there are changes to the course;
- v. a lawyer claiming teaching and preparation credit can also claim writing credit for additional time writing course materials;
- vi. no credit for setting or marking examinations, term papers or other assignments;
- vii. no credit for preparation time if the lawyer does not actually teach the course. Examples include
 - assisting someone else in preparation without actually teaching,
 - acting as a teaching assistant without actually teaching,
 - preparing to teach, but the course is then cancelled.

g. Writing

Lawyers may claim credit

- i. for writing law books or articles intended for publication or to be included in course materials intended for any audience
- ii. a maximum of 6 hours for each writing project, based on the actual time to produce the final product,
- iii. no cap on the overall credit hours available for writing,
- iv. in addition to credit for teaching and preparation for teaching,
- v. not for preparation of PowerPoint,
- vi. not for writing for law firm websites,

- vii. not for blogging or wikis (as there are no generally accepted standards for posting to blogs or wikis at present – this will be considered as part of the next CPD review).
- viii. for volunteer or part-time writing only, not as a part of full-time or regular employment.

h. Mentoring

The following provisions apply to mentoring:

- i. a lawyer who has engaged in the practice of law in Canada, either full or part-time, for 7 of the 10 years immediately preceding the current calendar year, and who is not the subject of an order of the Credentials Committee under Rule 3-18.31(4) (c), is eligible to be a mentor principal.
- ii. mentoring credit is available for mentoring another lawyer or an articling student, but not for an articling principal mentoring one's own articling student;
- iii. mentoring credit is not available for mentoring a paralegal;
- iv. mentoring goals must comply with the subject matter requirements applicable for any other CPD credit;
- v. mentoring must not be file specific or simply answer questions about specific files;
- vi. a mentor is entitled to 6 hours of credit per mentee, plus another 6 hours (for a total of 12 hours) if mentoring two mentees separately. If two or more mentees are mentored in a group, the mentor is entitled to 6 hours, and each mentee is entitled to 6 hours;
- vii. credit is for time actually spent together in the mentoring sessions, and can be face to face or by telephone, including real time videoconferencing.
- viii. mentoring by email or similar electronic means qualifies for credit;
- ix. there is no minimum time for each mentoring session;

i. Self study restriction

No credit is available for self-study, such as reading, and reviewing recorded material on one's own, subject to the prescribed exception above for approved interactive online programs. Lawyers are recommended to complete a minimum 50 hours of self-study annually, are not required lawyers to report this as it is not eligible for credit.

4. Accreditation Process

The Law Society considers applications for credit according to the following processes:

- i. A course provider may apply for pre-approved status, in which case the provider is responsible for ensuring the courses meet the prescribed accreditation above criteria, or may request that the Law Society review and approve each course. Pre-approval status is dependent on the provider maintaining integrity and quality according to standards.
- ii. A lawyer may apply individually for accreditation of a course if a provider has not done so.
- iii. A lawyer must individually apply for accreditation of group study, teaching, writing and mentoring plans.
- iv. All applications by providers and lawyers must be submitted electronically through the Law Society website log-in.
- v. Approval decisions are made by Law Society staff. A provider or lawyer may ask staff to review a decision a second time.

5. Compliance and Reporting Requirements

- i. The CPD requirement is based on the calendar year, with the compliance date being December 31 each year. Credits in excess of 12 hours cannot be carried over into a subsequent year.
- ii. Lawyers log on to the Law Society website and click on a link to the CPD program, where they are shown their individual credits obtained to date in the calendar year. After completing an accredited course or other accredited learning activity, lawyers should add that to their record.
- iii. Lawyers must keep their own record of the number of hours of professional responsibility and ethics, client care and relations, and

practice management they complete, and when they have completed at least 2 hours, should reply 'yes' to the specific question in their CPD report.

- iv. Lawyers are notified electronically of the approaching calendar deadline and, if the deadline is not met, are given an automatic extension to April 1 of the following year to complete the necessary requirement, in which case a late fee of will be charged as follows:
 - lawyers who complete their CPD hours by December 31 but do not report completion by the December 31 deadline will be levied a \$200 late fee plus applicable taxes; or
 - lawyers who do not complete the required CPD hours by December 31, and are therefore required to complete and report the required CPD hours by April 1 of the following year, will be levied a late fee of \$500 plus applicable taxes.
- v. If the requirement is not complete by April 1 of the following year, the lawyer is suspended until all required professional development is complete. The lawyer will receive a 60 day prior notice of the suspension. The Practice Standards Committee has the discretion to prevent or delay the suspension in special circumstances on written application by a lawyer.
- vi. The twelve hour requirement is subject to adjustment for entering or re-entering practice mid-year. Lawyers who are exempt during the reporting year, but resume practising law within the reporting year, must complete one credit hour for each full or partial calendar month in the practice of law. The professional responsibility and ethics, client care and relations, and practice management requirement is also adjusted.

6. Exemptions

Lawyers with a practising certificate, whether full or part-time, are subject to the full CPD requirement, with the following exemptions:

- i. lawyers with a practicing certificate who submit a declaration that they are not practising law in the reporting year. Examples of lawyers who might submit a declaration that they are not practising law are those who are
 - inactive;

- on medical or maternity leave;
 - taking a sabbatical.
- ii. new members who have completed the bar admission program of a Canadian law society during the reporting year;
 - iii. lawyers who resume practising law within the reporting year after having been exempt and, subject to (ii), above, new members by way of transfer. These lawyers must complete one credit hour for each full or partial calendar month in the practice of law. The professional responsibility and ethics, client care and relations, and practice management requirement is also adjusted.
 - iv. no exemption is available for
 - being too busy (such as a long trial);
 - the practice of law being in another jurisdiction.

APPENDIX A

A GUIDE TO CRITERIA FOR ACCREDITING

1. PROFESSIONAL ETHICS
2. PRACTICE MANAGEMENT
3. LAWYERING SKILLS

I. PROFESSIONAL ETHICS

Content focusing on the professional and ethical practice of law, including conducting one's practice in a manner consistent with the *Legal Profession Act* and Rules, the *Code of Professional Conduct for British Columbia*, and generally accepted principles of professional conduct.

II. PRACTICE MANAGEMENT

Content focusing on administration of a lawyer's workload and office, and on client-based administration, including how to start up and operate a law practice in a manner that applies sound and efficient law practice management methodology.

