

MINUTES OF CONVOCATION

Friday, 26th June, 2020

9:30 a.m.

Via Videoconference

PRESENT:

The Treasurer (Teresa Donnelly), Adourian, Alford, Banack, Brown, Burd, Charette, Chiumminto, Conway, Cooper, Corbiere, Corsetti, Desgranges, Epstein, Esquega, Fagan, Falconer, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Lau, Lean, LeSage, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Mercer, Merali, Minor, Murchie, Murray, Painchaud, Parry, Pawlitzka, Pineda, Poliacik, Pollock, Prill, Rosenthal, Sellers, Sheff, Shi, Shin Doi, Shortreed, Spurgeon, Strosberg, Troister, Walker, Wellman, Wilkes, Wilkinson, B. Wright and N. Wright.

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Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

Treasurer Mercer welcomed those joining Convocation by videoconference.

The Treasurer recognized that Convocation would normally be meeting in Toronto which is a Mohawk word that means "where there are trees standing in the water".

When Convocation meets in Toronto, the Treasurer advised that he acknowledges that Convocation meets on the traditional territory of the Mississaugas of New Credit First Nation. He also acknowledges the Haudenosaunee. He advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. He recognized the long history of all the First Nations in Ontario and the Métis and Inuit peoples and thanks the First Nations people who lived and live in these lands for sharing them with us in peace.

The Treasurer addressed the protocol for Convocation via Zoom videoconference.

The Treasurer advised Convocation that on June 24, 2020, he presided at the ceremony to confer the degree of Doctor of Laws, honoris causa, on Philip M. Epstein, Q.C., approved by Convocation on February 27, 2020.

At the Treasurer's invitation, bencher Sidney Troister read the citation that was read at the ceremony.

ELECTION OF TREASURER

The Secretary announced the results of the first ballot:

Teresa Donnelly	31
Philip Horgan	22

The Secretary declared Ms. Donnelly elected as Treasurer.

Former Treasurer Mercer congratulated the new Treasurer and addressed Convocation.

Treasurer Donnelly thanked Mr. Mercer for his service as Treasurer.

Treasurer Donnelly invited Mr. Horgan to address Convocation.

Mr. Horgan congratulated the new Treasurer and addressed Convocation.

It was moved by Mr. Horgan, seconded by Mr. Lyon that the vote in the Treasurer's election be made unanimous.

Carried Unanimously

Treasurer Donnelly addressed Convocation.

TREASURER'S REMARKS

The Treasurer commented on the extraordinary experiences in the last four months as a result of the COVID-19 pandemic, and how the Law Society has adapted and innovated in this time.

The Treasurer also noted the current issues surrounding the Indigenous and racialized communities, and the important part the Law Society plays in fighting racism.

The Treasurer advised that the Law Society must continue to adapt and innovate in regulating as part of fulfilling its duties in the service of justice.

The Treasurer referred to the Access to Justice Committee Report in the Convocation Materials and noted the launch today of the consultation on the licensing model for family legal service providers.

The Treasurer also referred to the information report from the Tribunal Committee at Tab 5 of the agenda.

The Treasurer advised that she will consider committee appointments in the next four weeks and will likely call a Special Convocation this summer to approve appointments.

MOTION – CONSENT AGENDA – Tab 1

The Treasurer advised that a new motion has been added to the Consent Agenda at Tab 1.3 for the election of benchers, and that supplementary information has been provided in the motion at Tab 1.2 respecting appointments to the Law Society Tribunal, via e-mail.

It was moved by Ms. Lewis, seconded by Mr. Esquega, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Mr. Nicholas Wright requested that the motion for Law Society Tribunal appointments at Tab 1.2 be removed from the consent agenda.

The remaining items on the Consent Agenda were approved.

Mr. Parry and Mr. Prill abstained

Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of May 28, 2020 were confirmed.

Tab 1.3 - ELECTION OF BENCHER

WHEREAS Teresa Donnelly who was elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors, has been elected as Treasurer; and

WHEREAS upon being elected Treasurer, Teresa Donnelly ceased to hold office as an elected bencher in accordance with subsection 25(2) of the *Law Society Act*, thereby creating a vacancy in the number of benchers elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.

THAT under the authority contained in By-Law 3, Michael B. LeSage, having satisfied the requirements contained in subsections 43(1) and 45 of the By-Law, and having consented to the election in accordance with paragraph 12(1)(d) of the By-Law, be elected by Convocation as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.

Carried

Tab 1.2 – TRIBUNAL APPOINTMENTS

HEARING DIVISION

It was moved by Ms. Lewis, seconded by Mr. Esquega:

THAT the following be reappointed to the Hearing Division of the Law Society Tribunal for a term from September 26, 2020 to September 30, 2022:

Thomas G. Conway
Jacqueline Harper
Jay Sengupta
Anne E. Spafford

HEARING AND APPEAL DIVISIONS

THAT Malcolm M. Mercer be appointed to the Hearing and Appeal Divisions of the Law Society Tribunal for a term expiring June 24, 2022.

Mr. Pollock, seconded by Dr. Alford, moved that the motion be amended to appoint Michael LeSage to the Law Society Tribunal.

The Treasurer ruled the motion out of order.

The main motion carried.

Mr. Chiumminto, Mr. Fagan and Mr. Pollock abstained.

The Treasurer welcomed Mr. LeSage to Convocation.

AUDIT AND FINANCE COMMITTEE REPORT

Mr. Poliacik presented the Report.

Re: Lawyer Pool of the Compensation Fund Fund Balance Management Policy

It was moved by Mr. Poliacik, seconded by Mr. Groia, that on the unanimous recommendation of the Audit and Finance Committee, Convocation approve the revised Fund Balance Management Policy for the Lawyer Pool of the Compensation Fund set out in paragraphs A through D in the motion in the Report.

Carried

For Information:

- Fund Balance Management Policy – General Fund
- LIRN Inc. Financial Statements for the Quarter ended March 31, 2020
- Investment Compliance Reports – March 31, 2020

PRIORITY PLANNING COMMITTEE REPORT

Ms. Miles presented the Report.

Re: Recommendations for Strategic Change

It was moved by Ms. Shortreed, seconded by Mr. Chiumminto, that on the recommendation of the Priority Planning Committee, Convocation adopt the following motions:

1. That licensing candidates be permitted to choose between an administrative Call to the Bar or participation in a Call to the Bar ceremony and that the requirement to sign the Rolls of the Court of Appeal and the Superior Court of Ontario be revoked.

Mr. Troister, seconded by Mr. Wellman, moved that the motion be amended to permit a candidate to receive an administrative call and at the option of the candidate, a ceremonial call.

Lost

Mr. Horgan abstained.

The main motion carried.

Mr. Troister abstained.

2. That the Law Society cease publishing the names of administratively suspended licensees in the Ontario Reports.

Carried

Mr. Cooper and Mr. Desgranges abstained.

3. That all licensees be required to use the Portal to complete standard interactions with the Law Society unless the Society has a duty to provide alternative methods of interaction pursuant to its duty to accommodate persons as prescribed in the Ontario *Human Rights Code*.

Carried

4. That amendments in principle to By-Law 7 be approved to remove the requirement for the Law Society to approve the names of licensee professional corporations.

Carried

5. That amendments in principle to By-Law 7 be approved to remove requirements that licensees:

- notify the Law Society before entering into affiliations;
- apply for approval before entering into multi-discipline partnerships; and
- file annual reports in respect of an affiliation or a multi-discipline partnership.

Carried

6. That amendments in principle to By-Law 14 be approved to remove the reciprocity requirement for the issuance of a Foreign Legal Consultant permit.

Carried

7. That amendments in principle to By-Law 4 be approved to permit Quebec lawyers to practise in Ontario subject to the same terms and conditions as lawyers from other Canadian provinces.

Carried

8. That the Professional Conduct and Practice in Ontario Course be discontinued.

Carried

PROPOSED CHANGES TO THE BENCHER ELECTION PROCESS

Mr. Charette, seconded by Mr. Fagan, moved that the release of the consultation on proposed bencher election reforms be deferred.

Carried

For Information:

- Update on Proposed Bencher Election Reforms

IN PUBLIC

REPORTS FOR INFORMATION ONLY

ACCESS TO JUSTICE COMMITTEE REPORT

- In Camera Matter

TRIBUNAL COMMITTEE REPORT

- Law Society Tribunal Quarterly Statistics January to March 31, 2020

CONVOCATION ROSE AT 1:20 P.M

Confirmed in Convocation this 6th day of August, 2020.

Malcolm M. Mercer,
Treasurer

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 26, 2020

MOVED BY: Atrisha Lewis

SECONDED BY: Etienne Esquega

THAT Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

DRAFT

MINUTES OF CONVOCATION

Thursday, 28th May, 2020

9:00 a.m.

Via Videoconference

PRESENT:

The Treasurer (Malcolm M. Mercer), Adourian, Alford, Banack, Brown, Burd, Charette, Chiumminto, Cooper, Corbiere, Corsetti, Desgranges, Donnelly, Epstein, Esquega, Fagan, Falconer, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Krishna, Lalji, Lean, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Merali, Minor, Murchie, Murray, Painchaud, Parry, Pawlitzka, Pineda, Poliacik, Pollock, Prill, Rosenthal, Sellers, Sheff, Shi, Shin Doi, Shortreed, Spurgeon, Strosberg, Troister, Walker, Wellman, Wilkes, Wilkinson and N. Wright.

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Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed those joining Convocation by videoconference.

The Treasurer recognized that Convocation would normally be meeting in Toronto which is a Mohawk word that means "where there are trees standing in the water".

When Convocation meets in Toronto, the Treasurer advised that he acknowledges that Convocation meets on the traditional territory of the Mississaugas of New Credit First Nation. He also acknowledges the Haudenosaunee. He advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. He recognized the long history of all the First Nations in Ontario and the Métis and Inuit peoples and thanks the First Nations people who lived and live in these lands for sharing them with us in peace.

The Treasurer addressed the protocol for Convocation via Zoom videoconference.

The Treasurer advised that legal media and stakeholder representatives are joining Convocation under an appropriate protocol for public access to the videoconference.

The Treasurer congratulated bencher Gina Papageorgiou who was appointed a judge of the Superior Court of Justice on May 22, 2020 and thanked her for her contributions to the Law Society as a bencher over the past five years.

ELECTION OF BENCHER

It was moved by Ms. Corsetti, seconded by Ms. Corbiere, that:

WHEREAS Gina Papageorgiou, who was elected from the Province of Ontario "A" Region (City of Toronto) on the basis of the votes cast by all electors, has been appointed a judge of the Superior Court of Justice of Ontario; and

WHEREAS upon being appointed a judge of the Superior Court of Justice of Ontario, Gina Papageorgiou became unable to continue in office as a bencher, thereby creating a vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by all electors;

THAT under the authority contained in By-Law 3, Barbara Murchie, having satisfied the requirements contained in subsections 43(1) and 45 of the By-Law, and having consented to the election in accordance with paragraph 12(1)(d) of the By-Law, be elected by Convocation as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by all electors.

Carried

The Treasurer welcomed Ms. Murchie to Convocation.

TREASURER'S REMARKS

The Treasurer expressed condolences to the family of life bencher Daniel J. Murphy, Q.C., who passed away on April 30, 2020.

The Treasurer expressed condolences to the family of former Treasurer Arthur R. A. Scace, C.M., Q.C., who passed away on May 3, 2020.

The Treasurer addressed the matter of the scheduling of the Annual General Meeting and referred to the motion in the consent agenda.

The Treasurer referred to information reports in the Convocation agenda at Tabs 4 through 8 of the Convocation Materials:

- Professional Development and Competence Committee Report
- Tribunal Committee Report
- LAWPRO 2019 Annual Report
- Treasurer's Report under Section 54 of the Bencher Code of Conduct

The Treasurer referred to the lists for calls to the bar at Tab 1.3 and in particular the list of 296 new lawyers. The Treasurer noted that had it not been for the COVID-19 pandemic, these lawyers would have been welcomed at the call to the bar ceremony in June.

The Treasurer advised that this is his last Convocation as Treasurer and that it has been a privilege to serve.

MOTION – CONSENT AGENDA – Tab 1

It was moved by Ms. Corsetti, seconded by Ms. Corbiere, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of April 23 and May 12, 2020 were confirmed.

Tab 1.2 – MOTIONS

Re: Tab 1.2.1 – Annual General Meeting

THAT, further to the postponement of the Annual General Meeting from May 13, 2020 to a date to be determined, Convocation approve Monday, August 10, 2020 at 5:15 p.m. at Osgoode Hall, 130 Queen Street West, Toronto or, if required, by telephonic or electronic means, as the time and place of the 2020 Annual General Meeting.

Carried

Re: Tab 1.2.2 – LIRN, Inc.

THAT Convocation authorize the individual who holds the office of Treasurer of the Law Society of Ontario to represent the Law Society of Ontario, a shareholder of LIRN Inc., at meetings of shareholders of LIRN Inc.

