The Law Society of British Columbia

Preliminary Report of the Lawyer Education Task Force On Mandatory Continuing Professional Development

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For: The Benchers

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Preliminary Report of the Lawyer Education Task Force On Mandatory Continuing Professional Development

Executive Summary

The Lawyer Education Task Force (the "Task Force") has concluded that the time has come for the introduction of mandatory continual professional development in British Columbia that, amongst other things,

- serves as a basis for a comprehensive post-call education programme;
- provides for the development of skills as well as knowledge about developments in the law;
- provides resources that are relevant to lawyers at various stages of their careers;
- is based on criteria (or "credits") that are broadly categorized and will therefore be easily obtainable by lawyers irrespective of their practice location;
- will be able to ensure that subjects that the Law Society considers to be important to a lawyer's professional development are addressed, irrespective of market considerations.

The Task Force is not convinced that simply requiring lawyers to take a certain number of hours of courses offered through current education providers will materially advance the quality of legal services provided. Therefore, the form of a mandatory programme, how that programme is to be developed, and which organization or organizations should offer it still needs some consideration. However, the Task Force has reached a consensus that four options warrant further consideration;

i. A programme requiring a certain number of hours of study, of which a portion requires the study of certain subjects;

ii. A programme of required courses for all lawyers, with the remainder of hours to be made up of courses chosen by lawyers;

iii. A programme of required courses for certain areas of practice;

iv. A programme requiring a certain number of hours of study through approved activities.

If the Benchers agree in principle with the recommendation that a mandatory continuing professional development programme be established, the Task Force asks that the issue be returned to it for the purpose of making recommendations about which option to develop, how a lawyer may obtain credit toward the programme, and over what period of time or stage of one's career the credits need to be obtained as well as programme

enforcement, the consequences of non-compliance, and the staff required to run the programme.

1. Purpose of this Report

The Lawyer Education Task Force has reached a consensus to recommend to the Benchers that the Law Society develop a programme of mandatory continuing professional development. This Report has been prepared to outline the reasons for the Task Force's recommendation, as well as to outline preferred options for further consideration.

The Task Force asks the Benchers to agree in principle with the recommendations made in this Report, and to return the issue to the Task Force to discuss and develop the options further and return with a recommendation concerning how the programme should be structured.

2. Introduction

In December 2004, the Benchers considered five proposed policy objectives identified by the Task Force. The Benchers resolved that the Task Force examine the proposed objectives and return with recommendations to the Benchers. One of the proposed objectives was "mandatory continuing legal education."

The Task Force has spent a considerable amount of time reviewing mandatory education programmes from other jurisdictions in the United States, Australia and England, as well as discussing whether there is a need for a mandatory programme of education in British Columbia, and if so, what such a programme should look like.

(a) Quality Assurance

Much of the focus of the Law Society has historically been on discipline and setting standards of ethics and professional conduct. These remain of crucial importance to the Law Society, as a regulator, in protecting the public interest. However, more recently the legal profession's regulators in Canada and in other Commonwealth jurisdictions have been placing increased importance on how to establish a standard of quality in how lawyers practise law.

Part of the Law Society's responsibility in protecting the public interest in the administration of justice is to establish standards for the education of lawyers. Section 28 of the *Legal Profession Act* (found in Part 3 of that *Act* under the heading "Protection of the Public) allows the Benchers to take any steps they consider advisable to promote and improve the standard of practice of lawyers. The use of this section allows the Benchers to establish "quality assurance" in the way lawyers practise law.

The Law Society currently has programmes targeted at quality assurance, including its Practice Standards Programme and Committee, its Practice Advice Programme and its recently created Trust Assurance Programme. The Small Firm Practice Course will be operational as of January 1, 2007 and will provide valuable practice management

education and resources. The Law Society is currently engaged, as we understand are other law societies in Canada, in determining what else is necessary in order to ensure a standard of quality in the way lawyers practise law.

Establishing a programme of post call education for all lawyers is part of the overall enhancement of "quality assurance." A programme of mandatory education as a condition of permitting a lawyer to continue to practise law is an important part of that enhancement.

(b) A Note on Terminology

"Mandatory continuing professional development" and "mandatory continuing legal education" are often used interchangeably. They denote a programme of continuing education requirements required of lawyers in order to maintain a licence to practise law. This Report uses the phrase "mandatory continuing professional development." In British Columbia, the phrase "continuing legal education" or "cle" is closely associated with the Continuing Legal Education Society of British Columbia. "Mandatory continuing legal education" may be read by some as a determination by the Task Force that lawyers will be required to take a certain number of courses offered through the Continuing Legal Education Society. While that Society may become an important part of a mandatory continual professional development programme, the Task Force wants readers to understand that "continuing professional development" can be undertaken in a variety of ways.

