

8th December, 2006

MINUTES OF SPECIAL CONVOCATION

Friday, 8th December, 2006
9:30 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Alexander, Backhouse, Banack, Bobesich, Campion, Carpenter-Gunn*, Caskey, Chahbar, Cherniak, Chilcott, Coffey, Copeland, Crowe, Curtis, Dickson, Doyle*, Dray, Eber, Feinstein, Fillion, Furlong, Gotlib, Gottlieb, Harris*, Heintzman, Henderson, Krishna, Lawrence, Legge, Minor, Murray, Pawlitza, Porter, Potter, Robins, Ross, Ruby, Sandler, Silverstein, Swaye, Symes, Topp, Wardlaw, Warkentin and Wright*.

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*participated by telephone

Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer expressed Convocation's condolences to Wendy Tysall and her family on the passing of her son, David on December 1st.

The following people were appointed to the Federal Judicial Advisory Committees: Margaret Ross, east and north regions, Sheila Block, Metro Toronto region and James Caskey, south and west regions.

The Treasurer reported on his activities since last Convocation.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of November 23, 2006 were confirmed.

APPOINTMENT - RESEARCH ADVISORY BOARD OF THE LAW COMMISSION OF ONTARIO

The Treasurer announced the appointment of James Leal as the Law Society's representative on the Research Advisory Board of the Law Commission of Ontario.

MOTION – Treasurer’s LL.D. Advisory Committee and Law Society Medal Selection Committee

It was moved by Heather Ross, seconded by Gerald Swaye, that the following benchers be appointed to the LL.D. Advisory Committee:

Carole Curtis
Anne Marie Doyle
Laura Legge
Julian Porter

That the following benchers be appointed to the Law Society Medal/Lincoln Alexander Award Committee:

James Caskey
Carole Curtis
Anne Marie Doyle
Laura Legge
Julian Porter

Carried

MOTION – Committee Appointments

It was moved by Heather Ross, seconded by Gerald Swaye, that Avvy Go be appointed to the Equity and Aboriginal Issues Committee/ Comité sur l'équité et les affaires autochtones and Access to Justice Committee.

Carried

It was moved by Heather Ross, seconded by Gerald Swaye, that Thomas Heintzman be removed from the Equity and Aboriginal Issues Committee/ Comité sur l'équité et les affaires autochtones and Emerging Issues Committee at his own request.

Carried

EQUITY AND ABORIGINAL ISSUES COMMITTEE/Comité sur l'équité et les affaires autochtones REPORT

Mr. Copeland presented the Equity and Aboriginal Issues Committee Report.

Report to Convocation
December 8, 2006

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones

Committee Members
Joanne St. Lewis, Chair
Paul Copeland, Vice-Chair
Marion Boyd
Richard Filion

Holly Harris
 Thomas Heintzman
 Tracey O'Donnell
 Mark Sandler

Purposes of Report: Decision and Information

Prepared by the Equity Initiatives Department
 (Josée Bouchard, Equity Advisor - 416-947-3984)

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COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on November 27, 2006. Committee members Paul Copeland, Vice-Chair, Marion Boyd, Dr. Richard Filion, Holly Harris and Thomas Heintzman participated. Staff members Josée Bouchard, Katherine Corrick, John Matos and Roy Thomas also participated.

FOR DECISION

BENCHERS ELECTION 2007

MOTION

2. That Convocation approve the following recommendations:
 - a. that the Law Society not provide the email addresses of members to candidates in the 2007 benchers election;
 - b. that the Law Society continue to provide candidates the option of using the mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. The cost of the labels and shipping ought to be borne by the candidates; and
 - c. that, beginning with the 2009 Member's Annual Report (the "MAR") and continuing every fourth year thereafter, the MAR provide members the option to

expressly allow the Law Society to provide benchner election candidates with their email addresses to assist candidates with the distribution of their campaign material.

BACKGROUND

3. On October 26, 2006, a report was presented to Convocation recommending,
 - a. that the Law Society not provide the email addresses of members to candidates in the 2007 benchner election; and
 - b. that the Law Society continue to provide candidates the option of using the mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. The cost of the labels and shipping ought to be borne by the candidates.
4. A number of benchers voiced their concern about the recommendation that the Law Society not provide email addresses of members to candidates in the 2007 benchner election. Some benchers were of the view that the matter is an equity issue, as the cost of sending campaign materials by mail is prohibitive and has a disproportionate impact on candidates who cannot afford it. Convocation did not vote on the recommendations, and the matter was referred to the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) for its consideration.
5. It is estimated that printing and sending campaign materials by post to about 40,000 eligible voters amounts to more than \$20,000 for each mailing.
6. The Equity Advisor, in collaboration with the directors of the Policy and Tribunals, Information Systems and Communications and Public Affairs departments spent a considerable amount of time and resources to identify ways to assist candidates in the 2007 benchner election. On November 27, 2006, the Committee considered the options outlined below and concluded that the status quo should be maintained for the 2007 benchner election. However, the Committee was of the view that the Law Society should, for benchner election conducted after 2007, ensure that candidates have access to email lists of members. It recommends that, beginning with the 2009 MAR and continuing every fourth year thereafter, the MAR provide members the option to expressly allow the Law Society to provide benchner election candidates with their email addresses to assist candidates with the distribution of their campaign material. The 2009 MAR is filed in 2010, the year preceding the next benchner election in 2011. The Committee is of the view that providing access to email lists of eligible voters and using emailing for campaigning activities will reduce the barriers faced by those who cannot afford the exorbitant costs of mailing campaign materials and will provide greater access to the membership.
7. This report presents an overview of the assistance provided by the Law Society to candidates, describes the options considered by the Committee and outlines some external options available to candidates.

LAW SOCIETY ASSISTANCE PROVIDED TO CANDIDATES

8. The Law Society of Upper Canada provides the following assistance to candidates during the election process. The bench election process is described in By-Law 5 – *Election of Benchers*. Section 12 of By-Law 5 provides as follows:
 - a. A candidate may submit the following materials along with his or her nomination form:
 - i) A photograph of the candidate that meets all specifications established by the Elections Officer;
 - ii) A statement of not more than 120 words, including headings, titles and other similar parts of the statement, containing biographical information about the candidate;
 - iii) A typed election statement of not more than 700 words, including headings, titles and other similar parts of the statement.
9. Section 26 of By-Law 5 provides that, subject to the following exception, the Elections Officer will include in the election booklet all election statements that he or she receives. The Elections Officer will not include in the election booklet any election statement that in his or her opinion may be libelous, in breach of the *Rules of Professional Conduct* or in bad taste, unless a committee of benchers has approved the statement. In such cases, the committee of benchers considers the election statement and either approves the statement, or returns the statement to the candidate, provides the candidate with a written explanation of the committee's objections to the statement, and specifies the time by which the candidate may submit a redrafted election statement.
10. The Law Society sends out the election booklet to all eligible members, posts the election statements and photographs on its website, and informs all eligible voters that the information is readily available on the website. Candidates may, in their election statement, make reference to their own websites and provide the webpage address to access their website.
11. Other than the election materials referred to in By-Law 5, there are no further rules relating to campaigning. Therefore, candidates may, in addition to the information provided by the Law Society about candidates, develop his or her own campaign materials and disseminate the materials by any means available to the candidate, including posting the material on his or her website and including the website address in the electoral statement.

OPTIONS CONSIDERED BY THE COMMITTEE

12. The Committee considered the following options to further assist candidates in the 2007 bench election, but concluded that the practice adopted in the 2003 bench election should be maintained:
 - a. Law Society provides members' email addresses to candidates;
 - b. Law Society sends candidates' email campaign messages to eligible voters;
 - c. Law Society provides mail house services;
 - d. Contract third party to send emails to members on Law Society list;
 - e. Reform campaign rules.

Option 1 – Law Society provides members' email addresses to candidates

13. It could be argued that members provide their consent to the use of their email address by rejecting the privacy option in the MAR. The MAR includes a box that members check off if they do not want the Law Society to provide their name, business address or email address to other legal organizations. The privacy option reads as follows:

On occasion, the Law Society may provide members' names, business addresses and e-mail addresses to professional legal associations, organizations and institutions (e.g. Ontario Bar Association, Ontario law schools) without charge, to facilitate the maintenance of mailing lists, and enhance communications with the profession, including information about programs, initiatives, products and services. You have the option to instruct the Law Society not to provide your name and business address to any professional association, organization or institution. Fill in the oval if you do not wish the Law Society to provide your name or business address to any professional legal association, organization or institution.
14. The MAR privacy option, as worded, only allows the Law Society to provide members' information to legal associations, organizations and institutions, and does not extend to the transfer or selling of email addresses to election candidates for the purpose of campaigning.
15. In 2004, Industry Canada created a Task Force on Spam. The Task Force produced a report entitled *Stopping Spam Creating a Stronger, Safer Internet* that outlines recommended best practices for marketing email use, including campaigning emails (see Appendix 1). Spam was defined as unsolicited commercial emails. The best practices notes that emails should only be sent to recipients who have provided their express consent to receiving the information. The report indicates that recipients of marketing emails must be provided with an obvious, clear and efficient email or web-based way to opt out of receiving any further business and/or marketing email messages from the organization. The internal process used to obtain consent should be clear and transparent. Organizations should keep records of the type of consent obtained from recipients so that email lists can be scrubbed prior to campaign broadcasts. The MAR privacy option is not an express consent that allows the Law Society to transfer or sell the list of members' email addresses to candidates.
16. The MAR privacy option also creates an expectation that the member's information will not be provided if the member has indicated that he or she does not wish to have his or her information provided to other organizations. In 2003, 11% of members indicated they did not want the Law Society to provide their contact information to other legal organizations. By 2005, this percentage had risen to nearly 20%. There is a general increase in public awareness and sensitivity around issues related to the privacy of their information.
17. We consulted university websites and contacted other law societies and other professional regulatory bodies to determine how organizations have dealt with the issue of using email and the Internet for electoral campaigns. Most organizations provide some assistance to election candidates to boards or council positions. However, such assistance is typically limited to including information about candidates on the organization's website and to providing mailing labels and mailing lists of members to

candidates. Although there may be organizations that provide email addresses to members for the purpose of campaigning, our research has not identified any organization that adopts that practice. The Barreau du Québec, the Law Society of British Columbia, the Law Society of Manitoba and the Law Society of Saskatchewan have indicated that, for privacy reasons, they do not allow their email address lists to be used for commercial or election purposes. The College of Audiologists and Speech-Language Pathologists of Ontario, the College of Chiropractors of Ontario, the College of Massage Therapists, the College of Pharmacists, the College of Physicians and Surgeons of Ontario, the Ontario Association of Architects, the Ontario College of Teachers, the Ontario Professional Foresters Association, and the Royal College of Dental Surgeons indicated that, for privacy reasons, they do not provide members' email addresses for the purpose of campaigning.

