

The Law Society of British Columbia



Report of the Lawyer Education Committee on Continuing Professional Development

For: The Benchers

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1. Purpose of this Report

This Report follows the Report of the Lawyer Education Task Force dated November 15, 2006, which was considered by the Benchers on December 8, 2006. In that Report (the “2006 Report”), a recommendation was made that some form of mandatory continuing legal education (termed “mandatory continuing professional development” in the Report) should be implemented. The Report outlined a number of options by which such a program might be implemented.

The Benchers agreed in principle with the 2006 Report, and asked the Lawyer Education Task Force to consider the options further in order to return with a recommendation concerning how a program of continuing professional development might be structured. This Report is the result of that further consideration. It makes recommendations concerning how a program of continuing professional development, required of all members of the Law Society, should be implemented in British Columbia.

2. Lawyer Education Committee

The Benchers created the Lawyer Education Committee on April 5, 2007.

The creation of the Committee recognized the fact that the *Legal Profession Act* requires the Law Society to establish the standard of education for lawyers, and for those who wish to become lawyers, as part of its duty to protect the public interest in the administration of justice. Developing and monitoring education-based initiatives is an ongoing task. It became evident, therefore, that the Lawyer Education Task Force was dealing with an ongoing mandate. A Committee was therefore created to ensure that there was a group of benchers and others who would be able to develop a comprehensive approach to make certain that lawyers are qualified to practise law when called to the Bar and afterwards. All the members of the Lawyer Education Task Force were appointed to the Committee.

This report, therefore, is that of the Lawyer Education Committee. It follows, however, from the work of the Lawyer Education Task Force.

3. Background to the Initiative

As has been noted in past reports, the debate on mandatory professional development has been going on for in excess of 30 years. It has been the subject of reports to and discussion by the Benchers in the late 1970s and early 1980s, and has been, as well, the topic of Committee reports in the early 1990s. Various recommendations concerning ways to increase lawyers’ participation in continuing professional development activities were considered, although they did not always reach debate at a Benchers’ meeting. A continuing professional development initiative required of all lawyers had never, however, been approved until approval in principle was given by the benchers in

December 2006, although at least one Benchers, as long ago as 1985, is recorded as having expressed the view that some form of mandatory education for lawyers was long overdue.

In June, 2002, acting on two of the recommendations in the Report of the Admission Program Task Force, the Benchers established the Lawyer Education Task Force (the “Task Force”). The mandate of the Task Force was to “develop proposals for a comprehensive, strategic approach to promote the excellence and competence of lawyers through post-call learning and information support.” The Task Force began meeting in 2003.

In March, 2004, the Task Force issued its first interim report, which recommended that the Law Society require each lawyer to report annually to the Society through the Annual Practice Declaration all continuing legal education courses or activity undertaken by the lawyer in the previous 12 month period. The Benchers approved this recommendation, and “mandatory reporting” of continuing legal education activity has been implemented.

In late 2004, the Task Force presented the Benchers with a second interim report outlining a series of policy objectives that the Task Force considered worthy of further analysis in the discharge of its mandate. Mandatory continuing legal education was one of the objectives identified by the Task Force for further study.¹

The Benchers resolved that the Task Force should pursue all objectives identified by the Task Force in its second interim report.

The Task Force reported on the mandatory continuing legal education objective in the 2006 Report. That report outlined the history of the debate concerning mandatory professional development, and explained the arguments both in favour and against such a program. It also detailed both the policy objectives and the policy considerations examined by the Task Force that lay behind its recommendations contained in the 2006 report. That discussion will not be repeated in this Report. Those who are interested in it may access the 2006 Report through the Law Society of British Columbia’s website.

4. Examining Statistics from the Mandatory Reporting of Post Call Education Activity

As noted in the 2006 Report, statistics based on responses by lawyers to required reporting of continuing professional development activity for the 2005 year rather alarmingly disclosed that just over one-third of all lawyers reported *no* hours of “formal” course study. The number of lawyers reporting no formal continuing professional development activity increased with length of call. Only 19% of lawyers with less than 5

¹ The other four objectives were:

- Improving access to education resources;
- Recommending or requiring that certain lawyers and/or classes of lawyers take practice management related courses;
- Limited licensing programs;
- Specialization.

years call reported no formal study, while 54% of those with 30 or more years at the bar did so.

