



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Jacqueline Mullenger, Director, Education & Credentials

Date: May 13, 2015

Subject: MCPD Options

For: **Approval**

Introduction

Information

Recommendation/Motion:

Be it resolved that commencing in the 2015-16 reporting year, the MCPD requirement set out in regulation 8.3.2.15 be altered to require all practising lawyers to prepare and keep a record of a written plan for their continuing professional development on an annual basis.

Summary:

Last month staff provided Council with a report reviewing the current MCPD requirements. At that time Council were asked to consider the report and be prepared to make a decision about the program at the May meeting. Staff were asked to report back to Council about resources, options and the impact of mobility on our MCPD requirements.

Analysis:

Resources:

As stated in the earlier report the resources currently employed to maintain the MCPD requirement involve a number of departments and individuals. In E&C the Director, E&C Officer, and Assistant play major roles. In addition, the Database Officer plays a significant role. Finally the Administrator, Web and Publications plays a role in keeping the information on available programs on the website. The Society maintains both a CPD email and a CPD phone line which must be checked daily. CPD data is collected from 6 organizations and that data must be seeded into the database.

While each of these is attended to during the year, the traffic increases dramatically during April and May. The Director spends at least 10 percent of her time between April and July processing requests for waivers, exemptions, abridgments and answering questions about MCPD requirements. The Officer and Assistant spend part of each day during the same period answering questions from both the line and the email and tracking those who have not done their cpd and following up with them. The Database officer spends time running reports, adding data to the database, talking with PD people at firms and ensuring that the CPD log is running properly. In addition he serves as a help desk to those who cannot get access to their CPD log, can't remember their user name or password or who need technical support. During May and June when lawyers are completing their CPD logs there is another flow of requests for log in information and for extensions which is often so large that the website at times crashes and the Receptionist helps with giving out information.

Part of the workload comes from the fact that in April of each year over half of the membership have still not recorded any CPD in their logs and therefore staff need to send out reminders and follow up to ensure that everyone reports on time.

The total of hours spent by staff on all cpd work during the year would be equivalent to approximately 60% of a full time position. Although staff spend significant periods of time on cpd, very little of substance is accomplished. This time would be better spent creating assessments, templates and resources for lawyers and in identifying and assisting lawyers who may need help in creating their plans.

Staff spend very little time working with lawyers who actually need support in determining what MCPD they need or want or even planning for the future. The questions that are answered are more about waivers and extensions, process and what courses might fit within the boundaries or timelines and how to properly log information.

As stated in the earlier report, from a principled, proactive and proportional point of view these resources would be better utilized to assist those who need help determining what they might need to learn and where they might do that learning. The most useful work has been assisting a sole practitioner in finding ways to get what they need and even in deciding what they might need to learn.

Mobility:

The question was raised at the last Council meeting and by some of the individuals we spoke to about how they would satisfy their cpd requirements if they are members in other Canadian provinces. While other provinces except for Alberta have requirements that so many hours be completed there is no reason for this to interfere with the lawyer's CPD in Nova Scotia. The Society could permit those members who have to complete hours elsewhere to track those hours and use them as evidence of a "plan" for Nova Scotia. The point is not to be so prescriptive but to encourage lawyers to continue their education and to do it in a way that is relevant to their practice.

Options:

When Nova Scotia was first considering MCPD and the CPD working group looked at the Alberta model it was felt that simply requiring people to certify that they had a plan was "regulation-lite". However, that was before we began to consider changes to the way we regulate and certainly before we articulated principled, proactive and proportionate regulation as a core regulatory objective.

What we know from the past two years of MCPD is that virtually all lawyers actually complete their CPD. We also know that most would do so and were doing so before we ever made it mandatory. Asking lawyers to create a plan and be prepared to provide it to the Society if requested is still holding them accountable and is being

proportionate. The fact is that the Society does not have the resources to check every plan just as we are not able to check every cpd log, so we are relying to some extent on lawyers doing the right thing.

The thought is that each year lawyers would be asked on the Annual Members Report if they have a CPD plan, if they met their goals from the year before and if they had trouble finding relevant education. In addition, each year the Society could hold several focus groups to ask lawyers what they need in terms of learning and how the Society might help. Finally time could be spent creating templates and self assessment which would assist lawyers in identifying education goals and needs.

As we consider the move to an entity regulation world the designated lawyer for each firm could be asked to certify that the members of their firm do have their plans in place and that they are meeting their set goals.

Rather than simply auditing lawyers, the auditing of CPD plans could coincide with other audits that occur, such as practice audits.

Staff propose that lawyers and firms could use any plan that suits their needs, however we would provide templates and questions that would ask them to consider not just their needs in terms of substantive education but also education in areas such as risk management, professionalism and practice management.

Some examples of these were provided with the report last month (See Scotland handbook and questions from NSBS website).

Conclusion:

This proposal represents the beginning of our work in making MCPD as useful as possible, both for our membership and for our efforts to transform regulation and governance in the public interest. Our proposed model is not yet perfected, but as the report of the CBA Legal Futures Initiative notes, “it may be necessary to accept imperfect solutions or incomplete actions in certain areas as long as they are moving the profession in the right direction.”¹ This is our first step in that direction. While the challenge may seem daunting, this represents an opportunity for the Society to take a leading role in tackling an issue that has troubled many licensed professions.

I would be happy to answer your questions.
