

# THE LAW SOCIETY OF BRITISH COLUMBIA

## MINUTES

- MEETING:** Benchers
- DATE:** Friday, September 9, 2011
- PRESENT:**
- |  |                   |
|--|-------------------|
| Gavin Hume, QC, President                        | Jan Lindsay, QC   |
| Bruce LeRose, QC, 1 <sup>st</sup> Vice-President | Peter Lloyd, FCA  |
| Art Vertlieb, QC, 2 <sup>nd</sup> Vice-President | Benjimen Meisner  |
| Haydn Acheson                                    | Nancy Merrill     |
| Rita Andreone                                    | David Mossop, QC  |
| Satwinder Bains                                  | Suzette Narbonne  |
| Kathryn Berge, QC                                | Thelma O'Grady    |
| Joost Blom, QC                                   | Lee Ongman        |
| Patricia Bond                                    | Gregory Petrisor  |
| Robert Brun, QC                                  | David Renwick, QC |
| E. David Crossin, QC                             | Claude Richmond   |
| Tom Fellhauer                                    | Alan Ross         |
| Leon Getz, QC                                    | Catherine Sas, QC |
| Carol Hickman, QC                                | Herman Van Ommen  |
| Stacy Kuiack                                     | Kenneth Walker    |
- ABSENT:** Richard Stewart, QC
- STAFF PRESENT:**
- |                     |                 |
|---------------------|-----------------|
| Tim McGee           | Michael Lucas   |
| Deborah Armour      | Bill McIntosh   |
| Robyn Crisanti      | Jeanette McPhee |
| Lance Cooke         | Doug Munro      |
| Charlotte Ensminger | Susanna Tam     |
| Su Forbes, QC       | Alan Treleaven  |
| Jeffrey Hoskins, QC | Adam Whitcombe  |
- GUESTS:**
- Dom Bautista, Executive Director, Law Courts Center
  - Mark Benton, QC, Executive Director, Legal Services Society
  - Johanne Blenkin, Executive Director, Courthouse Libraries BC
  - Mary Anne Bobinski, Faculty of Law Dean, UBC
  - Ron Friesen, CEO, CLEBC
  - Donna Greschner, Faculty of Law Dean, UVIC
  - Jeremy Hainsworth, Reporter, Lawyers Weekly
  - Azool Jaffer-Jeraj, President, Trial Lawyers Association of BC
  - Allan Parker, QC, Program Consultant, Access Pro Bono
  - Sharon Matthews, President, CBABC
  - Caroline Nevin, Executive Director, CBABC
  - Kerry Simmons, Vice-President, CBABC
  - Wayne Robertson, QC, Executive Director, Law Foundation of BC

## **CONSENT AGENDA**

### **1. Minutes**

The minutes of the meeting held on July 15, 2011 were approved as circulated.

## **REGULAR AGENDA – for Discussion and Decision**

### **2. President’s Report**

Mr. Hume referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President since his last report, and commented briefly on a number of matters. Mr. Hume noted that he was curtailing his oral report in light of the length of the agenda, and because a number of issues otherwise warranting his comment would be discussed in the strategic planning portion of the meeting.

### **3. CEO’s Report**

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 1 to these minutes), including the following matters:

- a. Financial Report – First Half of Year Operating Results**
- b. Strategic Plan 2012 – 2014 – Update**
- c. Communications Updates**
  - i. Public Education Program**
  - ii. Communicating New Student Rules**
  - iii. BencherNet Replaced by Lawyer Login Page**
- d. 2011 Employee Survey**
- e. Recruiting for New Hearing Panel Pools – Update**
- f. Electronic Document and Record Management Project – Update**
- g. Government Relations / Legislative Ask – Update**
- h. LSBC Annual General Meeting – September 20, 2011**
- i. Advocate Article**
- j. 9th Floor Facelift**

#### **4. Report on Outstanding Hearing and Review Reports**

The Benchers received and reviewed a report on outstanding hearing decisions.

#### **2009-2011 STRATEGIC PLAN IMPLEMENTATION (*FOR DISCUSSION AND/OR DECISION*)**

#### **5. Lawyer Education Advisory Committee: Review of Continuing Professional Development Program**

Ms. O'Grady briefed the Benchers and referred them to the report at page 5000 of the meeting materials (Appendix 2 to these minutes) for the Committee's fifteen recommendations (pages 5014-5021). She noted that implementation of the recommendations would not trigger increased budgetary expenses for the Law Society, including required staffing resources. Ms. O'Grady acknowledged and thanked Mr. Treleaven and Ms. Ensminger for their valuable support in preparing the Committee's report.

Ms. O'Grady moved (seconded by Mr. Blom) that the report of the Lawyer Education Advisory Committee, including the fifteen recommendations set out on pages 5014-5021 of the meeting materials, be adopted.

The following issues were addressed in the ensuing discussion:

- need and planning for communications initiatives to promote the mentorship program
- focus on the public (as opposed to client) aspect as the key to CPD entitlement for presentations
- focus on the education model as the key to CPD policy-making
- reasonableness of maintaining the current 12 hour annual CPD requirement

The motion was carried.

Ms. Berge referred to the list of topics that would not satisfy the practice management definition for CPD accreditation (Appendix A, Section II (h), page 5023 of the meeting materials):

...

(h) business case for:

(i) retention of women, and

(ii) retention of visible minority lawyers and staff; ...

Ms. Berge suggested that Ms. Tam be requested to broaden the language of Appendix A, Section II (h) to include other diversity issues.

The Benchers agreed.

**2012-2014 STRATEGIC PLAN DEVELOPMENT (FOR DISCUSSION AND/OR DECISION)****6. Setting Goals for 2012-2014 Strategic Plan**

Mr. Hume outlined the purpose and interactive structure of this strategic planning session. He stressed the importance of full and open discussion of priorities by the Benchers, noting that consideration of resource implications should be left to the October meeting.

Mr. McGee emphasized the value of hearing Benchers' individual preferences and supporting reasons today, noting that the difficult decisions to be made at the October and December meetings will be strengthened accordingly.

A full discussion followed, structured around the four policy goals and various potential strategic initiatives outlined in the Executive Committee's memorandum at page 6003 of the meeting materials. Those four goals were identified by the Benchers at their July meeting as follows:

1. Be an innovative and effective professional regulatory body;
2. Promote and improve access to legal services;
3. Establish appropriate standards for admission to and practice in the legal profession and ensure that programs exist to aid applicants and legal professionals to meet those standards; and
4. Enhance public confidence in the administration of justice and the rule of law.

At the conclusion of the discussion Mr. Lucas confirmed that a number of 'write-in initiatives' will be added to those identified in the Executive Committee's memorandum, for the purposes of the polling the Benchers' individual preferences at the end of the meeting. Mr. Hume noted that Benchers may allocate their 'sticky note ballots' as they like among the indicated overarching goals and related potential initiatives, with the results to be tabulated for consideration and development of recommendations by the Executive Committee at its next meeting.

**OTHER MATTERS (FOR DISCUSSION AND/OR DECISION)****7. Approval of Addendum to the Quebec Mobility Agreement: extending mobility rights to members of the Chambres des notaires du Québec**

This matter was discussed *in camera*.

**8. Rural Education & Access for Lawyers (REAL) Initiative: 2012-2013 Funding**

Mr. Hume briefed the Benchers, referring them to the meeting materials for the Executive Committee's memorandum (page 8000) and the memorandum of CBABC Vice-President Kerry Simmons (page 8004). He noted the Executive Committee's assessment of the demonstrated value of the REAL Initiative after three years of operation, and of the importance of completing the initiative's five-year plan.

