

## MINUTES OF SPECIAL CONVOCATION

Friday, 4<sup>th</sup> December, 2009  
9:00 a.m.

## PRESENT:

The Treasurer (W. A. Derry Millar), Aaron, Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Campion, Caskey, Chilcott, Conway, Crowe, Daud (by telephone), Dickson, Dray, Elliott, Epstein, Eustace, Feinstein, Finkelstein, Fleck, Furlong, Go, Gold, Gottlieb, Hainey, Halajian, Hare, Hartman, Heintzman, Henderson, Krishna, Lawrie, Lewis, MacKenzie, McGrath, Marmur, Minor, Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch, Robins, Ross (by telephone), Rothstein, Ruby, Sandler, Schabas, Sikand, Silverstein, Simpson, C. Strosberg, H. Strosberg, Swaye, Symes, Topp, Tough, Wardlaw and Wright.

.....

Secretary: Katherine Corrick

The Reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer congratulated former Chief Justice R. Roy McMurtry who received the Canadian Bar Association's 2009 Ramon John Hnatyshyn Award for Law on November 27.

The Treasurer reported on the meetings he chaired in Sudbury and Ottawa in November. These are the first in a series of meetings scheduled across the province to discuss civility and the administration of justice with lawyers, paralegals and articling students.

DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of October 29, 2009 were confirmed.

MOTION – APPOINTMENTS

It was moved by Mr. Wright, seconded by Ms. Dickson, –

THAT Carl Fleck be appointed and Carol Hartman be reappointed to the Board of Directors of LibraryCo for a term of one year.

THAT James Leal be reappointed as the Law Society's representative on the Research Advisory Board of the Law Commission of Ontario for a term of three years.

THAT Christopher Bredt be reappointed as the Law Society's representative on the Law Commission of Ontario for a term of three years.

Carried

## REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

### To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

---

#### CALL TO THE BAR AND CERTIFICATE OF FITNESS

##### Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with subsection 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Friday, December 4, 2009.

ALL OF WHICH is respectfully submitted

DATED this 4th day of December, 2009

#### CANDIDATES FOR CALL TO THE BAR

December 4th, 2009

Marie-Eve Julie Desjardins  
Marie-Claude Carmen Desrosiers  
Marnie Jill Foster  
Véronique Marie Marie-Claude Fraser  
Robert Johnathan Kimball  
Piotr Kamil Krysiak  
Selim James Tela Levy  
Gwyn Kelechi Okorie  
Glenys Heather Stevenson  
Colin John Taylor

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that the Report of the Director of Professional Development and Competence listing the names of the Call to the Bar candidates be adopted.

Carried

#### FINANCE COMMITTEE REPORT

Ms. Hartman presented the Report.

Report to Convocation  
December 4, 2009

---

Finance Committee

Committee Members:  
Carol Hartman, Chair  
Chris Bredt, Vice-Chair  
Raj Anand  
Larry Banack  
Jack Braithwaite  
Mary Louise Dickson  
Jack Ground  
Susan Hare  
Janet Minor  
Ross Murray  
Judith Potter  
Jack Rabinovitch  
Paul Schabas  
Gerald Swaye  
Brad Wright

Purpose of Report: Decision

Prepared by Wendy Tysall,  
Chief Financial Officer – 416-947-3322

FOR DECISION

TRUSTEE SERVICES BANKING

Motion

1. That Convocation approve the addition of the Manager, Compensation Fund, as a signing officer for the Trustee Services bank accounts.

## Background

2. Three bank accounts specific to the operations of Trustee Services are maintained at the Bank of Montreal as follows:
  - A Canadian Dollar Trust Account,
  - A US Dollar Trust Account, and
  - A Petty Cash Bank Account (holds a balance less than \$1,000).
3. As per the current Schedule to Incorporated Company Certificate and Agreement (LF327), a supporting schedule of the banking resolution, the signing officers on the above named Trustee Services bank accounts include the following titles
  - Chief Executive Officer
  - Chief Financial Officer
  - Manager, Finance
  - Director, Professional Regulation
  - Manager, Trustee Services
  - Senior Legal Counsel/Assistant Manager, Trustee Services
  - Counsel, Trustee Services
  - Unclaimed Trust Officer
4. The first two accounts listed in point 1 are set up with the same instructions that are applied to a member's trust account and with all cheques requiring the signature of two authorized individuals. Responsibility for signing cheques drawn on the two Trustee Services trust accounts was delegated to Law Society Trustee Services employees due to the nature of the work performed by Trustee Services where transactions related to a member's practice may need to be settled within a few hours.

## Banking Changes

5. With Trustee Services located at the Law Society's office at 393 University Avenue in Toronto, there is an operational need for an additional signing officer located in the same building to facilitate the timely signing of cheques. The motion recommends that the title of Manager, Compensation Fund be added to the list of signing officers authorized to sign cheques on the three Trustee Services related bank accounts. The Manager, Compensation Fund is familiar with Trustee Services operations, holds a management position and is a lawyer.
6. The Schedule to Incorporated Company Certificate and Agreement (LF327) included with this motion reflects the addition of the title of Manager, Compensation Fund as a signing officer on the Trustee Services bank accounts.
7. Convocation is requested to approve the changes to the Schedule to Incorporated Company Certificate and Agreement (LF327).

# SCHEDULE TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT (LF 327)

Effective Date: December 4, 2009

Schedule Dated: September 25, 2008

## Account Numbers:

XXXX-XXX (General Fund - General Bank Account)  
 XXXX-XXX (Compensation Fund - Compensation Bank Account)  
 XXXX-XXX (General Fund – J. Shirley Denison Fund Bank Account)  
 XXXX-XXX (General Fund - Payroll Bank Account)  
 XXXX-XXX (General Fund - Accounts Payable Bank Account)  
 XXXX-XXX (General Fund - Unclaimed Trust Fund Bank Account)  
 XXXX-XXX (General Fund - Online Payments Bank Account)  
 XXXX-XXX (General Fund - US Dollar Bank Account)  
 XXXX-XXX (Osgoode Society in Trust - McMurtry Fellowship Bank Account)  
 XXXX-XXX (General Fund - Business Premium Rate Savings Account)  
 XXXX-XXX (Compensation Fund – Business Premium Rate Savings Account)  
 XXXX-XXX (Unclaimed Trust Fund – Business Premium Rate Savings Account)  
 XXXX-XXX (Osgoode Society in Trust – Business Premium Rate Savings Account)

Please Refer to Certificate and Agreement (LF327) dated: September 25, 2008

## Title

Treasurer	Chief Executive Officer
Chair, Finance Committee	Chief Financial Officer
Chair, Audit Committee	Director, Policy & Tribunals
Vice Chair, Finance Committee	Manager, Finance
Vice Chair, Audit Committee	
Designated Bencher(s)	

## Signing Instructions:

All Law Society cheques, for the bank accounts identified above, require two signatures from the above noted list of positions. Cheques in excess of \$150,000.00 require that the first signature be that of the Treasurer, the Chair of the Finance Committee, the Vice Chair of the Finance Committee, the Chair of the Audit Committee, the Vice Chair of the Audit Committee or a designated bencher with the second signature being that of the Chief Executive Officer, Chief Financial Officer, the Manager of Finance or the Director, Policy & Tribunals.

# SCHEDULE TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT (LF 327)

## Account Numbers:

XXXX-XXX (General Fund – Trustee Services Canadian Dollar Trust Account)  
 XXXX-XXX (General Fund - Trustee Services US Dollar Trust Account)

Title

Chief Executive Officer	Director, Professional Regulation
Chief Financial Officer	Manager, Trustee Services
Manager, Finance	Senior Legal Counsel/Assistant Manager, Trustee Services
	Manager, Compensation Fund
	Counsel, Trustee Services

Signing Instructions

All Law Society cheques for account XXXX-XXX and XXXX-XXX require two signatures from the above noted list of positions.

Account Number:

XXXX-XXX (General Fund – Trustee Services Petty Cash)

Title

Chief Executive Officer	Director, Professional Regulation
Chief Financial Officer	Manager, Trustee Services
Manager, Finance	Senior Legal Counsel/Assistant Manager, Trustee Services
	Manager, Compensation Fund
	Counsel, Trustee Services
	Unclaimed Trust Officer

Signing Instructions

All Law Society cheques for the account number XXXX-XXX require one signature from the above noted list of positions.

Corporation Name: The Law Society of Upper Canada

Per: \_\_\_\_\_  
Name  
Title

Per: \_\_\_\_\_  
Name:  
Title:

Re: Trustee Services Banking

It was moved by Ms. Hartman, seconded by Mr. Bredt, that Convocation approve the addition of the Manager, Compensation Fund, as a signing officer for the Trustee Services bank accounts.

Carried

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed



IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed



IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

FINAL REPORT OF THE GOVERNANCE TASK FORCE

Mr. Heintzman presented the Report.

Governance Task Force  
December 4, 2009

---

Final Report to Convocation

Task Force Members  
Thomas Heintzman (Chair)  
Vern Krishna (Vice-Chair)  
Raj Anand  
Larry Banack  
Christopher Bredt  
Abraham Feinstein  
Janet Minor  
Linda Rothstein

Purposes of Report: Decision

Prepared by the Policy Secretariat  
(Jim Varro – 416-947-3434)

GOVERNANCE TASK FORCE  
RECOMMENDATIONS

Motion

RECOMMENDATION 1

That Convocation:

- a. end *ex officio* benchner status for elected benchers who have served 16 years as a benchner (life benchner); and
- b. grandparent all current life benchers and benchers who will qualify in the current benchner term ending May 2011 as *ex officio* life benchers with the current rights and privileges attaching to the status of life benchner, with the following conditions:
  - i. A life benchner who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* benchner, and
  - ii. Rights and privileges lost under i. will be reinstated after the life benchner attends three of five consecutive regular Convocations.

RECOMMENDATION 2

That Convocation:

- a. limit the length of time a person may serve as an elected benchner; and

- b. provide that once a bencher reaches the limit for service as an elected bencher, that bencher becomes an *emeritus* bencher, as defined in this report.

### RECOMMENDATION 3

That Convocation choose one of the following as the maximum length of time that a person may serve as an elected bencher:

- a. eight years, which need not be served consecutively, or
- b. twelve years, which need not be served consecutively.

### RECOMMENDATION 4

That Convocation:

- a. end *ex officio* bencher status for former Treasurers;
- b. provide that once a Treasurer completes his or her term of office, the former Treasurer becomes an *emeritus* bencher, as defined in this report; and
- c. grandparent all current former Treasurers and the current Treasurer when that Treasurer's term is completed as *ex officio* benchers with the current rights and privileges attaching to the status of a former Treasurer as bencher, with the following conditions:
  - i. A former Treasurer who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* bencher, and
  - ii. Rights and privileges lost under i. will be reinstated after the former Treasurer attends three of five consecutive regular Convocations.

### RECOMMENDATION 5

That Convocation:

- a. end *ex officio* bencher status for former Attorneys General; and
- b. grandparent all current former Attorneys General and the current Attorney General when he becomes a former Attorney General as *ex officio* benchers with the current rights and privileges attaching to the status of a former Attorney General as bencher, with the following conditions:
  - i. Former Attorneys General who fail to attend regular Convocation four consecutive times will cease to have the rights and privileges of an *ex officio* bencher; and
  - ii. Rights and privileges lost under i. will be reinstated after the former Attorney General attends three of five consecutive regular Convocations.

## RECOMMENDATION 6

That Convocation encourage the appointment of non-bencher lawyers and paralegals and non-licensees to Law Society committees, as permitted by section 109 of By-Law 3.

## RECOMMENDATION 7

That Convocation direct that the Tribunals Committee on an ongoing basis assess whether additional non-bencher lawyer, paralegal and non-licensee members should be added to the Hearing Panel.

# GOVERNANCE TASK FORCE FINAL REPORT TO CONVOCATION

## EXECUTIVE SUMMARY

### INTRODUCTION

In accordance with its terms of reference, the Governance Task Force has been meeting since May 2006 to review a number of issues relating to the Law Society's governance structure and processes. This sixth and final report of the Task Force consists of recommendations to improve the governance of the Law Society by Convocation. The recommendations address the need for a dynamic, accountable and rationally-structured board that reflects the constituency it governs in the public interest.

Implementation of some of the recommendations, if adopted, will require amendments to the *Law Society Act*. The Task Force urges Convocation to pursue these amendments at the appropriate time.

### THE CURRENT STRUCTURE OF CONVOCATION

Benchers are elected as members of Convocation every four years. The bencher election provides lawyers and, soon, paralegals with a transparent process for electing their governors, who govern in the public interest. With the addition of lay benchers and *ex officio* benchers, who include former Treasurers, the current and former Attorneys General and life benchers, the total number of benchers is 83, as follows:

- The Treasurer
- Forty elected lawyer benchers
- Two paralegal benchers appointed by the Attorney General<sup>1</sup>
- Eight lay benchers appointed by the Attorney General
- Thirty-two *ex officio* benchers (12 life benchers, 10 former Treasurers, the Attorney General of Ontario and nine former Attorneys General).

---

<sup>1</sup> An election will replace the appointment of two paralegal benchers by the Attorney General.

Assuming the addition of two former Treasurers and seven life benchers by the end of the bencher term in 2011, the number of *ex officio* benchers will be 41, exceeding the number of elected benchers in Convocation. By that time, under existing governance provisions, Convocation may increase from 83 to 92 members. A further increase in size may take place at the end of the next bencher term in 2015.

## THE TASK FORCE'S VIEWS ON THE NEED FOR IMPROVEMENTS

Good governance of the Law Society is a key factor in successful and legitimate self-regulation. Self-regulation rests on continued public acceptance that lawyers, recently joined by paralegals, rather than government or some other body, are in the best position to determine appropriate standards for admission, ethical rules of conduct and behaviour, and sanctions for those lawyers and paralegals who breach the accepted standards. In exchange for the rights that accompany self-regulation, the governance structure and the process must satisfy the mandate set forth in Section 4.2 of the *Law Society Act*, namely, that it be open, efficient and in the public interest.

As the composition of Convocation stands now, the Task Force believes that the integrity of the democratic process for choosing governors of the Law Society is affected by having a very large and increasing unelected component, some with voting rights, who wield influence within Convocation. At the end of the next bencher term, if the *status quo* is maintained, Convocation will have more *ex officio* members than elected members. This cannot have been envisaged as an appropriate model for Convocation, given the long-standing effort to have governors elected and the time-intensive and costly process of running an election every four years.

The consultations with lawyers and paralegals demonstrated that the democratic nature of Convocation has gained importance in recent years. This is attributable to the statutory expression of the Law Society's mandate to govern in public interest, and not operate as an advocacy body for lawyers or paralegals. An understanding of this principle has grown among those governed, who are now appreciating that the Law Society does not "act for me." This has resulted in increased concern – or skepticism – about the exercise of the Law Society's authority.

In this environment, the Task Force believes that a greater effort must be made by the Law Society to engage and involve lawyers and paralegals. To that end, some of the recommendations focus on involving lawyers and paralegals in governance. This approach also supports the Task Force's recommendations to limit the non-elected component of Convocation to emphasize that lawyers' and paralegals' involvement through their elected benchers is paramount.

## SUMMARY OF THE ISSUES AND RECOMMENDATIONS

The Task Force's recommendations relate to,

- the size of Convocation;
- the status of *ex officio* bencher for life benchers, former Treasurers and former Attorneys General;
- term limits for elected benchers;
- the participation of non-benchers on committees; and
- the increased participation of non-benchers on the Hearing Panel.



## Reducing the Size of Convocation

The Task Force is not recommending reducing the size of the elected bench component of Convocation.

The Task Force's view is that Convocation is a large board. The Task Force acknowledged that having 40 elected benchers in Convocation means that some efficiencies in the functioning of the board at its meetings may be lost. However, what is gained is the range of views of elected benchers from across Ontario that enhances Convocation's decision-making in the public interest.

However, the other component of Convocation which significantly adds to its size is the large number of unelected *ex officio* benchers. The Task Force does not believe that an unelected and unappointed component of 32 *ex officio* benchers - and growing - is appropriate. The majority of those with whom the Task Force consulted did not think that the component of unelected and unappointed benchers was necessary or appropriate in the public interest.

The size of Convocation, and in particular its size due to the presence of *ex officio* benchers, also has an impact on lawyers' and paralegals' views of Convocation and the Law Society. Many of those who attended the consultation sessions expressed a detachment from or lack of interest in the affairs of Convocation. Some said that this detachment arose from their perception of Convocation as being composed of very long-serving benchers who are influential in Convocation but who lack fresh ideas and may have less of a connection to the realities of practice.

The Task Force has concluded that as a group within Convocation, the number of *ex officio* benchers is no longer appropriate for the type of governance structure required by the Law Society today. The Task Force's recommendations include discontinuing the *ex officio* status of life benchers, former Attorneys General and former Treasurers. This will eventually reduce the size of Convocation to 51 benchers, being 42 elected benchers (including two elected paralegal benchers as of 2010), 8 appointed lay benchers and the Treasurer. While still a large board for a professional regulator, the size can be more readily justified in the public interest.

## Life Benchers

The office of life bencher was created in 1910. Few law societies in Canada include the office of life bencher. In those law societies that do, the role of life benchers is mostly honorific.

The Task Force assessed the value that life benchers bring to Convocation and the appropriate structure for a board that embodies democratic principles and a commitment to renewal. The assessment was based upon contemporary views of lawyers and paralegals and the heightened degree to which good governance is expected by the public and other stakeholders.

While lawyers and society at large may have accepted in 1910 that a large proportion of the governors of the Society be unelected senior members of the judiciary, government and the legal profession, the Task Force is of the view that this does not reflect the current views of lawyers and paralegals about who should be responsible for governing the legal profession. Accordingly, the Task Force concluded that life bencher status should be discontinued.

Benchers who currently serve as life benchers will not be affected by this recommendation, and will continue as life benchers with the rights and privileges attached to that office. Benchers who will qualify for life bencher status in May 2011 will also become *ex officio* benchers as of that date. However, for life benchers to maintain their entitlement to participate in Convocation and committees, they will be required to attend Convocation regularly. If they are absent on four consecutive occasions, they will lose their right and privileges as an *ex officio* bencher. Those rights and privileges may be regained if the life bencher attends three of five consecutive regular Convocations.

#### Former Treasurers

Former Treasurers wield a significant influence in the election of new Treasurers. Although many former Treasurers do not attend Convocation, all cast a vote for the new Treasurer. This exercise of the vote by former Treasurers, notwithstanding their absence from Convocation during the term of the bench, concerns some benchers.

The continued exercise of the vote by former Treasurers in Convocation offends democratic principles, particularly when former Treasurers may not have participated for months or years in the proceedings at Convocation. With life expectancy increasing, it is likely that more former Treasurers will be capable of exercising their franchise in Convocation.

There is also a perception that Convocation is an institution in which long-serving members of the profession continue to exert influence for many years. As noted above, this was a frequent comment at the consultation sessions.

Accordingly, the Task Force is of the view that *ex officio* status for former Treasurers should be discontinued. The Task Force also proposes that former Treasurers be accorded *emeritus* status with the Law Society at the end of their term. This status would qualify these individuals for appointment to the Hearing Panel and as members of Law Society committees (with a vote). This will permit former Treasurers with expertise in adjudication or who have particular skills that would assist committees to continue to make a valuable contribution to the work of the Law Society outside of Convocation.

With respect to the existing former Treasurers, the Task Force proposes that they be grandparented and permitted to continue to serve as *ex officio* benchers with their current rights and privileges, with one new condition. The Task Force proposes that the current Treasurer and past former Treasurers should continue to enjoy *ex officio* bencher status and vote in Convocation provided they attend Convocation regularly. This additional requirement for attendance ties the former Treasurers' entitlement to participate in Convocation with their actual participation. The Task Force proposes that if a former Treasurer is absent from Convocation for four consecutive regular Convocations, he or she will lose the rights and privileges of *ex officio* status, including the right to vote.

To reinstate rights and privileges that have been lost, the former Treasurer must attend three of five consecutive regular Convocations.

#### Former Attorneys General

With few exceptions, the nine former Attorneys General who are *ex officio* benchers have not participated in Convocation.

The Task Force believes that the Attorney General, as the guardian of the public interest in relation to the Law Society's legislative mandate, ensures that the necessary public interest perspective is brought to the work of Convocation. With this structure in place, the Task Force's view is that the Law Society does not require that former Attorneys General continue as members of Convocation.

Further, continuing to add former Attorney General to Convocation's membership as *ex officio* benchers is inconsistent with the democratic principles underlying Convocation's structure.

For these reasons, the Task Force concluded that Convocation should discontinue *ex officio* status for former Attorneys General.

The Task Force proposes that all past former Attorneys General be grandparented, together with the current Attorney General when his term as Attorney General ends. They may attend Convocation but will lose that privilege if they are absent from Convocation for four consecutive meetings. They may reinstate their privilege by attending three of five consecutive Convocations.

#### Office of the Treasurer

The Task Force considered whether the governance structure of Convocation would benefit from creating a short "ladder" to the office of Treasurer. This would be a way to provide for continuity of the leadership of the Law Society and enhance of the implementation of its priorities. One proposal was to establish the *ex officio* office of Vice-Treasurer (one year term), who would become the Treasurer (one year term), and then the Past Treasurer (two year term).

The Task Force concluded that while there may be some benefits to a ladder to the office of Treasurer, the *status quo* should remain. The benefits of a ladder and the learning that occurs as a person progresses to leadership are largely derived from a ladder structure within an executive committee. The Law Society has no executive committee and none is proposed. Further, the current term of the Treasurer – effectively two years – provides the time and resources a Treasurer requires to direct Convocation's agenda and see that important initiatives are completed.

#### Term Limits

The Task Force subscribes to the view that terms of office for benchers achieves an appropriate balance between the need for stability and corporate memory and the need to inject new ideas and renew board membership. This is of added importance for Convocation given the electoral environment where incumbents have a significant advantage in the bencher election over new candidates.

First, the Task Force proposes that Convocation limit the length of time a person may serve as an elected bencher. Second, the Task Force proposes that a bencher who reaches the limit of service be accorded *emeritus* status with the Law Society. As with former Treasurers, this status would qualify these individuals for selection to the Hearing Panel and as members of Law Society committees (with a vote). This proposal will permit benchers who have gained expertise in adjudication at the Law Society or who have skills that might assist committees to continue to make a valuable contribution to the work of the Law Society outside of Convocation.

Third, the Task Force is proposing that Convocation choose one of two options for the maximum length of time an elected benchner may serve: eight years or twelve years, which need not be served consecutively.

Term limits will benefit Convocation as the governing body. The continuous renewal of the membership of Convocation will increase the likelihood that new perspectives and ideas will be offered to make Convocation a better board. A limit on the number of years a benchner may serve will formalize and regularize the renewal process. Perhaps as important, term limits may promote greater participation of lawyers and paralegals in the affairs of Convocation. Over time, a larger number of lawyers and paralegals will serve as elected benchners if term limits are imposed. Such an inclusive approach is likely to foster a better understanding of and appreciation for the work of Convocation.

#### Length of Benchner Term

The Task Force concluded that no change should be made to the length of the benchner term, currently four years. In the Task Force's view, the potential benefits that may result from this change do not outweigh the potential costs. As discussed in this report, encouraging greater participation by lawyers and paralegals in governance processes – one potential benefit of a shorter term - can be achieved through other methods.

#### Increased Number of Non-Benchner Adjudicators and Non-Benchner Appointments to Law Society Committees

The Task Force is recommending that Convocation encourage the appointment of lawyers and paralegals with particular expertise to Law Society committees. The Law Society has the authority to appoint individuals who are not benchners to standing committees under By-Law 3 (Benchers, Convocation and Committees).

The feedback during the consultations indicated that there is a strong interest among lawyers in serving on Law Society committees, and that it would be appropriate for the Law Society to identify people who have skills that may not be found among the elected or appointed benchners. Those consulted thought these people could include those who are not licensees.

Other participants in the consultation said that the involvement of lawyers and paralegals in committee work will develop their interest in and their commitment to the Law Society. Some said that this is a way for younger lawyers and paralegals to give back to the profession without the burden of being a benchner. In time, they may be more likely to run as benchner candidates.

Upon appointment, the Law Society would make clear to the individual that as a member of a committee of Convocation, the individual must advance the interests of the Law Society only, and not his or her personal interests, and will be bound by duties of confidentiality and good faith. In addition, and if necessary, part of the requirement for service could include the individual's agreement, in writing if necessary, to adhere to a fiduciary duty and a duty of confidentiality.

The Task Force recommends that the Tribunals Committee assess on an ongoing basis whether additional non-benchner adjudicators should be added to the Hearing Panel.

The Task Force is of the view that the composition of the Hearing Panel is an important governance issue from a number of perspectives. Serving on the Hearing Panel places a considerable time burden on benchers, in addition to the time they spend in Convocation. There is a perception among some observers that there is an inherent conflict in benchers being both regulators and adjudicators. To the extent that the burden of adjudication is assumed by other members of the profession, this perception will be lessened.

In the Task Force's interchange with benchers and with lawyers and paralegals, a desire was expressed for a competence-based Hearing Panel that would include experienced non-bencher adjudicators. The Law Society has already approved and appointed eight such individuals as Hearing Panel members, as permitted by the *Law Society Act*.

Non-bencher adjudicators are directly involved in the affairs of the Society and will become increasingly aware of the importance of the governance role and the efforts being made by the Society to regulate the profession in the public interest. That is a product of good governance, and increasing the number of such adjudicators, when appropriate, can enhance this positive effect.

### The Election Process

The Task Force is making no recommendations about the election process, although it remains concerned about the declining voter turnout. Some of the Task Force's recommendations aimed at involving more lawyers and paralegals in governance processes may assist in addressing this concern and may eventually translate into greater voter turnout. However, the Task Force urges the Law Society to carefully consider the feedback from lawyers and paralegals obtained during the consultations on the bencher election as it prepares for the next bencher election in 2011.

### Executive Committee

After considering the merits of an executive committee and given its other recommendations, the Task Force is not recommending the establishment of an executive committee. The introduction of the reforms recommended in this Report will, in the Task Force's view, help to make the governance process at the Law Society more effective and efficient.

At the same time, the Task Force believes that much greater use must be made of the Priority Planning Committee, and that it exercise to the fullest its mandate in wrestling with the issues of Convocation's priority agenda.

## GOVERNANCE TASK FORCE SIXTH REPORT TO CONVOCATION

### INTRODUCTION

1. In accordance with its terms of reference<sup>2</sup>, the Governance Task Force has been meeting since May 2006 to review a number of issues relating to the Law Society's governance structure and processes.

---

<sup>2</sup> See **Appendix 1** for the terms of reference.

2. These issues include,
  - a. the effectiveness of Convocation as a board;
  - b. the methods of priority-setting for Convocation; and
  - c. efficient and effective co-ordination of corporate governance with the operational management of the Law Society under the leadership of the Chief Executive Officer.
  
3. The Task Force has met on 37 occasions. It has provided five reports to Convocation dealing with,
  - a. certain procedures for the Treasurer's election in By-Law 3,<sup>3</sup>
  - b. matters relating to setting Convocation's agenda,
  - c. a strategic planning process that enables Convocation to identify priorities for its policy agenda,<sup>4</sup>
  - d. the integrity of the Law Society's financial statements and financial systems,
  - e. the integrity of Convocation as a board,
  - f. a proposal for consultations with lawyers and paralegals, and information on the document used in those consultations, and
  - g. an information report on the consultations.
  
4. This sixth and final report consists of recommendations to improve the governance of the Law Society by Convocation. In doing so, it addresses the following subject areas:
  - a. the benchers election process;
  - b. the size of Convocation;
  - c. the composition of Convocation;
  - d. the length of time benchers serve as members of Convocation;
  - e. *ex officio* benchers and their role in Convocation;
  - f. committee composition, including the Hearing Panel; and
  - g. the office of Treasurer.
  
5. In addition to the terms of its mandate, impetus for the focus on Convocation's structure was provided by the results of the benchers retreat in September 2007, in which the governance structure was identified as one of the priorities for the Law Society. Convocation confirmed this priority by approving the motion in the November 2007 report of the Priority Planning Committee for priorities for the next four years, which included the governance structure.

---

<sup>3</sup> Report to Convocation, October 2006 (adopted December 2006) with respect to 3.a. and b. The recommendations dealt with electronic voting, the nomination process, the voter's list and breaking a tie. Convocation also approved a recommendation to create a process by which certain matters may be placed on Convocation's agenda.

<sup>4</sup> Report to Convocation, February 2007 (adopted March 2007) with respect to 3.c. through e. Convocation approved the creation of a Priority Planning Committee and a priority planning process. Convocation also approved creation of an Audit Committee and a Finance Committee, to replace the existing Finance and Audit Committee, and a policy whereby benchers whose rights and privileges as members of the Society are suspended are not permitted to participate in Convocation for the duration of the suspension.

6. Details of the Task Force's work since its inception in May 2006 appear in Appendix 2.
7. Implementation of some of the recommendations in this report, if adopted, will require amendments to the *Law Society Act*. The Task Force urges Convocation to pursue these amendments at the appropriate time.<sup>5</sup>

#### SOME BACKGROUND – THE LAW SOCIETY AND CONVOCATION

8. The Law Society is defined in s. 2(2) of the Law Society Act as follows:

The Society is a corporation without share capital and its members at a point in time are:

- (a) the person who is the Treasurer at that time;
  - (b) the persons who are benchers at that time;
  - (c) the persons who are at that time licensed to practise law in Ontario as barristers and solicitors; and
  - (d) the persons who are at that time licensed to provide legal services in Ontario, who shall be referred to as paralegal members.
9. The Act defines Convocation as “a regular or special meeting of the benchers convened for the purpose of transacting business of the Society.”
10. Forty benchers are elected as members of Convocation every four years. The eligible voters are the 39,000 lawyers licensed by the Law Society. Soon, paralegals will elect paralegal benchers as members of Convocation, to replace the appointment process followed pursuant to the *Law Society Act*.
11. The bencher election provides lawyers and, soon, paralegals with a transparent process for electing their governors, who govern in the public interest. To that extent, lawyers and paralegals have the opportunity to influence their governance through the election process.
12. In addition to the elected majority in Convocation, the *Law Society Act* authorizes others to serve as benchers, including lay appointees and *ex officio* benchers (former Treasurers, current and former Attorneys General of Ontario and life benchers). With these individuals, the total number of benchers is 83, as follows:
  - a. The Treasurer
  - b. Forty elected lawyer benchers
  - c. Two paralegal benchers appointed by the Attorney General<sup>6</sup>
  - d. Eight lay benchers appointed by the Attorney General
  - e. Thirty-two *ex officio* benchers (12 life benchers, 10 former Treasurers, the Attorney General of Ontario and nine former Attorneys General).