18. Numerous Law Society members have indicated that they do not wish to receive unsolicited email messages. In 2003, some candidates had access to a large database of member email addresses and used it to distribute campaign material. The Law Society did not provide the database. The Law Society received a number of complaints from members about the use of their email addresses for campaigning purposes.
19. As mentioned in the 2007 Benchers Election report to Convocation of October 2006, if the Law Society agreed to distribute its database of member email addresses, it would have no control over the use that is made of it. The risk would not be limited to the use made of it by the candidate who uses it to distribute campaign material, but would extend to the recipients of the material as well. Unless the sender of the original email develops a customized email program, all recipients of the email would have access to the database.
20. In light of the information provided to the Committee, it concluded that the Law Society does not have the express consent of members to distribute its email list to candidates for the purpose of campaigning and it should abstain from such a practice for the 2007 benchers election. It is a practice that is inconsistent with industry approved best practices, and would not reflect well on the Law Society as the governing body of the legal profession. This is also the approach taken by other law societies and professional regulatory bodies.
21. The Committee was also of the view that requesting the express consent from members to transfer their email address to candidates for campaigning purposes is not a strategy that can effectively be implemented for the 2007 benchers election. The Committee reached its conclusion based on the following factors:
 - a. the percentage of members who are likely to provide their consent is extremely low at between 5% and 10%;
 - b. the Law Society would have to allocate significant resources to compile the lists of members who provided their express consent¹ ; and
 - c. without a protocol or an agreement reached with candidates to ensure that the lists would only be used for campaigning purposes in the benchers election, the Law Society would have little or no control over the use of lists.

¹ The Director of the Information Systems Department estimates that the implementation of such a proposal would require 3 to 4 weeks of one or two full-time staff time.

22. However, the Committee strongly recommends that, beginning with the 2009 MAR and continuing every four years thereafter, the MAR provide members the option to expressly allow the Law Society to provide benchner election candidates with their email addresses to assist candidates with the distribution of their campaign material

Option 2 – Law Society sends candidates' email campaign messages to eligible voters

23. Instead of distributing the Law Society's email lists to candidates, the Committee considered whether the Law Society could send candidates' campaign email messages to eligible voters. The Law Society communicates regularly with the profession via email to promote programs and resources, such as its professional development programs and the e-bulletin. However, there are sound reasons that the Law Society should not adopt that practice for the purpose of benchner election campaign messages.
24. The Law Society must remain impartial during the benchner election process and must ensure that it does not disseminate statements that are libelous, in bad taste or against the *Rules of Professional Conduct*. It should therefore not be responsible for distributing candidates' campaign messages, other than by means allowed under By-Laws and regulations. The Law Society should not email campaign materials to members without such safeguards. The resources required to vet all campaign emails, to make final decisions on emails that appear inappropriate and to send emails out to eligible voters are likely to be extremely onerous.
25. The Professional Engineers of Ontario (the "PEO") has adopted the practice of mailing hard copies of campaign materials for candidates, at the candidate's expense, or of sending campaign emails at no costs to the candidates. The PEO does not release membership lists to candidates. A protocol on mass emails has been adopted which establishes rules about the type of emails that the PEO will send. Candidates are permitted a maximum of 300 words and may include a URL link to more comprehensive information published on their websites or on the PEO's election website. Graphics are not permitted. The registrar or a delegate is responsible for ensuring that email messages comply with the protocol, and corrects spelling and punctuation. The PEO Director of Communications and Chapters has indicated that the practice adopted by the PEO requires substantial staff time. She estimates that the practice requires one full time staff for a period of one week. It should be noted that approximately 16 candidates run in PEO elections, that the election process is much shorter than the Law Society process and that about 13,000 of the 68,000 PEO members vote in the Council elections. Because the number of candidates for benchner election is approximately 5 times higher than the number of candidates who run for PEO Council, it is anticipated that the Law Society would require significant resources to implement such a practice.
26. When considering this option, the Committee also took note of Industry Canada's best practice that emails should only be sent to recipients who have provided their express consent. If it were to adopt the practice of sending campaign emails to eligible voters, the Law Society would require the express consent of its members. As mentioned above, studies have shown that when express consent is requested from recipients of marketing and campaigning emails, the rate of consent is usually between 5% and 10%.
27. Spam has become a worldwide problem and the Law Society must be cautious when it communicates via email with its members. Mass repetitive emails, especially with attachments, are to be discouraged. The best practices for email marketing note that

most responsible organizations follow industry codes and best-practices and are guided by the Canadian Marketing Association's *Code of Ethics and Standards of Practice*. Sending repetitive mass emails could lead to messages from the Law Society being filtered out by anti-spam technologies before they reach their intended recipients, which would greatly impact the Law Society's business.

28. In conclusion, the Law Society should not engage in the practice of sending mass campaign emails for candidates for the following reasons:
- a. it would require the express consent of candidates;
 - b. it is unlikely that it would receive the express consent of more than 4000 members;
 - c. it would require significant resources to adopt such a practice;
 - d. it would require safeguards to ensure that it does not send inappropriate emails for candidates;
 - e. as an impartial organization, it should not participate in candidates' campaigning activities, other than in regulated activities.

Option 3 – Law Society provides mail house services

29. In 2003, the Law Society contracted with Pitney Bowes, its in-house mail service provider, to provide candidates with full mail house services, including printing and distribution of campaign material. In addition, Pitney Bowes provided pressure-sensitive address labels of electors by region to candidates who requested them. Labels for all eligible voters cost \$1,107. Candidates dealt directly with Pitney Bowes. Candidates were responsible for arranging shipping of the labels by courier, and for paying Pitney Bowes. This arrangement allowed the Law Society to maintain control over its database of member addresses, while at the same time assisting candidates to communicate with the electorate.
30. The practice adopted in 2003 was well received and the Committee recommends that the following be followed in 2007:
- a. That the Law Society continue to provide candidates the option of using the mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. The cost of the labels and shipping ought to be borne by the candidates.

Option 4 – Contract a third party to send emails to members on Law Society list

31. The Information Systems department of the Law Society contacted external service providers to determine whether it could retain an external provider to send out emails to members of the profession for candidates in bench election. The Law Society contacted two companies. The following outlines the information gathered:
- a. third party companies could send out emails at a cost of approximately \$0.045 per email to the Law Society's members list;
 - b. the third party would require the express consent of the recipient before sending out materials;

- c. studies show that when express consent is sought, approximately 5% to 10% of recipients consent to the use of their emails for marketing or campaigning purposes;
 - d. emails with attachments would not be sent.
32. The Committee is of the view that this option is not likely to be an acceptable option for candidates because,
- a. it is unlikely that any more than 4000 members would provide their express consent to receiving campaign emails;
 - b. the candidate would have to pay each time the provider sends an email for him or her; and
 - c. no emails with attachments would be sent.

Option 5 - Reform campaign rules

33. Our research indicates that some organizations have taken measures to provide links to candidate's websites and some have developed rules on the use and content of email campaigning. If the goal of providing access to email addresses is to level the playing field, imposing rules on campaign activities, including restricting the use of Internet, may be appropriate.
34. The State Bar of Texas followed such an approach during its 2006 election campaign (Appendix 2). It adopted rules that described what could be posted on candidates' personal websites or web pages, including the type of information that could be included on the website, and rules about the distribution of emails. It established that solicitation of votes by emails can be done only to persons who are Professional Acquaintances of the person making the contact. Further, nominees may not distribute substantially similar emails, including blast emails, unless the recipients are Professional Acquaintances of the nominee. Otherwise, emails may be sent to lawyers that the nominee does not know only if they are one-to-one and individualized. List-serves and group emails are not allowed unless every person on the list-serve or email group is a Professional Acquaintance of the sender. A Professional Acquaintance is defined as an attorney personally known by the soliciting attorney or candidate. Mere knowledge of the lawyer by name or reputation or membership in the same professional, social or alumni organization, and similar organization does not qualify as a Professional Acquaintance.
35. The American Psychiatric Association (APA) also adopted rules about email campaigning (Appendix 3). The rules state that while there is no limit on the number of campaign messages that may be sent by email, members supporting candidates in this way must begin the subject line with the words "APA Campaigning". The APA list serves created for conducting business of an APA component or list serves using APA technology may not be used for campaigning. Obtaining email addresses is the responsibility of the candidates and their supporters, and such addresses may not be as readily available as mailing addresses and are not to be provided by APA, Area Councils/State Associations, or District Branches.
36. The Committee was of the view that these two options are not acceptable options, as they do not address the issue of providing affordable access to membership lists.

EXTERNAL OPTIONS AVAILABLE TO CANDIDATES FOR THE 2007 BENCHER ELECTION.

37. In considering the above-mentioned options, the Committee also took into account the fact that candidates have access to assistance offered by external organizations.
38. The Committee noted that the University of Toronto Press now publishes the *Ontario Legal Directory* on hard copy and on CD Rom, which includes a search engine. The *Ontario Legal Directory* has over 30,000 listings of lawyers, law firms, federal and provincial courts and government offices, each complete with names, addresses, telephone and fax numbers, and e-mail and web addresses. The directory is available on CD Rom for \$155 plus tax, shipping and handling. The CD Rom may also be used by multiple users at the following costs:
 - a. The cost for 1 CD is \$155;
 - b. The cost for 1-3 users license is \$195;
 - c. The cost for 4-6 users license is \$292.50;
 - d. The cost for 7-9 users license is \$341.25;
 - e. The cost for 10-20 users license is \$390;
 - f. The cost for 21-30 users license is \$465.
39. Candidates for bencher election can purchase the CD Rom at a reasonable price. Although the list may not be as complete and up to date as the Law Society email address list, it is quite extensive with 30,000 listings. The CD Rom is updated on an annual basis. Emails from the list can be extracted from the CD Rom by city and inserted into email lists, although this process is a manual one and would be time consuming for the candidate as the data information is not easily exported onto an email list format. The CD Rom includes a help line number.
40. Candidates who wish to use the CD Rom for campaigning purposes should note that the University of Toronto Press and CEDROM-SNi own the copyright on the CD Rom information and that written permission to use the CD Rom for the creation of lists should be requested. The copyright clause reads as follows:

All rights reserved. No part of software, documentation, or materials contained in the Ontario Legal Directory 2006 may be copied, modified, altered, adapted or transferred, in whole or in part, including but not limited to translating, decompiling, disassembling, or creating derivative works or mailing lists, without the prior written permission of the copyright holder.
41. The Law Society also approached Canada Law Book, which publishes Canada Law List with listings for over 55,000 lawyers in Canada, to inquire whether it would agree to send out campaign emails for candidates to their members' list for a fee. Canada Law Book indicated that it is not able to send out emails for candidates. However, it indicated that it is considering posting candidate information provided by the Law Society on the website of its newspaper, the Law Times. Notices directing readers to the website would also be published in the Law Times. Canada Law Book cannot make concrete decisions on this issue until it has further information about the number of candidates that will run for election and the amount of information that candidates would wish to post on the website.

