

NEW FIRM PRACTICE COURSE PROPOSAL

(approved by the Benchers / November 10 2005)

1. Introduction

In its November 4, 2004 report to the Benchers, the Lawyer Education Task Force outlined several policy objectives that it had been discussing, and which it intended to consider further. One objective proposed was that of specific post-call education for lawyers who wished to open new practices.

The Benchers directed the Task Force to consider all objectives proposed, and to return at a later date with a policy analysis of any recommendation proposed by the Task Force together with a plan for implementation.

During 2005, the Task Force has considered at length developing a recommendation that lawyers take practice management courses. The Task Force focussed particularly on the recommendation that lawyers who are opening new practices take a course that addresses practice management and trust accounting. This is consistent with one of the mandates of the Task Force – that lawyers moving into sole practice should obtain relevant continuing education.

The Task Force has concluded that such a policy should be recommended to the Benchers for approval. A discussion of the Task Force's reasons for this recommendation and a proposal are outlined in this report.

2. The Proposal: New Firm Practice Course

The Lawyer Education Task Force proposes that Benchers approve the development and implementation of the New Firm Practice Course, primarily designed for lawyers transitioning into sole practice or small firm practice. (See the discussion of "Target Audience" in section 4, below.) The course would include mandatory core components for the target audience, enriched by optional components. The core course and the optional enrichment components would be available to all other lawyers on a voluntary basis.

The course would be provided free of charge and available at all times online, so as to be accessible to all lawyers regardless of time and location. While development of the online course is the first priority, the Task Force recognizes the value of an in-person course, in workshop format, being available as well, and endorses the development of such a course once the online course has been fully developed.

The online course would include self-testing components throughout, so that lawyers would answer questions and thereby measure their own understanding. The self-testing components would be incorporated throughout the course, and the course would be designed so that each self-testing component would be completed before the lawyer moves to the next section of the course. There would, however, be no examination that must be passed to complete the course requirement.

The online course materials would provide links to practice management resources, further reading, forms, precedents, courses, and contacts for information and practice / professional support.[1]

3. Background: Sole and Small Firm Practice

Lawyers practising as sole practitioners or in firms of 5 or fewer lawyers are essential to the provision of legal services to the public in BC. In most areas of the province, the public relies on sole and small practitioners for legal services, and the legal services provided by larger firms are not reasonably accessible. The approximate size of law firm in BC, measured by number of lawyers in the firm, is as follows:

- 30% are sole practitioner firms
- 20% are 2 to 5 lawyer firms
- 15% are 6 to 10 lawyer firms
- 10% are 11 to 20 lawyer firms
- 8% are 21 to 50 lawyer firms
- 17% are firms of more than 50 lawyers.

Law Society data shows that the great majority of lawyers in sole and small firm practice provide effective legal services, although as a group they are disproportionately faced with the pressures of geographic isolation, working alone or in small groups without ready access to colleagues in the profession, demands to attend to law office management and administrative work, rising overheads and narrower profit margins.[2] In fact, the challenges faced by many sole and small firm practitioners are increasing. Accordingly, the Task Force proposes that the Law Society be pro-active, through a New Firm Practice Course and accompanying practice resources, in supporting sole and small firm lawyers in delivering quality legal services and sustaining viable law practices.

4. How to Identify the Target Audience

The New Firm Practice Course would be a valuable resource for all BC practitioners, and in particular those in sole practice and small firms. Lawyers who are in sole or small firm practice on the implementation date of the New Firm Practice Course requirement and continue in sole or small firm practice would be grandfathered from the course requirement. Similarly, lawyers who transfer from jurisdictions that have implemented the National Mobility Agreement would be grandfathered for purposes of practising in BC if in their home jurisdiction they are in sole or small firm practice on the implementation date of the course requirement and continue in sole or small firm practice.

Moreover, the Task Force, following further study and consultation, also expects to recommend that lawyers who practise in larger firms not be included in the target audience, unless they subsequently enter sole or small firm practice. It will be necessary for the Task Force to clarify the criteria, which would be on the basis that larger firm

lawyers do not typically encounter the unique pressures faced by many lawyers in sole and small firm practice.^[3]

The target audience will comprise those sole and small firm lawyers who are responsible for the books and records of a law practice, and who practise alone, practise alone but share office space, practise under their own name with lawyer employees, or practise in association with other lawyers.^[4] The Task Force intends to study and consult further to define more precisely the target audience, and on a preliminary basis has identified the following examples:

- lawyers beginning sole or small firm practice for the first time,
- lawyers in small firm practice who are new signatories on trust accounts,
- lawyers who re-enter the target audience group after being outside of the group for three or more years
- lawyers who are referred by the Discipline or the Practice Standards Committee.