Carried

Re: Tab 1.2.3 – Law Society Tribunal

THAT Barbara Murchie be appointed Vice-Chair of the Appeal Division of the Law Society Tribunal for a term expiring May 28, 2021.

Carried

Tab 1.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

THAT the Report of the Executive Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

IN PUBLIC

AUDIT AND FINANCE COMMITTEE REPORT

Ms. Donnelly presented the Report.

Re: Law Society of Ontario Audited Financial Statements for the Year Ended December 31, 2019

It was moved by Ms. Donnelly, seconded by Ms. Walker, that Convocation approve the audited annual financial statements for the Law Society of Ontario for the year ended December 31, 2019, including the net inter-fund transfers listed in Note 14 to the statements.

Carried

LAWPRO 2019 ANNUAL REPORT

Mr. Spurgeon presented the LAWPRO Report for information.

PRIORITY PLANNING COMMITTEE REPORT

Mr. Varro presented the Report.

Re: Amendments to By-Law 3 Respecting an Online Treasurer's Election

It was moved by Mr. Chiumminto, seconded by Ms. Shortreed, that Convocation make amendments to By-Law 3 as set out in the motion at Tab 3.1 to implement an online election process for the 2020 Treasurer Election.

Carried

POINT OF ORDER

Mr. Falconer raised concerns about the lack of transparency on the matters to be discussed at the Committee of the Whole meeting scheduled for today.

Mr. Falconer moved that Convocation discuss the merits of creating transparency around Convocation's processes.

The Treasurer ruled the motion out of order.

CONVOCATION ROSE AT 10:23 A.M

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 26, 2020

HEARING DIVISION

THAT the following be reappointed to the Hearing Division of the Law Society Tribunal for a term from September 26, 2020 to September 30, 2022:

Thomas G. Conway
Jacqueline Harper
Jay Sengupta
Anne E. Spafford

HEARING AND APPEAL DIVISIONS

THAT Malcolm M. Mercer be appointed to the Hearing and Appeal Divisions of the Law Society Tribunal for a term expiring June 24, 2022.

Explanatory note:

Mr. Mercer's appointment as recommended by the Tribunal Chair is as a lawyer adjudicator for a two-year term. As a previous bench adjudicator from 2011 to 2018, he made an exceptional contribution to the Tribunal, presiding at pre-hearings, summary hearings, and chairing numerous hearings in both Divisions. His writing contributed considerably to the jurisprudence of the Tribunal. His additional adjudicative experience includes sitting as a member of the Immigration Appeal Division of the Immigration and Refugee Board of Canada. He is an expert in professional regulation issues affecting lawyers and paralegals. Convocation has approved previous recommendations for appointments outside the general Tribunal recruitment process where a candidate has exceptional adjudicative skills and experience, possesses strong familiarity and experience with professional regulation issues affecting lawyers and paralegals, clearly meets the qualifications applied in the formal recruitment process and would make a particularly strong contribution to the work of the Tribunal. Mr. Mercer fully meets these criteria.

June 26, 2020

SUPPLEMENTARY INFORMATION FOR TRIBUNAL APPOINTMENTS MOTION

TAB 1.2 CONVOCATION MATERIALS - CONSENT AGENDA

The reappointments are important to ensure continuity at the Tribunal. Each of the appointments was made two years ago following a competitive process and the adjudicators are at the end of their first term. All four had experience as adjudicators before being appointed and help ensure high-quality adjudication. Three are bilingual. They are recommended for reappointment by the Tribunal Chair after participating in the performance development process approved by Convocation.

LAW SOCIETY OF ONTARIO

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 26, 2020

WHEREAS Teresa Donnelly who was elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors, has been elected as Treasurer; and

WHEREAS upon being elected Treasurer, Teresa Donnelly ceased to hold office as an elected bencher in accordance with subsection 25(2) of the *Law Society Act*, thereby creating a vacancy in the number of benchers elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.

MOVED BY: Atrisha Lewis

SECONDED BY: Etienne Esquega

THAT under the authority contained in By-Law 3, Michael B. LeSage, having satisfied the requirements contained in subsections 43(1) and 45 of the By-Law, and having consented to the election in accordance with paragraph 12(1)(d) of the By-Law, be elected by Convocation as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors.



Law Society
of Ontario

Barreau
de l'Ontario

Tab 2

Audit & Finance Committee

Report to Convocation

June 26, 2020

Committee Members:

Teresa Donnelly (Chair)
Lubomir Poliacik (Vice Chair)
Ryan Alford
Gary Graham
Philip Horgan
Vern Krishna
Shelina Lalji
Nancy Lockhart
Michelle Lomazzo
Cecil Lyon
Isfahan Merali
Clare Sellers
Tanya Walker

Authored By:

Finance Department
Brenda Albuquerque-Boutilier, Executive Director & CFO
416 947 3436

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FOR DECISION

Lawyer Pool of the Compensation Fund Fund Balance Management Policy

Motion:

The Audit & Finance Committee unanimously recommends that Convocation approve the revised Fund Balance Management Policy for the Lawyer Pool of the Compensation Fund set out below:

- A. The Law Society's policy is to maintain the Lawyer Compensation Fund balance at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenarios (one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one-hundred-year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.**
- B. If the Lawyer Compensation Fund balance exceeds four one-in-one-hundred-year events, Convocation shall utilize some or all of the excess for the following:**
 - i. Mitigation of the Lawyer Compensation Fund levy for the next fiscal year;**
 - ii. Annual mitigation of the Lawyer Compensation Fund levy shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.**
- C. If the Lawyer Compensation Fund balance is less than the minimum of one one-in-forty-year event, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.**
- D. If the Lawyer Compensation Fund balance is more than the minimum of one one-in-forty-year event and less than four one-in-one-hundred-year events Convocation may:**
 - i. Mitigate the Lawyer Compensation Fund levy for the next fiscal year;**
 - ii. Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;**

iii. Leave the fund balance at its current balance for the upcoming fiscal year.

The only change from the prior Policy is the minimum required fund balance is recommended to change from one one-in-two-hundred-year event (99.5th percentile aggregate claim scenario) to one one-in-forty-year event (97.5th percentile aggregate claim scenario).

Under the current Fund Balance Management Policy, the minimum required fund balance is \$20.5 million. If the Policy minimum threshold of one-in-two-hundred-year event and the model used previously (Inverse Gaussian) is maintained, based on the updated stochastic modelling analysis completed by Eckler Consultants and Actuaries (Eckler), the required minimum balance becomes \$28.2 million. Under the proposed change to one-in-forty-year event, the fund balance minimum is \$19.6 million.

The Committee considered that the new proposed minimum fund balance is sufficient to fulfil the requirements of the Compensation Fund, taking into account:

- the claims experience from 2009 onwards, which while volatile, its high was in 2017 at \$14.4 million, below the planned minimum threshold
- similarly, the new fund balance minimum provides the flexibility to address the uncertainty created by the COVID-19 crisis and possible increased claims, which historically has occurred after a financial downturn
- similarly, there is some flexibility in the minimum fund balance to manage a possible change in claims experience as a result of the claims limit increase to \$500,000. The impact, if any, will develop over the next few years

Due to some of the uncertainties referenced above, the Committee decided that it will monitor the impact of the policy change closely, reassessing the minimum fund balance benchmark next year.

According to the Fund Balance Management Policy ([Appendix A](#)), the estimated amount of aggregate claims is to be actuarially reviewed at least every three years. It was reviewed in 2016 and 2018. To assess the minimum and maximum benchmarks for the Fund Balance Management Policy as well as sensitivity, volatility and the financial impacts of various expected claim scenarios, the Committee relied on the stochastic modelling report prepared by Eckler and is included with this material at [Tab 2.1.4](#). Primarily, the report is used to:

- support an annual fee levy sufficient to fund annual grants payable at the 50th percentile, or median value of expected grant payments;

- assist in quantifying what is considered the appropriate fund balance to be maintained in the Lawyer Compensation Fund.

Stochastic Modelling Report

The stochastic modelling in the Eckler report estimates a minimum fund balance required under the current Fund Balance Management Policy of a one-in-two-hundred-year event (99.5th percentile) of \$28.2 million under the Inverse Gaussian Results model, notably higher than the current minimum of \$20.5 million. Eckler notes that these results are greater than their last report for the following reasons:

- the average claim severity has increased to approximately \$52,000 versus \$38,000 in the 2018 analysis and \$33,000 in the 2016 analysis
- the mean number of claims has decreased. The mean number of claims simulated has decreased from 157 to 123

These trends have not had a significant impact on the median but have increased the projected value of more extreme events – the higher percentiles in the report. The reduced number of claims has caused the projected value of more extreme events to be more volatile. From the table in the Base Case Results – Current Coverage Limit of the report, the estimated median of the 2021 aggregate lawyer licensee claims, which is typically used to set the normal claims provision is \$4.5 million (\$4.8 million in the 2018 report).

The report prepared by Eckler includes two stochastic models, the Log Normal and the Inverse Gaussian. The difference between them arises from relationships between claim limits and means and there is no preferred stochastic model. In prior year reports, the differences between them have been less pronounced. The 99.5th percentile (a one-in-two-hundred-year event) of the aggregate lawyer licensee claims, which is the current minimum fund balance under the Fund Balance Management Policy, is \$28.2 million (\$20.5 million in the 2018 report).

Key Issues and Considerations

The following are the key issues for consideration:

- Convocation's level of risk tolerance
- The impact on the lawyer levy for the purpose of maintaining a policy approved fund balance
- Claim limits
- The discretionary nature of grants paid by the Fund

- The Society's ability to raise funds subsequent to a major defalcation
- The policy as it applies to the paralegal pool of the Compensation Fund

Fund Balance Management Policy – Risk Tolerance

In assessing the Fund Balance Management Policy, there is no single correct answer to the question of how much capital is enough or too much. It can also be said that there is no level of capital that is sufficient to guarantee protection against possible insolvency. This will depend on Convocation's appetite for risk. In its review of the Fund Balance Management Policy and the stochastic modelling of aggregate lawyer licensee claims, Convocation may consider a different percentile depending on risk appetite.

The proposed Policy reduces the required minimum balance from \$20.5 million to \$19.6 million. If the fund balance of the lawyer pool of the Compensation Fund falls below the minimum, Convocation shall budget for an annual excess of revenues over expenses to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

Impact on the Lawyer Levy

The 2020 budget was the final year of a three year plan to replenish the fund balance of the Lawyer Compensation Fund with an additional provision of \$5 million included in the budget beyond the provision for routine claims. The fund balance at March 31, 2020 is \$22.6 million. Should routine claims experience for the balance of the year continue similar to the first quarter of 2020 and with the replenishment funding, it is projected that the fund balance will be approximately \$25 to \$26 million at the end of the year. This projection takes into account some fluctuation in annual fee revenue as a result of COVID-19, but a better sense of the impact will not be known for a few months, when trends related to licensees' status changes may be better known.

Based on the proposed Fund Balance Management Policy, the fund balance at the end of 2020 for the lawyer pool of the Compensation Fund is projected to be above the new \$19.6 million minimum benchmark. The \$5 million provision to replenish the fund balance in 2020 will likely not be required in the 2021 budget. As a result, the annual fee could be reduced by approximately \$113 per lawyer based on 44,000 full fee equivalent lawyers and assuming comparable administrative costs and no use of fund balance to further mitigate the fee.

The table at [Appendix B](#) sets out the impact on the required minimum fund balance

based on the current Fund Balance Management Policy, what the minimum fund balance would be should Convocation determine that a lower percentile is acceptable, and the effect on the Compensation Fund component of the lawyer annual fee for 2021. It should be noted that the information contained in the table is meant to isolate the quantum impact of each of the percentiles on the annual fee and the fund balance and ignores all other variables (e.g. other budgeted revenues or expenses). This is not a projection of the fund balance or overall compensation fee levy, but is used to demonstrate the impact of the proposed change.

If the policy remains unchanged, the minimum and maximum policy benchmarks would be \$28.2 and \$96.3 million, respectively using the updated Eckler report. As the projected fund balance falls under the \$28.2 million minimum, a provision to replenish approximately \$3.2 million over three years would be required¹. This will result in the continuation of an additional levy of about \$25 per year based on the current 44,000 full-fee-equivalent lawyers, above that needed for the provision of routine grant claims and administration of the Compensation Fund (\$106 per lawyer based on the 2020 budget).

If no change is made to the policy, a funding alternative to replenish the fund balance for the Lawyer Compensation Fund is to consider accessing some of the \$15 million that is no longer restricted by Convocation as a backstop for adverse claims within the Errors & Omissions Fund (E&O Fund). With the E&O Fund intended for insurance and the Compensation Fund having a quasi-insurance nature, it may be a viable option as an alternate to the lawyer levy.

Claim Limits

The present claim limit is \$500,000 per claimant for claims involving funds advanced to a lawyer on or after September 22, 2016. The per claimant limit for funds given to a lawyer between to April 24, 2008 and September 21, 2016 is \$150,000. In updating the stochastic model, the analysis is calculated as if the \$500,000 cap is applied to pre-2016 claims. While these claims would have had lower limits, for the purposes of projecting future claim values, the historic activity of claims is used with the new claims limits. While it is possible that some claims may arise relating to periods where the claim limit is \$150,000, these will represent a smaller amount of claims with each passing year.