Mr. LeRose moved (seconded by Mr. Meisner) the adoption of the Executive Committee's recommendation and qualifying conditions as set out at page 8003 of the meeting materials:

... that the Benchers approve co-funding [by the Law Society] with the CBABC of the REAL initiative for 2012 and 2013, with a contribution of \$75,000 per year subject to satisfactory due

diligence regarding the criteria for the inclusion of communities and the part-time Regional Career Officer and the following conditions:

- the Law Society will only provide funding for 2012 and 2013 to the conclusion of the original five-year program
- the Law Society reaches agreement with the CBABC about the criteria for inclusion of the communities entitled to benefit from the initiative
- the Law Society's contribution is recognized in communications and public relations about the program during the two years
- conclusion of a satisfactory co-funding agreement with the CBABC consistent with the terms of the original proposal and grant from the Law Foundation

Mr. LeRose noted his satisfaction regarding the REAL initiative's community inclusion criteria and the value added by its part-time Regional Career Officer. He pointed out the initiative's potential positive impact on access to legal services in BC's rural communities. Mr. LeRose noted that completion of the initiative's five-year lifespan should provide enough data to support development of a strong permanent program. He stressed that the Executive Committee's recommendation does not contemplate provision of Law Society funding beyond the bridge financing needed for completion of the initiative's remaining two years.

Mr. Fellhauer confirmed his strong support for the motion as the Bencher member of the REAL Oversight Committee. He pointed out that the program was designed for five years, and that a steep learning curve climbed by the initiative's organizers and Oversight Committee in year one and year two. Mr. Fellhauer also noted the importance of strong community relationships in the building of support for the REAL initiative, noting that establishing relationships takes time and persistence.

The following additional issues were addressed in the ensuing discussion:

- the importance of due diligence to make sure that rural communities that really need help are the ones to get it
- the importance of mentorship and practice advice as elements of the initiative's support for young lawyers
- the active role expected of the Oversight Committee over the final two years of the initiative's lifespan
- the importance of measuring communities' retention of the young lawyers who have participated in the initiative

The motion was carried.

Sharon Matthews, President of the BC Branch of the Canadian Bar Association, thanked the Benchers for the Law Society's commitment and support.

## **9. External Appointments: Law Society Appointments Guidebook and Revised Appointments Policy**

Mr. Hume briefed the Benchers on the background to the development of a guidebook for the Law Society's appointments and nominations to boards, councils and committees of more than twenty five

outside bodies. He advised that the Executive Committee has responsibility for managing Law Society appointments, and has adopted the Law Society Appointments Guidebook, included in the meeting materials at 9008 for the Benchers review. Mr. Hume advised that the guidebook is intended to serve as a 'one-stop reference' on the Law Society's appointments process and protocol, noting that it includes contact information and profiles for the outside bodies to which the Society makes appointments and nominations, and outlines the Society's expectations for consultation and communication with its appointees and nominees.

Mr. Hume referred the Benchers to page 9001 of the meeting materials for draft revisions to the Law Society Appointments Policy, included in the meeting materials at page 9001 for the Benchers' approval. He noted that the current policy has not been updated since its adoption by the Executive Committee in 1994, and that the key proposed revisions match the Consultation and Communication Expectations provisions of the guidebook.

Mr. McGee noted that drafting intention for those provisions was to provide clarity and a practical focus regarding the Law Society's expectations.

In the ensuing discussion the Benchers expressed general approval of the proposed revisions to the appointments policy, with the following suggestions for refinement:

- bolster the Equity section's explanation of the Law Society's commitment to promote and ensure appropriate diversity in its internal and external appointments
- add provisions to the Communication Expectations section confirming the Law Society's commitment
  - to maintain a complete listing of current appointments and upcoming appointment opportunities on the Law Society website
  - to provide appropriate orientation to appointees whose responsibilities include representation of the Law Society

It was agreed to table approval of the proposed appointments policy revisions to the next meeting, by which time the noted refinements should be made.

## **10. Insurance Coverage for Trust Shortfalls Arising from "Bad Cheque" Scams**

This matter was deferred to the next meeting.

## **11. Federation Governance Policy**

Mr. Hume briefed the Benchers as the Law Society's member of the Federation of Law Societies of Canada Council, referring them to page 11001 of the meeting materials for the Federation's draft Governance Policy. He advised that the proposed policy is intended to expedite Federation decision-making, and to clarify the scope of authority of the Federation Council, individual Council members, the Executive Committee, the President and the Chief Executive Officer. Mr. Hume noted that the proposed policy both supports and calls for more effective and timely communication by Council members with their respective law societies.

Mr. LeRose moved (seconded by Mr. Vertlieb) that the Benchers approve the draft Federation Governance Policy as set out at page 11001 of the meeting materials (Appendix 3 to these minutes).

In the ensuing discussion the following issues were raised:

- various forms of Council decision-making
- the nature of matters for which Council members must seek express direction from their respective law societies
- the importance of timely and effective communication between the Federation and its member law societies
  - for the Federation, member societies and law schools
- the Federation's reliance on its member law societies for implementation of its policies and decisions

The motion was carried.

## **12. Federation of Law Societies of Canada Update**

Mr. Hume reported to the Benchers as the Law Society's member of the Federation of Law Societies of Canada Council. His report covered the following Federation matters:

- national bar admission standards as the main topic of the upcoming semi-annual conference
- progress on the national competency standards project
- Model Code Standing Committee update on progress toward finalizing the Code's Current Client Conflicts provisions
- Updating the Policy on Rotation of the Federation Presidency
- CanLII Board of Directors update

### ***IN CAMERA SESSION***

The Benchers discussed other matters *in camera*.

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The Law Society  
of British Columbia



## ***Chief Executive Officer's Monthly Report***

A Report to the Benchers by

Timothy E. McGee

September 9, 2011

## **Introduction**

My report this month attaches highlights of the financial results for the six months ended June 30, 2011 and provides updates on a number of projects and initiatives.

### **1. Financial Report – First Half of Year Operating Results**

Highlights of the financial results to June 30, 2011 are attached to this report as Appendix 1. Jeanette McPhee, our CFO, and I will be available to answer any questions you may have on the results at Friday's meeting.

### **2. Strategic Plan 2012 – 2014 - Update**

This month's meeting is an important one on the path to developing a new three year Strategic Plan. Please take a little extra time to review the materials you will be provided in the Benchers' package regarding the planning process. Gavin and I will have more to say on what we hope to accomplish at the meeting.

### **3. Communications Updates**

#### ***Public Education Program***

Since the Public Education Program was presented to the Benchers in March 2011, the Communications team has developed a more detailed tactical plan and begun implementation of a number of those tactics, including obtaining broad media coverage around Law Week and developing the access to justice webpage. We expect that the majority of the work will be completed this fall, including a public inquiry strategy, a public relations awareness campaign and additional educational materials on various Law Society policy initiatives. Robyn Crisanti, Manager, Communications and Public Affairs, will be at the meeting, should you have any questions about the Program.

#### ***Communicating New Student Rules***

Our Communications department is implementing a comprehensive communications plan to advise lawyers and students of the new student rules, including:

- Article in Benchers' Bulletin (mid-September)
- E-Brief mention (mid-September)
- Letter and flyer sent to all students and principals
- New website copy for Articling section

- Home page of website (Highlights section) (mid September)
- Mention in Advocate article regarding PLTC survey (November)
- Notice to law school publications (late September)

Please let Robyn Crisanti know if you have any questions about the above.

### ***BencherNet Replaced by Lawyer Login Page***

BencherNet has now been retired in favour of a more robust Lawyer Login page, which provides access to all Bencher and committee materials as appropriate, based on user profile. If there is any information that Benchers would like to see added to the new Bencher Resources section, please feel free to share your ideas.

#### **4. 2011 Employee Survey**

We will soon be conducting our annual employee survey. The purpose of the survey is to ensure that we engage all staff in providing their feedback on how we can improve job satisfaction and our effectiveness as an organization. We will be reviewing the survey results with the Benchers early in the new year.

#### **5. Recruiting for New Hearing Panel Pools – Update**

As you know, at the beginning of the Summer, we advertised for lawyers and non-lawyers willing to volunteer to sit on hearing panels with Benchers. The response was more than we expected: 130 non-Bencher lawyers and nearly 600 non-lawyers. The working group has met three times and set the criteria for selecting the best pool of panel members, starting with the guidelines established by the Benchers. We then outsourced the process of applying the criteria to the applications received to a professional executive search team. This not only made operational sense but also ensured that the selection process would be seen to be objective.

