



## Submission on Renewing the LSO Continuing Competency Framework

Submitted to: The Law Society of Ontario

Submitted by: Ontario Bar Association

Date: January 21, 2022



ONTARIO  
BAR ASSOCIATION  
A Branch of the  
Canadian Bar Association

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



## Table of Contents

Introduction.....	3
The Ontario Bar Association .....	3
Overview .....	3
Comments.....	4
Mandatory Continuing Professional Development Requirement .....	4
Tying CPD Requirement to Practice Area(s), Experience Level or Identified Areas of Risk .....	5
Technological Competence .....	6
Indigenous Cultural Competency .....	6
Certified Specialist Program .....	7
Legal Information and Research Supports.....	7
Conclusion.....	7



## Introduction

The Ontario Bar Association (OBA) appreciates the opportunity to provide this submission in response to the Law Society of Ontario's (LSO) Report from the Competence Task Force on Renewing the LSO's Continuing Competence Framework (the "Consultation Paper").

## The Ontario Bar Association

Established in 1907, the OBA is Ontario's largest voluntary legal advocacy organization, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system. Through the work of our 40 practice sections, the OBA routinely provides expert advice to the Law Society on matters that affect the administration of justice in Ontario in the interest of the public and the profession.

In preparing this submission, the OBA has sought input from a critical cross-section of the bar, including senior and junior lawyers, from managing partners to new calls and students, who practise across Ontario as solicitors and barristers in a variety of practice settings.

## Overview

The stated objective of the Task Force is to recommend an effective, proportionate, and balanced regulatory framework addressing career-long competence in a manner that protects the public interest and is responsive to the public's legal needs.<sup>1</sup> Access to lawyer services is critical to protecting and responding to the public's needs. To achieve these objectives, it is crucial for the LSO to ensure that the regulatory framework does not unnecessarily jeopardize lawyer practice feasibility. To an extent, this is reflected in the principles of flexibility and feasibility that the Task Force has identified to guide its work, and they are included in the comments from our members that follow.

---

<sup>1</sup> Consultation Paper at p. 2



## Comments

### *Mandatory Continuing Professional Development Requirement*

The OBA previously provided feedback supporting the requirement of 12 mandatory CPD hours, as a reasonable and not overly burdensome requirement for the bar<sup>2</sup>. Since the inception of this requirement, we have not heard calls for reform. No compelling reason has been put forward to disrupt the current CPD requirement, nor has any persuasive alternative been proposed that is able to achieve the balance of flexibility and public confidence more effectively. The CPD requirement, as it currently stands, provides a measure of confidence for the public, while being balanced with the flexibility lawyers need to ensure they are able to select the CPD activities required to suit their particular practice. We understand the requirement for one EDI hour is explicitly excluded from the consultation. We assume that is because the need for, and value of, such education is patently evident.

The Consultation Paper notes that “compliance with the CPD requirements has been very high since inception of the program” with “approximately 99% of practicing lawyers ... fulfill[ing] the requirement on an annual basis”. The CPD requirement continues to have strong support from the bar at large, with a recognition that the requirement provides important protection for the public and aligns the profession with other respected professions.

The experience of our members, as creators, participants (i.e. speakers) and consumers of CPD, shows us that there are also many ancillary benefits of the OBA’s CPD offerings, including:

- Hearing voices from different firms, regions, perspectives and/or practice areas for a diverse and well-rounded educational experience;
- Establishing and building business development, networking and mentorship relationships with fellow attendees and speakers; and
- Raising profile for speakers.

---

<sup>2</sup> OBA Submission, [Mandatory Continuing Professional Development – Two-Year Review](#), April 2, 2013



The OBA is dedicated to providing CPD programs that are accessible, timely and relevant regardless of where lawyers are located across the province. While the Consultation Paper notes that the “majority of licensees participate in CPD programs to fulfill their annual requirements”, the other eligible learning activities under the current CPD requirement are valuable in providing even further accessibility and flexibility for members of the bar to meet the requirement.

### Tying CPD Requirement to Practice Area(s), Experience Level or Identified Areas of Risk

The LSO has asked broad questions about whether to further tailor the CPD requirement based on a number of factors, such as practice area, experience level or identified areas of risk. The LSO would need to set out a compelling reason to add such additional regulatory requirements and no such reason has been clearly identified.