¹ This assumes a projected fund balance at the end of the year of \$25 million. If the projected fund balance is at the high end of \$26 million, the amount to be replenished over 3 years is \$2.2 million or approximately \$17 per year.

Discretionary Nature of Grants

Section 50.5 of The Law Society Act, states that “Convocation in its absolute discretion may make grants from the Fund in order to relieve or mitigate loss sustained by a person ...”. The Act is permissive in allowing Convocation the discretion to award a grant and also the value of the grant. The grant may relieve the loss in its entirety or merely mitigate the loss. The Act’s permissiveness has allowed Convocation to establish grant maximums and to establish guidelines around what losses are eligible for compensation and which are not. For example, the Compensation Fund does not compensate financial institutions for a loss as a result of lawyer dishonesty.

The ability to exercise discretion in the payment of grants is a potential risk management tool to be employed in the event of a truly catastrophic loss due to lawyer dishonesty. Convocation, through the Compensation Fund Committee, could determine that the value of grants that would otherwise be paid through the application of its guidelines to be too onerous on the profession and apply a formula such as prorating the payment of grants to individual claimants based on the size of each claim relative to the total payment Convocation was prepared to make. This discretion therefore, acts an additional backstop to a fund balance management policy supporting the financial integrity of the Compensation Fund.

Funding After Extraordinary Claims

The Society has the ability to levy an annual fee necessary to support its operations, including those of the Compensation Fund. The Society does need to be mindful of the financial burden placed on lawyers when establishing the annual fee, but is able to fund grants subsequent to a major defalcation, if necessary, through increased annual fees. The funding of the expected annual grant provision at the median level along with the existence of a reasonable fund balance allows for a relatively stable Compensation Fund component of the annual fee over the long term and the ability to absorb an immediate extraordinary shock. In the event of a major defalcation, the fund balance can still be restored over a three year period with an increase to the annual fee. This method may also highlight the Fund’s claims experience to lawyers and the behavioral link between claims experience and annual fees. To facilitate Convocation’s discussion about adopting a model with a lower required fund balance, a table of the Compensation Fund grant experience for the last 10 years is included at [Appendix C](#) and includes the impact of grants paid and the changes to the provision for unpaid grants. This Appendix highlights the significant variability in the claims experience, the resulting financial impact and the need to ensure that there are sufficient reserves to withstand these fluctuations.

The fund balance policy is not a tool to mitigate risk but rather a tool to manage risk. The policy will have no impact on the number and value of defalcations. What the policy does impact is the timing of the funding of major defalcations.

Paralegal Compensation Fund

The discussion in this report has dealt solely with the Lawyer pool of the Compensation Fund. At the present time, no policy exists for the management of the fund balance of the Paralegal pool of the Compensation Fund. The reason for no policy to date is the grant limit is significantly lower at \$10,000, the number of claims has been low and there was relatively less historical data to complete a meaningful analysis with the Law Society only regulating paralegals since 2007.

The fund balance at the end of March 2020 is \$726,000. As part of good governance, in the fall, the Committee will consider whether there is a requirement to engage Eckler to prepare an analysis of claims history to facilitate an assessment of whether it would be prudent to now develop a fund balance management policy for the paralegal pool of the Compensation Fund.

Provision for Normal Claims in the 2021 Budget

The actuary's report also supports a provision for normal grants in the 2021 budget at the 50th percentile level of \$4.49 million which the Committee concluded would be used in compiling the Law Society's budget for 2021 which will be approved by Convocation in the fall. This compares to the provision for normal grants in the 2020 budget of \$4.8 million.

COMPENSATION FUND BALANCE MANAGEMENT POLICY

SEPTEMBER 2016

- E. The Law Society's policy is to maintain the Lawyer Compensation Fund balance at an amount sufficient to provide for a minimum of one 99.5th percentile aggregate claim scenarios (one-in-two-hundred-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one-hundred year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.
- F. If the Lawyer Compensation Fund balance exceeds four one-in-one-hundred-year events, Convocation shall utilize some or all of the excess for the following:
 - iii. Mitigation of the Lawyer Compensation Fund levy for the next fiscal year;
 - iv. Annual mitigation of the Lawyer Compensation Fund levy shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.
- G. If the Lawyer Compensation Fund balance is less than one one-in-two-hundred-year events, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.
- H. If the Lawyer Compensation Fund balance is more than one one-in-two-hundred-year events and less than four one-in-one-hundred-year events Convocation may:
 - iv. Mitigate the Lawyer Compensation Fund levy for the next fiscal year;
 - v. Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;
 - vi. Leave the fund balance at its current balance for the upcoming fiscal year

**Impact of Fund Balance Minimums on Annual Fees
Based on Aggregate Lawyer Licensee Claims Percentiles**

Inverse Gaussian Model

Description	Inverse Gaussian Results Proposed Minimum Fund Balance	Projected Fund Balance end of 2020	Variance	2021 Annual Fee Increase / (Reduction) (A)	Increase / (Reduction) in fund balances from fee changes (B)
Mean	\$6,101,797	\$26,000,000	\$19,898,203	(\$219)	(\$9,636,000)
50th Percentile	\$4,620,590	\$26,000,000	\$21,379,410	(\$219)	(\$9,636,000)
75th Percentile	\$7,702,757	\$26,000,000	\$18,297,243	(\$219)	(\$9,636,000)
90th Percentile	\$12,173,686	\$26,000,000	\$13,826,314	(\$219)	(\$9,636,000)
95th Percentile	\$15,728,358	\$26,000,000	\$10,271,642	(\$219)	(\$9,636,000)
97.5th Percentile	\$19,570,494	\$26,000,000	\$6,429,506	(\$146)	(\$6,429,506)
99th Percentile	\$24,074,005	\$26,000,000	\$1,925,995	(\$44)	(\$1,925,995)
99.5th Percentile	\$28,178,418	\$26,000,000	(\$2,178,418)	\$50	\$2,178,418

Notes:

(A)	In the scenarios where the projected fund balance at the end of 2020 exceeds the Inverse Gaussian Results Proposed Minimum Fund Balance, the fee reduction was capped at the 2020 lawyer Compensation Fund component of the annual fee of \$219. This amount included approximately \$113 related to the \$5 million provision to replenish the fund balance. Under the 99.5th percentile, a \$50 fee annual fee increase is reflected, but it should be noted that under the current Fund Balance Management Policy, the replenishment of the fund balance could be over 3 years, resulting in approximately \$17 per year. For the purposes of the annual fee impact in 2021, 44,000 full fee equivalent lawyers was used.
(B)	The impact on the 2021 fund balance noted here is isolated to the impact from the changes in the annual fee by a decision related to the Fund Balance Management Policy. There are other factors impacting the potential fund balance including other revenues (investment income and recoveries), unrealized gains/losses on investments, administrative expenses, grant payments and changes to the provision of unpaid grants. This is not an attempt to project the fund balance in 2021, but rather to demonstrate and isolate the quantum impact of each of the percentiles on the annual fee and on the fund balance, ignoring all other variables.

**Impact of Fund Balance Minimums on Annual Fees
Based on Aggregate Lawyer Licensee Claims Percentiles**

Log Normal Model

Description	Log Normal Results Proposed Minimum Fund Balance	Projected Fund Balance end of 2020	Variance	2021 Annual Fee Increase / (Reduction) (A)	Increase / (Reduction) in fund balances from fee changes (B)
Mean	\$5,906,703	\$26,000,000	\$20,093,297	(\$219)	(\$9,636,000)
50th Percentile	\$4,489,533	\$26,000,000	\$21,510,467	(\$219)	(\$9,636,000)
75th Percentile	\$7,569,832	\$26,000,000	\$18,430,168	(\$219)	(\$9,636,000)
90th Percentile	\$11,793,241	\$26,000,000	\$14,206,759	(\$219)	(\$9,636,000)
95th Percentile	\$15,091,469	\$26,000,000	\$10,908,531	(\$219)	(\$9,636,000)
97.5th Percentile	\$18,475,087	\$26,000,000	\$7,524,913	(\$171)	(\$7,524,913)
99th Percentile	\$23,399,681	\$26,000,000	\$2,600,319	(\$59)	(\$2,600,319)
99.5th Percentile	\$26,970,713	\$26,000,000	(\$970,713)	\$22	\$970,713

Notes:

(A)	In the scenarios where the projected fund balance at the end of 2020 exceeds the Log Normal Results Proposed Minimum Fund Balance, the fee reduction was capped at the 2020 lawyer Compensation Fund component of the annual fee of \$219. This amount included approximately \$113 related to the \$5 million provision to replenish the fund balance. Under the 99.5th percentile, a \$22 fee annual fee increase is reflected, but it should be noted that under the current Fund Balance Management Policy, the replenishment of the fund balance could be over 3 years, resulting in approximately \$7 per year. For the purposes of the annual fee impact in 2021, 44,000 full fee equivalent lawyers was used.
(B)	The impact on the 2021 fund balance noted here is isolated to the impact from the changes in the annual fee by a decision related to the Fund Balance Management Policy. There are other factors impacting the potential fund balance including other revenues (investment income and recoveries), unrealized gains/losses on investments, administrative expenses, grant payments and changes to the provision of unpaid grants. This is not an attempt to project the fund balance in 2021, but rather to demonstrate and isolate the quantum impact of each of the percentiles on the annual fee and on the fund balance, ignoring all other variables.



Law Society
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AUDIT AND FINANCE COMMITTEE REPORT

APPENDIX C

Aggregate Lawyer Claims - Budget vs Actual Experience 2009 – 2019

This document is available upon request. Please email your request to archref@lso.ca. Thank you.



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AUDIT AND FINANCE COMMITTEE REPORT

Compensation Fund for Lawyer Licensees Stochastic Modeling Analysis

This document is available upon request. Please email your request to archref@lso.ca. Thank you.

FOR INFORMATION

General Fund Balance Management Policy

The Committee assessed the current policy to manage the size and use of fund balance for the Law Society's Lawyer General Fund as set out below and concluded not to recommend any changes.

The Committee considered recent developments and pressures on the Paralegal General Fund and its fund balance. The Committee will consider a Fund Balance Management Policy for the Paralegal General Fund to coincide with the drafting the 2021 budget.

Lawyer General Fund

The Lawyer General Fund is the operating fund, accounting for the Society's program delivery and administrative activities related to the regulation and licensing of lawyers. The current Lawyer General Fund Balance Management Policy is:

- a) *The Law Society's policy is to maintain the sum of the Lawyer General Fund balance at no less than two, and no more than three months of General Fund budgeted expenses.*
- b) *If the Lawyer General Fund balance exceeds three months of budgeted Lawyer General Fund expenses Convocation shall utilize the excess for one or more of the following:*
 - *Mitigate the Lawyer General Fund levy for the next fiscal year;*
 - *Transfer the excess to another Law Society fund if the fund balance is below its stated policy benchmark.*
- c) *If the Lawyer General Fund balance is less than two months of budgeted Lawyer General Fund expenses, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.*
- d) *If the Lawyer General Fund balance is more than two months of budgeted Lawyer General Fund expenses and less than three months of budgeted Lawyer General Fund expenses, Convocation may appropriate funds from the Lawyer General Fund Balance for one or more of the following:*
 - *Mitigate the Lawyer General Fund levy for the next fiscal year;*
 - *Transfer the excess to another Law Society fund if the fund balance is below its stated policy benchmark.*

The fund balance for the Lawyer General Fund at the end of 2019 was \$26.1 million. The 2020 budget planned to use \$5.1 million of the fund balance to fund operating expenditures. Based on the 2020 budget and the current Fund Balance Management Policy, the minimum and maximum fund balance for the Lawyer General Fund is \$17.3 million and \$26 million, respectively, the equivalent of two and three months of operating expenses.

Paralegal General Fund

The Paralegal General Fund accounts for similar activities to the Lawyer General Fund related to the regulation and licensing of paralegals.

The Paralegal General Fund does not have a fund balance policy. Historically, the rate of growth of full fee equivalent (FFE) paralegals was at a level that it led to a healthy fund balance and the need for a fund balance policy was considered unnecessary. This allowed for the planned use of some of the fund balances to fund future budgets and mitigate annual fee increases, similar to the practice used with the Lawyer General Fund. For example, the 2019 budget planned to use \$2.4 million as the paralegal fund balance at the end of June 2018 was \$4.2 million. Most recently, the 2020 budget incorporated use of \$2.4 million of the Paralegal General Fund balance with the paralegal fund balance at June 2019 being \$3.2 million.

The impact of COVID-19 on Paralegal General Fund revenues, in particular on unbudgeted unrealized losses on investments, led to pressure on the fund balance noted at the end of March 2020. In addition, the last two years have seen a slowing in the rate of growth of FFE paralegals to approximately 2% per year. The 2019 budget factored in growth of 200 FFE paralegals. In noticing a possible trend, the 2020 budget projected an increase of only 100 FFE paralegals. Also, to manage licensee annual fees, the 2020 budget was developed to more closely reflect anticipated actual spending and tighten variances between projected and actual results to mitigate against growing fund balances.