We have received reports on the two hearing panel pools, with recommended selections based on the criteria. We are now in the process of doing our due diligence to ensure that all of the selections are appropriate. That includes consulting the Benchers, which the President will speak to you about in the course of the meeting.

#### **6. Electronic Document and Record Management Project – Update**

In my May 2011 report, I introduced the Enterprise Content Management Working Group (now the Electronic Document and Records Management System “EDRMS” Project Team). The EDRMS project team’s mandate is to define our user needs in detail, consult on what would constitute the best

solution, and create the necessary business case for consideration. This work will be completed in three phases:

- Phase 1- Detailed needs analysis
- Phase 2 – Solution identification
- Phase 3 – Implementation of solution(s)

The EDRMS team has received the Phase 1 report from consultants KPMG, which is an analysis of the Law Society's needs, current systems and processes for electronic information and case management, and which makes general recommendations for moving forward. Once Management Board and the Executive Committee have completed their review of the report (end of September), a project manager will be assigned to lead Phase 2 – Solution Identification. During this phase, we will be working with consultants to identify specific software solutions for our information and case management requirements.

EDRMS co-chairs Jeanette McPhee and Adam Whitcombe will be at the meeting to answer questions about this project.

#### **7. Government Relations / Legislative Ask – Update**

The Ministry of the Attorney General is now actively working on the requests for amendments that the Benchers approved in the middle of 2010. Policy lawyers with the Ministry have been in touch with us several times to clarify and discuss our various proposals for more effective regulation in the public interest. We expect that a request for legislation will go to Cabinet for approval in the Fall. After that, it will go to Legislative Counsel for drafting of the specific amendments to be included in the legislative program when space can be found for it, hopefully in the Spring of 2012.

#### **8. LSBC Annual General Meeting – September 20, 2011**

This is a reminder that the Law Society's 2011 Annual General Meeting will be held at the Fairmont Hotel Vancouver in Vancouver and in 10 different satellite locations around the province on Tuesday, September 20, 2010. Registration begins at 11:30 a.m. with call to order at 12:30 p.m.

There is one member resolution this year, proposing that the Law Society allow payment of membership fees by monthly installment or by credit card. A message from the Benchers has been included in the AGM Second Notice, which advises that implementation of this resolution would result in increased practice fees, due to increased administrative requirements and loss of investment income on full member dues as well as additional expense due to merchant fees payable to the

credit card companies. The message also sets out the Benchers' concerns that monthly payments will make tracking and reporting of member status in an accurate and timely manner difficult.

If you have any questions about arrangements for the AGM, please do not hesitate to contact Bill McIntosh.

**9. Advocate Article**

I am attaching a copy of the Law Society's response, which was posted on the Law Society's website, to the recent Advocate article regarding the Western Law Societies Conveyancing Protocol, attached to this report as Appendix 2. I would be happy to discuss this in further detail at the meeting.

**10. 9<sup>th</sup> Floor Facelift**

I am pleased to report that we are 95% complete on our plans to upgrade the 9<sup>th</sup> floor facilities. I think you will agree with me that the renovations are a big improvement to our workspace on that floor. I would like to congratulate and thank Bernice Chong, Manager of Operations, and her team for all their hard work in bringing this project in on time and budget.

Timothy E. McGee  
Chief Executive Officer

# The Law Society of British Columbia



## **Report of the Lawyer Education Advisory Committee: Continuing Professional Development Review and Recommendations**

**For: The Benchers**

**Date: September 9, 2011**

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Thelma O'Grady, Chair  
Joost Blom, QC, Vice-Chair  
Tom Fellhauer  
Ben Meisner  
Nancy Merrill  
Catherine Sas, QC  
Patricia Schmit, QC  
Jim Vilvang, QC  
Johanne Blenkin  
Linda Robertson

**Purpose of Report: Discussion and Decision**

**Prepared on behalf of: Lawyer Education Advisory Committee**

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

**Charlotte Ensminger  
Staff Lawyer, Policy and Legal Services (604) 697-5843**

## **I. BACKGROUND**

1. On November 16, 2007, the Benchers approved the former Lawyer Education Committee's recommendations for a mandatory continuing professional development ("CPD") program, to begin on January 1, 2009. Approval of CPD was premised, above all, on assuring the public and the profession that the Law Society is committed to establishing, maintaining and enhancing standards of legal practice in the province.
2. Although CPD requirements for lawyers exist in many other jurisdictions, including England, Wales, Scotland, Ireland, 45 American states and 4 Australian jurisdictions, the Bencher decision marked the first time that a Canadian law society had introduced a comprehensive CPD requirement.
3. Today, seven provinces and one territory have or are about to introduce comprehensive CPD requirements.

## **II. PURPOSE OF THIS REPORT**

4. This is the third year of the CPD program. The Committee conducted a comprehensive review of the program in 2011, and is reporting the results to the Benchers, together with recommendations for some specific modifications, in time to ensure that changes are in place beginning January 1, 2012.

## **III. CONSULTATION**

5. The Committee surveyed BC lawyers in the spring of 2011 to assess the CPD program. Of the 1,419 lawyers who participated in the survey, 78% agreed that continuing education should be mandatory for lawyers, with more than half agreeing that the annual requirement is likely to strengthen the quality of legal services that BC lawyers provide to their clients. The results show that the overall assessment of the program has been very positive.
6. The Committee has also received input from lawyers and law-related organizations. That input has been mainly positive. Where concerns have been raised, they are mostly in connection with questions relating to approved subject-matter, cost and geographic barriers.
7. Some lawyers and law-related organizations suggest harmonizing the BC requirements with other provinces and territories, to reflect the increasing inter-jurisdictional mobility of lawyers. The Committee is recommending that such an initiative be the subject of the next CPD program review, which would include examining a role for other law societies and the Federation of Law Societies.

## **IV. COMMITTEE RECOMMENDATIONS AND COMMENTARY**

8. The Committee has been guided in its analysis of a considerable number of options by wanting to ensure that the CPD program is as straight-forward and stream-lined as reasonably possible for lawyers, legal education providers, and the Law Society.

9. The Committee has developed the following detailed recommendations, to take effect January 1, 2012. Commentary is included as background or to explain the reasons for any proposed changes.

**10. Recommendation 1 - The 12 Hour Requirement**

- (a) Continue the annual 12 hour requirement.
- (b) Amend current Rule 3-18.3(1) so that the Benchers no longer need to approve on an annual basis the minimum number of CPD hours a practising lawyer is required to meet.

*Comment: Rule 3-18.3(1) currently reads as follows: “Before the commencement of each calendar year, the Benchers must determine the minimum number of hours of continuing education that is required of a practising lawyer in the following calendar year.” The Committee has concluded that requiring annual Bencher approval serves no practical purpose.*

**11. Recommendation 2 – The Two Hour Requirement for Professional Ethics, Practice Management, Client Care and Relations**

- (a) Continue the requirement that at least two of the annual 12 hours required must pertain to any combination of professional responsibility and ethics, practice management and client care and relations.
- (b) Professional responsibility and ethics, practice management, and client care and relations content that is embedded in the overall credit available for a course continues to comply with the two hour requirement.

*Comment: CPD providers continue to be encouraged to also offer non-embedded or “stand-alone” content and courses that meet the two hour requirement.*

**12. Recommendation 3 - Overall Subject Matter Requirement**

Eliminate the “audience test” requirement, so that the overall subject matter requirement would read as follows:

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

- (a) substantive law,
- (b) procedural law,
- (c) professional ethics,
- (d) practice management (including client care and relations),

- (e) lawyering skills.