Just over 19% (almost 1 out of every 5) also reported no self-study hours for 2005. Again, the percentage of lawyers reporting no self-study hours increased with length of call.

The statistics did not change materially in either 2006 or 2007. 33% of lawyers reported no formal course study in 2006. In 2007, this improved very slightly to 30%. The number of lawyers reporting no formal course study continues to increase by age.

5. Goals of a Continuing Professional Development Program

The Committee believes that a continuing professional development program can accomplish the goal of ensuring a wider variety of professional education resources that are easily available and relevant to lawyers at all stages of their practices. Such a program will also ensure that lawyers use education resources. Lawyers will benefit by having a wider array of resources available to assist them in their practice. The public will benefit by being assured that there is a commitment within the profession to the establishment, promotion and improvement of the standards of legal practice in the Province.

6. Consultations

Over the past ten months, the Committee has met with a number of groups it has identified as being particularly interested in the implementation of a continuing professional development program². Each group has provided information and suggestions to the Committee, which has assisted the Committee in developing and revising its proposal.

7. Recommendation

The program for the implementation of continuing professional development as recommended by the Committee is as follows:

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

² The Committee has met with representatives of the Continuing Legal Education Society, the B.C. Branch of the Canadian Bar Association, the Trial Lawyers Association, the Canadian Corporate Counsel Association, and the Law Society's Equity and Diversity Committee.

2. Approved educational activities include:

(a) Traditional courses and activities:

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

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

- any course offered by the Continuing Legal Education Society of British Columbia, the Trial Lawyers’ Association of British Columbia, the Canadian Corporate Counsel Association, the Canadian Bar Association, the Federation of Law Societies of Canada, or the Law Society of British Columbia
- any course offered by Canadian law schools dealing primarily with the study of law or matters related to the practice of law
- any other course, or provider who offers courses, dealing primarily with the study of law or matters related to the practice of law, provided that the attendee has obtained prior approval from the Law Society of British Columbia.

(b) Non-traditional activities:

- Attendance at CBA section meetings;
- Attendance at a course or other education-related activity offered by a local or county bar association;
- Participation in (including teaching at) an education program offered by a lawyer’s firm, corporate legal department, governmental agency

or similar entity, provided that the program is offered in a group setting;

- Participation in a study group of 2 or more provided that the group's study focuses on law related activities;
 - Writing law books or articles relating to the study or practice of law for publication.
3. Not less than two hours of the required 12 hours of continuing professional development must pertain to any one or any combination of the following topics:
- professional responsibility and ethics;
 - client care and relations;
 - practice management.
4. Each lawyer must report to the Law Society the number of hours of approved professional development activity completed over the previous 12 month period. Failure to complete and report the minimum number of required hours will result in a breach of a Law Society Rule, and may subject the lawyer to sanctions.

8. Discussion

(i) General Comments

The program recommended by the Committee is a combination of the first and fourth options outlined in the 2006 Report. It recommends a certain number of hours of study, a small portion of which must be in connection with specified subjects, but leaves to the lawyer to identify the balance of subjects and the modes of learning that he or she wishes to take during the reporting period. The Committee considers that this combination of options is the best way to introduce a program of continuing professional development, as it recognizes that lawyers ought, primarily, to identify what education they need in what areas of law and practice. It also recognizes Law Society responsibilities to ensure lawyers receive, annually, at least some education in areas important to the regulatory responsibilities that the Society must discharge – topics that the Committee considers have not been routinely addressed in the voluntary continuing professional development program that currently exists.