Fund Balance Considerations

The key question in establishing a fund balance policy is how much is appropriate to ensure an organization is positioned to manage unexpected needs or events and the related risk while wanting to manage excessive revenue generation. Too low a fund balance may mean being underprepared for risks, but too high a fund balance means licensees may be over contributing.

To manage the financial stability of an organization, it is important to maintain adequate levels of fund balance to mitigate current and future unplanned financial risks such as revenue shortfalls (as may be experienced as a result of COVID-19) and unanticipated expenditures. Appropriately managed fund balances can also

- reduce volatility in annual fees year over year, which may be more challenging for licensees to manage, or
- the need for significant expenditure reductions, which may not be feasible to implement in short time period.

Policy Options

There are essentially two options in the development of fund balance management policies – a pay-as-you-go approach and a fee stabilization approach.

Pay-As-You-Go Approach

Under this approach, annual fees are established to fund anticipated operational expenditures of a given year and any existing fund balance is immediately utilized to fund the given budget. Under this model, there is no accumulation of fund balance as it is used for the first available budget and any existing fund deficiency due to expenses exceeding revenues is immediately eliminated by an increase in annual fees in the subsequent budget year.

An annual fee setting approach using the pay-as-you-go approach increases annual fee volatility as it is impossible to precisely predict revenues and expenditures in any particular budgetary year. For the Law Society, a year where revenues are under budget or expenses are over budget resulting in overall excess expenses over revenues, in the face of no accumulated fund balances, would lead to an annual fee increase in the following budget year or the need for expense reductions within a short period of time, which could impact service levels, as an example.

Depending on the timing of cash inflows and outflows, the pay-as-you-go approach may result in the need to borrow funds to deal with interruptions in cash inflows or if a crisis was to adversely affect the Law Society's financial position.

The pay-as-you-go approach may be viewed favourably as it supports the approach of current expenses being funded by current licensees and that future expenses should be paid by future licensees. The accumulation of fund balances results in the transfer of some of the funding burden from future licensees of the Society to current licensees.

Fee Stabilization Approach

A “fee stabilization” approach is based on reasonable fund balances being maintained within benchmarks established through a fund balance management policy. Under this approach, fund balances exceeding the benchmark are utilized in a prescribed fashion (which may include the mitigation of future annual fees). Similarly, fund balances below the set benchmark are restored over a set number of fiscal periods.

This approach uses the concept of a “rainy day fund” to help an organization mitigate the risks that may impact financial performance by maintaining adequate levels of cash assets and equity. In essence, appropriate fund balances act as an insurance policy to enable an organization to maintain financial solvency and mitigate risk such as revenue shortfalls and unanticipated expenses. The Law Society’s current fund balance management policy has positioned it to manage the financial challenges of the COVID-19 crisis. As cash and investments are a component of the overall fund balance, the maintenance of an appropriate fund balance helps ensure an organization has sufficient cash flow to meet normal and unexpected operating needs.

With the fee stabilization approach, as the name suggests, an appropriate fund balance provides for greater flexibility in establishing the licensee annual fee, in particular, mitigating volatility which could be financially challenging for some licensees.

The current policy (and the Lawyer Compensation Fund Balance Management Policy) uses the fee stabilization approach. The decision to use this approach was based on best practices, and to manage financial risk to the Law Society should there be notable detrimental fluctuations in revenues or expenses. This approach also mitigates volatility in licensee annual fees.

Best Practices

Generally, there is limited literature on fund balance policy best practices and, in particular, fund balance policies for organizations similar to the Law Society. Some Finance department employees are active members of the Government Finance Officers Association (GFOA), which represents public finance officials throughout the United States and Canada. The GFOA is considered a respected source of best practice information on governmental budgeting policies, much of which can be applied to the not-for-profit sector, including the Law Society. Finance also references the Municipal Research Service Centre as a source of best practices on this topic.

Key Components of Fund Balance Policies

Based on available literature including information through the GFOA, a fund balance policy establishes minimum levels for designated funds to ensure stable service delivery, meet future needs, and protect against financial instability. According to the GFOA, at a minimum, these policies should include:

- Scope and purpose
- Appropriate fund balance level
- Use and replenishment of funds

Scope and Purpose

The scope and purpose should clearly identify which funds are included and what purpose the fund balances are intended for.

Key questions to consider in establishing scope and purpose are:

- a) Which funds are the major operating funds? Establish minimum fund balances for all of these funds.
- b) Is there an interdependence between funds to be considered? For example, the Parental Leave Assistance Fund is dependent on the Lawyer General Fund for revenue through the budget process.
- c) What types of reserves should be included in the policy, if any? The Law Society currently does not have any specific reserves. When considering types of reserves, it's important to define the issue or potential problem that could trigger the need for a reserve such as future outlays for capital or liability accruals such as employee buy-outs. Some of the most common reserves are contingency reserves, rainy day funds or emergency reserves and capital needs reserves. The Law Society manages its capital needs through the Capital Allocation Fund and sets a 'contingency' through the budget process for the General Fund.

Appropriate Fund Balance Level

The question of an appropriate level of fund balance is always a difficult one to answer.

The GFOA recommends that the unrestricted fund balance in the general fund should take into account each organization's own unique circumstances. For example, an organization vulnerable to natural disasters or dependent on a volatile revenue sources may need to maintain a higher level in the unrestricted fund balance. Nevertheless, the GFOA recommends, at a minimum, maintaining a general fund balance of no less than two months of regular general fund operating revenues or regular general fund operating expenditures.

Key questions to consider:

- a) Is the organization dependent on cyclical or volatile revenue sources? The Law Society depends primarily on annual fee revenues. This revenue is due from licensees in the first two months of the calendar year. While relatively predictable, this timing does not match up with the timing of expenses, which are incurred evenly throughout the year. Also, this fee base can be influenced by underlying economic conditions.
- b) Does the organization have access to credit facilities? Debt is sometimes viewed as supplementary or an alternate to fund balances. The Law Society closed its line of credit/operating facility a few years ago as it was not used. With COVID-19, management has had brief discussions with the bank and the indication is that a facility of at least \$5 million would be available at no cost.
- c) Is the organization dependent upon a small number of revenue providers that represent a large portion of the cash inflow? The Law Society's fee revenue is broad based among over 60,000 lawyers and paralegals spread across private practice, corporate employment, government and academia. For some licensees, their annual fees are paid for by their firm or employer, introducing an element of vulnerability.
- d) Is the organization vulnerable to natural disasters such as earthquakes, fires, pandemics, or flooding? It is prudent to maintain some fund balance to prepare for and protect against such risks.
- e) Is there a buffer against economic downturns? Will the organization be able to sustain essential operations or will layoffs and service cuts be required? As the Law Society's licensees and candidates are sensitive to economic conditions so too is the Law Society.
- f) Will other organizations be evaluating the Law Society's fund balance levels? If the Law Society considers taking on debt, the nature and history of fund balance policies or lack thereof will be one of the factors considered in assessing creditworthiness.

Use and Replenishment of Funds

It is recommended that the policy clearly state:

- When the fund balance should be used – define contingencies, “rainy days,” and emergencies and what the trigger is for use. In the Law Society's case, specific circumstances are difficult to envisage without being too restrictive.
- How the fund balance will be replenished and how quickly, and what happens when fund balances drop below the designated levels.

Income Tax Considerations

The Law Society Act establishes the Society as a corporation without share capital but is silent on the Society's tax status. The Society claims exemption from tax under S149(1)(l) of the Income Tax Act and this status, as a non-profit organization, adds further rigour to the administration of accumulated fund balances. If the Canada Revenue Agency (CRA) concludes that a non-profit organization has accumulated assets, excess to its core purpose and/or is excessively using investment income to finance its operations, then the CRA may disallow the organization's status as a non-profit or non-taxable organization and assess tax payable on income.

Comparable Organizations

The Law Society of British Columbia does not have a formal fund balance policy but they do review the level of liquidity/working capital with their Finance Committee each year and discuss if it is reasonable. It is usually assessed in terms of how many months of reserve and in 2018, they had a Working Capital Reserve of \$5.6 million on total General Fund expenses of \$29.5 million which is about 2.25 months of operating expenses. In 2019 they were closer to \$8.4 million which is closer to 3.5 months. Informally, they consider three to six months of reserve to be reasonable and standard.

The College of Physicians and Surgeons Ontario is moving in a different financial direction in accumulating a Building Fund rather than more general reserves.

Chartered Professional Accountants Ontario maintained an operating reserve of \$25 million on operating expenses of \$107 million in 2019, equivalent to approximately 3 months of operating expenses. The operating reserve is intended to support the organization's day-to-day operations in the event of unforeseen shortfalls or special projects. The reserve may also be used for one-time, non-recurring expenses that will build long-term capacity, such as research and development, or investment in technology or other infrastructure.

Chartered Professional Accountants Canada has \$52 million in fund balances on operating expenses of \$123 million in 2019. Fund balances were inflated slightly by the disposal of tangible assets with a net book value of \$9.1 million. The fund balances are required to provide sufficient financial capital to meet any unexpected material financial risks and to capitalize on significant new opportunities when presented. The fund balances are also available to help maintain reasonable stability in annual member fees. The CPA Canada Audit Committee believes CPA Canada should currently retain a minimum fund balance in the range of \$32.9 million to \$55.2 million and a target amount

of \$40.6 million, which is the equivalent of approximately 4 months of operating expenses.

The Law Society of New South Wales has fund balances of \$104 million on operating expenses of \$42 million in 2019 although fund balances were inflated by a one-off payment of \$45 million after the closure of the Solicitors Mutual Indemnity Fund. If the one-off payment is ignored, the fund balance would be at \$59 million.

FOR INFORMATION

LIRN Inc. Interim Financial Statements for the Quarter Ended March 31, 2020

Convocation is requested to receive the interim financial statements for LIRN Inc. for the first quarter of 2020 for information.

LIRN Inc. is the central manager of the Ontario county courthouse library system in accordance with the objectives, policies and principles established and approved by the Law Society, in consultation with the Federation of Ontario Law Associations (FOLA) and the Toronto Lawyers' Association (TLA), all shareholders of the organization through two classes of shares: 100 common shares and 100 special shares. The Law Society holds all of the common shares outstanding. Of the special shares outstanding, 25 are held by TLA and 75 are held by FOLA.

LIRN Inc. is fully funded by the Law Society through the lawyers' annual fee. The LIRN Inc. component of the annual fee for 2020 is \$182 per lawyer. Grants to the 48 county libraries comprised 87% of LIRN Inc. expenditures with the balance being centralized expenses such as access to online research products.

**LIRN INC.
FINANCIAL REPORT
For the three months ended March 31, 2020**

KEY POINT SUMMARY

Overall Results

1. Results for the first quarter identify an excess of revenues over expenses of \$17,248. This is better than planned, as the 2020 budget envisages \$88,719 being drawn from the fund balance of the General Fund for the year.
2. The positive variance from budget of \$26,253 for the quarter is due to small favourable variances in virtually all expense categories other than the grants to county law libraries. It is too early in the year to attribute these variances to timing differences or actual savings.

Revenues

3. The Law Society grant includes amounts for central administration and quarterly transfers to the 48 county law libraries. The actual grant from the Law Society was \$2.005 million in the first quarter and matched budgeted amounts for the period. Because of a reduction in transition expenses, the grant from the Law Society was budgeted to decrease slightly from 2019.

Expenses

4. Total expenses were \$1.991 million compared to a budget of \$2.014 million for the quarter.
5. There was an unbudgeted expenditure of \$18,833 relating to third party recruiting fees for the Managing Director search. When the 2020 budget was compiled, transition expenses of this nature were envisaged to be funded from the fund balance as \$300,000 was budgeted in 2019 for this purpose and not utilized.
6. Other head-office expenses include the production of the Annual Report, head office courier/postage costs, Directors and Officers (D&O) insurance, bank charges, website maintenance costs, the cost of providing most libraries with a toll free telephone number and governance meeting expenses.
7. Electronic product expenses of \$90,784 are in line with the agreement with LexisNexis and budget. They are higher than the previous year due to the timing of invoicing in the first quarter of 2019, and no related accrual.

8. Group benefits and insurance of \$83,548 consist of the Group Benefits for enrolled county law library staff, and library D&O and property insurance.
9. Other centralized expenses of \$8,820 includes continuing education bursaries for county law library staff, library courier costs for inter-library loans of materials, publications provided by the Law Society to each of the 48 county law libraries, and the Federation of Ontario Law Associations' (FOLA) meeting expenses for their Library Committee. Underspending in publications contributed the largest variance from budget.
10. County and district law libraries grants of \$1.765 million are in line with budget and increased from 2019 as expected with the 2020 budget providing for a 2% increase.
11. Capital and special needs grants comprise the computer refreshment grants approved by the Board. There is no regular pattern to the expenditures over the year.

