

The Law Society of British Columbia



Report on Professionalism Education

From: The Lawyer Education Advisory Committee

To: The Benchers

Date: December 10, 2010

Note: The Benchers, on December 10, 2010, approved the recommendations .

Purpose of Report:

Discussion and Decision

Prepared on behalf of:

**The Lawyer Education Advisory Committee,
based on the recommendations of the
Professionalism Education Working Group**

REPORT ON PROFESSIONALISM EDUCATION

INTRODUCTION

The Professionalism Education Working Group was established by the Lawyer Education Advisory Committee (the "Committee") to assist the Committee in meeting Strategy 3-2 of the Law Society's Strategic Plan for 2009-2011.

Strategy 3-2

Develop and implement initiatives to more effectively educate lawyers on the topic of professionalism.

Initiative 3-2 directs the Committee to examine the issue of professionalism and report on options for initiatives in BC.

Initiative 3-2

Professionalism lies at the heart of lawyering; yet from an educational perspective it is not a topic that receives much dedicated attention. Development of initiatives that would focus on the issues of principle and values that inform or underlie specific rules of professional conduct would fill a sizable void in the educational options available to lawyers, and assist lawyers in meeting the requirements of the CPD program. An examination of programs available in other jurisdictions, together with the development of options for such programs in BC, for consideration by the Benchers will be a worthwhile initiative to achieve the goal of effective education.

BACKGROUND

The members of the Professionalism Education Working Group are

1. Johanne Blenkin (Chair)
2. Joost Blom, QC
3. Thelma O'Grady
4. Jim Herperger
5. Linda Robertson
6. Richard Stewart, QC.

The Professionalism Education Working Group has reviewed courses and educational resources available in Australia, Ontario and through the larger providers in the United States, as well as the ABA Center for Professional Responsibility. The inconsistency of the offerings became apparent immediately in the type and number of courses, the resources in support, and additional stand alone resources.

Research in the medical profession, which has robust continuing education programs, indicates that continuing professional education has a positive impact on competency when the education is directed toward specific problems encountered by medical practitioners. There is anecdotal evidence to support the assumption that a problem focused learning approach is equally effective for the legal profession.

DISCUSSION

The Professionalism Education Working Group, in the absence of an existing curriculum or best practices for developing resources and tools, concluded that the creation of a Proposed Content Guideline in key topic areas, in conjunction with a sample resources template, would be a useful starting point for the future development of a curriculum and resources.

The Law Society of Upper Canada has recently reported that it would employ a problem focused learning approach as a feature of its CPD initiative, beginning in 2011. The Law Society of Upper Canada has announced that it will produce and provide sufficient professionalism programming to enable Ontario lawyers, free of charge, to satisfy a three hour annual requirement. The Ontario approach will require a significant increase in Law Society staff and other resources, an approach the Committee does not recommend for the Law Society of BC.

In BC, unlike in most Canadian jurisdictions, including Ontario, the Law Society of BC is not the primary provider of continuing legal education. The Committee recognizes the expertise and experience of BC's continuing legal education providers, and is therefore recommending a collaborative approach that engages BC's third party providers without mandating any type or number of resources.

The goal of the Proposed Content Guideline approach is to promote consistent offerings for the profession, and to enable third party providers to meet the needs of the profession. Professionalism and ethics are large, complex areas, which prior to the adoption of the two hour CPD requirement in BC were largely embedded in continuing legal education courses and other resources rather than standing alone. While that approach may have been effective historically, law societies are increasingly taking a more proactive view of professionalism and ethics as part of their mandate to protect the public interest.

The Proposed Content Guideline, attached as appendix A, would serve the purpose of facilitating and encouraging the collective organization of existing resources and, of equal importance, illuminating gaps by identifying areas of need.

The Professionalism Education Working Group, in the course of consultation, provided a draft Proposed Content Guideline and sample resources template to the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC and the BC branch of the Canadian Bar Association, and met with senior staff from those organizations to elicit their views on this approach. A proposed sample resources template on the topic of "Undertakings" is attached as appendix B.

While the concept was well received during the consultations, it became apparent that at this stage it must be made clear that the Proposed Content Guideline would be a working guide, not a final document. Consulting with the key continuing legal education providers early in the process has provided important feedback and set a positive tone for engaging in an ongoing collaborative approach.

