

CPD TASK FORCE REPORT

INTRODUCTION AND METHODOLOGY

In February 2011 the Executive of the Law Society of Yukon struck a task force to look at the establishment of compulsory professional development (“CPD”) in the Yukon. That Task Force reviewed the rationale for establishing CPD programs, evaluated CPD programs in other Canadian jurisdictions, and conducted a membership survey on the issue of CPD in the Yukon. The conclusion of the Task Force is that CPD should be required of Yukon lawyers.

What follows are the recommendations on the structure, content, reporting and consequences for failing to meet the CPD requirements. With these recommendations, the Task Force has strived to make the CPD program meaningful while being mindful of the limited resources, both administratively and educationally, in the Yukon. It is the belief of the task force that, subject to approval, all recommendations can be implemented by the establishment of Rules under the current *Legal Profession Act*.

RECOMMENDATIONS OF THE TASK FORCE

1. Structure of CPD in the Yukon

CPD programs in Canada have various structures. The most common structure uses a specified number of CPD hours in a given reporting period. Some jurisdictions specify that a certain part of the required hours must involve specified learning, such as practice management or ethics. Some jurisdictions have a multi-year reporting period while others run on an annual basis.

Generally, the average number of required hours is 12 per year. This appears meaningful but not onerous. Multi-year reporting, while allowing more flexibility to members in scheduling their hours, becomes complicated administratively. Currently all of the reporting requirements of the Law Society of Yukon are annual in nature.

Recommendation

Therefore, the Task Force recommends that the structure of the CPD program implemented by the Law Society of Yukon require that **members complete 12 hours of professional development annually**.

2. Consequences of failing to fulfill the CPD requirements

Each Law Society with a CPD program has different consequences for failing to meet the CPD requirements. While a majority use administrative sanctions of some form or another (fine, suspension, suspension and fine), others use or allow recourse to disciplinary proceedings.

Generally, administrative sanctions are easier to implement and, while the failure to complete CPD hours is of concern, it does not seem to fit well with the disciplinary process in place in the Yukon. It would appear that, if CPD rules are specifically and carefully drafted, the current *Legal Profession Act* would allow for the creation of administrative sanctions with respect to failing to complete the required hours (see Appendix A). Some questions remain over who would be responsible for enforcing the administrative sanctions and the Task Force offers no opinion on if or how the Executive would delegate such authority.

Recommendation

Therefore, the Task Force recommends that the consequences for failing to fulfill the CPD requirements be **administrative sanctions in the nature of fines, additional time to obtain the required hours and, as a final consequence, administrative suspension**. Details of such a structure as set out below:

a. Suspension

- (i) a member who fails to complete the requirements by December 31 and report by January 31 is required to pay a late fee, and receives an automatic 3 month extension (January, February & March) to complete the CPD requirement, without being suspended;
- (ii) the member receives a 60 day prior written notice of the possible suspension;
- (iii) if the requirement is not met by April 1, the member is administratively suspended until all required CPD requirements are completed;
- (iv) the Society has the discretion to prevent or delay a suspension in special circumstances on application by the member to do so;
- (v) a lawyer who is completing the prior year's CPD requirement by April 1 of a current year is subject to the provisions governing the prior year's CPD.

b. Late fee structure:

- (i) members who complete their CPD hours by December 31 but fail to report completion by the January 31 deadline will be levied a \$200 late fee plus applicable taxes;
- (ii) members who fail to complete the required CPD hours by December 31, and are therefore required to complete and report the required CPD hours by April 1 of the following year, will be levied a late fee of \$500 plus applicable taxes.
- (ii) members who fail to complete the required CPD hours by April 1, and are therefore required to complete and report the required CPD hours before re-instatement after suspension, will be levied a late fee of \$500 plus a reinstatement fee plus applicable taxes.

3. Exceptions

While the CPD requirements are meant to apply to all practicing lawyers in the Yukon, it is acknowledged that requiring 12 hours of CPD would not be beneficial or may be onerous in some circumstances. New calls that have just completed numerous hours of bar admission courses may not benefit from additional CPD. Members with non-practicing status and retired members are not required to complete the CPD requirements. In addition, there are a great many members of the Law Society of Yukon that are also full members of other Law Societies in Canada and may be subject to different CPD requirements and requiring additional hours could be onerous.

Recommendation

The Task Force recommends that **members who have completed a bar course and members who are subject to *comparable* CPD requirements in another jurisdiction not be required to undertake additional CPD activities for the Law Society of Yukon.** Members who are not subject to comparable CPD requirements in another jurisdiction would have to comply with the Law Society of Yukon requirements.