42. During each bench election, Law Times also publishes general news coverage of the bench election and it is anticipated that this practice will continue in 2007. In addition, Canada Law Book is considering adding a more detailed election supplement that would focus solely on candidates and election issues. Depending on the advertising revenue that can be generated for such an initiative, the edition could be between four and eight pages long. As in past years, Law Times will offer considerably discounted rates, to be confirmed with the Law Society at a later date, for candidates' advertisements.
43. The Law Society also contacted third parties to assess the costs associated with the development and hosting of websites for candidates. Third parties estimate the costs to set up websites for candidates at approximately \$1,000 for the set up, and a maintenance fee of \$100 per month. Design consultation, if required, is approximately \$180 per hour. Costs for the development of the website would be borne by the candidate. Additional costs would be incurred by the candidate if he or she wished to promote the website by sending emails to members.

Attached to the original Report in Convocation file, copies of:

- (1) A copy of a report produced by the Task Force entitled Stopping Spam Creating a Stronger, Safer Internet.
(Appendix 1, pages 18 – 31)
- (2) A copy of the State Bar of Texas report re: Guidelines for Election of State Bar President-elect.
(Appendix 2, pages 32 – 39)
- (3) A copy of the rules about email campaigning by the American Psychiatric Association re: APA's Election Guidelines Emphasize Dignity, Courtesy, and Fairness.
(Appendix 3, pages 40 – 44)

Re: Bench Election 2007 – Email Address List

It was moved by Mr. Copeland, seconded by Dr. Filion, that Convocation approve the following recommendations:

- a. that the Law Society not provide the email addresses of members to candidates in the 2007 bench election;
- b. that the Law Society continue to provide candidates the option of using the mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. The cost of the labels and shipping ought to be borne by the candidates; and
- c. that, beginning with the 2009 Member's Annual Report (the "MAR") and continuing every fourth year thereafter, the MAR provide members the option to expressly allow the Law Society to provide bench election candidates with their email addresses to assist candidates with the distribution of their campaign material.

It was moved by Mr. Aaron, seconded by Mr. Silverstein, that paragraph (b) be deleted.

Not Put

The Report was referred back to the Committee for further consideration and be brought back to Convocation in January 2007.

GOVERNANCE TASK FORCE INTERIM REPORT

Mr. Heintzman presented the Report of the Governance Task Force Interim Report.

Governance Task Force
December 8, 2006 *

Interim Report to Convocation

Task Force Members
Thomas Heintzman (Chair)
Vern Krishna (Vice-Chair)
Sy Eber
Abraham Feinstein
Janet Minor
William Simpson

Purposes of Report: Decision and Information

Prepared by the Policy Secretariat
(Julia Bass - 416-947-5228 and Jim Varro – 416-947-3434)

* Includes items deferred from October 26 and November 23, 2006 Convocations

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Convocation's Priority Planning Process

GOVERNANCE TASK FORCE
INTERIM REPORT TO CONVOCATION

Introduction

1. In accordance with its terms of reference¹, the Governance Task Force has been meeting since May 2006 to review a number of issues relating to the Society's governance structure and processes, including:
 - a. the effectiveness of Convocation as a board;
 - b. the office of Treasurer and its intended role in governance;
 - c. the methods of priority-setting for Convocation; and
 - d. efficient and effective co-ordination of corporate governance with the operational management of the Law Society under the leadership of the Chief Executive Officer.
2. As requested by Convocation, the Task Force has also been considering specific issues related to
 - a. the Treasurer's election process, including certain provisions of By-Law 6, and
 - b. procedural issues relating to Committee recommendations and motions before Convocation.
3. The Task Force has met on eight occasions to date and expects to provide a final report by the spring of 2007. The Task Force has prepared this interim report for decision by Convocation on two issues:
 - a. certain procedures for the Treasurer's election in By-Law 6, and
 - b. matters relating to the setting of Convocation's agenda.

These issues relate to paragraph 2 of the terms of reference at Appendix 1.

4. The Task Force is also reporting for information on a matter that the Task Force proposes be discussed at a future Convocation. The proposals, at TAB C, include a new approach to priority planning and the creation of a Priority Planning Committee, which relate to paragraph 1c. of the terms of reference. The report will be scheduled for discussion when the Task Force completes its review of other issues that arise from the terms of reference relating to this matter.
5. The remaining issues in the terms of reference are the subject of continuing discussion at Task Force meetings and will be addressed in the Task Force's final report.

¹ See Appendix 1 for the terms of reference.

APPENDIX 1

GOVERNANCE TASK FORCE TERMS OF REFERENCE
(APPROVED MAY 25, 2006)

1. The Task Force will consider and recommend to Convocation improvements to the corporate governance of the Law Society to fulfill its mandate through:
 - a. efficient and effective corporate governance;
 - b. co-ordination of corporate governance with the operational management of the Law Society, and
 - c. effective priority setting, including budgetary considerations.
2. In addition, The Task Force will study the following two specific issues referred to it by Convocation:
 - a. the Treasurer's election process, including certain provisions of By-Law 6, based on the Secretary's report to Convocation of March 23, 2006;
 - b. procedural issues relating to Committee recommendations and motions before Convocation, arising from adoption of Rules of Procedure for Convocation (amendments to By-Law 8) on March 23, 2006;
3. The Task Force expects to report to Convocation from time to time with specific recommendations throughout 2006 and 2007, completing its work by April 2007.

FOR DECISION
TREASURER'S ELECTION ISSUES

Motion

6. That with respect to the Treasurer's election, Convocation
 - a. approve electronic voting as an alternate method of voting in the Treasurer's election beginning in 2008;
 - b. amend subsection 2(1) of By-Law 6 to provide that two benchers, and not more than two, may nominate a candidate for Treasurer, and that a nomination that does not comply with this requirement is invalid;
 - c. affirm that the voters' list, showing who has voted, is available for review by Treasurer candidates and benchers; and
 - d. change the current process for breaking a tie in a Treasurer's election to a process in which the presiding Treasurer votes to break the tie in accordance with the results of his or her draw of one of the candidate's names from a ballot box.

Background

7. In March 2006, Convocation considered a report from the Law Society Secretary, requesting clarification on a number of matters arising from the Treasurer's election process. These issues were referred to the Task Force for resolution. Some issues

relate to specific provisions of By-Law 6, while others relate to the management of the election process. By-law 6 is attached as Appendix 2.

Electronic Voting

8. Most benchers vote in the advance poll. This has been the case for at least the last three Treasurer elections. Currently, benchers must attend in person at the Secretary's office to vote in the advance poll, or request a voting package that is then sent to them by courier. The Secretary must receive the ballot in an envelope that is signed by the bencher.
9. There is no provision in the By-Law for voting by fax, e-mail, telephone or internet. In the Secretary's view, this is not the most efficient method of running the advance poll. Benchers may be out of the province or out of the country at the time of the election. Courier services are expensive and not always reliable.
10. The Secretary suggested that Convocation explore the possibility of permitting electronic voting, by telephone or internet. The Law Society successfully conducted the referendum on bencher remuneration electronically. Anonymity and security are easily assured.
11. The Task Force agrees with the Secretary's suggestion and recommends that electronic voting be made available to benchers, but that it not be the only method of voting. It is proposed that electronic voting be available for the Treasurer's election beginning in 2008. Resources are currently being devoted to the bencher election in May 2007 and more time is needed to create the infrastructure for this facility for the Treasurer's election.

Number of Nominators

12. Section 2(1) of By-Law 6 provides that, "a candidate for election as Treasurer shall be nominated by two benchers who are entitled to vote in Convocation." Notwithstanding this, it is not unusual for a candidate to be nominated by more than ten benchers.
13. In the Secretary's view, it is unclear whether the provision in section 2(1) was intended to restrict or specify the number of benchers who could nominate a candidate, or simply provide the minimum number. A number of benchers have inquired about this matter.
14. The Task Force was requested to clarify the intention of this section of the By-law and to recommend whether the number of nominators should be restricted to two.
15. In the Task Force's view, section 2(1) of the By-Law should be amended to make it clear that a candidate shall be nominated by two and only two benchers. It is the Task Force's view that this is the correct interpretation of the existing provision. It is also consistent with the number of benchers required to bring a motion.
16. This amendment will prevent a candidate from seeking a large number of nominators and pressuring benchers to declare at an early date for one candidate or another. In the Task Force's view, such activity can effectively remove the secrecy of the election ballot and may cause the campaign for Treasurer to begin earlier than might otherwise be the case.

17. In addition to the above amendment, the Task Force also recommends that the By-Law be amended to state that failure to meet this nomination requirement invalidates the nomination.

Public Nature of the "Voter's List"

18. Prior to the opening of the advance poll, the Secretary makes a chart listing the names of benchers who are entitled to vote. The Secretary notes on the chart when a bencher has voted in the advance poll. This allows the Secretary to know at all times who has voted.
19. While the advance poll is being conducted, candidates and other benchers who want to know which benchers have voted regularly contact the Secretary, and she has provided this information. Some benchers have questioned the Secretary's authority to do so.
20. The Secretary considers the chart of benchers who have voted to be comparable to the "voters list" that is used in municipal, provincial and federal elections. The names of those who have voted in the advance poll are available to candidates. As well, throughout the day on which the election is held, candidates from each political party know who has yet to vote.
21. The Task Force agrees with the Secretary's view and recommends that the list of benchers who have voted continue to be treated as a public document, available to all candidates for Treasurer and benchers.