---

<sup>5</sup> Relevant sections of the *Law Society Act* appear at **Appendix 3**.

<sup>6</sup> As noted earlier, an election will replace the appointment of two paralegal Benchers by the Attorney General.

With 83 members, 60 of whom may vote, Convocation is the largest board among professional regulatory organizations in Canada and is the largest among the Canadian law societies.<sup>7</sup>

13. The Law Society operates with a budget of over \$80 million and over 450 staff. The staff and day-to-day operations of the Law Society are overseen by the Chief Executive Officer (CEO). The CEO is accountable to Convocation for implementing Convocation's policy decisions. Assisting the CEO is a nine-member senior management team.
14. To obtain a "snapshot" of the composition of Convocation, including those who make up the largest group of *ex officio* benchers (life benchers), the Task Force prepared information in the form of tables showing,
  - a. the number of candidates in the last four elections,
  - b. the new and incumbent benchers elected,
  - c. the number of women, racialized, Francophone and Aboriginal benchers elected,
  - d. a profile of elected benchers including practice area, size of firm and age, and
  - e. a profile of life benchers.

These tables and related commentary appear at Appendix 5.

#### Information About *Ex officio* Benchers

##### Life Benchers

15. Benchers attain *ex officio* status as life benchers when they have served as elected benchers for 16 years. These benchers may elect life bencher status or may run again to become an elected bencher. As such, there is no limit on the number of years a person may serve as an elected bencher.
16. Life benchers may attend and speak in Convocation but do not have a vote in Convocation. They may attend and vote in committees. They may sit as a member of the Law Society's Hearing and Appeal Panel.
17. All of the life benchers are male and the median age is 70. The oldest is over 80 and the youngest is between 55 and 60. Less than half of the current 12 life benchers participate regularly in Convocation. In the next term, if those elected benchers who qualify as life benchers elect to take life bencher status, there will be seven additional life benchers, for a total of 19.
18. The 1871 statute that established democratic bencher elections did not include any provision for life benchers as a category of *ex officio* bencher. In 1910, amendments to the *Law Society Act* through *An Act to amend The Act respecting The Law Society of Upper Canada* created the status of life bencher for those benchers elected at four quinquennial elections, with the same rights and privileges as elected benchers.

<sup>7</sup> The other Canadian law societies' boards are as follows: British Columbia, 32; Alberta, 24+; Saskatchewan, 24; Manitoba, 23; Quebec (Barreau), 37; New Brunswick, 29; Nova Scotia, 34 (with reforms imminent); Prince Edward Island, 12; Newfoundland, 22+; Yukon, 6; Northwest Territories, 5; Nunavut, 5. See **Appendix 4** for more detailed information.



19. The minutes of Convocation (November 1906) disclose the reason that the status of life bencher was established. Convocation recognized that in the democratic elections introduced in 1871, the same benchers were being elected time after time, with vacancies created for the most part due to judicial appointments or deaths. The motive was to encourage the election of new benchers over incumbents by removing long serving benchers from the list of candidates running for election.
20. An amendment to the Act in 1964 changed the requirement for life bencher status to election in three quinquennial elections. In 1970, the Act was further amended to change the criteria for becoming a life bencher to election at four quadrennial elections (the frequency of bencher elections was also changed to every four years), with a total of 16 years service. A grandparent clause was included to preserve the status of life benchers created prior to the changes taking effect. These amendments also took away life benchers' right to vote entirely, both at Convocation and in committees, to take effect after the 1971 bencher election.
21. Between 1971 and well into the 1990's, the issues of life benchers' status and voting rights were debated at Convocation on at least five occasions. In 1990, voting rights at committee were restored, and with the 1998 amendments to the Act, the criteria for becoming a life bencher was changed to service as an elected bencher for at least 16 years.

#### Former Treasurers

22. The 10 former Treasurers who are *ex officio* benchers are permitted to vote in Convocation. In the normal course, two new former Treasurers are added as *ex officio* benchers every term.
23. Six former Treasurers attend Convocation regularly, but all vote on some occasions. The Treasurer's election is one such occasion. In the last seven years, all former Treasurers have voted in the Treasurer's election. Former Treasurers are effectively life benchers as they may remain in Convocation with a vote for life.
24. From 1797 to 1871, as all benchers held office indefinitely, there was no distinction between former Treasurers and other benchers. After their term as Treasurer ended, they continued as benchers with the rights and privileges they had as benchers prior to being elected Treasurer.
25. Treasurers were not among the *ex officio* benchers created in the 1871 amendments to the Act, when elections for benchers were established. To remain a bencher, the individual had to stand for election at the next bencher election.
26. A 1993 memorandum prepared by John Arnup referred to the fact that prior to 1900, Treasurers were not included in the list of *ex officio* benchers. The precursor to the *Law Society Act, the Law Society of Upper Canada Act*, was amended in 1900 by adding to the list "every person who has for seven consecutive years held the office of Treasurer of the said Society." Mr. Arnup provided the following as the reason for the change:

Edward Blake, Q.C. was Treasurer from 1879 to 1893. He was succeeded by Aemilius Irving, Q.C. In the quinquennial election of benchers in 1896 Irving finished well down the list. As the 1901 election drew close, his fellow benchers were anxious that Irving should continue as Treasurer, but were concerned that he might not be re-elected as a bencher.

As a result of their representations the Law Society of Upper Canada Act was amended...

27. The seven year requirement was dropped in the amendments to the Act in 1964. In the 1970 Act, it was made clear that a Treasurer becomes *ex officio* upon election and has the rights and privileges of an elected bencher.

#### Former Attorneys General

28. Of the nine former Attorneys General, who are also *ex officio* benchers, none currently regularly participates in Convocation, on committees or on the tribunals.<sup>8</sup> Former Attorneys General may speak in Convocation but may not vote. They may vote in committees.
29. In the 1797 statute that established the Law Society, the Attorney General was designated as a bencher, and was not distinguished from other benchers (some Attorneys General also served as Treasurer). The origins of *ex officio* status for former Attorneys General can be traced to 1835, when Former Attorney General Henry John Boulton declined to take his seat in Convocation because he had doubts as to whether or not he was entitled to do so as a former Attorney General. As a result, Convocation clarified the issue and passed a motion to treat former Attorneys General as other benchers.
30. When the Act was amended in 1871 to establish a democratic election of benchers, *ex officio* benchers were created, which included the Attorney General of Ontario and former Attorneys General.
31. The changes made to the voting rights of *ex officio* benchers in amendments to the Act in 1970 did not affect the current or former Attorneys General, who retained the right to vote in Convocation and committees. This was changed in 1990 when the Act was amended to restrict the right of former Attorneys General a vote in committees. The current Attorney General retains the right to vote in Convocation and committees.
32. The historical underpinnings of *ex officio* status for Attorneys General suggest this status was based on a perceived need to include the senior legal officer of the Ontario government in the governing body of the Law Society. This was at time when the number of lawyers in Upper Canada was relatively small and the bar was still in the process of organizing itself.

---

<sup>8</sup> One former Attorney General, Marion Boyd, active in Law Society work as an *ex officio* bencher, now serves as a lay bencher. Allan Lawrence, until his death in 2008, also served as an *ex officio* bencher and regularly attended Convocation. He was heavily involved in Committee and Task Force work.

### Further Comment

33. Life benchers and former Treasurers who are appointed to the judiciary regain their *ex officio* status once they retire from the bench and restore their license to practise law.
34. In total, there are 22 life benchers and former Treasurers who constitute over 26% of all benchers.
35. Assuming the addition of two former Treasurers and seven life benchers by the end of the bencher term in 2011, the number of *ex officio* benchers will be 41, exceeding the number of elected benchers in Convocation. By that time, under existing governance provisions, Convocation may increase from 83 to 92 members. A further increase in size may take place at the end of the next bencher term in 2015.

## RECOMMENDATIONS TO IMPROVE THE STRUCTURE OF CONVOCATION

### Introduction

36. The Task Force's proposals in this report address the need for a dynamic, accountable and rationally-structured board that reflects the constituency it governs in the public interest.
37. In the Task Force's view, good governance of the Law Society is a key factor in successful and legitimate self-regulation. Self-regulation of the legal profession in Ontario is a long-standing privilege and rests on continued public acceptance that lawyers, recently joined by paralegals, rather than government or some other body, are in the best position to determine appropriate standards for admission, ethical rules of conduct and behaviour, and sanctions for those lawyers and paralegals who breach the accepted standards. In exchange for the rights that accompany self-regulation, the governance structure and the process must satisfy the mandate set forth in Section 4.2 of the Law Society Act, namely, that it be open, efficient and in the public interest.<sup>9</sup>
38. The proposals in this report come after lengthy research and consideration of information from a number of sources.

---

<sup>9</sup> **Principles to be applied by the Society**

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

39. The Task Force received a great deal of information from the formal and informal consultations it undertook. Input was received from meetings with former Treasurers, lay benchers, the Paralegal Standing Committee, benchers (who attended their own governance workshop), representatives of legal organizations and lawyers and paralegals in five locations in Ontario.
40. A range of views was expressed by these individuals. Many issues relating to the current governance structure were raised by benchers in their governance workshop. The consultation document provided to the lawyers and paralegals who attended the consultation sessions also prompted feedback that highlighted concerns about Convocation. A separate report from the County and District Law President's Association (CDLPA) provided its views on reforms to the Law Society's governance structure.
41. The Task Force carefully assessed the input and in particular the comments expressed about the current governance model and the manner in which Convocation operates as a board. This information assisted the Task Force in arriving at its conclusions and recommendations. This input is summarized in Appendix 6<sup>10</sup>, and the Task Force urges members of Convocation to read the summary as a key part of this report.
42. Other sources of information for the Task Force included,
- a. Previous reports prepared for the Law Society and Convocation on governance and related issues;
  - b. Reports and information on the experiences of other law societies, organizations, institutions and regulators on governance, including governance reform, and research done specifically for the Task Force<sup>11</sup>; and
  - c. Material provided by the Task Force's governance consultant, Tim Plumptre, on governance reform. The Task Force expresses its thanks to Mr. Plumptre for providing his expertise and insights on governance reform, which were of great assistance to the Task Force in this initiative.
43. In formulating its recommendations, the Task Force was guided by the following:
- a. an acknowledgement that a number of changes in recent years have been made to help Convocation fulfill its mandate; several things Convocation does and the processes it observes are in fact consistent with the exemplary practices for governance referenced in Appendix 2;
  - b. the principles in Section 4.2 of the *Law Society Act*, noted earlier, that require the Law Society to protect the public interest and to act in a timely, open and efficient manner;
  - c. the need to answer the question of whether the present governance structure is a reasonable model to fulfill Convocation's governance mandate; and
  - d. the ability of the present structure of Convocation to engender a commitment by lawyers and paralegals to the Law Society as a governing body, as an element of the self-governance of legal service providers.

---

<sup>10</sup> Appendix 6 also includes a list of those who attended the lawyer and paralegal consultation sessions and a detailed summary of the input received during these consultations.

<sup>11</sup> The Task Force is indebted to Ann-Marie Langlois, the Law Society's Records and Information Management Specialist who prepared a history of the development of *ex officio* bencher status.

44. The recommendations focus on achieving the following to bolster Convocation's effectiveness:
  - a. a Convocation that is better able to provide strategic direction to the Law Society with long term goals;
  - b. terms of office for benchers that balance the need for experience, stability and corporate memory with the need for renewal, fresh ideas and increased opportunity among lawyers and paralegals for service as a bencher; and
  - c. a committee structure that will involve the professions and include individuals with expertise for the responsibilities associated with the committees' mandates.
45. The Task Force does not purport to offer a perfect solution to any of the concerns that the current governance structure may create. The Task Force also acknowledges that the bencher workshop on governance disclosed that there is a wide spectrum of views related to governance reform among benchers. Some are satisfied with the status quo or see that only minor changes are needed. Others see a need for more significant reform.
46. The changes proposed by the Task Force are intended to enhance the confidence of the public, lawyers and paralegals in the governing structure of the Law Society, and improve Convocation's governance as a board.
47. At this stage, the Task Force determined that no recommendations should be made with respect to reducing the elected component of Convocation, length of the elected bencher term, changing the structure of the office of the Treasurer, the election process or the creation of an executive committee. The report includes comment on these issues, including options the Task Force discussed respecting a reduction in the number of elected benchers.
48. The Task Force's recommendations focus on,
  - a. the size of Convocation;
  - b. *ex officio* status for life benchers, former Treasurers and former Attorneys General;
  - c. term limits for elected benchers;
  - d. the participation of non-benchers on committees; and
  - e. the increased participation of non-benchers on the Hearing Panel.

#### Size of Convocation

49. For reasons set out later in this report, the Task Force does not recommend a change in the size of Convocation's elected bencher component. The Task Force has focused on the size of Convocation's unelected bencher component.
50. At 83 members, Convocation as a board of directors is large for an organization like the Law Society. Based on attendance in the 2003 – 2007 term and up to and including September 2009, the median attendance at Convocation is 51 benchers.
51. In reviewing the governance structure of the Law Society against the principles set out in section 4.2 of the *Law Society Act*, the Task Force questioned whether the size of Convocation helps it to effectively protect, and can be justified in, the public interest.

52. An assessment of the appropriate size of Convocation also involves consideration of how it is perceived by benchers and various stakeholders. Some people see Convocation as having features of a quasi-legislative body and others see it strictly as a corporate board.
53. Further, the Task Force considered the thoughts and views of benchers, lawyers and paralegals on the structure of Convocation, and whether that structure adequately commands the respect and commitment of those who are governed by the Law Society.
54. A board that draws 50 of its members to a meeting, the vast majority of whom are elected benchers, may be large for effective and efficient decision-making. The input from benchers disclosed that while some thought that Convocation's size enhances its democratic character and allows different voices to be heard, many benchers characterized Convocation as a "difficult" decision-making forum. Because of its size, they said that Convocation lacks focus, tends to get into too many issues and strays from the core mandate of the Law Society into activities only peripherally related to its role. As such, they say that there continues to be a lack of focus on priorities, despite the recent creation of a Priority Planning Committee.
55. At a more practical level, some benchers said that the way Convocation operates is, in part, linked to its size. Some members of Convocation are reluctant to speak, or to speak more than once, because of the number of potential speakers and a concern about the length of the meeting. Because of this, a continuous debate or dialogue, in which discussion occurs and the participants speak several times as the issue is narrowed, is less possible.
56. These comments were echoed by lawyers and paralegals in the consultations who, apart from the former benchers at the sessions<sup>12</sup>, did not speak from experience in Convocation but from their own experiences and knowledge. They said that in a bigger group, there is more "yes/no" voting than a comprehensive exchange of pros and cons. If the board were smaller, it is more likely that a full sounding and agreement on a course of action, and more buy-in to the decision, would result.
57. Ultimately, the Task Force acknowledged that having 40 elected benchers in Convocation means that some efficiencies in the functioning of the board at its meetings may be lost. However, what is gained is the range of views of elected benchers from across Ontario that enhances Convocation's decision-making in the public interest. In addition, while debate may be more structured at Convocation, its decision-making function is a product of a vibrant committee structure where robust debate frequently occurs.
58. The other component of Convocation is the group of unelected *ex officio* benchers. Convocation is large to a great extent because of the number of *ex officio* benchers.

---

<sup>12</sup> The former benchers who attended the consultation sessions generally were of the view that Convocation is too large and unwieldy a board.

59. Convocation's democratic foundation is the basis for the accountability required of the board in governing lawyers and paralegals in the public interest. This principle becomes an important consideration when a significant number of the Law Society's board members are unelected.
60. The key question is whether it is appropriate to maintain a system that effectively provides for an increasing number of unelected governors. Within that question, others arise. Is there an expectation that the large majority of those who govern the profession should be elected? Is it democratic to have 32 unelected benchers, including 10 former Treasurers who may vote and who do not have the same accountability as elected benchers? Does the benefit of having these unelected individuals as benchers outweigh these concerns?
61. Many of the lawyers and paralegals who were consulted saw virtue in the ability of Convocation to access the wisdom and experience of benchers with long service, but most thought that it was neither necessary nor desirable to have those benchers in Convocation. They also thought it was not necessary to continuously add these individuals to Convocation. The fact that *ex officio* status for certain benchers was part of the current governance arrangements was seen by some as perpetuating the perception of the Law Society as an "old boys' club."
62. Considering these perspectives, the Task Force's view is that it is difficult to justify Convocation's large unelected component if Convocation is to be the best decision-making body it can be for the purposes of its mandate. No one with whom the Task Force consulted advocated that a governing body of 83 benchers is necessary for the effective governance of the Law Society or is a cost-effective or efficient size for Convocation. No one with whom the Task Force consulted suggested that if Convocation were designed today in the public interest, it would have 83 members, with a regular growth in numbers of *ex officio* benchers.
63. The Task Force does not believe that an unelected and unappointed component of 32 *ex officio* benchers is appropriate. The Task Force's recommendations include discontinuing the *ex officio* status of life benchers, former Attorneys General and former Treasurers. If all recommendations are adopted, this will eventually reduce the size of Convocation to 51 benchers, being the Treasurer, 40 elected benchers, eight appointed lay benchers and two paralegal benchers. While still a large board for a professional regulator, the size can be more readily justified in the public interest.
64. In the following section of the report, the Task Force explains its conclusions, starting with comments on the elected bencher component. In arriving at its conclusions, the Task Force reviewed the basis for the current scheme, other law societies' treatment of the issue, benchers' views and those obtained through the consultations. The Task Force also noted the Law Society's unique history, culture and traditions that have influenced its governance structure, and used that history as the starting point for its proposals for these improvements to governance.

Comment on the Elected Bencher Component of Convocation (no change recommended)

65. The Task Force discussed at length whether the number of elected benchers should be reduced from the current 40.

66. One proposal was to halve the size of the number of elected benchers to 20. The benefit of such a reduction would be a more streamlined and dynamic Convocation in which defined and focused debate and a full discussion of issues would be possible. The reduction might also increase the importance of each vote for a bencher. As one participant in the consultations said, there needs to be more value attached to the vote - if there were fewer votes to make, voters would be more careful with them and more motivated to participate.
67. The Task Force noted with interest the March 2009 report of the Nova Scotia Barristers' Society's Task Force on Council Composition, adopted by Council, which recommended reducing the Council in 2011 to 22 members from 34 members.<sup>13</sup>
68. While the reduction in the number of elected benchers may improve the operational dynamic of Convocation, the reduction could result in the inadequate representation, or perceived inadequate representation, of lawyers and paralegals, given the size of Ontario and the diversity of its population. The current number of seats for elected benchers provides an opportunity for lawyers from various geographic and specialty areas to run for and be elected as bencher, and incorporates a regional bencher component. This fact, in turn, elevates the prospect of a range of views to assist in decision-making. It is arguable that a reduction in the number of elected benchers may profoundly affect the ability to encourage diversity on the board, such that appointing individuals to the board may be the only way to address this concern.
69. A reduction to 20 elected benchers might also affect the dynamic of the election. It might give an advantage to well-resourced, large firm lawyers running for benchers. It may encourage more individuals with a "career bencher" mindset to run with the idea of staying for the long haul. It may prompt more organized "slates" of bencher candidates in regions or geographic locations and create a sense for voters in those locations that their choice for electors is narrowed.
70. Reducing the elected component of Convocation also requires consideration of the number of elected benchers in relation to lay benchers and paralegal benchers. If the number of elected benchers was reduced significantly, changes to the numbers of lay and paralegal benchers would almost certainly be considered.
71. Of less concern to the Task Force was the notion that a reduction in elected benchers would affect the functions that the benchers fulfill at the Society beyond Convocation, such as committee work and adjudication. While some benchers are needed to lead and populate committees, non-bencher lawyers and non-lawyers with particular expertise would be excellent additions to the committees and to the Hearing Panel, with a number of benefits to the Law Society. This issue is discussed later in this report.

---

<sup>13</sup> The interim report, referenced in the final report, discussed the effect of reducing the board's numbers: After considering these factors, the Task Force determined that a Council size in the range of fifteen (15) to twenty-three (23) would best meet the criteria considered important by the Task Force. A council of this size would support the necessary regulatory work of the Society and experience improved efficiency, while continuing to allow for geographic election of members and the meaningful representation of diverse communities.



72. A smaller reduction, for example, to a board with 30 elected lawyer benchers, was also discussed. Some of the same considerations noted above also apply to this proposal. A reduction to 30 would have a less profound effect, but would still create a more manageable board in terms of numbers.
73. Having considered all these factors, the Task Force concluded that a reduction of the number of elected benchers from 40 to 20 was at present too radical a change and would create too many uncertainties. If the size is reduced, the Task Force suggests that it be gradual, so that the impact of the change can be carefully determined.
74. The Task Force concluded that there are legitimate arguments in favour of reducing the number of elected benchers to 30, or maintaining the present number of elected benchers. The arguments for and against such a reduction in the number of elected benchers, relating to the discussion above, may be summarized as follows:

Against reduction

- a. Convocation has historically been composed of 40 elected benchers. The need to represent lawyers across Ontario justifies 40 elected benchers;
- b. Convocation is a quasi-legislative body. A larger number of benchers is justified to perform this role than if Convocation was simply a Board of Directors;
- c. No real benefit would be achieved by reducing Convocation by 10 elected benchers. A reduction in the size of Convocation to 15 to 20 members would be needed to generate the sort of environment that some governance experts recommend for the purposes of board efficiency and effectiveness. No one has recommended such a drastic reduction in the size of Convocation; and
- d. Reducing the number of elected benchers will require a reconsideration of the number of lay benchers and paralegal benchers. There is uncertainty around whether a reduction in the number of those benchers would occur.

For reduction

- a. Convocation could readily discharge its board functions with a board size of 30 elected benchers and a total Convocation of 41 members. With 15 elected benchers from inside Toronto and 15 from outside Toronto, the diversity and geographical location of lawyers and paralegals across Ontario could be adequately represented;
- b. A smaller Convocation, even by 10 members, would be better able to engage in more focused debate and dialogue;
- c. Convocation reduced to 41 members would demonstrate a real commitment of the Law Society toward efficiency and cost-effectiveness;
- d. A smaller Convocation would require, or would be necessarily accompanied by, the involvement of non-benchers and persons with expertise in the committee work and adjudicative functions now performed by benchers. This would increase the participation of lawyers and paralegals in the affairs of the Society and draw upon other sources of expertise in those functions; and
- e. If the number of elected benchers was reduced by one-quarter, the Ontario government might reduce the number of appointed benchers by one-quarter, to six. This would further reduce the size of Convocation to 39 members.

75. In light of these conflicting views about the need to reduce or advisability of reducing the number of elected benchers to 30, the Task Force is making no recommendations on this subject.

*Ex Officio* Benchers: Life Benchers, Attorneys General and Former Treasurers

76. When considering the large *ex officio* component of Convocation, two questions arise in relation to Convocation's structural foundation: what the design for an elected board is intended to achieve and whether the integrity of that design is being maintained.
77. Convocation has a long-standing democratic foundation based upon the election of benchers by members of the profession. Since 1871, benchers have been elected by the Law Society's membership in elections originally held every five years and since 1970, every four years. The Law Society's governance structure is a functional response to its legislative mandate to be the self-governing regulator of Ontario's lawyers and paralegals.
78. The election allows lawyers and paralegals to choose their governors. Apart from the lay benchers appointed by the Ontario Government, the covenant between the governed professions and the governors depends upon this democratic principle. In effect, lawyers and paralegals are saying "we govern ourselves and you, the benchers, whom we elect, are our proxy in doing so, all in the public interest." There should be no disconnect between this design and the reality of Convocation's composition as a board of governors.
79. The contribution of former Treasurers and life benchers to the Law Society has been substantial. Their institutional knowledge has enhanced their contribution to the Law Society. Indeed, by virtue of their experience, these benchers exercise a persuasive influence among benchers and in Convocation.
80. In the Task Force's view, however, the value of the longevity of service as a bencher must be balanced with the need for an accountable board that reflects the democratic principles by which it is initially constituted and the currency of issues within the profession that affect how the Law Society governs. As the information in Appendix 6 explains, the concept of accountability as one of the five principles of sound governance benchers discussed at their governance workshop was given an especially high rating by benchers relative to the other principles.<sup>14</sup>

---

<sup>14</sup> This principle states that decision-makers can be held to account through recognized governance processes and standards; these are open and understandable; failure to observe standards has known and enforceable consequences; information is widely available to the public and the professions and is actively shared.

81. Some benchers expressed the view that, since the majority of non elected benchers do not attend Convocation, there is no governance problem arising from the present size of Convocation. The Task Force takes the contrary view. The fact that *ex officio* benchers do not attend Convocation is itself a governance issue. Each of the 32 *ex officio* benchers receives, or is entitled to receive, the material prepared for each meeting of Convocation and is entitled to attend each of these meetings, as well as meetings of committees of Convocation. A self-regulating profession should not have a board in which almost half of its membership receives, at considerable expense, the voluminous materials for each Convocation, and does not attend. That fact calls into question the level of commitment, usefulness and legitimacy of these individuals as members of Convocation. If all *ex officio* benchers attended Convocation, it could not be accommodated in the usual meeting room. Convocation would not be manageable or efficient as a governing council.
82. In the Task Force's view, a board with such a large number of non-participating, non-elected and non-appointed members has difficulty operating legitimately in the public interest. This was the view of the majority of those with whom the Task Force consulted. As expressed by a general counsel of another public institution at one of the consultation sessions, the number of *ex officio* benchers itself compromises the legitimacy of Convocation.
83. The size of Convocation, and in particular its size due to the presence of *ex officio* benchers, also has an impact on lawyers' and paralegals' views of Convocation and the Law Society. Many of those who attended the consultation sessions expressed a detachment or lack of interest in the affairs of Convocation. Some said that this detachment arose from their perception of Convocation as being composed of very long-serving benchers, who are influential in Convocation but who also lack fresh ideas and who may be less connected to the realities of practice. This view of Convocation does not, in the Task Force's view, contribute to engendering the confidence which lawyers and paralegals should have in the Law Society.
84. The Task Force believes that the integrity of the democratic process for choosing governors of the Law Society is affected by having a very large and increasing<sup>15</sup> unelected component, some with voting rights, who wield influence within Convocation. At the end of the next bencher term, if the *status quo* is maintained, Convocation will have more *ex officio* members than elected members. As noted earlier, by the end of the bencher term in 2011, the number of *ex officio* benchers will be 41. A further increase in size attributable to the *ex officio* component may take place at the end of the next bencher term in 2015. This cannot have been envisaged as an appropriate model for Convocation, given the long-standing effort to have governors elected and the time-intensive and costly process of running an election every four years.

---

<sup>15</sup> The *ex officio* group of benchers continues to grow. As noted earlier, the number of *ex officio* benchers presently totals 32. This number represents 80% of the number of elected benchers and almost 39% of all benchers. Seven elected benchers became *ex officio* benchers at the end of the last term (May 2007).

85. The consultations with lawyers and paralegals demonstrated to the Task Force that the democratic nature of Convocation has gained importance in recent years. This is attributable to the statutory expression of the Law Society's mandate to govern in the public interest, and not operate as an advocacy body for lawyers or paralegals. An understanding of this principle has grown among lawyers, the original governed group, who now appreciate that the Law Society does not "act for me." This has resulted in increased concern – or skepticism – about the exercise of the Law Society's authority.
86. In this environment, the Task Force believes that the Law Society must increase its efforts to engage and involve lawyers and paralegals. This factor has led to recommendations focused on involving lawyers and paralegals in governance. It also supports the Task Force's recommendations to limit the non-elected component of Convocation to emphasize that lawyers' and paralegals' involvement through their elected benchers is paramount.

#### Life Benchers

87. There are currently 12 life benchers, representing 30% percent of the number of elected benchers and 14% of all benchers. In the next term, there will be seven additional elected benchers eligible for life bencher status, for a total of 19, or almost 50% of elected benchers. Few law societies in Canada include the office of life bencher, and in those that do, the role of life benchers is mostly honorific.<sup>16</sup>
88. The office of life bencher has a lengthy history at the Law Society. As noted earlier, that office was introduced by *An Act to amend The Act respecting The Law Society of Upper Canada* in 1910. At that time, the population of the province and the legal profession was much smaller and it was thought important to include a broad cross section of the judiciary, legislature and leading members of the profession in Convocation. This can be seen in the list of ex officio benchers as set out in the Law Society Act, R.S.O. 1914:
- "The Minister of Justice, the Solicitor General of Canada and every person who has held either of those offices, the Attorney General of Ontario and every person who has held that office, every person who has for seven consecutive years held the office of Treasurer of the Law Society, every person who has been elected be bencher at four quinquennial elections, every retired judge of the Supreme Court of Canada or the Exchequer Court of Canada (who at the time of their appointment was a member of the Bar of Ontario) and every retired judge of the Supreme Court of Judicature for Ontario."
89. The structure of the office of life bencher has changed through the succeeding decades. The Task Force believes further change should be made, based on a judgment about the value that life benchers bring to Convocation and the appropriate structure for the board that embodies democratic principles and a commitment to renewal. That judgment is based upon contemporary views of lawyers and paralegals, and the heightened degree to which good governance is expected by the public and other stakeholders.

