



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Jacqueline Mullenger

Date: November 26, 2009

Subject: Futures Discussion Paper

For: **Approval**
 Introduction
 Information

Recommendation/Motion:

A Working Group be appointed to provide concrete recommendations to Council. An interim report of the Working Group shall be presented to Council by March 2010.

Executive Summary:

The Futures Project was designed to address long term competence issues for the profession after the Continuing Competence Task Force report gave some general direction.

Through workshops with hundreds of members of the bar and a public perception survey, it became evident that there are significant trends and challenges facing the profession in maintaining competence.

These trends and challenges indicate that some substantial work must be undertaken to design and deliver a professional development program that meets the increasingly complex needs of the membership and their clients.

The results of the Futures Project should be considered in the context of the Continuing Competence Task Force Report and recent Continuing Competence developments in other Law Societies.

Analysis:

Attached is the Futures Discussion Paper

Exhibits/Appendices:

Appendix "A" c. 2 Legal Ethics Handbook - Competence
Appendix "B" Continuing Competency Task Force Report
Appendix "C" Questions asked at Group Meetings
Appendix "D" Bristol Public Perception Survey Results

Futures Project – Discussion Paper

Introduction

This discussion paper reflects the work of the Futures Project as reported below. It presents the views and perspectives of those who spoke to the Society about practicing law in 2008-2009. It identifies trends, challenges and issues that need to be considered in the development of a continuing competency regime for all lawyers.

I. Background:

The work of the Futures Project stemmed from the mandate of the Society:

Mandate of Society

The purpose of the Society is to uphold and protect the public interest in the practice of law. In pursuing its purpose, the Society establishes standards for the professional responsibility and competence¹ of members.

In furtherance of this mandate Council created the Continuing Competency Task Force (“CCTF”) to look at a variety of issues relating to Continuing competence. The Task Force reported to Council in March, 2007, and the Report of the Task Force is attached as Appendix “A”.

The CCTF concluded that the Society needed a comprehensive Continuing Competency regime that included **self-assessment**, **continuing education** and **quality assurance**. The CCTF concluded that for lawyers to fulfill their duty to be competent they must engage in continuous learning throughout their careers. The Task Force stated:

“Learning will not always be done at a course or in a formal setting. Learning is accomplished in a variety of ways and at a variety of levels. What is important is that the lawyer continues to develop her knowledge and skills throughout her career.

In addition, education must be thought of as a continuum; the world does not stand still. The task Force is of the view that the Society needs to create a culture of continuous learning and development within the legal professions.

Finally, the Task Force believes that any comprehensive continuing competency regime must include a continuum of activities from self-assessment through to

¹ Attached as Appendix “A” is the provision of the Legal Ethics Handbook that sets the standard for competence for lawyers in Nova Scotia

quality assurance. The most effective regime will be one which is voluntary, relevant and engages the education needs of the membership.”

Following acceptance of the CCTF Report, Council determined that further work needed to be undertaken to develop the concepts outlined in the Report. Specifically, the membership needed to be consulted about how they saw the practice of law developing and what education and assistance they needed. Thus the Futures Project was created.

II. The Futures Team

The Society engaged BURST! Transformational Solutions to lead the Futures Working Group consisting of:

Lesley Southwick Trask, BURST! Transformational Solutions
Jackie Mullenger, NSBS
Claudia Chender, NSBS (until November, 2008),
Patricia Busby, BURST! Transformational Solutions

The Society also created an Advisory Committee of senior lawyers to assist with the Project. This group participated in meetings that were held with lawyers and gave advice and counsel on strategy and issues that arose to the Futures Working Group. The Committee consisted of:

The Honourable Constance Glube, QC, (retired)
Clarence Beckett, QC
Kim Turner, QC
Darlene Jamieson, QC,
Moka Michelle Case, public representative on Council
Frank Schwartz, member of the public
Emma Halpern, NSBS Equity Officer, and
Darrel Pink, NSBS Executive Director

Following presentation of some preliminary conclusions of the Futures Project to Council in June 2009, four members of Council, Marjorie Hickey QC, Sean Layden, Jill Perry, and Ken Nason, joined the Advisory Committee. This discussion paper reflects the results of the work that has been done to date.

III. Methodology

Although the CCTF had identified a number of areas for the design and delivery of education for members, before embarking on design and development it made sense to survey the members to determine what they saw as the issues in practice and also what they felt their educational needs were.

The Futures Project Team and some members of the Advisory Committee met with lawyers from around the province to discuss experiences and issues. This effort took the better part of a year and was highly instructive in forming the conclusions that are now being tabled.

Each group of lawyers was asked the same set of questions (see Appendix “B”). As a result of the information obtained, trends and themes were identified and from these, conclusions were drawn.

In addition, there was an environmental scan of the current literature on the state of the profession. In this process, Richard Susskind’s book, “The End of Lawyers?²” was quite instructive and provocative.

The Futures Advisory Group reviewed the information gathered by the CCTF regarding continuing competence regimes around the globe, and also reviewed professional development regimes within the legal profession in Canada.

Finally, the Society engaged Bristol Communication to conduct a public opinion survey on the public’s perception of lawyers and the practice of law. The findings of that report have been reported to Council. They can be found at Appendix “C”.

The value of meeting with groups of lawyers throughout the province cannot be underestimated. The exercise was highly instructive for the Society and extremely important for the lawyers to be heard.

