



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: CPD Working Group

Date: April 20, 2011

Subject: CPD Working Group Final Report

For:

Approval	<input checked="" type="checkbox"/>
Introduction	<input type="checkbox"/>
Information	<input type="checkbox"/>

Recommendation/Motion:

Be it resolved that:

1. That the requirements for mandatory continuing professional development come into effect on July 1, 2012;
2. Council adopt the recommendations of the CPD Working Group set out in its report dated April 16, 2011;
3. The Executive Director be directed to bring back a plan to Council regarding all aspects of implementation of the mandatory continuing professional development program.

Analysis:

In November 2010, the CPDWG presented its recommendations with respect to 11 considerations regarding a Continuing Professional Development Program for Nova Scotia lawyers. The focus of the mandate and recommendations was with respect to whether the Nova Scotia Barristers' Society should implement a program of mandatory CPD for its members.

Between November 2010 and March 2011, the report was circulated to the membership for feedback.

The CPDWG has had the opportunity to review that feedback and consider whether there should be any changes to our recommendations. As well, as set out in a second memo to Council, the CPDWG has also considered a potential shift in the Society's focus away from being a direct provider of CPD.

Review of Responses

The Society received in the area of 50 responses, some of which were representative of larger groups of lawyers.

Generally the feedback is supportive of moving to mandatory CPD as proposed in the report, although many of the responses raised concerns regarding accessibility to CPD generally for rural practitioners, with a heightened concern with respect to the availability of reasonably affordable, relevant and accessible CPD programs in the areas of Risk and Practice Management and Professionalism.

Four of the submissions received opposed any form of Mandatory CPD.

The list of the issues arising from the member responses include:

1. **Practice management/professionalism requirement**
2. **Availability of courses and costs for rural and others**
3. **Harmonizing requirements across country**
4. **Accreditation**
5. **What's included and what isn't**
6. **How do they "prove what they've done and should they have to?"**
7. **Why need – have there been increases in complaints or claims**
8. **Why don't the 14% do their education**
9. **Government and corporate lawyers have unique needs**
10. **What will and won't count**
11. **Podcasts**
12. **12 hours too much (or too little)**
13. **Time away from the office**

The CCPDWG reviewed each of these concerns/themes to determine what, if any, impact they had on the CPDWG's recommendations.

1. **Practice management/professionalism requirement**

There continues to be some feeling that, while the CPD requirement is acceptable, to require the credits to be in each of the 3 categories is not reasonable for all members. This related both to concerns of accessibility and relevance. Those in private of Government practice, in particular raised questions regarding the relevance of the practice management category. The CPDWG considered these submissions, but on balance continues to recommend the 3 categories for all members. Upon reviewing the "list" of included topics, it was thought that many would be relevant to members who are outside of private practice. For example, wellness, client management, time management, communications, conflicts, client relations and disaster planning would all be potentially relevant.

2. **Availability of Courses and Costs for Rural and Others**

There is a general concern that CPD courses are not easily available to rural practitioners. Some of the submissions included detailed accounting of the cost to attend CPD activities in Halifax. The CPDWG recognizes this issue but believes that there is ample room in the recommendations for CPD requirements to be met within offices, electronically, or within the county bar associations. The Committee noted for example that the Cape Breton Bar is proposing to take the initiative to "attempt" to strike a regional Prof

Development Committee, dealing with local Bars from Sydney to Antigonish, and are thinking of hosting a daylong session in the fall. In consideration of these concerns, however, the CPDWG does believe that the Society should be satisfied that there are reasonably affordable, relevant and accessible CPD opportunities in the categories of Risk and Practice Management and Professionalism; prior to requiring members obtain an least 2 hours of CPD in each of these areas.

3. Harmonizing Requirements across the Country

The CPDWG believes that the 12 hours is a step towards this, at least in terms of the number of hours required in a year, which is consistent with many Provinces and with the American Bar Associations. However, it is noted that there currently no Canadian standards with which to harmonize in terms of many of the other CPD issues, including accreditation and means by which MCPD credits may be obtained. .

4. Accreditation

The CPDWG affirmed its view that the accreditation process is not only resource intensive but also expensive. The Group remained unconvinced that accreditation would enhance the value of the MCPD program.

5. What is included and what isn't

There appears to be concern that the Society is being vague in terms of requirements, but will then be strict in terms of enforcement. The CPDWG recognizes the need to be clearer with respect to the broad scope of activities that may qualify, and to also be clearer with respect to the potential response in the event that someone participates in an activity that the Society does not, upon review, believe is a qualifying CPD activity. (guidance – not discipline, administrative suspension or fining)

6. How do they “prove” what they’ve done and should they have to

While the obvious answer to this is to keep receipts, records and notes of activities – this does seem to suggest a concern with respect to the Society over “policing” CPD activities. The Society will need to continue to emphasize that the goal is one of encouraging competence through education, not policing

7. Why is there a need?

Some members rightfully pointed out that there is no evidence to suggest mandatory CPD reduces claims and questioned why the whole membership should be subject to a requirement where it appears that a minority are not doing education or are getting in trouble for a lack of competence in the various areas listed. The CPDWG affirmed its view that in spite of the lack of empirical evidence, the CPDWG considers (for the many reasons already set out in the report) that this is an appropriate requirement. The overwhelming majority of professions in this country have some form of MCPD or mandatory continuing legal education. This is a matter of public confidence in the profession and therefore a public interest issue.

8. Why don't the 14% do their education

The CPDWG doesn't have the answer to this

9. Government and corporate lawyers have unique needs

This is related to item 1 – in that there seems to be questions with respect to the value of the professionalism or practice management category to government lawyers or in house counsel. The CPDWG believes that even within those work spheres there are elements in all categories regarding which CPD activities could be of benefit.

10. What will and won't count (repeat of #5)

11. Podcasts

One of the out of province responses questioned the CPDWG's recommendation to include listening to "podcasts" as an acceptable CPD activity under the "required" category. The CPDWG reviewed its initial reasons for including podcasts, and discussed whether any audio or electronic learning had to have the opportunity for interactivity, as is the case in some other jurisdictions. In the end the CPDWG decided to leave the recommendation as is. It was felt that, in particular with the generational changes, that if the Society wants to encourage learning, and ensure that learning is accessible, then pod casts remain appropriate. The ability to be interactive is somewhat of a "red herring" in that members can still be very passive learners who never take advantage of that opportunity. Some podcasts will be "replays" where there was interaction – so the member would have the equivalent learning experience.

12. 12 hours –Too Much, Too Little

The CPDWG recognized that there is no "magic number", but continues to support the hours set out in the recommendations.

13. Time away from Office

This relates to the concerns regarding costs and accessibility. See #2 above.

After reviewing the above, and considering the impact of potential changes to the Society's focus as a provider of CPD, the CPDWG has made some changes to its report which is attached. These changes do not change the substantive recommendations, but do suggest that the Society ensure that reasonably affordable, relevant and accessible CPD be available in the areas of Risk and Practice management and Professionalism, before members are required to have hours in these two areas. Accordingly, please find attached the final report of the Continuing Professional Development Working Group.