---

<sup>16</sup> Information on other law societies' governance appears at **Appendix 4**, including information on terms of office and life bencher status.

90. While lawyers and society at large may have accepted in 1910 that a large proportion of the governors of the Society be unelected senior members of the judiciary, government and the legal profession, the Task Force is of the view that this does not reflect the current view of lawyers and paralegals about who should be responsible for governing them. As such, the Task Force is proposing that life bencher status be discontinued.
91. Benchers who currently serve as life benchers will not be affected by this recommendation, and will continue as life benchers with the rights and privileges attached to that office. Benchers who will qualify for life bencher status in May 2011 will also become *ex officio* benchers as of that date. However, for life benchers to maintain their entitlement to participate in Convocation and committees, they will be required to attend Convocation regularly. If they are absent on four consecutive occasions, they will lose their rights and privileges as an *ex officio* bencher. Those rights and privileges may be regained after the life bencher attends three of five consecutive regular Convocations.
92. Later in this report, the Task Force discusses its recommendation to impose term limits on benchers' service. Term limits, if adopted in the manner proposed by the Task Force, will effectively end the ability of benchers to attain life bencher status. The proposal for term limits also provides that upon completion of the maximum number of years of service, a bencher will be accorded *emeritus* bencher status. These individuals would be invited to attend bencher social events and be eligible for appointment to committees and the Hearing Panel.

#### Former Treasurers

93. As noted earlier in this report, an amendment to the Law Society's governing statute in 1900 stated that every person who had held the position of Treasurer for seven consecutive years was to be an *ex officio* bencher. From 1964 to the present, every person who has held the office of Treasurer has been an *ex officio* bencher, as the seven year requirement was dropped.
94. The Task Force recognizes the important role that the Treasurer fulfills in the Society's governance. The Task Force also understands the honour and privilege attached to attaining the office of Treasurer.
95. The Task Force found the treatment accorded to former Treasurers (or their equivalent) in other law societies in Canada of interest. For example, in British Columbia, Alberta and Nova Scotia, the president's service as a member of Convocation ends when the president's term ends. He or she serves no official role after that date with the law society. In Saskatchewan, Manitoba and Newfoundland and Labrador, the president becomes the past president and serves for one year. In Saskatchewan, the past president serves on the executive committee for one year without a vote. In Manitoba, the immediate past president is a member of the governing body (Convocation) for one year. In Newfoundland and Labrador, the past president may attend bencher meetings for one year.

96. As noted earlier, there are 10 former Treasurers who are permitted to vote in Convocation. This constitutes 25% percent of the elected benchers and 12% of all benchers. Usually, a new former Treasurer is added to Convocation every two years.
97. In the Task Force's view, there are a number of reasons for ending *ex officio* status for former Treasurers.
98. First, former Treasurers wield a significant influence in the election of new Treasurers. Although many former Treasurers do not attend Convocation, all cast a vote for the new Treasurer. This exercise of the vote by former Treasurers, notwithstanding their absence from Convocation during the bencher term, concerns some benchers.
99. Second, the continued exercise of the vote by former Treasurers in Convocation offends democratic principles, particularly when former Treasurers may not have participated for months or years in the proceedings at Convocation. With life expectancy increasing, it is likely that more former Treasurers will be capable of exercising their franchise in Convocation.
100. In addition, as noted in the Task Force Recommendations with respect to life benchers, there is a perception that Convocation is an institution in which long-serving benchers continue to exert influence for many years. This was a frequent comment at the consultation sessions. The Task Force believes that this perception contributes to the detachment from the Law Society expressed by some lawyers.
101. Finally, the Task Force is of the view that former Treasurers can always be contacted by the current Treasurer for consultation.
102. For these reasons, the Task Force recommends that *ex officio* status for former Treasurers be discontinued. The Task Force proposes that once the Treasurer has served his or her term of office, the former Treasurer should be accorded *emeritus* status with the Law Society. This status qualifies these individuals for appointment to the Hearing Panel and to Law Society committees (with a vote). Thus, a former Treasurer who has expertise in adjudication or has particular skills that would assist committees may continue to make a valuable contribution to the work of the Law Society outside of Convocation.
103. With respect to the existing former Treasurers, the Task Force proposes that they be grandparented and permitted to continue to serve as *ex officio* benchers with their current rights and privileges, with one new condition.
104. The Task Force proposes that the current Treasurer once his term is completed and the existing former Treasurers should continue to enjoy *ex officio* bencher status and vote in Convocation provided they attend Convocation regularly. This additional requirement for attendance ties the former Treasurers' entitlement to participate in Convocation with their actual participation. The Task Force proposes that if a former Treasurer is absent from Convocation for four consecutive regular Convocations, he or she will lose the rights and privileges of *ex officio* status, including the right to vote.

105. To reinstate rights and privileges that have been lost, the former Treasurer must attend three of five consecutive regular Convocations.<sup>17</sup>

#### Former Attorneys General

106. There are currently nine former Attorneys General who are *ex officio* benchers. In the recent past, only two former Attorneys General regularly participated in Convocation. These individuals made outstanding contributions as board members, notwithstanding that former Attorneys General have no voting rights in Convocation, only in committees.<sup>18</sup> None of the nine former Attorneys General regularly attends Convocation.
107. In 2007, the Task Force obtained the views of the Government and Public Affairs Committee on the merits of retaining this group of *ex officio* benchers. That Committee advised that the rationale for former Attorneys General continued status as *ex officio* benchers rests largely in the value they bring from the political perspective, particularly in relation to the Society's government relations activities. Their unique understanding of the workings of government can provide insights that would not otherwise be available to the Society.
108. While the Task Force understands this view, it believes that the Attorney General, as the guardian of the public interest<sup>19</sup> in relation to the Law Society's legislative mandate, ensures that the necessary public interest perspective is brought to the work of Convocation. With the benefit of this structure, it is the Task Force's view that the Law Society does not require that former Attorneys General continue as members of Convocation.
109. Further, as unelected members of Convocation, their continued addition to the membership of Convocation as *ex officio* benchers is inconsistent with the democratic principles underlying Convocation's structure. As noted earlier, the Task Force believes that a board with a large (and growing) number of non-elected, non-participating members has difficulty operating legitimately as a public interest regulator.
110. Accordingly, the Task Force recommends that the status of former Attorneys General as *ex officio* benchers be discontinued.

---

<sup>17</sup> Former Treasurers who have been appointed to the bench would be subject to this requirement following retirement from the bench, reinstatement of their status as licensees and their return to Convocation as *ex officio* benchers.

<sup>18</sup> Marion Boyd, who is now a lay bencher (with full voting rights) and Allan Lawrence.

<sup>19</sup> The *Law Society Act* includes the following:  
Attorney General, guardian of the public interest

13. (1) The Attorney General for Ontario shall serve as the guardian of the public interest in all matters within the scope of this Act or having to do in any way with the practice of law in Ontario or the provision of legal services in Ontario, and for this purpose he or she may at any time require the production of any document or thing pertaining to the affairs of the Society.

111. The Task Force proposes that all past former Attorneys General be grandparented, together with the current Attorney General when his term as Attorney General ends. They may attend Convocation but will lose their privileges as *ex officio* benchers if they are absent from Convocation for four consecutive meetings. They may reinstate their privileges by attending three of five consecutive Convocations.

The Office of Treasurer (no change recommended)

112. The Task Force explored the question of whether the governance of the Law Society would benefit from the creation of a short “ladder” to the office of Treasurer, whether the term of the Treasurer should be shortened to one year and whether the immediate past Treasurer should have a more formal role in the governance structure.
113. The majority of Canadian law societies have a “ladder” to the office of Treasurer or president. This system means that the individual who will eventually become president serves as a second or first vice-president on the law society’s executive committee and moves up the ladder to the highest office.<sup>20</sup> In British Columbia, for example, the Rules provide that second vice-president is an elected lawyer bencher and is chosen as second vice-president by the Law Society of British Columbia’s membership at its Annual General Meeting for a term of one year. That person then becomes the first vice-president for one year and then becomes the president for one year.
114. Other regulators have used this structure, such as the Institute of Chartered Accountants of Ontario.<sup>21</sup>

---

<sup>20</sup> The chart at **Appendix 4** includes this information.

<sup>21</sup> **Appendix 4** also includes information on other regulators. The following is from the Institute of Chartered Accountants of Ontario’s By-Laws:

Officers

221 Elections and appointments of officers

(1) As soon as reasonably practicable following the annual election, the new Council shall meet and shall elect from its members a chair, a vice chair and such other officers as it may deem appropriate. These members shall be the elected officers of the Institute and, together with the president and chief executive officer, shall act as an Executive Group on behalf of the Council in accordance with terms of reference approved by the Council.

(2) The Council shall appoint a president and chief executive officer and a registrar and provide for the appointment of such other officers and agents as the Institute may from time to time require.

222 Chair’s responsibilities

(1) The chair shall be entitled to preside at all meetings of the Institute and the Council.

(2) In the absence of the chair or at his or her request the vice chair shall act as chair.

(3) At any meeting of the Institute or of the Council where the chair or the vice chair is not in attendance, those present in person at the meeting, provided they constitute a quorum under these bylaws, may by resolution appoint any other member of the Council to act as chair of the meeting.



115. For the Law Society, being Treasurer is an onerous responsibility. The Task Force found the following narrative description provided by bencher Ron Manes, transcribed from Convocation's discussion of the Strategic Planning Report on January 25, 2001, to be instructive:

...when it comes to defining what the Treasurer does, it's important we understand the scope of the Treasurer's job and how it has evolved from what historically may be termed a largely ceremonial position to what is now a real integral function to the internal operations of the Law Society and to Convocation.

The Treasurer, it is true, presides over Convocation, presides over our agenda to ensure that what comes before us is properly before us, and, of course, regulates the debate. The Treasurer oversees all committees, all task forces, and all working groups to ensure that they all achieve their objective.

The Treasurer is responsible for coordinating. The Treasurer is an ex officio member of all of those committees, task forces, and working groups, and in our experience with our present Treasurer, attends many of these committee meetings, task force meetings, et cetera.

The Treasurer, in addition to that, monitors the CEO. We have decided that now. It is clear to us that the Treasurer is going to be accountable to us to monitor the performance of the CEO. Now, this entails, just so we understand, not only defining for the CEO or translating what we have defined for the CEO what the CEO's objectives are, but also measuring the CEO against those objectives.

Now, anyone who knows that responsibility knows how onerous it is, and it is not a responsibility that in our view the Treasurer can possibly discharge on his own. And then he comes to recommend to us, in a formal way, what we or how we assess the performance of the CEO.

The Treasurer, in addition to that oversight and in addition to his responsibilities here at Convocation, must liaise with the public, must liaise with the profession, must liaise with the bench, liaise with the press, deal with interest groups and constantly write letters to the Globe and Mail.

...

The Treasurer is the face of Convocation. Yes, it is a ceremonial job. It is a huge job. He represents us at a substantial number of functions, more functions than we can possibly count or comprehend."

116. In addition, the Task Force learned that there is little that a bencher can do to prepare for the office of Treasurer. Vern Krishna, a member of the Task Force and a former Treasurer, described how once elected, the enormity of the task of Treasurer is quickly visited upon the successful candidate, and that learning essentially takes place on the job. While the Treasurer obviously has had the experience of sitting in Convocation as a bencher, and once elected as Treasurer, has support from Convocation, individual benchers and Law Society staff, there is much that the Treasurer can only learn once he or she assumes the duties of Treasurer.

117. The Task Force considered one proposal as follows:
- a. the benchers elect an individual to the office of Vice-Treasurer, as they would if they were electing the Treasurer;
  - b. the Vice-Treasurer, who would become an *ex officio* bencher, would serve one year in that office and then become Treasurer;
  - c. the Treasurer, who would continue to be an *ex officio* bencher, would serve a one year term. The tradition of serving two consecutive years as Treasurer (i.e. acclamation of the sitting Treasurer in the Treasurer's election) would end;
  - d. the Treasurer, upon completing the one year term, would remain in Convocation as the Past Treasurer, a new office and an *ex officio* position, for one year; and
  - e. upon completing the office of Past Treasurer, that person would remain in Convocation for one year as an *ex officio* bencher.
118. The Task Force saw some possible benefits to this proposal:
- a. The individual elected by the benchers as Vice-Treasurer would have a year to learn about the office of Treasurer, engage in some of the activities of Treasurer and assist the sitting Treasurer with the extensive responsibilities. This could assist the person in preparing for the job of Treasurer in one year.
  - b. There would be a person ready and able to step into the position of Treasurer should the sitting Treasurer, for whatever reason, be unable to act, or to continue to act. This may be preferable to the current structure, in which the chair of a standing committee assumes the office of Treasurer in such circumstances and an election is required to fill the office of the Treasurer<sup>22</sup>.
  - c. This proposal would make the Treasurer's duties less onerous. Presently, some benchers may be unable to contemplate the onerous responsibilities of a two-year term as Treasurer and may be more willing to offer themselves as candidates in the proposed model.
  - d. The structure would ensure that in the normal course, the person who eventually leads the Law Society by the end of his or her service will have a total of four years in Convocation, in addition to the number of years he or she serves as an elected bencher.

---

<sup>22</sup> By-law 3 includes the following:

#### **Vacancy**

72. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected bencher to fill the office of Treasurer until the next election of Treasurer under section 54.

#### **ACTING TREASURER**

##### **Acting Treasurer**

73. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 72, the chair of the Finance Committee, or if he or she for any reason is unable to act, the chair of the Professional Development and Competence Committee, shall perform the duties and exercise the powers of the Treasurer until,

- (a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or
- (b) a Treasurer is elected under section 72 or 54.

- e. It would end the tradition of the immediate past Treasurer leaving Convocation upon the election of a new Treasurer, on the assumption that there is merit to the immediate past Treasurer, who is an experienced benchers with a broad understanding and knowledge of the Law Society, remaining in Convocation.
  - f. In addition, a further Past Treasurer would remain in Convocation. The presence of the two most recent Treasurers in Convocation would provide experience and institutional memory for Convocation.
  - g. This system could assist in planning the priorities for Convocation's policy agenda. With the Vice-Treasurer, Treasurer, and Past Treasurer passing through overlapping terms of office, they may be more likely to develop, promote and act upon consistent and coherent policies and priorities.<sup>23</sup>
119. Ultimately, the Task Force concluded that the *status quo* should remain. A "ladder" may have the benefits as described above. However, the Task Force learned that the benefits of a ladder and the learning that occurs as a person progresses to leadership are largely derived from a ladder structure within an executive committee. The Law Society does not have a executive committee and the Task Force is not recommending that one be created.
120. Further, the present system, in which the Treasurer's term of office is effectively two years, gives the Treasurer the necessary time and resources to direct Convocation's agenda and see that important initiatives are completed. A one year term of office for the Treasurer may negatively impact the ability of the Treasurer to effectively lead Convocation to accomplish its goals.
121. For these reasons, no recommendation is made with the respect to changes to the office of the Treasurer.

#### Term Limits

122. The Task Force subscribes to the view outlined in the Exemplary Practices in Governance (see Appendix 2) which states: "Terms of office for board officers and for board members themselves achieve an appropriate balance between the need for stability and corporate memory and the need to inject new ideas and renew board membership."
123. Some benchers and some of the lawyers and paralegals who were consulted thought that given the democratic foundation of Convocation, terms limits would fly in the face of the electors' ability to choose the governors in a free vote. This view subscribes to the notion that democracy should override any attempt to limit the participation of those willing to serve and who are elected to do so. Others thought that term limits were reasonable even in a democratic process to elect board members and were the appropriate way to ensure renewal in the board and the infusion of fresh views and perspectives.

---

<sup>23</sup> This approach would be consistent with the priority-setting model that Convocation adopted in March 2006. Through this model, Convocation decides on the Law Society's priorities for the benchers term and seeks to achieve them. With the office of Vice-Treasurer evolving to Treasurer and Past Treasurer, the evolution and execution of Convocation's priorities may occur more coherently.

124. As this report makes clear, the Task Force supports the paramountcy of democratic principles. However, as the Law Society continues to function in the current business and legal environment, the need for renewal and turnover is a crucial reality. If the critics of term limits conclude that they amount to attenuated democracy, the Task Force believes it is for a valid and supportable reason, namely, to ensure that Convocation as a board has the ability to be current and accessible to those who wish to serve for a reasonable period of time, which will enhance its ability to provide sound, effective governance.
125. It is a fact that incumbents have a significant advantage over new candidates in the bench election. As the data at Appendix 5 discloses, in the last three bench elections, incumbents made up 70% of elected benchers in Convocation, and of the incumbents who ran for re-election, 90% were re-elected. This was noted in the consultation sessions. As one lawyer, who has significant experience working with not-for-profit organizations, said,
- There is a barrier to running for bench. The same people are elected, and this in part is because of a lack of term limits. There is no proper turn around [in Convocation] and that is an oddity because it is so fundamental in non-profit boards. Otherwise, there is real conservatism and no new ideas.
126. Appendix 5 also includes information from a survey of bench candidates in 2007, who noted the incumbency factor. The report on the survey said:
- ...It is clear that a number of candidates enter the election process with some advantage because they are incumbent benchers or because of factors such as name recognition or resources.
- ...
- Another factor that strongly influences the bench election process is the increased likelihood of success of incumbent benchers. ... Options that provide non-incumbents equal access to electors would likely enhance the fairness of the election process by allowing them to campaign and providing them with an opportunity to increase their name recognition. This is not as critical for incumbent benchers who are likely to benefit from name recognition and a profile because of their role as benchers.
127. In the Task Force's view, term limits will benefit Convocation as a governing body. The continuous renewal of the membership of Convocation will increase the likelihood that new perspectives and ideas will be offered to make Convocation a better board. A limit on the number of terms a bench member may serve will formalize and regularize the renewal process. The Task Force agrees with the following statement it obtained through its research into current perspectives on term limits:

Term limits also protect both the board member and the organization against stasis. They are emblematic of a formal process for assuring the periodic introduction to the organization's governance of new energy, new viewpoints, and diverse skills. For the board member, term limits are the assurance that their service is valued, though limited, and that the unique leadership they bring to one board will be freed to serve the nonprofit in other ways, and to serve other boards or other pursuits.<sup>24</sup>

128. Perhaps as important, term limits may promote greater participation of lawyers and paralegals in the affairs of Convocation. Over time, a larger number of lawyers and paralegals will serve as elected benchers if term limits are imposed. Such an inclusive approach is likely to foster a better understanding and appreciation of the work of Convocation.
129. This is important because many lawyers and paralegals who attended the consultation sessions expressed feelings of detachment and disengagement from the Law Society. This may be one reason for the declining number of lawyers who vote in bencher elections. The Task Force does not believe that the primary problem is with the election process but rather, stems from a lack of knowledge about or involvement in the governance process of the Law Society. The Task Force considers the expressions of detachment and disengagement a serious issue. The continued confidence and involvement of the lawyers and paralegals in the work of Convocation is fundamental to the concept of self-governance.
130. The Task Force believes that providing a way for more lawyers and paralegals to participate in Convocation may help to remedy this situation. The recommendation for term limits is in aid of making the governing process of the Law Society more accessible and open to more individuals.

---

<sup>24</sup> From "Term Limits: Only 'Perfect' Boards Can Do Without Them" by Michael Wyland, Partner, Sumption & Wyland, at [http://www.sumptionandwyland.com/nonprofit\\_Topics/term\\_limits.html](http://www.sumptionandwyland.com/nonprofit_Topics/term_limits.html),

131. Benchers themselves recognize that acting as a member of Convocation increases their appreciation for the work of the Law Society. Many have derived personal and professional satisfaction by contributing to governance.<sup>25</sup> The Task Force believes that the greater the number of lawyers and paralegals who participate in governance processes, the greater the understanding and appreciation for that process will be.
132. The Task Force understands that concerns have been expressed by some benchers about the “learning curve” at the Law Society for new benchers and the potential loss of institutional memory if term limits cause a more frequent change in board members. The concern is that Convocation will lose some members who are familiar with and have gained an understanding and knowledge of the workings of the organization, which is beneficial to the Society, the profession and the public.
133. The Task Force believes that institutional memory is difficult to quantify. In the Task Force’s view, there is no optimum number of long serving benchers or a particular qualification on the part of benchers that will create the “critical mass” to ensure that the memory is preserved. As such, given the rolling number of benchers who will serve for the maximum number of years in the term, potential loss of institutional memory should not be an overriding concern. It does not appear to have been a concern with other law societies in Canada that have term limits for benchers.
134. Accordingly, the Task Force proposes, first, that Convocation decide that a limit be placed on the time a person may serve as an elected bencher.
135. Second, the Task Force proposes that benchers who have reached the limit of service be accorded *emeritus* status with the Law Society, as described earlier in respect of former Treasurers. This status qualifies these individuals for appointment to the Hearing Panel and to Law Society committees (with a vote). *Emeritus* status will allow benchers who have gained expertise in adjudication at the Law Society or have skills that might assist committees and who reach the term limit to continue to make a valuable contribution to the work of the Law Society outside of Convocation.

---

<sup>25</sup> These sentiments were expressed by elected benchers who were surveyed as part of the study the Equity and Aboriginal Issues Committee/Comité sur l’équité et les affaires autochtones undertook on promoting diversity in bencher elections, reported to Convocation in September 2006. The following reflect the nature of some of the comments:

- a. A recognition of the important work and role of benchers in regulating the profession, and its importance to the public;
- b. An appreciation and respect for benchers, the work they do and the issues they deal with;
- c. The personal rewards that come with shaping broader public or legal policy;
- d. The value in gaining experience in how the lawyer’s regulator works;
- e. The ability to raise issues in Convocation and have a meaningful discussion;
- f. An ability to see the “big picture”, work with bright and committed people, and gain a sense of the profession from the perspectives of a lawyer and a governor;
- g. The opportunity to be engaged in the issues affecting the profession, contributing to its governance and making a difference in the public interest;
- h. The ability to be on the cutting edge of issues and to be able to do something positive;
- i. The reward that comes when peers place their confidence in an elected bencher in representing their voices.

136. Third, the Task Force proposes that Convocation establish the maximum time that a person may serve as an elected benchner, after which time the person is ineligible to run as benchner. The time need not be served consecutively. The maximum time should be either eight years or twelve years. In the Task Force's view, this limit recognizes the value that a number of years of service can bring to the Law Society, but provides a reasonable limit on an elected benchner's participation in Convocation in the interests of renewing and refreshing its composition. The Task Force leaves to Convocation the decision on which of these limits is appropriate.
137. If a benchner serves part of the term for elected benchners (four years), the Task Force proposes that this should not count against the limit. The Task Force thought this was a fairer way to address partial term service. This means that the term limit of either eight or twelve years would coincide with the end of a four-year benchner term. Under this rule, some benchners who are elected mid-term would serve more than eight years or twelve years, as the case may be, but less than 16 years, if the limit is twelve years. However, this allowance will avoid mid-term elections of individual benchners and make transitions easier.
138. One member of the Task Force did not agree with the recommendation on term limits. This member felt that if a benchner wishes to run for re-election, he or she should be free to do so. This member is of the view that the electorate should determine the benchner's success or failure as a re-elected benchner.

Length of Benchner Term (no change recommended)

139. The Task Force considered the benefits and drawbacks of reducing the length of the benchner term to less than four years.
140. A shorter term could make service in Convocation more attractive to some lawyers and paralegals because the time period to which they commit may be more manageable for their practices. This may also permit more individuals from diverse legal communities to serve.
141. A more frequent renewal of the board membership may result in the participation by greater numbers of lawyers and paralegals in the professions' governance, with a potential for increased vigor within the board to its governance responsibilities. This approach may also be a way of broadening the knowledge and appreciation of more lawyers and paralegals about the importance of a self-governing profession and the need for an effective governing body.
142. The primary concern about reducing the length of the benchner term to a period less than four years is the potential increased turnover of board members who may have only become comfortable and knowledgeable in the role of benchner after a year or so.
143. Another concern is that a benchner election would be required more often, with the attendant financial and human resource costs.<sup>26</sup>

---

<sup>26</sup> The cost of the 2007 benchner election was almost \$300,000. This cost is likely to increase with future elections as the number of voters increases.

144. The Task Force concluded that no change should be made to the length of the benchers term. In the Task Force's view, the potential benefits that may result from this change do not outweigh the potential costs. As discussed in this report, encouraging greater participation by lawyers and paralegals in governance processes can be achieved through other methods.

#### Increasing Non-Bencher Appointees to the Hearing Panel

145. One of the themes that emerged from the Task Force's interchange with benchers and with lawyers and paralegals was a desire for a competence-based Hearing Panel that would include experienced non-bencher adjudicators. This idea was raised by a number of individuals, in the knowledge that the Law Society had already approved and appointed eight such individuals as Hearing Panel members, as permitted by the *Law Society Act*.<sup>27</sup>
146. Non-bencher adjudicators are directly involved in the affairs of the Society and will become increasingly aware of the importance of the governance role and the efforts being made by the Society to regulate the profession in the public interest. That is a product of good governance, and increasing the number of such adjudicators will only increase this positive effect. Second, to the extent that the time burden on benchers is lessened, a barrier to entry into the governance process may be removed for some lawyers and paralegals who are considering running for bencher. As one lawyer stated during the consultation:

My best dream is to be elected as a bencher. My worst nightmare is to be elected as a bencher; I couldn't afford the time commitment!

147. The composition of the Hearing Panel may not be considered by some to be a governance issue. However, the Task Force is of the view that this is an important governance issue from a number of perspectives. First, serving on the Hearing Panel places a considerable time burden on benchers, in addition to the time they spend in Convocation. Second, there is a perception among some observers that there is an inherent conflict in benchers being both regulators and adjudicators. To the extent that the burden of adjudication is assumed by other members of the profession, this perception will be lessened.
148. In its approach to this issue, the Task Force adopts the words of the April 2007 Tribunals Composition Task Force adopted by Convocation:

---

<sup>27</sup> Section 46.21 says:

#### **Composition**

(2) The Hearing Panel shall consist of at least three persons appointed by Convocation, of whom at least one shall be a person who is not a licensee. 2006, c. 21, Sched. C, s. 49.

#### **Eligibility for appointment**

- (3) A person is not eligible to be appointed to the Hearing Panel unless he or she is,
- (a) a bencher;
  - (b) a licensee; or
  - (c) a person approved by the Attorney General for Ontario.



The majority of Task Force members agree that non-bencher lawyers should be added as members of the Hearing Panel. Having an expanded pool of adjudicators available for hearings should alleviate difficulties in finding benchers available to sit on hearings. Expanding the Hearing Panel is necessary to have a pool of adjudicators ready and able to sit and to meet the need for increased adjudicative or area of law expertise. There will be cases where specific expertise would be of great value to the hearing process. In the Task Force's view, the risk of inconsistency in the quality of adjudicators and the need to select adjudicators who are capable of handling certain cases must be addressed.

Otherwise, the pool of appropriate adjudicators for some matters is narrowed considerably, and scheduling and timeliness issues arise.

An expanded pool of adjudicators would include non-bencher lawyers who not only have particular practice area expertise, but who represent regional and other diversity interests. This may broaden the profession's understanding of the regulatory issues that the Law Society must address and enhance members' understanding of the adjudicative process and its consequences to them. This in turn may have a salutary effect among members of the profession, the benefit of which would accrue to the public, the profession and the Society.

The bencher/non-bencher lawyer pool may also assist in addressing any perception outside of the Law Society that discipline applied by an exclusive group of elected governors is a "closed shop." The public's view of the Society is important to the health of the self-regulatory authority it has been granted. The Society must be mindful not only of what the Society thinks is in its best interests as a regulator, but also what the public perceives and sees.

149. For these reasons, the Task Force recommends that Convocation direct that the Tribunals Committee on an ongoing basis assess whether additional non-bencher appointments be made to the Hearing Panel. The Tribunals Committee is best situated to review the composition of the Hearing Panel and determine anticipated adjudicative needs.
150. The Task Force suggests that the Tribunals Committee could undertake its review within the time period referenced in Recommendation 4<sup>28</sup> of the Tribunals Composition Task Force report of April 2007, which is explained in the report as follows:

---

<sup>28</sup> Recommendation 4 reads:

That if Convocation approves Recommendation 1, two years after implementing the recommendation, Convocation authorize a review of the manner in which the non-bencher lawyers and the non-bencher non-lawyer persons have served as adjudicators on the Law Society's Hearing Panel, the results of which are to be reported to Convocation.

As a means to ensure the effectiveness of the addition of these eight adjudicators to the Hearing Panel, the Task Force is proposing that after a period of time, the manner in which these individuals have carried out their responsibilities as Hearing Panel members be reviewed. The Task Force recommends that two years after implementing the recommendation to add these individuals to the Hearing Panel, Convocation should authorize such a review through the appropriate committee. The results of the review should then be reported to Convocation. The review may also help in assessing whether additional non-bencher members should be added to the Hearing Panel in future.

151. As the eight new non-bencher adjudicators were appointed earlier this year, within the next two years, the Tribunals Committee would have the opportunity to assess the matter and make recommendations to Convocation. That said, the Task Force is of the view that if additional adjudicators are needed sooner, the Tribunals Committee should be free to make recommendations to Convocation at the appropriate time.

#### Non-Bencher Appointees to Law Society Committees

152. Another view that emerged from the Task Force's consultations with lawyers and paralegals was the suggestion that non-bencher lawyers and paralegals, and perhaps others with a particular expertise, be appointed to Law Society committees. The Law Society has the authority to appoint individuals who are not benchers to standing committees under By-Law 3 (Benchers, Convocation and Committees).<sup>29</sup>
153. The Task Force's view is that Convocation should encourage the appointment of non-benchers to committees.
154. The feedback received by the Task Force during the consultations indicated that there is a strong interest among lawyers in serving on Law Society committees. Many participants at the consultation sessions thought it appropriate to identify people who have skills of use to the Law Society that may not be found among the elected or appointed benchers. They thought these people could include those who are not licensees. This coincides with commentary in the Exemplary Practices in Governance, (at Appendix 2) which suggests a practice whereby "Committees (and task forces) are staffed with individuals with the appropriate expertise to discharge the committee's mandate effectively. Committee members need not be board members as long as there is a sound connection to the board through the chair (usually a board member)."