IV. The Trends

As the project began, the Working Group and Advisory Committee identified certain “trends” that seemed to be affecting the profession in Nova Scotia. The trends identified were:

1. Demographics Trends

- a. the group of practicing lawyers in this province is aging;
- b. the number of women beginning the practice of law in the province is increasing;
- c. the ethnic diversity of the practicing lawyers is increasing; and
- d. rural practices are decreasing.

2. Technology Trends

- a. information technology is rapidly increasing access to information and virtual management of files;
- b. client’s expectations for quick responses are increasing due to technology;

² Richard Susskind, *The End of Lawyers?* (USA: Oxford University Press, 2008)

- c. a wide range of alternative careers is open to people who could choose to be lawyers.

3. Justice Trends

- a. justice, as the underlying pursuit for which the profession exists, appears to be undermined by the escalating costs associated with legal proceedings.

4. Market Trends

- a. Dealing with an ever-evolving economy requires creative responses;
- b. the market is becoming increasingly global and increasingly competitive;
- c. there is a war for talent that offers a wide range of alternative careers to bright and ambitious people; and
- d. there are increasing costs associated with the practice of law.

As information was gathered it became clear that the profession, in part as a result of the identified trends, is experiencing eight significant challenges, regardless of firm size, type of practice or the geographic location. These challenges affect lawyers' ability to practice successfully and to feel good about what they do. The challenges are:

- A. Polarization of legal services
- B. Conflict between law as a profession and law as a business
- C. Intergenerational conflict
- D. Lack of Personal Satisfaction
- E. Flattening of the World
- F. Decrease in Professional Reputation
- G. Failures in Communication
- H. Lack of Accountability for the Profession

What follows is a summary of each challenge, preceded by comments made by the lawyers who participated in the discussions. The quotations are taken from the focus groups, interviews and workshops held with lawyers across the province.

A. The Polarization of legal services:

“NSBS needs to ensure that all types of practising lawyers are included otherwise large firms are going to take over”

“People in medium size/boutique firms are lucky – they have more flexibility, better work/life balance”

“Legal Aid: Repeat Business”

“A medium size firm offers an opportunity to get to know your colleagues”

“I’m more than disappointed with the access people have to justice”

“The community work we do in our firm is free work for clients, it’s not really for the community”

“We cannot afford to take legal aid work or do pro bono work”

- Legal services are becoming polarized with “free” legal aid on one end of the spectrum and expensive private practice on the other;
- Members are concerned about the diminishing numbers of sole and small firm practitioners;
- The midfield is eroding as medium size firms decide to down-size or wind down amidst competition for lawyers willing to invest in the perceived work/life balance trade-off;
- Sole practitioners and small firms are fatiguing under the pressure of finding clients, delivering service and running the business;
- The ability of a sole practitioner and small practice to survive is based on the legal talent and credibility of the practitioners, combined with a high degree of business savvy that translates into strong business management skills;
- Access to justice is undermined by this polarization.

B. Conflict between law as a profession and law as a business:

“I had an idealistic view of helping people. The reality is it is managing a business”

“Thought law was a profession not a business”

“Thought law was about justice and equity”

“Oil prices, food crises, the world economy is going to have an impact on our practice”

“Clients will have less money for law”

“We need to deal with our “junkie” mentality – we don’t need so much”

“The trend toward settlement is not allowing the law to catch up”

“Thought law was practiced in court – case of vanishing trial”

“Time management, stress management, business management bigger part of practice than I assumed”

“I thought I was going to learn how to be a lawyer in law school”

- This conflict becomes more apparent in times of accelerated change, globalization and recession;
- Questions are being asked about the viability of the existing business models within the profession, including the billable hour.

C. Intergenerational Conflicts:

“We need to let go of tradition, structures, hierarchies, billable hours, big and expensive litigation”

“We need to stop being afraid of technology”

“If you are not prepared to devote your life to the firm, then they don’t want you. This attitude has just started to change”

“I thought when you got a job at a law firm you would stay there. Younger generation has different priorities”

“There needs to be flexibility and creativity in where and when I do my work to accommodate my life and family”

“It is an issue when a model is based on time to determine success”

“If we can’t find a way to keep women and young people and continue to practice with a bottom-line, then we will need to undergo some drastic changes”

“We need to recognize contributions beyond the billable hour”

“We need to address the generation gap, which includes attitudes toward gender, diversity, work/life balance”

“If you want us to recommend the practice of law then firms need to contribute to the community they live in and to Society as a whole”

“We need more collaboration”

“Law School is every person for themselves. When you get into a firm you suddenly need to be a team player”

- The generational differences between lawyers, and between lawyers and their clients is increasing;
- Both groups perceive that their contributions are undervalued;
- There is greater turnover;
- Senior lawyers feel the younger lawyers must pay their “due”.

D Lack of Personal Satisfaction:

“I assumed after law school I’d know the law, but everything is always changing”

“I assumed lawyers were rich”

“As you advance in your career, things get more complex rather than easier because of the constant change”

“We can’t have it all. Need to keep expectations in check and make healthy choices”

“Retirement? Really? I’ve never seen a lawyer retire – maybe they start taking vacations”

“Law School is great training, but I would recommend looking at non-traditional ways to apply it”

“If you like to fight, then you will be in pig heaven. But fighting can be tiring”

“The current model of practice cannot accommodate the needs of women”

- Lawyers express a lack of personal satisfaction and pride in their work;
- Lawyers do not feel respected or valued (with the exception of in-house counsel);
- Lawyers struggle with the demands of constant change in the practice.