(c) Definition of the Issue

The issue, simply put, is should the Law Society implement a programme requiring a lawyer to partake in a certain defined amount of professional development activity on a periodic basis as a condition of that lawyer's continued ability to practise law, and if so, what options are available for consideration?

(d) Background

The debate on mandatory continuing professional development British Columbia goes back to the 1970s. In 1975, Minnesota became the first jurisdiction in North America to require lawyers to take education programmes. Not long afterwards, mandatory continuing professional development was debated in British Columbia. It has been the subject of reports and discussion by the Benchers through the late 1970s and early 1980s, and appears to have last come to the Benchers at their February 1985 meeting. Full "mandatory continuing legal education" was not sought at that meeting, rather motions were approved (1) to collect data about lawyers' continuing legal education activity; and (2) to consult the membership about implementing an education "tax" of $75 per year, $25 of which would be a grant to the Continuing Legal Education Society and $50 of which would be a credit for lawyers against courses offered by that Society.

"Mandatory continuing legal education" was also discussed in the Report to the Law Society of British Columbia on Professional Legal Education and Competence prepared by James Taylor in September 1983 (the "Taylor Report"). The Taylor Report did not

recommend mandatory continuing legal education. It instead recommended steps to encourage voluntary participation.

The topic was also one of the subjects of discussion by the Post Call Curriculum Planning Committee in the early 1990s. There is a useful review of the arguments for and against mandatory continuing legal education in the report, but the focus of the report as it relates to continuing legal education activity is directed at broader issues, including how lawyers might be better motivated to participate in continuing legal education activities. The index of Benchers' Minutes does not refer to any minutes of Bencher debate on mandatory continuing legal education as a result of that Committee's work.

In many ways, the debate on mandatory continuing professional development in British Columbia has remained quite stagnant over the past 25 – 30 years. Each time it is raised, it seems to get about as far as the stage of suggesting ways to improve access to educational activities, seeking further information from the profession, or trying to find ways to motivate lawyers to take courses. The debate then seems to fade away. Mandatory continuing professional development has never been approved by the Benchers when it reached them for decision, although at least one Bencher, as long ago as 1985, is recorded as having expressed the view that some form of mandatory education was long overdue.

3. The Arguments in Favour of and Against Mandatory Continuing Professional Development

The Task Force reviewed the arguments for and against mandatory continuing professional development, and noted that there does not appear to be any conclusive answer militating in favour of or against such a programme. To a large extent, there seems to be a bit of a "leap of faith" that implementing a regime will improve the competency of lawyers. On the other side, the argument seems to be that if there is no empirical evidence that it improves competence, then why do it? This might be described as an "absence of faith." Objective science plays no part in this debate. Instead, more vague concepts such as how decision makers gauge public interest, member reaction, and public confidence in the profession come into play.

The arguments in favour of and against the programme have to be understood in order to decide what might be done. They are as follows:

(a) <u>In Favour</u>

- Mandatory continuing professional development raises professional competence by exposing lawyers to new developments and renewing basic knowledge and skills. Law is in constant flux – therefore requiring lawyers to take continuing education is necessary to ensure lawyers keep up with the law and remain competent;

- All lawyers would benefit from exposure to new developments in theory and practice contained in well-designed programmes;

- Mandatory continuing professional development programmes demonstrate to the public that the legal profession is resolved to combat competency concerns;

- For lawyers who find practice pressures deter them from taking continuing education programmes (even for those who enjoy them when they can find the time to take them), mandatory continuing professional development will provide a positive incentive;

- Extra funds from mandatory continuing professional development programmes would improve the quality and quantity of continuing education programmes and would assist providers of such programmes to devote more time and resources to develop more effective programmes;

- Recertification based on continuing professional development is preferable to periodic re-examination;

- Some evidence that lawyers in jurisdictions with mandatory continuing professional development *believe* it increases competency;

- Online and technology based continuing education is expanding quickly throughout the Province, thereby enhancing access by reducing geographic and time barriers.

- Many other jurisdictions and most, if not all, other professions in British Columbia have mandatory continuing professional development programmes – how do we explain to the public why we do not?