---

<sup>29</sup> 109. (1) Each standing committee shall consist of at least six persons appointed by Convocation.

#### Benchers

- (2) Each standing committee shall include at least five benchers.

#### Appointment of persons to standing committees

- (3) Convocation may appoint persons to a standing committee at any time.

#### Treasurer's recommendations for appointment

- (4) The Treasurer shall recommend to Convocation all persons for appointment to standing committees.

155. The level of interest is borne out by the response to the Law Society's recent outreach for non-bencher adjudicators, following Convocation's approval of these appointments. Over 200 lawyers offered their services for the four positions. In the Task Force's view, this indicates a real interest in and willingness to contribute to the work of the Law Society.
156. Other participants in the consultation said that the involvement of lawyers and paralegals in committee work will develop their interest in and their commitment to the Law Society, and allow them to become knowledgeable about its processes. Some said that this is a way for younger lawyers and paralegals to give back to the professions without the burden of being a bencher. In time, they may be more likely to run as bencher candidates.
157. At a higher level, involving lawyers and paralegals in Law Society committees would make the governance of the Law Society more open, an objective which is mandated by Section 4.2 of the *Law Society Act*. It may alleviate the skepticism of some lawyers who have experienced confusion about the Law Society stated role of acting in the public interest and not in the interest of lawyers.
158. A number of participants in the consultation reflected on their experience on other boards, including important public interest boards for universities and hospitals. They said that including non-board members on committees had enhanced the input received from those committees by those boards as a result of the expertise and commitment of non-board members to the committee work.
159. In the Task Force's view, the participation of non-benchers on committees of Convocation should not create a problem in managing the confidential nature of committee deliberations. Upon appointment, the Law Society would make clear to the individual that as a member of a committee of Convocation, the individual must advance the interests of the Law Society only, and not his or her personal interests, and will be bound by duties of confidentiality and good faith. In addition, part of the requirement for service could include the individual's agreement, in writing if necessary, to adhere to a fiduciary duty and a duty of confidentiality. This would ensure that material confidential to the Law Society and the Law Society's interests is protected.
160. The Task Force assumes that thought has already been given to this issue, given the existing authority in By-Law 3 to appoint non-benchers to committees. In addition, since non-benchers serve on committees in other law societies, the Task Force does not believe that this issue poses any obstacle for the Law Society of Upper Canada.

The Bencher Election (no change recommended)

161. Despite increased efforts by the Law Society to encourage lawyers to vote in the bencher election, a significant number of lawyers do not vote, and the trend is down rather than up. In recent bencher elections, the benchers have been elected by less than 50% of the eligible voters.<sup>30</sup>

---

<sup>30</sup> The following indicates the declining participation of eligible voters: 1995, 44%; 1999, 42%; 200, 38.75%; 2007, 34.5% .

162. Voter turnout statistics for eligible voters for benchers elections show that,
- a. in the last six elections, between men and women, the percentage turnout was higher among men by an average of about six percent;
  - b. in the last four elections, by age, the highest percentage of voters was in the 67 to 76 age range;
  - c. in the last four elections, by year of call, the highest percentage of voters was in the group called between 1961 and 1970;
  - d. in the last four elections, by firm size, the highest percentage of voters was in firms of 51 to 75 members; and
  - e. in the last three elections, by electoral region, the highest percentage of voters was found in the northwest region (about 54% on average).<sup>31</sup>
163. The Task Force received significant comment during the consultations from lawyers on the benchers election process and related issues (see Appendix 6). Some participants thought that the current process, even though described as cumbersome, was the best democratic model. Others talked about instituting a competence matrix to obtain the skills and experience that might benefit Convocation in its governance role. Some thought that appointments rather than an election would achieve a better result. Still others offered suggestions on how the election could be restructured to achieve the representation and capabilities within Convocation that would contribute to better governance. The issues they raised included,
- a. whether benchers positions should be established for certain constituencies, such as francophones, aboriginal lawyers, young lawyers, in-house counsel, etc.;
  - b. whether lawyers from within Toronto should continue to have a vote for benchers candidates outside Toronto, and whether lawyers outside Toronto should continue to have a vote for benchers candidates within Toronto;
  - c. whether greater value would attach to the vote if the maximum number of votes – i.e. the number of positions – was reduced.
164. The Task Force considered these and the other extensive comments on the benchers election process, but did not devote significant time or analysis to the issue. The Task Force's initial impressions were that some of the suggestions might negatively impact the unifying effect that a democratic vote across the profession engenders, or create a different level of disenchantment if attempts were made to establish constituency or region-based voting.
165. The Task Force believes that even with the concerns and issues that arise from the process, an election process is the better alternative for populating Convocation. The fact that an election process determines who serves as a member of Convocation provides the credibility and legitimacy for the system of self-government. The Task Force believes this is so despite poor voter turnout. In the absence of an election process, the Society might well be criticized for failing to provide an opportunity for lawyers and paralegals to democratically choose their governors.

---

<sup>31</sup> From "2007 Election Results and Voter Turnout Statistics 1987 – 2007," prepared for benchers following the 2007 election.

166. As such, the Task Force is making no recommendations about the election process, although it remains concerned about the declining voter turnout. This may be a symptom of the disengagement from the Law Society described by some lawyers and paralegals, as noted earlier. Some of the Task Force's recommendations aimed at involving more lawyers and paralegals in governance processes may assist in addressing this concern and may eventually translate into greater voter turnout. However, the Task Force urges the Law Society to carefully consider the feedback from lawyers and paralegals on the bench election as it prepares for the next bench election in 2011.

Executive Committee (no change recommended)

167. As boards usually set the policy agenda for an organization, a large board could benefit from the work of a smaller group of its members for this purpose. For the Law Society, an executive committee could add value by providing diverse viewpoints on key issues coming before Convocation and helping the Treasurer focus on the groundwork for advancing priorities on Convocation's policy agenda.
168. The suggestion that the Law Society explore establishing an executive committee has arisen from time to time in discussions about priorities and planning for Convocation. In particular, the executive or advisory committee has been characterized as a way to assist Convocation in effectively and efficiently sorting out priorities and planning Convocation's policy agenda.
169. The Task Force reviewed material that shows that the issue dates back to at least the early 1990s. In 1991, a Research and Planning Committee report referenced a subcommittee report's findings on the idea of an executive committee:

When agreement has been reached on the limits of the proper role of the Law Society, a further study should be undertaken into the respective roles of benchers and staff to determine whether there are ways in which bench workload might be reduced, ...

...Consideration should be given as to whether the problem might be alleviated by the establishment of an Executive Committee of Convocation.

The proposal that the establishment of an Executive Committee should be studied coincides with your Committee's earlier thinking in response to the request from the Finance and Administration Committee to consider how the Society should respond to proposals for new programmes in times of fiscal restraint.

The further consideration of these matters will be recommended to the Research and Planning Committee which takes office after the 1991 bench election.

170. While further reports were prepared, no recommendation was submitted to Convocation on this subject.

171. The next comprehensive treatment given to the issue was in the 2000 Strategic Plan, which recommended that a type of executive committee be formed “for managing and streamlining Convocation’s agenda and advising the treasurer.” The Strategic Planning Committee’s January 2001 report to Convocation included the following recommendation for the Treasurer’s Advisory Committee:

That a Treasurer’s Advisory Committee be established with the mandate to ensure that,

- (a) the work of committees, task forces and working groups is overseen;
- (b) issues are channelled to the appropriate committee;
- (c) the work of the committees is progressing and finding appropriate space on Convocation’s agenda;
- (d) the work of the committees is co-ordinated to avoid duplication of effort;
- (e) Convocation’s policies are implemented by maintaining close liaison with the law society’s chief executive officer;
- (f) appropriate monitoring mechanisms are established; and
- (g) the Law Society’s Governance Policies meet the current needs of the Law Society;

172. The above recommendation was defeated in Convocation by a vote of 20 to 12.

173. A number of years have passed since the Strategic Planning Committee’s report, and, significant improvements to some of the processes related to planning Convocation’s policy agenda have been made, including the following:
- a. Committees and task forces are better at preparing the necessary information on issues for Convocation’s decision-making, the impact on stakeholders, the financial impact and how the decisions are to be implemented operationally;
  - b. Since 2002, through the budget planning process, a systematic review of operations includes information on the implementation status of Convocation’s policies, which will also inform the need for new initiatives that Convocation should consider<sup>32</sup> ;
  - c. The work of the committees and task forces is co-ordinated to a large extent through the Policy Secretariat, which has regular briefings on committee

---

<sup>32</sup> The following is from the Finance Committee’s report to April 2009 Convocation on the budget planning process for the 2010 budget:

A comprehensive system of program reviews linked to the budget has been in place since 2002. The operations to be reviewed for the 2010 budget are still to be finalized.

The rotational review of activities has the benefits of:

- Allowing a more meaningful and focused analysis of revenues and expenditures relating to program activities under review
- Increasing discipline in budget development
- Limiting resistance as the onerous and exhaustive examination of costs is not imposed every year in the absence of changing circumstances
- Reducing the length of the budget process
- Increasing benchers’ understanding of a number of specific activities each year
- Increasing the accountability of management for the programs underlying the financial information contained in the annual budget.

- activities. Efforts are made to avoid duplicated work and to ensure that issues that cross committees are wholly dealt with;
- d. In consultation with the Policy Secretariat, the Chief Executive Officer informally monitors the progress and completion of policy issues before the standing committees and task forces.
174. The most recent initiative focusing on Convocation's priority planning function was the creation of the Priority Planning Committee, which prepares for Convocation a proposal for its long term policy agenda in consultation with the Treasurer. The January 2009 report of that Committee to Convocation illustrates that priority planning is well underway.<sup>33</sup>
175. The Task Force noted information in the January 2006 report of the Governance Task Force (Clayton Ruby, Chair), which reviewed the mandates of the executive committees of a diverse group of organizations. This material disclosed some common duties of an executive committee:
- a. To perform the duties and exercise the powers delegated to it by the board;
  - b. To expedite the administration and affairs of the organization between board meetings on important matters arising between board meetings that cannot be postponed until the next scheduled meeting of the board;
  - c. To exercise all the powers delegated to it by the board when the board is not in session and, in the judgment of the committee, calling an in-person or telephonic special board meeting is impractical or unnecessary;
  - d. To act as a sounding board for general management issues and/or matters that affect the organization as a whole;
  - e. To conduct an annual performance evaluation of the committee;
  - f. To report to the board on a regular basis so that the board can monitor the committee's performance and take any corrective action.
176. The Task Force received some useful input on the role of an executive committee in the lawyer and paralegal consultations. Those who commented on the issue drew on their own experiences as experts in the field of corporate governance, as counsel to boards or as members of boards that have executive committees. Some of the views were as follows:
- a. An executive committee may help to clarify and streamline the work of Convocation;
  - b. With a large board, it is difficult to make day-to-day decisions, and the trend is to an executive committee as an agile group that can deal seriously with important issues. It becomes a day-to-day implementation body rather than a strategic planning body. The mandate should be restricted to procedural issues;
  - c. The concept of and theory behind an executive committee is reasonable. But it can evolve to effectively replace the board, which becomes a rubber stamp. The risk is that the Executive Committee will become the decision-maker, leaning to a

---

<sup>33</sup> The two recommendations approved by Convocation in the report of the Committee were:

- 1. That Convocation approve the work plan set out at Appendix 1 to achieve the priorities identified and approved by Convocation. [Governance appears as item 8 in the Appendix]
- 2. That Convocation approve the process for adding new issues to the work plan described in paragraphs 16 to 18. [communications between the Treasurer, the Committee, the CEO and the chairs of committees]

tendency of the board to inappropriately rely on an executive committee and defer to it.

- d. As an executive committee creates an inner and outer circle, it has to be very inclusive and transparent. Otherwise, it becomes a clique. If three or four people shape Convocation's agenda, there is risk of centralizing power and creating an institutionalized elite political clique. In terms of structure, it could be five people elected by the board, and could be or include chairs of committees reporting to the board. Alternatively, Convocation could appoint the executive committee from Convocation to ensure diversity, and have a regular flow through of people. All agenda items could go to all benchers and minutes could be circulated. It would then become a self-regulating committee.
177. In the Task Force's view, an executive committee at this stage would not have as its primary focus the priority planning function for Convocation. Rather, an executive committee would be used as a tool to streamline the governance of the Law Society by Convocation, an admittedly large board, and assist the Treasurer in managing Convocation's agenda.
  178. After considering the merits of an executive committee and given its recommendations for reforms in this report, the Task Force is not recommending that an executive committee be established. Rather, the Task Force recommends a step-by-step approach to improvements in governance. The introduction of the reforms recommended in this Report, will, in the Task Force's view, help to make the governance process at the Law Society more effective and efficient.
  179. At the same time, the Task Force believes that much greater use must be made of the Priority Planning Committee and that it exercise to the fullest its mandate in wrestling with the issues of Convocation's priority agenda. If those efforts and the recommendations of this Report are insufficient to ensure that Convocation sets and follows through on priorities, then the issue of an executive committee should be revisited in the future.

## CONCLUSION

180. The Task Force's recommendations focus on improving Convocation's ability to exercise its governance responsibilities in accordance with the public interest regulatory mandate of the Law Society.
181. Government, from which the Law Society's self-regulatory mandate emanates, lawyers, paralegals, benchers and the public, for whose protection regulation ultimately exists, expect that the Law Society will operate efficiently, transparently and effectively. Its governance structure must allow it to do so, and must be justified as the best structure for the purpose, after all factors are considered.
182. The Task Force believes that the improvements it is proposing through the recommendations in this report will make Convocation a better, more effective board. Over time, the size of Convocation will be reduced to a more efficient, cost-effective and rational size for its mandate, in keeping with its democratic foundation and the principles of accountability. The proposals will also engage more lawyers and paralegals in governance through adjudicative and committee functions, which should assist in promoting the value of self-regulation and regaining some of the disengagement that those governed by the Law Society have experienced over the years.



183. In an environment where scrutiny of the Law Society can occur in an instant, the Law Society must be able to demonstrate that its governance and its leadership is sound. Achieving good governance starts with the board, how it is structured and how its structure affects its governance responsibilities. The Task Force believes the proposals in this report will give the Law Society's stakeholders greater confidence in its ability to fulfill its role and help the Law Society to become a better regulator.

## APPENDIX 1

### GOVERNANCE TASK FORCE TERMS OF REFERENCE (Approved May 25, 2006)

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

## APPENDIX 2

### OVERVIEW OF THE GOVERNANCE TASK FORCE'S WORK

1. In its first two reports in the fall of 2006 and early 2007, the Task Force focused on some specific functions that Convocation fulfills. The important changes Convocation adopted on the recommendations of the Task Force are intended to improve the integrity of the Treasurer's election process, Convocation's priority planning process and its financial oversight functions.
2. Following these reports, the Task Force's work focused on the structure of Convocation. The Task Force's report to Convocation in April 2007 included recommendations respecting life benchers and former Treasurers. It also included a recommendation with respect to term limits, which was a matter that arose through the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones. That Committee became involved in the work of the Task Force when the issue of term limits was raised at the January 2007 Convocation during discussion of spending limits on bencher candidates' campaigns.

3. The April 2007 report was deferred to May 2007 Convocation, when, at the direction of the Treasurer, the report was not debated, but the Task Force was requested to give further consideration to the implications for governance that arise from term limits. The Task Force did so in consultation with the chair and vice-chair of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones.
4. The Task Force's review of the structural elements of Convocation led to informal discussions with benchers groups on issues related to the structure. Meetings were held in early 2008 with former Treasurers, lay benchers and members of the Paralegal Standing Committee, from which valuable input was received.
5. After considering the views of these groups, the Task Force concluded that there should be consultation with a wider group of stakeholders, including benchers collectively, on the performance of the Law Society's current governance structure in fulfilling the Law Society's statutory mandate. To assist in this initiative, the Task Force engaged Tim Plumptre, an expert in governance reform, whose expertise and insights were of great assistance to the Task Force.
6. On the recommendation of the Task Force in its third report in September 25, 2008, Convocation approved consultations by the Task Force (and the related budget) with benchers and with lawyers and paralegals on principles of governance for the Law Society. In February 2009, the Task Force's fourth report provided a summary of results of the governance workshop for benchers at the Law Society in November 2008. The workshop provided a forum for those closest to the Law Society's governance to express their views and concerns on governance issues. The fourth report also set out the consultation document to be used in the consultations.
7. The fifth report in June 2009 provided a summary of the Task Force's experience with the consultations with lawyers, paralegals and various legal organizations, held in April and May 2009.
8. Following the consultations, the Task Force received the report of the County and District Law Presidents' Association (CDLPA) Professional Governance Committee (June 30, 2009), which CDLPA delivered directly to all benchers. The report contains 12 recommendations for governance reform at the Law Society. The executive summary and recommendations appear as part of Appendix 6 to this report.
9. To assist in its deliberations, the Task Force, with Tim Plumptre's guidance, articulated principles of governance. These principles helped in determining what the concept of "good" or "sound" governance might mean for the Law Society. They were based on five principles of good governance for the public sphere developed by Canada's Institute on Governance (IOG), with which Mr. Plumptre was previously associated.<sup>34</sup> Since the mandate of the Law Society is to govern lawyers and paralegals in the public interest, the Task Force thought that this set of principles, adapted to the Law Society, would

---

<sup>34</sup> The IOG principles are derived from a more comprehensive set developed initially by the United Nations Development Program. This latter set of principles is designed to apply to societies rather than organizations. They in turn rest on various UN conventions, such as the Universal Declaration of Human Rights.

provide a foundation upon which to consider specific reforms. These principles would be applicable to all aspects of the Society's governance, including Convocation, committees and task forces, and related processes conducted under the auspices of Convocation, notably those for dealing with complaints and discipline.

10. For the Law Society, these principles may be articulated as follows:

Legitimacy and voice:	Governance process inspires confidence, provides adequate voice to members and other stakeholders and to the public at large. The process encourages participation. Decisions are based on a consensus orientation.
Performance:	Yields results of value both to society and to members; governance processes are efficient (as required by the Law Society Act) as are the programs and activities of the Society.
Direction:	Delivers sustained and clear strategic purpose, apparent both to members and to the public at large.
Accountability and transparency:	Decision-makers can be held to account through recognized governance processes and standards, these are open and understandable, failure to observe standards has known and enforceable consequences; information is widely available to the public and the profession and is actively shared.
Fairness and balance:	Members and other stakeholders are fairly treated, there is an absence of special deals for 'insiders' or conflicts of interest, interests of the general public are taken into account in the process of decision-making.

11. Coupled with these principles are “exemplary practices” in governance, provided by Tim Plumptre, which the Task Force used, where appropriate, as a measure in determining governance reforms for the Law Society. They are as follows:

#### “Exemplary Practices” in Governance

*Over the last two decades, literature on governance has burgeoned, reflecting experience in both the corporate world and in the non-profit sector. This document summarizes key elements of this literature. It does not pretend to be comprehensive.*

*Not every 'exemplary practice' will be suited to every organization, and not every organization will adopt all these measures. Some are more difficult to apply to organizations where the board is elected, not appointed. An organization seeking to become well governed should decide for itself which of these practices it wishes to adopt. If it chooses not to adopt some of these practices, it should have a sound rationale for doing so.*

*Tim Plumptre, May 27, 2009*

\*\*\*\*\*

#### Board and Committee Composition

1. Board members have the appropriate capabilities and experience to be effective as directors.
2. Through a Nominating Committee or similar entity, the board develops a profile of desirable capabilities, connections and experience of prospective board members; it proactively searches out directors with desired characteristics to draw them into the board and/or its committees.
3. Committees (and task forces) are staffed with individuals with the appropriate expertise to discharge the committee's mandate effectively. Committee members need not be board members as long as there is a sound connection to the board through the chair (usually a board member).
4. Terms of office for board officers and for board members themselves achieve an appropriate balance between the need for stability and corporate memory and the need to inject new ideas and renew board membership (the average term of office for a director in the private sector is said to be 7 – 8 years).

#### Roles and Responsibilities

1. Clear role statements / terms of reference exist for board officers, including the chair, and for board committees and task forces
2. The role of the board chair is separate from that of the CEO (a particular concern in the corporate sector).
3. The board provides strategic direction to the organization, with a particular emphasis on the longer term.
4. The board fulfills a strong risk management role. With respect to organizational finances, it ensures that relevant legislative requirements and sound accounting practices are observed. A strong Audit Committee is usually relied upon to help discharge this responsibility.
5. Board members understand the implications of holding a fiduciary office. They reflect this in their general behaviour and in their conduct at board meetings.
6. Committees / task forces are chaired by capable individuals.

7. The board distinguishes between committees (ongoing entities required from year to year, e.g. standing committees like Audit) and task forces (time-bounded entities with a deadline and specific deliverables).
8. Committee and task force work are aligned with board priorities and are well supported by staff.

#### The Conduct of Board Business

1. The board agenda is focused on areas of strategic importance (priorities), and is not diverted into issues ancillary to the core mission of the organization.
2. The board may periodically engage in “generative” discussions around difficult upcoming issues to help guide staff thinking in developing policy relative to such issues.
3. Board meetings are well led by the chair, with due regard for the need to hear different voices, to foster constructive debate, to move discussion forward and to take clear decisions.
4. Documentation provided to the board presents information that allows the board to exercise its oversight responsibilities effectively with respect to finances, programming, and other aspects of organizational performance.
5. The atmosphere around the board table is open and collegial while being efficient. Board members are collaborative and mutually respectful.
6. Board meetings are characterized by thoughtful discourse and debate; topics are well aired and the ethic of constructive dissent is alive and well.
7. The board holds periodic discussions without the presence of staff to allow it to raise any issues of concern relative to staff performance, relationships, etc.
8. Board meetings are held at a frequency appropriate to the needs of the organization.

#### Support for the Board; Board/Staff Relations

1. The CEO performs effectively and is respectful of the role of the board.
2. Board/staff relations are congenial, open, and mutually supportive. Of particular importance is a relationship of trust and candour between the board chair and the CEO.
3. The board is respectful of the staff's role and does not engage in micro-management.
4. Documentation in support of board meetings provides a sound platform for decision-making. Decision options are clearly set forth; documents are relevant, timely, readable and accurate.
5. The results of board meetings are soundly documented. Decisions are well communicated to staff and others as appropriate.

### Evaluation of Performance

1. There are regular and substantive evaluations of the performance of the board and sometimes of its individual members.
2. There are periodic (typically annual) evaluations of the performance of the CEO (usually undertaken by a committee of the board such as the Executive Committee or Governance Committee) and objectives for the CEO's performance in the upcoming year are agreed.
3. In public organizations, in-depth evaluations of major program activities are conducted from time to time, against a framework of well-articulated program objectives and rationale.

### Other

1. The board observes the values of transparency and openness in the conduct of its affairs, notably with respect to the remuneration of directors (and the CEO).
2. Governance practices provide for input to key organizational decisions by members of the organization and by other stakeholders, as appropriate.
3. Bylaws and associated governance policies are approved by the board and provide a sound framework for the conduct of board business.
4. Governance policies include a board-endorsed code of conduct for both the board and staff members.
5. There are consequences for board members or staff who fail to adhere to the code of conduct.

### REASONS FOR THE GOVERNANCE TASK FORCE'S FOCUS ON CONVOCAATION'S STRUCTURE

#### The "Continuum" of Governance Reform at the Law Society

1. There is a continued interest within the Law Society in achieving a governance structure that is equipped to deal with the responsibilities that flow from the Law Society's legislative mandate. In the past 15 to 20 years, Convocation has considered a series of reports related to the governance of the Law Society that flowed from governance reform initiatives.<sup>35</sup>

---

<sup>35</sup> In 1996, the Law Society underwent its first comprehensive governance change in recent years. Convocation agreed to focus on questions of policy and "ends" and not operations or "implementation", which were recognized as the responsibility of staff. This was an approach to governance known as the "Carver model" of policy governance.

Consideration of the policy governance model led to a more detailed review of various governance issues. A wide-ranging governance review followed in the context of the Society's Strategic Planning Committee initiative of 2000-2003. Convocation adopted an initial Strategic Plan in May 2000 and directed the Committee to undertake further

2. In some cases, these governance reports were informed by surveys of lawyers and other stakeholders. Some surveys raised concerns about the Law Society, including the relevancy of the regulator, whether it provides “value for money”, a lack of consensus about its core mandate and the Society’s credibility.
3. Other Law Society policy initiatives have touched on aspects of governance on which input from the profession and others was received. In these contexts, issues have been raised by the members of the profession and members of Convocation itself on the cost of running the Law Society, the remoteness from the regulator that lawyers feel, the plethora of programs that appear to have little to do with the core responsibility of regulation, concerns about diversity within Convocation and whether it is representative of the public and the profession.
4. Past committee and task force reports on governance included recommendations for substantive change to the Law Society’s governance arrangements and recommendations of less substantive impact. Convocation tended to adopt the latter recommendations. The more significant proposals in these previous reports related to:
  - a. the size of Convocation;

---

work to outline options for the implementation. The Committee’s report on implementation recommended various changes, notably:

- a. That the Treasurer be the spokesperson for Convocation and be accountable for overseeing the performance of the CEO;
- b. Formation of an Executive Committee or Treasurer’s advisory committee with responsibility for streamlining Convocation’s agenda and generally assisting the Treasurer to lead the work of Convocation;
- c. Adoption of rules of debate;
- d. Reduction in the size of Convocation;
- e. Adoption of a process to monitor implementation of the strategic plan;
- f. Better management of the process for establishing and overseeing the work of committees, task forces and working groups;
- g. A recommendation for committees in future to bring forward reports containing options for consideration by Convocation, with analysis of pros and cons, whether or not the committee recommends a particular option.

A follow-up report in 2001 included a recommendation for a Treasurer’s advisory committee. However, Convocation rejected this proposal and other related reforms, including the idea of staggering the terms of benchers. It deferred consideration of the proposal that the size of Convocation be reduced, and ultimately, no changes were made on this issue. However, a project to draft rules of procedure was undertaken and these were eventually adopted.

Governance issues persisted as a result of other work related to the Society’s core values. In September 2004, Convocation appointed a new Task Force to examine certain aspects of governance. The report of this Task Force was received by Convocation in February 2006 but it was never finally debated. In any event, it had no recommendations related to the larger issues mentioned above.

At February 2006 Convocation, newly elected Treasurer Gavin MacKenzie proposed that Convocation create another Task Force (the present one) to consider governance matters. Convocation approved the Task Force’s terms of reference in May 2006.

The current governance review is thus part of a series of efforts aimed at reform that began 13 years ago.

- b. clarification of the role of the Treasurer, including the responsibility of the incumbent to be the official spokesperson of Convocation and to review the performance of the CEO;
- c. an executive committee to work with the Treasurer;
- d. the number of committees;
- e. focusing the work of Convocation on a limited range of high priority or strategic issues; and
- f. monitoring the performance of the Society, in particular, in the implementation of its strategic plan.

#### Governance Reform as a Benchers Priority

- 5. The most recent assessment of governance, during the currency of the Task Force's work, took place at the benchers retreat in September 2007. At the retreat, the governance structure was identified as one of the priorities for the Law Society.<sup>36</sup>
- 6. In answering the question why reforms to the governance structure were a priority, benchers focussed on the need for fewer priorities, and utilizing a more efficient governance model in order to advance the Law Society's strategic goals and to continue to meet the Law Society's disciplinary commitments.
- 7. The work plan for the priorities, including review of the governance structure through the Task Force's work, was approved by Convocation in January 2009, on the recommendation of the Priority Planning Committee.

#### The Current Business Environment

- 8. The professions, including the legal profession, are facing changing legal and business environments and more recently, increased regulatory intervention by governments. The environment in which legal professionals provide their services and the services themselves are being affected by a number of factors and trends. These trends, discussed below, raise important issues for the Law Society, as they touch on access to justice, the demands of practice, the regulatory framework, business structures and the value of self-regulation.
- 9. The composition of the bar is changing. Studies of the profession, including some completed by the Law Society, explain how this is happening. Fewer lawyers are providing services to the public (a 25% drop in 30 years). This is particularly true in rural

---

<sup>36</sup> The motion adopted by Convocation in November 2007 in the report of the Priority Planning Committee in part stated:

That Convocation approve the following nine priorities as Convocation's priorities for the next four years:

- Discipline
- Access to justice
- Regulation of paralegals
- Small firms and sole practitioners
- Governance structure
- Strategic communications
- Maintenance of high standards and ensuring effective competence
- Diversity within the profession
- Licensing and accreditation



areas where over 40% of lawyers are over 50, and fewer lawyers are choosing to work in these environments. Among younger lawyers (under 30) women now outnumber men, but most women in private practice leave after eight to ten years.