Balance Sheet

12. Cash of \$1.065 million has increased from the same period in 2019 due to the excess of revenues over expenses in the intervening period. The funds are held in the LIRN bank account where interest rates competitive with other short-term investments have been negotiated by the Law Society.
13. Accounts payable and accrued liabilities of \$74,112 are higher than 2019 with the accrual of electronic products invoices for February and March in 2020.
14. The fund balance of the General Fund has increased from \$327,426 the end of the first quarter of 2019 to \$525,246 based on the excess of revenues over expenses for the period of April 2019 to March 2020.
15. The Reserve Fund has a balance at the end of March of \$500,000 comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000 in accordance with prior LibraryCo policy.



Legal Information and Resource Network

LIRN INC.
Balance Sheet
Stated in Dollars
As at March 31, 2020
Unaudited

	2020	2019
Assets		
Current Assets		
1 Cash and short-term investments	1,065,240	825,464
2 Accounts receivable	26,417	22,458
3 Prepaid expense	7,901	7,603
4 Total Assets	1,099,558	855,525
Liabilities, Share Capital and Fund Balances		
Liabilities		
5 Accounts payable and accrued liabilities	74,112	27,899
7 Total Liabilities	74,112	27,899
8 Share Capital and Fund Balances		
9 Share capital	200	200
10 General fund	525,246	327,426
11 Reserve fund	500,000	500,000
12 Total Share Capital and Fund Balances	1,025,446	827,626
13 Total Liabilities, Share Capital and Fund Balances	1,099,558	855,525

This Balance Sheet includes the financial resources of the LIRN Inc. entity only.



Legal Information and Resource Network

LIRN INC.
Statement of Operating Revenues and Expenses
Stated in Dollars
For the three months ending March 31, 2020
Unaudited

	2020 Actual	YTD Budget	Variance	Annual Budget	2019 Actual
REVENUES					
1 Law Society of Ontario grant	2,004,773	2,004,773	-	8,019,094	2,014,484
2 Interest income	3,197	-	3,197	-	2,554
3 Total revenues	2,007,970	2,004,773	3,197	8,019,094	2,017,038
EXPENSES					
Head office / administration					
4 Salaries and benefits	-	-	-	-	-
5 Administration	-	10,000	10,000	40,000	-
6 Professional fees	3,631	3,375	(256)	13,500	6,096
7 Contingency	18,833	-	(18,833)	-	-
8 Other	6,940	11,070	4,130	48,900	3,090
9 Total head office / administration expenses	29,404	24,445	(4,959)	102,400	9,186
Law libraries - centralized purchases					
10 Electronic products and services	90,784	90,810	26	363,250	58,778
11 Group benefits and insurance	83,548	93,500	9,952	374,000	85,848
12 Other	8,820	35,347	26,527	184,900	10,873
13 Total law libraries - centralized purchases	183,152	219,657	36,505	922,150	155,499
14 County and district law libraries - grants	1,765,166	1,765,166	-	7,060,663	1,730,555
15 Capital and special needs grants	13,000	4,510	(8,490)	22,600	2,871
16 Total county and district law libraries expenses	1,778,166	1,769,676	(8,490)	7,083,263	1,733,426
17 Total expenses	1,990,722	2,013,778	23,056	8,107,813	1,898,111
18 Excess of revenues over expenses (expenses over revenues)	17,248	(9,005)	26,253	(88,719)	118,927

This statement includes the revenues and expenses of the LIRN Inc. entity only.



Legal Information and Resource Network

LIRN INC.
Statement of Changes in Fund Balances
Stated in Dollars
For the three months ending March 31, 2020
Unaudited

	2020			2019
	General Fund	Reserve Fund	Total	Total
1 Balance, beginning of year	507,998	500,000	1,007,998	708,499
Excess of revenues over expenses				
2 (expenses over revenues)	17,248	-	17,248	118,927
3 Balance, end of period	525,246	500,000	1,025,246	827,426



Law Society
of Ontario

Barreau
de l'Ontario

AUDIT AND FINANCE COMMITTEE REPORT

Investment Compliance Reports for the Quarter ended March 31, 2020

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Law Society
of Ontario

Barreau
de l'Ontario

Tab 3

Priority Planning Committee

For Decision and Information

June 26, 2020

Committee Members:

Malcolm Mercer (Chair)
Teresa Donnelly (Vice-chair)
Robert Burd
Joseph Chiumminto
Dianne Corbiere
Cathy Corsetti
Seymour Epstein
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Jacqueline Horvat
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Tab 3.1

Priority Planning Committee

Recommendations for Strategic Change

June 26, 2020

Committee Members:

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Motion

The Priority Planning Committee recommends that Convocation adopt the following motions:

1. That licensing candidates be permitted to choose between an administrative Call to the Bar or participation in a Call to the Bar ceremony and that the requirement to sign the Rolls of the Court of Appeal and the Superior Court of Ontario be revoked.
2. That the Law Society cease publishing the names of administratively suspended licensees in the Ontario Reports.
3. That all licensees be required to use the Portal to complete standard interactions with the Law Society unless the Society has a duty to provide alternative methods of interaction pursuant to its duty to accommodate persons as prescribed in the Ontario *Human Rights Code*.
4. That amendments in principle to By-Law 7 be approved to remove the requirement for the Law Society to approve the names of licensee professional corporations.
5. That amendments in principle to By-Law 7 be approved to remove requirements that licensees:
 - notify the Law Society before entering into affiliations;
 - apply for approval before entering into multi-discipline partnerships; and
 - file annual reports in respect of an affiliation or a multi-discipline partnership.
6. That amendments in principle to By-Law 14 be approved to remove the reciprocity requirement for the issuance of a Foreign Legal Consultant permit.
7. That amendments in principle to By-Law 4 be approved to permit Quebec lawyers to practise in Ontario subject to the same terms and conditions as lawyers from other Canadian provinces.
8. That the Professional Conduct and Practice in Ontario Course be discontinued.



Introduction

The above motions are recommended by the Committee, based on proposals for strategic change made by the CEO, Diana Miles and informed by the deliberations and decisions of the Proportionate Regulation and Program Review Task Forces. These measures are being brought forward to Convocation at this time by the Committee, in cooperation with the Task Forces, in response to a need to expedite regulatory and program reforms in priority, at the direction of the Committee of the Whole.

These measures, when combined with other proposals made by the CEO are intended to:

- Reduce regulatory burdens on licensees;
- Modernize and streamline the Law Society's internal processes, providing flexibility to adapt to new circumstances and challenges; and
- Achieve savings and internal efficiencies.

The CEO's recommendations pertain to Law Society programs as well as regulatory obligations, processes and procedures that directly affect licensees. Some of these recommendations relate to items that were previously before or scheduled for review by the Proportionate Regulation Task Force ("Task Force"), such as administrative calls to the bar, professional corporation names and the approval of affiliations and multi-discipline partnerships.

Struck by Convocation on August 8, 2019, the Task Force has been mandated to examine the proportionality of regulatory obligations, processes and procedures that directly affect licensees. The mandate of the Task Force is complementary to that of the Program Review Task Force, also established in August 2019.

On June 15, 2020, the Committee considered the first set of CEO recommendations and adopted, *inter alia*, the recommendations described below. Other recommendations are outlined in the *in camera* report to Convocation found at **Tab 3.2**.

Strategic Change Items

1. Administrative Calls to the Bar

The Law Society holds eight Call to the Bar ceremonies each year. In June, when the largest cohort of candidates are called, four ceremonies are held in Toronto over three days, and one is held in each of London and Ottawa. There are also two additional ceremonies in Toronto in September and January. The number of licensing candidates entering the process has tended to increase each year, which has necessitated an increased number of ceremonies. This trend is likely to continue into the future.

Although attendance at a call ceremony is not a specific requirement for the issuance of a licence, all candidates are required to take the applicable oath, which is administered at the ceremony.

Under current requirements, licensing candidates must make advance arrangements to attend in person at the Law Society or at the call locations in London and Ottawa to sign the Rolls in order to be called to the Bar. The Law Society administers this process and maintains the Rolls on behalf of the Court of Appeal and the Superior Court of Ontario.

In 2003 the Law Society introduced a “deemed call” to facilitate the entry of mobility and transfer candidates to practise law in Ontario. Under this process the candidate takes the oath before a notary or commissioner, documentation is filed with the Law Society, and the candidate’s name is listed in a motion for Call to the Bar as part of Convocation materials. Once the motion is passed, the candidate is licensed to practise law and receives his or her licensing and court certificates.

Commencing May 1, 2020, in response to COVID-19-related public health directives, all eligible licensing candidates have been called to the Bar using an administrative call process. This process is similar to the deemed call, except that candidates’ names are not put before Convocation in a motion.

Traditionally, approval of requests to receive a deemed call has been granted by the Executive Director, Professional Development and Competence, based on justifiable circumstances generally related to hardship or difficulties and/or supported under human rights legislation. The proposed strategic change would make an administrative call a matter of choice for the individual candidate.

Each year approximately 5 – 10% of candidates who receive a licence to practise law do so through the deemed call process described below. All other remaining candidates attend one of the ceremonies. Between 75% - 80% of candidates who attend a ceremony attend in Toronto, with the vast majority of those attending at one of the June ceremonies.

a) Recommendation

The Committee recommends that Convocation approve:

- a new policy to allow administrative calls as a matter of choice made by licensing candidates; and
- the removal of the requirement to sign the Rolls of the Court of Appeal and the Superior Court of Ontario.

b) Rationale

The Committee recognizes the importance of call ceremonies as a shared and public way to welcome new lawyers to the profession. However, the timing and location of call ceremonies may present a barrier for some licensees. In particular, candidates who do not live in or near the current call ceremony locations of London, Toronto and Ottawa may face additional expenses for travel and accommodation. For many recent graduates who are carrying large student loan debts, these additional costs may be significant.

In addition, for certain candidates, there may be a significant delay between the conclusion of their articling terms and the next call ceremony, which can delay the commencement of their careers. A more widely available administrative call process might allow these candidates to begin working in a more timely way.

Therefore, the Committee recommends the adoption of a policy that supports personal choice for licensing candidates and allows candidates to choose either to attend a call ceremony at their scheduled times and locations, or choose an administrative call.

The Committee also recommends ceasing the practice of requiring new calls to sign the Rolls of the Court of Appeal and the Superior Court of Ontario. There is no longer a need for the Rolls to be maintained by the Law Society, and no need to require candidates to attend at the Law Society or a call ceremony, in advance, to sign prior to licensing.

c) Implementation

The requirements to attend at a call ceremony and sign the Rolls are not prescribed by legislation or our by-laws. Therefore, if Convocation approves these recommendations, implementation can begin immediately.

Once fully implemented, licensing candidates will be required to choose whether they wish to be called either at a scheduled call ceremony or by an administrative call at the next Convocation. If these recommendations are approved, the Law Society will begin to provide notice to candidates and law schools, as well as other interested stakeholders.

2. Publishing the names of administratively suspended licensees

Historically, the profession was notified of an individual licensee's administrative suspension through the Ontario Reports ("ORs"). The move to electronic ORs has reduced reliance on these notices, which are also published on the Law Society's website and in the Law Society's register. Those who wish to hire or vet a licensee are able to do so more easily using online means, including the Law Society Lawyer and Paralegal Directory,

which fulfills the Law Society's obligation under section 27.1 of the *Law Society Act* to have a register that includes information about suspensions. In addition the Courts, who do rely on licensee status data, are notified directly.

a) Recommendation

The Committee recommends that Convocation approve a decision to cease publishing the names of administratively suspended licensees in the ORs.

b) Rationale

The process of generating the list of suspended licensees for publication is labour intensive. The inherent delay caused by the preparation time and publication dates often leads to the publication of an out-of-date list, resulting in complaints from licensees who were reinstated before publication.

Ceasing the practice of publishing the names of licensees in the ORs is consistent with the Law Society's goals of modernizing regulation and providing more fair and effective treatment for licensees.

c) Implementation

If this recommendation is approved, information about whether a licensee is administratively suspended will no longer be published in the ORs and will instead only be available in the Lawyer and Paralegal Directory or via phone or email inquiry. Implementation can begin immediately, with the first step of providing notice of the change through standard channels such as our eBulletin and the Law Society Gazette.

3. Use of the Law Society Portal by all licensees

The Law Society Portal has been developed to redirect interactions through an online interface and decrease manual interactions for both licensees and employees. Some licensees, however, refuse to use their portal account and instead ask to receive and submit paper copies of the Annual Report; ask Law Society employees to enter their CPD hours in the Portal; report personal and business information to Membership Services; and/or request invoices by mail.

At present, 3.5% of lawyers do not have a portal account, with the majority of those being either life members or licensees who are exempt from reporting or filing requirements due to age or incapacity; 0.5% of paralegals do not have a Portal account, with many of those

also in exempt categories. In both 2018 and 2019, the Law Society provided paper copies of the Annual Report to over 250 licensees.

a) Recommendation

The Committee recommends that Convocation approve a policy to require licensees to use the Portal unless there is a duty to accommodate a licensee pursuant to the Ontario *Human Rights Code*.

b) Rationale

If having and using a Portal account is a condition of being licensed, Law Society employees will spend less time manually entering and updating the licensee database and mailing documents. In addition, Law Society communications through the portal would be more effective in reaching all licensees.