Lawyers who are not subject to the course requirement would, however, be encouraged to complete the course as a pro-active means of strengthening their law practices.

5. Course Goals

The Task Force intends, through consultation and study, to further develop and fine-tune the goals of the course so that the course most effectively meets the needs of lawyers, and particularly those in the target audience. These lawyers' needs include information, skills, knowledge, and practice management resources to enable them to practise effectively, maintain and enhance their competence, maintain effective law firm trust accounting procedures, and strengthen the viability of their law practices.

Ongoing effectiveness of the course would be assessed as follows:^[5]

- by surveys of all lawyers who complete the course, to measure their satisfaction;
- for voluntary users, by frequency of usage as a measure of demand and, less directly, of their satisfaction;
- by evaluating over time the extent to which there is a positive change in the success of sole and small firm practices, including through Law Society statistics and surveys of members;
- by assessing the performance of those lawyers who are referred to the course by the Discipline Committee and the Practice Standards Committee;
- by assessing, through the Law Society's audit program, whether the course is having a positive impact;
- by assessing over time, as increasing numbers of lawyers complete the course, whether as a group they appear to have benefited from the course when compared to those lawyers who are exempt.

Assessment of the course would be an ongoing project, and would become increasingly reliable in proportion to the number of lawyers who complete the course.

6. Course Description

The course curriculum would include the components listed below, delivered online sequentially by individual module. The modularized design would enable all lawyers to take advantage of the course as a practice resource.

Online learning is, by its very nature, self-paced according to the time individual lawyers require to learn the material. The course would be developed with the intention that its full completion would typically require approximately 6 to 8 hours of a lawyer's time.

(a) Core Course Content

The course curriculum would include the following core modules, which would be mandatory for those lawyers in the target audience,[6] and would include the information necessary to comply with the requirements of a Law Society trust assurance program:

(i) Setting up and operating a law practice

- trust accounting requirements, including trust reporting and working with a bookkeeper,
- GST, PST, and income tax remittances, including employee income tax remittances,
- interest income on trust accounts at year end,
- technology in law practice, including
 - office systems,
 - e-filing,
 - legal research and legal information resources, including electronic,
- retainer agreement,
- acquiring retainer funds up front, and billing practices,
- file retention and disposal practices,
- law practice coverage during absences / continuity for catastrophic occurrences,[7]
- withdrawing legal services.

(ii) Avoiding pitfalls

- conflict checks, including systems,
- client screening,
- managing difficult clients,
- identifying whether there is a conflict,
- diary system (reminder system),

- file management and documentation,
- delegation of tasks / supervision,
- avoiding being a dupe / avoiding fraud.

(b) Optional Course Content

The core course would be enriched with the following optional modules,[8] designed to promote greater success in the practice of law:

(i) Decisions to make before starting a law practice: a business plan

- goals,
- type of practice,
- finances,
- practice set up and planning, including premises, staffing, equipment,
- marketing plan and client development plan.

(ii) Steps to success and increasing profitability

- using law practice financial statements,
- client satisfaction,
- time management,
- staff employment issues,
- continuing to build a law practice, including networking and marketing,
- isolation in law practice.

7. Regulatory Requirements

The Task Force will continue to develop and fine-tune the following proposed regulatory requirements in relation to the target audience:

- A lawyer must complete the course within 6 months of becoming a member of the target audience.
- “Complete the course” includes completion of all the core modules, including the self-testing components.
- If a lawyer who is not a member of the target audience chooses to complete the course, the lawyer would be required to repeat the course if the lawyer becomes a member of the target audience three or more years after completing the course.
- Failure to complete the course as required or to obtain an extension for its completion would be a disciplinable matter.
- Lawyers who are grandfathered because they are in sole or small firm practice on the implementation date of the course, would be subsequently required to complete the course if they leave sole or small firm practice and then return to it after an absence of at least three years.

Appropriate rule changes would be required to implement the new regulatory requirements.

8. Policy Objectives to be Served by the Proposal

The Task Force is firmly of the opinion that a solid ability to manage one's practice is a key component to a lawyer's ability to practise law competently and effectively. It is in the public interest to ensure that lawyers receive education and training on this topic.

Good practice management skills and an understanding of accounting are every bit as fundamental to practising law as is knowledge of substantive law itself. Indeed, statistics indicate that more complaints arise out of practice management deficiencies than they do from lack of substantive knowledge of the law.