10. Some segments of the profession are suffering from an undersupply of lawyers.<sup>37</sup> This problem is manifested in certain geographic areas, areas of practice and demographic communities. In some cases, the undersupply of lawyers is linked to the inability of clients to purchase services at a rate that will sustain sole and small firm practices.
11. There is now a worldwide market for legal services, driven by clients seeking to operate globally. Certain clients are looking for lawyers who are tapped in to the global market and are able to provide seamless service.
12. The legal profession is facing increasing competition from other service providers. The pressure is coming from banks, insurers and retail operations that want to provide certain legal services. The Canadian Competition Bureau recently examined five self-regulating professions, including the legal profession. It concluded that current restrictions on business structures unduly limit competition in the delivery of legal services in Canada.
13. The business structure of the profession is shifting. In England and Wales, non-lawyers are now permitted to invest in and own law firms. In 2007, Slater & Gordon in Australia became the first law firm to be listed on a stock exchange.
14. The profession's ability to maintain self-regulation has been eroded in other jurisdictions. In the last five years, the legal profession in Australia, New Zealand, England & Wales, Scotland and Ireland has effectively lost this privilege. A major contributing factor was the failure, both real and perceived, of these law societies to regulate in the public interest and adapt to change.
15. Other forces are affecting the legal profession's responsibility to self-regulate. In the recent past, governments and other institutions have sought to impose intrusive regulation on the profession, such as anti-money laundering and client identification requirements. Such initiatives presume to strike a balance between competing societal interests. However, while the legislative mandates may operate to achieve a general societal benefit, they may be implemented through a process that effectively erodes the profession's deeply held values of independence and client loyalty.

#### Increased External Attention to the Law Society's Governance Mandate

16. Lawyers, paralegals and the public are likely to increasingly scrutinize the way in which Convocation governs the Law Society's affairs. As a result of media attention to the affairs of governments, corporations and regulatory bodies, the public and relevant stakeholders have a heightened expectation that persons occupying fiduciary and regulatory positions will effectively and diligently discharge their responsibilities.

---

<sup>37</sup> See the Law Society's 2006 Sole Practitioner and Small Firm Task Force Report.

17. Governing in the public interest has always been the focus of the Law Society, and its 1994 Role Statement<sup>38</sup> affirmed this. However, the expectation that the Law Society will exercise efficient and effective governance is heightened in light of the now explicit legislative mandate, added to the *Law Society Act* in 2006, to regulate in the public interest. The Act articulates the principles to be applied by the Society in fulfilling its governance responsibilities:

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

## APPENDIX 3

### EXCERPTS FROM THE LAW SOCIETY ACT

#### BENCHERS

##### Government of the Society

10. The benchers shall govern the affairs of the Society. 2006, c. 21, Sched. C, s. 11.

##### Honorary benchers

11. Every person,  
 (a) who is an honorary bencher on the 1st day of October, 1970; or  
 (b) who after that day is made an honorary bencher,  
 is an honorary bencher but as such has only the rights and privileges prescribed by the by-laws. R.S.O. 1990, c. L.8, s. 11; 1998, c. 21, s. 5.

##### Benchers by virtue of their office

12. (1) The following, if and while they are licensees, are benchers by virtue of their office:  
 1. The Minister of Justice and Attorney General for Canada.

<sup>38</sup> The Law Society of Upper Canada exists to govern the legal profession in the public interest by,

- ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and
- upholding the independence, integrity and honour of the legal profession,

for the purpose of advancing the cause of justice and the rule of law.

2. The Solicitor General for Canada.
3. Every person who has held the office of elected bencher for at least 16 years. 1998, c. 21, s. 6; 2006, c. 21, Sched. C, s. 12 (1).

Same: attorneys general

(2) The following are benchers by virtue of their office:

1. The Attorney General for Ontario.
2. Every person who has held the office of Attorney General for Ontario. 1998, c. 21, s. 6; 2006, c. 21, Sched. C, s. 12 (2).

Same

(3) Subsections (1) and (2) do not apply to a person whose licence is in abeyance under section 31. 2006, c. 21, Sched. C, s. 12 (3).

Rights and privileges

(4) Benchers by virtue of their office under subsection (1) or (2) have the rights and privileges prescribed by the by-laws but, except as provided in subsection (5), may not vote in Convocation or in committees. 1998, c. 21, s. 6.

Voting

(5) The following voting rights apply:

1. The Attorney General for Ontario may vote in Convocation and in committees.
2. Benchers by virtue of their office under paragraph 3 of subsection (1) or paragraph 2 of subsection (2) may vote in committees. 1998, c. 21, s. 6.

Elected bencher's choice

(6) An elected bencher who becomes qualified as a bencher under subsection (1) or (2) shall choose whether to continue in office as an elected bencher or to cease to hold office as an elected bencher and serve as a bencher under subsection (1) or (2). 1998, c. 21, s. 6.

Same

(7) If a bencher licensed to practise law in Ontario as a barrister and solicitor chooses under subsection (6) to continue in office as an elected bencher, he or she is eligible to be re-elected under subsection 15 (1), without prejudice to his or her right to become a bencher under subsection (1) or (2) at any time so long as he or she is still an elected bencher. 2006, c. 21, Sched. C, s. 12 (3).

Same

(8) If a bencher licensed to provide legal services in Ontario chooses under subsection (6) to continue in office as an elected bencher, he or she is eligible to be re-elected under subsection 16 (1), without prejudice to his or her right to become a bencher under subsection (1) or (2) at any time so long as he or she is still an elected bencher. 2006, c. 21, Sched. C, s. 12 (3).

### Attorney General, guardian of the public interest

13. (1) The Attorney General for Ontario shall serve as the guardian of the public interest in all matters within the scope of this Act or having to do in any way with the practice of law in Ontario or the provision of legal services in Ontario, and for this purpose he or she may at any time require the production of any document or thing pertaining to the affairs of the Society. R.S.O. 1990, c. L.8, s. 13 (1); 1998, c. 21, s. 7 (1); 2006, c. 21, Sched. C, s. 13.

### Admissions

(2) No admission of any person in any document or thing produced under subsection (1) is admissible in evidence against that person in any proceedings other than proceedings under this Act. R.S.O. 1990, c. L.8, s. 13 (2); 1998, c. 21, s. 7 (2).

### Protection of Minister

(3) No person who is or has been the Attorney General for Ontario is subject to any proceedings of the Society or to any penalty imposed under this Act for anything done by him or her while exercising the functions of such office. R.S.O. 1990, c. L.8, s. 13 (3); 1998, c. 21, s. 7 (3).

### Former Treasurers

14. Every licensee who previously held the office of Treasurer is a bencher by virtue of his or her office. 1998, c. 21, s. 8; 2006, c. 21, Sched. C, s. 14.

### Benchers licensed to practise law

15. (1) Forty persons who are licensed to practise law in Ontario as barristers and solicitors shall be elected as benchers in accordance with the by-laws. 2006, c. 21, Sched. C, s. 15.

### Regions

(2) The benchers elected under subsection (1) shall be elected for regions prescribed by the by-laws. 2006, c. 21, Sched. C, s. 15.

### Vacancies

(3) Any vacancies in the offices of benchers who are licensed to practise law in Ontario as barristers and solicitors may be filled in accordance with the by-laws. 2006, c. 21, Sched. C, s. 15.

### Ceasing to be bencher

(4) A person who is elected as a bencher under subsection (1) or who holds the office of elected bencher under subsection (3) ceases to be a bencher if the person ceases to be licensed to practise law in Ontario as a barrister and solicitor. 2006, c. 21, Sched. C, s. 15.

### Benchers licensed to provide legal services

16. (1) Two persons who are licensed to provide legal services in Ontario shall be elected as benchers in accordance with the by-laws. 2006, c. 21, Sched. C, s. 16.

### Regions

(2) If the by-laws so require, the benchers elected under subsection (1) shall be elected for regions prescribed by the by-laws. 2006, c. 21, Sched. C, s. 16.

### Vacancies

(3) Any vacancies in the offices of benchers who are licensed to provide legal services in Ontario may be filled in accordance with the by-laws. 2006, c. 21, Sched. C, s. 16.

### Ceasing to be bencher

(4) A person who is elected as a bencher under subsection (1) or who holds the office of elected bencher under subsection (3) ceases to be a bencher if the person ceases to be licensed to provide legal services in Ontario. 2006, c. 21, Sched. C, s. 16.

### First election

(5) The first election of benchers under subsection (1) shall take place on the day prescribed by the by-laws. 2006, c. 21, Sched. C, s. 16.

### Interim benchers

(6) Until the first election of benchers under subsection (1) takes place, their offices shall be filled by two persons appointed by the Attorney General for Ontario from among the five persons appointed to the Paralegal Standing Committee under clause 25.2 (2) (a). 2006, c. 21, Sched. C, s. 16.

### Same

(7) The benchers who hold office under subsection (6) at the time of the first election of the five persons referred to in clause 25.1 (3) (a) to the Paralegal Standing Committee continue to hold office under subsection (6) until the first election of benchers under subsection (1) takes place. 2006, c. 21, Sched. C, s. 16.

17.-21. Repealed: 1998, c. 21, s. 11.

### Removal for non-attendance

22. The benchers may remove from office any elected bencher who fails to attend six consecutive regular Convocations. R.S.O. 1990, c. L.8, s. 22.

### Lay benchers

23. (1) The Lieutenant Governor in Council may appoint eight persons who are not licensees as benchers. 2006, c. 21, Sched. C, s. 17 (1).

### Term of office

(2) Every appointment under subsection (1) expires immediately before the first regular Convocation following the first election of benchers under subsection 15 (1) that takes place after the effective date of the appointment. 2006, c. 21, Sched. C, s. 17 (2).

### Reappointment

(3) A person appointed under this section is eligible for reappointment. 1998, c. 21, s. 12.

### Deemed reappointment

(4) A person whose appointment expires under subsection (2) shall be deemed to have been reappointed until his or her successor takes office. 1998, c. 21, s. 12.

### Termination of appointment

(5) A person's appointment under this section is terminated if the person becomes a licensee. 2006, c. 21, Sched. C, s. 17 (3).

### Quorum

24. Ten benchers present and entitled to vote in Convocation constitute a quorum for the transaction of business. R.S.O. 1990, c. L.8, s. 24.

### Election of Treasurer

25. (1) The benchers shall annually, at such time as the benchers may fix, elect an elected bencher as Treasurer. 1998, c. 21, s. 13.

### Bencher by virtue of office

(2) The Treasurer is a bencher by virtue of that office and ceases to hold office as an elected bencher. 1998, c. 21, s. 13.

### Re-election as Treasurer

(3) The Treasurer is eligible for re-election as Treasurer, despite having ceased to hold office as an elected bencher, but,

(a) after a new election of benchers takes place under subsection 15 (1), a Treasurer who is a person licensed to practise law in Ontario may be re-elected as Treasurer only if he or she was elected as a bencher in that election; and

(b) after a new election of benchers takes place under subsection 16 (1), a Treasurer who is a person licensed to provide legal services in Ontario may be re-elected as Treasurer only if he or she was elected as a bencher in that election. 2006, c. 21, Sched. C, s. 18.

## OTHER LAW SOCIETIES GOVERNANCE

## APPENDIX 4

Province/ Territory and Membership (2006) <sup>39</sup>	Number of Benchers/Governors	Bencher Term	Life Bencher or Similar Office	Treasurer/President Term and Election/ <i>Ex officio</i> Status (if any)	Frequency of Convocation/ Council Meeting	Executive Committee	Rules of Procedure
British Columbia 11,036	Total of 32 benchers include: Attorney General, up to six lay benchers, elected benchers (25 elected benchers from nine electoral districts (Rule 1-20)) (Act s. 4, 5 and 7)	Two-year bencher term (Rule 1-1(2)); limit of four terms	Office of life bencher after four terms; honorific only, with no vote in bencher meetings (Rule 1-2)	One-year term for president, first vice- president, second vice-president (Rule 1- 3) (Second vice- president, who must be an elected lawyer bencher, elected by membership at AGM (Rule 1-18)); no <i>ex officio</i> status for former president	The Executive Director notifies the Benchers of the date, time and place of the next Bencher meeting or of an adjourned Bencher meeting. The Executive Director notifies the Benchers at least 48 hours before the meeting, or within less time if that is reasonable in the circumstances. (Rule 1-14)	Mandated executive committee; benchers may delegate any of the powers and duties of the benchers to the executive committee, subject to any conditions they consider necessary (Act s. 10)	Procedure at meetings, where not otherwise covered in Act or Rules, governed by <i>Robert's Rules of Order Newly Revised</i> (Rule 1- 15)
Alberta 11,272	Total of 24+ Benchers are: 17 elected benchers (Act s. 10) but where more than 1000 members, not to exceed 20; honorary benchers (Act s. 9) include the Minister, past Presidents of the Society who do not hold office as Benchers, and appointed honorary Benchers; four lay benchers (Act s. 11) Three districts for bencher election (Rule 8(1))	Elected for three year terms starting in 2005 (Act s. 12); limit of three terms (Rule 9)		One year term for President. The election of the President-Elect is conducted by secret ballot by benchers where more than one candidate is nominated. (Rules 27 and 28); no <i>ex officio</i> status for former President	Meetings of the Benchers are held as the Benchers determine. (Act s. 20(1))	Mandated executive committee includes the President, the President-Elect, four other Benchers elected from among the Benchers and one lay bencher (Rule 26)	The procedure at meetings of the Benchers governed by the current edition of <i>Robert's Rules of Order Newly Revised</i> (Rule 18)

<sup>39</sup> Source: Federation of Law Societies of Canada

Province/ Territory and Membership (2006) <sup>39</sup>	Number of Bencher/Governors	Bencher Term	Life Bencher or Similar Office	Treasurer/President Term and Election/ <i>Ex officio</i> Status (if any)	Frequency of Convocation/ Council Meeting	Executive Committee	Rules of Procedure
Saskatchewan 2117	Total of 23 Benchers are the Dean of the College of Law of the University of Saskatchewan; not less than 17 elected benchers, 50% from Regina or Saskatoon, 40% otherwise; includes a "new lawyer" bencher (in practice for less than 10 years); four lay benchers; federal and provincial Attorneys General as <i>ex officio</i> benchers ( <i>ex officio</i> benchers have no vote in convocation). (Act s. 6 and 7)	Three-year term (Rule 16); a limit of two consecutive terms; may run again after absence of one term (Rule 17)		One-year term for president (Rule 48); elected by benchers; vice-president elected at same time as president (Rule 60); immediate past president if a bencher remains as bencher for one year as member of Executive Committee (Rule 130)	Benchers meet at time/places as determined by benchers (Rule 90)	Mandated Executive Committee (Rule 130)	Disputes on procedures not provided for in the Act or Rules resolved by the Chairperson (the president) (Rule 92)
Manitoba 2037	In 1995, reduction from 34 to 16 elected benchers; total of 23 Benchers are 10 lawyers from Winnipeg; two lawyers from the Western Electoral District; one lawyer from each of the four other districts; one articling student; the immediate past president; four lay benchers; the Minister of Justice and Attorney General of Canada and the Minister of Justice and Attorney General of Manitoba ( <i>ex officio</i> ); the Dean of the Faculty of Law of the University of Manitoba (Act s. 5); honorary benchers may also be	Two-year term (election held every even-numbered year); after 8 years as elected bencher, bencher becomes a life bencher (Act. s. 9(1)(a))	Members who have completed a term as president and members who have served as a bencher for at least eight years (Act. s.9)	President and vice-president elected every year (Act s. 11(1)); past president becomes a life bencher (Act. s. 9)	Not less than six meetings of benchers yearly (Rule 2-33)		Procedural issues governed by <i>Roberts Rules of Order</i> (Rule 2-43)



Province/ Territory and Membership (2006) <sup>39</sup>	Number of Benchers/Governors	Bencher Term	Life Bencher or Similar Office	Treasurer/President Term and Election/ <i>Ex officio</i> Status (if any)	Frequency of Convocation/ Council Meeting	Executive Committee	Rules of Procedure
	appointed						
Quebec (Barreau) 21,364 <sup>40</sup>	37 members on the General Council, including 31 delegates from various regions, the Bâtonnier and vice-president; four representatives from the Office des Professions			Bâtonnier and vice-president each serve a term of one year	At least four times per year	The Executive Committee includes 13 members of the <a href="#">General Council</a> and looks after day-to-day administration between meetings of the General Council, whose powers it exercises (except those exercised by regulation).	
New Brunswick 1602	Total of 29 Benchers <sup>41</sup> include: the immediate Past-President; the Minister or designate; the Dean of the University of New Brunswick Faculty of Law; the Dean of	Two-year term for elected benchers (Act s. 8(2)); incumbent is		Elected together with vice-president and treasurer by membership at annual general meeting (Act. s. 14(1))	Monthly meeting of council (Rule 67(1))	Mandated executive committee includes the President, Vice-President,	

<sup>40</sup> 2005 data

<sup>41</sup> S. 7(2) The total number of elected Members of Council, the number and boundaries of regions, the number of Members of Council to be elected from each region and the selection of other local law societies to be represented by a Member of Council may be changed or established, by rule made by

(a) a resolution of the Society passed by not less than two-thirds of the members present and entitled to vote at a general meeting of which written notice of the proposed change has been given to the members, or

(b) an affirmative vote of not less than two-thirds of those members voting in a referendum respecting the proposed change.

Province/ Territory and Membership (2006) <sup>39</sup>	Number of Bencher/Governors	Bencher Term	Life Bencher or Similar Office	Treasurer/President Term and Election/ <i>Ex officio</i> Status (if any)	Frequency of Convocation/ Council Meeting	Executive Committee	Rules of Procedure
	the Université de Moncton Faculty of Law; and 19 elected benchers from various regions; three lay benchers; president, vice-president and treasurer (Act s. 6 and 7)	ineligible to run in election if elected in more than two immediately preceding elections (Act s. 8(4))				Treasurer and Executive Director.	
Nova Scotia 2896	In 1998-99, number of benchers reduced from 48 to 31 members, and three public representatives; new structure adopted in 2009 effective 2011 <sup>42</sup> , but currently, the Benchers (members of council) are: 21 elected barristers from four judicial districts; others include Attorney General or representative appointed by Attorney; the President, the Vice-presidents, the immediate Past President; Dean of Dalhousie Law School; three lay benchers appointed by the Council (Act s. 7(1) and Reg. s. 2.3.1))	Council members can only serve maximum of three two-year terms (Reg. s.2.3.3. and 2.3.5)  Term of council runs from AGM to AGM (Reg. s. 2.3.5)		President holds office from election/ appointment to next annual general meeting (Act s. 8(5)); members elect the second Vice-president	A minimum of six Council meetings per year (Reg. s. 2.3.8)	Executive committee mandated, "to assist the officers in carrying out their responsibilities, to review matters to be dealt with by Council to ensure they are ready for Council consideration, and to undertake those matters that are delegated to it by Council; (Reg. s. 2.9.1(e))	Procedure at council meetings is parliamentary procedure (Reg s.2.3.13)

<sup>42</sup> The Nova Scotia Barristers' Society recently adopted reforms to be implemented in 2011 that will result in a board of 22 individuals, composed of 21 voting members (including three lay members) and one non-voting member (the Executive Director).

Province/ Territory and Membership (2006) <sup>39</sup>	Number of Bencher/Governors	Bencher Term	Life Bencher or Similar Office	Treasurer/President Term and Election/ <i>Ex officio</i> Status (if any)	Frequency of Convocation/ Council Meeting	Executive Committee	Rules of Procedure
Prince Edward Island 273	Total of 12 Benchers (members of council) are: president, past president, vice-president; secretary-treasurer; six members; two lay council members appointed for three-year term by the Lieutenant Governor in Council (Act s. 7)	One-year term; retiring members of council are eligible for re-election		President, vice-president and six council members elected at AGM by members of the Society (Act s. 7(2))	Meetings held as called by the president or secretary-treasurer, or requisition of four council members (Act s. 9(1))		Meetings of council to be conducted by parliamentary procedure (Reg s. 5)
Newfoundland 857	Total of 22+ Benchers are: 17 elective benchers from various regions; the Registrar of the Supreme Court; honorary benchers (former treasurers); and four appointed benchers. (Act s.7)	Bencher election held every year (Act s. 9); benchers are elected for four year terms, but benchers can serve two terms (eight years) and then must wait 12 months following the term to run again for election (Act s. 13). In each year four elective benchers and one appointed bencher		One-year term for president and vice-president (appointed by benchers). past president serves as bencher for one year only and may attend bencher meetings	Convocation meets at least five times a year (Act s. 17)	Mandated executive committee established by benchers of at least five benchers (Act s. 23); the benchers may determine the duties of the executive committee and delegate authority to it.	Procedure at Convocation by "ordinary parliamentary mode" (Rule 2.06(4))  Order of proceedings at Convocation prescribed (Rule 2.07)

Province/ Territory and Membership (2006) <sup>39</sup>	Number of Benchers/Governors	Bencher Term	Life Bencher or Similar Office	Treasurer/President Term and Election/ <i>Ex officio</i> Status (if any)	Frequency of Convocation/ Council Meeting	Executive Committee	Rules of Procedure
		cease holding office. (Act s. 14)					
Yukon 238	At least six benchers (called the Executive) are: at least four elected, two lay appointees (Act s. 4); Executive composed of President, 1st Vice-President, 2nd Vice-President, Treasurer, Secretary	Election every year – term is one year for elected bencher (Act s. 4)	Immediate past president is an honorary member of the Executive, may participate in any meeting of the Executive and may vote and form part of any quorum required. (Rule 17)	At general election, members elect candidates for offices of president, first vice-president and elect three additional candidates at large who decide amongst themselves which of them will serve as Second Vice-President, Secretary, and Treasurer. (Rule 30); for <i>ex officio</i> status, see Life Bencher Office column	A meeting of the Executive may be called at any time by the President or by any two members of the Executive. (Rule 40)		
Northwest Territories 407	Five Benchers (called the Executive) are: at least four elected, one lay appointee (Act s. 3); Members of the Executive are the President, the Vice-President, the Secretary and the Treasurer (Act s. 6) The Attorneys-General (NWT and Canada) and past Presidents of the Society are honorary members of the Executive, but cannot vote (Rule 5)	Two active members shall be elected to the Executive in each year (Rule 6).		The members of the Executive choose from among themselves the President, the Vice-President, the Secretary and the Treasurer (Act s. 6).	A meeting may be called at any time by any two members of the Executive or by the President or, in the absence of the President, by the Vice-President. (Rule 20)		

Province/ Territory and Membership (2006) <sup>39</sup>	Number of Bencher/Governors	Bencher Term	Life Bencher or Similar Office	Treasurer/President Term and Election/ <i>Ex officio</i> Status (if any)	Frequency of Convocation/ Council Meeting	Executive Committee	Rules of Procedure
Nunavut 190	Executive composed of one person, who is not a member of the Society, appointed for a term of three years; and not less than four other persons who are elected from among the members of the Society who are resident in Nunavut.(Act s. 3)	Two year term in accordance with Rules. Every retiring member of the Executive is eligible for nomination and re-election to the Executive.		The members of the Executive shall choose from among themselves the officers of the Society, namely, the President, the Vice-President, the Secretary and the Treasurer, and the offices of the Secretary and Treasurer may be held by the same person. (Act s. 6)	In accordance with Rules		

Notes on bencher terms/life bencher status:

*Law Society of British Columbia*

Bencher serve a maximum of four two-year terms, after which they are ineligible to run as a bencher candidate. A partial term counts as a whole term. Life bencher status is given to those who reach the term limit, but in practice, the status is honorific only. Life benchers do not attend and participate in Convocation. The only function the life benchers perform is as panelists on discipline hearings.

*Law Society of Alberta*

Bencher serve a maximum of three three-year terms, after which they are ineligible to run as a bencher candidate. Once a bencher has served the maximum number of terms, he or she is no longer a bencher. There is no office of life bencher or other ex officio status given to such benchers.

*Law Society of Saskatchewan*

Bencher may serve a maximum of two three-year terms (consecutively), after which they are ineligible to run as a bencher candidate for at least one full term. There is no life bencher or other ex officio status given to benchers who serve the maximum number of terms.

*Law Society of Manitoba*

Benchers may serve a maximum of four two-year terms, after which they are ineligible to run as a bencher candidate. Benchers who serve the maximum number of terms are given life bencher status, which entitles them to speak but not vote at the equivalent of Convocation (no life benchers have attended the bencher meeting for some time). They also serve as panelists on discipline hearings.

*Barreau du Quebec*

Benchers typically serve a one-year term, but there are no rules on a maximum number of terms. The experience has been that few benchers serve for more than one term. There is no office of life bencher.

*Nova Scotia Barristers Society*

Benchers serve for a maximum of three two-year terms. A part of a term is not counted as a term. Benchers who have served the maximum can run again as a candidate after waiting one full term, but in practice, no one does this. There is no office of life bencher or any other role for benchers who have served the maximum number of terms.

*Law Society of Newfoundland and Labrador*

Benchers serve a maximum of two four-year terms, after which they are ineligible to run as a bencher candidate for a period of one year. There is no office of life bencher or any other role for benchers who have served the maximum number of terms.

## Composition of Discipline Hearing Panels at Other Law Societies in Canada

British Columbia	Alberta	Saskatchewan	Manitoba	New Brunswick	Nova Scotia	PEI	Nfld. & Labrador	NWT
<p>Panel must be an odd number of persons but must not be one person</p> <p>Panel must be chaired by a Benchers who is a lawyer.</p> <p>All Benchers, all Life Benchers and all lawyers are eligible to be appointed to a panel.</p> <p>No requirement that lay benchers sit on panels, but lay benchers are members of the current Discipline Committee.</p>	<p>A panel is 3 or more Benchers other than the President or any Benchers disqualified from sitting on the Committee</p> <p>Panelists can include an honorary Benchers who was a President of the Society in the 10 years immediately preceding the appointment</p>	<p>A panel is not more than 5 benchers or members</p> <p>A panel may include a lay benchers but there is no requirement that a lay benchers sit.</p>	<p>Not less than 6 benchers must be on the Discipline Committee; the Committee sits in 3 member panels</p> <p>At least 2 of the three must hold current practising certificates. However, there is no requirement that any of the three be benchers (the Act permits members to be appointed to committees).</p> <p>There is no requirement that a lay benchers sit on panels.</p>	<p>Discipline Committee consists of:</p> <ul style="list-style-type: none"> <li>• 10 practising members appointed by Council, 5 to be appointed for a term of one year and 5 for a term of 2 years, and subsequent appointments shall be for terms of 2 years, and</li> <li>• 4 lay persons appointed by the Minister of Justice, 2 to be appointed for a term of 1 year and 2 for a term of 2 years, and subsequent appointments shall be for terms of 2 years.</li> </ul>	<p>The Hearing Committee is lawyers and non-members of the Society.</p> <p>The Hearing Committee is at least 12 persons, none of whom may be members of Council and, unless Council otherwise determines, must include at least 2 members of the Society from each of the 4 judicial districts and 2 persons who are not members of the Society.</p> <p>The Committee sits in panels</p>	<p>Two panels of the Discipline Committee, consisting of 6 members and 2 lay persons (one appointed by the Lieutenant-Governor-in-Council) on each committee</p>	<p>The Discipline Panel is at least 20 members who are not elective benchers, 1 of whom shall be appointed to serve as chairperson, and 10 lay people appointed by the minister Individual panels (the adjudication tribunal) are composed of 3 people, of whom 2 are members and 1 lay person. The chair of the disciplinary panel appoints one of the members on an adjudication</p>	<p>Discipline Committee is composed of not less than nine people the majority of whom are active members resident in the Territories; this Committee appoints the members of the Discipline Committee from among the members of the Society.</p>

<b>British Columbia</b>	<b>Alberta</b>	<b>Saskatchewan</b>	<b>Manitoba</b>	<b>New Brunswick</b>	<b>Nova Scotia</b>	<b>PEI</b>	<b>Nfld. &amp; Labrador</b>	<b>NWT</b>
				The Committee sits in panels of 5, which must include 1 lay member.	of 3 or more members.		tribunal to be the chair.	