Requiring the use of a Portal account will modernize our filing and reporting requirements in a manner that is equitable to all licensees, while still allowing for necessary accommodations.

c) Implementation

If this recommendation is approved, implementation can begin immediately. Notice of the new policy will be provided to licensees and interested stakeholders through standard channels as well as through targeted communications to licensees who have historically been reluctant or unwilling to use the Portal.

4. Requirement to Approve Professional Corporation Names

Pursuant to section 4 of By-Law 7, licensees who wish to practise law or provide legal services through a professional corporation may apply for a certificate that the Law Society does not object to the establishment of a professional corporation under a proposed name (Corporate Name Certificate). Upon receipt of an application, the Law Society must review it and either issue the certificate or reject the application. Licensees are not required to apply for a Corporate Name Certificate, however, and may instead simply apply for a Certificate of Authorization after they have established their professional corporation. Section 3 of By-Law 7 provides that the name of a professional corporation must be:

- Demonstrably true, accurate and verifiable;
- Neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive; and

- In the best interests of the public and consistent with a high standard of professionalism.

These requirements mirror the marketing rules applicable to all licensees, in Rule 4.2-1 of the *Rules of Professional Conduct* and Rule 8.03(2) of the *Paralegal Rules of Conduct*. Licensees who practise law or provide legal services through a professional corporation are subject to these rules, as well as the requirements in section 3 of By-Law 7, with respect to both their professional corporation name and any operating or trade name that the corporation may use.

The Law Society receives a considerable number of applications for a Corporate Name Certificate in each year. In 2018 and 2019, the Law Society received 606 and 708 applications respectively. Individual licensees will often submit multiple applications, despite only intending to establish a single professional corporation. In 2018 and 2019, approximately 10% of applications were denied on the basis that they did not comply with section 3 of By-Law 7.

a) Recommendation

The Committee recommends that Convocation approve in principle amendments to By-Law 7 to remove the requirement for the Law Society to approve the names of licensee professional corporations.

b) Rationale

The process of approving professional corporation names is very time consuming and often contentious as between licensees and the Law Society. Removing the requirement for the Law Society to approve professional corporation names would remove a significant administrative burden for the Law Society, without any change to the requirements applicable to licensees.

Marketing rules would continue to apply to professional corporations. However, with respect to professional corporation business names, licensees would be required to satisfy themselves that their business name was compliant and could face complaints or discipline where it is not. This would mirror the process in place for other licensee business structures, thereby establishing consistency and improving fairness for licensees.

c) Implementation

If Convocation approves amendments to By-Law 7 in principle, they will be drafted and proceed through the Professional Regulation Committee before proceeding to Convocation for final approval.

5. Requirement to Notify the Law Society about Affiliations and Multi-Discipline Partnerships

Multi-discipline partnerships (“MDPs”) and affiliations are permitted under Parts III and IV of By-Law 7, respectively. Under Part III, a licensee may enter into a partnership with a non-licensee, for the purpose of permitting the licensee to provide to clients the services of the licensee and the non-licensee partner. Under Part IV, a licensee affiliates with one or more non-licensees when they join on a regular basis in the delivery or promotion and delivery of the services of the licensee and the non-licensee affiliated entity.

For each business structure, the by-law prescribes a number of rules and requirements, including that the licensee maintain control over the business through which they practise law or provide legal services. In addition, however, the by-law requires that the licensee apply for approval, in the case of an MDP, and provide notice to the Law Society, in the case of affiliations. For each business structure, licensees must file an annual report.

There are approximately 10 active MDPs and approximately 50 affiliations.

a) Recommendation

The Committee recommends that Convocation approve amendments in principle to By-Law 7 in order to remove requirements that licensees:

- notify the Law Society before entering into affiliations;
- apply for approval before entering into MDPs; and
- file annual reports in respect of an affiliation or an MDP .

Rules and by-law requirements applicable to both affiliations and MDPs would remain in place.

b) Rationale

Removing the application, notice and annual report requirements for these business structures would reduce administrative burdens for both licensees and the Law Society.

These administrative processes were initially intended to ensure compliance with by-law requirements and to monitor uptake of the then new forms of alternative business structures. However, there is no evidence that they enhance public protection or licensee competence or effectiveness.

Licensees would still be required to comply with the rules and requirements applicable to MDPs and affiliations but would no longer be required to apply or give notice to the Law Society or file an annual report. Since all other by-law requirements and rules would remain in place, public protection and effective regulation would not be impacted.

c) Implementation

If Convocation approves amendments to By-Law 7 in principle, they will be drafted and proceed through the Professional Regulation Committee before proceeding to Convocation for final approval.

If approved, targeted notice will be given to existing MDPs and affiliations including a reminder that while application, notice and report requirements are no longer in place, applicable rules and requirements remain and non-compliance would be addressed through usual regulatory channels.

6. Reciprocity Requirement for Foreign Legal Consultants

Persons who are licensed to practise law in a foreign jurisdiction, and who want to give legal advice in Ontario about the laws of that jurisdiction, may apply to the Law Society for a Foreign Legal Consultant permit.

Under subsection 4(2) of By-Law 14, applicants for a Foreign Legal Consultant permit:

- Must be authorized to practise law in their home jurisdiction;
- Must have been engaged in the practice of law in their home jurisdiction for at least three of the last five years;
- Must be of good character;
- Must not be the subject of any conditions, limitations or restrictions with respect to their authorization to practise law in their home jurisdiction; and
- May not be the subject of an order made against them by their governing body.

In addition to these requirements, the by-law also has a reciprocity requirement, that is: the relevant foreign jurisdiction has provisions that would allow an Ontario licensee to give legal advice about the law of Ontario or Canada.

a) Recommendation

The Committee recommends that Convocation approve amendments in principle to By-Law 14 to remove the reciprocity requirement for the issuance of a Foreign Legal Consultant permit.

b) Rationale

The reciprocity requirement is an administrative burden for both the Law Society and applicants, which does not enhance protection of the public or provide any information or standards with respect to competence.

Applicants who satisfy all of the substantive requirements for the issuance of a permit may be denied a permit based solely on an inability to prove the reciprocity requirement, which is irrelevant with respect to competence or suitability.

In such circumstances a considerable amount of Law Society time is often used justifying the requirement and the refusal to proceed with an application.

Removing the reciprocity requirement therefore, would eliminate a barrier for some applicants and a burden for the Law Society.

c) Implementation

If Convocation approves amendments to By-Law 14 in principle, they will be drafted and proceed through the Professional Regulation Committee before proceeding to Convocation for final approval.

7. Implementation of the Quebec Mobility Agreement

In 2013, Canadian law societies signed the new National Mobility Agreement 2013, which extends mobility to Quebec lawyers on the same terms as are currently applicable to lawyers from other Canadian provinces. That agreement, however, requires implementation in each province in order for it to come into force. In Quebec, approval is required through a government agency, the Office de Professions du Québec. Approval has not been granted and does not appear to be forthcoming. However, even though the agreement has not been implemented in Quebec, other law societies have begun to enact provisions in their jurisdictions to allow for the mobility of lawyers licensed in Quebec. Under the current by-law provisions in Parts II and VII of By-Law 4, lawyers from Quebec who wish to practise in Ontario on a temporary basis may only do so for up to 10 matters in a calendar year, and must apply for a permit before representing clients in those matters (an Occasional Practice Permit).

Lawyers from Quebec who wish to transfer to Ontario on a permanent basis must complete examinations. If they do not have a common law degree, they may have to completed additional educational requirements through the National Committee on Accreditation.

Subject to terms and conditions in By-Law 4, lawyers from other Canadian provinces may practise law in Ontario for up to 100 days in a calendar year without permission, and may apply for an extension if necessary. If these lawyers wish to transfer to Ontario on a permanent basis, they may apply to do so and may be licensed after completing reading materials without the need to complete examinations.

In 2018 and 2019, the Law Society received 175 and 169 applications for Occasional Practice Permits from Quebec lawyers. In those same years the Law Society received 42 and 40 licensing applications.

a) Recommendation

The Committee recommends that Convocation approve amendments in principle to By-Law 4, to permit Quebec lawyers to practise in Ontario subject to the same terms and conditions as lawyers from other Canadian provinces.

b) Rationale

The proposed strategic changes would allow the Law Society to streamline its application processes and reallocate resources that are currently used to grant Occasional Practice Permits and administer examinations for Quebec lawyers.

If these by-law amendments are implemented, Ontario's requirements for Quebec lawyers would be consistent with most other provinces, and a significant administrative burden would be removed from the Law Society. Enforcement provisions set out in the National Mobility Agreement, 2002, including that the lawyer's home governing body will assume responsibility for alleged misconduct, will continue to apply to lawyers from Quebec practising in Ontario on a temporary basis. Quebec lawyers who transfer permanently to Ontario will become licensees subject to the Law Society's rules and requirements.

c) Implementation

If Convocation approves amendments to By-Law 4 in principle, they will be drafted and proceed through the Professional Regulation Committee before proceeding to Convocation for final approval.

8. End the Professional Conduct and Practice in Ontario (PCPO) Course

The PCPO Course is a three-day course that was developed to respond to the articling crisis and policies developed to address the influx of internationally educated licensing candidates.

Candidates are excused from experiential training, either articling or the Law Practice Program (“LPP”), and instead complete the PCPO course if they:

- have a minimum of 10 months of actual legal work experience;
- can show evidence of having completed work in all key competency categories required for entry to the profession in Ontario; and
- have referees who affirm the above.

The PCPO is an in-person course and is held twice per year.

The requirement of a minimum of 10 months of legal practice is sufficient and in line with other experiential components (LPP and articling). PCPO candidates have spent an average of three to four years practising law in other jurisdictions before applying to the Law Society for licensing. While some have only 10 months, the vast majority have many years of practical experience. Many international candidates with limited years of legal practice still take the LPP or article in order to network and acclimate to the Ontario legal environment. Attendance at the PCPO has averaged about 150 candidates per year.

a) Recommendation

The Committee recommends that the PCPO course be discontinued.

b) Rationale

Although the PCPO serves a relatively small number of licensees, there are significant administrative and financial requirements for the Law Society to administer the course.

In addition, the benefits of the course are not clear. The course is based on the completion of professionalism and practice management competencies that are already emphasized in the licensing examinations. Moreover, the course does not include any testing or evaluation that would assist in determining how much candidates learn through completing the course.

c) Implementation

At this point, the number of likely PCPO candidates is much lower than the average of 150. Accordingly, discontinuation of the course could occur as soon as practicable, and no later than the end of December 2020.



Law Society
of Ontario

Barreau
de l'Ontario

Tab 3.1.1

Priority Planning Committee

Recommendations for Strategic Change Supplementary Report

June 26, 2020

Committee Members:

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Issue

The following supplementary information has been requested regarding certain items outlined in the report of the Priority and Planning Committee on Recommendations for Strategic Change, found at Tab 3.1 (the Primary Report).

Strategic Change Items

1. Administrative Call to the Bar

As indicated in the Primary Report, in recent years the Law Society has held eight Call to the Bar ceremonies per year. The number of licensing candidates entering the licensing process has tended to increase each year, which has necessitated an increased number of ceremonies.

The number of lawyers called to the bar between 2013 and 2019 is as follows:

Call Year	Number of Lawyers Called to the Bar
2013	1,996
2014	1,953
2015	2,150
2016	2,150
2017	2,280
2018	2,314
2019	2,342

Each year approximately five to 10% of candidates who receive a licence to practice law do so through the deemed call process described below. All other candidates attend one of the ceremonies. Between 75 and 80% of candidates who attend a ceremony attend in Toronto, with the vast majority of those attending at one of the June ceremonies.

Deemed Call

In 2003 the Law Society introduced a “deemed call” to facilitate the entry of mobility and transfer candidates into legal practice in Ontario. Under this process the candidate takes the oath before a notary or commissioner, documentation is filed with the Law Society, and the candidate’s name is listed in a motion for the Call to the Bar as part of Convocation materials. Once the motion is passed, the candidate is licensed to practise law and receives the licensing and court certificates.

The deemed call is not formally communicated to candidates as it is an exception established through policy developed to support candidates in extenuating circumstances. Approval of requests to receive a deemed call are granted by the Executive Director, Professional Development and Competence based on justifiable circumstances generally related to hardship or difficulties and/or supported under human rights legislation. Requests for a deemed call are made by candidates to the Professional Development and Competence Division, which must expend time and resources vetting requests to determine if they merit consideration by the Executive Director’s office.

Costs and Revenues

When the Call to the Bar ceremonies were considered by the Proportionate Regulation Task Force, costs to both the candidates and the Law Society figured prominently in their discussion.