All practicing members must fulfill the CPD requirement, subject to the following exceptions:

- (a) newly called lawyers who complete the bar admission program of a Canadian law society during the reporting year are exempt; and
- (b) lawyers who have fulfilled comparable CPD requirements in another Canadian jurisdiction for the same calendar year (for example if you are a member of the Law Society of British Columbia and have fulfilled their 12 hours of CPD requirements you are not required to undertake additional CPD activities or training for the Law Society of Yukon)

4. Guidelines for Eligible CPD Activities

In order to assure a high quality of legal services is available to Yukon residents, the Law Society must ensure that CPD activities undertaken as part of the CPD requirement develop lawyer competency either directly through development of practice skills or updates on substantive law and more generally by encouraging a practice of life-long learning.

Background / Rationale

In jurisdictions where CPD has been implemented Law Societies have also implemented a method of ensuring that the CPD activities undertaken by members accomplish the goal of ensuring lawyer competency. While the approval methods vary from jurisdiction to jurisdiction, the guidelines for eligible content are similar.

At the most onerous end, several law societies (Quebec, British Columbia) have chosen to require pre-approval of the content of CPD activities or the providers. Other Law Societies have opted to provide a statement or guideline for eligible content for members to use in deciding upon what program or activity best suits their individual learning needs.

Eligible CPD content in other Canadian jurisdictions generally includes substantive legal knowledge, skills development such as research and advocacy, and practice management including ethics and wellness. Excluded is time spent researching and delivering presentations or documents directed at clients or generated in the normal course of business and courses geared towards marketing or profit maximization. Statements of eligible and excluded content from other Canadian Law Societies are found in Appendix B.

The Task Force believes that the most appropriate method of regulating the content of CPD activities is to set out guidelines for eligible content and to rely on the professionalism of members to determine what CPD programs are best suited to their individual practice needs.

The Guidelines will provide the Law Society a baseline from which to ensure members are undertaking useful CPD and, where necessary, exclude or recommend particular activities.

Recommendation

The CPD Task Force recommends **the Law Society of Yukon adopt the following Guidelines for eligible CPD content:**

Eligible CPD activities must contain significant substantive or practical content with the primary objective of increasing lawyers' professional competence.

For greater clarity eligible CPD activities include activities and content dealing with

- the practice of law (including ethics, professional responsibility, practice standards, etc.);

- lawyering skills (such as advocacy, drafting, research, communication, cultural competence, etc.); or
- practice management (including client relations, wellness, time management, practice technology, etc.).

CPD hours will also be available for non-legal content if the member can demonstrate that it is directly related to improving professional competence in the lawyer's practice. Content and activities relating to marketing or profit maximization or content or activities primarily designed for attracting clients, or prepared and delivered in the ordinary and usual course of practice **are not eligible** CPD activities.

5. Mandatory Content

It is a characteristic of some CPD programs in Canada that a certain number of the mandatory hours be completed in prescribed subjects. For example the Law Society of British Columbia requires that two of the twelve hours of CPD required in a year be in ethics/professional responsibility.

Background/Rational

The requirement of mandatory content in the Yukon was debated. Requiring mandatory content was seen as a way to focus members on topics seen as particularly important. However, it was also recognized that requiring mandatory content would seemingly also create a responsibility of the Law Society to provide opportunities to meet the requirement. The administrative and reporting burden would also be increased with mandatory content, which was seen as a negative.

Recommendations

The CPD Task Force **recommends that regular mandatory content, such as the on-going ethics/professional responsibility requirement in British Columbia not be instituted at this time.** However, the CPD Task Force **also recommends that there be an ability for the Law Society to mandate CPD content and hours either on an annual or on an ongoing basis in the future.** An example of a situation where annual mandatory content may be considered would be if new Rules of Court were introduced. The entity that would be given the power to mandate content was not discussed by the Task Force.

6. Mode of Education

There are numerous ways to access and obtain continuing legal education throughout Canada and the world. Many other CPD programs in Canada have restrictions or requirements on various modes of education that will apply to the CPD requirement and/or limit the amount of hours of some particular modes that can apply to the requirement. For example, in Ontario web or telephone based course must have an ability for participants to interact with the presenters in order for the course hours to count as CPD hours. As a further example, the Law Society of British Columbia restricts the number of CPD hours obtained through mentoring to six per year.

Background/Rationale

Given the small bar and the number of traditional live courses available in the Yukon, it was felt that there was flexibility needed in the modes of education that would satisfy the CPD requirements. Should the content requirements be met, there should be minimal restrictions in the mode of education used. This rationale is seen to be in-line with the idea that members are the best judge of what legal education they need for their own practice and the mode in which they can best obtain that education. However, the fact that CPD hours are for continuing education of members must not be lost; the mode chosen must have educational value and must not be undertaken for a client or employment purpose.