**OTHER PROFESSIONS IN ONTARIO<sup>43</sup>**

<b>CPSO</b>	<b>ICAO</b>	<b>OAA</b>	<b>PEO</b>	<b>CTO</b>	<b>RECO</b>
<b>Composition of Governing Council or Board</b>					
<p>32 but not more than 34 members, including: 16 physicians elected by their peers on a geographical basis every 3 years; physicians appointed from among the 6 faculties of medicine in Ontario, no fewer than 13 and no more than 15 non-physician or public members appointed by the provincial government for terms decided by the government.</p> <p>Both medical faculty members and public members may be re-appointed at the end of their terms.</p> <p>Term of office is a</p>	<p>Not more than 16 persons who are members of the Institute and are elected by the membership; 4 public representatives appointed by the government who are not members of the governing body of a self-regulating licensing body under any other Act.</p> <p>Elected members hold office for a term of 2 years; except that the member of Council who was elected to the office of Chair of the Institute during the second year of his or her term shall</p>	<p>Not fewer than 12 and not more than 20 elected architects; not fewer than 3 and not more than 5 public representatives appointed by the government who are not members of the governing body of a self-regulating licensing body under any other Act; the immediate past president of the Council, if he or she is not an elected member of the Council.</p> <p>The Council elects a president, a treasurer and one or more vice-presidents from among its elected members.</p>	<p>Not fewer than 15 and not more than 20 persons who are elected engineers; not fewer than 5 and not more than 7 persons who are engineers appointed by the government; not fewer than 3 and not more than 5 persons who are public representatives appointed by the government who are not members of the governing body of a self-regulating licensing body under any other Act; and the holders of offices prescribed by the regulations who are not members of the Council as described</p>	<p>23 teachers elected by the members; 14 public representatives appointed by the government</p> <p>Term of office is 3 years, except as permitted by regulation.</p> <p>A person may be a Council member for more than 1 term but not for more than 7 consecutive years.</p> <p>The Council must meet at least 4 times a year.</p> <p>The officers are the Chair, Vice-Chair, Registrar, Deputy Registrar and others as</p>	<p>Minimum of three and maximum of 12 directors, at not more than 9 of whom must be elected by members.</p> <p>The government may appoint 1 to 3 directors.</p> <p>The board must meet at least once per year. A simple majority is quorum.</p> <p>The board appointed the Chair, vice-Chair, CEO, President, Secretary, Vice-Presidents, treasurer. None of whom need to be on the board except the chair and vice-chair.</p> <p>Term of office is 1 year. The maximum is 3</p>

<sup>43</sup> CPSO = College of Physicians and Surgeons of Ontario  
ICAO = Institute of Chartered Accountants of Ontario  
OAA = Ontario Association of Architects  
PEO = Professional Engineers of Ontario  
CTO = College of Teachers of Ontario  
RECO = Real Estate Council of Ontario

CPSO	ICAO	OAA	PEO	CTO	RECO
<p>maximum of 3 years. Councillors may not serve more than 3 terms (9 consecutive years).</p> <p>The College President is elected from and by Council for a one-year term.</p> <p>Council meetings number 4 or 5 per year.</p>	<p>not be required to seek reelection to the Council and shall continue to serve as a member of the Council and shall hold the office of Chair until the completion of his or her term as Chair.</p> <p>Following the annual election, the new Council elects from its members a chair, a vice chair and such other officers as appropriate. With the president and chief executive officer, these people act as an Executive Group on behalf of the Council in accordance with terms of reference approved by the Council.</p> <p>The Council appoints a president and chief executive officer and a Registrar.</p>	<p>Council members elect from among the elected members a president, a vice-president and treasurer and 2 or more vice-presidents.</p> <p>The council fixes the term of office of the president, the vice president and treasurer and the vice-presidents but the term of office can't exceed 18 months.</p> <p>The president's limit is 2 terms in succession.</p> <p>The Council shall meet at least 4 times a year.</p> <p>The term of office of members of the Council is 3 years.</p>	<p>above.</p> <p>15 members are elected to the Council as follows: 13 members are elected for a 2-year term of whom 3 members shall be elected as councillors-at-large by and from among the Members, 2 members shall be elected by and from among the members in each of 5 regions, and 2 members shall be elected annually by and from among the members as a president-elect and a vice-president.</p> <p>Additional officers: the president, who is a member and who was president-elect in the immediately preceding year; a vice-president, who shall be appointed annually by Council from among its engineer members (elected or appointed) at a meeting of Council; the past president,</p>	<p>the Council determines from time to time.</p> <p>The Council, at the first meeting following an election, elects a Chair and Vice-Chair to hold office until the first meeting following the election of the next Council.</p>	<p>consecutive terms.</p>

CPSO	ICAO	OAA	PEO	CTO	RECO
			who is a member and who was the president in the immediately preceding year.		
CPSO	ICAO	OAA	PEO	O	RECO
Composition of Discipline Committees and Hearing Panels					
<p>Panel: at least 3 but not more than 5 persons</p> <p>At least 1 person must be both a member of the College and a member of Council.</p> <p>At least 2 persons must be appointed Council members.</p> <p>A quorum is 3 members, one of whom must be an appointed Council member.</p>	<p>Discipline committee consists of members of the Institute, including a chair and deputy chairs, and public representatives appointed by Council</p> <p>Panel: not fewer than 3 members, one of whom must be a public representative and if the charged member holds a public accounting license, one of whom must hold such a license.</p> <p>Chair of the Discipline Committee chooses the chair of the panel.</p>	<p>Discipline Committee is composed of at least 1 elected Council member, at least 1 public appointee member of Council and Council appointees who are architects with not less than 10 years practice experience</p> <p>Quorum is 3 members, one of whom must be a public representative member of Council.</p> <p>The chair appointed by Council must be an elected member of Council.</p>	<p>Discipline Committee is composed of at least 1 elected Council member, at least 1 engineer who is appointed to the Council and Council appointees who are engineers with not less than 10 years practice experience</p> <p>The Committee may also include one or more public representative appointees to Council.</p> <p>Quorum is 5 members, one of whom must be a public appointee to the Council and one of whom must be an elected member of Council.</p> <p>The members of the Discipline Committee</p>	<p>Discipline Committee is at least 11 members appointed by Council.</p> <p>A majority of the Committee must be elected Council members</p> <p>A panel of the Committee must consist of at least 3 persons, a majority of which must be members of the Committee. The panel must include at least 1 member of the Committee who was elected to the Council and at least 1 member of the Committee who was appointed to the Council. A member of the panel who is not a member of the Committee must be on a roster of eligible panelists for the committee established under the Act. The</p>	<p>Discipline committee appointed by the board is at least 5 members, one of whom has never been a registrant or a shareholder, officer, director or employee of a registrant or former registrant.</p> <p>Members of the board cannot be appointed to the discipline committee. The board appoints a chair and vice chair of the committee.</p> <p>Panel: at least 3 members of the committee, at least 2 of which must be registrants and 1 person who has never been a registrant or a shareholder, officer, director or employee of a registrant or former registrant. (Specific members required for specific</p>

CPSO	ICAO	OAA	PEO	CTO	RECO
			name a member of the Committee to be chair.	<p>Council may establish the roster consisting of people the Council considers qualified.</p> <p>The government may appoint people to the roster as he or she considers appropriate.</p> <p>At least 4 members of the Committee must be public appointees.</p> <p>Council appoints one member of the Committee as chair.</p> <p>The chair of the Committee appoints panellists and appoints the panel chair from among the Committee members.</p>	<p>hearings (e.g. if a "broker of record" is the subject of the hearing, one member of the panel must be a broker of record).</p>

## APPENDIX 5

## THE NATURE OF CONVOCATION

The information in the following charts discloses the following about Convocation:

1. The number of candidates for the benchers election has declined from a high of 122 in 1995. The number of candidates in 1999 was 84. A similar number of candidates ran in the 2003 and 2007 elections (approximately 100);
2. In 1995, 16 of 22 incumbents who ran were re-elected, and 24 new candidates were elected. But since 1999, the vast majority of incumbents who ran were re-elected.
3. In 1995, the 16 elected incumbents made up 40% of elected benchers. In the following three elections, incumbents made up at least 70% of elected benchers in Convocation. The results of a 2007 survey of bencher election candidates<sup>44</sup> confirmed that among the sample of benchers who responded, incumbents were significantly more likely to be elected than non-incumbents.<sup>45</sup>

---

<sup>44</sup> The survey may be accessed at [http://www.lsuc.on.ca/media/convoc08\\_eaic.pdf](http://www.lsuc.on.ca/media/convoc08_eaic.pdf)

<sup>45</sup> Comment was made on the incumbency factor in a January 2007 report prepared by the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones on spending limits for the 2011 bencher election. Part of that report includes a discussion of factors that affect chances of success in the bencher election. The relevant excerpt is as follows:

**Factors That Affect Chances Of Success**

1. This section provides a brief overview of factors that have influenced campaigning strategies and the likelihood of success in bencher election. It is clear that a number of candidates enter the election process with some advantage because they are incumbent benchers or because of factors such as name recognition or resources. Convocation is asked to take these factors into account when considering the Committee's motion.  
...
2. Another factor that strongly influences the bencher election process is the increased likelihood of success of incumbent benchers. ... Options that provide non-incumbents equal access to electors would likely enhance the fairness of the election process by allowing them to campaign and providing them with an opportunity to increase their name recognition. This is not as critical for incumbent benchers who are likely to benefit from name recognition and a profile because of their role as benchers.

4. The breakdown by firm size among elected benchers has been consistent over the last four elections. Roughly speaking, the number of benchers from large firms and sole practices is similar (between eight and 10 benchers in each category) and the number from small/medium-size firms is double that number (approximately 19);
5. Thirteen women were elected as benchers in 1995. While this number dropped to eight in 1999, it has increased steadily since then (to 18 in the 2007 election). With the appointment of two female benchers to the bench and the resignation of two female benchers in the current term, this number is now 14;
6. In recent elections, no Francophone benchers have been elected. Three benchers (7.5% of elected benchers) from racialized and Aboriginal communities were elected in each of the last two elections. This number increased to five as a result of elections during the bencher term. One bencher from a racialized community was elected in each of 1995 and 1999;
7. While candidates and elected benchers come from a wide range of practice areas, barristers have consistently outnumbered solicitors more than five to one among elected benchers in the last four elections, even though solicitors represent 30% of all lawyers;
8. The elected benchers have become a progressively older group since 1995. From 1995 onward, an increasing number of individuals 50 and older were elected. Only one individual over 60 was elected in 1995. This number increased to 11 in 1999, to 13 in 2003 and to 16 in 2007;
9. There are very few younger members of the profession elected to Convocation.

**Chart 1 – Profile of Elected Benchers 1995-2007**

Year	Number of candidates	Number of new benchers elected and %	Number of incumbents elected and %	Number from regions outside Toronto elected	Female Benchers	Racialized Elected	Francophone Elected	Aboriginal Elected
1995	122 (46 Toronto; 76 outside)	24 of 100 new candidates (60% of elected benchers)	16 of 22 incumbents (40% of elected benchers)	No regional bencher process	13 elected from 33 female candidates	1	0	0
1999	84 (35 Toronto; 49 outside)	11 of 53 new candidates (27.5% of elected benchers)	29 of 31 incumbents (72.5% of elected benchers)	*CE – 2, CS – 2, CW – 2, E – 7, NE – 1, NW – 2, SW – 4	8 elected from 21 female candidates	1	0	0
2003	102 (55 Toronto; 47 outside)	12 of 71 new candidates	28 of 31 incumbents	CE – 1, CS – 2, CW – 2, E – 8, NE – 1	11 elected from 28 female candidates	1	0	2

	outside)	(30% of elected benchers)	(70% of elected benchers)	– 2, NW – 1, SW – 4	female candidates			
2007	99 (51 Toronto; 48 outside)	12 of 68 new candidates (30% of elected benchers)	28 of 31 incumbents (70% of elected benchers)	CE – 2, CS – 2, CW – 2, E – 7, NE – 3, NW – 1, SW – 3	18 elected from 33 female candidates	2	0	1

\* CE – Central East, CS – Central South, CW – Central West, E – East, NE – Northeast, NW – Northwest, SW – Southwest

**Chart 2 – Profile of Elected Benchers – Practice, Firm Size and Age 1995-2007**

Year	Number of candidates	Practice areas represented by all candidates (where they can be identified)	Practice areas represented by elected benchers	Barristers vs. solicitors among elected benchers	Size of law practices of elected benchers	Ages of elected benchers (numbers greater than 1 of a particular age noted)
1995	122 (46 Toronto; 76 outside)	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia, public sector/government, clinic lawyer, journalist	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia, public sector/government	30 barristers 7 solicitors	Large firm – 8, small/medium firm – 20, sole practitioners - 9	<u>Range: 38 to 65</u> 38, 40, 41, 42(2), 43 (2), 44(4), 45(2), 46(3), 47, 48(2), 50(5), 51 (3), 52(3), 53(3), 55, 57(2), 58, 59(2), 65
1999	84 (35 Toronto; 49 outside)	Family law, criminal law, civil litigation, ADR, real estate, estates, immigration, corporate/commercial, academia, public sector/government, clinic director	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia	30 barristers 7 solicitors	Large firm – 9, small/medium firm – 19, sole practitioners - 9	<u>Range: 44 to 70+</u> 44, 45(2), 46, 47(2), 48(2), 49(2), 50, 51, 52(4), 54(6), 56(4), 57, 59(2), 60(2), 61(3), 62, 63(2), 64, 76, 70+
2003	102 (55 Toronto; 47 outside)	Family law, criminal law, Crown Attorney, civil litigation, immigration, real estate, estates, corporate/commercial, academia, public sector/government, legal aid, in-house counsel, clinic director	Family law, criminal law, civil litigation, real estate, estates, immigration, corporate/commercial, academia, public sector/government, in-house counsel	30 barristers 5 solicitors	Large firm – 9, small/medium firm – 19, sole practitioners - 7	<u>Range: 42 to 68</u> 42, 44(3), 48, 51(6), 52(2), 53(2), 54(2), 56(3), 57(2), 58(5), 60(2), 61, 62, 63(2), 64(2), 66, 67(3), 68
2007	99 (51 Toronto; 48 outside)	Family law, criminal law, Crown Attorney, civil litigation, real	Family law, criminal law, civil litigation, real estate, estates, immigration,	30 barristers 5 solicitors	Large firm – 9, small/medium	<u>Range: 39 to 80+</u> 39, 41, 46, 47, 48(3),

<b>Year</b>	<b>Number of candidates</b>	<b>Practice areas represented by all candidates (where they can be identified)</b>	<b>Practice areas represented by elected benchers</b>	<b>Barristers vs. solicitors among elected benchers</b>	<b>Size of law practices of elected benchers</b>	<b>Ages of elected benchers (numbers greater than 1 of a particular age noted)</b>
	outside)	estate, estates, immigration, corporate/commercial, academia, public sector/government, legal aid, in-house counsel, clinic director	corporate/commercial, academia, public sector/government, clinic director		firm – 21, sole practitioners - 5	50, 51, 52(4), 54, 55(4), 56(2), 57(2), 58, 59, 61(3), 62(2), 64, 65, 66, 68(2), 69, 70, 71(2), 74, 80+



**Chart 3 - Information on the 12 Current Life Benchers**

<b>Benchers</b>	<b>Location (Region)</b>	<b>Practice Area/Retired</b>	<b>Barrister or Solicitor</b>	<b>Size of Firm If Applicable</b>	<b>Years Served as Benchers (2009)</b>
1	Metro Toronto	Counsel (criminal law firm)	Barrister	Small/medium	38
2	Metro Toronto	Criminal/civil litigation	Barrister	Small/medium	18
3	East	Real estate	Solicitor	Small/medium	18
4	Metro Toronto	Civil litigation	Barrister	Large	18
5	Southwest	Civil litigation	Barrister	Small/medium	34
6	Metro Toronto	Retired	-	-	34
7	Metro Toronto	Civil litigation	Barrister	Small/medium	22
8	Southwest	Civil litigation	Barrister	Small/medium	26
9	Northwest	Counsel (full service firm)	Solicitor	Small/medium	18
10	Northeast	Criminal Law	Barrister	Sole practitioner	18
11	Central West	Retired	-	-	30
12	Central South	Litigation	Barrister	Small/medium	30

## APPENDIX 6

## ISSUES ARISING FROM THE CURRENT STRUCTURE OF CONVOCATION

## Feedback from Lay Benchers, Former Treasurers and Paralegal Standing Committee Members on Governance Issues

1. A range of views was expressed by these individuals in the meetings with the Task Force in late 2007 and early 2008. The meetings were intended to obtain feedback on some options that the Task Force was discussing with respect to discontinuing or making more effective the *ex officio* status of life benchers and former Treasurers and term limits on benchers' service.

The Views of Former Treasurers

2. Former Treasurers Laura Legge, George Finlayson, and Sydney Robins, in addition to former Treasurer Vern Krishna who is a member of the Task Force, met with the Task Force. The Task Force appreciates the time these individuals took to provide their comments.
3. They opined that Convocation cannot be treated like another board. Convocation is not like a board of directors that is answerable to members (shareholders), but is answerable to the public, as part of a self-governing independent profession.
4. Generally, the group of former Treasurers thought that ending *ex officio* status for former Treasurers would be discouraging the availability of those who can be of assistance to Convocation. The group thought that former Treasurers should continue to have a vote in Convocation and that they can be a calming, non-partisan voice on issues and know how Convocation works.
5. The group was not offended by the idea of a requirement that former Treasurers must attend Convocation to keep their voting privileges.
6. They also cautioned that as changes to *ex officio* status would require amendments to the *Law Society Act*, the Law Society does not have control over the matter once with the government.
7. They queried why certain bencher positions would be eliminated if benchers are needed to populate committees and serve on discipline panels.
8. The group also said that there is an argument a lawyer should be free to run and be elected every election. But they also saw an argument for term limits, with a suggestion that it be 16 years. Some of the group said that there is inherent value in renewal, and that no one should be permitted to run and be elected term after term indefinitely.
9. With respect to diversity in Convocation, the view was that the Law Society should not assist in ensuring certain groups are represented in Convocation, as this is matter for the profession through the votes in the bencher election.

Views of the Lay Benchers

10. The lay benchers with whom the Task Force met offered a range of views.
11. On the size of Convocation, some saw the total number of benchers (83) as a non-issue. Some said that the *status quo* should be maintained, including the current complement of and processes for adding *ex officio* benchers. Another said that the number of elected benchers should be increased because of the increase in the membership of the Law Society.
12. Some said that term limits should not be imposed as it would “stunt” democracy to impose such limits. There is no shortage of candidates, and term limits will not attract more people to run. A related view was that reducing the length of the term does not make sense, as people need time to get their stride.
13. Another view was that there should be limits on the number of terms, but a bencher should be permitted to run again after being away for one term. This would effectively end life bencher status. Those who are now life benchers and who will qualify at the end of the term should be grandparented.
14. More important than reducing numbers in Convocation is the discipline around what is done in Convocation. One idea would be to place limits on the time a bencher may speak. Improvements can be made around efficiency without dealing with the numbers.
15. Some said that a bencher should only participate in Convocation if he or she participates as an adjudicator in discipline matters. The view was that every bencher should make himself or herself available for discipline, and should only be remunerated when he or she serves on a discipline panel.
16. Some saw permitting former Treasurers to vote in Convocation as a bad practice, as they can determine the result of a matter without electoral accountability. But another view was that there are not enough former Treasurers who come to Convocation on a consistent basis to worry about the effect of the vote. Others said that perhaps there should be an attendance requirement or some kind of contribution made to maintain the vote.

Views of Members of the Paralegal Standing Committee

17. Some members of this committee questioned whether having 60 voting benchers is effective governance. They said that while the elected members of Convocation should never be “outweighed” by the *ex officio* members, it may be appropriate to keep some life benchers and former Treasurers. This would be a less radical change than eliminating them but would be an attempt to reduce numbers.
18. An alternative view was that from the public perspective, having 40 elected benchers deciding on regulation of lawyers is not good governance. Benchers govern in the public interest, and a defence to criticism of self-regulation might be to have only 50% elected benchers. The remaining *ex officio* complement would be present, who are not elected although they once were.

19. One suggestion was that the Law Society should create the office of vice-Treasurer, who would be elected for that office. This would allow the sitting Treasurer to share some of the burden going forward.
20. The group also suggested that the Law Society should have either a cabinet or executive committee. Because of concerns among benchers about who is or who is not included on an executive committee, it may be preferable to have a “cabinet” of standing committee chairs. One view was that Convocation would benefit from an “early warning” system for the purpose of advising on issues of importance that are coming forward. This could be done either through the chairs or a document distributed one month ahead of Convocation.
21. Some in the group did not see the numbers in Convocation as necessarily a problem. The number of elected benchers permits regional and equity diversity. However, the ability to elect qualified people can be an issue.
22. Some saw an efficiency issue in Convocation. They thought it meets too often, is unwieldy, is run by a few, has no measure of productivity and needs to make better use of time. Comments turn into speeches. Convocation should sit a full day but less often. Also, the meeting room is cramped and does not lend itself to the work (e.g. benchers not at the table, balancing material on their laps). This does not motivate benchers to contribute their best. Lastly, housekeeping matters should be taken off Convocation’s agenda.
23. Others saw a board of 50 people as ludicrous. There is a problem with the number of *ex officio* benchers. They provide history and corporate memory, but they should be used in another, more limited way. Life benchers serve on discipline hearings, but they do not need to be in Convocation. An idea is to create life benchers earlier.
24. While the group acknowledged the lack of younger benchers, they also recognized that a person needs time to be bencher, which means a well-established practice and a lawyer with some years of experience.
25. Some questioned the merits of term limits.
26. One view was that Convocation may want to look at a military organizational model. Older leaders who are no longer in operations fulfill an advisory capacity, and sit apart but provide continuity and history.

#### Issues Raised by Benchers at the Governance Workshop

27. The November 2008 bencher workshop was designed to obtain the views of benchers about the governance principles noted above (see Appendix 2), how Convocation is performing in respect of each of the principles and issues that arose from the views benchers expressed about Convocation’s performance in respect of the principles.
28. As reported to February 2009 Convocation, the workshop indicated that there is a wide spectrum of views related to governance reform among benchers. Some are satisfied with the *status quo* or see that only minor changes are needed. Others see a need for more significant reform.

29. The workshop also provided the Task Force with advice regarding several major themes or topics<sup>46</sup>, which include a number of sub-issues, for further analysis and reflection. These topics and issues, outlined below, provided the basis for discussion at the external consultations, discussed later in this report.
30. The information that follows was included in a report on the workshop distributed to benchers in January 2009.

The response to the governance principles

31. Benchers were asked to consider the five principles of sound governance (legitimacy and voice, performance, direction, accountability and transparency, and fairness) and to indicate, first, how important they thought that principle was to the Law Society, and second, how well the Law Society was performing in respect of each principle.
32. Benchers rated all the principles as important. The last two principles – accountability and fairness – were rated especially important relative to the others. The principle of direction, although significant, was seen as somewhat less important than the others.
33. When benchers were invited to comment on how well they thought the Law Society was performing in each of these broad areas, there were significant discrepancies between the importance accorded to the principle and the perceived performance of the Law Society in fulfilling that principle. The Task Force acknowledges that it may have been somewhat difficult for benchers to vote on these matters, as each principle raised a number of subsidiary issues or questions. Feedback from some benchers was that they thought the Society might be doing well in one dimension of the principle but less well in another.
34. Generally, the responses suggest work is needed at the Law Society to narrow the gap between principle and performance. For the principle rated most important by benchers – accountability and transparency - about two-thirds of participants thought that the Law Society's performance in this area was "adequate" or worse, even though over 90% of participants rated this area as "somewhat" or "highly" important to the Society. A similar gap existed with respect to each of the principles, with the most notable being in the sphere of fairness, which was also seen as especially important to the Law Society.
35. With respect to the appetite for governance reform, the results showed a kind of equilibrium between those who are in favour of change (almost one-third of benchers saw a "very significant" need for reform, with a further 14% perceiving a somewhat significant need), and those who do not favour reform (17% saw no need whatever for change, 24% favoured only minor change). The Task Force recognized that caution is needed in interpreting the results of this vote, as the definition of "very significant" may vary among benchers.

---

<sup>46</sup> Convocation's: size, composition, responsiveness and diversity; Convocation's strategic focus; discipline; member relations & external communication.

36. The Task Force was able to draw some broad information from the voting patterns of benchers. This was possible as they were asked to provide basic demographic information through a series of four “profile questions”. The questions allowed a determination of whether there were differences in the way different groups voted during the workshop (voting patterns of individuals remained anonymous). On the most basic question (the need for reform), 29 benchers voted on this question. Their responses revealed that:
- a. elected benchers, the largest cohort of participants, were almost evenly split between seeing a significant need for reform or relatively little need;
  - b. the four lay benchers who took part did not see much need for change;
  - c. the two paralegals were supportive of significant change;
  - d. over 50% of participants from Metropolitan Toronto favoured “significant” or “very significant” change;
  - e. over 50% of participants from outside Toronto thought there was relatively little or no need for change;
  - f. benchers from larger or medium sized firms saw a greater need for reform than did those from smaller firms or sole practitioners;
  - g. of the 12 benchers elected to Convocation prior to 2001, 70% saw little or no need for change;
  - h. the 21 benchers elected in 2001 or later were much more disposed to reform, with many of them citing a “very significant” need for change.
37. Generally, the benchers from outside Toronto tended to be somewhat less disposed toward change than those from Metropolitan Toronto. Sole practitioners or lawyers from small firms also tended to be more cautious and those from medium or large firms were more favourably disposed toward the idea of change.
38. Benchers who had served longer at the Law Society were, on most issues, somewhat more conservative with respect to the need for change than those benchers elected or appointed in the last eight years.

#### Positive features of present governance arrangements

39. Benchers were asked to identify features of the existing governance arrangements that were contributing to the strength of the Law Society’s governance. The following matters were identified:
- a. the strength of the staff, and in particular, the staff of the policy department for their effective support of committees and Convocation;
  - b. the atmosphere of civility and respect at Convocation, and the thoughtfulness of the debate that often occurred there;
  - c. the important contribution of committees to the work of the Society;
  - d. the quality of benchers, their positive motivation, and the advantage of having diversity of representation around the table;
  - e. discussions in Committee of the Whole;
  - f. the greater use of consultation by the Law Society;
  - g. the value of educational sessions and workshops provided from time to time for Convocation members.

### Suggestions for improvement

40. The benchers identified a range of areas characterized as “opportunities for improvement” that could be addressed in a reform initiative.

### *Convocation’s Size*

41. Many benchers characterized Convocation as a “difficult” decision-making forum and related that to its size. Some benchers consider the size of Convocation as a virtue. The views included the following:
- a. A large body can better represent the different facets of the profession, and the increased diversity among benchers in the past few elections is a positive development for the Law Society.
  - b. The Society prides itself on being democratic. Convocation is sometimes characterized as a kind of “legislature” for the profession; its size enhances its democratic character and allows different voices to be heard.
  - c. Convocation needs to be large to provide a pool of benchers to staff both the disciplinary panels of the Law Society and its many committees, where much of the most important work of the Society takes place. Life benchers are particularly valuable in staffing hearing and appeal panels as many are retired and have more time available than lawyers in active practice.
  - d. Convocation is a board, not a legislature; it needs to be able to perform in line with accepted exemplary practices for board governance and cannot do so when it is so large.
  - e. A decision-making body of this size is clumsy and hard to manage, and does not foster the kind of “to and fro” discourse that makes it possible to analyze issues in depth. As its size makes it unwieldy, Convocation is unable to move quickly when required.
  - f. Convocation’s “slowness” is not detrimental to its effectiveness. The deliberative nature of Convocation is the result of the complex issues before Convocation, and its slowness is reflective of that complexity.
  - g. Because of its size, Convocation lacks focus, tends to get into too many issues and strays from the core mandate of the Law Society into activities only peripherally related to its role. As such, there continues to be a lack of focus on priorities, despite the recent creation of a Priority Planning Committee.
  - h. Bringing together so many benchers about nine times every year and distributing lengthy meeting materials to so many benchers is too costly.<sup>47</sup> Convocation could meet less frequently.
42. Benchers pointed out that *despite* its size<sup>48</sup>, Convocation as presently constituted does not reflect the diversity of the legal profession. Some noted that there is an imbalance between solicitors and barristers, and that certain economic groups are not represented.

---

<sup>47</sup> The cost of each Convocation, including travel and related expenses and remuneration for benchers, is approximately \$50,000.

<sup>48</sup> Several benchers thought Convocation was “too big.”

43. The issue of diversity was raised generally on several occasions, in particular with reference to the desirability of engaging more young benchers in Convocation. Concerns were expressed as to how that might be done under existing governance arrangements. Participants saw a need to balance “size” with “diversity” but did not advance any specific suggestions as to how this could be done.

*Convocation’s Elected Bencher Component*

44. Some benchers saw consequences to reducing the number of elected benchers to improve Convocation’s efficiency. Some of these issues relate to the representativeness of and diversity within Convocation, as discussed above.
45. Some thought that reducing the number may impact the adequacy of representation of lawyers within and outside of Toronto and would create an imbalance between the number of elected benchers and the number of lay and paralegal benchers. It may also affect the functions that the benchers fulfill at the Law Society beyond participation in Convocation, such as committee work and adjudication.
46. Some benchers see the 40 seats for elected benchers as an opportunity for lawyers from various geographic and specialty areas to participate in the governance of lawyers and paralegals. This affects the diversity of the board and the prospect of a range of views to assist in decision-making. On the issue of diversity, it is arguable that a reduction in the number of benchers may affect the ability to achieve a reasonable level of diversity.

*Bencher Terms and Ex Officio Status*

47. The concept of a limit on the number of terms a bencher may serve was raised by some benchers, and some questioned whether *ex officio* benchers should continue to be part of Convocation.

*The Treasurer as Chair of Convocation*

48. Benchers noted that in determining the issues Convocation needs to address, the Treasurer often seeks advice from individual benchers on an issue by issue basis. This relates to the Treasurer’s responsibility to set Convocation’s agenda for its monthly meetings, manage the debate at Convocation and, to the extent possible, see that Convocation’s business is completed in a timely way.
49. Some benchers indicated that the challenge for the Treasurer is to engage in the discussions with other benchers in a way that avoids the perception that a smaller group of benchers significantly influences Convocation’s agenda.
50. Other issues raised by benchers related to the Treasurer’s responsibilities included the following:
- a. The need for more rigour or discipline to avoid involving the Law Society in issues and activities distant from its core mandate.
  - b. Adoption of a practice where proposals are tabled through a series of “readings” to provide a better opportunity for their consideration;
  - c. More regimented rules of debate;
  - d. Placing time limits on agenda items that come before Convocation



- e. The absence of an express process to address alleged misconduct by benchers.
- f. More attention to competencies in placing benchers on committees, coupled with more involvement of non-benchers.
- g. Reducing the number of committees in line with the objective of providing a clearer focus on core functions.
- h. Holding committee days earlier before Convocation, to provide more time to develop reports for Convocation and to communicate proposals to other benchers.

*The Concept of an Executive Committee*

- 51. Some benchers questioned whether the Law Society should create an executive committee, noting that the Treasurer, as mentioned above, will engage in informal consultations with small groups of benchers on an issue by issue basis.
- 52. Reference was made by benchers to Convocation's Priority Planning Committee, which reviews a range of issues and provides its recommendations for a priority agenda for Convocation's term. Some benchers were uncertain about whether this committee is an effective vehicle to help identify priorities.

*The Discipline Function*

- 53. Benchers acknowledged that the discipline of lawyers and paralegals is central to the Law Society's responsibilities.
- 54. A number of benchers cited concerns about who should serve as discipline hearing panelists and about "dual function" benchers (i.e. policy makers and adjudicators).
- 55. Many benchers believe that only benchers should act as adjudicators for Law Society hearings. Some benchers expressed support for a more "competency-based" approach to the appointment of members of tribunals, and for making more use of non-bencher lawyers as adjudicators.

*The Electoral System, Member Relations and External Communications*

- 56. Benchers expressed concerns about a range of issues on relations with members of the Law Society. This related in part to the bencher election.
- 57. Voter turnout was seen as disappointing, and there appeared to be apathy among members. The same people tend to be re-elected, leading to an aging Convocation and a dearth of new blood. Elections were also said by some to be biased in favour of the large firms for at least two reasons: the greater ease for lawyers in big firms to recruit a cohort of supporters to vote for them, and the greater difficulties faced by lawyers in small firms, or serving as sole practitioners, to shoulder the financial burdens associated with participation in Convocation.
- 58. Benchers acknowledged that despite increased efforts by the Law Society to encourage lawyers to vote in the bencher election, a significant number of lawyers do not vote, and the trend is down rather than up.
- 59. The election process was characterized by some benchers as encouraging motivated, qualified and committed people to run as bencher.

60. A related concern was the lack of interest in the Law Society and an adequate understanding of it in the profession at large. This was linked to frequent references to the need to do a better job of external communication. Benchers noted that the Society as regulator had a difficult role to play affirming its value as a regulator given the tough decisions that it had to take from time to time. Some benchers voiced the opinion that the Law Society does not really have an effective communications strategy to which Convocation is committed. One measure suggested to help was the possible re-establishment of a Communications Committee.
61. Some benchers saw a linkage between these concerns about members of the Law Society and a potential effect on self-regulation. The apparent lack of support or interest among lawyers was seen as perhaps making the Law Society more vulnerable to external criticism of self-regulation.

### Conclusions

62. The bencher workshop revealed that there is a wide spectrum of ideas related to reform.
63. Slightly less than half of the benchers who voted on the question regarding the need for reform were not supportive of any significant change, and were generally satisfied with the *status quo*. Some would appear to support some of the minor proposals for change that addressed how Convocation was chaired and similar matters. These benchers appear to be concentrated among those who are older or have served for many years and those from outside Toronto and/or smaller practices.
64. Roughly the same number of benchers see a true need for reform, many of them looking for “very significant” change. These benchers seem to be concentrated among those more recently appointed and those who work in the Metropolitan Toronto area and/or in medium or large firms.

### Input Received Through the Consultations with Lawyers and Paralegals

65. A brief report on the consultations with lawyers and paralegals was provided to June 2009 Convocation. Over 100 lawyers and paralegals attended the 10 consultation sessions in Toronto, Ottawa, London, Sudbury and Thunder Bay. The Task Force also met with representatives of key legal organizations.<sup>49</sup>
66. As reported in June 2009, the Task Force was impressed by the willingness of lawyers and paralegals to prepare for the consultation sessions, engage in conversation about governance and offer their candid and informed views. Many participants thanked the Law Society for coming to their communities for this discussion and encouraged more of this type of outreach.
67. While many views were expressed during the Task Force’s consultation meetings, a number of themes emerged from the sessions, discussed below.

---

<sup>49</sup> An alphabetical list of those who attended the consultation sessions with the Task Force, their location and organizational affiliation, as the case may be, appears near the end of this Appendix, followed by the detailed comments of the participants, without attribution.

Elections and the Law Society's Relationship with Lawyers and Paralegals

68. There was vigorous discussion of the pros and cons of the current electoral system for Convocation. However, participants were unable to agree on an alternative to existing practices that would be a clear improvement.
69. Some participants expressed concern about the distant relationship they felt with the Law Society and their sense of disengagement from it. They frequently mentioned the lack of understanding of the role of the Law Society and suggested "better communication" as a way to deal with this. They were especially positive about the idea of more consultation by the Law Society with members of the profession. The consultative meetings like those of the Task Force were seen as a particularly effective way of improving mutual understanding and fostering engagement.
70. A number of participants commented negatively on the bias in favour of incumbent members demonstrated through election results. They perceived a domination of the electoral process by big Toronto-based firms that had the resources to promote their preferred candidates and to influence election outcomes. The need for the Law Society to engage younger members of the profession was frequently mentioned. It was generally recognized that serving as a benchers in Convocation was not feasible for most new members of the bar for practical and economic reasons.
71. The Task Force was enjoined to pay particular attention to the growing role of paralegals in the Law Society in considering its recommendations on governance issues.

The Size and Composition of Convocation

72. Participants understood that, although the total size of Convocation is 83 benchers, between 45 and 50 benchers attend Convocation regularly. Based on that number, a persistent and widespread view was that Convocation was too large and difficult to manage. The large majority of participants thought that Convocation should be significantly reduced in size, but views as to what the best size would be varied.
73. Some strongly favoured a large reduction to a kind of corporate board of eight to 15 members. Others thought that to accommodate the need for some regional representation, lay benchers and other members, a model more in the range of 25 to 30 members might be more suitable. Another group was reluctant to reduce the existing number of elected benchers. Using 40 benchers as a base, they wished to add another 10 to 15 members to accommodate lay benchers and a few others for a total in the range of 50 to 55 members. Very few participants thought the existing board of 83 was appropriate.
74. Many participants saw virtue in accessing the wisdom and experience of benchers with long service, but most thought that it was neither necessary nor desirable to have those benchers in Convocation. They also thought it was not necessary to continuously add these individuals to Convocation.

75. The majority of participants saw little merit in existing life benchers arrangements. They favoured the adoption of term limits as a way to introduce more “new blood” into Convocation and as a good practice in other boards that the Law Society should emulate. Many liked the idea of having an elected benchers service end after two or three terms. Some suggested that the former benchers should be free to run again after the passage of one full term. In the interim, the former benchers could serve on committees or in other capacities, including discipline adjudication.
76. They suggested that the life benchers designation might become more honorific without including membership in Convocation. Some favoured the idea of establishing a special advisory council or similar body that could be convened from time to time to discuss difficult issues facing the Law Society, upon which life benchers and others, such as former Treasurers, could be invited to sit.
77. Similar views were expressed about former Attorneys General.
78. With the exception of the immediate past Treasurer, there was very little support for the continued participation of former Treasurers as members of Convocation, although their wisdom and experience was acknowledged. Many participants favoured retaining the immediate past Treasurer as a member of Convocation, but only for one term. They also took exception to the practice of former Treasurers turning out collectively to help elect a new Treasurer.
79. This and other aspects of the current governance arrangements, notably life benchers, were seen as perpetuating the perception of the Law Society as an “old boys’ club.”

#### Executive Committee

80. A number of participants felt that an executive committee would be a sensible and desirable step, would enhance transparency and would improve on any current ad hoc arrangements akin to an advisory or executive committee. A range of ideas were offered on how such a committee might be structured. It was recognized that the bigger Convocation became, the greater the need would be for an executive committee
81. Participants noted that there was a risk associated with an executive committee, in that such a committee may sometimes become too influential and tend to supersede the board. They felt that it would be important to clearly define the mandate of such a committee and its relationship to Convocation, and ensure that its appointment process and work were transparent.

#### Committees and the Hearing Panel

82. Most participants were not persuaded by the argument relayed by Task Force members that Convocation needed to be large to populate the many committees of Convocation and the Hearing and Appeal Panels.
83. Most participants were of the view that it would be advantageous to include more non-benchers lawyers and others with particular expertise from time to time on such committees. This would make it possible to gear committee appointments to the capabilities, skills and experience required to carry out the committee’s work effectively.

84. Some suggested that more young lawyers could be given opportunities to contribute to the work of the Law Society by serving on committees, without having to take on the onerous responsibilities of serving as a benchers. They said that this could help to address disaffection and misunderstanding in the profession. It would also engage a range of new members in the work of the Law Society, possibly grooming them to run for benchers once more established in their practices, and improve communications with those who are governed.
85. A number of participants raised questions as to whether the work of Convocation might benefit from more focus, and wondered whether it was necessary for the Law Society to have as many committees as it did.
86. Most participants thought that as a general rule, benchers should chair committees. This would preserve a strong connection between the work of the committees and Convocation.
87. With respect to the composition of the Hearing Panel, the majority of participants favoured a competence-based model. They said that panelists should be drawn from a pool of individuals who have benefited from training and who have demonstrated capability as adjudicators. Participants did not see why a person elected to serve as a benchers would necessarily possess any particular skills as an adjudicator.
88. A number of participants saw a conflict between the role of benchers as policy-makers and their role as adjudicators, and thought that on principle these two roles should be separated. Other participants did not see this conflict and thought it was acceptable for benchers to perform this role.
89. Participants recognized that many experienced individuals such as life benchers or former Treasurers might well be very capable adjudicators, but they saw no reason why such individuals could not be invited and indeed encouraged to continue to take part in adjudication without being members of Convocation.
90. Participants believed that bringing more non-benchers into discipline work would help to reduce the workload of benchers. As in the case of other committees, it would also promote the engagement of lawyers and paralegals in the work of the Law Society.

#### Lay Benchers

91. Participants encouraged the Law Society to be more proactive in the selection of lay benchers. They thought the Law Society should identify the kinds of lay persons, perhaps through use of a skills matrix, that would strengthen the work of Convocation.
92. They also encouraged the Law Society to be more proactive in its relations with the government. One option would be to identify a list or slate of desirable candidates from which the government would be asked to make its selection.

#### The Report of CDLPA's Professional Governance Committee

93. As noted in Appendix 2, CDPLA delivered to benchers in July 2009 a copy of its June 2009 "Commentary and Position Paper on Governance Reform of the Law Society of Upper Canada," prepared by its Professional Governance Committee and approved at CDLPA's May 2009 Spring Plenary.

94. The Task Force considered these recommendations in formulating the proposals in its report, and noted with interest that some of them reflect the thinking of the Task Force.
95. The executive summary and recommendations appear at the end of this appendix.

PARTICIPANTS – GOVERNANCE TASK FORCE CONSULTATIONS  
APRIL - MAY 2009  
OTTAWA, THUNDER BAY, TORONTO, LONDON, SUDBURY  
(INCLUDES ORGANIZATIONAL REPRESENTATIVES AS NOTED)

Allison, Nancy	Barrie
Andrew, Kathleen E.	Windsor
Arbour, Michelle L.	Point Edward
Baker, Merrill F.	Windsor
Bates, Paul	Toronto
Bickerton, Angus F.	Brockville
Binks, Mary J.	Ottawa
Bocock, Randall S.	Hamilton (CDLPA)
Brown, J. Patrick	Toronto (Ontario Trial Lawyers Association)
Bucci, Kristen L.	Thunder Bay
Burd, Robert J.	Brampton (Licensed Paralegal Association of Ontario)
Carey, Thomas	Mississauga
Charron, Janet E.	London
Cherniak, Earl A.	Toronto
Chyczij, Alexandra M.	Toronto (The Advocates Society)
Colquhoun, Sarah E.	Thunder Bay
Cook, Martha	Stratford
Copes, Terence	Sudbury
Cornish, Mary	Toronto
Corsetti, Cathy J.	Mississauga
Costa, Kimberley F. M.	Thunder Bay
Cronyn, Peter J.	Ottawa (The Advocates Society)
Crossan, Lawrence H. J.	London
Cunningham, Robert K.	London
Cyr, John A.	Thunder Bay
Dantzer, Ian T.	London
Davey, Paul B.	Ottawa
Dey, Peter	Toronto
Doddy, Michael	Toronto
Dooley, Dan	Barrie
Earle, Wendy	Toronto
Ervin, Eileen	Thunder Bay
Feder, Harold J.	Ottawa
Feld, Sylvia Lisa	Toronto
Fillmore, Gordon B.	Thunder Bay
Fortier, Krista	Sudbury
Fuhrer, Janet M.	Ottawa
Gardner, Jerome	Sudbury

Garnett, Robin D.	Ottawa
Hamilton, Mark R.	Sudbury
Hanigsberg, Julia	Toronto
Hansell, Carol	Toronto
Hayes, Richard A.	London
Hedley, Nicholas	Toronto (Association of Law Officers of the Crown)
Henein, Marie	Toronto (The Advocates Society)
Holden, Michael G.	Toronto
Holervich, Morris	Thunder Bay
Huculak, Jocelyn P.	Thunder Bay
Hull, Judith A.	London
Iacobucci, Edward	Toronto
James, Patrick	Toronto
Jeejeebhoy, Pheroze	Hamilton
Johns, Randall V.	Thunder Bay
Johnson, Nancy C.	Ottawa
Johnston, Michael M.	Brockville (CDLPA)
Kalm, John	Toronto
Kar, Shahana	Toronto (South Asian Bar Association of Toronto)
Keller, Werner H.	Windsor
Killoran, Daniel J.	Ottawa
Kimmel, Jessica A.	Toronto (Toronto Lawyers Association)
King, Bonnie	Thunder Bay
King, Jacqueline L.	Toronto
Konduros, Robert	Cambridge
Labelle, Eric J. M.	Sudbury
Lafrance, Christi-Anne	North Bay
Landgren, Catherine	London
LeBer, James A.	London
Lee, Theresa	Sudbury
Lozano Ayala, Sandra	Toronto (Hispanic Lawyers Association)
MacKillop, Carol F. Q.	Kingston
MacLean, M. Virginia	Oakville (Women's Law Association of Ontario)
Madorin, William H. P.	Kitchener
Madott, Matthew C.	Sudbury
Matthews, Christopher J.	Toronto (Toronto Lawyers Association)
McGee, Sean T.	Ottawa (AJEFO)
Meehan, Patricia L.	Sudbury (CDLPA)
Merovitz, Charles L.	Ottawa
Miettinen, Terry L.	Thunder Bay
Miller, Nancy	Toronto
Moffatt, E. Jane	Whitby
Montgomery, Brian L.	Sudbury
Moore, Richard J.	Ottawa
Morris, Kimberly T.	Toronto
Morrison, Mark A.	Ottawa
Nathan, Hartley R.	Toronto
Nickerson, Mara L.	Toronto

O'Brien, Allan R.	Ottawa
O'Shaughnessy, Michael J.	Brockville
Orendorff, Thomas L. W.	Sudbury
Ortved, W. Niels	Toronto
Ouellette, Denise	Sudbury
Paddon, Victor R.	Thunder Bay
Paivalainen, Seppo K.	Thunder Bay
Pearse, Richard	Toronto
Pengelly, Steve	Toronto (Ontario Bar Association)
Petricone, Ivana F.	Toronto (ARCH Disability Law Centre/Association of Community Legal Clinics of Ontario)
Pilkington, Marilyn	Toronto
Poratto-Mason, Lise	Sudbury
Prior, Robert D.	London
Protich, Milena	Kitchener
Recoskie, John	Sudbury
Ritchie, C. Scott	London
Ritter, Carol J.	Toronto
Scott, Murray A.	Sudbury
Scott, David W.	Ottawa
Sinclair, Macgregor D.	Sudbury
Slack, Douglas M.	Kingston
Spano, Carmelo	Toronto
Stevens, Lisa	Lively
Straiton, W. Paul	Thunder Bay
Strezos, Louis	Toronto (Criminal Lawyers Association)
Sue, Errol M.	Toronto
Surowiak, Christopher	London (Paralegal Society of Ontario)
Thompson, David J.	London
Tobin, Barry M.	London
Trimble, Jamie K.	Toronto (Ontario Bar Association)
Vandenbosch, Paul W.	London
Waby, Michael	Toronto (Ontario Crown Attorneys Association)
Wade, Gregory G.	London
Walwyn, Frank F.	Toronto (Canadian Association of Black Lawyers)
Peter M.	Thunder Bay
Whitehead, Janet	Sarnia (CDLPA)
Willis, Ronald G.	Cornwall
Wilson, Richmond C. E.	Manotick
Wojciechowski, Stephen J.	Thunder Bay
Wozenilek, Richard R.	Toronto (CDLPA)
Wunch, Sara R.	Toronto (Family Lawyers Association)
Young, James M.	Sudbury



DETAILED SUMMARY OF COMMENTS FROM THE  
LAWYER AND PARALEGAL CONSULTATIONS  
(without attribution)

April - May 2009  
Ottawa, Thunder Bay, Toronto, London, Sudbury

(Includes Meetings with Representatives of Legal Organizations and Information from CDLPA's  
Professional Governance Committee Report)

ELECTION PROCESS AND VOTER ENGAGEMENT

Popularity and Incumbency

1. There is a barrier to running for benchers. The same people are elected, and this in part is because of a lack of term limits. There is no proper turn around and that is an oddity because it is so fundamental in non-profit boards. Otherwise, there is real conservatism and no new ideas.
2. So many incumbents are re-elected. Many people believe outcomes are a known conclusion. The Society might get more votes if voters thought the votes would change the outcome.
3. In the election process, it seems that those with reputation and assets have a huge advantage – this is a general perception. The playing field should be evened up with a strict set of rules. Democracy is needed but it must be monitored and regulated.
4. A more radical idea might be to divide incumbents from non-incumbents and limit the number of votes each member could cast for incumbent members.

Regionalized Elections

5. The ability to vote for those outside a region should not be eliminated, but there might be increased voter interest if there was more regionalization.
6. There is a lot of material for the election [from lawyers running]. Lawyers vote for those they know, not just for the numbers. The respondent would feel more comfortable knowing more about the candidates, although this may only happen locally.
7. Consider a regional representative for Convocation with restricted geographic representation. Benchers would get to know lawyers in that area well. The concern about that is that there are some higher profile benchers outside the region whom the voter may want to choose. If the election were regionalized, the benchers elected may be someone who doesn't speak the same language. So there is reluctance to give that [voting outside the region] up.
8. It is a curious system to vote province-wide as it does not give as much bang for the buck. Elections could be held by region, with a reduction from 40 to 32 benchers with a regional component. There would be no confusion with the regional system, and while it may seem at odds with governance in the best interests of the public, it would be a more

informed vote. It does not seem fair for an outside Toronto voter to tell Toronto who it should be governed by.

9. Voters for Toronto benchers can wipe out a district so the district [regional] vote is valuable. Toronto seems to control votes.
10. The answer may not be having representatives from all constituencies. They change too, and for them to have a voice does not mean everyone has to be in Convocation. This input could be obtained through more consultation with the profession and the representatives of those constituencies.
11. It would be a huge step backwards to get rid of regional benchers, so that should not be done. This would make the Society more irrelevant. Without a regional bencher, a candidate cannot make the mark to be elected. Regionalization allows the local bencher a measure of interest. The "old" system centralized power in Toronto. As long as there are regional elections, there is no downside to the current system.
12. Voting for those outside the region is important too. Lawyers want to vote throughout the province - to have a say in votes from outside.

#### Slates, Constituencies and "Slots" for Benchers

13. The problems with bencher elections (disengagement of a large swath of the profession, particularly younger lawyers, from voting; the need for substantial resources to mount a successful campaign, etc.) are difficult to address and may simply be endemic to the model of elected benchers. Better communication of course might help. Proactive recruitment of candidates from underrepresented groups and support for those campaigns might also be worth exploring.
14. Convocation is not there for the constituencies. If groups want to get together and make sure a bencher runs and is elected who understands them, that is democracy and should be done, to ensure that regulation is effective.
15. The board needs to have a representative of corporate counsel – there are 4000 in Ontario. Other constituencies should also have a specific representative.
16. Some regions in Ontario have a slate of candidates, and some organizations (like CDLPA) also have a slate. This is a way of giving some thought to who should be put forward as a candidate.
17. The election process has not produced bad results – the people we elect are fine. We need to look at what we are getting from the election. Is there less interest in it? If the selection of candidates is from a slate, electors may ask if their vote counts.
18. Being a bencher is not for everyone. Younger lawyers starting out may say no. If we have categories of benchers, where do you draw the line? Is there any real demographic representation? How grassroots can Convocation be when it is so large?

19. Newly called lawyers feel disengaged with the Society; they are caught up with practice, etc. How would the Society get their attention? One idea might be to have a benchers position for a lawyer in the 1-10 year call category. Otherwise, that person may not feel he or she would have a chance to get elected.
20. An election is the purest form of democracy and while there has to be a place for a geographic representative, it should never be said that Convocation has to be representative of the profession. There are so many group. Forty elected benchers is plenty, and a benchers represents the profession as a whole, not a particular group. Currently, Convocation is quite representative to the extent it can be with 40 elected benchers.
21. The process should not segment lawyers too finely – benchers should not have slots. There is a real problem with classification – it might simply replace one type of hierarchy with another that may not be better. It would only result in groups competing that are different from the current groups competing.
22. Convocation should be representative of areas of law. Right now, there are more litigators in Convocation. Representation by area of law would also include paralegals.

#### Skill Matrices and Qualifications

23. There is no skills matrix for benchers. Other non-profit boards look for people with certain attributes. In other structures, there is the nominating committee that includes the chair, vice chair, immediate past chair and president. It will look at the composition of board and recommend appointments for the board and committees.
24. Non- profit organizations usually have boards that operate on skills matrices and competencies, and a system is needed to ensure that the competencies are there. In appointing members, competencies and diversity (including that in practice) are considered. It is difficult to achieve competencies with an election.
25. Create a nominating committee that will determine the skills for Convocation's decision-making members; this could include, for example, with 20 individuals from metro areas who include a range of lawyers (small, large firms, etc.). Elections would follow based on a slate of candidates who represent the appropriate skill set. The nominating committee would say here are 75 individuals with the appropriate skills. Voters would not have a raft of material that puzzles them as they go down the list. This process would lead to intelligent decisions by voters.
26. Another option would to have a recruiting committee approach people who may not think they can contribute as a benchers, with an emphasis on skills.
27. But what would the criteria be for the recruiting committee? There are 40,000 lawyers. It would be cumbersome, and who would choose the committee?
28. If a number of benchers were appointed, who decides on who they should be? Is it transparent? The nominating process could be fraught with political issues.

Younger Lawyers

29. As a new call, the respondent says that he does not care about the election. He is more focussed on learning the practice of law and has no interest in governance policies or what Convocation does. He does not know if he would vote. This lack of interest is shared by others he knows. He could not afford to become a benchers with his budding practice. Representation is expanding from bottom up with the least interested – the older members have the interest in Convocation, and this will filter up and the younger calls get older. But younger lawyers could be used on committees.
30. The Society needs to engage young lawyers earlier, at the student level. Have mandatory education in the licensing process about the role of the Society.
31. Lawyers want experienced, sophisticated people to be benchers, and the idea of electing a new call is not appealing; there is a need for stability. The contrary view is that this group has a voice and that should be represented in Convocation.
32. For younger lawyers, they do not recognize anyone running. If they do not have a connection, they will not vote and that is why young lawyers feel the Society is not relevant.
33. The time commitment for being a benchers should be discussed. Large firms have backup support for benchers, but younger lawyers would find it difficult. The job is not a real option for many lawyers.
34. On the issue of “getting new blood” in Convocation, there is nothing that indicates that the Society has an interest in achieving this. That said, it would be a huge burden for a newly called lawyer to be elected as a benchers. Younger lawyers do not have the time or money to become benchers.

Disengaged Voters/Candidates

35. There is a lack of interest in the Law Society by lawyers, but they misconceive the function of the Society, which is to govern. The size of Convocation confuses the understanding. Lawyers say the Society does not do anything for me, and there is a large minority who think the Society should pursue the things CDLPA pursues. Lawyers can be faulted for being lazy about their knowledge of the Society but there is also the issue of poor communication on part of the Society.
36. Outside of Toronto, not much is heard about what goes on at the Society. There is not a close connection. The view is that it is tedium at the Society and not particularly relevant.
37. There is voter apathy, but it is not known whether that is because of Convocation’s structure.
38. Apathy in voters will translate to apathy in running for election. Some lawyers think it is the last thing they want to do, to the point where the type of person who would want to be involved might not run. Lessening benchers’ duties might make it more attractive.

39. Lawyers feel disconnected and that the Society is remote. But lawyers are not keeping up with the good things the Society has done in last 10 years. The Law Society has done a good job, but the respondent has a unique view through the CDLPA executive. How could the Law Society improve its public relations?
40. The Society has an important regulatory function, but beyond that, how does it affect lawyers? If the Society is trying to do something to increase relevance, it should educate members about what it does to represent them. The respondent is not discontented with the Society's work, but he says he is apathetic.
41. In-house counsel, in one respondent's experience, have little to do with the Society, and do not vote because it is not relevant to them.

#### Technology to Encourage Participation in Convocation

42. The Law Society could use technology – Skype or Netmeeting – so that lawyers could participate outside of Toronto without having to attend.
43. Lawyers are discouraged from running because of the huge impact it will have on their work and offices. But Convocation does not need to be in Toronto. Video-conferencing could be used – this would remove the disincentive.

#### The Political Aspect

44. Benchers are highly attuned to the electorate.
45. There is cronyism in some smaller locations in Ontario and less interest in the Society's mandate. This means it is harder to select lawyers in the election with an interest in the mandate. Even with flaws, the current election process is better at doing that.
46. The Society cannot be another version of the OBA, so the role of the Society must be understood. The Society should balance the elected with robust non-elected representatives. This may mean having many more lay benchers than at present.

#### The Election Process Itself

47. If there was a vigorous election process, the effect might be limits on benchers' services if there were fewer spots and the positions were more influential. In this way, term limits may not be needed as the electorate would take care of the terms benchers serve.
48. There are too many candidates to make intelligent decisions. Making the election process more complex makes it more costly for all candidates.
49. For the campaign, benchers should run in a category, publish a blurb, be prohibited from sending e-mails and have no advertising campaign.
50. All-candidates meetings are an idea but may not be realistic. It is not easy for a lawyer to be familiar with candidates outside his or her geographic area. Perhaps an internet-based facility could assist.

51. Use electronic communications for the election process; for example, a 5 minute speech that can accessed electronically.
52. In the election, the large firm candidates will have resources that small firms do not. How can that be changed? Perhaps the Society could assist with a modest amount, contingent on the candidate receiving a certain number of votes.
53. Voting should be made mandatory, including dedicated spots for women and minorities. A credit could be offered for voting.
54. There should be spending limits for the bench election.
55. The election process is vital as a democratic process. It is reasonable and the information provided by the Society is good. It is easy for people to decide to run.

#### Issues-Based Elections

56. The first question is how to get people interested. The election is not issues-based, and this is what is missing. Make it issues-based, not a personality contest. This might have the Society communicating its issues and policy alternatives, and identifying issues on Convocation's agenda.
57. On an ongoing basis, members should get more information about Convocation, what the issues were, how benchers addressed them and voted. Members should be able to evaluate it at end of four years.
58. The Society could survey members for issues and publish the results for elections – a type of "report card".
59. The election process has to address the policy basis for regulation.

#### The Regulatory Mandate vs. A Representative Body

60. Asking whether Convocation adequately reflects/represents the profession is the wrong question. It does not connect properly to the mandate. A consultation process to understand the people being regulated is extremely important, as this speaks to the diversity needed on the board. The right question is "are the benchers or their profile the right people/profile for this mandate." If you take the issue and push it out to representation, you will not get the skill but the representation would be mirrored. But then this is attenuated democracy.
61. If the objective is governance, the Law Society needs to consider how to get the right skills, experience and interests around the table to implement the objects of governance. This means moving away from representation. Benchers cannot think of themselves as representing any interest but must focus on objects. Having a constituency means having an interest that is at odds with this.
62. The problem with the election process is relying on members to put together an effective group for governance. There is no nomination process. If the Society is looking for the most effective group with the right skills, it is hard to see how this can be done with one vote per lawyer.

63. It can be a challenge in the election process to get the right skills among elected benchers, but lack of competency does not appear to be an issue in Convocation, although there are some sectors of the profession that are not represented.
64. The Society needs the right people with the right qualities to govern. Lawyers should not be looking for something from the Society as in what can it do for me. The mandate needs to be clarified. This respondent is not as committed to an election process – the same result can be achieved, but the standards must be met.
65. The Society will not achieve true diversity on the board through an election alone.
66. Representation from various areas is important, but to this needs to be added the quality of good decision-making.
67. Rather than thinking the Society needs representatives from all over Ontario, experience and skill, including that gained from practising law, is the issue for Convocation.
68. It is hard to deal with the Society and Convocation in pieces. The results of the electoral process may or may not reflect the profession. But the Society exists in defence of the public interest. If some lawyers are not represented, we can improve that but we must keep our eye on the ball of self-regulation. Self-regulation is doomed unless there is a sound governance model that cannot be undermined. The respondent has no complaints about the election process.
69. With a focus on governance, this will also focus on who by way of skill should be at Convocation. Without this focus, the Society will have absurdities such as the over balance of unelected benchers and the concept of representation.
70. A legislative agenda is set by the elected representatives, but for the Law Society, the only “agenda” is the statutory objects.

#### General Comments

71. Who votes may not be right question – how and why people voted are the questions.
72. It is difficult to know whether the election process works in populating the board because there is no measurement. What is the quality of the governance? Where are the strengths and weaknesses?
73. Elections are good – the fact that people are not voting in larger numbers does not mean that this is not working.
74. The profession needs to elect people to serve in Convocation from a broad base. We should dismiss the view that the election system promotes self-interest and should be thrown out. Lawyers take the responsibility for electing benchers seriously and we should trust the electoral system to achieve the right competencies.
75. While not having extensive experience with the Society, governance seems to be working and things are getting done.

76. Is a vote democratic if it is uninformed?
77. What is the option to an election process? Appointment by the Attorney General? This would not be self-governance.
78. The election makes more sense if people know who they are voting for, even if the candidate is in Toronto and the voter is outside Toronto.
79. There is a diminishing marginal return for each vote after a point. A voter cannot possibly give justice to a flock of 40 votes. If the vote was only for 12, that would not feel like a less representative number.
80. There needs to be more value attached to the vote. If there were fewer votes to make, voters would be more careful with them and more motivated to participate.
81. For lawyers not in private practice, there is a need to know how the Society assists all within the profession – it requires outreach to make it more relevant. That may increase voter turnout.
82. The majority of benchers should be elected.
83. An election for benchers is favoured. Lawyers then have an ownership interest and a responsibility to be engaged in the vote and in that way, are responsible for decisions.
84. Why don't the lawyers who are elected care about what lawyers do so they can find out what the public interest is?
85. What the board is depends a lot on how vigorous the elections are. Lawyers are diverse, so why would that not show up in the results of the elections? Perhaps there are systemic issues preventing that, but that needs to be known before decisions for change are made. If it is always an election machine that elects benchers, it won't matter.
86. The aging of benchers is not a concern – this is not surprising.
87. With respect to the rate of turnover, there would be more alarm if the rate were 50% to 60%. Law is an experienced-based profession and it takes time to get up to speed on things. Experience prior to serving at Convocation is important.