(b) Against

- There does not appear to be any empirical evidence proving that participation in mandatory continuing professional development actually *improves* lawyer competence;

- It may be expected that lawyers will resent the requirement. Forcing people to take courses may interfere with their desire to learn;

- Only a small percentage of lawyers are truly incompetent – it is therefore unfair to force all lawyers to comply with a programme designed to remedy the problems of a few;

- Mandatory continuing professional development may simply be a facile response to public concern, and therefore be no more than superficial window-dressing that does not actually address lawyers with serious competency problems. It is very difficult to teach practical skills, proper management and good judgment. Mandatory continuing professional development may therefore actually mislead the public into believing that all lawyers are current and competent in their field of practice, which may not be the case;

- Standard mandatory continuing professional development programmes do not differentiate between types or modes of learning;

- Mandatory continuing professional development plans are expensive, both for the regulator in administering, and for the practitioner in attending due to programme fees, travel, and lost productivity;

- The quality of continuing professional development courses will be reduced due to the massive increase in time.

It has been suggested that the true problem with mandatory continuing professional development is not with the concept, but with the programmes of simply requiring a prescribed number of credits over a prescribed period of time – often resulting in a rush to take *anything* as the time is running out. There is criticism that, from lecture-style courses, most information is not applied and is indeed forgotten not long after the course unless it is immediately applicable. The Task Force generally agrees with these concerns and criticisms and believes that any implementation of a mandatory education programme must be tailored to address them. Otherwise, the programme simply becomes a requirement to take a certain number of hours of study in an unstructured way, which the Task Force does not believe will lead to an optimal result.

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

In March 2004, the Benchers approved a recommendation of the Task Force requiring lawyers to report annually the amount of continuing education taken, both through course study and through self-study. The Benchers endorsed the recommendation that minimum expectations should be set for each category – 12 hours for course study and 50 hours for self-study.

The Task Force obtained a report from the Chief Information Officer on the Mandatory Reporting statistics based on responses for the 2005 year. Rather alarmingly, the statistics disclosed that just over one-third of respondents reported *no* hours of "formal" course study. While it was heartening to see that just over 50% of respondents took 12 or more hours, the one-third number suggests that a significant number of lawyers currently take no formal education activity at all. This number seems to increase with length of call. For example, the report discloses that 19% of lawyers with less than 5 years call reported no formal study, while 54% of those with 30 or more years at the bar did so.

Just over 19% of respondents (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.

For each of formal study and self-study reporting, the statistics show that women and insurance-exempt lawyers (those not in private practice) were more likely to report in engaging above the recommended level of 12 and 50 hours respectively. It is unclear what conclusions can be drawn about why women tended to partake in more activity.

One possible explanation about why insurance exempt lawyers tended to report above the minimum expectation *might* have to do with different practice pressures.

There was nothing that showed a significant relationship between hours of formal study and claims or complaints, although lawyers of 15 – 20 years of call tended to have made one or more reports of claims or possible claims if they had reported no formal study hours. The overall analysis, however, showed that the amount of formal study hours reported is unrelated to a lawyer's claims or complaint record. The report *did* note, however:

> ….having undertaken some formal study is related, at least with respect to the likelihood that the lawyer will have experienced one or more complaints. This result indicates that there may be an underlying factor related to both the likelihood of claims and complaints and the tendency to engage in some formal study. For example, it may be that lawyers who undertake some formal study are more careful and conscientious than those who do not.

With respect to self-study reporting, the report noted no significant relationship between the amount of reported self-study hours and the claims or complaints ratio. The report also noted no significant relationship between those who engaged in no self-study and the likelihood of experiencing one or more complaints.

5. The Policy Considerations

(a) General Considerations Debated by the Task Force

Throughout one's legal career, a lawyer must continue to develop his or her knowledge, skills, and professionalism. Moreover, a lawyer's understanding of, and ability to apply, ethical considerations to his or her work also continues to develop. This knowledge and skill can be developed in a number of ways, both formal and informal. However, it *must* be developed. A lawyer cannot ignore the need for continuous learning and development.

However, the Task Force was mindful of the lack of empirical evidence that competence is actually improved by taking continuing education courses. While this lack of evidence may not be the determining factor in deciding whether to implement a mandatory education program, it has caused the Task Force to think hard about whether an unstructured programme of education is the best way to generate learning in lawyers.

Opportunities for learning present themselves frequently in practice, and the Task Force expects that most lawyers seize those opportunities. Opportunities for "formal" education are also available through courses offered by programme providers. Lawyers in the Lower Mainland can, apart from cost considerations, easily access these courses as the vast majority are offered in Vancouver or its suburbs. They are, however, less easy to access for lawyers in other areas of the Province. This is a complaint that the Task Force has heard repeatedly from the profession.