The recommendation is designed to accomplish two desired outcomes. The first is to introduce a program of continuing professional development for lawyers in British Columbia that will meet the goals described above. The second is to ensure that lawyers may meet the continuing professional development requirements in a variety of ways. Some of these are traditional continuing legal education-style courses. Recognizing,

however, that such courses can be expensive (particularly for lawyers outside the more heavily populated areas of the province), and that courses do not always meet the learning needs of all practitioners (either due to subject matter or level of experience the course is aimed at), the Committee has worked to identify and include “non-traditional” activities through which lawyers may meet the continuing professional development requirements.

The common thread between the types of activities that are included in the recommended program is not only “education,” but also “engagement.” The practice of law requires interaction with other lawyers. It requires the exchange and discussion of opinions. The opportunity to ask questions to clarify one’s understanding of the opinion is also important. The Committee believes that these opportunities are of considerable importance to education obtained through a continuing professional development program.

A number of groups have commented on the fact that lawyers are very good at independent learning, and that self-study should therefore be available for continuing professional development purposes. The Committee agrees that self-study is important (as described below), but concluded that, for the purposes of the program it recommends, education where a lawyer is more likely to be engaged with others is preferable for the minimum 12 hour requirement that the proposal identifies.

The Committee discussed the other two options recommended for consideration in the 2006 Report, but ultimately rejected them at this stage. Each option contemplated the development of a program of education and the identification, or creation, of courses or programs for all lawyers or for certain areas of practice. The Committee was not convinced such a program was required. It concluded that it was better to allow lawyers to determine what subjects and what form of education best suited their needs, rather than for the Law Society to prescribe education programs and content to lawyers. If it becomes evident to the Committee, while monitoring the program after its implementation, that the goals of the program are not being met, the Committee may have to reconsider this decision. However, it is hoped that lawyers will be able to make the best choices for their educational requirements.

(ii) “Course offered by a provider approved by the Law Society”

The Committee recommends that courses offered by any of the current continuing legal education providers (those identified above) in the province should be recognized by the Law Society for continuing professional development credits. This recognition should be under review on a regular, perhaps continuous, basis by the Committee in order that the Law Society can be assured that courses offered are meeting the needs of the program, but, for the time being, the Committee believes that the current providers listed are offering courses that the Law Society should approve for credit.

The Committee also recommends that courses relating to law offered by universities in B.C. should be recognized for credit, although it makes no recommendation at this time as to whether such recognition should extend to universities outside the province.

The Committee further recommends that other courses, offered by other education providers, could be available for credit, provided they have a substantial connection to legal issues. However, the Committee recommends that lawyers wishing to attend such courses check with Law Society staff prior to taking the course to determine if credit could be applied. To this end, the Committee recommends that staff develop a policy describing the criteria for approval of such courses or providers.

Recognizing courses in this manner avoids having to create a full accreditation system for courses and course providers. The Committee is not convinced that an accreditation system is necessary at this stage.

(iii) Self-Study

The Committee recommends that self-study should not be available for continuing professional development credits, unless the self-study was in connection with interactive online courses with a testing component.

This topic was one of considerable discussion, because the Committee recognizes that it would be advantageous for lawyers in more remote areas of the province to obtain continuing professional development credits through self-study. However, the Committee reasons that the relatively modest 12 hours of continuing professional development requirements on the basis of allowable activity as described above is reasonable and attainable, particularly if, as the Committee understands, the Continuing Legal Education Society will have (as that Society advised during consultations that it would have) most of its programs available through live web casts by 2009 when the continuing professional development program is planned to come into effect. The B.C. Branch of the Canadian Bar Association also informed the Committee that many of its section meetings (which would qualify for credits under the recommended proposal) are available by telephone.

The Committee does not, however, discount the general importance of lawyers engaging in self-study learning. The Committee therefore believes that self-study should be encouraged, and that the Law Society should continue to ask lawyers to report the hours they spend each year on voluntary self-study activity (which may, in addition to reading, include participation in an association's "list-serve", review of non-interactive course videos or other archived material) with 50 hours being stated to be the recommended norm.

(iv) Ethics, Professionalism, Practice Management and Client Relations

This topic generated some debate during the course of consultations with course providers, and within the Committee itself.

