



Mandatory Continuing Professional Development –
Two-Year Review

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Submitted by: The Ontario Bar Association



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BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



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The Ontario Bar Association ("OBA") very much appreciates the opportunity to provide input on the Law Society of Upper Canada's ("Law Society") review of mandatory continuing professional development ("CPD"). We congratulate the Law Society and staff who have worked to implement and manage mandatory CPD in its first two years. While we look forward to working with the Law Society to enhance the CPD experience for Ontario lawyers, we recognize that initial implementation was a significant undertaking which was carried out very well, as evidenced by, among other things, the high rate of compliance even in the first year.

The OBA

(a) Lawyers as Subjects of the CPD Requirements and as Service Providers

As the largest voluntary legal organization in the province, the OBA represents 18,000 lawyers, judges, law students and professors. Through our 38 practice sections, we provide legal education in virtually every area of the law. As more fully outlined below, our members are involved in the development and execution of our CPD offerings. We are, therefore, speaking on behalf of members from two perspectives: as lawyers subject to the mandatory CPD requirements and lawyers who play a role in offering CPD. The committees who oversee CPD, the OBA CPD staff and all of our practice sections were canvassed for input and we received comments from both perspectives.

(b) The OBA's CPD

Currently, CPD topics are generally chosen by the practice section or sections most expert in the relevant field. Members of the sections participate in choosing the presenters from among leading judges, lawyers and other professionals, both inside and outside the organization. The process is supported by CPD professionals including the Director of CPD, a program planning lawyer, the Director of Sections and their staff. The OBA's CPD professionals ensure that topical issues are covered and that the content and approach are appropriate to meet the Law Society's requirements for accreditation and to otherwise maintain, enhance and update the knowledge and skill of the profession.

Since the inception of mandatory CPD, the OBA has offered more than 560 programs including approximately 200 accredited programs totaling more than 200 accredited hours and 1000 substantive hours.

Comments Received Regarding CPD

We received comments from our membership and CPD staff in three basic areas:

- (a) The mandatory CPD requirement generally – including the number of hours required and the calculation of the hours;
- (b) Accreditation – including the process for accreditation and guidance provided with respect to creditable topics in certain areas; and



(c) Administrative issues – including the portal.

Where the OBA has the capacity to offer assistance to the Law Society in addressing the issues raised by our members, we have made recommendations accordingly.

(a) The Mandatory CPD Requirement

The mandatory requirement for CPD received resounding support. Members from various substantive practice areas and from our Young Lawyers' Divisions felt that it is a reasonable and important requirement that ensures the profession remains aligned with other respected professions and helps to protect the public.

In addition, essentially no issue was taken with the overall number of required hours – 12 was considered completely reasonable. There were calls for some flexibility in two regards:

1. Those whose practices tend to involve long trials (including members of our Insurance Law Section) suggested that, without reducing the overall number of hours, licensees should be allowed the flexibility to complete their hours on a biennial, rather than annual cycle. The requirement would be changed to mandate 24 hours of CPD over a two year period. It is, of course, recognized that such a change might negatively impact at least one goal of CPD – the requirement to stay current – and we would only recommend this flexibility if it could be crafted in a way that aligned with the currency goal and perhaps only on a case-by-case application basis;
2. New members considered the requirement for professionalism hours to be important. However, some indicated that the need to combine substantive programming with professionalism content was problematic. Being required to find a program with .5 professionalism hours limits the number of eligible substantive offerings available to new lawyers at a stage where there is still a significant substantive learning curve in their areas of practice. This is particularly true for new lawyers whose practices are focused on one area of expertise. It was suggested that rather than attaching any professionalism requirement to eligible substantive hours, new lawyers be required to have a higher number of professionalism hours.

(b) Accreditation

1. Procedural Issues

The OBA CPD and Sections Directors and their staff very much appreciate the approachability of members of the Law Society staff and the latter's willingness to take the time necessary to discuss general issues and work out case-specific problems. Despite top notch staff at both ends, some issues in the



accreditation process persist to the frustration of OBA members and staff involved in CPD. These include:

- (1) *Delay* – For providers like the OBA there are essentially three stages between inception and the actual delivery of an accredited program: program design; accreditation and advertisement. There is very little opportunity for these steps to occur concurrently since the Law Society requires significant program design detail before it will accredit and accreditation is necessary before the program can be most effectively advertised (some advertising is, by necessity, done before accreditation but it is not as effective without the ability to include an accreditation). A three-week delay in accreditation is too significant in many cases, particularly where the issue is topical and the bar requires timely information (eg. a significant conflict of interest decision that affects the practice. This would be a professionalism program that required quick execution). Even with programs that have a more standard timeline, three weeks between design completion and the ability to effectively advertise the program and collect realistic attendance numbers is a frustration for the OBA members involved in programming. It would be helpful for the Law Society to engage in further discussion with program providers to determine the factors affecting the length of accreditation delay and determine if, working together, we can shorten the process;
- (2) *Failure to Provide Reasons* - In the very few instances where OBA accreditation applications have been rejected or where the hours accredited are lower than requested in the application, no explanations are usually provided. This leads to a sense that the decisions are arbitrary and often even inconsistent with previous decisions on similar programming. The Law Society's Assistant Manager, Licensing and Accreditation as well as, others have been extremely helpful in resolving issues where decisions at first instance were not appropriately made or explained. However, the need to involve a second decision-maker, even a very efficient one, exacerbates delay and increases the Law Society's workload.
- (3) *Program Provider as Sole Granter of Accreditation* - While we understand that appropriate departmental screens are in place, being a high-market-share program provider with complete control over the accreditation process, continues to put the Law Society in an awkward position. For example, members who participate in programming for both organizations mention how much program detail is required from the OBA before a program can get accredited whereas Law Society programs are advertised well in advance with accredited hours but without a complete agenda or speakers' list. While we have enjoyed a good working relationship with the Law Society on accreditation issues, this perception remains problematic.