Moreover, the Task Force is concerned that the courses offered by continuing education providers are driven by market-based considerations. The Task Force does not blame the

course providers for this – it is to be expected. Courses must be provided in areas that will generate enrolments, even for organizations that operate on a non-profit basis. The result, however, is that subjects that historically receive poor registrations are rarely, if ever, the primary subject matter of a course. Unfortunately, the Task Force notes that ethics and practice management courses fall into this category.

Further, currently available courses tend to focus on knowledge rather than skills. Knowledge is an important component of being a lawyer, but the application of knowledge is also crucial to gaining competence as a lawyer. Skills may be picked up through practice, although there is a danger that if proper skills are not established early on, a lawyer will only end up continuing to develop poor skills. The lack of "performance evaluation" in most current post-call education courses in British Columbia also means lawyers are unable to gauge how much they have taken away from the activity. Some ability to provide for a common denominator of skills development thorough education would, the Task Force believes, do much to promote "quality assurance."

The Task Force was also concerned to note that registrations for course study decreased markedly for senior lawyers. The Task Force concluded that senior lawyers either did not find that the courses currently offered were sufficiently relevant for their purposes, or were otherwise unmotivated to take courses.

There is no comprehensive post-call education programme for the legal profession in British Columbia. Lawyers who have gone through an established pre-call education and who have been called to the Bar have developed a set of knowledge, skills and behaviours expected of a newly-called lawyer.[1] Once a lawyer has been called to the Bar, however, the Law Society provides no education programme that the lawyer may follow to guide his or her development. The Task Force was concerned that this too often results in the pursuit of a haphazard continuing education programme, which seems to tail off as a lawyer becomes older. What education activity there is may be focused heavily on lecture-style courses with little, if any, performance evaluation. There are many activities besides courses that could be incorporated into a planned continuing education programme if one were developed.

(b) Policy Objectives to be Served

Section 3 of the *Legal Profession Act* requires the Law Society to uphold and protect the public interest in the administration of justice by, amongst other things, establishing the standards for the education of its members. Section 28 permits the Benchers to take any steps they consider advisable to promote and improve the standard of practice by lawyers.

The "Ends" of the Law Society are set out in Part 1 of the Bencher Policies. Ends relevant to this discussion are as follows:

End 2 Lawyers provide services competently after call to the Bar

[1] See the "Competency Profile" at Appendix "C" of the Report of the Admission Programme Task Force, June 28, 2002

(b) post call legal education that is relevant and of appropriate quality is available and voluntarily consumed.

End 10 The public has confidence in the legal profession

(b) the public, government and the media have confidence that lawyers are honest, ethical and competent and that the Law Society does a good job regulating the profession.

Implementation of a mandatory continuing professional development programme would obviously not be a "voluntary consumption" of post call legal education. The statistics from the report of the Chief Information Officer referred to above, however, indicate that there are problems with the current voluntary consumption of post call education activity. The statistics indicate to the Task Force that lawyers either aren't voluntarily taking the recommended minimum amounts of course study, or that the resources offered are not sufficiently relevant or available.

The Task Force believes that the implementation of a mandatory programme that aims to improve the availability of professional development resources and the relevance of those resources to individual practitioners best meets the post call education component of the Ends of the Law Society in ensuring that lawyers provide competent services. It will also demonstrate to the public that it may have confidence that lawyers are competent (as well as honest and ethical) and that the Law Society takes steps to ensure a continued level of competence after the lawyer is called to the Bar.

(c) Goals of a Mandatory Continuing Professional Development Programme

The Task Force considered that a mandatory continuing professional development programme ought not to form part only of an overall programme of learning that lawyers should expected to take, but, more importantly, that lawyers would want to take because it would be useful to their practice and to their development as a lawyer.

In order to become a lawyer, a prescribed course of legal education is required, first through law school and later through articles and PLTC. Part of being a member of a profession, however, includes a commitment to continuous learning. The Task Force believes that call to the Bar ought not to be seen as an end of a lawyer's formal education.

Day-to-day practice is currently expected to provide much of a lawyer's learning, and the Task Force agrees that "learning on the job" can be an excellent means to develop knowledge and skills, provided it is done in the right environment. However, opportunities to learn and what is available to be learned vary widely from practice setting to practice setting and from place to place. In any event, on-the-job learning is only one form of education, and ought to be supplemented by learning through other environments. A formal, continuing programme of education would be a standard to ensure that, throughout the stages of one's career, a lawyer is continuing to upgrade and augment his or her skills and knowledge. This result will not only help lawyers, but will help the Law Society meet public expectations that it is doing all it can to ensure that lawyers are competent in the areas of law in which they practise, consistent with its

statutory mandate. This, in turn, is expected to enhance the quality of services provided by lawyers, and thereby improve the standing of the profession in the community.