Topics include

- (a) client care and relations, including managing difficult clients;
- (b) trust accounting requirements, including:
 - (i) trust reporting;
 - (ii) financial reporting for a law practice;
 - (iii) interest income on trust accounts;
 - (iv) working with a bookkeeper;
- (c) Federal and provincial tax remittances, including employee income tax remittances;
- (d) technology in law practice including:
 - (i) law office systems;
 - (ii) e-filing;
 - (iii) legal document preparation and management, including precedents;
- (e) retainer agreements and billing practices relating to Law Society requirements, including:
 - (i) unbundling of legal services;
 - (ii) permissible alternative billing arrangements;
- (f) avoiding fee disputes;
- (g) file systems, including retention and disposal;
- (h) succession planning;
- (i) emergency planning, including law practice continuity for catastrophic events and coverage during absences;
- (j) managing law firm staff, including:
 - (i) *Code of Professional Conduct for British Columbia* requirements;
 - (ii) delegation of tasks/supervision;
- (k) identifying conflicts, including:
 - (i) conflict checks and related systems;

- (ii) client screening;
- (l) diary and time management systems, including:
 - (i) limitation systems;
 - (ii) reminder systems;
 - (iii) follow-up systems;
- (m) avoiding “being a dupe”/avoiding fraud;
- (n) complying with Law Society Rules.

The following topics do not satisfy the practice management definition for CPD accreditation:

- (a) law firm marketing;
- (b) maximizing profit;
- (c) commoditization of legal services;
- (d) surviving a recession;
- (e) basic technology and office systems (unless in the specific context of practising law, as listed above);
- (f) attracting and retaining law firm talent;
- (g) alternate work arrangements in a law firm;
- (h) business case for retention of lawyers and staff, including retention relating to gender, Aboriginal identity, cultural diversity, disability, or sexual orientation and gender identity.
- (i) handling interpersonal differences within your law firm;
- (j) cultural sensitivity in working with your law firm staff;
- (k) training to be a mentor.

III. LAWYERING SKILLS

Lawyering skills include

- (a) effective communication, both oral and written;
- (b) interviewing and advising;
- (c) problem solving, including related critical thinking and decision making;
- (d) advocacy;
- (e) arbitration;
- (f) mediation;
- (g) negotiation;
- (h) drafting legal documents;
- (i) legal writing, including related plain writing;
- (j) legal research;
- (k) legal project management;
- (l) how to work with law practice technology, including:
 - (i) e-discovery;
 - (ii) in the courtroom;
 - (iii) client record management;



- (iv) converting electronically stored information into evidence;
- (v) social networking technology to facilitate client communication (but excluding marketing and client development);

but not







- (a) general business leadership;
- (b) chairing / conducting meetings;
- (c) serving on a Board of Directors;
- (d) general project management;
- (e) skills and knowledge primarily within the practice scope of other professions and disciplines.

LAW SOCIETY OF BC 2016 CPD SURVEY RESULTS

Should there be some amount of mandatory CPD for lawyers?

Response	Chart	Percentage	Count
Yes		83.2%	1042
No		16.8%	211
		Total Responses	1253







How appropriate is the current requirement of 12 hours per year?

Response	Chart	Percentage	Count
Much too low		2.1%	27
A little too low		8.6%	108
About right		55.4%	696
A little too high		15.0%	188
Much too high		5.6%	71
The requirement should not be based on hours		13.3%	167
		Total Responses	1257



Should the annual CPD requirement be adjusted according to the individual lawyer's:

	Yes	No	Total Responses
Practising full or part time	616 (49.6%)	625 (50.4%)	1241
Length of time in practice	426 (34.4%)	812 (65.6%)	1238

How appropriate is the current requirement of 2 hours per year minimum for ethics, practice management and client care and relations education?

Response	Chart	Percentage	Count
Much too low		2.0%	25
A little too low		8.7%	110
About right		56.6%	712
A little too high		8.3%	105
Much too high		1.0%	13
There should be no such requirement		23.4%	294
		Total Responses	1259



Wellness: Are you in favour of extending CPD accreditation to wellness courses that support the mental and physical well-being of lawyers in the practice of law?

Response	Chart	Percentage	Count
Yes		60.3%	756
No		39.7%	497
Total Responses			1253

Comment?

The 356 response(s) to this question can be found in the appendix.



Law firm marketing and business development: Are you in favour of extending CPD accreditation to law firm marketing and business development programs?

Response	Chart	Percentage	Count
Yes		34.1%	425
No		65.9%	823
Total Responses			1248

Comment?

The 284 response(s) to this question can be found in the appendix.



Pro bono: Are you in favour of extending CPD accreditation to the provision of pro bono legal services?

Response	Chart	Percentage	Count
Yes		50.2%	629
No		49.8%	624
Total Responses			1253

Comment?

The 315 response(s) to this question can be found in the appendix.



Legal Aid: Are you in favour of extending CPD accreditation to the provision of legal services funded through the Legal Services Society?

Response	Chart	Percentage	Count
Yes		35.6%	444
No		64.4%	802
		Total Responses	1246




Comment?

The 243 response(s) to this question can be found in the appendix.


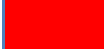



Which of the following would you prefer?

Response	Chart	Percentage	Count
Maintain an annual CPD requirement, but allow lawyers who complete more than the required number of credits each year to carry over some of their excess credits to the next reporting year.		75.7%	946
Maintain an annual CPD requirement, but do not allow lawyers who complete more than the required number of credits each year to carry over some of their excess credits to the next reporting year.		24.3%	304
		Total Responses	1250







If you typically complete more than 12 hours of CPD in a year, do you record your hours in excess of the required 12 in the Law Society's online CPD reporting system?

Response	Chart	Percentage	Count
Yes		46.7%	587
No		40.5%	509
N/A		12.9%	162
		Total Responses	1258




If you typically complete more than 12 hours of CPD in a year, approximately how many hours do you complete in a typical year?

Response	Chart	Percentage	Count
13 - 15 hours		28.5%	356
16 to 20 hours		30.0%	375
21 to 25 hours		10.2%	127
More than 25 hours		14.9%	186
N/A		16.5%	206
		Total Responses	1250

The online system for reporting CPD credits is easy to use.

Response	Chart	Percentage	Count
Strongly agree		25.7%	324
Agree somewhat		45.1%	568
Neither agree nor disagree		7.7%	97
Disagree somewhat		14.6%	184
Strongly disagree		5.4%	68
Don't know		1.5%	19
		Total Responses	1260

If the Law Society were to provide a web app or mobile app for reporting CPD credits, would you likely use it?

Response	Chart	Percentage	Count
Yes		36.8%	462
No		37.7%	474
Not sure		25.5%	321
		Total Responses	1257

How would you PREFER to satisfy your CPD requirements this year? Please rank up to 8 preferences, with 1 indicating your first preference, 2 your second preference and so on.

