

The Law Society of British Columbia



Report of the Lawyer Education Advisory Committee on Continuing Professional Development

For: The Benchers

Date: July 4, 2008

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

Prepared on behalf of: Lawyer Education Advisory Committee

Staff: Alan Treleaven
Director, Education and Practice (604) 605-5354

Michael Lucas
Policy and Legal Services Administrator (604) 443-5777

Report of the Lawyer Education Advisory Committee on Continuing Professional Development

I. Background

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

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

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

II. Purpose of this Report

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

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

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

III. Consultation

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

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

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

IV. Committee Conclusions

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

(a) Overall Subject Matter Requirement

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

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

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

The following activities will not be accredited:

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

(b) Credit Available for Participation in Courses

Courses will be accredited based on the following criteria:

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

(c) Credit Available for Education Activities other than Courses

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

(i) Teaching

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

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

(ii) Writing

Credit will be available for writing as follows:

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

(iii) Study Groups

Credit for study group activity will be available as follows:

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

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

(iv) Local Bar and CBA Section Meetings

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

(v) Online Education

A Group Event

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

B Self-Study

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

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

C Listserv/forum /network site

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

(d) Accreditation Process

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

(e) Compliance and Reporting Requirements

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

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

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

(f) Exemptions

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

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

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

V. Budget

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

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

VI. Proposed Rules for the Continuing Professional Development Program

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

The proposed Rules accomplish two main purposes:

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

(a) Requirement to Complete Continuing Professional Development

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

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

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

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

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

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

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

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

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

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

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

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

VII. Recommendation

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

APPENDIX A

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

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

2. Approved educational activities include:

(a) Traditional courses and activities:

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

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

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

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

APPENDIX B

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

APPENDIX C

Consultation Communication to the Profession and Legal Organizations

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

Frequently Asked Questions

Why do we need a continuing professional development program?

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

What are the requirements?

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

Do I have to take CLE courses?

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

How will I report my educational activities?

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

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

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

What are other professions doing?

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

Approved Educational Activities

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

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

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