E “Flattening” of the World:

“It is a competitive market place. Services that used to be done here are now being done In India and China”

“We need business and technology skills”

“Address the encroachment of other professions”

“We need to be willing to embrace and invest in technological change”

“flexibility in where, when and how law is practiced”

- Technology has rendered geographic location less important;
- Hand –held devices increase the speed of practice and client expectations;
- Growing capacity to access and manage information is opening the door for more commoditization of services.

F Decrease in Professional Reputation:

“I assumed lawyers were wealthy and respected”

“Lawyers who get into trouble often have mental health issues”

“To recommend the profession of law there would need to be commitment to community”

“The Society should communicate positive things about lawyers to the public and not just the discipline decisions”

- The reputation of the profession is coming under pressure;
- The public assumes monetary value is the primary driver of the professions work ethic;

- Law is now seen as a mercantile pursuit as opposed to a profession of trusting advisors.

G Failures in Communication:

“We need caring, compassion and collegiality”

“let go of adversarial approaches to problem solving”

“we need mediation and adr skills”

“clients expectations are too high, they want immediate service and they don’t want to pay a lot for it”

“clients are beginning to ask firms to provide RFP’s for potential work”

“clients want set fees”

“clients want immediate answers”

- Problems arise from lack of communication with clients;
- Clients are expressing increased desire for a partnership relationship with lawyers;
- The public perceives lawyers as not giving value for money;
- The public perceives that lawyers do not put the client’s interests first.

H Lack of Accountability for the Profession:

“The Society needs to support and promote all kinds of practice”

“Support lawyers in positive ways so they can best serve public”

“Encourage and support collegiality and networks to create a better professional community and allow the exchange of ideas and information”

“Demonstrate leadership in the changing profession”

“We need education in new ideas and new ways of practicing”

“The Society needs to protect the public interest by supporting the development of competent, professional and effective legal practice”

- There is confusion surrounding who has the accountability, responsibility and authority to address the issues;
- There is no mechanism that would enable clarity;
- The membership does not clearly understand that the Society’s job is not to protect their interests.

V. Summary of Trends and Challenges

Based on the above, the trends and challenges can be summarized as follows:

1. Many lawyers from every area and type of practice believe that **the profession is facing significant change precipitated by changing demographics and attitudes, advancing technology, changing law, shifting economic realities, and an increasingly competitive marketplace.** (The exception comes from those who believe that the current level of change will simply continue and therefore it will be a constant.)
2. Many lawyers **do not believe the profession is prepared for the nature or degree of change** that is here – nor coming. Reasons for this include – inertia, complacency, power (where it is held) and the innate conservatism of the profession.
3. **Women continue to face huge challenges** in legal practice – despite some progressive policies; firms are generally seen as hostile environments, especially for women who choose to have a family.
4. The consequences associated with the gap between the change that is coming and our lack of preparedness is the fear that the practice of law will continue to be encroached upon, and that the marketplace will be absorbed by large practices to the point where the varied interests of the public will not be served by the profession.
5. Positioning of firms and practices in the market place raises distinct needs and issues for members. Lawyers in similar practice areas or in firms of similar size appear to be so much the same that it is difficult for them to stand out in the market.
6. Access to justice continues to be an issue of concern to the profession.
7. The business model for operating a law firm is creating difficulties in terms of performance expectations and retention of young lawyers. Focus on billable hours is seen as rewarding inefficiency, creating a stressful work environment, and is ultimately seen by many as an outdated measure, particularly as the tendering process begins to appear more and more for major files.

VI. The Impact of these Trends on a Continuing Competence regime

From her work with the Society and drawing on the above findings, the Consultant suggested that these trends need to inform and influence the content and delivery of any continuing competence program for lawyers. The following is a summary of her conclusions:

1. **In order to be competent lawyers need to understand the context in which their clients are operating**

Rather than looking at a client's problem as purely legal with legal options, a competent lawyer understands not just the legal issues but the needs and interest of the client in a practical and real sense. She sees that her client lives or works in a particular world and has concerns, needs and interests that may have nothing to do with the "technical" legal issue. The client is not making decisions in a vacuum. Good lawyers know this and already do it intuitively. They take time to get to know their client and the context they live in when advising them. Unfortunately, too many lawyers approach their clients' problems more from a theoretical perspective. They look for the legal issue and the legal options and ignore the context. This causes the client to feel that the lawyer does not have their interests in mind.

2. **Education for lawyers has to include more than substantive law and traditional "lawyering" skills**

Lawyers need to develop competency in managing their clients, their files, their finances. They need to know how to secure clients and manage the business in a small firm. Lawyers expressed the desire to learn how to manage the business of practicing law, how to deal with new technology, and how to manage the knowledge that they have or acquire. Lawyers also need to develop cultural competency, which means being sensitive to a wide range of cultural differences and awareness of their own cultural worldview.

3. **Education for lawyers needs to be responsive to individuals**

What became obvious as the project proceeded was that different lawyers need different kinds of education. Lawyers in big firms have access to more education and resources and are in large measure not responsible for many of the business practices. Lawyers in small or solo firms need more access to education and need resources to assist them in managing their "business" as well as their practice. One-size-fits-all education is not effective or relevant to today's lawyer. The question to ask is: What does this lawyer need to be competent and effective?