	1	2	3	4	5	6	7	8	Total Responses
Live courses	513 (45.9%)	252 (22.6%)	158 (14.1%)	81 (7.3%)	52 (4.7%)	29 (2.6%)	21 (1.9%)	11 (1.0%)	1117
On-line courses	346 (30.9%)	329 (29.3%)	171 (15.3%)	110 (9.8%)	70 (6.2%)	44 (3.9%)	45 (4.0%)	6 (0.5%)	1121
Study groups	62 (7.1%)	128 (14.6%)	151 (17.2%)	172 (19.6%)	119 (13.6%)	115 (13.1%)	116 (13.2%)	14 (1.6%)	877
In-house education	140 (14.5%)	226 (23.4%)	220 (22.8%)	166 (17.2%)	71 (7.4%)	73 (7.6%)	57 (5.9%)	12 (1.2%)	965
Teaching	68 (7.6%)	114 (12.7%)	149 (16.6%)	148 (16.5%)	164 (18.3%)	150 (16.7%)	95 (10.6%)	8 (0.9%)	896
Writing	17 (2.1%)	64 (7.9%)	82 (10.1%)	108 (13.3%)	150 (18.5%)	197 (24.2%)	172 (21.2%)	23 (2.8%)	813
Mentoring	22 (2.6%)	48 (5.8%)	105 (12.6%)	137 (16.4%)	164 (19.7%)	138 (16.5%)	200 (24.0%)	20 (2.4%)	834
Other (Please specify below.)	34 (6.5%)	13 (2.5%)	20 (3.8%)	8 (1.5%)	13 (2.5%)	7 (1.3%)	19 (3.6%)	411 (78.3%)	525







The 184 response(s) to this question can be found in the appendix.

To what extent are any of the following a barrier to satisfying your annual CPD requirement?

	Strong barrier	Modest barrier	Not a barrier	Total Responses
Price	427 (34.9%)	427 (34.9%)	368 (30.1%)	1222
Geographic location	230 (19.2%)	305 (25.5%)	660 (55.2%)	1195
Time	270 (22.2%)	587 (48.4%)	357 (29.4%)	1214
Availability of topics relevant to your practice	277 (22.8%)	462 (38.0%)	477 (39.2%)	1216
Other (please specify below)	49 (17.2%)	32 (11.2%)	204 (71.6%)	285








The 173 response(s) to this question can be found in the appendix.

What are the top TWO factors likely to determine how you will fulfil your CPD credits in 2016?



Response	Chart	Percentage	Count
To enhance your knowledge and skills within your field(s) of practice		76.9%	969
To improve your competence as a lawyer		46.1%	581
Ease of participation in the course or other form of educational activity		35.3%	445
Price		25.0%	315
What is available for credit at the end of the year		7.6%	96
Other (Please specify below.)		4.1%	52
Total Responses			1260






The 86 response(s) to this question can be found in the appendix.

How many years have you practised law?




Response	Chart	Percentage	Count
Fewer than 5 years		13.5%	170
5 to 10 years		15.9%	200
11 to 15 years		13.7%	172
16 to 20 years		11.5%	145
21 to 25 years		13.1%	165
26 to 30 years		11.1%	140
More than 30 years		21.3%	268
Total Responses			1260

The size of the firm in which you practise is:

Response	Chart	Percentage	Count
Sole practitioner		21.9%	275
2 to 4 lawyers		13.8%	173

5 to 9 lawyers		10.2%	128
10 to 24 lawyers		10.2%	128
25 to 49 lawyers		3.3%	42
50 or more lawyers		10.8%	136
Not in a law firm (corporate/government counsel, etc.)		29.9%	376
Total Responses			1258

Are you currently practicing?

Response	Chart	Percentage	Count
Full time		84.6%	1063
Part time		14.1%	177
Not Practising		1.3%	16
Total Responses			1256

Where is the principal city, town or municipality of your law practice?

The 1220 response(s) to this question can be found in the appendix.

The best way(s) to improve the CPD program would be to:

The 723 response(s) to this question can be found in the appendix.

Please provide any additional comments.

The 191 response(s) to this question can be found in the appendix.

Memo

To: Lawyer Education Advisory Committee
From: Alan Treleaven
Date: June 26, 2017
Subject: CPD Review Consultation Update

I have sent the following customized email, with the 2016 CPD member survey results attached, to the following institutions, organizations and firms, and will provide a report on responses at the July 6 Committee meeting.

- Continuing Legal Education Society of BC
 - Courthouse Libraries BC
 - Trial Lawyers' Association of BC
 - BC Legal Management Association (BCLMA)
 - CBA BC
 - CBA BC Aboriginal Lawyers Forum
 - Federation of Asian Canadian Lawyers of BC
 - South Asian Bar Association of BC
 - Black Lawyers Association BC Chapter
 - l'Association des juristes d'expression française de la Colombie-Britannique
 - Ismaili Lawyers Association
 - 26 local bar associations
 - 25 large law firms (with in-house education directors)
 - BC's three law schools
-

Invitation to the Victoria Bar Association

Neil,

The Law Society of BC's Lawyer Education Advisory Committee is reviewing the Continuing Professional Development ("CPD") program. In addition to the Committee having consulted with the profession in 2016 through an online survey, the results of which are attached, the Committee is initiating further, focused consultations with institutions and organizations that may have a direct interest in potential changes to the CPD program.

At this stage of the review, the Committee is considering potential changes to the CPD program, such as introducing eligibility of the following subjects, topics and learning modes for CPD credit:

1. additional subject matter:
 - a) educational activities related to professional wellness
 - b) knowledge primarily within the practice scope of other professions and disciplines, but sufficiently connected to the practice of law
 - c) educational activities related to Truth and Reconciliation Commission Report Call to Action #27, including cultural competency
2. additional practice management topics:
 - a) understanding the business of law, including:
 - (i) marketing of a law practice, including client development
 - (ii) strategic business planning
 - (iii) management and running of a law practice
 - (iv) technological systems incorporated into running a law practice
 - (v) financial systems incorporated into running a law practice
 - b) multicultural and diversity issues that arise within the legal context
 - c) mentoring best practices for lawyers
3. additional lawyering skills topics:
 - a) governance issues
 - b) leadership for legal professionals
 - c) training to be an articling principal
4. additional learning modes:
 - a) independent viewing of pre-recorded courses
 - b) writing for law firm websites
 - c) credit for teaching the same course up to two times per year

The Committee invites you to respond to the following questions by email to atreleaven@lsbc.org. (It would be helpful to receive your response by July 5.)

1. What suggestions do you have for expanding the scope of subject areas, topics and learning modes eligible for accreditation?
2. Do you have other comments or suggestions as to how the CPD program could be improved?

If you would like to arrange a follow-up discussion with Law Society representatives, please contact:

Alan Treleaven
 Director, Education & Practice
 Law Society of British Columbia
 845 Cambie Street, Vancouver, BC V6B 4Z9
 1-604-605-5354
 BC toll-free 1-800-903-5300
atreleaven@lsbc.org

Thank you very much.