Candidate Costs

All candidates are charged a Call to the Bar fee of \$250.¹ Candidates who attend at a ceremony must wear court attire, which can cost in excess of \$1000 to purchase or about \$200 to rent.² Candidates who do not live in Toronto, Ottawa, or London must travel to

¹ Note that paralegal candidates are charged a licensing fee of \$175 to account for administrative and staffing costs associated with licensing. Therefore, an increase in deemed call options for lawyer licensing candidates would like realize only a modest reduction, if any, for licensing fees for lawyer candidates.

² See *Criminal Lawyers Association launches old-robe clothing drive*, Law Times, May 13, 2019 (available at <https://www.lawtimesnews.com/practice-areas/litigation/criminal-lawyers-association-launches-old-robe-clothing-drive/263545>)

their call, and incur additional expenses to do so. In addition, since the licensing process does not have a residency requirement, and there has been an increasing number of licensing candidates from international schools entering the licensing process through the National Committee on Accreditation procedure, some candidates attend ceremonies from international locations, at great cost and disruption to both their personal and professional lives.

The ceremony schedule may also mean that certain candidates are required to wait for the next ceremony, in some cases for a number of months, before they are able to work as a lawyer. For instance, candidates who participate in the Law Practice Program complete their experiential training in late April, over a month before the June ceremonies.

In addition, candidates are also charged the following licensing costs:

- Application fee - \$160
- Barrister Licensing Examination Fee - \$750
- Solicitor Licensing Examination Fee - \$750
- Articling Program / Law Practice Program Fee - \$2800³

Finally, many students will also graduate with significant student debt. According to one recent survey, between 80 and 85% of law students will graduate with an average debt of approximately \$84,000.⁴

Law Society Costs

In 2019, the 2,342 candidates who were called to the bar generated revenue of \$585,500 through the Call to the Bar fee. This fee was applied to various costs related to the Call to the Bar ceremonies, including venue and facilities expenses, costs related to Benchers' attendance at the ceremonies and administration of the ceremony process.

³ Additional fees, for instance examination rewrite fees of \$600, may also be incurred by some candidates.

⁴ *Just or Bust? Results of the 2018 Survey of Ontario law Students' Tuition, Debt, & Student Financial Aid Experiences*, Law Students' Society of Ontario (available at <https://s3.amazonaws.com/tld-documents.llnassets.com/0010000/10102/law%20students%20society%20of%20ontario%20-%20just%20or%20bust%20report.pdf>)

Signing of the Rolls

Historically the Law Society has administered the signing of the Rolls of the Court of Appeal and the Superior Court of Ontario to maintain a list of lawyers who are entitled to practice law in the courts of this province.

The Primary Report recommends that the signing of the Rolls be discontinued because the courts do not want to receive the relevant information through roll books.

In 2014, the Law Society reached out to the courts to explore the necessity of signing of the Rolls. Both the Court of Appeal and the Superior Court of Ontario advised that, for their purposes, the signing of the Rolls did not need to be continued. In fact, the courts have advised the Law Society that they do not wish to receive or store completed roll books, as had been the historical process.

In addition, an archival review of the roll books was undertaken in 2014. That review revealed that no notations had been made in the books (for example, a striking out for resignation) since 1993. The review also revealed that updates to the Rolls had not been completed either fully or correctly. Comparisons to discipline records and data showed gaps in the information and significant missing notations, indicating that the roll books could not be held out as representing proper or correct recordkeeping even in earlier years.

With the advent of modern tracking processes, including technology, to maintain the licensee member database and information, signing of the Rolls has become an unnecessary and burdensome requirement for both the Law Society and licensing candidates.

Task Force Recommendations

This matter was considered by the Proportionate Regulation Task Force on January 16, 2020. There was general agreement among Task Force members that the call ceremony is an important tradition that should not be eliminated. Task Force members noted that the ceremony is a memorable, unifying experience, with value as a rite of passage beyond what may be immediately obvious to licensing candidates. In particular, Task Force members noted that the call ceremony:

- welcomes lawyers to the profession in a manner that is appropriately reverential to their forthcoming role in the administration of justice and in service of their clients and the public interest;

- provides an opportunity for new lawyers to publicly take the required oath and to accept and acknowledge the rights and responsibilities that come from being a member of the profession; and
- provides an opportunity for a new lawyer's family and friends, as well as the Law Society and the legal profession, to publicly recognize the hard work and dedication that has been required to reach this stage in one's career.

Given these benefits, there was no support among Task Force members to explore eliminating the call ceremony or reducing the number of ceremonies in the short term.

The Task Force did note, however, that the requirement to attend at a ceremony may present a significant barrier for some licensing candidates. In particular, candidates who do not live in or near the current call ceremony locations of London, Toronto, and Ottawa may face additional expenses for travel and accommodation. For many recent graduates who are carrying large student loan debts, these additional costs may be significant.

In addition, for certain candidates, there may be a delay between the conclusion of their articling term and the next call ceremony, which creates the additional burden of delaying the start of their career until they can attend at a call ceremony and become licensed. A more widely available deemed call process might allow these candidates to begin working in a more timely way.

Due to these barriers, a majority of the Committee agreed that the current mandatory participation rule should be relaxed so that candidates are free to decide whether to have a deemed call as soon as possible, or wait until the next scheduled call ceremony. A minority of the Task Force was in favour of maintaining the status quo with respect to the availability of deemed calls.

2. Publishing the names of administratively suspended licensees

The Law Society would save considerable time and resources by terminating the practice of publishing the names of administratively suspended licensees in the Ontario Reports (ORs). Three times a year, the Law Society will publish lists of approximately 1000 administrative suspensions, arising from non-compliance with standard obligations, i.e. reporting CPD hours, paying the annual fee or filing the Annual Report. In addition, shorter lists are assembled and published throughout the year.

To ensure accuracy, the preparation of the list for publication requires focused and detail-oriented attention, and multiple reviews. Despite best efforts to ensure accuracy, the list is sometimes inaccurate, often because licensees have brought themselves into good standing in the period between preparation and publication of the list. In those instances,

Law Society management is often required to expend significant resources responding to complaints and concerns from licensees.

Given that status information is available in real time on the Lawyer and Paralegal Directory, ceasing publication in the ORs would not impact information that the public requires to make informed decisions when vetting or hiring licensees. However, as detailed above, it would save the Law Society considerable time.

3. Use of the Law Society Portal by all licensees

The Law Society Portal launched in September 2010. Over time the following portlets were added to the Portal:

- 2010 – Change of Information Portlet - to allow licensees to advise the Law Society about their business and personal contact information.
- 2011 – CPD Portlet - to allow licensees to report on their continuing professional development requirements
- 2012 – Annual Report Filing Portlet
- 2014 – Fees and Payments Portlet
- 2016 – Law Society Referral Service Portlet - to allow licensees to register for the Referral Service and manage their availability and other relevant information
- 2017 – Professional Corporation Portlet – to allow for the renewal of Certificates of Authorization and the updating of information about shareholders and licensee employees for licensees who practise law or provide legal services through a professional corporation
- 2019 – Bencher Election Portlet

Through these enhancements, the Law Society has sought to redirect interactions through the Portal and decrease manual interactions for both licensees and employees.

Enhancements to the Portal have been communicated to licensees through usual channels, such as licensee updates and the Law Society Gazette. In addition, individual interactions with licensees by the Client Service Centre routinely advise about the Portal in instances where that interaction might have been conducted through one of the portlets listed above.

4. Requirement to approve Professional Corporation Names

Section 3 of By-Law 7, provides that the name of a professional corporation must be:

- Demonstrably true, accurate and verifiable;



- Neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive; and
- In the best interests of the public and consistent with a high standard of professionalism

These requirements are mirrored in Rule 4.2-1 of the *Rules of Professional Conduct* and Rule 8.03(2) of the *Paralegal Rules of Conduct*, which are applicable to all licensee firm names, regardless of the business structure used.

Under section 4 of By-Law 7, a licensee who wants to practice law or provide legal services through a professional corporation may apply to the Law Society for a Corporate Name Certificate, by which the Law Society certifies that it does not object to the establishment of a professional corporation under a proposed name. When an application is made, the Law Society must consider the application and either issue a Corporate Name Certificate or reject the application. If the application is rejected, the licensee can apply to a committee of Benchers for a review of the decision.

The proposed amendment to By-Law 7, as described in the Primary Report, would repeal section 4 of By-Law 7, thus eliminating the ability of licensees to apply for a Corporate Name Certificate, the requirement that the Law Society consider the application and the review process.

Licensees who want to practice law or provide legal services through a professional corporation would still be required to comply with section 3 of By-Law 7 and the rules related to licensee marketing.

By leaving the requirements in section 3 in place, but removing the Corporation Name Certificate process, the procedure for professional corporations would be consistent with all other licensee business structures. Regardless of the business structure through which they wish to practise law or provide legal services, all licensees would be required to satisfy themselves that their business name is compliant and could face complaints or ultimately discipline in instances where it is not.

5. End the Professional Conduct and Practice in Ontario (PCPO) Course

In order to be licensed, internationally trained lawyers must complete the PCPO course. The course is offered twice a year at considerable cost to both licensing candidates and the Law Society.

Candidates cannot be licensed until they complete the course, which costs \$900 in addition to associated travel and accommodation costs, which may be significant for



internationally trained candidates, many of whom do not live in Toronto. In addition to these costs, the value of the course for candidates is not evident since the curriculum is focussed on ethics and professional conduct rules, which are covered in the licensing materials and exams that these candidates will eventually complete.

For the Law Society, design and delivery of the three-day PCPO course is significant undertaking. This course is longer than any other Law Society program. Preparation and delivery of the course entails review and updating of course materials, securing speakers, printing materials and managing logistics and the facility.

Administration of the course requires a team of approximately 15 employees at various times throughout the year. Counsel are drawn from the departments of Practice Audits, Licensing & Accreditation, and Practice Supports & Resources. Logistical support is provided by the Continuing Professional Development department.



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Tab 3.3

Priority Planning Committee

Proposed Changes to the Bencher Election Process

June 26, 2020

Authored By:

James Varro, Director, Office of the CEO and Corporate Secretary

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Issue

This report provides an update on the work of the Priority Planning Committee's Bencher Election Reforms Working Group. The report describes proposals for certain election reforms aimed at improving the election process and a call for comment on those proposals.

A. Executive Summary

Based on issues identified by the Elections Officer's arising from experience with bencher elections, the Working Group reviewed a number of possible reforms to the bencher election process. Reforms approved by Convocation may require amendments to By-Law 3 ("the By-Law").

Based on the Working Group's report, the proposals the Committee believes should be pursued are:

1. Requiring as a condition of candidacy that the candidate acknowledges having read and if elected agrees to abide by the Law Society's Governance Practices and Policies, which include the Bencher Code of Conduct;
2. Requiring as a condition of candidacy that a licensee who would be elected a bencher for the first time register for and complete an online bencher candidate module for orientation and education purposes; and
3. Considering shortening the voting period in the election

Background

A. Election Process Review

Following each bencher election, the Elections Officer notes issues and matters that arise during the election period, including those that may require review and consideration for change to the process for the next election. A number of election reforms have been implemented based on this type of review since the 2011 bencher election for lawyers and the 2014 paralegal election for Paralegal Standing Committee members (since changed to a bencher election).

The Elections Officer noted some issues following the 2019 bencher election and other matters that relate to how the election process and recent governance reforms at the Law Society intersect. The Working Group was created to explore these and other issues that members of the Working Group might raise related to the election process.



Background information about the bencher election and election process was reviewed by the Working Group, including:

- [By-Law 3](#)
- FAQs published for the 2019 election
- Candidate Instructions for the 2019 election
- Nomination forms
- [Governance Practices and Policies \(including the Bencher Code of Conduct\)](#)

The Proposals

A. Key Issues

While the Working Group considered a number of issues¹, they narrowed their focus to three key issues. These issues form the basis for proposals for change which the Committee believes will improve the election process.

- 1. Requiring as a condition of candidacy that the candidate acknowledges having read and if elected agrees to abide by the Law Society's Governance Practices and Policies including the Bencher Code of Conduct**

¹ Among them were the following which the Working Group determined would not be pursued at this time:

- Consider eliminating the requirement for five nominators for a candidate, to be replaced with a requirement for a declaration of candidacy by a candidate;
- Consider requiring as a condition of candidacy and election that a candidate not be subject to any LSO complaint investigation, Tribunal proceeding or disciplinary order;
- Consider elimination of the candidate's election statement and creating an option to provide a personal web address for access to the candidate's election statement and any other campaign materials;
- Explore whether additional guidance is required on licensee bencher election campaign communications and conduct.



Currently, as soon as practicable after an election, benchers sign a Declaration of Adherence respecting the Law Society's Governance Practices and Policies, which include the Bencher Code of Conduct.

The Governance Practices and Policies were approved by Convocation in February 2019 and apply to benchers as Convocation policy on governance. This was one of the initiatives of the Governance Task Force 2016, which developed the Governance Practices and Policies to replace outdated governance policies adopted in 1996 and to address a number of matters not covered in existing policies. The Task Force's extensive research on the subject included review of similar documents of other law societies, agencies, boards, tribunals and municipalities.