4. **Lawyers need strong self-assessment skills so they can assess their own competency**

As with all education, people will learn what they need, when they need it. There is always the question: What's in it for me? It was clear from the discussions that this is true for our members. They are busy trying to manage their practices and they will only seek education when they believe it is necessary for them to do so. To that end, it will serve both the public and the membership if lawyers are better equipped to assess their own practice skills and identify what it is they need in order to pursue their own goals, not those that have been set for them.

5. **Lawyers need to have strong client management skills**

Lawyers feel strongly when told that their clients often do not feel lawyers have their best interests in mind when making decisions. What clients want is to solve

problems as cheaply and as quickly as possible. Clients need lawyers to communicate clearly and to understand the processes involved. It is evident from the statistics gathered by the Society in both the Professional Responsibility process and in the claims against lawyers that managing clients expectations is indeed an issue for a large number of lawyers.

6. In order to be competent, lawyers needs to engage technology and knowledge management

Competent lawyers leverage technology and other improvements to make them practice smarter and more efficiently. Younger lawyers generally better understand the value of technology and are not afraid to use it. However, many lawyers told us that they just don't know how to best use it or that they don't have time to research and discover what's out there. In today's environment it is becoming more difficult for lawyers to succeed without learning to embrace technology and making it work for them and their clients.

7. Lawyers need to practice preventive law to assist clients in managing risks

Lawyers become trusted advisors and therefore more valuable to their clients when they are able to help their clients effectively manage risk. This is a skill in and of itself that lawyers need to learn and use routinely.

8. Lawyers should support raising the competency level of the entire profession by sharing knowledge, services and educational information

This was seen especially in the small and solo practice groups. These lawyers expressed an interest in finding ways to share education and services in order to make them more accessible and affordable for the lawyer and their clients. There was also discussion in the larger firms about helping and sharing information with younger lawyers and lawyers who had fewer resources as this raises the level of competency of the profession.

9. The Society and lawyers need to work with other educational providers and those outside the legal profession

The breadth of areas in which lawyers need education means this work cannot be undertaken solely by the Society. There are many providers of continuing professional development and the Society needs to facilitate collaboration with key providers to ensure availability of appropriate support.

VII. The Way Forward

The legal profession must continue to evolve if it is to thrive through times that demand both adaptability and creativity. Lawyers, like other professionals, must continue to ask themselves the tough questions and be willing to expand both their minds and their idea of what the practice of law should look like in a world of fast paced technology, globalization, diversity, and increasing sophistication of both clients and the general public.

The Society, as the regulator of the profession, must be aware of and assess the trends, looking for means to enhance competency and to assist lawyers in moving forward in the public interest.

Equally important is the necessity of continued conversation between the Society and its members in order to ensure that the membership understands the role of the Society and that an atmosphere of cooperation and collaboration is created among stakeholders.

Ongoing consultation with the membership is key to the success of the next phase of this work as the details of the Society's competence program are developed and implemented.

Council now has at its disposal the CCTF Report from 2007, and the information learned from the Futures Project in 2008 and early 2009. In addition, it must be noted that since the preparation of the CCTF Report, and indeed since the information gathering stage of the Futures Project, other law societies in Canada have either proposed or implemented varying new continuing competence/professional development regimes.

It is proposed that the Advisory Committee and the four Council members who have been liaising with the committee form a working group and be assigned the task of integrating the gathered information into concrete recommendations for Council's approval

Appendix A

Chapter 2

Rule

A lawyer has a duty to be competent to perform all legal services undertaken on behalf of a client.¹

Guiding Principles

A competent lawyer has relevant knowledge, skills and attributes and applies them in a manner appropriate to each matter undertaken on behalf of a client, and within the reasonable parameters of the lawyer's experience and the nature and terms of the lawyer's engagement.² Consequently, being competent requires the following:

- i. knowing general legal principles and procedures, and substantive law and procedure for the areas of law in which the lawyer practices;³
- ii. investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate courses of action;
- iii. implementing the chosen course of action through the application of appropriate skills⁴ including:
 - (a) legal research;
 - (b) analysis;
 - (c) application of the law to the relevant facts;
 - (d) writing and drafting;
 - (e) negotiation;
 - (f) advocacy;
 - (g) problem solving
- iv. establishing and maintaining an appropriate lawyer-client relationship, including managing client expectations;⁵
- v. communicating in a timely and effective manner at all stages of the matter;⁶
- vi. performing all functions conscientiously, diligently, and in a timely and cost effective manner;⁷
- vii. complying in letter and in spirit with the *Legal Ethics Handbook*;
- viii. recognizing limitations in one's ability or capacity to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
- ix. managing one's practice effectively;⁸
- x. pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
- xi. otherwise adapting to changing professional requirements, standards, techniques, and practices.

Appendix “B”

MEMORANDUM

TO: Bar Council
FROM: Continuing Competency Task Force
DATE: MARCH 20, 2007
RE: Continuing Competence Options and Recommendations

Background:

On September 22, 2006, Council created a mandate for the Continuing Competency Task Force. It stated:

The purpose of the Society is to uphold and protect the public interest in the practice of law. In pursuing its purpose, the Society establishes standards for the professional responsibility and competence of members³. In keeping with this purpose Council had created the Continuing Competency Task Force and asked that the Task Force do the following:

1. Formulate a policy that articulates the Society’s expectations regarding continuing competence for lawyers;
2. Articulate the principles that should be used to determine whether and, if so, under what circumstances, mandatory education should be a component of a continuing competence regime.
3. Priorize the areas in which continuing education is needed to support the public interest and the membership and, if so, to identify these for Council;
4. Make recommendations to Council about how a comprehensive continuing competence regime could be provided to the membership. Particular attention should be paid to affordability, convenience, communication among Society departments, individual attention, the best use of resources and making education a tool rather than a hammer.