Lawyers could be encouraged to give meaningful thought to selecting their CPD activities to provide for a richer learning experience. This could include self-assessment, developing a plan to target identified goals or needs, and self-reflection. That said, we do not have any cause to believe that lawyers are not targeting their CPD selections to their particular practice needs. In fact, it is hard to fathom why a lawyer would take the time (and often incur the expense) of CPD activities that are not tied to or beneficial for their practice. If the LSO has information that suggests such a disparity, it should be clearly provided.

Additionally, practice-focused requirements are likely to have the most significant impact on general practitioners. General practice is a critical structure for lawyers to be able to deliver services on “Main Street”, which is itself an access to justice consideration in many smaller centres across the province. Imposing additional CPD requirements tied to specific practice areas may be unduly burdensome and restrictive for lawyers with a more general practice, many of whom are often serving smaller communities.

The flexibility to align CPD activities with the services a lawyer provides is an important part of the current regime. It is not evident that lawyers, in particular general practitioners, are failing to stay on top of areas in which they practice in a way that jeopardizes competence. Additionally, even if the data does support such a conclusion, it is not clear that amending the CPD regime is the appropriate fix. If the LSO’s data supports the conclusion that general practitioners, or lawyers generally, are not



targeting their CPD activities to meet the needs of their practices, that information should be provided so that both specialist and generalist lawyers can comment on what response best addresses such an issue without jeopardizing practice feasibility.

### Technological Competence

Technological competence is critical to the practice of law today. The truth of this statement has only become clearer through the course of the COVID-19 pandemic. With the courts, tribunals and government agencies transitioning to electronic systems, lawyers need to keep pace and the LSO should encourage this.

Technological competence is appropriately captured in the current professionalism content criteria. Many OBA CPD events provide technological training, either as standalone events such as our CaseLines Hands-On Training or incorporated into other substantive and professionalism events.

Given the fundamental importance of technological competence, it is worth considering a specific technology-focused requirements within the current CPD regime.

### Indigenous Cultural Competency

The Truth and Reconciliation Commission of Canada (TRC)'s Call to Action 27 calls upon law societies to ensure that lawyers receive appropriate cultural competency training. The Federation of Law Societies of Canada subsequently urged law societies to consider mandatory Indigenous cultural competency training. The panel report commissioned by the LSO in 2018, called upon legal professionals to radically improve their competence in dealing with Indigenous clients and called for cultural competency training for lawyers.

The Canadian Bar Association, the OBA's national organization, endorsed this Call to Action at its annual meeting in 2016, passing a Resolution that outlined the CBA's commitment to further advancing the TRC Calls to Action<sup>3</sup>. The CBA and the OBA have since worked to provide CPD

---

<sup>3</sup> Canadian Bar Association, [Resolution 16-12-A – Responding to the Truth and Reconciliation Call to Action](#), August 11, 2016.



programming targeted at enhancing lawyers' cultural competency<sup>4</sup>, demonstrating the significance of the role and ability of the legal profession to advance the TRC Calls to action.

The TRC Calls for Action make clear that justice sector reform is a critical element of the path to reconciliation. The OBA supports the addition of Indigenous cultural competency training requirements and opportunities for lawyers

### ***Certified Specialist Program***

Certified Specialist Designations are an important indicator to both the public and the legal profession that those who hold them are recognized as having achieved a high standard of expertise in a particular field. This both allows lawyers to promote their expertise, and assists the public (as well as other practitioners) in identifying a lawyer who is best placed to address specific legal issues.

The OBA has advocated for the expansion of the Certified Specialist program to additional practice areas in recent years, including into the area of Taxation Law (which was added to the program) and Privacy Law (which is currently under consideration), and supports its continuation.

### ***Legal Information and Research Supports***

Local law libraries have long served as a centre of activity and support for local lawyers. It is critical that they receive the necessary funding to continue to carry out that role, and the supports to make requisite improvements to ensure continued relevance and maximum efficiencies, such as taking advantage of technological innovation.

## **Conclusion**

The OBA appreciates the opportunity to comment on the important issues presented in the Consultation Paper and looks forward to further engagement on this topic as the Task Force moves forward with its work. We would be happy to provide further feedback on the existing LSO programs.

---

<sup>4</sup> See for example: [The Path – Your Journey Through Indigenous Canada](#); [We Are All Treaty People – Why We Need to be Allies](#); [After the TRC and the National Inquiry: The Gladue Principles and the Ongoing Call for Justice](#); [The Future of the United Nations Declaration on the Rights of Indigenous People in Ontario](#).



To provide effective additional feedback, additional information would be helpful and we would welcome a meeting to discuss further.