-Alan Treleaven

Appendix D

New subject matters

- Professional Wellness
- Knowledge primarily within the practice scope of other professions and disciplines, but sufficiently connected to the practice of law

Eligible Practice Management topics
(a) client care and relations, including managing difficult clients
(b) trust accounting requirements, including: <ul style="list-style-type: none"> (i) trust reporting (ii) financial reporting for a law practice (iii) interest income on trust accounts (iv) working with a bookkeeper
(c) Federal and provincial tax remittances, including employee income tax remittances
(d) technology to assist running a law practice including: <ul style="list-style-type: none"> (i) law office systems (ii) e-filing (iii) legal document preparation and management, including precedents (iv) client record management
(e) retainer agreements and billing practices relating to Law Society requirements, including: <ul style="list-style-type: none"> (i) unbundling of legal services (ii) permissible alternative billing arrangements
(f) managing client expectations related to fees and disbursements
(g) file systems, including retention and disposal
(h) emergency planning, including law practice continuity for catastrophic events and coverage during absences
(i) managing law firm staff, including:

<ul style="list-style-type: none"> (i) <i>Code of Professional Conduct for British Columbia</i> requirements (ii) training, supervising and delegating to staff
<ul style="list-style-type: none"> (j) identifying conflicts, including: <ul style="list-style-type: none"> (i) conflict checks and related systems (ii) client screening
<ul style="list-style-type: none"> (k) diary and time management systems, including: <ul style="list-style-type: none"> (i) limitation systems (ii) reminder systems (iii) follow-up systems
<ul style="list-style-type: none"> (l) avoiding “being a dupe”/avoiding fraud
<ul style="list-style-type: none"> (m) complying with Law Society Rules
<ul style="list-style-type: none"> (n) understanding the business of law, including: <ul style="list-style-type: none"> (i) the marketing of a law practice in accordance with professional obligations, including client development; (ii) strategic business planning (iii) the management and running of a law practice (iv) the technological systems incorporated into running a law practice (v) the financial systems incorporated into running a law practice
<ul style="list-style-type: none"> (o) multicultural and diversity issues that arise within the legal context
<ul style="list-style-type: none"> (p) mentoring best practices for lawyers
<ul style="list-style-type: none"> (q) succession planning and related issues

Ineligible Practice Management topics
<ul style="list-style-type: none"> (a) any activity developed primarily for the purpose of marketing to existing or potential clients
<ul style="list-style-type: none"> (b) maximizing profit
<ul style="list-style-type: none"> (c) commoditization of legal services
<ul style="list-style-type: none"> (d) surviving a recession

Eligible Lawyering Skills topics
(a) effective communication, both oral and written
(b) interviewing and advising
(c) problem solving, including related critical thinking and decision making
(d) advocacy
(e) arbitration
(f) mediation
(g) dispute resolution
(h) negotiation
(i) drafting legal documents
(j) legal writing, including related plain writing
(k) legal research
(l) legal project management
(m) technology to support a legal practice, including: <ul style="list-style-type: none"> (i) e-discovery (ii) in the courtroom (iii) converting electronically stored information into evidence (iv) social networking technology to facilitate client communication (but excluding advertising and client development)
(n) training to be a principal
(o) governance issues related to the practice of law
(p) leadership for legal professionals

Ineligible Lawyering Skills topics
(a) general business leadership
(b) acting as a chair / conducting meetings
(c) serving on a Board of Directors
(d) general project management

Memo

To: Benchers
From: Governance Committee
Date: October 10, 2017
Subject: Annual Benchers and Committee Evaluation Surveys

The 2012 governance review recommended that the Benchers ensure there is a process in place for an annual evaluation of the Benchers, committees, task forces and working groups. In 2013, the Governance Committee recommended forms of evaluations to be conducted annually in December and that evaluations should be delivered and completed online. The Committee revised the annual evaluation survey questions in 2015 and implemented the changes for the 2016 evaluation.

In early December 2016, all of the Benchers and all the members of the 2016 committees and task forces were provided with links to online evaluation forms and asked to complete the forms by December 16, 2016.

Earlier this year, the Committee reported to the Benchers on the results of the 2016 surveys. In its report to the Benchers, the Committee reported that this year it would consider the current statements and process with a view to making the process more useful.

At its September 2017 meeting, the Committee considered whether to recommend revisions to the evaluation process in order to make it more useful. After discussion, the Committee concluded that the current process has merit but that the evaluation statements in the Benchers and committee surveys required revision to clarify and improve on the utility of the results.

As a result, the Committee revised the statements as redlined in Appendix A. A clean version of the revised questions is attached as Appendix B.

The Benchers are asked to approve the revised version of the Benchers and committee evaluation surveys. If adopted, the 2017 survey will reflect the revised versions.

<i>Current Bencher Survey Questions</i>	<i>Proposed Bencher Survey Questions</i>
The Benchers have an effective role in the strategic planning process.	No change
The Benchers are up to date with latest developments in the regulatory environment.	The Benchers are up to date with latest developments in legal regulation in this and other jurisdiction.
The Benchers are up to date with latest developments in the market for legal services.	The Benchers are up to date with <u>on the</u> latest developments in the supply and demand for legal services.
The Benchers receive sufficient information on organizational performance.	The Benchers receive sufficient information to evaluate organizational performance.
The Benchers receive sufficient information on financial performance.	No change
The Benchers receive sufficient information on about progress on the strategic goals.	The Benchers receive sufficient information about progress on the strategic goals.
As part of the discussion around every major decision, the Benchers analyze the potential risks arising from the decision.	The Benchers receive sufficient information to analyze the potential risks and benefits of every major decision.
The Benchers receive adequate briefings on the principal risks of the organization, and on its systems for identifying, managing and monitoring such risks.	No change
Meeting materials are received in sufficient time to allow for adequate preparation.	No change
Meeting materials provide appropriate context and background information to support informed decision-making.	No change
Presentations to the Benchers are generally of appropriate length and content.	No change
Bencher meetings allow for candid, constructive discussion and critical questioning.	Bencher meetings allow for candid , constructive discussion and critical questioning.
The right things are placed on the agenda.	No change

There is adequate time for discussion of agenda items during Benchers meetings.	No change
Benchers come to meetings prepared.	No change
Benchers use the meeting time effectively and efficiently.	No change
The Benchers know what is expected of them.	No change
Benchers discussions are open, meaningful and respectful.	No change
Benchers have no hesitation raising issues in Benchers meetings.	No change
The Benchers are actively engaged with each other and with management on issues.	No change
The Benchers spend sufficient time to get to know each other and build trust in one another.	Remove
The Benchers take advantage of education/developmental opportunities to improve governance capabilities.	Benchers have sufficient educational opportunities <u>respecting their role as Benchers.</u>
The roles of the Benchers and the CEO are well understood.	The different roles of the Benchers and the management are well understood.
The Benchers respect the CEO's role in managing the organization.	The Benchers and management work collaboratively.
Evaluation of the CEO's performance is appropriate.	Benchers have sufficient information regarding the performance evaluation of the CEO and senior management
The Benchers provide adequate direction and support to the CEO.	Delete
The Benchers seek and obtain sufficient input from management and staff to support effective decision-making.	The Benchers obtain sufficient input from committees and staff to support effective decision-making.