³ *Legal Profession Act, S.N.S. 2004 c. 28, s. 4(1)*

The Task Force has met on several occasions since September, including holding a full day, facilitated workshop on February 7, 2007. During that workshop the Task Force was able to articulate some recommendations and options for Council’s consideration. What follows is a discussion of the material reviewed by the task force and an articulation of those recommendations and options.

The Task Force reviewed a number of reports prepared by other law societies on the topic of continuing professional development, the definition of competence in our Legal Ethics Handbook, the competence criteria used in the Articling and Admission Process in Nova Scotia, statistics that were derived from the annual members report and the membership database and the legal education offerings of the providers in Nova Scotia. All materials reviewed will be made available to Council but will not be paraphrased in this report.

From the review of the available materials and the discussions held, the Task Force determined that a comprehensive competence regime would require attention to three areas: Self Assessment, Education and Quality Assurance. Essentially, in order to articulate, implement and evaluate a competence regime the Society needs to turn its attention to providing members with ways to assess their own level of competence as well as providing them with educational opportunities. Finally, any regime requires a quality assurance arm that deals with the Society’s responsibility to ensure that standards of competence are met. A chart was derived that looks like this:

<p align="center">Self-Assessment</p> <p align="center"><i>How do we help lawyers assess their own level of competence?</i></p>	<p align="center">Education</p> <p align="center"><i>How do we help lawyers enhance their competence?</i></p>	<p align="center">Quality Assurance</p> <p align="center"><i>How do we ensure the standards of competence are met?</i></p>
<p>How do lawyers demonstrate to themselves their own level of competence?</p> <p>How do we help them keep themselves competent and self-assess their level of competence?</p> <p>What are the standards? Are they visible and understood?</p> <p>What reflective practices are necessary for lawyers? e.g. Professional development plans? Self assessment tools for areas of practice</p>	<p>Based on competence</p> <p>See what NSBS does and how</p> <p>What other kinds of education can we/should we offer to enhance & maintain competence?</p> <p>Do some need to be mandatory? If so on what basis will we determine if it must be mandatory? What criteria will we use?</p> <p>How do we determine what education is needed?</p> <p>How is the needs assessment for education linked with Quality Assurance and risk assessment?</p>	<p>Supporting Self Assessment</p> <p>Provide tools for self assessment</p> <p>Report to the Society</p> <p>Enforcement</p> <p>Random audits</p> <p>Audit according to risk</p> <p>Comprehensive audit system</p>

The Task Force looked at each of the arms of the regime and concluded the following:

Self Assessment:

The starting point should be the standards in Chapter Two of the Handbook. The Society would start from the assumption that lawyers are competent. We are satisfied that newly admitted lawyers are competent to the degree that they should be. The question that is raised here is how the Society ensures that lawyers continue to be competent. One of the ways and certainly the least intrusive way is to provide lawyers with the tools, standards and other information that they can use to assess themselves. What's required here is self-reflection. The individual lawyer needs to make use of the information the Society provides to assess for themselves whether they are maintaining and/or enhancing their competence.

Education:

Under this arm we are looking at what education is available for members to maintain and enhance their competence. Education must be thought of as a continuum; the world does not stand still. We need to change the culture so that lawyers accept that continuing their education is an obligation to maintain and enhance their competence.

There is a growing trend across Canada for the public to question why the legal profession does not require mandatory education. More importantly, in order for lawyers to continue to protect the public interest in the administration of justice lawyers need to continue to enhance their competency so they can do an increasingly better job of representing their clients – of protecting and defending their legal rights. Lawyers who are working as if the legal world has not changed in five or ten years cannot adequately represent their clients and contribute to the desire of some to commoditize the practice of law. Lawyers have special training and skills that allow them to be the right people to represent and protect the rights of individuals. This can only continue if the profession keeps up with the changes in the world and keeps itself fully educated and knowledgeable.

As the Task Force has previously identified, education takes many forms and is offered by many providers. The Task Force would not recommend that all education be offered by the Society alone, nor would it support a narrow view of education. Education will continue to be offered by a diverse group of providers and be offered in increasingly diverse delivery methods. This is as it should be. Gone are the days when education is only offered in large group talking head conferences.

The Society offers a wide range of education and continues to work toward increasing the number and types of offerings. A calendar of the offerings to date is attached as Appendix A to this report.

In terms of additional educational offerings, the Task Force reviewed the available statistics from the 2006 Annual Members Report. What was clearly evident was the fact that the statistics were almost worthless as a result of the fact that the information was given anonymously. While the Task Force recognizes the members reluctance to provide information linked to their names the fact is that it is only by analyzing more detailed information that the Society can know what additional education is needed. Attached to this report as Appendix B is a report of the education statistics that were gathered from the Annual Members Report.

The Society is not interested in knowing exactly what John Smith did, rather it needs to know what lawyers in large firms are doing for education, what newly admitted lawyers are doing, what the 10-15 year lawyer is doing...it is only by knowing these things that appropriate educational initiatives can be created. Knowing what groups of lawyers are doing would allow the Society to identify what education would enhance and maintain member competence.