Recommendations

The CPD Task Force **recommends that there be no restriction to the number of hours that live courses, including internal or private courses, educational components of meetings and conferences, and webcast and telecast courses (with or without the ability to interact with presenters) count toward the annually required hours**, provided content requirements are met and that only the hours in actual attendance at the course or educational component of the conference or meeting be considered eligible hours.

The Task Force **recommends that there be no restriction to the number of hours that group study (two or more members) count toward the required hours**, provided the content requirements are met and that only hours in actual group study be considered eligible hours (that is, preparation time is not counted as eligible CPD hours).

The Task Force **recommends that for teaching there be a maximum of six hours per year eligible to meet the annual requirement**, provided that the content requirements are met, that the hours count for only the first presentation (second and subsequent presentations of the same lecture, for example, would not count toward CPD hours), and that the time spent teaching be multiplied by 3 to account for preparation time (for example 1 hour of teaching would equal 3 CPD hours). The Task Force recommends that there be no restrictions or requirements on the audience, except that presentations to clients would not count towards CPD hours.

The Task Force **recommends that for writing books or articles there be a maximum of six hours per year eligible to meet the annual requirement**, provided that the content requirements are met, the purpose be publication or use in an educational program, and that the writing not be done as part of the member's regular employment. Time spent writing headnotes or case reports would be considered eligible to meet the annual requirement.

The Task Force **recommends that self-study, listserves, forums, and network sites *not* be eligible to count towards the required hours**. The educational value of these activities can be highly variable and difficult to quantify.

The Task Force **recommends that mentoring or being a principle to an articulated student *not* be eligible to count towards the required hours**. There is no formal mentoring program in the Yukon and the educational component of acting as a principle is varied and difficult to quantify.

7. Monitoring and Reporting

For a CPD program to be effective there must be ways for members to report compliance and means for the Law Society to monitor that compliance. However, requiring complex reporting mechanisms is resource intensive for both the Law Society and members. Therefore the Task Force recommends that **CPD reporting be done once a year on the current Form 13 (Annual Declaration)**. This form is something already completed by members and would not be a new form to complete. In addition, the member is swearing the contents of the form, including the proposed CPD report. It is recommended that **the member report what course or activity they attended, some identifying information about the course or activity, the eligible hours and the date(s) completed**. Finally, it is recommended that **those members who are exempt from complying with CPD requirements identify their exemption**. A draft of Form 13 with the CPD report is attached as Appendix C.

With respect to monitoring compliance of members with the CPD program, the Task Force recommends that **there be an ability to conduct audits the CPD report of members**. These audits could be random or as a result of concerns with specific members CPD reports. It is not thought that this would take place immediately, but would be an effective means of ensuring accurate CPD reporting.

Because the Law Society of Yukon will not be accrediting courses or providers, it is anticipated that there will be a number of questions with respect to eligible content. The Task Force recommends that **there be an identified person with the authority to determine eligible content and that a determination by that person be binding**. The Task Force makes no recommendation on whether that person should be a member of the Executive (such as the 2nd Vice President, CLE) or an administrative person (such as the Executive Director). Further, the Task Force recommends that **the Law Society of Yukon should only consider those courses or activities that clearly do not meet the content guidelines to be ineligible**. Determining what is required for a specific member's practice is difficult and courses or activities with questionable content will only make up a fraction of the CPD activities of a member over the course of their career.

CONCLUSIONS AND NEXT STEPS

The task force is supported in these recommendations by the knowledge that those members who responded to the survey overwhelmingly support CPD in the Yukon. We feel that the structure proposed provides a balance between making CPD meaningful but manageable and provides for the flexibility that is often needed in the North.

The Executive approved CPD in principle in December 2011. It is the hope of the task force that the Executive will approve these recommendations and use this document as a basis for drafting the Rules to formally implement CPD in the Yukon. The goal would be to have Rules ready to be presented and voted on at the 2012 AGM in May. This would allow formal implementation of CPD in January 2013.

If these recommendations are accepted, the details of the recommendations should also be presented to members. Notice of the CPD program and the voluntary “practice year” were sent out in December. Providing details on the CPD program now will allow members to be more confident and compliant in this test period.

Finally, the task force has agreed to be available as needed to answer questions and provide clarification and assist with the development of Rules.

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Task Force Members

Kim Sova, Second Vice-President (CLE)

Maegan Hough

Kathleen Kinchen

Jim Tucker

Laura Cabott

Lynn Daffe