The goal of a mandatory continuing professional development programme is to provide education resources that are easily available and relevant to lawyers at all stages of their practices, and to ensure that the resources are consumed in order to be able to assure the public that there is a commitment within the profession to establishing, promoting and improving the standards of practice in the Province.

(d) Key Comparisons

No other law society in Canada has mandatory post call education requirements with the exception of Nova Scotia, which requires lawyers who wish to work in land registrations to complete a certain course. The Task Force has looked at the mandatory continuing professional development programmes of several of the United States, as well as those in England and Wales and the larger Australian states. In addition, the programmes of several of the other professions in British Columbia – particularly, those required by the College of Physicians and Surgeons, the British Columbia Dentist College, and the Institute of Chartered Accountants – were reviewed. It is worth noting that, apart from mid-wives, lawyers are the only professional body in British Columbia that are not required to participate in continuing professional education requirements by their governing body.

The type and requirements of the different mandatory education programmes vary considerably. Some are simply a requirement that lawyers take a certain number of credits which they can obtain by registering in a course offered by an approved provider. Usually one unit of credit amounts to one hour of course study. Other programmes are more intricate, and, while most are still based on obtaining a certain number of credits over a prescribed period of time, the manner in which the credit can be earned is varied. "Work-shadowing", mentoring, or teaching can generate credits in some jurisdictions. Still other jurisdictions require certain credits to be obtained in certain areas of study. The Task Force unanimously favoured programmes that offered more varied ways of obtaining credits.

(e) Policy Considerations

(i) Public Interest

How would implementing or not implementing a mandatory continuing professional development programme affect the public interest? The Law Society's mandate is to protect the public interest in the administration of justice in a number of ways, including by establishing standards for education, professional responsibility and competence. Would the public interest therefore be enhanced by mandatory continuing professional development? There is no doubt it would be if there were empirical evidence that allowed one to connect improvement in competence with post call education activity. This may lead some observers to suggest that the Law Society may be able to effectively

discharge its mandate through the encouragements it has given toward voluntary consumption of post call education activity.

(ii) Member Relations

Member relations have figured prominently in the past as an argument against mandatory continuing professional development, as there is a presumption that lawyers will resent the requirement and that forcing members to take courses may interfere with their desire to learn. On the other hand, mandatory continuing professional development may be viewed as a positive inducement for busy lawyers to take time out to engage in post call education activity that they may not otherwise undertake. Some studies also suggest that while there is initial resentment to the imposition, that dissipates relatively quickly and that the mandatory continuing professional development requirement soon becomes an accepted norm of the requirements of being a lawyer. In any event, the public interest must prevail over member preferences.

(iii) Public Relations

There seems to be a presumption that mandatory continuing professional education will improve the legal profession's standing with the public. It *is* one way of demonstrating publicly that the profession (and its regulator, the Law Society) takes the issue of competence seriously. It would bring the legal profession in British Columbia into line with other professions in the Province. How important this is may be a matter of debate if there is no real evidence to support that it produces a better quality of lawyer and may, depending on the cost of the programme, increase the cost of legal services.

(iv) Financial Implications

The cost of implementing a mandatory continuing professional development depends, of course, on what type of programme is implemented. Depending on the form of implementation, some standardization or vetting of course providers, and approval of courses will be required. A programme of mandatory education will require regulation through the tracking of the reporting of hours taken, and will require a consideration of what disciplinary consequences will follow if the mandatory requirements are not met, as well as the cost of imposing those sanctions where required. On the members' side, cost of participating in courses, travel, and lost productivity will no doubt be raised. As mentioned above, it is at least possible that the cost of legal services might increase, depending on the increase in Law Society fees, if any, and the cost of mandatory participation in courses.

(v) Programme Effectiveness

How would mandatory continuing professional development affect the effectiveness of the post-call education programme and mandate of the Law Society?

The Small Firm Practice Course is a form of mandatory continuing professional development for a designated group, and the Benchers, by approving it, have obviously considered it an effective way of ensuring a standard of education within a discrete category. Broader forms of mandatory continuing professional development in other categories (advocacy, ethics, professional responsibility) might do likewise, and might create a market for courses where there is none now. Doing so would require the Law Society to conclude that the current absence of a market is a *bad* thing in the public interest, and that the lack of such a market is an abdication by lawyers in discharging their responsibilities in this area.

