

The Law Society
of British Columbia



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

December 8, 2017

Prepared for: Benchers

Prepared by: Alison Luke, Staff Lawyer, Policy and Legal Services

Alan Treleaven, Director, Education and Practice

Purpose: Decision

On December 8, 2017, the Benchers approved the Recommendations outlined in this Report with the exception of Recommendations 10 and 22B. The issues addressed in Recommendation 10 will be subject to further consideration by the appropriate Law Society Committee in 2018. Recommendation 22A was adopted by the Benchers in favour of Recommendation 22B.

Table of Contents

Executive Summary.....	4
Introduction	4
Background.....	5
History of CPD in British Columbia	5
The 2016-2017 review process.....	6
Committee meetings	7
Engagement with other jurisdictions.....	8
Consultation with the profession	8
Purpose of the Final Report	9
Program objectives and key design features.....	9
Continuation of the CPD program.....	9
Purpose statement	10
Key design features	11
Accreditation model	11
Linkages to practice areas and testing.....	12
Learning plans.....	13
Content of the CPD program: subject matters.....	14
Subject matters	15
Professional Wellness	15
Pro bono and legal aid	23
Knowledge primarily within the practice scope of other professions and disciplines	24
Practice Management.....	26
Lawyering Skills.....	31
Delivery of the CPD program: Learning modes.....	33
Courses	34
Online interactive courses, local bar and CBA section meetings and study groups.....	34
Teaching.....	35
Writing	36
Mentoring.....	37
Self-study	38

Reporting requirements	39
Credit-hour requirement	39
Imposing caps on credit-hours	40
Exemptions	45
Carry-over.....	46
Compliance and enforcement measures	48
TRC Calls to Action	48
Summary of recommendations	49
Next Steps.....	52
Conclusion	53

© Law Society of British Columbia. See [lawsociety.bc.ca>Terms of use](https://lawsociety.bc.ca/terms-of-use)

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 Bencher 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.
DM1691311

— 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_laps.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...[1]lawyer 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:

DM1691311

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.

[This Recommendation was not approved by the Benchers and will be subject to further consideration by the appropriate Law Society Committee in 2018.]

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, diversity and equity 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
DM1691311

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

Multicultural, diversity and equity issues that arise within the legal context

114. Multicultural, diversity and equity 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, diversity and equity 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, diversity and equity issues that arise within the legal context” to the list of eligible topics.

Recommendation 13: The Law Society will recognize “multicultural, diversity and equity 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
DM1691311

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 *servicing* 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 and general project management.
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 and multicultural, diversity and equity 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. [*This Recommendation was not approved by the Benchers.*]

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, diversity and equity 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.
DM1691311

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 late fees. 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 late fees 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 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, diversity and equity 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 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 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.

[This Recommendation was not approved by the Benchers and will be subject to further consideration by the appropriate Law Society Committee in 2018.]

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, diversity and equity 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. [*This Recommendation was not approved by the Benchers.*]

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 late fees 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 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 2019 reporting year to meet their 2020 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. [*Recommendation 22B was not approved by the Benchers and caps will not be imposed on new subject matters and topics.*]
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 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?

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

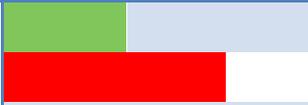
Comment?

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?

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

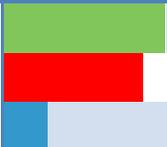
Response	Chart	Percentage	Count
Yes		35.6%	444
No		64.4%	802
		Total Responses	1246

Comment?

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

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

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

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

Please provide any additional comments.

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:

(i) <i>Code of Professional Conduct for British Columbia</i> requirements (ii) training, supervising and delegating to staff
(j) identifying conflicts, including: (i) conflict checks and related systems (ii) client screening
(k) diary and time management systems, including: (i) limitation systems (ii) reminder systems (iii) follow-up systems
(l) avoiding “being a dupe”/avoiding fraud
(m) complying with Law Society Rules
(n) understanding the business of law, including: (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
(o) multicultural, diversity and equity issues that arise within the legal context
(p) mentoring best practices for lawyers
(q) succession planning and related issues

Ineligible Practice Management topics
(a) any activity developed primarily for the purpose of marketing to existing or potential clients
(b) maximizing profit
(c) commoditization of legal services
(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) general project management