Tie-Breaking

22. In the event of a tie, section 13 of the By-Law requires the Treasurer to cast the tie-breaking vote. This means that, in the event of a tie, the Treasurer votes twice. Many benchers were not aware of this, prior to the last election.
23. It is not uncommon that the Chair of a Board, or in the Law Society's case, the Treasurer, has the authority to break a tie by casting a second vote.
24. Some benchers have suggested that this method of tie-breaking ought to be re-examined. The issue was highlighted during the last election when the Acting Treasurer was a candidate in the election. In these circumstances, section 6 of By-Law 6 requires the Treasurer to appoint a bencher who is the chair of a standing committee to perform the duties and exercise the powers of the Treasurer under the By-Law. This section permits a candidate in the election to appoint a person who may, in the event of a tie, be permitted to vote twice.
25. The Acting Treasurer recognized this as an issue in the last election. To avoid the issue, the candidates agreed that the bencher appointed to conduct the election would cast the tie-breaking vote in accordance with a draw.
26. The Task Force considered three possible options for breaking a tie:
 - a. The Treasurer abstains from voting unless an even number of votes is cast;
 - b. The Treasurer only votes in the event of a tie, or

- c. A random method is used.
27. The Task Force's view is that in the event of a tie, the benchers have indicated equal support for two candidates, indicating that both would be qualified to be Treasurer. As such, the Task Force believes that the fairest way to break the tie is to have the presiding Treasurer cast his or her deciding vote randomly, and not be forced to choose between two candidates who have equal support from the benchers.
 28. The Task Force proposes that, in the event of a tie, each candidate's name be placed on a separate piece of paper in a ballot box and that the Treasurer draw from the box the name of one of the candidates and cast the tie-breaking vote in accordance with the results of the draw.
 29. If Convocation agrees with this proposal, the By-Law should be amended to provide for this process.

APPENDIX 2

BY-LAW 6

Made:
 April 30, 1999
 Amended:
 June 25, 1999
 December 10, 1999
 May 24, 2001
 October 31, 2002
 April 28, 2005
 May 26, 2005

TREASURER

ELECTION OF TREASURER

Time of election

1. (1) Subject to subsection (2), there shall be an election of Treasurer every year on the day on which the regular meeting of Convocation is held in June.

Same

- (2) If after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection (1), all of the candidates, but one, cease, for any reason, to be candidates, there shall be an election of Treasurer on the later of the day on which the regular meeting of Convocation is held in June and the day that is ten business days after the day of the close of nominations of candidates.
 First matter of business

- (3) If there is an election of Treasurer on the day on which the regular meeting of Convocation is held in June, despite subsection 6 (1) of By-Law 8, the election of Treasurer shall be the first matter of business at the meeting.

Nomination of candidates

2. (1) A candidate for election as Treasurer shall be nominated by two benchers who are entitled to vote in Convocation.

Nomination in writing

(2) The nomination of a candidate shall be in writing and signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate.

Time for close of nominations

(3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.

Exception

(4) In a year in which there is an election of benchers under section 3 of By-Law 5, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

Nominations reopened

(5) If after the close of nominations of candidates under subsection (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (1), all of the candidates, but one, cease, for any reason, to be candidates,

- (a) the period for nominations of candidates shall be reopened; and
- (b) the new close of nominations of candidates shall be 5 p.m. on the day that is ten business days after the day on which the Secretary sends the notice under section 3.1.

Withdrawal of candidates

3. A candidate may withdraw from an election of Treasurer at any time before the day of the election of Treasurer by giving the Secretary written notice of his or her withdrawal.

Reduction in number of candidates: notice

3.1 If, after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (1), all of the candidates, but one, cease, for any reason, to be candidates, not later than five business days after the day on which one candidate remains, the Secretary shall send to each bencher entitled to vote in an election of Treasurer a notice stating,

- (a) the day on which the notice is sent;
- (b) that the period for nominations of candidates has re-opened;
- (c) the new time for close of nominations;
- (d) that any ballots received at the advance poll shall be discarded;
- (e) the time for the beginning of the new advance poll; and
- (f) the day on which there shall be an election of Treasurer.

Election by acclamation

4. If on the earlier of the time for the close of nominations of candidates and the day on which there shall be an election of Treasurer, there is only one candidate, the Secretary shall declare that candidate to be elected as Treasurer.

Poll

5. (1) If on the day on which there shall be an election of Treasurer, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

Secret ballot

(2) A poll to elect a Treasurer shall be conducted by secret ballot.

Treasurer is candidate in election

6. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this By-Law.

Right to vote

7. Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

Notice of candidates to benchers

8. If after the close of nominations of candidates, there are two or more candidates, the Secretary shall, as soon as practicable after the close of nominations of candidates, notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

Advance poll

9. (1) An advance poll shall be conducted,

- (a) beginning at 9 a.m. on the second Wednesday in June and ending at 5 p.m. on the day preceding election day; or
- (b) if after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (1), all of the candidates, but one, cease, for any reason, to be candidates, beginning at 9 a.m. on the day that is three business days after the day of the close of nominations of candidates under subsection 2 (5) and ending at 5 p.m. on the day preceding election day.

Methods of voting at advance poll

(2) A bencher may vote at the advance poll by,

- (a) attending at the office of the Secretary on any day that is not a Saturday or Sunday between the hours of 9 a.m. and 5 p.m. to receive a ballot and to mark the ballot in accordance with subsection (3); or
- (b) requesting a voting package from the Secretary and returning the voting package to the Secretary by regular lettermail or otherwise.

Marking a ballot

(3) A bencher voting at the advance poll shall mark the ballot in accordance with subsection (4) or (5).

Two candidates

(4) If there are no more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

More than two candidates

(5) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballot box

(6) If a bencher is voting at the advance poll under clause (2) (a), after the bencher has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into the ballot box.

Same

(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 9.1 (3) and (4), the Secretary shall remove the ballot envelope from the return envelope, remove the ballot from the ballot envelope and put the ballot into the ballot box.

Ballots not to be opened

(8) Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.

Ballots to be discarded

(9) If after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (1), all of the candidates, but one, cease, for any reason, to be candidates, the Secretary shall cause to be discarded the ballots received at the advance poll conducted after the close of nominations under subsection 2 (3) or (4).

Special procedures: voting by mail

9.1 (1) If a bencher requests a voting package from the Secretary under clause 9 (2) (b), the Secretary shall send to the bencher a voting package that includes a ballot, a ballot envelope and a return envelope and shall specify the address to which the voting package must be returned.

Same

- (2) If a bencher is voting at the advance poll under clause 9 (2) (b), the bencher shall,
- (a) in accordance with subsection 9 (3), mark the ballot received from the Secretary;
 - (b) after complying with clause (a), place the marked ballot inside the ballot envelope and seal the ballot envelope;
 - (c) after complying with clause (b), place the sealed ballot envelope inside the return envelope and seal the return envelope;
 - (d) after complying with clause (c), sign the return envelope; and
 - (e) after complying with clause (d), send to the Secretary, by regular lettermail or otherwise, the voting package, that includes the ballot, the ballot envelope and the return envelope, so that it is received by the Secretary not later than 5 p.m. on the day preceding election day.

Receipt of return envelopes

(3) When the Secretary receives a voting package at the specified address, the Secretary shall check to see if the return envelope bears the signature of a benchner to whom a voting package was sent.

Discarding ballots

- (4) The Secretary shall discard a voting package that the Secretary receives,
- (a) at an address other than the specified address;
 - (b) that does not bear the signature of a benchner to whom a voting package was sent; and
 - (c) after 5 p.m. on the day preceding election day.

Procedure for voting on election day: first ballot

10. (1) On election day, each benchner entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a first ballot listing the names of all candidates for election as Treasurer.

Second ballot

(2) On election day, if a Treasurer is not elected as a result of the votes cast at the advance poll and on the first ballot, each benchner entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a second ballot listing the names of the candidates remaining in the election of Treasurer at the time of that ballot.

Application of subs. (2) to second and further ballots

(3) Subsection (2) applies, with necessary modifications, to the second ballot and any further ballots in an election of Treasurer.

Marking ballot

(4) Each benchner shall vote for one candidate only on each ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

Ballot box

(5) After a benchner has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into the ballot box.

Counting votes

11. (1) On election day, after all benchners entitled to vote in an election of Treasurer have voted or declined on a ballot, the Secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.

Counting votes cast at advance poll

(2) If at the advance poll votes were cast for candidates by rank of preference, in counting the votes cast for each candidate at the advance poll, the Secretary shall assume that a benchner's candidate of choice was the candidate on the ballot given the highest rank by the benchner.

Application

(3) This section applies to the count of votes on the first ballot in an election of Treasurer and, with necessary modifications, to the count of votes on the second ballot and any further ballots in an election of Treasurer.

Report of results: two candidates

12. (1) If on any ballot there are no more than two candidates, immediately after counting the votes cast for each candidate, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the Secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the largest number of votes.

Same

(3) If on any ballot there are three or more candidates and, after counting the votes, the Secretary determines that no candidate received more than 50 percent of all votes cast for all candidates, the Secretary shall report to Convocation that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect a Treasurer.

Further ballot required

(4) If a further ballot is required under subsection (3), the Secretary shall report to Convocation the candidate on the previous ballot who received the smallest number of votes and that candidate shall be removed as a candidate in the election.

Casting vote

13. If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall give the casting vote.

Equal number of votes

13.1 (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election of Treasurer, a poll shall be conducted to select the candidates to remain in the election.

Secret ballot

(2) A poll conducted under subsection (1) shall be conducted by secret ballot.

Right to vote

(3) Each bencher entitled to vote in an election of Treasurer is entitled to vote in a poll conducted under subsection (1).

Ballot

(4) Each bencher entitled to vote in a poll conducted under subsection (1) shall receive a ballot listing the names of the candidates who received the equal number of votes.

Marking ballot

(5) A bencher shall vote for the candidate or candidates, but not for all the candidates, whom he or she wishes to remain in the election of Treasurer and shall indicate his or her choice or choices by placing a mark beside the name of each candidate chosen.

Ballot box

(6) After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into the ballot box.

Counting votes

(7) After all benchers entitled to vote in a poll conducted under subsection (1) have voted or declined on a ballot, the Secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all ballots from the ballot box, open the ballots and count the votes cast for each candidate.

Report of results

(8) Immediately after counting the votes cast for each candidate, the Secretary shall report the results to Convocation.

Same

(9) The candidate who receives the least number of votes in the poll conducted under subsection (1) shall be removed as a candidate in the election of Treasurer.

Further polls

(10) If two or more candidates in a poll conducted under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted under subsection (1), for the candidates with the same number of votes, until only one candidate from all the candidates included in the initial poll conducted under subsection (1) is removed as a candidate in the election of Treasurer.

TERM OF OFFICE

Taking office

14. (1) In an election of Treasurer under section 1,

- (a) a bencher elected as Treasurer by acclamation shall take office at the regular meeting of Convocation in June following his or her election; and
- (b) a bencher elected as Treasurer by poll shall take office immediately after his or her election.