Recommendation

1. **The three most significant accreditation issues could be resolved by a process in which the Law Society allowed certain trusted providers, such as the OBA, to make the accreditation determinations in respect of their own programming. The OBA's professional CPD staff,**



particularly its program planning lawyer and relevant Directors, already perform a screening function. Members suggest many programs for accreditation that are not forwarded to the Law Society because the content is not appropriate. It is exceptionally rare for an accreditation application from the OBA to be rejected. The details of the process would have to be the subject of further consultation but could include a formal or informal process to get a pre-ruling in cases that are not clear cut, as well as an audit process. While the Law Society would, by necessity, remain in ultimate control of accreditation, this step would reduce Law Society and OBA workload, allow for the more efficient provision of programs and go a significant distance in resolving the problematic perception that the Law Society has an unfair competitive advantage.

2. Accreditable Content Issues

In the context of in-house counsel (including in-house government lawyers), there appears to be a significant disconnect between the views of the Law Society accreditation staff and the views of counsel themselves in terms of what topics are useful for teaching professionalism and practice management in that context. Even senior members of the in-house and public-sector bar are often surprised by program topics that are not accredited. This disconnect raises issues for the Law Society and the OBA, whose Canadian Corporate Counsel Association and Public-Sector members find the range of accredited programming topics to be limited and, therefore, repetitive. More importantly, from counsels' point of view, highly relevant practice management and professionalism topics are not accredited.

Recommendation

- 2. In-house counsel and those who provide programming to in-house counsel should meet with the Law Society to help develop clear accreditation guidelines that fit this context. This may involve clarifying existing guidelines used (which are not currently clear or transparent) or may involve expanding acceptable topics to better accord with the issues faced by in-house counsel.**

(c) Administrative Issues

Aside from the nearly universal support for mandatory CPD, the comment we received most consistently was that the Law Society portal, through which hours are recorded, is not user-friendly. While this was frequently given as a very general comment, the specifics provided include:

1. The requirement to enter substantive program hours manually

Currently, the portal lists only substantive program hours that are attendant with accredited programs. This requires manual input of stand-alone substantive programs. Ultimately, the portal should provide a



comprehensive list of substantive programming, including stand-alone substantive programming and allow the same search and pre-population functions that are available for accredited program hours. It is understood that non-program hours involve such significant variety that manual entry remains necessary. Stand alone substantive program hours, however, can be listed and allowed to pre-populate the record-keeping fields with virtually identical functionality as is now employed for combined programs. It is recognized that the Law Society may list only accredited hours on the basis that they have no role in approving substantive hours. However, as the Law Society mandates recording of the hours, it should allow for a user- friendly way for its busy licensees to perform such recording.

2. Difficulty finding a program and discrepancies

As the program provider, the OBA tends to be the first line of inquiry if a lawyer has trouble finding or recording an OBA program on the portal or if there is a discrepancy between the number of hours expected and the number of hours listed. The OBA fields more than a dozen calls per month on these and similar portal issues. As none of the OBA's CPD Director, Sections Directors or their staff have access to the portal, they can take virtually no steps in troubleshooting these issues, other than to refer the customer to the Law Society. This wastes lawyers' time, negatively impacts the reputation of both organizations, duplicates call intake efforts at both ends and increases the Law Society's work load.

Recommendations:

- 3. In order to assist in the listing of substantive program hours, the OBA can provide a list of its substantive programming in a format desired or, if provided with the necessary mechanism, can upload its programs directly onto the Law Society's website. This would have the added advantage of mitigating any perception that the Law Society's programming has the unfair competitive advantage of being the only complete list of programs enumerated on the only site that all members of the profession are required to access for various reasons (eg. annual filings, Rules of Professional Conduct Changes, recording CPD hours etc.).**
- 4. Allowing the OBA's CPD and Sections Directors, program planning lawyer or other mutually-agreed-upon delegated staff, to have administrative access to the portal would allow for the OBA to ensure listings are complete and accurate and to troubleshoot for those who are recording their OBA programs. It would eliminate the necessity for members to have two conversations about the issue and avoid unnecessarily elevating lawyers' frustration with both organizations. This recommendation relates to access to the program listings only. There would be no requirement for the OBA staff to be able to access any information on any licensee.**



Conclusion

The OBA would be grateful for the opportunity to work with the Law Society on the details necessary to operationalize our recommendations. We once again thank the Law Society for a productive working relationship.