In terms of mandatory education, the Task Force will make recommendations later in this report, however, it is important to note that the Benchers in British Columbia have recently voted to begin a program of mandatory education in 2008. While British Columbia has rejected the American notion of mandatory education it is preparing to require some education, although in a more contextualized way.

Quality Assurance:

Under this arm the Society needs to consider how it ensures that members continue to be competent. It should be stated that in the event the Society chooses to require members to complete self-assessments and provide those to the Society there will need to be provisions to protect that information from being disclosed to third parties. The Task Force reviewed a number of quality assurance regimes already in place in Canada. In particular, both the Quebec and Ontario models were studied. The Task Force sees quality assurance on a continuum from helping members with self assessment all the way to practice audits and peer review.

In Quebec, a self assessment is sent out to lawyers before a law society reviewer arrives to visit the firms. That gives lawyers an opportunity to assess their own competence before anyone else begins to review the practice. As we move along the continuum we could have a system where members must report the results of their self assessment to the Society all the way up to enforcement. The Task Force believes that enforcement should focus on risk and not a comprehensive system of review like the one in Quebec.

The Ontario model is more the type the Task Force would envision. In that program there are a clearly articulated set of criteria used to assess who will be reviewed. Ontario will conduct 700-800 audits per year out of 19,000 lawyers in private practice, less than 5% of members in private practice.

The Task Force did not examine the issue of whether members of the Society should be asked annually about their practices as a means to ensure that members are maintaining their

competence. The Task Force understands that members may maintain their licenses without actually practicing provided they continue to pay their practicing fees. This raises a question that needs to be addressed in terms of the Society's mandate to protect the public interest.

What follows is the Task Force's recommendations and options for each of the four areas of its mandate.

1. Formulate a policy that articulates the Society's expectations regarding continuing competence for lawyers;

The Task Force is of the opinion that, as recommended to Council in April, 2006, all members of the Society should continue to be encouraged to participate in at least 12 hours of structured continuing professional development per year and at least 50 self-study hours per year, and further be required to report on those activities annually. In the opinion of the task force this is not too onerous a requirement.

As agreed to by Council previously and incorporated into the 2006 Annual Members Report, CPD activities would include:

- Live CLE programs, workshops, conferences, in-house programs
- Telephone CLE
- Interactive On-line CLE
- Reading of journals, printed material
- Audio and video tapes and dvds
- Writing published texts, articles, or licensing process/CLE materials
- Preparation for and instructing in CLE, law school programs, in-house training
- Organized discussion groups such as CBA subsection meetings
- General education relevant to the member's practice
- Participating in post-LLB education programs

Structured activity includes preparation and teaching of courses as well as attending courses, including teleconferences, and other on-line technologies.

In addition, the Task Force recommends that the Society adopt a comprehensive continuing competence regime that incorporates self-assessment, education and quality assurance. The specifics of which will be identified under item four of the mandate.

2. Articulate the principles that should be used to determine whether and, if so, under what circumstances, mandatory education should be a component of a continuing competence regime.

The Task Force does not favour a wide spread program of mandatory education. Rather, it believes the Society should continue to collect data and monitor lawyers use of current opportunities.

The Task Force offers the following principles for consideration:

- **The Society should give serious consideration to implementing mandatory education when there is significant legislative change that will overhaul an area of practice**, as we saw with the Land Registration Act. Mandatory education during these times will ease the learning curve and protect the integrity of the system and the public interest. Looking forward a complete overhaul of the current civil procedure rules is one area where mandatory education would likely be required.
- **The Society also needs to consider implementing mandatory education when there are significant areas of risk that require it to protect the public interest.** One area where this has already been done is when a member wants to open a trust account for the first time. In addition, this might be required when members wish to change from public to private practice or to go back into practice after a lengthy absence. In both Ontario and British Columbia courses have been created for these situations. A member wishing to go into private practice from public or to return after an absence is required to take and pass a course prior to their return. The Society may also wish to require members who have multiple complaints that result in discipline to take professional responsibility education or to take some type of remedial education if the issue is member competence.
- **The Society may want to consider requiring mandatory education when/if statistical data from both professional responsibility and/or claims indicates that education is needed to protect the public interest.** Studies (Like the *North* and *Gold* Reports) and the statistics gathered by the Society would certainly support the fact that the majority of problems lawyers encounter are related more to their ability, or inability to manage their practice than not knowing the law. Dealing with client expectations, managing the retainer, communicating effectively and in a timely matter are all things that result in complaints and law suits. While it is important that lawyers keep up with the law it is equally important to ensure that they have good practice management skills. These skills would include professional responsibility and legal accounting skills. It is common across Canada for lawyers to avoid taking these kinds of “soft” courses. If the Society were to determine that members do not engage in this type of education and continue to have difficulty in this regard there may be a case for requiring this type of education. Indeed, it is one of the areas that British Columbia is considering.

Finally, it is important to recognize that although the Society might require education in certain areas does not mean that the Society has to be the deliverer of such education. While the Society would have a vested interest in ensuring that the education offered met the requirements identified by the Society other providers could certainly offer such education.

3. Prioritize the areas in which continuing education is needed to support the public interest and the membership and, if so, to identify these for Council;

The Task Force is of the view that this issue should be resolved from a risk analysis only. The current Risk and Practice Management program is one means of assisting the Society in identifying risk factors. In addition there is a need to better collect and analyze information from both the Professional Responsibility department and LIANS regarding causes of complaints and claims against lawyers.