Term of office

(2) Subject to any by-laws providing for the removal of a Treasurer from office, the Treasurer shall remain in office until his or her successor takes office.

HONORARIUM

Treasurer's entitlement to receive honorarium

15. The Treasurer is entitled to receive from the Society an honorarium in an amount determined by Convocation from time to time.

VACANCY IN OFFICE

Vacancy

16. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected benchman to fill the office of Treasurer until the next election of Treasurer under section 1.

ACTING TREASURER

Acting Treasurer

17. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 16, the chair of the standing committee of Convocation responsible for financial matters, or if he or she for any reason is unable to act, the chair of the standing committee of Convocation responsible for admissions matters, shall perform the duties and exercise the powers of the Treasurer until,

- (a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or
- (b) a Treasurer is elected under section 16 or 1.

FOR DECISION

MATTERS RELATING TO THE SETTING OF CONVOCATION'S AGENDA

Motion

30. That Convocation adopt the following policy relating to setting Convocation's agenda:

The Treasurer has the authority to decline to schedule a notice of motion on Convocation's agenda for two meetings after it is brought forward. At the third meeting, if the notice of motion has not been withdrawn and if Treasurer has not placed the notice of motion on Convocation's agenda, the fact that the notice of motion has not been scheduled should itself be an agenda item, to be considered *in camera* unless the Treasurer determines otherwise, and Convocation should be given the opportunity to vote to overturn the Treasurer's decision on a simple majority vote.

Background

- 31. The other specific issue referred to the Task Force concerned the setting of Convocation's agenda. The Task Force was asked to consider the extent of the Treasurer's discretion to set the agenda, including declining to place a specific item on the agenda.
- 32. At Convocation on March 23, 2006, new rules of procedure for Convocation were adopted. These rules now form part of By-Law 8 (Convocation).² Section 7 of the By-Law provides that "the business and the order of business at Convocation shall be

² See Appendix 3 for By-Law 8.

determined by the Treasurer". In addition, section 5 provides that a special meeting of Convocation shall be called on the written request of ten voting benchers.

33. The By-Law is silent on the issue of whether the Treasurer has the authority to decline to place an item, such as a motion or a committee report, on Convocation's agenda indefinitely. The Task Force was asked to make recommendations on this issue.

The Task Force's Deliberations

34. The Task Force has considered a number of issues concerning the effective operation of Convocation. Elsewhere in this report, the Task Force gives the rationale for the creation of a Priority Planning Committee, to assist in setting priorities, and it is contemplated that this committee would assist the Treasurer in setting Convocation's agenda.
35. Nevertheless, the Task Force is of the view that a clear policy on agenda setting would be helpful. The effective functioning of Convocation requires a proper balance that takes into account the following considerations:
- a. Each agenda should be of manageable length;
 - b. Important matters should not be crowded out by less important items;
 - c. Matters that are premature or that relate to items still being considered by a committee should be deferred;
 - d. All benchers are entitled to feel that their concerns will be addressed;
 - e. Frivolous and vexatious matters should be avoided.
36. For these reasons, the Task Force proposes that the Treasurer have the authority to decline to schedule a notice of motion for two meetings after it is brought forward. At the third meeting, if the notice of motion has not been withdrawn and if the Treasurer has not placed the notice of motion on Convocation's agenda, the fact that the notice of motion has not been scheduled should itself be an agenda item to be considered *in camera*, and Convocation should be given the opportunity to vote to overturn the Treasurer's decision on a simple majority vote.

APPENDIX 3

BY-LAW 8

Made:

January 28, 1999

Amended:

February 19, 1999

March 26, 1999

November 24, 2005

Revoked and Replaced: June 22, 2006

CONVOCATION

INTERPRETATION

Definitions

1. (1) In this By-Law,

“main motion” means a motion which is the subject of an amendment contained in a motion to amend;

“question of privilege” means a question about any right enjoyed at Convocation by the benchers present at Convocation collectively or by any bencher present at Convocation individually conferred by this By-Law or by practice, precedent, usage and custom;

“question of procedure” means a question about the procedure being followed at any time at Convocation;

“substantive motion” means a motion that is a self-contained proposal capable of expressing a decision of the benchers present at Convocation concerning a matter of import to the Society.

Interpretation: tabling a motion

(2) In this By-Law, “to table a motion” means to defer indefinitely debating the motion or putting the motion to a vote and “a motion which was tabled” has a corresponding meaning.

MEETINGS

Convocation conducted in accordance with By-Law

2. (1) Convocation shall be conducted in accordance with this By-Law.

Waiving compliance, *etc.*

(2) Despite subsection (1), the Treasurer may waive compliance with any requirement, alter any requirement and abridge or extend any time period mentioned in this By-Law in respect of Convocation.

Matters of procedure not provided for

(3) Any matter of procedure not provided for in this By-Law shall be determined by the Treasurer.

Place of Convocation

3. (1) Subject to subsections (2) and (3), Convocation shall be held in Osgoode Hall.

Same

(2) The Treasurer may convene Convocation at any place.

Convocation by telephone conference call, *etc.*

(3) Convocation may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in Convocation to communicate with each other simultaneously and instantaneously.

Convocation: when held

4. Convocation shall be held on the fourth Thursday of each month, except the months of July, August and December, unless otherwise directed by the Treasurer.

Convocation: special meetings

5. (1) The Treasurer may convene Convocation at any time by giving at least twenty-four hours notice, or by directing the Secretary to give such notice, to each bencher.

Same

(2) Upon the written request of ten benchers who are entitled to vote in Convocation, the Secretary shall convene Convocation by giving at least twenty-four hours notice to each bencher.

Convocation open to public

6. (1) Subject to subsection (2), Convocation shall be open to the public.

Public excluded

(2) Convocation shall be held in the absence of the public to deal with any of the following matters:

1. Matters relating to the Society's personnel.
2. Litigation in which the Society is involved.
3. Negotiations with a government.
4. Intimate financial or personal matters or other matters in respect of which, in the opinion of the benchers present at Convocation, the need for privacy outweighs the public interest in disclosure.
5. Any matter at the instance of the Treasurer.

Order of business

7. Subject to section 8, the business and the order of business at Convocation shall be determined by the Treasurer.

Order of business: special meeting

8. At Convocation convened under subsection 5 (2), the business of Convocation shall include the matters for which Convocation was convened.

Minutes

9. (1) Except when Convocation is resolved into a meeting of the benchers as a committee of the whole, minutes shall be kept for Convocation.

Confirmation of minutes

(2) At each Convocation, the minutes of the last Convocation shall be confirmed by the benchers present at Convocation and shall be signed by the Treasurer or the bencher who presided at the meeting of the Convocation to which the minutes relate.

Publication of minutes

(3) Except in the case of the minutes of Convocation held in the absence of the public, the minutes of Convocation shall be made available for public inspection.

Transcript

10. (1) A full court reporter service shall be provided for Convocation.

Publication

(2) The transcript of Convocation open to the public shall be made available for public inspection.

Adjournment for lack of quorum

11. (1) If at any time after Convocation has commenced, the Treasurer's attention is directed to the apparent lack of a quorum, the Treasurer shall determine whether a quorum is

present and, upon determining that a quorum is not present, the Treasurer shall adjourn Convocation without motion.

Same

(2) The matter before Convocation immediately prior to an adjournment under subsection (1), and all matters listed on the agenda for Convocation that are not reached prior to the adjournment, shall be deemed to be deferred to the next Convocation to be held under section 4.

Removal of benchers from office for non-attendance

12. (1) The benchers present at Convocation may remove from office an elected benchers who fails to attend Convocation held under section 4 six consecutive times.

Failure to attend three meetings

(2) When an elected benchers fails to attend Convocation held under section 4 three consecutive times, the Secretary shall immediately send to the elected benchers a notice of the failure and of the benchers' authority under subsection (1) to remove him or her from office.

Failure to attend six meetings: report

(3) When an elected benchers fails to attend Convocation held under section 4 six consecutive times, the Secretary shall report the failure at the first Convocation held thereafter under section 4.

TREASURER

Treasurer to preside

13. The Treasurer shall preside over Convocation.

Appeal of Treasurer's rulings and decisions

14. (1) Two or more benchers who are entitled to vote in Convocation may together appeal to the benchers present at Convocation from a ruling or decision of the Treasurer made in Convocation.

(2) Despite subsection (1), the following rulings and decisions of the Treasurer made in Convocation are not subject to an appeal:

1. A decision on a question of privilege or procedure.
2. A ruling that a benchers's remarks are out of order for the reason set out in clause 26 (3) (e).
3. A ruling that a motion is out of order because it is a motion mentioned in subsection 18 (2).
4. A decision under subsection 27 (1) to put a motion to a vote.
5. A decision about a recorded vote.

Time for making appeal

(3) An appeal from a ruling or decision of the Treasurer shall be made immediately after the ruling or decision.

Debate

(4) Except in the case of an appeal of a ruling or decision of the Treasurer in respect of a bencher's language or behaviour, an appeal of a ruling or decision of the Treasurer may be debated and sections 24 to 26 apply, with necessary modifications, to the debate.

Same

(5) The debate on an appeal of the Treasurer's decision under paragraph 5 of subsection 6 (2) shall be conducted in the absence of the public.

Disposition

(6) An appeal of a ruling or decision of the Treasurer shall be disposed of by a vote on the question: "Should the ruling or decision of the Treasurer be upheld?"

Same

(7) Sections 27 to 31 apply, with necessary modifications, to a vote on an appeal of a ruling or decision of the Treasurer.

Same

(8) The vote on an appeal of the Treasurer's decision under paragraph 5 of subsection 6 (2) shall be conducted in the absence of the public.

Resolution: appeal of Treasurer's ruling

(9) A ruling or decision of the Treasurer shall be upheld if the majority of votes cast are in favour of upholding the ruling or decision of the Treasurer or if there is a tie vote on the appeal.

ORDER AND DECORUM

Treasurer to preserve order, decorum, *etc.*

15. At Convocation, the Treasurer shall preserve order, decorum, civility and courtesy and shall decide questions of privilege and procedure.

Benchers not to interrupt Treasurer

16. (1) Benchers shall refrain from interrupting the Treasurer when he or she is speaking, making a ruling or decision or putting a motion or question to Convocation for a vote.

Bencher not to interrupt other bencher

(2) Unless otherwise provided in this By-Law, when a bencher is speaking, no bencher other than the Treasurer shall interrupt the bencher speaking.

Questions of privilege and procedure

17. (1) A bencher may raise a question of privilege or procedure at any time during Convocation and may interrupt another bencher who is speaking to do so.