In order for a lawyer to successfully engage in the practice of law, substantive knowledge of the law is extremely important. Knowledge of, and familiarity with, important practice skills is also vital. Generally speaking, continuing professional development courses are designed to focus on these learning outcomes.

As the regulator of lawyers, however, the Law Society must ensure that lawyers are not only competent to practise law, but that they do so ethically and that they are able to properly manage their practices. Most complaints about lawyers raise concerns about professional misconduct or conduct unbecoming a lawyer. The Committee therefore recommends that, when implementing a continuing professional development program, the Law Society should ensure that some of the required learning focuses on questions relating to ethics, professional responsibility, client care and relations, and practice management. Lack of knowledge or skills concerning any of these issues can give rise to serious regulatory consequences, and, moreover, can affect the public's confidence in the conduct of lawyers and in the administration of justice. An annual requirement for a modest two hours of review of these important issues is not unreasonable. The Committee believes, in fact, that it is necessary to ensure both good lawyers and public confidence. Some comments were made that two hours was actually too modest a requirement.

As noted in the 2006 Report, generally speaking there are few, if any, courses available on these topics currently being offered through continuing professional development providers. The Committee has inferred that this result is, at least in part, due to a lack of a market for such courses. The Committee believes that creating a requirement for continuing professional development credits on these topics will present an opportunity to course providers to develop courses (or other approved activities) to meet the needs of lawyers. The Committee considers that CBA section meetings, for example, could provide an ideal forum for discussion of ethical or practice management issues on various topics.

Course providers who met with the Committee commented that ethics, professionalism and practice management topics were being included in courses offered by the providers. The Continuing Legal Education Society, for example, has informed the Committee that it has written systems in place directing its planning committees to include content concerning these topics wherever feasible. That Society has also advised the Committee that its recent course brochures identify content on these topics with a time estimate, which will enable lawyers to keep track of how many hours they have consumed concerning these topics.

The Committee believes that education on these topics and the underlying issues they raise in the practice of law is important to the profession and to the public's confidence in the profession. While it agrees with the approach to "embedding" these topics in courses on substantive law and procedure, the Committee wants stand-alone courses on these topics to exist. Recognizing that there are few, if any, such courses at the current time, the Committee is prepared to allow lawyers to record hours on these topics through the "embedding" process at the outset of the program. Over time, however, the Committee would like to move toward requiring lawyers to obtain hours relating to these topics through dedicated courses. Ideally, the Committee would also like to increase the number of hours lawyers are required dedicate to education on these issues.

(v) Mentoring

The Committee debated whether lawyers should be able to obtain credit for mentoring younger lawyers. The Committee believes that a strong case exists to include, for the purposes of continuing professional development, the hours a lawyer spends mentoring a junior lawyer. The Committee has not included mentoring in the list of approved activities only because it has not had an opportunity to review any programs that may now exist to determine whether they meet the goals of the proposed initiative, or to develop a formal, structured program as part of this proposal. The Committee plans, at an early opportunity, to continue to examine this issue with a view to including mentoring as part of the activities toward which hours may be recorded for continuing professional development purposes.

(vi) Study Groups

The Committee believes that the creation of study groups can be a very effective way of promoting continuing professional development as has been demonstrated in other professions, particularly dentistry and accounting. It has therefore included study groups in the proposal. The Committee recognizes, however, that some structure needs to be developed around this category. It does not intend, for example, that study groups be an informal gathering of lawyers in a social setting. To this end, the Committee recommends that staff develop some directions or policies to attach to study groups.

(vii) Writing

The Committee recommends that writing for publication should be included in the continuing professional development proposal. While recognizing that writing is a form of self-study, the Committee notes that it has a demonstrable outcome. The Committee believes that writing for publication requires particular care and focus, and therefore is likely to result in valuable education for the author.