On the other hand, if implementing mandatory continuing professional development were to discourage lawyers in education and learning, and make them reluctant participators instead of enthusiastic or well-motivated ones, the effectiveness of post call education might be adversely affected.

(vi) Government Relations

As far as the Task Force is aware, there is no discussion at the government level about legislating mandatory continuing legal professional development, nor is it aware of any negative comments by the government about the legal profession's lack of mandatory continuing professional development. The Task Force suspects that the government would not view the imposition of such a programme negatively.

(vii) Equity and Diversity

If there were to be a mandatory continuing professional development programme, the Task Force believes that there would be renewed calls for a bursary to ensure that economically disadvantaged lawyers were accommodated[2]. There might also be a call to ensure that mandatory continuing professional development addressed areas such as discrimination, substance abuse, and eliminating bias. California, for example, has mandatory continuing professional development requirements in each of these areas.

(viii) Legal Implications

Section 28(a)(ii) of the *Legal Profession Act* ought to give the Law Society the statutory authority to introduce a mandatory continuing professional development programme.

There was a challenge a few years ago to the California programme by a lawyer who was involuntarily enrolled as an inactive member of the State Bar (and therefore unable to practise law) for failing to comply with its requirements. He challenged the constitutionality of the programme on the basis that it exempted certain groups of members (law school professors, retired judges, elected officials

[2] The Continuing Legal Education Society of BC currently provides a bursary programme that provides for a 50% discount on courses for any lawyer identifying a financial need. That Society also allows for payments on an instalment programme.

and state officers) on the grounds that this violated equal protection. The California Court of Appeal agreed. However, the Supreme Court of California overturned the Court of Appeal's decision, holding that the programme did not violate equal protection principles. It did comment that the wisdom of some or all of the exemptions may be debatable as a matter of policy, however. See *Warden* v. *State Bar of California* 21 Cal.4th 628 (1999).

6. Options

The Task Force has identified six options for the implementation of a mandatory continuing professional development programme, four of which the Task Force recommends for further discussion, and two of which the Task Force recommends no further consideration be given.

The four options recommended for further consideration by the Task Force are:

i. A programme requiring a certain number of hours of study, of which a portion requires the study of certain subjects.

Many of the American states have adopted a mandatory continuing professional development education programme that requires a given number of hours of study per year, a portion of which must be devoted to certain subjects. Most usually require study of legal ethics and/or professionalism. Still others require courses in the study of harassment and discrimination. Some states have certain requirements for courses in skills development for newly admitted lawyers, which is likely an effort to address the lack of practice experience faced by young American lawyers - experience that BC lawyers are supposed to receive through articles and PLTC.

The Task Force believes that this may be an attractive option because it allows the Law Society to determine what subjects or skills it considers lawyers *need* to study – in other words to regulate the profession about the requirements that the Law Society, in its role as regulator, sees are not being met well by lawyers, or where there is a real, or even perceived, lack of knowledge of an issue. It could allow the Law Society to ensure that lawyers understood the Society's perspective on certain topics or issues, and allow the Society to prescribe the form of the education activity. On the other hand, it also allows a proportion of continuing education activity to be chosen by the lawyer with respect to the needs that the lawyer has identified for him or herself. It allows the lawyer some control in the direction of his or her continuing education by allowing the lawyer to make up the balance of required credits from courses or activities of a lawyer's own choosing.

The Task Force has, in the course of its work, debated requirements for a number of hours in courses on ethics and professionalism. There are, generally speaking, no such courses available, however, and would therefore either require the Law Society to develop and offer them, or to expect that commercial course providers will recognize the opportunity of a captive audience and offer the courses

themselves. If this were to occur, it would be likely that the Law Society would have to pre-approve the course or other activity. There would be little purpose in requiring study in a given area without ensuring that the form of education offered met the need the Law Society considered was currently not being met. Otherwise, the requirement would be only for the sake of the requirement itself.

ii. A programme of required courses for all lawyers, with the remainder of hours to be made up of activities chosen by lawyers.

This is a variation of option 1. Rather than require that lawyers devote a certain number of hours on a certain subject, the Law Society could require a lawyer to take a certain *course* that would cover one or more subjects. The remainder of courses or activities needed to meet mandatory education requirements would be left to the lawyer. Again, this would permit the Law Society to prescribe the form of the course. It would continue to allow the lawyer some choice in courses or activities to make up the balance of required credits.