*Comments:*

*This revised subject matter requirement focuses on subject matter content, and eliminates the current “audience test” component, which reads “... material primarily designed and focused for an audience that includes, as a principal component, lawyers, paralegals, articling students and/or law school students, but not if the subject matter is targeted primarily at clients, the public, other professions, or other students.” The revised subject matter requirement eliminates, for example, denial of credit for attending an Institute of Chartered Accountants’ tax course designed and focused at accountants.*

*See appendix A for the guiding descriptions, adopted by the Committee, of the following subject matter:*

- *professional ethics,*
- *practice management (including client care and relations),*
- *lawyering skills.*

*Credit continues to be available for subject matter related to the law of other countries, provinces and territories, and is not limited to BC or Canadian law.*

### **13. Recommendation 4 - Subject Matter Exclusions**

Continue to exclude credit for the following:

- (a) lawyer wellness topics,
- (b) topics relating to law firm marketing or profit maximization,
- (c) any activity designed for or targeted primarily at clients.

*Comments:*

*The Committee’s rationale for continuing exclusions (a) and (b) is that accredited CPD should primarily enhance a lawyer’s legal knowledge and related legal skills.*

*The Committee discussed in detail whether content relating primarily to lawyer wellness or resiliency, for which CPD credit is not currently available, should be accredited for any or all of*

- *courses and other educational programs,*
- *study groups,*
- *teaching,*
- *writing,*
- *mentoring.*

*The Committee noted that although lawyer wellness is not currently an accredited subject matter, wellness content is not a complete barrier to accreditation. For example, a mentoring relationship that includes at least 6 hours of accredited subject matter, such as*

*a combination of family law and ethics, would be accredited for 6 hours, even though the balance of the time beyond the minimum 6 hours might focus on wellness.*

*The Committee concluded that engaging in wellness and resiliency activities can be of significant value to lawyers, and therefore serve the public interest, but decided that because wellness activity is not fundamentally professional education, it should continue to be ineligible for CPD credit.*

*The Committee observed, however, that there would be value in the Law Society developing initiatives that encourage lawyers to engage in activities promoting health and resiliency as they relate to law practice, and endorsed the idea of recommending such initiatives.*

*The Committee rationale for continuing exclusion (c), activity designed for or targeted primarily at clients, is that the CPD requirement is intended primarily to encourage lawyers to maintain and enhance their professional competence, not to encourage them to choose CPD activities on the basis that they will sustain and perhaps expand the firm's client base.*

#### **14. Recommendation 5 - Credit for Courses**

(a) Continue to accredit courses based on the following criteria:

- (i) actual time in attendance,
- (ii) online real time courses, streaming video, webcast and / or teleconference courses, if there is an opportunity for lawyers to ask and receive answers to questions,
- (iii) local or county bar association educational programs, and CBA section meetings: credit for actual time, but excluding time not directed to educational activity,
- (iv) reviewing a previously recorded course, if at least two lawyers review it together, including by telephone or other real time communications technology.

(b) Extend accreditation to reviewing a previously recorded course if a lawyer and articling student review it together, including by telephone or other real time communications technology.

*Comments:*

*Credit for reviewing a recorded course with an articling student extends the two lawyer requirement. The Committee decided against extending credit to a lawyer who reviews a recorded program with a paralegal, on the basis that there is no paralegal accreditation or licensing in BC.*

*Lawyers continue to receive credit for repeating the same courses, including online courses year over year, but not for repeating a course within the same reporting year.*

#### **15. Recommendation 6 - Self Study Restriction**

- (a) Continue to exclude self-study, such as reading, and reviewing recorded material on one's own, subject to the prescribed exception in recommendation 7 for approved interactive online programs;
- (b) Continue to recommend a minimum 50 hours of self-study annually, but not require lawyers to report their self-study, as it is not eligible for credit.

*Comments: The Committee continues to see considerable value in lawyers meeting together to engage in continuing professional development. While this requirement can present an obstacle because of geography or scheduling demands, the wide range of ways to engage in continuing professional development, including through electronic means, study groups, mentoring, local bar events, teaching and writing, considerably alleviates such a concern.*

#### **16. Recommendation 7 - Credit for an Interactive Online Self Study Program**

Continue credit for interactive online self-study education for up to a Law Society pre-assigned limit per online program, as well as for completing on one's own an audio, video or web program if the program includes each of the following characteristics:

- (a) 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;
- (b) the quiz is at the end of or interspersed throughout the program;
- (c) the lawyer can email or telephone a designated moderator with questions, and receive a timely reply.

*Comment: For the quiz component, the lawyer is not required to submit the quiz responses for review.*

#### **17. Recommendation 8 - Study Group Credit**

- (a) Continue credit for study group attendance at a meeting
  - (i) if at least two lawyers or a lawyer and articling student are together for educational purposes 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,

if a lawyer chairs or has overall administrative responsibility for the meeting.

*Comment: An educational purpose includes reviewing a recorded program.*

(b) Continue to exclude credit 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.

*Comment: The Committee's rationale for continuing to exclude (b)(i), participation on committees, boards and tribunals, is that although there may be some professional development value in volunteering on some boards and committees, the primary focus of accrediting CPD activity should be focused on enhancing legal knowledge and legal skills.*

## **18. Recommendation 9 - Mentoring Credit**

(a) Continue the following provisions relating 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;

*Comment: This mirrors the requirement for approval as an articling 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.

*Comment: (ii) and (v) continue to exclude CPD credit for mentoring law school students, including students in law school clinical programs. The Committee's rationale for this exclusion is that such mentoring, while providing an important service, does not achieve the goal that accredited CPD should meaningfully enhance the mentor's legal knowledge and related skills.*

(b) Implement the following changes to mentoring:

- (i) mentoring by email or similar electronic means qualifies for credit;
- (ii) no minimum time for each mentoring session. This waives the current 30 minute minimum;
- (iii) if less than 6 hours is spent in the year, continue the restriction that no time can be claimed for the mentoring relationship, but with a new exception for when the mentoring relationship ends prematurely under unexpected circumstances.

*Comment: These changes are intended to reduce constraints on mentoring, thereby encouraging growth in the mentoring program.*

**19. Recommendation 10 - Teaching Credit**

- (a) Continue to provide 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.

(b) Implement the following change if teaching is directed to an audience not listed in (a) (i), (ii), and (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.

*Comments:*

*Extending credit to teaching the general public is based on the rationale that there is professional development value in teaching to any audience and, in the case of the public, to doing so in a way that requires the skill to communicate to people who typically lack legal training. There would continue to be no credit if the teaching is targeted primarily at clients or is file specific.*

*The Committee's rationale for continuing to exclude credit for teaching designed for or targeted primarily at clients is that the CPD requirement is intended to encourage lawyers to maintain and enhance their professional competence, not to encourage them to choose CPD activities on the basis that they will sustain and perhaps expand the firm's client base.*

(c) Continue the following provisions:

- (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) no cap on the number of hours for teaching;
- (iv) credit only for the first time in the year, and not for repeat teaching of substantially the same subject matter within the year;
- (v) credit for the same course from year to year, whether or not there are changes to the course;
- (vi) a lawyer claiming teaching and preparation credit can also claim writing credit for additional time writing course materials;
- (vii) no credit for setting or marking examinations, term papers or other assignments;

- (viii) 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.

## 20. Recommendation 11 - Writing Credit

- (a) Continue writing credit, as follows:
  - (i) for writing law books or articles intended for publication or to be included in course materials,
  - (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,

*Comment: Time spent preparing PowerPoint is to be accounted for in teaching preparation time.*

- (vi) not for writing for law firm websites,
- (vii) not for blogging or wikis,

*Comment: At this time there are no generally accepted standards for posting to blogs or wikis, although postings typically range from informal chat to thoughtfully articulated expression in the nature of typical print publication. The Committee does not see it as feasible at this time to prescribe quality standards. The Committee resolved to reconsider this restriction as a part of the next CPD review.*

- (viii) for volunteer or part-time writing only, not as a part of full-time or regular employment.
- (b) Extend credit to writing for any audience, except when targeted primarily at clients, thereby eliminating the current restriction that the writing must be for
  - (i) an audience that includes as a principal component, lawyers, paralegals, articling students and/or law school students,
  - (ii) a continuing education or licensing program for another profession, or
  - (iii) a post-secondary educational program.