Discussion

(2) Apart from the bencher raising the question, there shall be no discussion or debate of a question of privilege or procedure.

Decision

(3) The Treasurer shall decide a question of privilege or procedure immediately after it is raised.

Taken up immediately

(4) If the Treasurer decides that a *prima facie* case of privilege exists, it shall be taken into consideration immediately.

MOTIONS

Motions to be made in accordance with by-law

18. (1) Motions made in Convocation shall be made in accordance with this By-Law.

Prohibited motions

- (2) No motion shall be made concerning a matter,
- (a) in respect of which a hearing may be conducted under the Act or by-laws; or
 - (b) that is pending before a court or tribunal for determination.

Who may make motion

19. (1) A motion may be made in Convocation by a benchner who is entitled to vote in Convocation.

Certain benchners to move certain motions

(2) A substantive motion of which notice has been given shall be made by the benchner who gave notice of the motion.

Notice required

20. (1) Notice is required for the following motions:
- 1. A substantive motion, other than a substantive motion contained in the report of a standing or other committee.
 - 2. A motion to resume debating and to put to a vote a substantive motion which was tabled.

Method of giving notice

(2) Notice of a motion shall be given in writing by the benchner intending to make the motion by delivering a copy of the text of the motion, signed by the benchner intending to make the motion and the benchner intending to second the motion, to the Secretary at least twenty days before the day fixed for Convocation at which the benchner intends to make the motion.

Sending notice to all benchners

(3) The Secretary shall as soon as possible after receiving notice of a motion under subsection (2) send a copy of the text of the motion to all benchners.

Substantive motion without notice

(4) Despite subsection (1), a benchner may make a substantive motion, other than a substantive motion contained in a report of a standing or other committee, without notice at Convocation if the motion relates to a matter then being debated at Convocation.

Seconders required

21. (1) A motion must be seconded before it may be debated, if debate is permitted, and voted on.

Seconders

(2) Only benchers who are entitled to vote in Convocation may second a motion.

Same

(3) A substantive motion of which notice has been given shall be seconded by the bencher who signed the text of the motion as the bencher intending to second the motion.

Introduction of substantive motion

22. (1) Subject to section 7, a substantive motion may be moved at any time at Convocation provided that no other substantive motion is before Convocation at the time.

Same

(2) A motion to refer the subject matter of a substantive motion, other than a substantive motion contained in the report of a standing or other committee, to a standing or other committee, a motion to table a substantive motion or a motion to put a substantive motion to a vote may be moved at any time after the substantive motion has been moved and seconded, but before it has been voted on, at Convocation.

Same

(3) A motion to amend may be made at any time after a main motion is moved and seconded, but before it has been voted on, at Convocation, provided that no other motion to amend is before Convocation at the time.

Same

(4) A motion to adjourn Convocation may be made at any time.

Withdrawal

23. (1) A bencher who has given notice of a motion may withdraw the same at any time.

Same

(2) A bencher who has moved a motion may withdraw the same at any time with the consent of the bencher who seconded the motion.

DEBATE

Debate on motions

24. A motion before Convocation may be debated except in the following cases:

1. A motion to table a motion.
2. A motion to adjourn Convocation.

Who may participate in debate

25. Every bencher, the Chief Executive Officer and any other person with the prior permission of the Treasurer may take part in any debate at Convocation.

Order of speaking

26. (1) Subject to subsection (2), in a debate, benchers are entitled to speak to a motion in the following order:

1. The bencher who moved the motion.

2. The bencher who seconded the motion.
3. Any other bencher or person, in accordance with section 25, when recognized by the `Treasurer.

Reserving right to speak

(2) The bencher who seconded the motion may reserve the right to speak to the motion until a later time in the debate.

Matters out of order in debate

- (3) In a debate, a bencher shall be called to order by the Treasurer if he or she,
 - (a) subject to subsections (4), (5), (6) and (7) speaks to a motion more than once;
 - (b) directs his or her speech to matters other than the motion being debated;
 - (c) persists in needless repetition or raises matters that have already been decided at Convocation;
 - (d) anticipates a matter already on the agenda of Convocation for consideration;
 - (e) refers to a matter,
 - (i) in respect of which a hearing may be conducted under the Act or by-laws; or
 - (ii) that is pending before a court or tribunal for determination;
 - (f) makes allegations against another bencher;
 - (g) imputes false, improper or ulterior motives to another bencher;
 - (h) charges another bencher with uttering a deliberate falsehood; or
 - (i) uses abusive or insulting language of a nature likely to create disorder.

Speaking twice

(4) A bencher may speak to a motion a second time only to explain a material part of his or her first speech which he or she believes may have been misunderstood, and in so doing, the bencher shall not introduce any new points.

Same

(5) A bencher who moves a motion may speak to the motion a second time immediately before the end of the debate to reply to any comments or questions raised during the debate.

Questions on speeches and replies

(6) At any time during the debate on a motion, a bencher may ask a brief question about another bencher's speech and that bencher may, with the Treasurer's permission, reply briefly.

Treasurer's permission to speak second time

(7) A bencher may speak to a motion a second time, in circumstances not mentioned in subsections (4), (5) and (6), with the Treasurer's permission.

Special rules of debate: motions to amend

(8) Immediately a motion to amend is made during the debate on a main motion, the Treasurer shall interrupt that debate and call for a debate on the motion to amend.

Resumption of interrupted debate

(9) A debate that has been interrupted under subsection (8) shall be resumed immediately the motion to amend which caused the debate to be interrupted has been voted on.

VOTING

Putting debatable motion to vote

27. (1) Subject to subsection (2), the Treasurer shall put a motion which may be debated to a vote when he or she is of the opinion that debate on the motion has been reasonably completed.

Motion to amend accepted

(2) A motion to amend shall not be put to a vote if the benchers who moved and seconded a main motion consent to that motion being amended as proposed in the motion to amend.

Putting non-debatable motion to vote

(3) The Treasurer shall put a motion which may not be debated to a vote immediately after the motion has received a seconder.

Treasurer may not vote

28. The Treasurer shall not vote on a motion except in the case of a tie when the Treasurer may give a casting vote.

Proxy voting prohibited

29. Votes may not be cast by proxy.

Manner of voting

30. Voting shall be by a show of hands, or if Convocation is conducted by means of telephone, electronic or other communication facilities under subsection 3 (3), by oral response, unless a recorded vote is required by the Treasurer, or requested by a bencher entitled to vote in Convocation and permitted by the Treasurer, in accordance with section 31.

Recorded vote

31. (1) A recorded vote may be required by the Treasurer or requested by a bencher entitled to vote in Convocation before a motion is put to a vote.

Recorded vote requested by bencher

(2) When a recorded vote has been requested by a bencher, the Treasurer may, but is not required to, conduct a recorded vote.

Manner of conducting recorded vote

(3) When a recorded vote is being conducted, the Treasurer shall put the subject motion to the benchers present in Convocation and the Secretary shall then call out the names of all benchers entitled to vote in Convocation and upon hearing his or her name, a bencher shall state his or her vote or if wishing not to vote shall state his or her abstention from the vote.

Resolution

32. A motion shall carry if a majority of the votes cast are in favour of the motion.

COMMITTEE OF THE WHOLE

Committee of the Whole

33. (1) At any time, the Treasurer may require Convocation to resolve itself into a meeting of the benchers as a committee of the whole to consider any matter before Convocation at the time.

Appointment of chair

(2) Immediately after announcing his or her decision to require Convocation to resolve itself into a meeting of the benchers as a committee of the whole, the Treasurer may appoint a bencher as chair of the committee of the whole and, if the Treasurer does so appoint a bencher, the Treasurer shall then leave the chair.

Appointed bencher takes chair

(3) When the Treasurer leaves the chair in accordance with subsection (2), the bencher appointed as chair of the committee of the whole shall take the chair whereupon Convocation resolves itself into a meeting of the benchers as a committee of the whole.

Rules of procedure

(4) Section 24 of the Act and subsection 11 (1) and sections 13 to 32 of this By-Law apply with necessary modifications to proceedings of a committee of the whole.

Treasurer resumes chair

- (5) When a committee of the whole has completed its proceedings,
- (a) if the Treasurer had appointed a bencher as chair of the committee, the chair of the committee shall leave the chair and the Treasurer shall then resume the chair; and
 - (b) Convocation shall resume as such.

Report to meeting

(6) When Convocation resumes after the benchers present at Convocation have met as a committee of the whole, the Treasurer or the chair of the committee may report to Convocation on the proceedings of the committee.

FOR INFORMATION

REPOSITIONING THE LAW SOCIETY'S GOVERNANCE: INSTITUTING A PROCESS FOR CONVOCATION TO PLAN ITS PRIORITIES *(for consideration and discussion at a future Convocation)*

Motion

37. That Convocation approve the following with respect to planning and prioritizing matters for Convocation's policy agenda:
- a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and

- b. Convocation shall establish a Priority Planning Committee to assist Convocation in planning its priorities, with the following membership and mandate:
- i) The members of the Committee are the Treasurer, who is the Chair, the Chairs of the Professional Development, Competence and Admissions Committee, the Professional Regulation Committee, the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, the Government Relations and Public Affairs Committee, the Finance and Audit Committee, and a lay benchers chosen by the Treasurer;
 - ii) The Chief Executive Officer shall be an *ex officio* member of the Committee;
 - iii) The mandate of the Committee is to
 - (A) recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
 - (B) periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future; and
 - (C) report annually to Convocation on the status of Convocation's priorities

Introduction

38. Priority-setting for Convocation has been discussed on a number of occasions within the past few years by committees, task forces and Convocation. These discussions are usually linked to the goal, at the highest level, of ensuring that the Law Society's self-governance of the legal profession is sound and continues to focus on the public interest. At a practical level, benchers realize that the Law Society's effectiveness as a regulator is linked to its effectiveness at the board (Convocation) level, and from time to time this prompts a review of how Convocation assesses and deals with priorities for its policy agenda.
39. While it seems that this subject appears at regular intervals on Convocation's agenda, the need exists within organizations like the Law Society, especially in times of change, to assess their structure and determine if improvements can be made for more efficient and effective governance. Organizations are not static, and change, whether prompted from within and from external sources, can be seen as an opportunity for renewal at the board level.
40. The Law Society is entering a period of significant change. It is on the verge of becoming the regulator of paralegals, which will have an effect – perhaps a profound effect – on the Society's operations and on Convocation's role in setting policy that directs the operational initiatives. In terms of the public constituency, paralegal regulation may be one of the most significant challenges for the Society, and it is anticipated that the Society will come under increased scrutiny. That scrutiny is likely to extend to the manner in which it governs itself.