Sole practitioners and small firms face unique challenges in succeeding in the practice of law, and do not always have at their disposal the ability to access funds or resources to help them establish themselves. The Task Force believes that lawyers who plan to open a sole or small firm practice – either shortly after articles or after many years in a larger firm - would benefit considerably from a well-developed course on practice management skills, including trust accounting. The Task Force believes that it is consistent with the Law Society's mandate of upholding the public interest in the administration of justice to provide resources to sole and small firm practitioners in order to assist them in establishing their practices. Providing the course free of charge, but requiring it to be taken, will ensure that the benefit of the course will be realized by the target audience with no financial cost. Providing the course at no charge also permits the Law Society to provide a useful benefit to the target audience in an effort to assist those in the group to better serve the public and succeed in their business while doing so.

9. Implications of the Proposal

(a) Resource Implications

The Task Force proposes that the course be provided free of charge to all lawyers and articling students.

Although it is difficult at this to estimate budgetary requirements before formulating a detailed course content and delivery model, the following assumptions can reasonably be made:

- Following Bencher approval, approximately the first 12 months would be required for program research, consultation, planning, and development. That work would be done largely on a contracting out basis.
- Cost for course development, pilot testing, consultation and roll-out would approximate \$350,000. [9]

- The Law Society's Credentials and Member Services group, supported by IT staff, would develop systems to monitor whether lawyers in the target audience have completed the course as required.
- There would be no course revenue, assuming that the course would be provided free of charge.

The Task Force believes that some consideration and discussion about the source of funding the proposal should occur. The Task Force considers funding the development and ongoing administration of the program out of the Trust Administration Fee may be appropriate, as the course would be targeted at providing education and resources that should result in better financial administration and fewer trust related (or other financial) complaints.

(b) Public Interest and Public Relations

The Task Force expects that the proposal would impact favourably on both the public interest and public relations. Through operating the course, the Law Society could demonstrate publicly its commitment to providing resources to its members to better assist them in opening and maintaining a law practice. Currently, the Law Society does very little to ensure lawyers have the administrative or accounting skills necessary to operate a firm.

Sole practitioners and small firms serve a large area of the Province. Many people seeking legal assistance, particularly those outside the City of Vancouver, will seek the advice of a sole practitioner or a lawyer in a small firm. Providing resources to better ensure the viability and success of those lawyers is in the public interest. Providing resources that will, it is hoped, reduce financial or practice management-related complaints should serve to improve public relations and the standing of the profession generally in the eyes of the public.

(c) Member Relations

The Task Force recognizes the possibility of adverse reaction among members – either from those in the target audience who may feel that the proposal is another regulatory intrusion, or possibly from those outside the target audience who may feel that Law Society resources should be spent on other issues, not focussed on one group.

The Task Force believes, however, that the proposal, properly understood, ought to favourably influence member relations.

Firstly, the proposal recognizes the importance of sole practitioners and small firms to the legal profession. It also recognizes the challenges facing those practicing law within this group. By providing a free resource to help those practitioners succeed, the Law Society is attempting to *do* something to assist. It is true that the Task Force recommends that the proposed course be a *requirement* rather than an option. However, after much

consideration, the Task Force believes that the requirement will better ensure that the lessons within the course are learned, which will better serve the public interest.

In this sense, the proposal does not discriminate against the target audience. Rather it identifies the target audience as lawyers who deserve some assistance from the governing body in order to better achieve success.

Secondly, the Task Force emphasizes that the course will be available to *all* lawyers. One does not have to be in the target audience to benefit from the resources provided. The Task Force believes that larger firms are more likely to have at their disposal resources to hire an office manager and accountant, and therefore the course may not be needed in the same way as it is for those in smaller firms or sole practices. That conclusion does not mean, however, that those lawyers can not access or benefit from the resources that the proposal recommends.

10. Recommendations to Benchers

The Task Force recommends that the Benchers approve the following next steps:

- (a) that the work on developing the course, including consultation and obtaining further Bencher approvals, be completed in time for a January 1, 2007 course implementation date,
- (b) that the Task Force develop, for Bencher approval, rule changes and procedures to govern the requirement for lawyers in the transition group to complete the course and the consequence of not completing the course,
- (c) that the Task Force in carrying out its work continue to consult with the profession,
- (d) that the Benchers approve a 2006 budget allocation of up to \$350,000 for completion of the work necessary for implementation of the course.