*Comment: The Committee concluded that this change would be consistent with its recommendation to accredit teaching to the general public, which is based on the rationale that there is professional development value in teaching to any audience and, in the case of the public, to doing so in a way that requires the skill to communicate to people who lack legal training.*

## **21. Recommendation 12 - Pro Bono Exclusion**

Continue to exclude CPD credit for providing pro bono legal services.

*Comments:*

*The Committee concluded that engaging in pro bono, while highly laudable, is the practice of law, and not primarily continuing professional development. In so deciding, the Committee considered submissions arguing that providing legal services to lower income or impoverished clients has professional development and ethical responsibility value.*

*No other Canadian jurisdiction provides CPD credit for pro bono activity. Approximately 12 of the 45 American states with MCLE requirements provide some credit for pro bono.*

## **22. Recommendation 13 - Compliance and Reporting Requirements**

- (a) Continue to base the CPD requirement on the calendar year, with a reporting date of December 31.
- (b) Continue to exclude credit carry forward or averaging to a subsequent CPD reporting year.

*Comments:*

*The Committee considered the following additional options for a CPD reporting cycle:*

- *a multi-year reporting requirement,*
- *credit carry over or averaging from year to year,*
- *a three year reporting requirement, with a minimum number of hours required in each of the 3 years,*
- *a 15 hour CPD requirement with permitted carry over.*

*The Committee discussed a concern that carry forward could be seen by the public as watering down the annual requirement, and that some lawyers would reduce what might otherwise be their annual 12 hour CPD consumption in ensuing years.*

*The Committee resolved to reconsider the restriction as a part of the next CPD review.*

- (c) Continue the following requirements:
  - (i) a lawyer who fails to complete and report the requirements by December 31 is required to pay a late fee, and receives an automatic 3

month extension to complete the CPD requirement, without being suspended;

- (ii) the lawyer receives a 60 day prior written notice of the possible suspension;
- (iii) if the requirement is not met by April 1, the lawyer is administratively suspended until all required CPD requirements are completed;
- (iv) the Practice Standards Committee has the discretion to prevent or delay a suspension in special circumstances on application by the lawyer to do so;
- (v) a lawyer who is completing the prior year's CPD requirement by April 1 of a current year is subject to the provisions governing the prior year's CPD.

*Comments:*

*Lawyers report their CPD hours by logging in to the Law Society website, and clicking on the CPD link, where they can review their individual credits and the time remaining to comply with the annual CPD requirement. After completing an accredited learning activity, lawyers add the credits to their record.*

*Lawyers are notified by email before the end of the year of the approaching deadline, and they are reminded of the consequences of non-compliance.*

- (d) Implement the following revised late fee structure:
  - (i) lawyers who complete their CPD hours by December 31 but fail to report completion by the December 31 deadline will be levied a \$200 late fee plus applicable taxes;
  - (ii) lawyers who fail to 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.

*Comment: The \$500 late fee levy would be new, reflecting the differing gravity of failure to report and failure to complete the required CPD hours by the deadline. In 2012, "Schedule 1 – 2012 Law Society Fees and Assessments," would include this change.*

*There are two other instances in which lawyers are currently charged late fees: at annual fee billing and on filing of trust reports.*

- *Lawyers are charged a late fee if they do not pay the annual fee by November 30 of the year preceding the year for which it is payable. (Practising lawyers are charged \$100 and non-practising lawyers are*

*charged \$25. There is no late fee on a retired membership.) If the annual fee and late fee are not received by December 31, the lawyer's membership is ceased and the lawyer must apply to be reinstated. The reinstatement application fee is \$415.*

- *A lawyer who fails to deliver a trust report by the date required is charged a late fee of \$200. If the trust report is not delivered within 30 days after it is due, the lawyer is subject to an additional assessment of \$400 per month or part of a month until the report is delivered. A lawyer who does not deliver the trust report within 60 days of its due date is suspended until the report is completed.*

### **23. Recommendation 14 - Exemptions and Extensions**

Continue to require all lawyers with a practicing certificate, whether full or part-time, to fulfill the CPD requirement, subject to the following exceptions:

- (a) lawyers with a practicing certificate who submit a declaration that they are not practising law are exempt, such as lawyers who are
  - (i) inactive,
  - (ii) on medical or maternity leave,
  - (iii) taking a sabbatical;
- (b) lawyers who resume practice within the reporting year after having been exempt and, subject to (c), below, new lawyers by way of transfer, must complete one credit hour for each full or partial calendar month in the practice of law;
- (c) newly called lawyers who complete the bar admission program of a Canadian law society during the reporting year are exempt;
- (d) no exemption or reduction for
  - (i) being too busy (such as a long trial),
  - (ii) the practice of law being in another jurisdiction,
  - (iii) part-time practice.

*Comments:*

*There has been little demand for a CPD reduction or exemption from BC lawyers who are also members in other jurisdictions, because educational activities in other jurisdictions generally meet the requirements for accreditation on BC. The Committee decided not to recommend at this time an exemption for lawyers who are also members in other jurisdictions, primarily practise law in another jurisdiction, and comply with a similar CPD requirement in that other jurisdiction. The Committee resolved to reconsider this restriction as a*

*part of the next CPD review, in consultation with other law societies and the Federation of Law Societies of Canada.*

*The Committee considered the issue of reduction for lawyers in part-time practice, including the discussion at the 2010 Law Society Annual General Meeting, and concluded that because part-time practitioners must perform at the same level of competence as full-time practitioners, there is no convincing rationale for reducing the requirement for part-time practitioners.*

#### **24. Recommendation 15 - Accreditation Model**

Continue the current accreditation model, whereby

- (a) all applications by providers and lawyers are submitted electronically, and approval decisions are made by Law Society staff;
- (b) all credits are approved in either of two ways:
  - (i) pre-approve the provider (an individual course or other educational activity offered by a pre-approved provider does not require further approval); or
  - (ii) approve (before or after the event) individual courses and other educational activities on the application of either the provider or an individual lawyer;
- (c) an individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
- (d) providers are pre-approved and remain pre-approved if they maintain integrity and quality.

*Comments:*

*BC, Saskatchewan, New Brunswick and Quebec have adopted an accreditation model. Manitoba, Nova Scotia and Northwest Territories have decided on a non-accreditation model. Ontario has a partial non-accreditation model combined with a paper-based spot audit.*

*All but one of the U.S. jurisdictions with mandatory CLE have an accreditation model, as do England, Wales, Scotland, Ireland, and the Australian jurisdictions with CPD requirements.*

*The Committee resolved to review the continuation of the accreditation model as a part of the next CPD review, when the Law Society has more experience with the current model and is able to compare its experience with other Canadian*

*jurisdictions that are introducing a non-accreditation and spot audit approach. If the Law Society were to move to a non-accreditation model, lawyers would, for example,*

- *list the educational activities they complete without an accreditation step, but be guided by subject-matter criteria published by the Law Society, and*
- *possibly be subject to a random spot audit. For example, a paper-based CPD spot audit is a feature of the Ontario program, which is in its first year of operation.*

## **V. BUDGET IMPACT**

25. The Committee proposals, if adopted and implemented, would not increase Law Society budgetary expenses, including required staffing resources.

## **VI. WHAT THE BENCHERS ARE BEING ASKED TO DO**

26. The Committee requests that the Benchers approve the following recommendations.

### **27. Recommendation 1 – The 12 Hour Requirement**

- (a) Continue the annual 12 hour requirement.
- (b) Amend current Rule 3-18.3(1) so that the Benchers no longer need to approve on an annual basis the minimum number of CPD hours a practising lawyer is required to meet.

### **28. Recommendation 2 – The Two Hour Requirement for Professional Ethics, Practice Management, Client Care and Relations**

- (a) Continue the requirement that at least two of the annual 12 hours required must pertain to any combination of professional responsibility and ethics, practice management and client care and relations.
- (b) Professional responsibility and ethics, practice management, and client care and relations content that is embedded in the overall credit available for a course continues to comply with the two hour requirement.