The Task Force's work on the Governance Practices and Policies, including the Code, began in the fall of 2017, with an initial report to February 2018 Convocation for information that offered a draft outline of the document. The Governance Practices and Policies were then formulated over the next months and reported to Convocation in November 2018 for approval. Convocation determined that further work was required and ultimately, the document returned to Convocation and was approved in February 2019.

The Governance Practices and Policies are both informational and instructive, and set out obligations and expectations for the Law Society, Convocation, benchers and management in fulfilling various functions. The Bencher Code of Conduct sets out the ethical responsibilities of benchers and guides appropriate behavior for board members.

Ideally, the Governance Practices and Policies would have been built into the requirements for the bencher election with the Declaration of Adherence as a requirement for candidacy. This was not possible for the 2019 bencher election as the 2019 election was already well underway when the Governance Practices and Policies were approved in February 2019.

The opportunity should be taken to incorporate in the By-Law the requirement that a candidate acknowledge and if elected abide by the Governance Practices and Policies as a condition of candidacy. In this way, candidates understand 'upfront' their obligations as a bencher and the expectations for their conduct as governors of the Law Society. The requirement would have the added benefit of educating candidates about the role of the bencher and the Law Society, and would be included as information in the pre-nomination webcast on the election process open to all licensees free of charge.

- 2. Requiring as a condition of candidacy that a licensee who would be elected a bencher for the first time register for and complete an online bencher candidate module for orientation and education purposes**



First time benchers often comment post-election how much there is to learn about the Law Society and how much they did not know before they were elected. Candidates who do their own research about the Law Society still usually experience a sharp learning curve once they arrive. One way to provide some key information about the Law Society and to start preparing candidates for the role of a bencher is to create an online learning and orientation opportunity prior to the close of nominations. Candidates would register for and complete the online course as part of their requirements for candidacy.

As a step beyond the requirement to read and acknowledge reviewing the governance policies and bencher code of conduct noted above, a brief program would be designed that would use the policies, code and other resources as a starting point for the bencher's education and orientation. An online module would take the licensee through a series of information pieces, scenarios and questions. The module would end with an acknowledgement of completion and a record that the licensee candidate had completed the module. In this way, the requirement to complete the module as a condition of candidacy can be documented.

Post-election, benchers receive focussed orientation on the broad spectrum of the roles and functions of benchers and the governance and operational structure of the Law Society. The pre-election education would dovetail with this as an early higher level learning opportunity. As the Law Society is a complex organization and the role of the bencher multi-faceted, an initiative that informs prospective benchers about their role and the organization in which they will serve accords with good governance practices. This should be seen as part of a larger effort to assist the benchers and the organization in achieving greater success in their roles and in fulfilling then Law Society's mandate.

3. Consider shortening the voting period for the election

Currently, the final stages of the bencher election process leading up to election day at the end of April in an election year start in February of an election year. Over the years, the voting period has been shortened as feedback on the time period to vote indicated that it was too long, especially given the online platform for the election.

The following are the prescribed dates for key points in the election process:

- The nomination form must be received in the office of the Elections Officer at Osgoode Hall by 5 p.m. on the second Friday in February
- The list of eligible voters in the bencher election (licensees whose licences are not suspended) is fixed at 5 pm on the first Friday in April
- Voting launches on the Monday following the second Friday in April, when the voting site incorporating the credentials of the nearly 60,000 eligible voters is ready



This proposal would shorten the voting period further by extending the time for nominations and fixing of the voters' list so that the relevant dates would become the following:

- The nomination form must be received in the office of the Elections Officer at Osgoode Hall by 5 p.m. on the **last Friday** in February
- The list of eligible voters in the bencher election (licensees whose licences are not suspended) is fixed at 5 pm on the **second Wednesday** in April
- Voting launches on **third Wednesday** in April, when the voting site incorporating the credentials of the nearly 60,000 eligible voters is ready

For 2023, this would mean the voting period would begin on April 19 and end on election day, Friday, April 28 – a period of 10 days. In 2019, the voting period would have been 14 days had this been in place that year. The number of days will vary depending on when the last business day in April falls (designated as the election day in By-Law 3), and whether a weekend intervenes before that day (as in 2019).

B. Next Steps

The Committee believes that a call for comment on these proposed reforms would be useful, both to create an awareness of the issues and to obtain comments on the merits of the suggested reforms. A call for comment can also provide new information that may be useful to the Working Group within its mandate. The call for comment document, in draft at **Tab 3.3.1**, incorporates much of what is in this report.

The proposed time frame for the call for comment is the summer and early fall of 2020. As the proposals are being discussed well in advance of the next election, time will permit a thoughtful consideration of the issues by Convocation either later in the fall or early 2021. If they are approved, the proposals will require amendments to By-Law 3.

DRAFT

Call for Comment

PROPOSALS FOR REFORMS TO THE BENCHER ELECTION PROCESS

A working group of the Law Society's Priority Planning Committee has been struck to review and make recommendations to Convocation on reforms to the bencher election process. Reforms that are approved by Convocation will be implemented prior to the next bencher election in April 2023.

The proposed reforms on which the working group is inviting comment are the following:

- Requiring as a condition of candidacy that the candidate acknowledges having read and if elected agrees to abide by the Law Society's Governance Practices and Policies including the Bencher Code of Conduct
- Requiring as a condition of candidacy that a licensee who would be elected as a bencher for the first time register for and complete an online bencher candidate module for orientation and education purposes
- Consider shortening the voting period for the election.

Requiring as a condition of candidacy that the candidate acknowledges having read and if elected agrees to abide by the Law Society's Governance Practices and Policies including the Bencher Code of Conduct

Currently, as soon as practicable after an election, benchers sign a Declaration of Adherence respecting the Law Society's Governance Practices and Policies, which include the Bencher Code of Conduct.

The Governance Practices and Policies were approved by Convocation in February 2019. This was one of the initiatives of the Governance Task Force 2016, which was struck by Convocation in September 2016. The Governance Practices and Policies were developed to replace outdated policies adopted in 1996 and to address a number of matters not covered in existing policies. The Task Force undertook extensive research in developing the Governance Practices and Policies, including review of similar documents of other law societies, agencies, boards, tribunals and municipalities.

Work on the Governance Practices and Policies, including the Code, began in the fall of 2017, with an initial report to February 2018 Convocation for information that offered a draft outline of the document. The Governance Practices and Policies were then formulated over the next months and reported to Convocation in November 2018 for approval. Convocation determined that further work was required and ultimately, the document returned to Convocation and was approved in February 2019.

The Governance Practices and Policies are both informational and instructive, and set out

obligations and expectations for the Law Society, Convocation, benchers and management in fulfilling various functions. The Bencher Code of Conduct sets out the ethical responsibilities of benchers and guides appropriate behavior for board members.

As the Governance Practices and Policies were approved in February 2019, this did not allow enough time to build in to the requirements for the 2019 election the Declaration of Adherence as a requirement for candidacy, as the election was already well underway. The Governance Practices and Policies apply to benchers based on Convocation's policy decision to adopt them. In addition, the February 2019 report to Convocation on the Governance Practices and Policies provided that, as applicable, they should form part of By-Law 3.

The opportunity should be taken to incorporate in the By-Law the requirement that a candidate acknowledge and if elected abide by the Governance Practices and Policies as a condition of candidacy. In this way, candidates understand 'upfront' their obligations as a bencher and the expectations for their conduct as governors of the Law Society. The requirement would have the added benefit of educating candidates about the role of the bencher and the Law Society, and would be included as information in the pre-nomination webcast on the election process open to all licensees free of charge.

Comments:

Requiring as a condition of candidacy that a licensee who would be elected a bencher for the first time register for and complete an online bencher candidate module for orientation and education purposes

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As a step beyond the requirement to read and acknowledge reviewing the Governance Practices and Policies, a brief program would be designed that would use this document and other resources as a starting point for the bencher's education and orientation. An online module would take the licensee through a series of information pieces, scenarios and questions. The module would end with an acknowledgement of completion and a record that the licensee candidate had completed the module. In this way, the requirement to complete the module as a condition of candidacy can be documented.

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Comments:

Consider shortening the voting period for the election

Currently, the final stages of the benchers election process leading up to election day at the end of April in an election year start in February of an election year. Over the years, the voting period has been shortened as feedback on the time period to vote indicated that it was too long, especially given the online platform for the election.

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- Voting launches on **third Wednesday** in April, when the voting site incorporating the credentials of the nearly 60,000 eligible voters is ready

For the next benchers election in 2023, this would mean the voting period would begin on April 19 and end on election day, Friday, April 28 – a period of 10 days. In 2019, the voting period would have been 14 days had this been in place that year. The number of days will vary depending on when the last business day in April falls (designated as the election day in By-Law 3), and whether a weekend might intervene before that day (as in 2019).

Comments:



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Tab 6

Tribunal Committee

For Information

June 26, 2020

Committee Members:

Isfahan Merali (Chair)

Julia Shin Doi (Vice-Chair)

David A. Wright (*ex officio*)

Larry Banack

Jack Braithwaite

Paul Cooper

John Fagan

Marian Lippa

Geneviève Painchaud

Gina Papageorgiou

Lubomir Poliacik

Authored By:

Lisa Mallia, Tribunal Counsel

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Tribunal Statistics – For Information

A. Executive Summary

Ongoing collection and reporting of Tribunal operational statistics assists the Tribunal to track issues, identify needs and monitor emerging trends in Tribunal proceedings. This enables the Tribunal Committee and Convocation to make policy decisions with a more fulsome understanding of the Tribunal's work.

B. Committee Process

In the absence of an in-person Tribunal Committee meeting in June 2020, the Q1 2020 Tribunal quarterly statistics were sent to the Committee by e-mail on June 12, 2020.

Background

The statistics we report were decided upon through an extensive process. In 2016, the Tribunal Committee considered what types of data would be useful in public and internal reports. This review was done while considering the goals of the Tribunal model as well as issues raised in the 2016 Tribunal Model Three-Year Review final report. That report highlighted the need for a revised approach to data collection that would focus on adjudicative purposes in order to measure the effectiveness of the Tribunal's processes.

In 2017, the Committee approved a list of statistics to be gathered and reported on quarterly and annually. The Tribunal then designed data collection and technology around this list. The goal of the statistics the Committee chose is to have focused reporting that:

- measures outcomes;
- measures efficiency;
- monitors trends; and
- monitors data around adjudicators, duty counsel/self-represented licensees, French language hearings, and licensee/licensee applicant data.

These goals must be pursued while bearing in mind the public interest nature of the information and the goal of transparency.

The Tribunal provides five statistical reports each year to Convocation: four quarterly reports and one year-end report. The Q1 2020 quarterly report is set out at **TAB 6.1**. Note that while the statistics largely reflect what happened before COVID-19 affected the Tribunal's operations, Law Society staff, including those at the Tribunal, began working at home during the last two weeks of the quarter. In addition all in-person hearings were cancelled at that time.

C. Q1 2020 quarterly report

The volume of cases open at any point in time is generally between 165 and 175, although in Q1 this year there were 185 files open at the end of the quarter: see *Caseload* on page 5 of the Q1 report. This is also shown in that more files were opened in Q1 of 2020 than 2019 and fewer files were closed in Q1 of 2020 than 2019: see *Figure 2* on page 3 and *Figure 6* on page 4 . The same increase also occurred in terms of hearing days used compared to Q1 of 2019: See *Figure 10* on page 6. Longer, more complex hearings were held in Q1: nine different files involved three or more full days of hearing and at least five involved five full days of hearing or more.

The figures on timeliness show that, on average, files are closed within a year of the first PMC: see *Figure 11* on page 7.

The Tribunal also measures the length of time taken to complete reasons: see *Figure 15* on page 11. The average number of days to deliver written reasons increased from 59 in Q4 2019 to 82 in this quarter. *Figure 16* on page 12 shows the differences in the longer time periods for completing reasons. In an effort to reduce the time taken to complete reasons, the Tribunal is making an active effort to communicate with adjudicators with reasons past the time limit to encourage submission of reasons as soon as possible.

The report also shows that all 17 applications by the Law Society that were closed in Q1 were granted in full: see *Figure 18* on page 13. In addition, all five motions for interlocutory suspension that were closed were granted, in full or in part: see *Figure 20* on page 14. Three matters initiated by the licensee / licence applicant were closed in Q1, all of which were granted in full or in part: see *Figure 12* on page 15.

Three appeals brought by licensee / licence applicants were closed in the first quarter – one was abandoned and two were dismissed: see *Figure 24* on page 16. The one appeal brought by the Law Society that was closed in Q1 was granted in part: see *Figure 26* on page 16. The charts on page 16 also show how Q1 in 2019 and in 2020 are very similar.

TRIBUNAL COMMITTEE REPORT

Law Society Tribunal 2020 Q1 Statistics

Available upon request via the Law Society Tribunal website

<https://lawsocietytribunal.ca/>