<i>Current Committee Survey Questions</i>	<i>Proposed Committee Survey Questions</i>
Members understand and act within the mandate of the committee.	No change
Members are aware of what is expected of them.	Delete
The right things are placed on the agenda.	Delete
Meeting agendas and supporting materials are received in sufficient time to allow for adequate preparation.	No change
Pre-meeting materials provide appropriate context and background information to support informed discussion and decision-making.	No change
The Chair ensures that all agenda items are covered during the meetings.	Delete
The Chair effectively manages dissent and works constructively towards arriving at decisions and achieving consensus.	The Committee works constructively towards arriving at decisions and achieving consensus.
The Chair ensures that meeting time is used effectively and efficiently.	Meeting time is used effectively and efficiently.
Everyone comes to meetings prepared.	Delete
Meetings allow for candid, constructive discussion and critical questioning.	Meetings allow for candid , constructive discussion and critical questioning.
Presentations are generally of the appropriate length and content.	No change
Discussion is open, meaningful and respectful.	No change

<i>Current Bencher Survey Questions</i>	<i>Proposed Bencher Survey Questions</i>
The Benchers have an effective role in the strategic planning process.	No change
The Benchers are up to date with latest developments in the regulatory environment.	The Benchers are up to date with latest developments in legal regulation in this and other jurisdiction.
The Benchers are up to date with latest developments in the market for legal services.	The Benchers are up to date on the latest developments in the supply and demand for legal services.
The Benchers receive sufficient information on organizational performance.	The Benchers receive sufficient information to evaluate organizational performance.
The Benchers receive sufficient information on financial performance.	No change
The Benchers receive sufficient information on about progress on the strategic goals.	The Benchers receive sufficient information about progress on the strategic goals.
As part of the discussion around every major decision, the Benchers analyze the potential risks arising from the decision.	The Benchers receive sufficient information to analyze the potential risks and benefits of every major decision.
The Benchers receive adequate briefings on the principal risks of the organization, and on its systems for identifying, managing and monitoring such risks.	No change
Meeting materials are received in sufficient time to allow for adequate preparation.	No change
Meeting materials provide appropriate context and background information to support informed decision-making.	No change
Presentations to the Benchers are generally of appropriate length and content.	No change
Bencher meetings allow for candid, constructive discussion and critical questioning.	Bencher meetings allow for constructive discussion and critical questioning.
The right things are placed on the agenda.	No change

There is adequate time for discussion of agenda items during Benchers meetings.	No change
Benchers come to meetings prepared.	No change
Benchers use the meeting time effectively and efficiently.	No change
The Benchers know what is expected of them.	No change
Benchers discussions are open, meaningful and respectful.	No change
Benchers have no hesitation raising issues in Benchers meetings.	No change
The Benchers are actively engaged with each other and with management on issues.	No change
The Benchers spend sufficient time to get to know each other and build trust in one another.	Remove
The Benchers take advantage of education/developmental opportunities to improve governance capabilities.	Benchers have sufficient educational opportunities respecting their role as Benchers.
The roles of the Benchers and the CEO are well understood.	The different roles of the Benchers and the management are well understood.
The Benchers respect the CEO's role in managing the organization.	The Benchers and management work collaboratively.
Evaluation of the CEO's performance is appropriate.	Benchers have sufficient information regarding the performance evaluation of the CEO and senior management
The Benchers provide adequate direction and support to the CEO.	Delete
The Benchers seek and obtain sufficient input from management and staff to support effective decision-making.	The Benchers obtain sufficient input from committees and staff to support effective decision-making.

<i>Current Committee Survey Questions</i>	<i>Proposed Committee Survey Questions</i>
Members understand and act within the mandate of the committee.	No change
Members are aware of what is expected of them.	Delete
The right things are placed on the agenda.	Delete
Meeting agendas and supporting materials are received in sufficient time to allow for adequate preparation.	No change
Pre-meeting materials provide appropriate context and background information to support informed discussion and decision-making.	No change
The Chair ensures that all agenda items are covered during the meetings.	Delete
The Chair effectively manages dissent and works constructively towards arriving at decisions and achieving consensus.	The Committee works constructively towards arriving at decisions and achieving consensus.
The Chair ensures that meeting time is used effectively and efficiently.	Meeting time is used effectively and efficiently.
Everyone comes to meetings prepared.	Delete
Meetings allow for candid, constructive discussion and critical questioning.	Meetings allow for constructive discussion and critical questioning.
Presentations are generally of the appropriate length and content.	No change
Discussion is open, meaningful and respectful.	No change

The Law Society
of British Columbia



Quarterly Financial Report

September 30, 2017

Prepared for: Finance & Audit Committee Meeting – October 26, 2017
Bencher Meeting – October 27, 2017

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation
Andrea Langille, Controller

Quarterly Financial Report – to end of September 2017

Attached are the financial results and highlights to the end of September 2017.

General Fund**General Fund (excluding capital and TAF)**

The General Fund operations, excluding capital allocation and depreciation, resulted in a positive variance to budget of \$1.9 million in the first nine months of the 2017 year.

Revenue

Revenue for the first three quarters was \$18.7 million, \$862,000 (5%) above budget, due to mainly to additional revenues in membership, electronic filing and interest income.

Operating Expenses

Operating expenses for the first nine months of the year were \$16.6 million, \$1.1 million (6%) below budget. This variance is partially due to the timing of significant external counsel fees which will still be incurred in the last quarter, along with permanent savings from salaries, external fees for regulation, credentials, forensics, and human resources, and lower tribunal costs.

2017 Forecast - General Fund (excluding capital and TAF)

At this time, we are projecting a positive variance of \$1.260 million by year end.

Operating Revenue

Revenues are projected to have a positive variance to budget. Practicing membership revenue is projected at 11,845 members, 85 members over budget, or \$154,000. Electronic filing revenue is projected to be ahead of budget by \$200,000, due to the increased real estate market activity. Interest income will be ahead of budget \$260,000 due to higher cash balances held. PLTC revenue is projected to be favourable to budget by \$28,000 with 511 students.

Operating Expenses

At this time, operating expenses are projected to have a positive variance of \$500,000 (or 2% of operating expenses). This favorable variance is comprised of

compensation savings of \$150,000, in addition to lower external counsel fees of \$225,000 due to the timing of file work by year end. There will be savings of \$140,000 in HR primarily related to a reduced requirement for consultants, external counsel fees and skills development costs. Additionally there will be \$45,000 in savings due to a reduced number of hearings. These savings are offset by \$120,000 in unbudgeted legal ordered costs and \$135,000 of additional costs in bencher governance related to the bencher retreat, meeting, travel and federation costs.

TAF-related Revenue and Expenses

The first two quarters of TAF revenue has only been received at this time, and is ahead of budget by \$415,000. This is partially due to timing of receipts, as \$60,000 of this revenue relates to the 2016 year. In addition, the 2017 budget was set prior to the rapid increase in 2016 real estate unit sales, so we expect that the 2017 TAF revenue budget will be ahead of budget in 2017.

Trust assurance program costs should be fairly close to budget by year end.

Special Compensation Fund

The transfer of the Special Compensation Fund reserve to the Lawyers Insurance will occur before the end of 2017.

Lawyers Insurance Fund

LIF operating revenues were \$11.4 million in the first nine months, slightly ahead of budget due to additional members.