41. For these reasons, an assessment of the manner in which Convocation establishes and carries out its policy agenda is timely. In addition, no crises exist that might cause the Society to address a governance issue with a focused but perhaps narrow solution. This permits the Society to engage in some broader thinking about its governance policies and the specific issue of priority-setting. As the title suggests, the report proposes a “repositioning” of the priority-setting function that Convocation is to exercise as a matter of good governance.

Principles of Good Governance

42. In considering a new approach for Convocation’s priority-setting responsibility, the Task Force thought it important at the outset to articulate general principles of good corporate governance as the foundation for forward planning. The Task Force drew on research already completed on governance at the Society and found some of the objectives of good governance identified in the May 15, 1996 Report of the Committee on Governance Restructuring (“A New Architecture for Law Society Governance”), to be instructive. They are as follows:
- a. Vision. Convocation should be focused on outward vision rather than internal administrative detail, and on the results it wishes to achieve for clearly defined groups or constituencies rather than on the minutiae of operations and program details.
 - b. Direction. Convocation should focus on setting policies and long-term strategic goals for the Law Society. Benchers should turn their attention regularly to setting the overall purpose and agenda for the Society--why it exists and who it should serve.
 - c. Definition of roles and responsibilities. Bencher and staff roles must be clearly distinguished and appropriate accountability defined.
 - d. Sound management. Convocation must ensure that the Society and all programs for which it is responsible are managed efficiently and effectively.
 - e. Effective self-management (of Convocation). Convocation must ensure that the structures and procedures it adopts will allow it to function effectively, e.g. committee structure, bencher conduct guidelines, meeting rules, role of benchers, Treasurer, etc.

Priority-Setting and Current Governance Policies

43. Past consideration of processes for planning priorities for Convocation date from the early 1990s, and focused on using an executive or advisory committee as a way to assist Convocation in effectively and efficiently sorting out priorities and planning a policy agenda.³

³ Research and Planning Committee reports in 1991 and 1992 referenced a subcommittee report’s findings on the idea of an executive committee responsible for determining the political and financial priorities of the Law Society. This initiative was not pursued, but the issue was picked up again, following the adoption of Governance Policies as discussed in this report, in 2000, with the 2000 Strategic Plan, noted later in this report.

44. A concerted effort to address Law Society governance in the mid-1990's resulted in Convocation's adoption of written Governance Policies, including processes to establish the priorities for the Law Society's policy objectives.⁴ In Part II of the Governance Policies, entitled 'Governance Process', the following is stated:

1. Governance Commitment

1.0 Convocation will govern as a self-regulating body so as to ensure that the Law Society of Upper Canada is accountable to the Ontario public and the legal profession by establishing and delivering appropriate goals and avoiding unacceptable outcomes.

B. Governing Approach

1.0 In governing, the benchers will emphasize strategic leadership, policy making, and the creation of effective accountability mechanisms. They will define values, and plans, looking outward and forward.

C. The Role of Convocation

2.0 Convocation shall

2.1 Govern the affairs of the Society *effectively and efficiently, guided by long term objectives.*

...

2.4 Focus on long term goals rather than the methods of achieving them.

(emphasis added)

45. In fact, the Governance Policies specifically require Convocation, and the benchers, to establish its and their priorities annually, and to do so in advance of, and not as part of, the budget process. Part II. H. Governance Process of the Governance Policies states as follows:

H. Annual Bencher Planning Cycle

1.0 *To accomplish its job to govern with a long term strategic perspective,* Convocation shall on an annual basis,

i) *re-examine its Ends policies;* and

ii) *set a twelve month agenda for its deliberations and policy development;*

1.1 *These activities shall precede the creation of the budget for the following year.*

(emphasis added)

46. Accordingly, while Convocation adopted the above policies as a method for considering and determining priorities, it has not taken the next logical step, which would be to institute a strategic planning cycle. It is the Task Force's view that the time has come to

⁴ These Policies arose from adoption of the Carver Model of Corporate Governance, in which Convocation sets its missions and "ends" as the benefits to be achieved or results the Law Society wishes to accomplish, and "means" as the processes and procedures (programs) that will fulfill or implement the ends.

recommend ways to carry this into effect, as Convocation has already mandated that it will establish its priorities, in accordance with the Policies, on a yearly basis.

Views on Law Society Governance That Informed the Task Force

The Plumptre Report

47. The Task Force reviewed a report prepared in September 2003 for the Chief Executive Officer by Tim Plumptre of Institute on Governance⁵. Mr. Plumptre's report offered a critique of the Society's current governance structure, based on his research, including interviews with benchers. After noting the historical studies on governance at the Society, Mr. Plumptre had this to say about priority planning:

Among the issues most commonly raised are the lack of any manner of setting priorities, and the need for some kind of mechanism to help guide the work of Convocation. A salient development, now more than two decades old (1981), was a decision by Convocation to adopt an Executive Committee with the apparently anodyne role to help set priorities, direct work to the right place and ensure implementation of Convocation decisions. This arrangement remained in place until 1983 when the then Treasurer decided to disband it because she believed it was causing too much divisiveness.

...

Interviewees stressed the lack of a process to set priorities systematically. "We start the year with ten ideas and we wind up with sixty. We can't possibly cover all this material. So the result is that *de facto*, staff wind up setting the priorities, which is not the way it should be." A related problem is that Convocation approves more initiatives than staff has the resources to work on.

The timing of a motion tends to determine its precedence or priority rather than its substance: "earlier motions get more attention even if they are not very important. If everyone wants to speak for one minute we'll spend an hour on it. There's no discipline or party process."

Similarly, "once an issue is studied, there is no process for determining its ripeness for debate" other than the Treasurer's personal judgement. The process of agenda-setting was criticized as undemocratic as well as inefficient: "under the present system if a Treasurer does not want to put an issue on the agenda of Convocation he can just stop it." One interviewee's impression was that many Benchers resented this kind of autocratic behaviour. The ability of the Treasurer, if so inclined, to manipulate the system to his or her own ends sometimes leads to "a very unhappy group of Benchers."

...

When it comes to reform, the Society is a victim of its own governance system: reform runs into the sand due to considerations such as the size and unwieldy nature of Convocation and the lack of an effective priority-setting process,

⁵ *Governance At The Law Society Of Upper Canada: Report*, Tim Plumptre, Institute On Governance, September 25, 2003. This report was included with the May 2006 Convocation Material.

(coupled with the apparent disinterest of many lawyers in the procedures and policies that support what is actually the central role of the Society - governance).

48. The Task Force, while acknowledging that Mr. Plumptre's critique was based in part on anecdotal evidence, felt that the concerns he raised have merit.

Other Law Societies

49. As a matter of interest, the Task Force reviewed the governance structures in other law societies in Canada and noted a number of differences between many of the law societies and the Law Society of Upper Canada. Most other law societies have an executive committee and some have a "ladder" to the equivalent position of Treasurer. For example, at the Law Society of British Columbia, the second vice-president is elected by the membership at the annual general meeting and eventually moves to the position of president, who serves for a one-term.⁶
50. The Task Force also learned through communications with the other law societies that they have from time to time been required to address the question of priority setting and how best to organize a policy agenda. The following are some of the comments offered by the other law societies:
- a. There is no simple way to set priorities, and this is a systemic problem for all regulatory bodies. The reality is that organizations like the Law Society cannot avoid having to react to both long term policy objectives and issues that arise unexpectedly. The key is to try to manage the process.
 - b. Managing the process starts with the highest level of governance. A manageable board and committee structure is important in this respect. The committees, not the board, should focus on the details. The board should focus on policy.
 - c. Priority-setting by benchers is at a high level, arising from planning retreats every few years on longer term objectives

Sy Eber's Contributions

51. The Task Force was also assisted in its consideration of priority planning by one of its members, Sy Eber. As a member of the Emerging Issues Committee during its review of governance issues two years ago, he focused on the influences on priority setting, the principles that should guide the setting of priorities and ideas for a structure to support priority setting.
52. Of particular interest to the Task Force were Mr. Eber's comments on the process for setting priorities. His view was that, first, longer-term vision was required of Convocation. Second, as a matter of process, he believes that the current priority-setting typically occurring within the "silos" of individual committees should be replaced by a matrix approach that would permit benchers to see what is occurring across these silos, as one aspect of determining priorities.

⁶ A chart at Appendix 4 includes information on the other law societies.

53. Mr. Eber thought that Convocation could consider applying some evaluative criteria by which to set priorities as well as measure and evaluate current policies and programs. This would, for example, utilize such tools as gap and risk analyses. He recognized that some of this work is already being done, but could be more structured and universally applied throughout Convocation and its committees.
54. In addition, he opined that an organizational structure for priority planning could be formalized to reflect much of what is already happening with the Law Society, and would involve institutionalizing current practices. For example, the chairs of committees are consulted individually, and, in some instances, collectively, to review priorities in isolation or in comparison. Rather than meetings and discussions being held on an *ad hoc* basis, he suggested that the committee chairs could be gathered on a more regular and formal basis together with the Treasurer and the Chief Executive Officer to consider the determination of priorities to be engaged by the Society. This group would be charged with providing thoughtful insight and suggestions to Convocation from an agreed-upon analytical framework, which would involve all benchers at an initial stage. This would support his view is that priority setting must be relevant to the body and people involved in it.
55. The Task Force found Mr. Eber's contribution of great value in determining how to address the question of improving priority planning.

Previous Efforts Relating to Priority Planning

56. As noted earlier, the Society has in the past explored establishing a committee for the purpose of planning and setting priorities for Convocation. The most recent comprehensive treatment given to the issue was in the 2000 Strategic Plan, which recommended that an executive committee be formed "for managing and streamlining Convocation's agenda and advising the Treasurer".
57. By the time of the Strategic Planning Committee's January 2001 report to Convocation, the proposal had evolved into a recommendation for a Treasurer's Advisory Committee. The recommendation aimed at addressing what the Strategic Planning Committee saw as gaps in priority planning, including a lack of co-ordination of policy issues between committees, overlap of issues among committees, little or no financial assessment of the issues and a lack of planning for implementation. The Treasurer's Advisory Committee would essentially oversee and co-ordinate the work of committees, task forces and working groups for the purpose of ensuring the Treasurer and ultimately Convocation could deal with policy matters in a more structured way. Convocation did not approve this recommendation.
58. While significant improvements have been made since 2001 to remedy the gaps noted by the Strategic Planning Committee, what remains lacking is a formal mechanism to plan and prioritize Convocation's agenda.
59. Against this background, the Task Force considered the merits of institutionalizing priority planning, and the best vehicle through which to accomplish it.