(viii) Part-time Members

The Committee recommends that lawyers who are insured as part-time members of the Law Society also be required to meet the 12 hour continuing professional development requirement. This recommendation is made on the basis that part-time lawyers need to be as competent as full-time lawyers. The Committee does not believe that an annual requirement to meet 12 hours of continuing professional development ought to be viewed as excessively onerous for part-time practitioners, particularly given the number of ways that the requirement may be met.

(ix) Compliance

The Committee believes that lawyers are professionals and ought to be trusted to comply with regulatory requirements established by the Law Society. Introducing a continuing professional development requirement into the rules, and requiring lawyers to report annually on how much development they have undertaken ought to meet Law Society regulatory concerns. Whether this is done through existing reporting forms, or whether a

new reporting mechanism should be created is something that can be determined in the implementation process.

Of course, should a lawyer fail to complete and report the minimum number of hours required by the program, the lawyer will be in breach of a Law Society Rule. Breach of a Rule can have disciplinary consequences, and may therefore result in the lawyer receiving sanctions available under the *Legal Profession Act*.

(x) Monitoring

The Committee recommends that the Law Society monitor the operation of, and results of, the implementation of this recommendation. One danger identified in the 2006 Report of the fourth option was that it could result in the development of haphazard education by permitting a lawyer to take any course he or she wished to take, even if it had nothing to do with the area of practice in which the lawyer usually practised. On reflection, the Committee believes that lawyers are unlikely to engage in such activity, particularly if continuing professional development hours can be obtained in a number of different ways as the Committee recommends.

However, the program should be monitored to ensure it meets lawyer and Law Society needs. If, for example, education concerning ethics, client care or practice management remains difficult to obtain, the Law Society may have to reconsider how such issues are addressed, and perhaps consider offering such courses through the Law Society itself.

9. Policy Analysis

The Committee has reviewed the policy considerations outlined in the 2006 Report, and believes that this recommendation addresses the issues raised in that Report.

The statistics referred to in Section 4 above quite clearly indicate that education objectives are not being met through voluntary continuing professional development programs. Implementation of a mandatory program has therefore become necessary to meet the Law Society's policy objectives.

In particular, the Committee has reached a consensus that the public interest and public relations objectives are appropriately met through this recommendation. The recommendation will result in the Law Society setting standards for education, thereby addressing s. 3 of the *Legal Profession Act*, and implementing a required program as s. 28 of the *Act* permits it to do. Steps are thereby taken to protect the public interest by creating a program designed to ensure a wider variety of professional education resources that are easily available and relevant to lawyers at all stages of their practices. The Law Society can more readily demonstrate that it takes the issue of lawyer competence as one of importance, and at the same time bring itself more into line with what other professions do in the province. The nature of the requirements, while meeting the goals described above, should be modest enough that lawyers will view them as reasonable, and, further, ought not to increase the cost of legal services overall as the overall number of hours required is no more than that already recommended by the Law Society.

The Committee believes that the program ought to be effective in a general sense. It will, the Committee trusts, assist in ensuring lawyers take a minimum number of hours of continuing professional development on an annual basis. If, after review, concerns develop about the nature or usefulness of the education taken, or it becomes evident that there are better ways to ensure competence, reforms to the program may have to be considered. However, those considerations are obviously premature. A review of the results of the recommended program would first be necessary.

10. Further Consultation and Implementation

If the Committee's recommendations outlined in this report are endorsed by the Benchers, the Committee intends to meet with local Bar groups to discuss its proposal. The Committee also intends to send its proposal to commercial education providers for information. The Committee also plans to publish this Report for comment by individual members. In each case, the Committee intends to review the comments received to the proposal in order to address any practical issues that may have, to date, been overlooked. The Committee intends to use such consultations to assist in determining the best way in which to finally implement the program, and will return to the Benchers by July, 2008 with a final report.

January 1, 2009 remains the target date for implementation of the proposed program.

11. Budget

In the budget for 2008, \$25,000 has been set aside for the purposes of developing and determining how to implement the program outlined in this Report. The Committee will, at its earliest opportunity, discuss and propose what financial resource it considers will be required to implement and operate the program for the purposes of the 2009 budget.