LIF operating expenses were \$5.0 million, \$473,000 below budget, relating primarily to \$328,000 in staff vacancy savings and reduced insurance costs.

The market value of the LIF long term investments held by the investment managers is \$167.8 million, an increase of \$9.8 million in the nine months of the year. The year to date investment returns were 6.21%, ahead of the benchmark return of 3.49%.

Summary of Financial Highlights - September 2017
(\$000's)

2017 General Fund Results - YTD September 2017 (Excluding Capital Allocation & Depreciation)				
	Actual*	Budget	\$ Var	% Var
Revenue (excluding Capital)				
Membership fees	14,583	14,242	340	2%
PLTC and enrolment fees	1,081	1,011	70	7%
Electronic filing revenue	685	525	160	30%
Interest income	413	256	157	61%
Credentials & membership services	330	292	38	13%
Fines, penalties & recoveries	364	325	39	12%
Other revenue	360	312	49	16%
Building revenue & tenant cost recoveries	906	897	9	1%
	18,722	17,860	862	5%
Expenses (excl. dep'n)				
	16,654	17,708	1,054	6%
	2,068	152	1,917	

2017 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)		
	Avg # of Members	
Practice Fee Revenue		
2013 Actual	10,985	
2014 Actual	11,114	
2015 Actual	11,378	
2016 Actual	11,619	
2017 Budget	11,760	
2017 Forecast	11,845	
		Actual Variance
Revenue		
Membership numbers are projected to be 85 over budget		154
Electronic Filing Revenue		200
Interest Income		260
PLTC students at 511 vs 500		28
Western Law Societies Conveyancing - refund of prior costs		35
Other		83
		760
Expenses		
Compensation savings		150
Net savings in Regulation external counsel fees (accounting for vacancy savings)		225
Savings in HR external fees, consultants & skills development		140
Other investigations and credentials fees, offset by forensic savings		120
Savings due to reduced hearings in 2017		45
Other		75
Legal ordered costs paid		(120)
Additional governance costs related to bench retreat, meetings, travel and federation		(135)
		500
2017 General Fund Variance (excl. reserve funded items)		1,260

Trust Assurance Program Actual- YTD September 2017				
	2017 Actual	2017 Budget	Variance	% Var
TAF Revenue **	2,204	1,790	414	23.1%
Trust Assurance Department	1,976	1,919	(57)	-3.0%
Net Trust Assurance Program	228	(129)	357	
** \$60,000 relating to Q4-2016, received after completion of audit.				

2017 Lawyers Insurance Fund Long Term Investments - YTD September 2017 - Before investment management fees	
Performance	6.2%
Benchmark Performance	3.5%

The Law Society of British Columbia
General Fund
Results for the 9 Months ended September 30, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance	% Variance
Revenue				
Membership fees (1)	16,653	16,322		
PLTC and enrolment fees	1,081	1,011		
Electronic filing revenue	685	525		
Interest income	413	256		
Other revenue	1,054	928		
Building Revenue & Recoveries	906	898		
Total Revenues	20,792	19,940	852	4.3%
Expenses				
Regulation	6,218	6,762		
Education and Practice	2,621	2,802		
Corporate Services	1,996	2,320		
Benchers Governance	768	641		
Communications and Information Services	1,684	1,643		
Policy and Legal Services	1,592	1,785		
Occupancy Costs	1,775	1,756		
Depreciation	309	410		
Total Expenses	16,963	18,118	1,155	6.4%
General Fund Results before TAP	3,829	1,822	2,007	
Trust Administration Program (TAP)				
TAF revenues	2,204	1,790	414	23%
TAP expenses	1,976	1,919	(57)	-3%
TAP Results	228	(129)	357	
General Fund Results including TAP	4,057	1,691	2,366	

(1) Membership fees include capital allocation of \$2.07m (Capital allocation budget = \$2.08m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at September 30, 2017
(\$000's)

	Sep 30 2017	Dec 31 2016
Assets		
Current assets		
Cash and cash equivalents	96	283
Unclaimed trust funds	1,962	1,813
Accounts receivable and prepaid expenses	1,006	1,982
B.C. Courthouse Library Fund	1,274	729
Due from Lawyers Insurance Fund	19,477	34,170
	<u>23,815</u>	<u>38,977</u>
Property, plant and equipment		
Cambie Street property	12,064	12,448
Other - net	1,352	1,197
	<u>37,231</u>	<u>52,622</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,440	6,282
Liability for unclaimed trust funds	1,962	1,813
Current portion of building loan payable	500	500
Deferred revenue	5,550	21,345
Deferred capital contributions	4	12
B.C. Courthouse Library Grant	1,274	729
Deposits	28	25
	<u>11,757</u>	<u>30,706</u>
Building loan payable	<u>1,600</u>	<u>2,100</u>
	<u>13,357</u>	<u>32,806</u>
Net assets		
Capital Allocation	3,454	2,647
Unrestricted Net Assets	20,420	17,169
	<u>23,874</u>	<u>19,816</u>
	<u>37,231</u>	<u>52,622</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2017
(\$000's)

	<i>Invested in Capital</i> \$	<i>Working Capital</i> \$	Unrestricted Net Assets \$	Trust Assurance \$	Capital Allocation \$	2017 Total \$	2016 Total \$
Net assets - At Beginning of Year	11,059	1,345	12,404	4,766	2,647	19,816	14,939
Net (deficiency) excess of revenue over expense for the period	(1,006)	2,751	1,745	228	2,083	4,057	4,877
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	-
LSBC Operations	525	-	525	-	(525)	-	-
845 Cambie	251	-	251	-	(251)	-	-
Net assets - At End of Period	11,329	4,096	15,425	4,994	3,454	23,873	19,816

***The Law Society of British Columbia
Special Compensation Fund
Results for the 9 Months ended September 30, 2017
(\$000's)***

	2017 Actual	2017 Budget	\$ Variance
Revenue			
Recoveries	4	-	
Interest income	23	-	
Total Revenues	26	-	26
Expenses			
Claims and costs, net of recoveries	55	-	
Total Expenses	55	-	55
Special Compensation Fund Results	(28)	-	(28)

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at September 30, 2017
(\$000's)

	Sep 30 2017	Dec 31 2016
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	1,335	1,363
	<u>1,335</u>	<u>1,364</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		
Deferred revenue		
	<u> </u>	<u> </u>
Net assets		
Unrestricted net assets	1,336	1,364
	<u>1,336</u>	<u>1,364</u>
	<u>1,336</u>	<u>1,364</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2017
(\$000's)

	Actual \$	Budget \$
Unrestricted Net assets - At Beginning of Year	1,364	1,352
Net excess of revenue over expense for the period	<u>(28)</u>	<u>12</u>
Unrestricted Net assets - At End of Period	<u><u>1,336</u></u>	<u><u>1,364</u></u>