Given the lack of a developed curriculum in the professionalism and ethics area, the Professionalism Education Working Group concluded it would be premature to direct resources to the creation of resource templates for each topic until such time as the

third party providers had determined whether this Proposed Content Guideline approach would assist them in meeting the needs of the profession in this area.

Courthouse Libraries BC has agreed to collaborate with the Law Society and continuing legal education providers to create a mechanism for organizing existing resources under the Proposed Content Guideline topics, so as to identify current offerings and identify any gaps. This gap analysis should be of particular benefit as it would enable providers to allocate resources in areas of particular need.

LAWYER EDUCATION ADVISORY COMMITTEE RECOMMENDATIONS

The Committee recommends that the Benchers approve the following proposals of the Professionalism Education Working Group.

These recommendations anticipate follow-up activity by Committee members and staff, but do not call for Law Society expenditure of funds or additional staffing resources.

Recommendation 1

That the Law Society provide the Proposed Content Guideline and the sample resources template on undertakings, together with information on how they might be employed, to the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the BC branch of the Canadian Bar Association, and BC's law schools;

Recommendation 2

That six months later the Law Society meet with the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the BC branch of the Canadian Bar Association, and BC's law schools, and again periodically, to evaluate how effective this approach is in promoting the development of courses and resources in professionalism and ethics, and to collaborate strategically on next steps.

APPENDIX A

PROPOSED CONTENT GUIDELINE IN KEY TOPIC AREAS

- **General Professional Responsibility**
 - confidential information — disclosure, use of
 - solicitor/client privilege
 - withdrawal from the file
 - undertakings
 - conflicts — two or more clients, against current client, former client, financial interest
 - communication with unrepresented parties

- **Clients**
 - communication — keeps client informed, responds in timely fashion, fees, manages expectations
 - client information – duty to verify?
 - settlements – conveying offers to clients
 - over identification with client or issues – i.e. not mouth piece for client

- **Practice Management – Files**
 - preparation and administration (evaluation, strategy, research, documentation)
 - conflicts that arise – problem files
 - undertakings
 - communication
 - management of electronic data

- **Personal Conduct**
 - integrity
 - off hours behavior
 - improper relations with clients
 - financial solvency

- **Within the Profession**
 - sharp practice
 - civility
 - opposing counsel
 - junior lawyers
 - senior lawyers

- **Duty to the Court**
 - dress
 - candour
 - communication
 - preparation
 - etiquette
 - respect
 - deference
 - difficult situations - unrepresented parties
 - disclosure of conflicts or information
 - treatment of witnesses
 - influencing witnesses
 - basis to make an argument
 - experts

- **Competencies**
 - the ability and capacity to deal adequately with any legal matters to be undertaken
 - upgrade education
 - seek assistance when necessary
 - office management - (human relations , delegation of duties, supervision, accounting systems including HST and GST responsibilities, file management guidelines, ultimate responsibility)
 - working with others – i.e. avoiding isolation

APPENDIX B

UNDERTAKINGS – SAMPLE RESOURCES TEMPLATE

Resources

A guide to developing and looking for resources may include the following matters.

Definition of an undertaking

- Professional Conduct Handbook
- Benchers Rulings
- The Courts
- Other

Is an undertaking necessary?

Forms of undertakings

- Written
- Verbal
- Implied Undertakings – Trust funds / Statement of Adjustments?

Who can give or accept an undertaking

- Non lawyers
- Undertakings to the court

What to consider when giving or accepting an undertaking

- Do not give an undertaking that cannot be filled
- Complete every undertaking in a timely manner
- Ensure the undertaking is in writing
- If you do not intend to accept personal responsibility, clearly state this in the undertaking
- Impose a time period in which the undertaking must be fulfilled
- Provide for contingencies
- Confirm whether the licensee providing the undertaking is entitled to practice law or provide legal services

Managing an undertaking – ensure every undertaking is

- Clear and unambiguous
- Confirmed in writing
- Recorded in a time management system
- Satisfied according to its terms

What happens when the undertaking goes awry

- Client changes instructions
- Proceeds of crime
- Waiving an undertaking

How to deal with the Law Society regarding undertakings and breaches

- Duty to report others and self
- Dealing with a complaint

Consequences / Sanctions

Checklist

Additional potential resources

- Podcasts
- Videos
- printed material
- online mentoring
- study groups
- social media such as Face book
- Web 2.0 technology such as wikis
- Law Society of BC Hearing Panel Decisions and Conduct Reviews
- webinars