



March 27, 2013

By email

Diana C. Miles
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Ms. Miles:

Re: Two-Year Review of the CPD Requirement

The Toronto Lawyers Association (TLA) welcomes the opportunity to provide comments to the Law Society of Upper Canada in connection with LSUC's review of the mandatory Continuing Professional Development (CPD) requirements.

Toronto lawyers have long been models of professionalism, integrity, and skill. The TLA offers a number of CPD programs to its members and the profession generally, including programs that are accredited by LSUC for Professionalism and New Member hours. The TLA has long supported mandatory CPD, while encouraging LSUC to retain a flexible approach for lawyers, coupled with a fair, clear, and straightforward accreditation process for CPD providers.

Feedback from TLA members

The TLA sought feedback from its members as part of preparing these submissions. Fifteen responses were received. There was no consensus; comments ranged from quite negative to quite positive. The following provides a sampling of the comments we received:

- A number of respondents suggested that the mandatory CPD requirements, particularly the professionalism requirement, should be waived for senior lawyers.
- Some complained of a lack of choice of programs in general, or in particular, programs accredited for Professionalism Hours.
- Two respondents found the LSUC portal difficult to use.
- One respondent found a lack of programs suitable for more experienced lawyers.

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- One respondent suggested that mandatory requirement should be based on two-year periods rather than one year periods, with the number of hours required doubled.

Reporting CPD hours

As noted above, TLA members have expressed frustration with the LSUC portal. TLA staff frequently receive calls from lawyers after TLA programs asking how to claim credit on the LSUC portal.

TLA therefore recommends that the LSUC portal be improved to simplify the process of claiming credits. One relatively easy fix would be to include a link on the page for each accredited program to claim the CPD hours for which it is accredited. Conference providers could then provide the link to the LSUC page for their program to registrants to simplify the claims process.

One of the features of the mandatory CPD requirement is that reporting is done on the honour system, without the need for individual lawyers or conference organizers to submit proof of registration.

The TLA strongly supports the honour system for CPD reporting.

Professionalism Hours

It is the Professionalism Hours requirement that seems to attract the most negative attention from lawyers.

Quite apart from the comments the TLA received, it should be noted that the three hour mandatory Professionalism Hours requirement, coupled with the 0.5 hour Professionalism Hours requirement to obtain New Member accreditation, creates a strong demand for programs that are accredited for Professionalism Hours. This, in turn, leads to organizers tweaking CPD programs in order to maximize Professionalism Hours. At its best, this practice ensures that professionalism topics are included as part of CPD programs; at its worst, it is an artificial process that risks impoverishing substantive programs.

The accreditation process for obtaining Professionalism Hours is also somewhat artificial; the LSUC appears to be taking a narrower view of professionalism in reviewing applications and now requires estimates of the amount of time that panels will devote to particular subtopics. The TLA asks moderators for realistic estimates of the time that will be spent on professionalism content and attempts to ensure that programs do in fact deliver the stated amount of professionalism content. That being said, the interactive nature of CPD programs means that the precise content of the program will depend on how the speakers and audience interact.

If the current three hour Professionalism requirement is to be retained, the TLA supports taking an expansive view of what “counts” as Professionalism Hours. It would be unreasonable to expect all lawyers, particularly experienced lawyers, to submit to three hours of lectures on the *Rules of Professional Conduct* every year.

There are, however, other options that might be explored, for instance:

- The Professionalism Hours requirement could be reduced to one hour, with the scope of topics narrowed, or even, with a particular web-delivered program mandated by the LSUC.
- A more narrow definition of Professionalism could be applied to lawyers in the first two years of practice, and a wider one, thereafter.

The TLA would be pleased to discuss issues concerning professionalism hours with the LSUC in greater detail.

Substantive Hours

One of the features of Ontario's mandatory CPD requirement is that the range of activities eligible for the nine hours of substantive CPD is very broad (except in the case of new members).

The TLA supports this feature of the mandatory CPD program. No accreditation should be required for substantive CPD credits.

There are, however, a number of anomalies in the rules on Eligible Educational Activities, particularly relating to writing. For example:

- The rules provide that one can claim credit for "writing and editing books or articles", but require that that the content must have been prepared solely by the person seeking the credit. This needs clarification, as it seems to suggest that the sole author of a short, superficial article could claim credit, while a co-author of a learned treatise could not. Surely that was not the intention. Indeed, this requirement is inconsistent with allowing one to claim for editing, since an editor by definition is not solely responsible for the content. Presumably the intent is that a lawyer should only be able to claim for time that he or she actually spent writing or editing. If so, the rules should say so.
- The rules for writing and editing require that the materials be "intended for publication or use in course materials, rather than primarily for personal use or marketing purposes". The test for eligibility ought not to be based on the purity of the author's motives. As the rule is written, it is arguable that an article written for a firm's client newsletter would not be eligible, but the same article, published in a publication such as the TLA's Toronto Law Journal would be eligible. While law firm client newsletters may have a marketing purpose, the newsletters help both their authors and readers keep up to date on the law, and as such, perform a valuable service. Any substantive published piece of legal writing, for example, a case comment or legislative update, ought to be eligible, without regard to the author's motives or place of publication.
- The rules for teaching and writing both provide that teaching or writing as part of full-time or regular employment is ineligible. This is ambiguous, since anything done by a lawyer

that relates to law is, in a sense, related to that lawyer's employment. Presumably the intention was to exclude full-time writers and teachers from claiming for writing and teaching. Even so, this is difficult to justify. If the goal is to ensure that lawyers remain up-to-date on the law in their areas of practice, it should not matter how individual lawyers get there.

Period for completing CPD hours

As noted above, one member suggested lengthening the period during which CPD hours must be accumulated from one to two year periods.

Some jurisdictions do this. For instance, the Barreau du Québec requires lawyers to complete 30 hours of CPD every two years. The New York State Bar Association requires lawyers to complete 24 hours of CPD every two years, of which 4 must be in ethics and professionalism. The NY Bar allows lawyers to carry over up to 6 hours from one two year period to the next.

Because of the ebb and flow of legal practice and available conferences, lawyers may in some years have many more CPD hours than needed, and in other years, struggle to find CPD hours at the end of the year.

There are a number of possible ways to accommodate this reality without compromising the goals of mandatory CPD, including:

- Lengthening the period for completing CPD hours from one to two years, and doubling the required number of hours to match.
- Allowing lawyers to carry over a certain number of CPD hours, perhaps as much as half of the minimum requirement, into subsequent years.
- Allowing a grace period after the end of the year before the summary suspension imposed.

It should be noted that the above suggestions are not mutually exclusive.

If you have any questions or would like further comments in relation to the above matters, do not hesitate to contact the TLA.

Yours very truly,
TORONTO LAWYERS ASSOCIATION

W. Michael G. Osborne
Member, Board of Trustees