Reasons for a Priority Planning Committee

60. The Task Force is of the view that a more structured approach to planning and prioritizing the Society's policy agenda is required if Convocation is to become more efficient and effective in fulfilling its mandate. The Task Force believes that this type of structure would help to address problems in the Society's governance, including the following:
- a. It is difficult, if not impossible, to determine at a given point in time what are Convocation's top priorities. This situation is exacerbated by the fact that the work of Convocation and its Committees generates many projects that may be underway at any one time. Historically, there has been no defined way of assessing these activities against appropriate criteria;
 - b. In these circumstances, it is difficult to determine whether Convocation is effectively and efficiently managing its priorities, which would include establishing attainable goals and creating effective accountability mechanisms. While benchers may be able to identify the major issues which concern the Society as an organization, it is more difficult to identify where each issue lies in terms of priority or how that issue should be assessed against other issues as a matter of priority;
 - c. Further, it is difficult to rationalize what Convocation does at the policy level against financial expenditures. In the Task Force's view, this situation approaches a paradox when the Finance Committee, which prepares the draft annual budget for Convocation's approval and must authorize all expenditures outside of those allocated in the budget, is often seen as the body that really determines priorities. This situation is contrary to Convocation's Governance Policies which, as above-noted, contemplate an Annual Bencher Planning Cycle and mandate that Convocation set a long term strategic perspective and then create a budget for the following year.
61. There is an informal process by which Convocation's agenda is set: consultations occur among the chairs of committees, and among senior staff, who bring issues forward as required to the Treasurer and the CEO. The Task Force believes this informal process should be enhanced and institutionalized with a more formal structure in the form of a priority planning committee.

Features of the Proposed Priority Planning Committee

62. The following are the Task Force's proposals for the Committee:
- a. The committee should be chaired by the Treasurer.
 - b. The members of the committee should be the chairs of those committees which are responsible for developing policy on matters related to the core mandate of the law society or which are necessary to informed policy development, namely, the Professional Regulation Committee, Professional Development, Competence & Admissions Committee, Aboriginal Issues Committee/Comité Sur L'Équité Et Les Affaires Autochtones, the Government Relations and Public Affairs Committee, and the Finance and Audit Committee.
 - c. The chair of the Paralegal Standing Committee, which is being composed pursuant to the enabling amendments to the *Law Society Act* in Bill 14, should be added as a member of the Committee at the appropriate time.

- d. The chairs of the above committees would be free to select an alternate delegate.
 - e. A lay bencher chosen by the Treasurer should also be a member of the Committee.
 - f. The Chief Executive Officer should be an *ex officio* member of the Committee. The Task Force's view is that the operations of the society must be realistically considered in planning priorities, and the CEO's perspective in this respect would be valuable.
 - g. Other benchers would be invited to attend committee meetings for specific issues.
 - h. The Committee should have no decision-making authority, but can only recommend matters to Convocation.
 - i. The Committee would be required to review its work on a yearly basis and assess the status of the policy agenda Convocation has adopted.
63. The Committee proposed by the Task Force, in supporting and assisting Convocation in fulfilling its responsibility for priority planning, may only make recommendations to Convocation. The Committee would not be an executive committee with decision-making power.

Key Features of the Priority Planning Process

64. The Task Force believes that all benchers should participate in determining Convocation's priorities. To that end, the Task Force proposes the following process, which defines the responsibilities of Convocation and also the mandate of the Priority Planning Committee:
- a. Near the beginning of each bench (that is, following the Bencher Election), a full bencher meeting should be devoted to considering Convocation's priorities. This meeting should be institutionalized as part of Convocation's priority planning function. The meeting could be held at a regular Convocation, arranged for a special Convocation, or held at a bencher retreat.
 - b. At this meeting, which would likely be held in the fall of each bencher election year, benchers would be given the opportunity to bring forward matters for consideration as strategic objectives to be addressed within the next three and a half years at the Law Society. This meeting would also be an occasion to review the existing priorities identified by the prior bench, and to assemble and review all of the projects and proposed projects on the agenda of the committees.
 - c. The strategic objectives would be informed by the role statement and the benchers' vision for the society, and thus, would be at a high level. In subsequent bencher terms, the statements of priorities by the previous bench would be available as a foundation for discussion.
 - d. The job of the Priority Planning Committee would be to assemble all of the relevant information, to assess all of these objectives and recommend for Convocation's approval a smaller number of the priorities for that period. Thus, the Committee would help organize the initial priority planning meeting of Convocation, and once that meeting is held, help organize the results of that meeting for final consideration by Convocation. The objective would be to recommend appropriate priorities for Convocation's approval.
 - e. For continuity purposes, budget planning relating to the policy agenda would be wedded to the three and a half year period. The regular annual budget planning

cycle would continue and would include any issues that arise annually from the prioritized objectives. As noted above, this is consistent with Governance Policy II H. which contemplates an Annual Benchers Planning Cycle in which the budget is based on a priority planning process.

- g. The Priority Planning Committee would identify the recommended priorities no later than December of the benchers election year, for Convocation's consideration and approval. It would be Convocation that would set the priorities assisted, but not governed, by the Priorities Planning Committee. Convocation would ensure that the issues arising from the strategic objectives are already being undertaken by the appropriate committee or administrative group within the Law Society, or that they would be assigned by Convocation to the appropriate committee, task force or working group. This process would also involve determination of operational strategies for implementation of the priorities.
 - h. As priorities may change over time, the Priority Planning Committee would address additional issues to be brought to Convocation to be assessed against Convocation's priorities. In this way, Convocation will be able to identify those issues that, at any particular time, are the most pressing ones on its agenda.
65. The end result of this process is a "rolling" priority statement by benchers on their primary policy objectives. That statement can also stand as both a stated "legacy" of policy objectives and accomplishments over the term of a particular bench, and an updated priority statement to be passed on to a new bench. Moreover, upon referral by Convocation of the issues to the appropriate committee, task force or working group, a second level of priorities to achieve the policy outcomes would be determined. Thus, priority setting would be accomplished by the following hierarchy:
- a. An objective informed by the Role Statement;
 - b. A vision on how the policy objective should be realized;
 - c. Operational strategy to determine the route to implementation; and
 - d. Operational tactics to implement the decision based on the policy objective.

The Priority Planning Committee's Additional Responsibilities

66. It is proposed that the Priority Planning Committee have the following additional responsibilities:
- a. when new issues are raised by benchers or presented to Convocation, to assist Convocation in determining whether those issues relate to identified priorities, so that Convocation may channel them to the appropriate committee or task force;
 - b. when new issues are raised which do not relate to identified priorities, to consider whether some urgency from a regulatory/governance perspective warrants immediate action on them, and to assist Convocation in determining what appropriate action should be taken to have the matter dealt with, or otherwise determine a response to the issue;
 - c. to act as the body to which new policy issues may be referred in the context of their consideration by Convocation, so that Convocation may be assisted with respect to the import of those issues in relation to Convocation's existing priorities; and
 - d. to monitor the implementation of Convocation's policy agenda for the period over which the strategic objectives are to be fulfilled, and report to Convocation on the results annually.

Attached to the original Report in Convocation file, copy of:

- (1) A copy of Table entitled Other Law Societies Governance.
(Appendix 4, pages 44 – 50)

Re: Treasurer's Election Issues

A debate followed.

Convocation went in camera briefly and returned in public.

It was moved by Mr. Heintzman, seconded by Professor Krishna, that Convocation

- a. approve electronic voting as an alternate method of voting in the Treasurer's election beginning in 2008.

Carried

- b. amend subsection 2(1) of By-Law 6 to provide that two benchers, and not more than two, may nominate a candidate for Treasurer, and that a nomination that does not comply with this requirement is invalid.

Carried

- c. affirm that the voters' list, showing who has voted, is available for review by Treasurer candidates and benchers.

Carried

- d. change the current process for breaking a tie in a Treasurer's election to a process in which the presiding Treasurer votes to break the tie in accordance with the results of his or her draw of one of the candidate's names from a ballot box.

Carried

It was moved by Mr. Wright, seconded by Mr. Swaye, that the number "two" in paragraph b to the motion be changed to the number "five".

Lost

Re: Setting of Convocation's Agenda

It was moved by Mr. Heintzman, seconded by Professor Krishna, that Convocation approve the following policy:

The Treasurer has the authority to decline to schedule a notice of motion on Convocation's agenda for two meetings after it is brought forward. At the third meeting, if the notice of motion has not been withdrawn and if Treasurer has not placed the notice of motion on Convocation's agenda, the fact that the notice of motion has not been scheduled should itself be an agenda item, to be considered *in camera* unless the Treasurer determines otherwise, and Convocation should be given the opportunity to vote to overturn the Treasurer's decision on a simple majority vote.

It was moved by Ms. Ross, seconded by Mr. Gottlieb, that the following words in the motion be removed “to be considered in camera unless the Treasurer determines otherwise.”

Lost

ROLL-CALL VOTE

Aaron	For	Krishna	Against
Alexander	For	Legge	Against
Backhouse	Against	Minor	Against
Banack	Against	Murray	Against
Bobesich	For	Pawlitza	Against
Campion	Against	Porter	Against
Carpenter-Gunn	Against	Potter	Against
Caskey	Against	Robins	Against
Chahbar	Against	Ross	For
Cherniak	Against	Ruby	Against
Chilclott	Against	Sandler	Against
Coffey	Against	Silverstein	Against
Copeland	For	Swaye	Against
Crowe	For	Symes	Against
Curtis	For	Topp	Against
Dickson	Against	Warkentin	Against
Doyle	Against	Wright	Against
Dray	Against		
Eber	Against		
Feinstein	For		
Filion	Against		
Gotlib	Against		
Gottlieb	For		
Harris	For		
Heintzman	Against		
Henderson	For		

Vote: 11 For; 32 Against

It was moved by Mr. Wright, seconded by Mr. Banack, that the word “regular” be added in front of the word “meetings” in the first and second sentences of the motion. This was accepted as a friendly amendment.

It was moved by Mr. Silverstein, seconded by Mr. Aaron, that the word “should” in the fourth last line and the second last line be substituted with the word “shall.”

Lost

It was moved by Mr. Heintzman, seconded by Professor Krishna, that the main motion as amended be adopted with the addition of the word “regular” before “meetings” in the second line and before the word “meeting” in the third line.

Carried

Item for Information

- Convocation's Priority Planning Process

CANLII REPORT

Ms. Curtis reported on CanLII.

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CONVOCATION ROSE AT 1:05 P.M.

Confirmed in Convocation this 25th day of January, 2007.

Treasurer