4. Make recommendations to Council about how a comprehensive continuing competence regime could be provided to the membership. Particular attention should be paid to affordability, convenience, communication among Society departments, individual attention, the best use of resources and making education a tool rather than a hammer.

The Task Force believes that the Society needs to fulfill its mandate of protecting the public interest and ensuring that the profession keeps pace with the rapid changes in the world around us.

The Task Force is of the view that the Society needs to create a culture of continuous learning and development within the legal profession. In addition, the most effective regime will be one which is voluntary, relevant and engages the education needs of the membership.

In order to create a comprehensive plan attention must be paid to all three arms identified earlier thereby creating a regime that:

- Fosters a regular reflective practice of self-assessment for lawyers
- Offers education to enhance skills and expose lawyers to new ways of doing their practice
- Creates a framework for monitoring for risk to ensure quality within the legal profession

Having studied the various models in existence within Canada (Quebec, Ontario, Alberta and BC) the Task Force has selected the elements that support its approach and created the following process based on a 5-10 year vision.

How to help lawyers self-assess:

There is a shared onus of responsibility to improve self assessment among lawyers. The NSBS can provide tools and encouragement but the individual member must be willing to use the information and tools that are provided.

A continuum of options should be developed and offered. These might include:

- on-line self assessments that make use of already existing tools in Quebec and Ontario
- a template for a professional development plan for lawyers to use

- Additional questions on the annual members report to find out about member plans for professional development (thereby planting the seed that it is important and checking in as the report is an already existing mandatory requirement)
- Offer examples of self-assessment that allow people to see how they are already self-assessing in their work (e.g. feedback)
- Begin to capture AMR data by individual not anonymously
- NSBS can actively educate lawyers how to self-assess (e.g. easy to offer a session outside metro area where small firms can come together for a joint session as less competitive)
- Change role of educators at NSBS from front line training to facilitators for reflective practice and/or Train the trainer
- NSBS could play role of enabling other educators (CBA, APTLA)

What is the best education to offer?

- Educational offerings should be based on some form of self assessment in order to ensure that the sessions be based on learner needs and are therefore relevant
- Openness to different forms of learning, use a variety of techniques/models not just lecture and classroom setting. (e.g. BC model includes in-house training, mentoring, on line, etc)
- Tailor activities to individual learning needs
- Mandatory as needed e.g. a new area of law like the LRA
- Establish and publish a continuous learning curriculum that is developmental in nature and that addresses the issues that arise for lawyers throughout their practice life
- Create a marketplace in which others could offer education. The Society could offer expertise and assistance to identify what's needed rather than necessarily being the deliverer of the education

How to assure quality?

- Establish law office standards with two components
 - Lawyer/client component
 - Law office management component
- Give tools to lawyers at the time of the Annual Member's Report
- Adapt Quebec/Ontario Quality Assurance checklist for NS and begin to use it in the PRPRS (professional responsibility practice reviews) to develop a consistent format for reports and give us some comfort using it
- Ensure the quality assurance approach is incorporated into the new LRA audits
- In 5 years consider whether a comprehensive quality assurance system is required, which would include some form of peer review or mandatory audit as seen in Ontario and Quebec.

Conclusion

The Task Force was asked to identify the expectations and principles to guide development of a comprehensive continuing competence regime for lawyers in Nova Scotia.

As stated in the earlier Task Force report, it is indisputable that lawyers have a duty to be competent and a duty to maintain competency. This is achieved by continuous learning throughout their careers in one form or another. Learning will not always be done at a course or in a formal setting. Learning is accomplished in a variety of ways and at a variety of levels. What is important is that the lawyer continues to develop her knowledge and skills throughout her career.

In addition, education must be thought of as a continuum; the world does not stand still. The Task Force is of the view that the Society needs to create a culture of continuous learning and development within the legal profession.

Finally, the Task Force believes that any comprehensive continuing competency regime must include a continuum of activities from self-assessment through to quality assurance. The most effective regime will be one which is voluntary, relevant and engages the education needs of the membership.

Appendix “C”

Questions asked of Participants

What are the assumptions that you held when you entered the practice of law that are no longer true?

What is the degree of change you anticipate will unfold in the world as you know it over the next 5 to 10 years?

What are the dynamics and trends that are, and will continue to affect your practice?

What is happening in your clients’ world that is changing how you practice?

What “habits” and competencies do you need to acquire in order to excel in this changing world?

What needs to happen for you to recommend this profession to the next generation?

What do you expect from the Society to help the membership and the profession thrive in this changing world?

Appendix “D”

Public Research

The Society recently conducted three focus groups and a telephone survey of 400 Nova Scotians, with Bristol Omnifacts

What people told us – key findings:

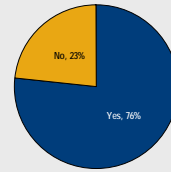
- about the Society
- about lawyers



Public awareness of NSBS

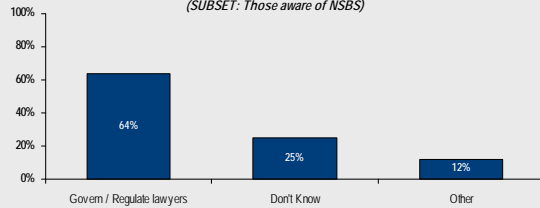
- 76% of survey respondents had heard of the Society, which speaks highly of our presence in Nova Scotia
- 64% of those respondents stated the Society's purpose as governing and regulating lawyers

"Have you heard of the Nova Scotia Barristers' Society?"