### **29. Recommendation 3 – Overall Subject Matter Requirement**

Eliminate the “audience test” requirement, so that the overall subject matter requirement would read as follows:

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

- (a) substantive law,
- (b) procedural law,

- (c) professional ethics,
- (d) practice management (including client care and relations),
- (e) lawyering skills.

### **30. Recommendation 4 – Subject Matter Exclusions**

Continue to exclude credit for the following:

- (a) lawyer wellness topics,
- (b) topics relating to law firm marketing or profit maximization,
- (c) any activity designed for or targeted primarily at clients.

### **31. Recommendation 5 – Credit for Courses**

- (a) Continue to accredit courses based on the following criteria:
  - (i) actual time in attendance,
  - (ii) online real time courses, streaming video, webcast and / or teleconference courses, if there is an opportunity for lawyers to ask and receive answers to questions,
  - (iii) local or county bar association educational programs, and CBA section meetings: credit for actual time, but excluding time not directed to educational activity,
  - (iv) reviewing a previously recorded course, if at least two lawyers review it together, including by telephone or other real time communications technology.
- (b) Extend accreditation to reviewing a previously recorded course, if a lawyer and articling student review it together, including by telephone or other real time communications technology.

### **32. Recommendation 6 – Self Study Restriction**

- (a) Continue to exclude self-study, such as reading, and reviewing recorded material on one's own, subject to the prescribed exception in recommendation 7 for approved interactive online programs.
- (b) Continue to recommend a minimum 50 hours of self-study annually, but not require lawyers to report their self-study, as it is not eligible for credit.

### 33. Recommendation 7 – Credit for an Interactive Online Self Study Program

Continue credit for interactive online self-study education for up to a Law Society pre-assigned limit per online program, as well as for completing on one's own an audio, video or web program if the program includes each of the following characteristics:

- (a) 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;
- (b) the quiz is at the end of or interspersed throughout the program;
- (c) the lawyer can email or telephone a designated moderator with questions, and receive a timely reply.

### 34. Recommendation 8 – Study Group Credit

- (a) Continue credit for study group attendance at a meeting
  - (i) if at least two lawyers or a lawyer and articling student are together for educational purposes 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,

if a lawyer chairs or has overall administrative responsibility for the meeting.

### 35. Recommendation 9 – Mentoring Credit

- (a) Continue the following provisions relating 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;
  - (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.
- (b) Implement the following changes to mentoring:
- (i) mentoring by email or similar electronic means qualifies for credit;
  - (ii) no minimum time for each mentoring session. This waives the current 30 minute minimum;
  - (iii) if less than 6 hours is spent in the year, continue the restriction that no time can be claimed for the mentoring relationship, but with a new exception for when the mentoring relationship ends prematurely under unexpected circumstances.

### **36. Recommendation 10 – Teaching Credit**

- (a) Continue to provide 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.
- (b) Implement the following change if teaching is directed to an audience not listed in (a) (i), (ii), and (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.

- (c) Continue the following provisions:
- (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) no cap on the number of hours for teaching;
  - (iv) credit only for the first time in the year, and not for repeat teaching of substantially the same subject matter within the year;
  - (v) credit for the same course from year to year, whether or not there are changes to the course;
  - (vi) a lawyer claiming teaching and preparation credit can also claim writing credit for additional time writing course materials;
  - (vii) no credit for setting or marking examinations, term papers or other assignments;
  - (viii) 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.

### **37. Recommendation 11 – Writing Credit**

- (a) Continue writing credit, as follows:
- (i) for writing law books or articles intended for publication or to be included in course materials,
  - (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,
  - (viii) for volunteer or part-time writing only, not as a part of full-time or regular employment.
- (b) Extend credit to writing for any audience, except when targeted primarily at clients, thereby eliminating the current restriction that the writing must be for
- (i) an audience that includes as a principal component, lawyers, paralegals, articling students and/or law school students,
  - (ii) a continuing education or licensing program for another profession, or
  - (iii) a post-secondary educational program.

### **38. Recommendation 12 – Pro Bono Exclusion**

Continue to exclude CPD credit for providing pro bono legal services.

### **39. Recommendation 13 – Compliance and Reporting Requirements**

- (a) Continue to base the CPD requirement on the calendar year, with a reporting date of December 31.
- (b) Continue to exclude credit carry forward or averaging to a subsequent CPD reporting year.
- (c) Continue the following requirements:
  - (i) a lawyer who fails to complete and report the requirements by December 31 is required to pay a late fee, and receives an automatic 3 month extension to complete the CPD requirement, without being suspended;
  - (ii) the lawyer receives a 60 day prior written notice of the possible suspension;
  - (iii) if the requirement is not met by April 1, the lawyer is administratively suspended until all required CPD requirements are completed;

- (iv) the Practice Standards Committee has the discretion to prevent or delay a suspension in special circumstances on application by the lawyer to do so;
  - (v) a lawyer who is completing the prior year's CPD requirement by April 1 of a current year is subject to the provisions governing the prior year's CPD.
- (d) Implement the following revised late fee structure:
- (i) lawyers who complete their CPD hours by December 31 but fail to report completion by the December 31 deadline will be levied a \$200 late fee plus applicable taxes;
  - (ii) lawyers who fail to 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.

#### **40. Recommendation 14 – Exemptions and Extensions**

Continue to require all lawyers with a practicing certificate, whether full or part-time, to fulfill the CPD requirement, subject to the following exceptions:

- (a) lawyers with a practicing certificate who submit a declaration that they are not practising law are exempt, such as lawyers who are
  - (i) inactive,
  - (ii) on medical or maternity leave,
  - (iii) taking a sabbatical;
- (b) lawyers who resume practice within the reporting year after having been exempt and, subject to (c), below, new lawyers by way of transfer, must complete one credit hour for each full or partial calendar month in the practice of law;
- (c) newly called lawyers who complete the bar admission program of a Canadian law society during the reporting year are exempt;
- (d) no exemption or reduction for
  - (i) being too busy (such as a long trial),
  - (ii) the practice of law being in another jurisdiction,
  - (iii) part-time practice.

**41. Recommendation 15 – Accreditation Model**

Continue the current accreditation model, whereby

- (a) all applications by providers and lawyers are submitted electronically, and approval decisions are made by Law Society staff;
- (b) all credits are approved in either of two ways:
  - (i) pre-approve the provider (an individual course or other educational activity offered by a pre-approved provider does not require further approval); or
  - (ii) approve (before or after the event) individual courses and other educational activities on the application of either the provider or an individual lawyer;
- (c) an individual course or other educational activity offered by a pre-approved provider does not require further approval unless requested by the provider;
- (d) providers are pre-approved and remain pre-approved if they maintain integrity and quality.

## APPENDIX A

### PROFESSIONAL ETHICS, PRACTICE MANAGEMENT, LAWYERING SKILLS

The Committee has adopted the following guiding descriptions of the following items listed in the revised subject matter test:

- professional ethics,
- practice management (including client care and relations),
- 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 *Professional Conduct Handbook*, 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.

The Committee adopted the following list of topics that would satisfy the practice management requirement for CPD accreditation, working from and revising a list developed by the former Committee on December 10, 2009:

- (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) HST and income 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) *Professional Conduct Handbook* 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 Committee identified a list of topics that would not satisfy the practice management definition for CPD accreditation, working from and revising a list developed by the former Committee on December 10, 2009:

- (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:
  - (i) retention of women, and
  - (ii) retention of visible minority lawyers and staff;
- (i) handling interpersonal differences within the law firm;
- (j) cultural sensitivity in working with law firm staff;
- (k) training to be a mentor.

### **III. LAWYERING SKILLS**

The Committee decided that to be eligible for CPD credit, 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 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.

## Federation Governance Policy

**From:** Jonathan Herman [mailto:JHerman@flsc.ca]

**Sent:** Tuesday, August 30, 2011 10:15 AM

**To:** Jonathan Herman **Subject:** Federation Governance Policy

President Ron MacDonald has asked me to forward the following message.