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 9 Months ended September 30, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance	% Variance
Revenue				
Annual assessment	11,354	10,970		
Investment income	9,592	4,890		
Other income	61	45		
Total Revenues	21,007	15,905	5,102	32.1%
Expenses				
Insurance Expense				
Provision for settlement of claims	11,607	11,607		
Salaries and benefits	2,001	2,324		
Contribution to program and administrative costs of General Fund	977	1,006		
Provision for ULAE	-	-		
Insurance	277	346		
Office	559	576		
Actuaries, consultants and investment brokers' fees	591	561		
Premium taxes	-	6		
Income taxes	-	-		
	16,012	16,426		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	600	651		
Total Expenses	16,612	17,077	465	2.7%
Lawyers Insurance Fund Results	4,395	(1,172)	5,567	

***The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at September 30, 2017
(\$000's)***

	Sep 30 2017	Dec 31 2016
Assets		
Cash and cash equivalents	11,306	32,863
Accounts receivable and prepaid expenses	211	122
Prepaid Taxes		
Due from members	146	164
General Fund building loan	2,100	2,600
Investments	163,326	154,268
	<u>177,089</u>	<u>190,017</u>
Liabilities		
Accounts payable and accrued liabilities	(461)	1,826
Deferred revenue	3,553	7,461
Due to General Fund	19,477	34,170
Due to Special Compensation Fund	1,335	1,364
Provision for claims	69,640	66,046
Provision for ULAE	8,781	8,781
	<u>102,325</u>	<u>119,648</u>
Net assets		
Unrestricted net assets	17,500	17,500
Internally restricted net assets	57,264	52,869
	<u>74,764</u>	<u>70,369</u>
	<u>177,089</u>	<u>190,017</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2017
(\$000's)

	Unrestricted \$	Internally Restricted \$	2017 Total \$	2016 Total \$
Net assets - At Beginning of Year	52,869	17,500	70,369	75,888
Net excess of revenue over expense for the period	4,395	-	4,395	(5,519)
Net assets - At End of Period	57,264	17,500	74,764	70,369



Memo

To: The Benchers
From: Finance and Audit Committee
Date: October 4, 2017
Subject: Accountability Policy for Externally Operated Programs and Projects

Background

1. In 2005,¹ the Benchers adopted a policy regarding Law Society funding of external programs and projects. The policy provides that the Law Society will consider funding externally operated projects or programs only when the Law Society specifically sponsored or participated in the creation of the project or program.
2. The Benchers also discussed how and to what degree external organizations receiving Law Society funding should be accountable to the Law Society and resolved that accountability requirements should be crafted to match the amount of funding and the nature of the external body, and to refer the matter to the Audit Committee to develop a more detailed set of accountability criteria.
3. Over the past year, the Finance and Audit Committee (“Committee”) has discussed the accountability of the programs and projects the Law Society funds from the annual practice fee in conjunction with the annual fee review.
4. At its September 14 meeting, the Committee approved an accountability policy for external programs and projects for consideration and approval by the Benchers.

The Role of the Committee

5. The mandate of the Committee is to assist the Benchers with oversight of the financial affairs of the Law Society. Specifically, the Committee makes recommendations to the Benchers regarding the annual fees members must pay.
6. In fulfilling that obligation, the Committee must make an annual assessment of the amount of funding to be allocated to the externally operated projects or programs which have been approved by the Benchers. For 2017, the amount allocated to external programs was almost 18% of the annual practice fee.
7. In relation to the Law Society General Fund budget, the Committee receives a significant amount of information about the current operations, the current and prior years’ budgets and actual revenues and expenses and detailed information about increases and decreases

¹ May 6, 2005 Minutes of the Benchers Meeting

in expected revenue and expense for the coming fiscal year. All of these are factored into the Committee's recommendations regarding the annual fees.

8. The Committee has considered this degree of oversight in recommending to the Benchers an accountability policy for funding external programs and projects. While the funding is for other organizations, it may be inconsistent to bring a certain level of oversight to 82% of the Law Society budget for the next fiscal period and do any less in respect of the remaining 18%.
9. At the same time, the Committee recognizes that in most cases the externally operated programs and projects are overseen by their own boards or steering committees, who bear the direct responsibility for delivering those programs and projects in a manner they consider appropriate. The Committee will not take on the role of those boards or steering committees. But the Committee can legitimately decline to recommend including the requested level of funding in the annual practice fee if the program or project is not being delivered in a manner consistent with the Benchers' intent in sponsoring or participating in the creation of the program or project.

Accountability Principles

10. There are certain principles the Committee adopted in developing this accountability policy that is being recommended to the Benchers:
 - a. The funds must be used for the intended purposes of the program and project and in the manner proposed and approved on an annual basis by the Benchers;
 - b. As a corollary to the first principle, if the expenditures for the program or project in any given year do not use all of the funds the Law Society provides, the surplus must be returned to the Law Society, unless otherwise approved by the Law Society.
 - c. The funds must be handled in a manner that meets the standards of financial accounting and responsibility acceptable to the Committee.

Accountability Policy

11. The Committee has proposed certain requirements for a request for funding, either initially or annually, in order to ensure that the Committee has sufficient information to fulfill and assess compliance with the accountability policy. The following is a list of requirements:
 - a. A statement describing in general the purpose for the proposed program or project and how the program or project advances one or more of the objects of the Law Society as set out in section 3 of the *Legal Profession Act*, SBC 1998, c. 9.
 - b. A statement as to the purpose of the funding and a detailed budget as to how the funding is intended to be used. The statement should describe how the funding is

consistent with the purposes of the Law Society as contained in s. 3 of the *Legal Profession Act*.

- c. A statement that describes the outcomes which the program is intended to achieve and also describes the means by which the Committee can assess if these outcomes are being met. On review, if a funding recipient falls short of achieving the intended outcomes, they must provide the Committee a written explanation as to the reason for failing to meet the outcomes.
 - d. In addition to regular financial and activity reports, audited financial statements are to be submitted no later than six months after the fiscal year end.
 - e. A statement listing all other sources of funding sought/received, including the amount of funding and the payment schedule and if no other sources of funding are being sought, an explanation why.
 - f. A description of any net asset or reserve policy in place, including the need for net assets on an ongoing basis, any specific plans for use of all or part of the current net assets in place, and how any net assets held might be used to offset funding requirements for the current year or in the future.
 - g. A statement explaining the organization's efforts at reducing costs/managing projects in a fiscally prudent fashion.
 - h. A summary of the planned activities for the year, including an explanation of any changes in the detailed cost of delivering the program or project from year to year.
 - i. Agreement that the organization will respond to all reasonable requests by the Law Society for updates on the status of the work for which funding is received, including access to any financial records necessary to assess compliance with the terms of funding.
 - j. Confirmation that the organization will immediately alert the Law Society of any material risks arising from the operation of the entity or program that might reasonably be seen to compromise:
 - i. The sustained existence of the organization or program;
 - ii. The reputation of the Law Society as a funder of the organization or program.
12. The policy and guidelines are expected to apply to the Courthouse Libraries BC (CLBC), Lawyers Assistance Program (LAP), The Advocate, and the CBA REAL program and any other external programs, projects or organizations that the Benchers determine the Law Society should fund. This generally makes up 18% of the total practice fee.