The Law Society of England and Wales has a variation of this option. For example, all solicitors in England and Wales are required to take the Law Society Management Course Stage 1[3] between the date of admission and the third year of their mandatory continuing legal education reporting requirements. The 7 hours of that course counts toward the lawyer's mandatory continuing legal education requirement. Solicitors in their first year of reporting requirements must also take the Client Care and Professional Standards and Financial and Business Skills modules of the Professional Skills Course, unless exempted.

The points in favour of this option are similar to Option 1, with the added benefit to the Law Society of a simpler form of administration. The Society would only have to ensure that a particular course was taken, rather than having to check that courses or activities taken met the Society's requirements that prescribed subjects had been included in courses taken by a lawyer over the course of the reporting period. The course or courses contemplated by this option needn't be offered through the Law Society. They can be contracted out, provided they meet Society standards.

iii. A programme of required courses for certain areas of practice.

This option would require a lawyer to participate in a programme of study prescribed by the Law Society if the lawyer wants to practise in a particular area

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[3] The Course itself covers the following subjects, of which three must be studied:

- Managing finance
- Managing the firm
- Managing client relations
- Managing information
- Managing people

of law. The Law Society has started down this road with the Small Firm Practice Course which will require all lawyers who wish to offer legal services after January 1, 2007 through a firm of four or fewer lawyers to take a particular on-line course prepared and offered by the Law Society.

This option requires the Law Society to identify what areas of law are amenable to the option and to ensure that it was satisfied with the courses or other education activities available. It means that the Law Society would have to take considerable care in defining the area of law affected and the concomitant education requirement(s). The programme could open up the option of developing a limited licensing programme on areas of law, or a specialization programme.

The Law Society could, through this option, also prescribe the form of the course or activity. These could be focused on skills enhancements useful to practice in the given area of law, as well as on developments in the law. It is doubtful that the lawyer would be required to take the prescribed form of education *every* year. Moreover, the courses or other education activities could be aimed at various stages of a lawyer's career. This, the Task Force believes, would allow the Law Society to focus requirements on skills and knowledge, in different practice areas, that would be useful at various stages of a lawyer's practice. It would also allow the use of senior practitioners as teachers, if credit were given at the senior level for teaching younger lawyers necessary skills and knowledge in various practice areas.

The prescribed form of education and the providers of the education would have to be accredited or alternatively the Law Society would have to develop and operate some or perhaps all of the education itself, to ensure a standard of quality. This would add administrative burdens to the option.

Standard mandatory continuing professional development programmes require credits to be earned annually, or require a certain number of credits be earned over a period of years, allowing the lawyer to take more or fewer credits in any given year provided the required number is met at the end of the period. An alternative method of delivering the programme would be to divide a lawyer's career into defined periods, and to require certain activities or courses to be taken at each stage of one's career. The Task Force has obviously not yet determined what it would recommend if any of these three options were pursued. Each of the options described could be developed in either fashion.

iv. A programme requiring a certain number of hours of study through approved activities.

Rather than having the Law Society identify particular subjects or courses that each lawyer will be required to take over certain periods of time, this option would leave it to each lawyer to identify the subjects and modes of education that he or she wishes to take during the reporting period. The option would permit "approved activities" of education that would extend beyond courses offered by

continuing legal education providers. Examples of such activities (which the Task Force considers can be extended to all options under consideration) are set out in Part 7 below. The Task Force believes that an expansion of the forms of study will improve the accessibility of education, especially to lawyers in rural areas.

The lawyer will be left to determine the relevance of the subject and form of study to his or her practice and/or career or educational goals. This option therefore risks the development of haphazard education activity referred to above, but that concern may be alleviated if lawyers are reminded to give consideration to continuing education requirements each year. The mandatory aspect of the programme should assist in encouraging lawyers to consider the form and content of their education requirements on an on-going basis.

The options that the Task Force does not recommend are:

v. A requirement that lawyers simply take a certain number of hours of courses already available.

The Law Society could simply require that lawyers take a certain number of hours of courses already available through current course providers, such as the Continuing Legal Education Society, Trial Lawyers Association, Canadian Bar Association or the Federation of Law Societies. While this would be the simplest option to implement, the Task Force considers that it would be the least desirable option from the point of view of programme effectiveness.

vi. A professional development programme created by lawyers themselves.

Some firms and government agencies require lawyers to submit an annual plan outlining their intended professional development activities. The Law Society could emulate such a programme by requiring each lawyer to submit a plan of professional development annually. The Task Force does not support this option. While it has the benefit of engaging each lawyer to actively think about his or her professional education and development, the Task Force considers that this option would be too difficult and expensive to administer and monitor.