\*\*\*\*\*

Colleagues,

At our June Council meeting, Council members generally agreed with the recommended principles underlying Council members' roles and responsibilities. It was then agreed that draft language reflecting these recommendations be incorporated into the draft Governance Policy, which had been circulated to Council in March 2011 and again in June. I am pleased to circulate a further draft for Council's consideration in advance of our meeting in PEI on September 15.

Please review it carefully and indicate as soon as possible whether you have any questions or suggestions for improvement which may be collated in advance of the next meeting so that we may expeditiously deal with any outstanding issues at the meeting itself. It is my hope that Council will approve the Governance Policy in its entirety so that we may proceed to make any consequential amendments to the By-laws. I also note that the draft Governance Policy would be inconsistent with the certain details of the Federation's Unanimity Policy, which was adopted by the Council of the Federation in 2004. For example, as drafted, that policy purports to grant member law societies approval authority over the budget of the Federation. In my view, the unanimity policy could benefit from an update once the Governance Policy has been approved. I attach the Unanimity Policy for your consideration.

I am mindful of the perils of "drafting by committee" but nonetheless invite you to provide your input in a timely way in order to enable us to move forward. Please make your comments known by responding to me or to Jonathan no later than September 9, 2011, if possible.

Kind regards,

Ron

Jonathan G. Herman

Chief Executive Officer, Federation of Law Societies of Canada

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

# **GOVERNANCE POLICY**

(DRAFT)

September 2011

## **NATURE AND SCOPE**

1. Subject to the by-laws of the Federation of Law Societies of Canada (the “Federation”), this policy sets out the roles and responsibilities among the Council, the Executive Committee, the President and the Chief Executive Officer of the Federation.

## **DEFINITIONS**

2. In this policy, the following terms shall have the meanings which follow:
- (a) “By-laws” means the General By-law of the Federation in effect from time to time;
  - (b) “CEO” means the Chief Executive Officer employed by the Federation as its most senior staff officer;
  - (c) “Council” means the Council of the Federation;
  - (d) “Executive Committee” means a committee consisting of the Executive Officers;
  - (e) “Executive Officers” means the Past-President, the President, the Vice-President and President-elect and such other Vice Presidents elected by the Council from time to time; and
  - (f) “Federation Committees” means, other than the Executive Committee, such committees or task forces as may be established by the Council or the Executive Committee from time to time.

## **ROLES AND RESPONSIBILITIES**

### ***Council***

3. The Council is the governing body of the Federation responsible for the overall strategic direction of the Federation and from which devolves all decision-making authority for the management of the business and affairs and the property of the Federation in accordance with this policy.

4. The Council determines the strategic objectives and priorities of the Federation on an ongoing basis.

### ***Scope of Council Member Authority***

5. Except as otherwise set out in this policy, decisions of Council members are made independently and without instruction from the law societies that appointed them.

6. The following is a non-exhaustive list of the types of decisions contemplated by paragraph 5:

- (a) the approval of the Federation's strategic plan;
- (b) the determination of Federation priorities within the strategic plan;
- (c) the setting of policies not otherwise required by the By-laws to be approved by the law societies;
- (d) the approval of the Federation budget and of the recommendation to law societies as to the required levy to fund Federation activities, it being understood that no recommendation to pay a levy shall be effective in respect of a law society unless ultimately approved by all law societies;
- (e) the establishment of Federation committees;
- (f) the appointment of the CanLII Board of Directors;
- (g) the hiring or termination of the CEO;
- (h) the approval of material contracts normally required to be approved by the Council, such as leases or bank financing;
- (i) the approval of model rules, regulations or standards recommended by any Federation committee, task force or working group, it being understood that no such recommendation calling for implementation by a law society shall be effective in respect of a law society unless ultimately approved by such law society;
- (j) the approval of any draft agreement among law societies, such as agreements with respect to mobility of the legal profession, compensation fund arrangements or governance arrangements for CanLII, it being understood that no such agreement shall be effective in respect of a law society unless ultimately approved by such law society;
- (k) the decision for the Federation to commence, participate in or settle litigation, subject to any litigation policy of the Federation in effect from time to time;
- (l) the decision for the Federation to intervene in a matter before a court, tribunal or other judicial or quasi-judicial body including a board or commission of inquiry, subject to any intervention policy of the Federation in effect from time to time;

- (m) generally, any decision not specifically identified as one requiring instruction by law societies in accordance with this policy.

8. Decisions of Council members are made on the instruction of the law societies that appointed them in all cases specifically identified by law societies as requiring their approval.

9. In advance of every decision, the Executive Committee shall indicate to Council members whether a Council decision is one contemplated by the rule set out in paragraph 5 or whether it requires instruction from law societies in accordance with paragraph 8.

### ***Communications Between the Federation, Council Members and Law Societies***

10. The Federation shall communicate information to Council members and law societies in a timely and thorough manner in order to ensure that provincial and territorial issues are brought forward to the Federation or to the Council table, as the case may be, prior to Council decisions being made.

11. Council members shall become and remain adequately informed about issues requiring debate or decision in order to maximize the effectiveness of their contributions to Council's deliberations.

12. The Federation, Council members and law societies shall maintain effective lines of communication to foster consistent approaches to issues and decisions, as required.

### ***Executive Committee***

13. The Executive Committee is responsible for providing overall strategic advice and leadership to the President and the Council.

14. The Executive Committee has the following specific responsibilities:

- (a) recommending to Council annual objectives of the Federation in order to implement the strategic plan adopted by Council in accordance with the priorities set by Council;
- (b) monitoring and oversight of the finances of the Federation;
- (c) monitoring compliance with governance policies;
- (d) measuring and reviewing the CEO's performance having regard to the Federation's performance in meeting the objectives set for it by Council; and

- (e) determining the CEO's compensation in accordance with the marketplace for similar positions.

15. Subject to the By-law and applicable laws, the Executive Committee is specifically delegated by Council with the authority to act on its behalf in exceptional circumstances where it is impractical for Council to meet in a timely way in order to consider matters requiring immediate attention. In such circumstances, the Executive Committee shall promptly report to the Council the facts giving rise to the urgency, the considerations underlying a decision to act in the place of Council, and the decision taken.

### ***President***

16. The President is the head of the Federation and is its public representative with sole authority to speak on behalf of the Council unless the President otherwise delegates such authority to another individual having regard to the circumstances.

17. The President provides leadership by fulfilling the following specific responsibilities:

- (a) representing the Federation to member law societies, external organizations, audiences and stakeholders;
- (b) chairing meetings of the Council in accordance with rules of procedure adopted by the Council and commonly accepted practices;
- (c) chairing meetings of the Executive Committee in accordance with rules of procedure adopted by the Executive Committee and commonly accepted practices;
- (d) reporting to the Council on behalf of the Executive Committee;
- (e) providing strategic leadership to the Federation in consultation with the Executive Committee and the CEO;
- (f) appointing chairs and members of Federation Committees in consultation with the Executive Committee and the CEO subject to ratification by the Council; and
- (g) working collaboratively with the CEO in respect of the CEO's overall management of the business and affairs of the Federation.

### ***Chief Executive Officer***

18. The CEO performs all of the functions and duties ordinarily associated with the office of chief executive officer and is responsible for the day-to-day management and co-ordination of all aspects of the operation, administration, finance, organization, supervision and maintenance of all Federation activities.

19. Without limiting the generality of the foregoing, the CEO has the following specific responsibilities:

- (a) implementing all policies and procedures established by the Council;
- (b) counselling and assisting the Council, Executive Committee and President in the development, adoption, implementation and advancement of the various objectives and activities of the Federation;
- (c) working collaboratively with the President in respect of the CEO's overall management of the business and affairs of the Federation;
- (d) engaging and supervising such personnel as are required, in accordance with approved budgets, in order to advance the objectives and administer the activities of the Federation;
- (e) measuring and reviewing the performance of Federation personnel and determining their compensation in accordance with the marketplace for similar positions; and
- (f) performing such other functions and duties as may be assigned to the CEO from time to time by the Council.

20. The CEO reports to the Council.

# Unanimity Resolution

Approved at the Council Meeting, 1<sup>st</sup> May 2004, Fredericton, NB



# Résolution sur l'unanimité

Adoptée à la réunion du Conseil d'administration, 1<sup>er</sup> mai 2004, à Fredericton, N.-B.