13. It is not proposed that the policy will apply to the funding of the Federation of Law Societies of Canada and CanLII, both of which come directly to the Benchers for approval after consideration by the Federation of Law Societies of Canada's council, on which we have representation.
14. The proposed Accountability Policy and Guidelines are attached as Appendix A and B.

Appendix A

External Funding Accountability Policy

Purpose

The Law Society includes an amount in the annual practice fee each year to fund a variety of externally operated programs and projects. Although itemized on the annual invoice, the total amount forms part of the mandatory annual practice fee that lawyers must pay to remain members.

The Benchers are responsible for determining which externally operated programs and projects will be funded in accordance with the Law Society's policy regarding funding.

The Finance and Audit Committee ("Committee") is responsible for applying this accountability policy to requests for funding where the amount is to be included in the annual practice fee. Any requests for funding must be made to the Committee within the normal annual fee and budget approval timelines.

Requirements and Guidelines

Organizations seeking funding from the Law Society must provide the following before any recommendation to the Benchers will be made by the Committee:

1. The organization's mission statement or organization objects, if any;
2. A list of its board of directors or the individuals responsible for its governance, along with a brief description of its process for managing its finances;
3. A statement as to the purpose of the funding and a detailed budget as to how the funding is intended to be used. The statement should describe how the funding is consistent with the purposes of the Law Society as contained in s.3 of the *Legal Profession Act*.
4. The proposed outcomes the program or project and, if applicable; a summary of what the program or project achieved with the prior year's funding and, if necessary, an explanation of why the prior year's outcomes were not achieved;
5. A description of how the proposed outcomes will be measured/evaluated;
6. How the funding will be used, including a detailed operating, and capital, if any, budget for the program or project and a proposed work plan and schedule of events;
7. An explanation of the planned activities for the year, including an explanation of any changes in the costs of delivering the program or project from year to year;
8. A list of other known non-profit projects or agencies operating in British Columbia that offer the same service or substantially similar services;

Appendix A

9. A description of any net assets amount or reserve policy in place, including the need for net assets on an ongoing basis, any specific plans for use of all or part of the current net assets in place, and how any net assets held might be used to offset funding requirements for the current year or in the future;
10. If an application has been made to any other funding body, a copy of the funding request along with the status of such application;
11. The following required financial information should be provided in the format attached (Appendix B):
 - a. The proposed year budget request, expressed as a total dollar amount (i.e.: not on a per member basis);
 - b. Overview/plan for the proposed year, highlighting any specific actions/issues that would be relevant to the budget request and details on whether the changes will be one time increases or ongoing costs;
 - c. The proposed year's detailed operating budget, with comparisons to the current year budget, current year forecast and prior year audited results. Detail the reasons for any significant increases/decreases from the current year and prior year results;
 - d. If any capital expenditures are requested, include an explanation of how the purchases will be funded (i.e.: from net asset reserves or current operations);
12. Provide final prior year audited financial statements;
13. Applicants must respond to all reasonable requests by the Law Society for updates on the status of the work for which funding is received, including access to financial records necessary to assess compliance with the terms of funding; and
14. Any other information requested by the Law Society to assess the funding requested.

Evaluation Guidelines

The Committee will review all requests for funding for externally operated programs and projects approved by the Benchers taking into account the following considerations:

1. A statement as to the purpose of the funding and a detailed budget as to how the funding is intended to be used. The statement should describe how the funding is consistent with the purposes of the Law Society as contained in s.3 of the *Legal Profession Act*.
2. Is the proportion of the organization's budget allocated to administration reasonable in relation to the nature of the organization and its operations?

Appendix A

3. Does the organization have an appropriate means for evaluating or measuring the outcomes?
4. Is it likely that the program or project will achieve its outcomes and, if applicable, was the explanation of why any of the outcomes were not achieved in the prior year acceptable?
5. Is the detailed budget for the program or project reasonable?
6. Is the level of net assets held for the program or project necessary or consistent with the Law Society approved net assets level for the program or project?
7. Are there valid explanations for any changes in the cost of delivering the program or project from year to year, and is any proposed increase acceptable based on the impact on the mandatory practice fee?
8. Have the opportunities for alternate funding been sufficiently considered and explored?

Conditions

1. The organization must agree to use the funds only for the intended purposes of the program and project.
2. The organization must agree that, if the expenditures for the program or project in any given year do not use all of the funds the Law Society provides, any unused or unaccounted portion of the funding must be refunded to the Law Society, unless the amount of the net assets falls within the Law Society previously approved net assets level for that program or project.
3. The organization must agree to use the funds as set out in the detailed budget for the program or project and in accordance with the proposed work plan and schedule, unless prior approval is received from the Law Society.
4. Funds may not be transferred from one budget category to another without the prior approval of the Law Society.

Appendix B- Law Society of British Columbia
External Funding Submission- Financial Information

Name or organization requesting funding: _____

Date: _____

Funding year: _____

Statement of Operations	Prior Year Audited F/S Results	Current Year Budget	Current Year Forecast to YE	Current Variance	Explanation of Significant Variances btw. Current year Budget & Forecast	Subsequent Year Funding Request	Change (\$) from Current	Change (%) from Current	Explanation of Significant Variances from Prior Actual & Current Budget to Funding request (Ongoing vs. One time)
REVENUE									
Law Society Funding	-	-	-	-		-	-	-	
Other Funding:	-	-	-	-		-	-	-	
Other Revenue	-	-	-	-		-	-	-	
Total Revenue	-	-	-	-		-	-	-	
EXPENSES (please list)									
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
	-	-	-	-		-	-	-	
Total Expenses	-	-	-	-		-	-	-	
NET PROFIT (LOSS)	-	-	-	-		-	-	-	

Appendix B- Law Society of British Columbia
External Funding Submission- Financial Information

Name or organization requesting funding: _____ Date: _____ Funding year: _____

Prior Year Statement of Changes in Net Assets Actual	Invested in Capital	Restricted	Unrestricted	Total
Balance Beginning of the Year	-	-	-	-
Excess of Revenues (Expenses) for the year	-	-	-	-
Acquisition of Capital Assets	-	-	-	-
Internally Restricted	-	-	-	-
Balance End of the year	-	-	-	-

Current Statement of Changes in Net Assets Forecast	Invested in Capital	Restricted	Unrestricted	Total
Balance Beginning of the Year	-	-	-	-
Excess of Revenues (Expenses) for the year	-	-	-	-
Acquisition of Capital Assets (Details below)	-	-	-	-
Internally Restricted (Details Below)	-	-	-	-
Balance End of the year	-	-	-	-

Current Capital Forecast	Funding from	
	Reserves	Operations
List Capital Purchases		
	-	-

Details of Internally Restricted Net Assets	
List Internally Restricted Net Assets	
	-

Subsequent Year Capital Budget	Funding from	
	Reserves	Operations
List Capital Purchases		
	-	-