7. Forms of Education Activity

The Task Force believes that credit for mandatory continuing professional development activity should be based on a broad range of activities, and not limited simply to course study. After discussion, it recommends that the following activities be included for credit in any programme developed:

- Accredited courses. The time spent can be for *attending* courses, and for *preparing* and *delivering* courses. Review of video repeats can be permitted. Some consideration could be given to whether such review in a group setting,

facilitating discussion, ought to be required for credit under this heading. If not, credit might still be available under another heading.

- Non-accredited courses. Some programmes permit credit for time spent in non-accredited courses if they are of particular relevance to a lawyer's area of work. Time for preparing and delivering such courses can also be credited.

- Coaching and mentoring. The Law Society of England and Wales, for example, allows actual time to be claimed for structured coaching and structured mentoring sessions involving professional development of 30 minutes or more, as long as they have written aims and objectives, are documented showing an outcome, and are accredited under an authorization agreement. The same Law Society also permits credit for "work shadowing" if it has clear aims and objectives and feedback or reflection.

- In-house programmes. Credit can be offered for courses offered by a law firm or other employer on legal topics relevant to a lawyer's practice. Debate may be necessary to determine the criteria on which the quality of the programme would be judged, as there would have to be some standard against which to measure the programme. Credit for in-house programmes is available in other jurisdictions, so there are precedents which we may draw from. Teaching and preparation time can also be available for credit.

- Professional group attendance, if an educational component is part of the meeting. Attendance at meetings of CBA sections is available currently to lawyers for the purpose of their reporting requirements. However, other professional group attendance can be available for credit. For example, rural bar associations could, as a group, bring in a speaker to address substantive or practice issues. This would allow lawyers in less densely populated areas to obtain credits for mandatory continuing professional development purposes without the need to travel to Vancouver.

- Study groups. Formal or informal study groups can be established amongst members. This method of professional development is common in dentistry and accounting. To qualify, the group probably ought to develop some objectives and, perhaps, report on some form of "outcome."

- Writing. Credit can be given for hours spent on writing on law or practice for law books, journals, or newspapers.

- Teaching PLTC. Actual time spent teaching (and, if necessary, preparation for teaching) articling students at PLTC can be available for credit

- Research. At present, lawyers are not permitted to claim credit for hours spent researching legal topics on client matters. Not all research is client oriented, however. Some programmes permit credit for actual time spent researching legal

topics or matters relevant to the practice of law, if the research results in a memorandum, written document, precedent, or survey.

- Post-graduate study/preparation of a dissertation. Study for a post-graduate degree on a matter relevant to law is available for credit in some jurisdictions.

In developing a programme, there are still a number of issues that would need to be addressed beyond the nature of the credits, such as the period over which the credit must be earned, how many credits are necessary, and whether credits may be carried over, to name a few.

8. Conclusion

The Task Force has concluded that it is time for the Law Society to develop a mandatory continuing professional development programme, provided that the programme is one designed to meet the goals and general considerations described in Part 5 above. The Task Force generally does *not* support or recommend the development of a simplistic programme requiring lawyers to take a certain number of hours of course study based upon the current availability of programmes.

Instead, a programme of education should be developed that, amongst other things

- serves as a basis for a comprehensive post-call education programme;
- provides for the development of skills as well as knowledge about developments in the law;
- provides resources that are relevant to lawyers at various stages of their careers;
- is based on criteria (or "credits") that are broadly categorized and will therefore be easily obtainable by lawyers irrespective of their practice location;
- will be able to ensure that subjects that the Law Society considers to be important to a lawyer's professional development are addressed, irrespective of market considerations.

While the Task Force has reached a consensus that the time has come to create a mandatory continuing professional development programme, it has not reached a consensus on which of the four options outlined in Part 6 (i), (ii), (iii) amd (iv) should be preferred. The Task Force has reached a consensus that, whatever option is ultimately pursued, credit toward the programme should be as broadly based as possible from the list outlined in Part 7 above.

The Task Force has prepared this Report to determine if the Benchers agree in principle with the recommendations made. If so, the Task Force will discuss and develop the options further and return with a recommendation concerning how the programme should be structured. The Task Force plans to accomplish this by July, 2007.

If the Benchers agree in principle to create a programme of mandatory continuing professional development, the Task Force believes that a reasonable date for its introduction would be January 1, 2009, and will work toward that schedule.

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