FOOTNOTES

1. The Task Force is considering whether and how the Law Society might provide follow-up supports, including in-person law practice set-up services, accounting systems advice, and refresher courses.
2. The Law Society of Upper Canada's *Final Report of the Sole Practitioner and Small Firm Task Force* (March 24, 2005) includes extensive research-based information on the factors and challenges that influence the success of many sole and small firm lawyers, including their ability to serve clients and overall sense of satisfaction.
3. *The Law Society of New Zealand* has a 50 hour online Trust Account Partner Course, which is mandatory for all law firm partners who are designated by the firm as a trust account partner. Each firm must designate at least one trust account partner. The course and the two written examinations cover trust accounting and financial management. There are also mandatory workshops on fraud and ethics.
4.
 - a) The Lawyer Education Task Force has considered and largely adopted the description of the group in the Law Society of Upper Canada's *Final Report of the Sole Practitioner and Small Firm Task Force*, including its proposals for a mandatory course.
 - b) *The Law Society of New South Wales* group for its mandatory program is those solicitors who wish to obtain an unrestricted practicing certificate, which entitles them to enter sole practice, enter partnership, or practise as a solicitor-director of an incorporated legal practice or as the head solicitor or solicitor on record for a corporation or government department. (All New South Wales solicitors have a restricted certificate for at least two years, during which time they can only do legal work as an employee and under the supervision of a solicitor who has an unrestricted practicing certificate.)
5. *The College of Law (New South Wales)* articulates its course outcomes as follows:

At the completion of the course, participants will be aware of issues in relation to

- the principles of business planning
- developing a financial year strategic plan
- developing marketing, client services and people plans
- preparing and maintaining trust accounts in accordance with the Act, Regulation and Practice Rules
- risk management issues and the role of LawCover
- ethical dilemmas which can occur in practice

- stress management in their practical life.
6. a) *Law Society of New South Wales Practice Management Course*: The Law Society accredits two providers to develop and deliver the Course. The principal provider is the College of Law, offering an accredited three day course (25 hours) several times each year, with a course fee of A\$1500 (GST free). Completion of the course permits a solicitor to acquire an unrestricted practicing certificate at any time following two years with a restricted certificate. The components of the course vary according to the use the solicitor intends to make of the unrestricted certificate. The major topics are
- principles of practice management
 - risk management
 - ethics and professional responsibility
 - client development
 - financial and business planning
 - professional liability insurance coverage and risk management
 - work management systems
 - stress management
 - trust accounts and controlled money
 - people management
 - partnership relations
 - ethical culture.
- b) The Law Society of Upper Canada's *Final Report of the Sole Practitioner and Small Firm Task Force* proposes mandatory practice management workshops. (The consultation process is ongoing.)

In the meantime, the Law Society of Upper Canada is developing its *Private Practice Refresher Program*, as a part of a new requalification scheme to be implemented in 2007. This program is to be web-based, and includes eight modules and written examinations:

- time management
- file management
- financial management
- client relationships and communication
- technology and equipment
- professional management
- personal management
- professional responsibility.

c) *The Law Society of Hong Kong* has a universal mandatory continuing professional development (CPD) requirement for solicitors, who must complete 15 hours of accredited CPD annually, including 6 hours of accredited risk management CPD in the first year of licensure, and three hours each year thereafter.

7. The Lawyer Education Task Force is considering a recommendation to the Practice Standards Committee proposing a rule dealing with continuity if a lawyer is unable to continue providing legal services because of a sudden or catastrophic occurrence. Lawyers would be required to report annually the name of another designated lawyer.
8.
 - a) *The Law Society of BC* currently provides practice support in a number of ways, including principally
 - practice advice by telephone and email
 - Practice Checklist Manuals
 - Opening Your Law Office package, including the CD Rom, "Getting Started: Opening Your Law Office and Trust Accounting"
 - practice resource articles and precedents on the website
 - PLTC Practice Materials, fully searchable free of charge on the Law Society website.
 - b) Other practice support resources are available in print and electronic form from a variety of providers, including through the websites and print-based materials of the CBA and the Continuing Legal Education Society. The new online course would refer lawyers to the best of those resources, and wherever possible through web links. There would be a potential to incorporate some of those resources into the proposed New Firm Practice Course.
 - c) *LAW 9000*: The Law Society of New South Wales and the College of Law in New South Wales have partnered with others to develop *LAW 9000*, a voluntary management system benchmark certification program for law firms. It provides law firms with two levels of achievement on the basis of which a law firm can gain independent recognition through certification. The first level of achievement is *LAW 9000-Legal Best Practice*, and is based on the international standard, ISO 9001, and a set of best-practice criteria specific to the practice of law. Once the first benchmark is attained, a second tier of achievement, *LAW 9000-Excellence in Law*, is available. The program is marketed on the basis that clients, competitors and regulators are constantly evaluating and comparing providers of legal services, and that the *LAW 9000* program will provide a publicly recognized credential for all sizes of law firm and for legal departments.
 - d) For a detailed description of the extensive resources provided by the Law Society of Upper Canada, see "Summary: Law Society of Upper Canada Practice Supports," below. LawPro, its quasi-independent insurance provider, also offers programs and web-based resources, including an annual \$100 insurance premium credit for completing two accredited Law Society or LawPro courses or programs, as well as those of other providers.