## WHEREAS:

- A. The mission of the Federation was restated in 2002 (the “**Mission Statement**”), as follows:
- (i) to identify and study matters of essential concern to the legal profession in Canada and to further co-operation among the governing bodies of the legal profession in Canada with a view to achieve uniformity in such matters;
  - (ii) to operate as a forum for the exchange of views and information of common interest to the governing bodies of the legal profession in Canada and facilitate the governing bodies working together on matters of common concern;
  - (iii) to improve the understanding of the public respecting the work of the legal profession in Canada; and
  - (iv) in appropriate cases, to express the views of the governing bodies of the legal profession on national and international issues in accordance with directions of the members of the Federation;
- B. Subsection 4.3 of the By-Laws of the Federation (the “**By-Laws**”) provides that the representative of each of the governing bodies of the Federation (the “**Members**”) shall exercise the voting rights of such Member at meetings of the Members;
- C. Section 6.1 of the By-Laws provides that the management of the business and affairs and the property of the Federation shall be vested in the Council of the Federation (the “**Council**”) which, in addition to the powers and authorities conferred upon it by the By-Laws, may exercise all such powers and do

## ATTENDU QUE :

- A. la mission de la Fédération a été reformulée en 2002, (l' « **énoncé de mission** »), comme suit :
- (i) déterminer et examiner les dossiers qui intéressent au premier chef la profession juridique au Canada ainsi que favoriser la collaboration entre les ordres professionnels de la profession juridique au Canada, laquelle visera à assurer l'uniformité dans ces dossiers;
  - (ii) agir comme lieu d'échange d'opinions et de renseignements qui intéressent tous les ordres professionnels de la profession juridique au Canada et faciliter le travail de collaboration entre les ordres professionnels dans les dossiers d'intérêt commun;
  - (iii) faire mieux comprendre au public le travail qu'accomplit la profession juridique au Canada; et
  - (iv) s'il y a lieu, exprimer les opinions des ordres professionnels de la profession juridique sur les dossiers nationaux et internationaux conformément aux directives émanant des membres de la Fédération des ordres professionnels de juristes du Canada;
- B. le paragraphe 4.3 des règlements administratifs de la Fédération (les « **règlements administratifs** ») prévoit que la personne représentant chacun des ordres professionnels au sein de la Fédération (les « **membres** ») exerce les droits de vote de ce membre aux assemblées des membres;
- C. le paragraphe 6.1 des règlements administratifs prévoit que la gestion des activités, des affaires internes et des biens de la Fédération est confiée au Conseil de la Fédération (le « **Conseil** ») qui, en plus des pouvoirs et attributions que lui confèrent les règlements administratifs, peut exercer tous

all acts and things as may be exercised or done by the Federation and are not by the By-Laws or the *Canada Corporations Act* (the “**Act**”) expressly directed or required to be exercised or done by the Members;

D. The By-Laws provide that the directors of the Federation (the “**Directors**”) are the members of the Council;

E. Section 5.7 of the By-Laws provides that (unless otherwise provided or required in the By-Laws or the Act), any question or resolution submitted to a meeting of the Members shall be determined or passed by a majority of votes of those Members present in person or by their proxy;

F. Subsection 5.9.1 of the By-Laws provides that a resolution in writing signed by all of the Members entitled to vote on a resolution is as valid as if it had been passed at a duly convened meeting of the Members;

G. It has been the practice and convention of the Federation to operate and make decisions on the basis of consensus or unanimity;

H. The Members wish to determine which of its decisions require unanimity, and which decisions may be approved other than on an unanimous basis;

NOW THEREFORE BE IT RESOLVED that:

1. The following matters require the unanimous approval of all of the Members:

- (a) an amendment to the By-Laws of the Federation;
- (b) an amendment to the Mission Statement;
- (c) the approval of the annual budget, or an amendment to the budget;
- (d) the setting of the annual levy;
- (e) a decision to commence, participate

les pouvoirs attribués à la Fédération et accomplir tous les actes que celle-ci peut accomplir, à l’exception de ceux qui relèvent des membres en vertu des règlements administratifs ou de la Loi sur les corporations canadiennes (la « **Loi** »);

D. les règlements administratifs prévoient que les administrateurs de la Fédération (les « **administrateurs** ») sont les membres du Conseil;

E. le paragraphe 5.7 des règlements administratifs prévoit que (sauf disposition ou indication contraire des règlements administratifs ou de la Loi) toute question ou résolution soumise à une assemblée des membres est décidée ou adoptée à la majorité des voix des membres présents en personne ou par procuration;

F. le paragraphe 5.9.1 des règlements administratifs prévoit qu’une résolution par écrit signée par tous les membres ayant droit de vote sur cette résolution est tout aussi valide que si elle avait été adoptée à une assemblée des membres régulièrement convoquée;

G. la Fédération a l’habitude de diriger ses activités et prendre ses décisions selon le principe du consensus ou de l’unanimité;

H. les membres désirent déterminer lesquelles de ces décisions requièrent l’unanimité et lesquelles peuvent être approuvées autrement qu’à l’unanimité;

IL EST RÉSOLU QUE :

1. les questions suivantes requièrent l’approbation unanime de tous les membres :

- (a) toute modification aux règlements administratifs de la Fédération;
- (b) toute modification à l’énoncé de mission;
- (c) l’adoption du budget annuel, ou toute modification au budget;
- (d) l’établissement de la cotisation annuelle;
- (e) toute décision visant à intenter un litige, y participer, intervenir dans un litige ou

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|     | in, intervene in or settle litigation;  |     | le régler;  |
| (f) | a decision to appear before or make submissions to any judicial, regulatory, or legislative body; | (f) | toute décision visant à plaider ou présenter des arguments devant un tribunal, un organisme de réglementation ou un corps législatif; |
| (g) | a decision to make expenditures materially in excess or in deviation from the budget;             | (g) | toute décision visant à effectuer une dépense qui dépasse ou qui n'est pas prévue dans le budget;                                     |
| (h) | such other matters as the Members may agree, by special resolution.                               | (h) | toute autre question, telle que convenue par les membres conformément à une résolution spéciale;                                      |
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|----|---|----|--|
| 2. | The requirement of unanimity shall be met where each Member either votes in support of the resolution, or declares that it abstains from voting provided that all of the Members that vote, vote in favour of the resolution. For further certainty, in the event that a resolution is passed where there is one or more abstaining Members, all Members, including the abstaining Member or Members, shall be bound by such vote, including any financial consequences arising from such resolution. | 2. | on aura répondu à l'exigence d'unanimité lorsque chaque membre vote en faveur de la résolution ou déclare qu'il s'abstient de voter (pourvu que tous les membres exerçant leur droit de vote, votent en faveur de la résolution); pour plus de certitude, si une résolution est adoptée et qu'il y a abstention d'un ou plusieurs membres, tous les membres, incluant le ou les membres s'étant abstenus, seront liés par ce vote, incluant toutes conséquences financières découlant de cette résolution; |
| 3. | Unless otherwise required by the Act or the By-Laws, all other matters shall be determined by the Members on the basis of a simple majority of votes cast.  | 3. | sauf indication contraire, telle que prévue par la Loi ou les règlements administratifs, toute autre décision sera prise par les membres à la majorité simple des voix exprimées;  |
| 4. | The Members and Council shall, where to do so is warranted by the subject matter of the resolution, when proposing a resolution for consideration, and in an effort to achieve consensus or unanimity, endeavour to state such resolution in terms that are sensitive to local regulatory and other factors.  | 4. | lorsque les membres et le Conseil proposeront une résolution, dans le but d'obtenir un consensus ou l'unanimité, ces derniers s'efforceront, lorsque l'objet de la résolution le justifiera, de formuler une telle résolution en termes qui tiennent compte des facteurs de réglementation locaux et autres.   |

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Certified by: Patricia-Ann Foley, Secretary-Treasurer/Secrétaire-trésorière  
 Certifié par:

