

## **Continuing Professional Development Working Group**

### **Report to Council**

**November 16, 2010**

#### **Introduction**

The Continuing Professional Development Working Group (CPDWG) was appointed by Council in February 2010, to examine and make recommendations on the components of a Professional Development Program for Nova Scotia lawyers.

The mandate of the CPDWG was to:

- Review and draw upon the content, conclusions and recommendations made by the Continuing Competence Task Force and the Futures Project;
- Consider ongoing developments in other jurisdictions; and
- Recommend the details of a Continuing Professional Development (“CPD”) Program for Council’s consideration.

Within this mandate, the CPDWG was asked to specifically address the following considerations:

1. Determine the key elements (e.g. self-assessment, formalized education, self-learning, quality assurance, etc.) of a Continuing Professional Development Program for the legal profession in Nova Scotia;
2. Identify which, if any, components of a Continuing Professional Development Program should be mandatory and the specific scope of any such components;
3. Articulate any reporting and monitoring requirements on the part of participating lawyers, whether through the Annual Member Report or otherwise;
4. Explore and determine the extent to which CLE is required, as an element of CPD and precisely what should be introduced if deemed appropriate;
5. Identify how any CLE programs should be offered to members;
6. Identify which, if any, CLE should be offered and delivered by the Society and which could be delivered by appropriate external service providers and the nature of these relationships;
7. Identify whether self-assessment tools and resources should be part of CPD and if so, identify what and how these should be provided to members;

8. Specify the nature of consultation needed with members prior to approving a Continuing Professional Development Program;
9. Identify what changes, if any, would need to be considered to the *Legal Profession Act* or Regulations;
10. Identify the steps and timing for the implementation of the recommended Continuing Professional Development Program; and
11. Identify the costs associated with implementing and operating a Continuing Professional Development Program together with the sources of revenue to cover such costs.

See Attached Terms of Reference, Appendix “A”.

An Interim Report was provided to Council in June 2010. This report focused on whether Nova Scotia should move to a program of mandatory CPD. In considering this question, the CPDWG extensively reviewed the work and recommendations of the Continuing Competency Task Force in 2006 - 2007 and the Futures Project consultations in 2008 – 2009. The CPDWG also considered the recent introduction of mandatory CPD programs in other Canadian jurisdictions. The CPDWG Interim Report concluded that the Nova Scotia Barristers’ Society should move in the direction of mandatory CPD, and made further recommendations regarding the scope of such a program.

Council’s feedback on the Interim Report was generally supportive of the direction taken by the CPDWG. Since June, the CPDWG has focused on refining its recommendations regarding mandatory CPD, and completing its recommendations regarding the remaining considerations.

While this report addresses the CPDWG’s recommendations on all 11 considerations, its primary focus remains the recommendation that the Society should introduce a program of mandatory CPD.

### **Mandatory CPD in Nova Scotia: The Long and Winding Road**

The Nova Scotia Barristers’ Society has for many years recognized the importance of continuing professional development to ensure the maintenance and enhancement of competence of the Society’s members.

The *Legal Profession Act* addresses the Society’s ability to regulate in this area as part of its mandate for “Protection of the Public” in Part III of the *Act*. Section 28(2)(d) of the *Act* provides Council with regulation-making authority:

Respecting the promotion of standards for the practice of law, including regulations setting mandatory requirements for some or all members of the Society for attendance and successful completion of programs of continuing legal education and professional development, and prescribing the sanctions or restrictions that apply where a member fails to successfully complete the requirements. *Legal Profession Act, section 28(2)(d)*

In the past, the Society has required mandatory education in limited circumstances, including mandatory *Land Registry Act* training for all lawyers wishing to practice property law in the online system, and the mandatory *Civil Procedure Rules* training prior to the introduction of new *Civil Procedure Rules* in January 2009.

Since 2006, the Society has also recommended members participate in at least 12 hours of structured continuing professional development per year and at least 50 self-study hours per year. While participation in such activities has been voluntary, the reporting of them is mandatory on each member's Annual Member's Report.

In spite of acknowledging the importance of CPD to a lawyer's continuing competence, the Society has been historically reluctant to implement mandatory CPD beyond the scope set out above. In 2007, the Continuing Competency Task Force recommended against a wide spread program of mandatory education, proposing instead an "as needed" program to respond to specific legislative change or identified areas of risk.

Some of the reasons cited against a wide spread program of mandatory education included:

- The lack of statistical data indicating education was needed to protect the public interest;
- The potential costs to the members and to the Society of implementing a program;
- The accessibility of appropriate CPD programs;
- The lack of similar requirements elsewhere in Canada; and
- Imposing professional development requirements would create negative push back from members, which would run counter to the Society's goal of creating a positive culture of continuous learning among the members. It could create a disincentive for Members to engage in continuous learning activities.

As a result of the Society's recent history of rejecting a wide spread mandatory CPD program, the CPDWG took great care in determining what, if any, factors had changed since the 2007 recommendations of the Task Force. The CPDWG concluded that there had been significant change:

1. In 2007, no other Law Society in Canada had implemented mandatory Professional Development. The trend at that time was for mandatory reporting of professional development activities.
2. There is now a national trend toward some form of mandatory CPD. As of this writing, British Columbia, Saskatchewan, Ontario, Quebec, and New Brunswick have mandatory annual CPD requirements and Alberta has mandated Professional Development Plans. Manitoba has also recently announced they will be implementing a mandatory CPD program, and the issue is on the agenda for discussion in both PEI and the Northwest Territories.
3. The accountability of professional regulators, including law societies, is increasingly under scrutiny by the public and by governments. Demonstrating that our members are participating in continuing professional development will serve to increase confidence in the professions' ability to regulate in the public interest.
4. Law Societies, including Nova Scotia, are lagging behind other professional bodies with respect to Continuing Professional Development.
5. In their Report, the CCTF identified the need to consider statistical data when determining if mandatory education is needed to protect the public interest. No such data was available in 2007. Now, through the Annual Member's Report, the Society has three years of data available for consideration, and partial information for 2010. These statistics reveal that in 2007, 21% of members reported doing no CPD at all, in 2008, 19%, and in 2009, (a year in which there was mandatory Civil Procedure training), this number was still at 14%.
6. Consultations by the Futures Committee in 2008-2009 found that lawyers were increasingly identifying the need for CPD in order to maintain their competence to practice in quickly changing work environments.
7. The Futures consultations also found there was a general receptivity for some form of mandatory CPD, perhaps as a result of the member's recent experience with mandatory *Civil Procedure Rules* training.
8. There is an increase in available and accessible professional development programming primarily through electronic media (internet, conferences which allow participation through telephone conferencing). This permits those outside of the urban centres to more easily participate in professional development activities.

Against this backdrop, the CPDWG then considered the questions posed by its mandate.

**1. Determine the key elements (e.g. self-assessment, formalized education, self-learning, quality assurance, etc.) of a Continuing Professional Development Program for the legal profession in Nova Scotia.**

In 2007, the Continuing Competency Task Force articulated the elements necessary for what it described as a comprehensive competence regime as:

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. (emphasis added)

The CPDWG believes that Self Assessment, Education and Quality Assurance continue to be the key elements of a CPD program in Nova Scotia. Within a voluntary or mandatory regime, lawyers must identify their strengths and weaknesses as lawyers, and determine what range of educational opportunities would enhance their practice. Once the need is identified, lawyers must have reasonable access to relevant educational opportunities. Finally, the Society must continue to ensure that standards of competence are met.

**2. Identify which, if any, components of a Continuing Professional Development Program should be mandatory and the specific scope of any such components.**

As set out in the CPDWG's Interim Report, this issue can be broken down to the following sub issues:

1. Should there be a mandatory component to a Nova Scotia CPD program?
2. If so, what model should be adopted?
3. What should be recognized as acceptable CPD activity within that model?
4. Should there be accreditation of programs?

*Should there be a mandatory component to a Nova Scotia CPD program?*

The CPDWG has carefully considered the changes which have been identified since this question was last considered by the Continuing Competence Task Force in 2007. (see above)

While it could be argued that no one change is enough to “tip the balance” in favour of mandatory CPD, when all of the changes are considered together, there is a compelling case for the introduction of mandatory continuing professional development in Nova Scotia. Mandatory CPD represents proactive regulatory action in support of the Society’s mandate to ensure protection of the public and will demonstrate to the public, government, and the profession that the Society is committed to establishing, maintaining and enhancing the competence of its members.

As threats to self regulation grow, the Society must not only be regulating in the public interest, but must be seen to be doing so. Responding only when a problem arises in a disciplinary context is no longer enough.

Even in the absence of empirical evidence of a correlation between mandatory CPD and increased competence, the arguments in favour of mandatory CPD remain persuasive.

These arguments have been canvassed in reports from British Columbia, Ontario and New Brunswick, and as set out in the January 26, 2009, N.B. report “Has the Time Arrived for Mandatory Continuing Professional Development in New Brunswick” include:

- 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 programs.
- Mandatory continuing professional development programs demonstrate to the public that the legal profession is resolved to combat competency concerns and that it is committed to uphold and protect the public interest in the administration of justice by establishing standards for education.
- For lawyers who find practice pressures deter them from taking continuing education programs, mandatory continuing professional development will provide a positive incentive to take time out to engage in post call education/professional development activity that they may not otherwise undertake.

- Young lawyers, tasked with large volumes of work, will feel less uncomfortable asking firms for time off to attend educational or professional development activities or requesting that their firms cover their cost, given that CPD is mandatory.
- Extra funds from mandatory continuing professional development programs would improve the quality and quantity of continuing education programs and would assist providers of such programs to devote more time and resources to develop more effective programs.
- 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.
- The law society will clearly articulate its expectations to lawyers and the public concerning MCPD which will further emphasize the importance that such education plays in assuring competence in its members.
- Online and technology based continuing education is expanding quickly throughout the Province, thereby enhancing access by reducing geographic and time barriers.
- The regime is based on credits broadly categorized and therefore readily attainable by lawyers regardless of their location.

In a country where the majority of Law Societies now require their members to participate in CPD, and in a province where the majority of professions require CPD participation, what justification is there for Nova Scotia lawyers to be exempt? The CPDWG could identify no persuasive arguments in favour of the status quo.

*What Model of Mandatory CPD should be adopted?*

The Law Societies in British Columbia, Saskatchewan, Ontario, Quebec and New Brunswick, have adopted an hours-based mandatory CPD approach. Although there are variations in terms of reporting, accreditation, and the scope of CPD accepted, the general trend is to require 12–15 hours per year. The “hours per year” model is also the model most common in U.S. jurisdictions.

By comparison, Alberta does not require specific hours of CPD, but does require members to annually prepare a professional development plan. Such plans are not filed with the Society, but a member must verify that a plan has been prepared.

The Alberta Law Society provides tools on its website to assist members in preparing their plans. The Law Society's emphasis is on "intentionality", encouraging its members to reflect upon the components of a professional development plan that would assist them in their practice.

In considering which model is appropriate for Nova Scotia, the CPDWG recognizes the need to balance the Society's obligation to ensure competence and accountability (and thus not to "under-regulate") with the desire not to "over regulate" professional development (which is ultimately best determined by the members themselves).

The CPDWG also considered the options in light of the key elements of self assessment, education and quality assurance. Any professional development program which is adopted must address and facilitate access to appropriate resources to support the Society's members in these areas.

With these considerations in mind, the CPDWG has determined that an hours-based program should be introduced in Nova Scotia, but the Society should also encourage elements of the Alberta System which emphasises self-assessment through Professional Development Plans. The CPDWG is therefore recommending a "Made in Nova Scotia" program, which would include mandatory CPD "hours," while at the same time encouraging self-learning, individual self-assessments and the preparation of individual professional development plans.

#### *How many hours should be required?*

The CPDWG recommends an annual mandatory minimum of 12 hours of CPD. (representing one hour of CPD per month). This should be easily achievable by the members and is consistent with the majority of other jurisdictions. It is also supported by the results of the Member's 2010 Annual Member Reports. For those members reporting CPD activities, the average time spent in formal learning is 30.56 hours and the average time spent in informal self-study is 63.27 hours. The recommended 12 hours of mandatory professional development will therefore promote CPD participation of those reporting no CPD, while at the same time creating no additional burden on those who are already taking advantage of CPD opportunities.



The CPDWG also recommends that these 12 hours be inclusive of any “one off” mandatory “education” programs which are required by the Society in response to significant legislative or rule changes. (e.g. the *Civil Procedure Rules Training*)

The CPDWG believes that there is continued value in not only the more structured types of CPD, but also in ongoing self-learning which includes reading legal journals, texts, publications, newsletters, and electronic media on subjects relevant to the member’s practice of law. The CPDWG therefore recommends that the Society continue to recommend each member annually participate in 50 hours of self-learning/self-study and that such hours continue to be reported on the Annual Member’s Report.

#### *What Activities Should be Included?*

In its 2006 Report, the Continuing Competency Task Force (CCTF)) adopted a broad definition of “Continuing Professional Development” as activity which:

Encompasses both formal learning by lawyers through participating in continuing legal education programs of some type and informal or private learning of lawyers through research, reading, mentoring, interacting with individual colleagues, and learning from experience.

(Reference: January 30, 2006 Report of MCLRTF/CCTF page 1)

The CCTF also recognized the breadth of settings in which learning may occur:

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. As stated earlier, 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.

(Reference: January 30, 2006 Report of MCLET/CCTF, page 5)

In considering what activities should be accepted by the Society as legitimate CPD, the CPDWG recommends a broad inclusion of activities which are “relevant to the member’s practice of law”.

The CPDWG has considered and decided against a number of the limitations imposed by the other jurisdictions on the nature of the CPD activity, the number of participants and the

requirement for in person attendance. The CPDWG feels that such restrictions could create a hardship for practitioners outside of the urban areas, and ignores the unique and individualized nature of CPD.

At the same time, the CPDWG recognizes the need to encourage CPD in more than just one scope of activity, in order to enhance competence in all areas of practice. The evidence available to the CPDWG suggests that the majority of issues that arise within the professional responsibility context and the insurance context relate not to competence in the member's substantive area of practice, but to practice management and professional responsibility issues.

For this reason, the CPDWG is recommending that three categories of CPD be established, "Substantive Legal Education and Skills Development", "Risk and Practice Management" and "Professionalism." To assist members, the CPDWG has created a non-exhaustive list of activities which would fall into each of these categories and recommends that the Nova Scotia CPD program should require that at least two (2) CPD credits be from activities in each of the three categories. (See Appendix "B")

The CPDWG recommends that this requirement be "phased in" over two (2) years. In its Interim Report, the CPDWG was recommending a longer phase in period, but in consideration of feedback received from Council, is now recommending that in year one (1) of the program, members should be allowed to achieve their mandatory 12 hours of CPD in any of the three categories. From year two (2) and beyond, members will be expected to have at least two (2) credit hours in each of the three categories.

The CPDWG has also created a list of accepted methods by which CPD can be achieved, all designed to create flexible, and accessible CPD opportunities. These include both conventional and new methodologies, such as:

- in person, formal education,
- on line courses,
- webinars/podcasts of courses or educational programs,
- distance education,
- teaching or presenting,
- writing or editing a book, article or blog,
- organized study groups of two or more people,
- in-house educational sessions, (e.g. lunch and learns or roundtable discussions),
- educational component of bar and law association meetings.

*Should there be a formal accreditation of CPD content or Programs?*

The CPDWG has carefully considered the experience of Law Societies that have introduced an accreditation program for CPD. Under such accreditation models, either the course provider, or the specific activity can be “accredited”. Members participating know in advance whether the Society allows a CPD activity to “count” towards their hours.

The experience elsewhere is that an accreditation process is very resource intensive. The CPDWG is concerned that the introduction of an accreditation process will absorb resources which would otherwise be available to enhance CPD opportunities. In addition, the CPDWG is concerned that such programs tend to focus members attention on obtaining the “certificate of attendance” rather than focusing on the activities themselves. Finally, an accreditation process may not fully recognize that each CPD can and should be uniquely tailored for each member.

In consideration of these factors, the CPDWG recommends that the Society not engage (at the present time), in any formal accreditation of CPD content or programs, but that resources be expended instead to assist members in identifying and accessing appropriate CPD within the recommended categories. The question of accreditation can be revisited, if necessary, at a later time.

*Exceptions*

The CPDWG recognizes that there should be some exceptions or modifications to mandatory CPD requirements, but believes that such exceptions should be rare. The CPDWG recommends that:

- If a member enters or leaves the profession during a reporting year, as reflected in a change of their practicing status, their CPD requirements will be prorated in accordance with the length of their absence from practice.
- In exceptional circumstances, the Executive Director may relieve a member of their CPD requirements, or may grant an extension for the completion of such requirements.

The CPDWG has also considered whether all practicing members should be required to obtain credits in all three of the CPD categories. The CPDWG believes that each of the CPD categories include learning opportunities which would be beneficial to all members, and which would enhance their competence, regardless of their field or scope of practice.

**3. Articulate any reporting and monitoring requirements on the part of participating lawyers, whether through the Annual Member Report or otherwise.**

*Reporting Requirement*

The CPDWG recommends that members be required to report both their mandatory and recommended/voluntary CPD activities on their Annual Member's Report. The CPDWG understands that it may be possible to establish an interactive reporting mechanism, by which members, firms, or course providers can update a member's CPD activities as they occur during a year.

*Failure to Report*

The CPDWG recommends that a failure to report on CPD activities on the Annual Member's Report will be treated like a failure to file a Report – and may result in administrative suspension of the member. If a member deliberately refuses to complete his or her CPD activities or to record such activities, they may find themselves subject to both an administrative suspension and a disciplinary investigation.

*Audits*

The requirement to attend CPD activities will be a new regulatory obligation upon lawyers. The Society, as the regulator acting in the public interest, must be able to verify compliance with these requirements as it does with other obligations imposed on members, such as its oversight of compliance with trust account rules. In an MCPD world, there must be a means to verify reported compliance by lawyers. As with other oversight activity carried out by the Society, this should be done in a minimally intrusive way.

The CPDWG recommends that the Society implement a program for the random auditing of members' compliance with their CPD requirements.

**4. Explore and determine the extent to which CLE is required, as an element of CPD and precisely what should be introduced if deemed appropriate.**

The CPDWG understands CLE in the above question refers to the more standard forms of classroom/course learning, as compared with CPD which encompasses a much broader scope of learning activities. The CPDWG recognizes that traditional CLE programming will continue to be a valuable component of CPD.

As is noted later in this report, the CPDWG also recognizes that, at present, there may not be sufficient educational materials/offerings available in the areas of Risk and Practice Management and Professionalism. As a result, particularly during the first five years, the Society should make special efforts to determine whether the members are finding a sufficient range of accessible and effective CPD educational offerings in all required areas. No cost implications have been calculated for this work if it is to be undertaken.

**5. Identify how any CLE programs should be offered to members.**

The CPDWG recommends that continuing professional development opportunities be broadly defined and should be offered through both conventional and new methodologies.

Included in the category of acceptable methods are:

- in person, formal education,
- on line courses,
- webinars/podcasts of courses or educational programs,
- distance education,
- teaching or presenting,
- writing or editing a book, article or blog,
- organized study groups of two or more people,
- in-house educational sessions, ( e.g. lunch and learns or roundtable discussions),
- educational component of bar and law association meetings.

**6. Identify which, if any, CLE should be offered and delivered by the Society and which could be delivered by appropriate external service providers and the nature of these relationships.**

The CPDWG recognizes that the Society already offers numerous CLE/CPD programs, which include components relevant to each of the categories of mandatory CPD. The Society should ensure that programs in the required areas are accessible to the broadest scope of members. Outside providers should be encouraged. The Society should identify any “gaps” in CPD coverage, and should make a focused effort to provide programs in such areas or to ensure they are accessible. It is anticipated that initially, the Society will play a larger role in the provisions of CPD in the areas of Risk and Practice Management and Professionalism.

The Society should consider whether it is feasible to provide “links” to outside providers’ CPD programs on the Society’s website and if so, what screening would be applied to a company seeking to be “linked”.

**7. Identify whether self assessment tools and resources should be part of CPD and if so, identify what and how these should be provided to members.**

Members who regularly engage in self-assessment will be uniquely able to determine CPD activities which will benefit their practices. As this is a key element of a CPD program, it is essential that the Society provide its members with access to self-assessment tools and resources. This could be done through the posting of resources on the website, or through the presentation of CPD courses which are themselves focused on self-assessment techniques, check - lists and tools.

One form of self-assessment tool is the creation of a Professional Development Plan (PDP). PDPs assist lawyers in being more intentional with respect to which professional development activities will contribute to their continuing competence and assist them in their practice. This too, however, is an area in which the Society may be required to provide resources to assist members in developing and maintaining a plan. The resources which may be required for the Society to provide support for this recommended activity have not yet been assessed. At a minimum, the CPDWG envisions the Society offering workshops to assist members in developing their CPD plans, which would include aspects of self-assessment.

The CPDWG recommends that lawyers should be encouraged to access PDP tools as appropriate to their individual circumstances, and the Society should play a leading role in ensuring there are resources available to assist members in this regard.

**8. Specify the nature of consultation needed with members prior to approving a Continuing Professional Development Program.**

The CPDWG recommends regular updates to the membership on the website and in Inforum advising that a discussion paper on the implementation of mandatory CPD will be available in November, and that the Society will be consulting members on the Paper's recommendations over the winter (2011) months.

A Discussion Paper should be distributed to the membership, with a focus being specifically drawn to the recommendations with respect to mandatory CPD.

Once the Discussion Paper is approved for dissemination, the following is recommended:

- The paper should be e-mailed to all members, with an electronic feedback form, and a deadline for feedback.
- The paper should be posted on the Society's website, with a direct link to an electronic feedback form.
- Additional input should be solicited from :
  - Managing partners of all firms and heads of government and corporate law departments;
  - County Bar Presidents; and
  - Other "groups", as determined appropriate by the CPDWG, to maximize opportunities for member input.

The above consultation should be completed by the end of February 2011. The CPDWG will consider the input, and revise its proposals as appropriate. Revised proposals will be prepared for Council's consideration at its March 2011 meeting, with an anticipated vote on the recommendations in April 2011.

**9. Identify what changes, if any, would need to be considered to the Legal Profession Act or regulations.**

The *Legal Profession Act*, section 28(2)(d) currently authorizes Council to make regulations respecting the promotion of standards for the practice of law, including regulations setting mandatory requirements for some or all members of the Society development and prescribing the sanctions or restrictions that apply where the member fails to successfully complete the requirements.

As such, no changes to the *Legal Profession Act* are necessary to implement a program of mandatory CPD.

**10. Identify the steps and timing for the implementation of the recommended Continuing Professional Development Program.**

It is important that before this program is implemented, the Society ensure that it has the resources in place to support the program. While “the sooner the better” is attractive, the CPDWG urges Council not to be overly ambitious in setting a time frame for implementation. It is important, if this is to be accepted by the members, that both the Society and members be given adequate time to prepare.

It is recommended that staff create a project plan which outlines the steps necessary for the implementation of this program including an appropriate time frame for its introduction. Such a project plan should take into consideration member preparedness and the time required for the Society to build the infrastructure necessary to administer such a program. The CPDWG anticipates that the program will be implemented at the latest July 2012.

As stated above, for the first year, members would be permitted to accumulate their 12 hours of credit in any CPD activities. In the second year (and beyond), members would be required to obtain at least two (2) credits in each of the three enumerated categories.

**11. Identify the costs associated with implementing and operating a Continuing Professional Development Program together with the sources of revenue to cover such costs.**

*Costs*



The CPDWG has identified the following potential cost areas:

- Developing the regulatory framework for an MCPD regime, such as is required to monitor compliance, audit, policies regarding exemptions;
- technology costs related to updated reporting mechanisms ( interactive AMR section for CPD) , and website links and updates;
- additional staff hours relating to implementation and monitoring of program; and
- costs related to additional CPD offerings to ensure member access to opportunities in areas of practice management and professionalism.

While it is not possible to be exact with respect to all of these parameters, it is anticipated that the approximate incremental cost of implementing and maintaining a mandatory CPD program will include:

- Start Up Costs - \$20,000
- Annual Increased Costs - \$80,000
- Potential cost of additional curriculum development - \$30,000

#### *Source of Funds*

The CPDWG has considered a number of options for funding the design, implementation and regulation of a mandatory CPD requirement, as recommended in this report. While the CPDWG has considered this issue independent of any broader policy discussion regarding the role of the Society in the provision of CPD, it nonetheless recognizes that mandatory CPD is consistent with the mandate of the Society to ensure member competence. As such, any incremental costs associated with the introduction of a mandatory requirement should be included in the Society's budget, and should be managed, if necessary, through an increase in membership dues. (on the basis of the estimates set out above, the CPDWG calculates this at approximately \$45 per member)

#### **Summary of Recommendations**

In consideration of all of the above, the CPDWG recommends that:

#### *Mandatory Continuing Professional Development*

1. NSBS members be required to annually complete 12 hours of Continuing Professional Development, commencing at such time as determined by Council.
2. To be eligible, the 12 hours of mandatory CPD must meet the following criteria:
  - a. It must be relevant to the member's practice of law;
  - b. It must include at least 2 hours in each of the following categories:

"Substantive Legal Education and Skills Development", "Risk and Practice Management" and "Professionalism." (see attached Appendix "D")
3. The above requirement will be phased in over two years. In year one CPD may be taken in any of the three categories. In years two and beyond, members must take at least two credits from in each of the three categories.
4. Members shall report their mandatory and recommended CPD activities on their Annual Member's Report, commencing at a time to be determined by Council.

#### *Recommended Continuing Professional Development*

5. The Society continues to recommend to members that they engage in 50 hours of self-learning/self-study annually (in addition to the 12 hours of mandatory CPD).
6. Members will continue to report their self-learning/self-study on their Annual Member's Report.
7. Members will be encouraged to prepare a yearly Professional Development Plan, which will include self-assessment.
8. The Society will provide resources to its members to assist in the development of such Professional Development Plans.

#### *Enforcement*

9. A member failing to complete the 12 hours of CPD, or failing to report CPD activities on his/her annual report shall be administratively suspended until such time as the CPD is completed or the report filed.

10. Members must be prepared, if required by the Society, to provide proof that they have engaged in the activities listed on their reports.
11. Lawyers who change their practicing status during the year will be entitled to a pro-ration of their obligations. In addition, it is recommended that the Executive Director, in exceptional circumstances may grant exceptions or extensions for the completion of a member's CPD requirements.

### **Next Steps**

Subject to the approval of Council, the next step is the preparation of and distribution of the Discussion Paper and invitation to consult. It is recommended that the consultation "phase" continue until the end of February 2011, which will enable a reporting back to Council in March 2011.

Respectfully submitted:

The Continuing Professional Development Working Group

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	Issue	Recommendations
1.	Determine the key elements (e.g. self-assessment, formalized education, self-learning, quality assurance, etc.) of a Continuing Professional Development Program for the legal profession in Nova Scotia	The Continuing Professional Development Working Group (“CPDWG”) confirms that the key elements of a CPD program for the legal profession in Nova Scotia are self assessment, education (formalized and self learning) and quality assurance.
2.	Identify which, if any, components of a Continuing Professional Development Program should be mandatory and the specific scope of any such components	<p><b>Mandatory CPD Requirement</b></p> <ul style="list-style-type: none"> <li>• All practicing members of the NSBS should be required to participate in a minimum of 12 hours of continuing professional development in each reporting year</li> <li>• These 12 hours should include a minimum of 2 hours in each of three categories, “Substantive Legal Education and Skills Development”, “Risk and Practice Management”, and “Professionalism”.</li> <li>• CPD programs or providers will not be accredited by the Society</li> </ul> <p><b>Recommended CPD Activities</b></p> <ul style="list-style-type: none"> <li>• In addition to a mandatory 12 hours, it is recommended that members should continue to annually engage in 50 hours of self learning/self-study.</li> <li>• Members should be encouraged to access self assessment tools, such as the creation of professional development plans, to assist them in identifying areas of continuing professional development which would be beneficial to their practice.</li> </ul>

		<p><b>Phase In</b></p> <p>The CPDWG recommends that for the first year of the program, members be permitted to obtain their 12 hours in any of the three categories, and that the requirement for a minimum of two credits in each of the three categories be implemented in year two of the program.</p> <p><b>Exceptions</b></p> <ul style="list-style-type: none"> <li>• If a member enters or leaves the profession during a reporting year, as reflected in a change of their membership category, their CPD requirements will be prorated in accordance with the length of their absence from practice in that year.</li> <li>• In exceptional circumstances the Executive Director may relieve a member of their CPD requirements, or may grant an extension for the completion of such requirements.</li> </ul>
3.	<p>Articulate any reporting and monitoring requirements on the part of participating lawyers, whether through the Annual Member Report or otherwise.</p>	<p><b>Reporting Requirement</b></p> <p>Members will be required to report their mandatory and recommended CPD activities on their Annual Member Report.</p> <p><b>Failure to Report</b></p> <p>A failure to report will be treated like a failure to file the members AMR – and may result in administrative suspension of a member with the requisite notification to the Courts, public offices and the membership as well as the requirement to pay a reinstatement fee</p> <p><b>Audits</b></p> <p>The Society should implement a program for the random auditing of member’s compliance with their CPD requirements</p>
4.	<p>Explore and determine the extent to which CLE is required ,as an element of</p>	<p>The CPDWG recognizes that traditional CLE programming will continue to be a valuable component of CPD.</p>

	CPD and precisely what should be introduced if deemed appropriate;	
5.	Identify how any CLE programs should be offered to members	<p>Continuing Professional Development Opportunities may be offered through both conventional and new methodologies. These include</p> <ul style="list-style-type: none"> <li>• in person, formal education,</li> <li>• on line courses,</li> <li>• webinars/podcasts of courses or educational programs,</li> <li>• distance education,</li> <li>• teaching or presenting,</li> <li>• writing or editing a book, article or blog,</li> <li>• organized study groups of two or more people,</li> <li>• in house educational sessions, ( e.g. lunch and learns or roundtable discussions),</li> <li>• educational components of bar and law association meetings.</li> </ul>
6.	Identify which, if any, CLE should be offered and delivered by the Society and which could be delivered by appropriate external service providers and the nature of these relationships	<p>The CPDWG recognizes that the Society already offers numerous CLE/CPD programs, which include components relevant to each of the categories of mandatory CPD. The Society should ensure that programs in the required areas are available and accessible to the broadest scope of members. Outside providers should be encouraged. The Society should identify any “gaps” in CPD coverage, and should make a focused effort to provide programs in such areas. It is anticipated that initially, the Society will play a larger role in the provisions of CPD in the areas of Risk and Practice Management and Professionalism.</p>
7.	Identify whether self assessment tools and resources should be part of CPD and if so, identify what and how these should be provided to members	<p>Self Assessment tools and resources should be made available to our members. As a result of experiences in other provinces, it is not recommended that the Society expend large resources to develop its own self assessment tools. The CPWDG believes that the members can be encouraged to do self assessment through CPD programs highlighting this practice, and through checklists and basic self assessment tools which the society can provide at relatively little cost. The Society should also provide the membership with links to further information on the use of such tools.</p>
8.	Specify the nature of	<p>There should be updates to the membership on the website and in Inforum advising that a discussion paper on the implementation of Mandatory CPD will be available by the end of the year,</p>

	<p>consultation needed with members prior to approving a Continuing Professional Development Program</p>	<p>and that the Society will be consulting members on the discussion papers recommendations over the winter months (January – February).</p> <p>Once the Discussion Paper is approved for dissemination, the following is recommended:</p> <ul style="list-style-type: none"> <li>• The paper should be e-mailed to all members, with an electronic feedback form, and a deadline for feedback.</li> <li>• The paper should be posted on the Society’s website, with a direct link to an electronic feedback form.</li> <li>• Additional Input should be solicited from : <ul style="list-style-type: none"> <li>• Managing partners of all firms, and legal departments in government and corporations,</li> <li>• County Bar Presidents</li> <li>• Other “groups”, as determined appropriate by the Working Group, to maximize opportunities for member input</li> </ul> </li> </ul> <p>The above consultation should be completed by the end of February. The Working Group will consider the input, and revise proposals as appropriate. Revised proposals will be prepared for Council’s consideration at its March 2011 meeting, with an anticipated vote on the recommendations in April 2011.</p>
9.	<p>Identify what changes, if any, would need to be considered to the Legal Profession Act or regulations</p>	<p>The <b>Legal Profession Act</b>, section 28(2)(d) currently authorizes Council to make regulations “ respecting the promotion of standards for the practice of law, including regulations setting mandatory requirements for some or all members of the Society development and prescribing the sanctions or restrictions that apply where the member fails to successfully complete the requirements.” As such, no changes to the <b>Legal Profession Act</b> are necessary to implement a program of mandatory CPD.</p>
10.	<p>Identify the steps and timing for the implementation of the recommended Continuing Professional Development Program</p>	<p>It is recommended that staff create a project plan which outlines the steps necessary for the implementation of this program including an appropriate time frame for its introduction. Such a project plan should take into consideration member preparedness and the time required for the Society to build the infrastructure necessary to administer such a program. The CPDWG anticipates that the program will be implemented at the latest July 2012.</p>

11.	Identify the costs associated with implementing and operating a Continuing Professional Development Program together with the sources of revenue to cover such costs	<p><b>Costs</b></p> <p>The CPDWG has identified the following potential cost areas:</p> <ul style="list-style-type: none"> <li>• Developing the regulatory framework for a MCPD regime, such as is required to monitor compliance, audit, and administer policies regarding exemptions.</li> <li>• technology costs related to updated reporting mechanisms ( interactive AMR section for CPD) , and website links and updates</li> <li>• additional staff hours relating to implementation and monitoring of program</li> <li>• costs related to additional CPD offerings to ensure member access to opportunities in areas of practice management and professionalism</li> </ul> <p>While it is not possible to be exact with respect to many of these numbers, it is anticipated that the approximate cost of implementing and maintaining a mandatory CPD program will include:</p> <ul style="list-style-type: none"> <li>• Start Up Costs - \$20,000</li> <li>• Annual Increased Costs - \$80,000</li> </ul> <p><b>Source of Funds</b></p> <p>The CPDWG recommends that the costs of implementing and maintaining a mandatory CPD program should be managed, if necessary, through increases in membership dues. (approximately \$45. per member on an annual basis)</p>