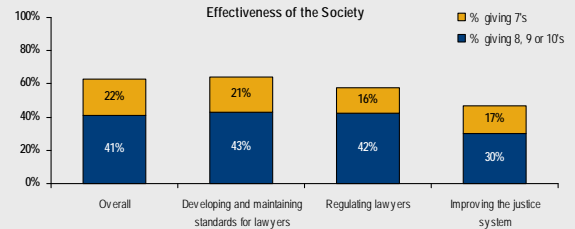
What does NSBS do?

"What does the Nova Scotia Barristers' Society do?"
(SUBSET: Those aware of NSBS)

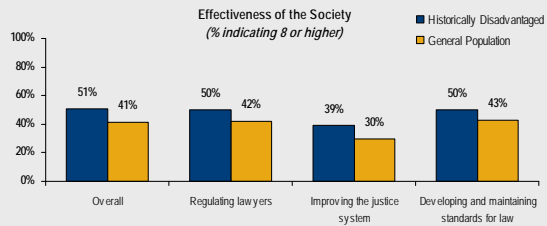


Are we doing a good job?

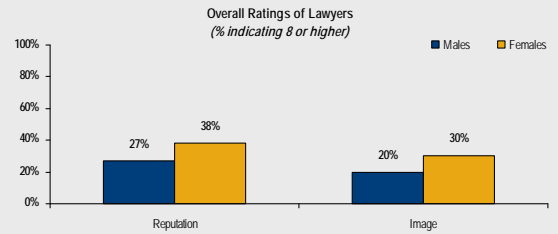
Effectiveness of the Society



Differing views

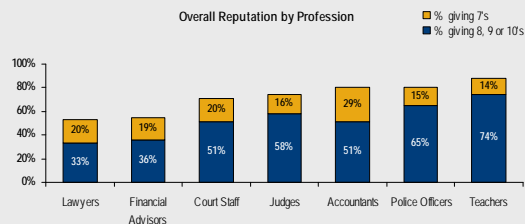


Gender impressions



Overall reputation by profession

Ratings of 8 or higher are considered very good; ratings of 7 are average



Perceived lawyer characteristics

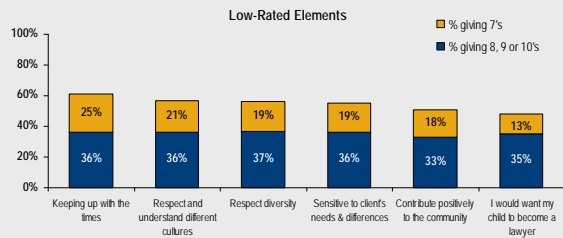
Attribute	Relative Importance	Rating (% 8 or higher)
Honest	27%	31%
Hard Working	23%	51%
Open or Transparent	17%	23%
Respected	17%	34%
Trusted	16%	30%

Legend - Performance

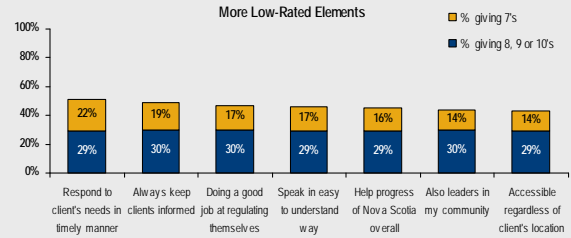
High	Moderate	Low	Very Low
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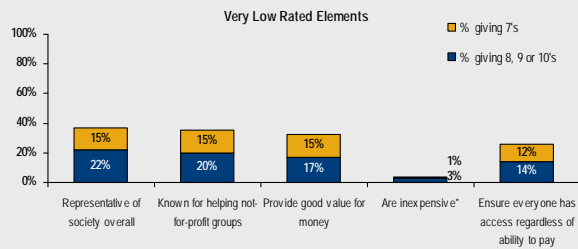
Some low scores for lawyers



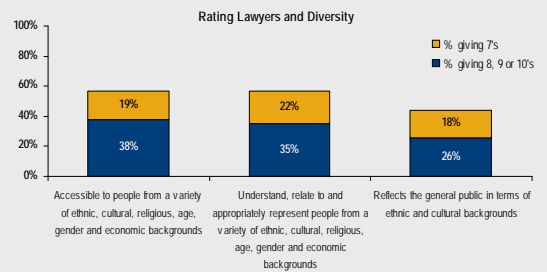
More low ratings



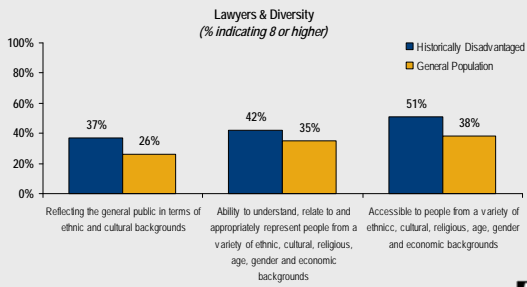
VERY low ratings



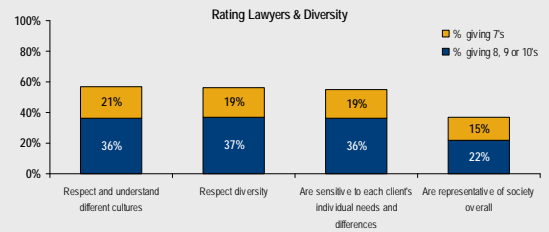
Diversity issues



Differing views



More on diversity



Regional access