SUMMARY: LAW SOCIETY OF UPPER CANADA PRACTICE SUPPORTS

The following resources are available through the Law Society website:

(i) *Practice Management Guidelines*

The website features 9 Practice Management Guidelines, a series that is being expanded on an ongoing basis. The Practice Management Guidelines are provided as online text and forms with links to relevant legislation and other reading. The Guidelines are

- Client Service and Communication
- Closing Down Your Practice
- File Management
- Financial Management
- Personal Management
- Practice Management
- Professional Management
- Technology
- Time Management.

There is no self-assessment test or examination, although the Guidelines could be readily adapted to include testing.

(ii) *Best Practices Self-Assessment Tool*

This is a voluntary, strictly confidential online self-assessment tool. The Law Society website states that the Law Society “does not, and will never have access to any personal identifiable information on users of this tool,” and describes the goal as to “assist you in improving client retention and practice profitability by helping you to understand your strengths and your growth opportunities in five core areas of practice management: client service and communication, professional behaviour and development, personal management, practice management, and technology. The Best Practices Self-Assessment Tool has been developed to allow you to easily assess your practice management capabilities by asking you to answer several statistically validated questions. It then provides you with a scorecard for each section and your rank among other practitioners in Ontario who have completed the section. Along with your scorecard, you will have access to several practical on-line resources to address areas of improvement.”

The \$100 annual insurance premium credit is available for the Best Practices Self-Assessment Tool.

(iii) *Bookkeeping Guide*

The Law Society website indicates that the *Bookkeeping Guide* has been written “to help members of the Law Society of Upper Canada and their staff cope with the more common bookkeeping issues in a law office and also to better understand the Law Society’s By-Laws ... While written especially with sole practitioners and small firms in mind, these recommendations can be used in any sized law office.” The *Bookkeeping Guide* is a free online resource, comprising 13 pages of text and approximately 75 pages of sample forms, books and records.

There is no self-assessment test or examination associated with the *Bookkeeping Guide*, although the *Bookkeeping Guide* could be readily adapted to include testing.

(iv) *Online Accounting Course*

The Accounting Course is administered through the Law Society website as a mandatory component of the Bar Admission Course. The Accounting Course material is accessible through the internet and comprises 10 units, which should take in total between 15 to 25 hours of self-paced study to complete. Each unit is divided into lessons. There is a pre-test at the beginning of each unit, designed to test a student’s current knowledge, and at the end of each unit there is a unit test to assist students to assess their own comprehension.

All Bar Admission Course students must pass a 90 minute examination, which is written on scheduled dates at Law Society designated locations. Although the Law Society has the capacity to administer the examination online, the Law Society does not do so because of the need to verify the identity of each student taking the examination. (The course could potentially be marketed to the profession, but has been used only in the Bar Admission Course.)

(v) *Other Practice Support Tools*

The Law Society website lists other programs to support lawyers, including

- *e-Bulletin Resources for Lawyers*

This is a monthly email bulletin to all Ontario lawyers. Each e-Bulletin is dedicated to a special topic, such as conflict checking systems, undertakings, referral fees, whether to accept a client, and dealing with a suspended lawyer.

- *Practice Management Help Line*

This is the approximate equivalent to the Law Society of BC’s Practice Advice service. The automated telephone answering system promises a personal return call within 24 hours, subject to the caller indicating greater urgency.

- *Articles and Tips*

The Law Society website includes an expanding collection of articles relating to the practice of law. The Professional Development and Competence Department employs a staff lawyer to develop the articles, who is supported by staff and also by volunteers and contractors under the staff lawyer's supervision.

- *LawPro Practice Support Programs*

The LawPro (insurance) website (linked through the Law Society website) includes a collection of practice aids and loss prevention booklets, and a live program series focussing on law office technology.

9. *Cost estimate for the New Firm Practice Course:* The estimated 2006 development cost is \$350,000, to include the following

- update existing practice resource materials
- write new practice resource materials
- online educational design and development
- develop online self testing quizzes
- develop course management infrastructure
- outside contracts
- staffing
- volunteer-related expenses
- consultation process
- pilot project and related redesign.

Beyond 2006, there would be ongoing costs, principally for revision and updating, quality enhancement, and technical support, although the principal costs would be incurred in 2006 for initial design, development and pilot testing.