## SIZE OF CONVOCATION

### General issues with the size

1. The Society needs to figure out what it needs to do and how many people are needed to do it. This should not be left to the vagaries of life.
2. There are diverse interests in this profession unlike other professions, which do not have the breadth of law. The profession's interests are informed by the collective experiences, and we have a diversity that has to be reflected in policy decisions taken by



the regulator. The concern is the right composition for Convocation, and it is not known whether it should be 30, 40 or 50 benchers. Because of diversity and the broad base, and diverse interests and views, Convocation has to be reflective of everyone so that they have a democratic voice. Establish consultative mechanisms, including through committees, for continuity.

3. The low voter turnout and the size of Convocation are related. Lawyers ask “how much will my vote count?” And if it does count, who says “my” bencher will have effect in a board of 83? A smaller board may invigorate governance.
4. Look at why the size should be reduced. Former Treasurers provide future skill – should this go because of expediency? Is there a failure on the board to delegate in its management of the board? Not all issues relate to size. If the numbers are reduced too much on the elected front, it gets too far away from democracy and too small a group to represent the number of lawyers.
5. If the elected portion is reduced, it will be hard to have remote benchers engage with members to make the Society relevant – it will be too large a geographic area to cover.
6. If the purpose of Convocation is effective management, then it must be smaller. If it is to engage in policy debate and the nuances of policy, it is more like a legislature.
7. The appropriate number is hard to determine because it is not known how Convocation deals with the current numbers. For example, a board of 32 is hard to chair if everyone is active. Could 24 benchers represent all constituencies? How well is diversity represented now? But smaller is best subject to the constituency you need (age, gender, etc.) after taking politics out of picture.
8. If the board were reduced to a 10 and 10 split, would the principle of geographic representation have to be abandoned?
9. One cannot just look at Convocation as unwieldy because of its size – one has to look at the business of Convocation and whether it is done timely and efficiently. How can you determine whether it is difficult or easy as a decision-making body unless you know the business? The question is how well is Convocation functioning?
10. Almost every organization has non-elected members; for the Society, this may lead to less than 40 benchers.
11. If the size of Convocation was reduced, this may create more interest in running, greater buy-in and more interest of non-bencher lawyers in serving on committees.
12. Either the size of Convocation should be reduced or there should be an executive committee.
13. The cost of Convocation may be a reason to streamline it.

Views that Convocation is too large

14. The 20/20 split for benchers inside and outside Toronto is crude. But fiddling with the 20/20 split would do a disservice to lawyers outside of Toronto, because of the perception of the Law Society as Toronto-centric.
15. Size is not the issue, if it can be justified. But there is nothing that justifies 83. How can a board that large work?
16. In a bigger group, there is more yes/no voting rather than a comprehensive exchange of pros and cons. If there were a board of 10 people, it is more likely to have a full sounding and agreement on a course of action, and more buy-in. That said, an executive committee, elected by Convocation could do more day to day things and have Convocation meet four times a year. Right now, for decision-making, the size is big.
17. Benchers have to abandon their practice to serve as benchers. With respect to the younger group, if you do not want them at Convocation, continue to run it as you do now. They do not have time to be engaged.
18. The Society needs a top flight manager (we have this now at the Society) and it needs to run more efficiently. Step back and ask what will be an effective structure given the mandate. And the mandate is simple – it is the public interest.
19. For the governance function, Convocation is much too large. It is not efficient or effective governance. Different decisions will result on the same issue depending on who is in the room,
20. Once above 30 people, a board is difficult to manage.
21. With 83 members, how can one say this is governing in the public interest? The *ex officio* benchers should go. There should be 30 elected lawyers, and with the 10 lay/appointed benchers; this is 40, which is a group that could be managed.
22. The 20/20 split is a gerrymander. The Society does not need 40 elected benchers. There are other ways to account for the regions and government appointments.
23. The most crucial point is voting and as long as the majority who have the vote are elected, this is okay, although the optics of having so many non-elected benchers in Convocation are not good. The *ex officio* benchers who have expertise should serve on committees. Non-benchers could do the same thing.
24. Convocation is too big, with too many unelected benchers. Life benchers should be abolished – this is an institution whose time has come and gone. The same applies to former Treasurers.
25. The elected number should be reduced to 14 or 15.
26. From an objective view, 40 people is a mass in terms of a quick-moving responsive body – governance literature says more than 20 is a big ship.

27. Convocation should try to reduce to about 45. The focus first should be on the *ex officio* component and then the elected component.
28. Governance literature says small boards are better. The trend runs against the goals of representation. There could be a board with a 14 and 14 split with some appointed to ensure representation. Reducing the size does not necessarily have to compromise representation.

#### How to manage a large board

29. A board of 50 (40 elected, 8 appointed lay benchers and 2 paralegals) is large but if it is run well, good governance can result. If that is the model, a robust committee structure is needed, and renewal would occur when there are non-benchers on the committees who can be groomed for bencher. This allows younger lawyers to participate and will also permit competencies to be represented. So for the big picture for the organization, it is representative, with some proportion of elected and appointed.
30. Those who are not elected should not have a vote. Fifty is cumbersome. For major decisions, the 50 could decide them but for day to day issues, you do not need to run them past a body of that size.

#### Views that the size of Convocation is acceptable

31. Forty elected benchers is reasonable given the number of lawyers, and eight lay members is appropriate.
32. There is some comfort with a larger group. Those outside Toronto do not want Toronto to control Convocation. It is more democratic to have a cross-section. The respondent is nervous about a small group.
33. The numbers in Convocation are not particularly concerning. There are ways to save costs without altering the structure (e.g. the cancellation of March 2009 committees and Convocation).
34. Get rid of the *ex officio* positions and add the extra 30 or so spots for elected benchers.
35. Why should the size be reduced, unless it is a burden with respect to cost? If there are robust committees, they do the work.

### THE *EX OFFICIO* COMPONENT

1. Generally, *ex officio* benchers should be eliminated. For corporate memory, keep the immediate past Treasurer or consult an ad hoc advisory council chaired by a former Treasurer for input as needed. The *ex officio* component stifles the new blood.
2. There is a need for a broader base in Convocation but it will not be achieved through the *ex officio* component. It is beneficial to have the Attorney-General's experience, for example, but Convocation does not need all nine former Attorneys-General. Convocation can select who will serve, and the same goes for life benchers.

Convocation could also have benchers emeritus, who should be voting, but this would only be one or two benchers.

3. Forced attrition could be imposed for *ex officio* benchers - if they are not attending meetings, they should go.
4. The respondent is not sure the Society needs to get rid of *ex officio* benchers, although there is a question about why former Treasurers have a vote. Why throw out people with experience? They are interested in making a contribution.
5. Life benchers should not have the automatic right to speak in Convocation. They should be titled "honorary" benchers, but be able to serve on discipline committees. Former Treasurers should be subject to this same restriction.
6. For former Attorneys General, if these people were in office five governments ago, who cares? The respondent doesn't know if there is value in having them in Convocation but intuitively would think not. The current Attorney General is sufficient for representing the public interest in Convocation.
7. The public will have a more skewed view than lawyers of the *ex officio* benchers. It is not easy for them to say "I have to go", but one has to fall on his or her sword, recognize the old boys issue and introduce fresh blood.
8. Life benchers should leave Convocation. Former Treasurers should stay for their knowledge and experience but whether they have a vote is the question.
9. The concept of "life bencher" is not tenable. Some life benchers are not actively practising or engaged. While a life bencher may be appropriate as an honorific title or as an advisory corps, it would not be legitimate for a person in this position to have a voting role, either in committee or in Convocation. The same is true of former Treasurers and former Attorneys General. They may all be helpful resources to Convocation but should not have a formal role.
10. Keep up to 10 former Treasurers, and then the longest serving leaves. Cap life benchers at 20 to 30 years at the Society, then they must leave.
11. Women are massively underrepresented, and eliminating the *ex officio* component would help create balance.
12. The immediate former Treasurer and Attorney General should be kept only for a year (or a term).
13. Why would we get rid of life benchers? The Society could use their experience. Impose terms, and when the term is reached, life bencher status applies. Even though there is an argument that they are not accountable as unelected benchers, life benchers were elected for 16 years.
14. The former Treasurer should not become a political favourite – so the current system should remain. Experience qualifies the former Treasurers but it has to be relevant experience – they must "stay in good standing."

15. A benchers not having a vote does not affect the democratic process – it is not consequential if the benchers has no vote.
16. It is difficult to remove long-serving people – they will vote on the change and because of that it is difficult to achieve change.
17. Keep life benchers. They cannot vote and have a long tradition in mentoring.

### TERM LIMITS

#### Term limits – a good idea

1. There ought to be term limits on benchers' service - for example, three terms.
2. New blood comes with term limits. Most benchers who have served and run again would get re-elected as long as they have not misbehaved.
3. Generally, term limits are a good idea, but there is a long learning curve at the Society. If two terms is the limit, the Society may be institutionalizing inefficiencies.
4. If the election process were simplified, there would be a natural selection (i.e. benchers would decide against running or not be re-elected).
5. A specific length of term is good governance as a way to encourage new people to join the board.
6. One idea is to break the consecutive terms (the notion of a term "holiday", after which an individual can run again), or have staggered terms.
7. Because of the public interest mandate, with the public as a constituent, Convocation needs people who represent the public; someone who sits for 16 years is not representative of public thinking or of our society or of the organic nature of the public interest. A 16-year benchers could not bring the same measurement as at beginning of his or her service; benchers are passionate at first but become stale. Eight years is a huge allotment of time to express all things a person wants to say about all the topics. As benchers age, the less relevant they become on the topics. At 16 years, they are not current. Two terms is plenty. In eight years, if the benchers has not introduced what he or she wants to, they should not continue to be benchers because they cannot offer anything new or novel.
8. All the benchers the respondent has met have been good, competent representatives of the profession, and the process of being benchers makes them better at governing. But term limits should be imposed. Convocation grows people; and if we get more people through Convocation, we could get more doing more. The older serving ones could step aside to permit that.
9. Elected benchers have to be involved for a number of years. Time limits for service are not a problem, but there needs to be a balance, for example, by way of staggered terms. That keeps corporate memory going.

10. Term limits would allow for more diversity in the board automatically. Make end of term benchers automatically members of the Hearing Panel.

Term limits should not be adopted

11. Do not impose limits. People are willing to run and serve and that is important. They also gain expertise as they serve, although the first term is tough. Also, it is a big sacrifice especially outside Toronto to go to Convocation, etc. If lawyers can do it, we should not want to force them out for even one term.
12. There should be no term limits. There is no reason for them if the bencher can get re-elected. If they have expertise, there is no reason not to run again.
13. Do not have life benchers. It's anachronistic. Let lawyers continue to run.
14. There are *de facto* term limits because life benchers do not vote.
15. Term limits may not be appropriate. But if benchers just show up, that is not good enough. They need to be active, and if they are busy, experienced benchers, that is good – they should stay.

#### DISCIPLINE AND BENCHERS' ROLES AS HEARING PANEL MEMBERS

1. Adjudication need not necessarily be a bencher obligation – others can be used, and some of those are better adjudicators than benchers, some of whom do not have the time to do hearings. Members can be appointed for hearings. There is no magic in being a bencher adjudicator.
2. It is fairer not to have those who are the regulator sitting in discipline.
3. The skill set and qualifications as adjudicator is more important than the fact that the adjudicator is an elected official.
4. Rethink benchers on discipline. Then, have designated groups vetted by benchers who are qualified to sit and you will get the cream of the crop.
5. It is better to have somebody overseeing the results of lawyers' activities who has stood in the lawyers' shoes. It is important that the people who make disciplinary decisions be lawyers. Benchers come to this with experiences and skills and this could be developed in other people. If benchers are not used for discipline, it would be a waste of skilled people. But why not use experienced lawyers (other than benchers) on panels? We would want that expertise.
6. If the body governing is also the group who judges in discipline, there is a lack of independence. Are they totally impartial? Move discipline away from the legislative body. Convocation could be structured as a legislative body or policy group. Other professional colleges follow this model. There would be less concern from the public perspective.

7. If the Society needs more adjudicators, get more. You do not need to increase the size of Convocation to do that, as you do not need to have benchers exclusively. But benchers should not be precluded from sitting.
8. As a routine matter, a hearing panel should be composed of an elected bencher, a lay bencher and a non-bencher lawyer (or paralegal as the case may be).
9. Benchers are needed for discipline and should preside. From their policy work, they have a sense of the values that inform what they do and the issues that are brought to bear around professional conduct. Without benchers, we would lose some of that.
10. The Society should have more professional adjudication, with those with adjudicative experience sitting with benchers.
11. Expert members with adjudicative experience (for example, retired judges who have returned to practice) should be permitted to play a role on panels, which would obviate the need for life benchers to serve in this capacity.
12. The profession and the public would benefit from a clear separation of the policy and hearing functions of benchers.
13. Competency in the discipline process defines the public confidence in the Law Society. Comfort is taken in having benchers sit on discipline. Be careful how the non-benchers are chosen. There should be a strong message that the standards are important. Good people are needed for this function.
14. If non-benchers are chosen, there must be an accountable and transparent process for doing so.
15. Those performing discipline have to understand why they are doing it. Because of volume, it is necessary to have non-benchers on discipline panels. But there should always be a bencher on a panel and discipline must always under the control of the Society and run by it.
16. The conflict of benchers doing discipline is a perception. It may be that we have a good model but with the wrong people. There is nothing special about benchers that qualifies them as adjudicators.

#### NON-BENCHERS ON COMMITTEES

1. If those with certain skills are not elected, surely those people can be found for committee work. It is incumbent on us to find people for committees who can bring skill sets to bear so that competencies exist in the committees. This extends to non-lawyers on some committees.
2. Use lawyers – ask them by survey for volunteers – so a large board is not necessary to meet the objectives. This involvement will develop interest and flush new people through the pool and provide new ideas for Convocation.
3. Use outside (non-elected) lawyers for committees. Life benchers could also be used. But use those who have a great deal of experience outside the Society.

4. Benchers could serve in more limited ways and have non-benchers on committees. This is a way for younger lawyers to give back to the profession without the burden of being a bencher. Later, they may be more likely to run.
5. It is trite that at the committee level the Society would try to source out valuable people to serve, just like this consultation.
6. Former benchers, like former board members in other organizations, can sit on committees. Many are prepared to make limited contributions.
7. Having non-benchers on committees allows them to participate without running, and may help in promoting the work of benchers in the profession.
8. Board members are the messengers on the committees that have non-board members. The committee is better because it gets fresh ideas.

#### EXECUTIVE COMMITTEE

1. Convocation would need an engine like an executive committee if it was a smaller board because there would be more duties on board members and the Treasurer.
2. An executive committee should only handle procedural issues – otherwise, it becomes a clique. If three or four people shape the agenda, there is risk of an extremely political clique that would be institutionalized.
3. An executive committee may be good for clarity and for streamlining the work of Convocation.
4. An executive committee may not make that much of a difference – committees do the real work and take the time to do it. Use members for committees; then you don't need an executive committee.
5. It is impossible to govern effectively with 40 people (elected benchers) without an executive committee.
6. Have an executive committee rather than reducing the size, but have the board be no more than 50 (with the *ex officio* benchers gone).
7. There is a need to watch that the executive committee does not become the board. Ensure it is transparent. For example, all agenda items should go to all benchers and minutes should be circulated. Then it will become a self-regulating committee. Convocation should appoint the executive committee and ensure diversity, and have a regular flow through of people.
8. There is a Priority Planning Committee that is supposed to help plan the agenda. An option would be to make this committee more effective. But is there trouble setting priorities?



9. With an executive committee, there is a concern about centralizing power. The respondent is uncomfortable with a small elite agenda-setting group.
10. A ladder to the office of Treasurer through the executive committee is not favoured, because it locks in individuals.
11. In theory, an executive committee is fine, but what evolves is that it replaces the board, which becomes a rubber stamp. The executive committee has to be a day to day implementation body rather than strategic planning body. An idea is to have the upcoming Treasurer come from the executive committee.
12. It may be better if committee reports go to an executive committee which then critiques them before they go to the board.
13. The informal executive committee that exists behind the scenes should be formalized.
14. With large boards, the trend is to an executive committee, an agile group that can deal seriously with important issues.
15. The executive committee should include the two benchers who received the highest number of votes inside and outside Toronto.
16. An executive committee is useful during a time of rapid change. The danger is that it becomes decision-making. There is then a tendency to draw the board into inappropriate reliance on an executive committee and to defer to it. The executive committee should be used strategically to add to the decision-making of Convocation. It could be five people elected by the board, and could be or include chairs of committees reporting to board.
17. Generally an executive committee is not a good idea. But with a large board, it is difficult to make day to day decisions, so it is needed. But it creates an inner and outer circle, and as such, it has to be very inclusive. The mandate should be restricted to, for example, conditional decisions (e.g. not something like a budget).
18. All the committee chairs should not be on the executive committee as it will be too big and will look like a secret society. It has to be transparent, to allow for contact with members and the chair of the executive committee.
19. The executive committee allows for pre-discussion, and allows a view of what is coming and the timing for it.

#### COMMENTS ON TYPES OF GOVERNING BODIES

1. The focus should be on professional regulation, not the professional association. Other professional regulators have adopted the "college" model, but the Society has not.
2. Have an elected assembly with different categories for representation and then a board of 10 to 15 as a management board. The board would be accountable and would perform the policy function. Then create a panel for discipline and have non-board members participate on committees. The cost of this structure would require assessment.

3. Apart from process, what about objectives? The size of Convocation is almost like a mini-legislature – do we want that? The respondent is not sure the answer is yes. Examine how Convocation should be run and whether it is meeting the objectives. Once that is answered, work back. Once you have answered how to run it, then decide who is needed to run it.
4. There is a distinction between a model for governance and proportional representation. The problem arises for the Law Society because the Act requires governance but has a structure more like a legislative assembly rather than a governance board. This leads to confusion and dissipated energy.
5. The election process should be scrapped – this would end the parliament-style Convocation and focus on a body impressed with the duty to reflect the best interests of the Society in the decision-making process for regulation of the profession.

Have a 10 to 12 person board which would be constituted by a one-time vote, with the ability to renew. A chair would be appointed, and then elections are held on some regular basis. But there would be no specific duty to reflect constituencies. That would be done by board. That board then has a nominating committee to ensure that the board reflects the various interests of the society. All the functions would be performed by people appointed and compensated. This is like the OSC model. There would be separate hearing panels which are not involved in policy-making. The dynamics of the model would ensure refreshment. The board would define the competencies. If more expertise is needed, people could be engaged for meetings so the board is constantly informed. To try to achieve this through an election process is a challenge.

6. The structure should include two parts – one a governing board that makes the major decisions and has an advocacy role for the Law Society in the public interest (a smaller elected body). The other part would be the discipline and competence function (also elected). One view is that these members could be appointed, although there is a view that appointments make people feel disenfranchised, and may prompt the reinforcement of the “old boys” network.

#### PARALEGAL ISSUES

1. The same resources for lawyers should be available to paralegals, including those through local associations (education functions, etc.).
2. Law Society materials for paralegals are “cut and paste”. In many cases, they do not match what paralegals do. Some rules don’t have application and other rules are more appropriate to lawyers than paralegals for their governance - e.g. trust accounts. This is an administrative nightmare. More literature is needed related to the areas in which paralegals can practice.

#### OTHER RELATED COMMENTS

1. The profession needs to know what the Society is – and the Society needs to decide on its core missions and communicate it over and over again.

2. This consultation process creates an awareness around the issues
3. The public interest is often said to be contrary to lawyers' interest- but we should say rather that we are in this together.
4. Benchers should not be relied on exclusively for views on policy issues - consultations like this one assure representative views from across the province.
5. There is an issue of financial accountability. If there is a huge board, the perception is that it is expensive. This is a communications issue.
6. The majority of benchers should be those with a vote.
7. Who measures the public interest? How do you know if you are meeting the public interest?
8. Lawyers were upset at the focus on the public interest (now in the Act) because they thought the Law Society was the lawyers' group. Since this focus, there has been a lack of interest because lawyers are not voting for someone to represent their interests.
9. There should be more regular contact between the Society and lawyers. If the Society wants people involved, the Society need to tell people about the issues and ask for comments - "what do you think" issues. The vote will then be related to the issues, and the Society will become relevant and modern very quickly.
10. There is still too much by way of paper from the Society.
11. Lawyers feel bombarded with information from the Society, and more may turn it off. If this is a way to keep members happy, the question is what is the purpose? If it is to keep the Society relevant to members, is relevance an end in itself?
12. Members do not know the Society's outcomes.
13. The Society is doing more and more and the budget is bigger. This means more cost for lawyers. Maybe the Society does too much, and should go back to the core of discipline and standards, with other things going to the OBA. The Society has a huge bureaucracy and this increases the activity of benchers.
14. What the Society does it does very well – the education program, practice tips are all first class. But does it take a staff of over 400? Producing more information about what the Society does would be important.
15. Benchers spend time at committees and on discipline hearings that are in addition to Convocation. This is a time and financial sacrifice too. From a governance perspective, there is tremendous bang for the buck. Outside of Toronto, lawyers may feel isolated from the Society, so it needs some polish on efforts to keep up the interaction with members.

16. Convocation should be reflective of the community at large, not just the legal community.
17. Benchers' duties should fit the workplace of lawyers. Their duties should be managing Convocation's affairs – other members of the profession can be used for discipline.
18. The Society is a tremendous resource for lawyers in the trenches.

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

A copy of the Executive summary and recommendations of the CDLPA "Commentary and Position paper on Governance Reform of the Law Society of Upper Canada."  
(pages 154 – 163)

### MEMORANDUM

To: Convocation

From: Tom Heintzman, Chair, Governance Task Force

Date: December 1, 2009

Re: Supplementary Information for Governance Task Force Final Report to Convocation, December 4, 2009

---

This memorandum deals with three issues:

- an amendment to Recommendation 1(b) in the Report;
- clarification of the status of grandparented and emeritus benchers; and
- calculation of the term limit.

1. An amendment to Recommendation 1(b) in the Report

Recommendation 1 on page 2 of the Task Force's report has been amended to include benchers who will qualify for life bencher status in May 2015. Upon review, the Task Force determined that those benchers who have served 12 or more years by 2011 should be included in the group to be grandparented according to the recommendation. The Task Force believes this maintains a reasonable threshold for grandparented status.

The Recommendation for Convocation's consideration now reads:

#### RECOMMENDATION 1

That Convocation:

- a. end *ex officio* bencher status for elected benchers who have served 16 years as a bencher (life bencher); and

- b. grandparent all current life benchers and benchers who will qualify in the current bencher term ending May 2011 and the bencher term ending May 2015 as *ex officio* life benchers with the current rights and privileges attaching to the status of life bencher, with the following conditions:
  - i. A life bencher who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* bencher, and
  - ii. Rights and privileges lost under i. will be reinstated after the life bencher attends three of five consecutive regular Convocations.
- 2. Clarification of the status of grandparented and emeritus benchers

The following information clarifies the status of grandparented *ex officio* benchers (reference is to paragraphs 91, 103 and 111 of the Report) and emeritus benchers (reference is to paragraphs 92, 102 and 135 of the Report).

#### Grandparented *ex officio* benchers

Life benchers, former Treasurers and former Attorneys General who would be grandparented would continue with the all the rights and privileges they currently enjoy as *ex officio* benchers for life. For example, life benchers and former Attorneys General could attend and speak in Convocation, and vote in committees. Former Treasurers could vote in Convocation and committees. They may sit on the Hearing and Appeal Panels.

Grandparented *ex officio* benchers would be subject to a new obligation to regularly attend Convocation, failing which all rights and privileges cease. The cessation of the rights and privileges continues until the bencher reinstates them after attending the requisite number of Convocations.

Former Treasurers, life benchers and former Attorneys General may continue to be invited to attend bencher social functions or similar events, as such attendance is not considered to be a right or privilege within the meaning of the recommendation.

#### *Emeritus* benchers

*Emeritus* benchers would be individuals whose service as benchers will have ended either because they have reached the maximum limit for years served as a bencher (the term limit), or because they have completed their service as a Treasurer. They cease to be members of Convocation and have no status as a bencher. The title is purely honorary. As such, they have no right to attend or vote at Convocation as a bencher or to attend committee or other bencher meetings.

*Emeritus* benchers would be eligible for appointment to the Hearing Panel, similar to non-bencher licensees, and for appointment to committees and task forces as non-bencher members. They may continue to be invited to attend bencher social events.

#### Summary of differences between grandparented *ex officio* benchers and *emeritus* benchers

- a. A grandparented *ex officio* bencher who loses rights and privileges is still a bencher, and can have those rights and privileges reinstated.

- b. An *emeritus* bencher is no longer a bencher, having served the term limit or having served as Treasurer.
- c. All grandparented *ex officio* life benchers will have served the term limit the Task Force is recommending, if adopted. As such, if a grandparented *ex officio* life bencher who lost rights and privileges for not attending Convocation wished, for some reason, to become an *emeritus* bencher, he or she would have to resign as a bencher. Upon resignation, such a person could become an *emeritus* bencher.
- d. In summary, there are three distinctions between grandparented *ex officio* benchers and benchers *emeritus*:
  - i. Grandparented benchers will be a declining number in the future, while those who become benchers *emeritus* (for life) will grow in number;
  - ii. Grandparented benchers are benchers, whereas benchers *emeritus* are not; and
  - iii. Grandparented benchers who have lost and not regained their rights as such are not eligible for appointment to the Hearing Panel or committees, while benchers *emeritus* are eligible.

### 3. Calculation of the term limit

The table below provides some examples of how the number of years would be calculated for the limit if a bencher is elected during, rather than at the start of, a four year bencher term (reference is to paragraph 137 in the Report). Each example is based on a new bencher candidate who is subject to an eight year term limit and is first elected in May 2011 or at some point during that term.

Each example shows that the end of service for the bencher who has served eight years would always coincide with the end of a four year bencher term. The bencher term begins in May of an election year (e.g. May 2011 to May 2015). On this basis, the bencher who reaches the limit before the next bencher election would continue as a bencher until May in an election year. This means that some benchers may serve more than eight years.

The number of years need not be served consecutively, and as such is cumulative.

Bencher	Bencher Election Year 2011	Bencher Election Year 2015	Bencher Election Year 2019	Bencher Election Year 2023	Total Years
Ms. A	First Elected 2013 (2)*	Elected 2015 (4)	Elected 2022 (1)	Elected 2023 (4)	11
Ms. B	First Elected 2013 (2)	Elected 2016 (3)	Elected 2019 (4)	-	9
Mr. C	First Elected 2011 (4)	Elected 2018 (1)	Elected 2020 (3)	-	8
Mr. D	First Elected 2011 (4)	Elected 2016 (3)	-	Elected 2024 (3)	10
Ms. E	First Elected 2013 (2)	Elected 2017 (2)	Elected 2021 (2)	Elected 2025 (2)	8

\*( ) shows years served in the four year term

RECOMMENDATION 1 (amended as set out in the Memorandum to Convocation)

MOTION

That Convocation:

- a. end *ex officio* bencher status for elected benchers who have served 16 years as a bencher (life bencher); and
- b. grandparent all current life benchers and benchers who will qualify in the current bencher term ending May 2011 and the bencher term ending May 2015 as *ex officio* life benchers with the current rights and privileges attaching to the status of life bencher, with the following conditions:
  - i. A life bencher who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* bencher, and
  - ii. Rights and privileges lost under i. will be reinstated after the life bencher attends three of five consecutive regular Convocations.

Re: Recommendation 1 a.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

Convocation

- a. end *ex officio* bencher status for elected benchers who have served 16 years as a bencher (life bencher).

Carried

ROLL-CALL VOTE

Aaron	Against	Heintzman	For
Anand	For	Henderson	For
Backhouse	Against	Krishna	Against
Banack	For	Lawrie	Against
Boyd	Against	Lewis	For
Braithwaite	Against	MacKenzie	For
Bredt	For	McGrath	Against
Campion	For	Marmur	For
Caskey	For	Minor	For
Chilcott	Against	Pawlitza	For
Conway	For	Porter	Against
Crowe	Against	Potter	Against
Daud	For	Pustina	For
Dickson	Against	Rabinovitch	For
Dray	For	Robins	For
Elliott	For	Ross	Against
Epstein	Against	Rothstein	For
Eustace	For	Ruby	Against
Fleck	For	Sandler	For
Go	For	Schabas	For
Gold	Against	Sikand	For
Gottlieb	Against	Silverstein	For
Hainey	For	Simpson	Against
Halajian	For	C. Strosberg	Against
Hare	For	H. Strosberg	Against
Hartman	For	Swaye	Against
		Symes	Against
		Tough	For
		Wright	Against

Vote: 32 For; 23 AgainstRe: Recommendation 1 b.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

## Convocation

- b. grandparent all current life benchers and benchers who will qualify in the current bencher term ending May 2011 and the bencher term ending May 2015 as *ex officio* life benchers with the current rights and privileges attaching to the status of life bencher, with the following conditions:



- i. A life bencher who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* bencher, and
- ii. Rights and privileges lost under i. will be reinstated after the life bencher attends three of five consecutive regular Convocations.

Carried

### ROLL-CALL VOTE

Aaron	Against	Henderson	For
Anand	For	Krishna	For
Backhouse	Against	Lawrie	For
Banack	For	Lewis	For
Boyd	For	MacKenzie	Against
Braithwaite	Against	McGrath	For
Bredt	For	Marmur	For
Campion	For	Minor	For
Caskey	For	Pawlitza	For
Chilcott	Against	Porter	For
Conway	For	Potter	For
Crowe	Against	Pustina	For
Daud	For	Rabinovitch	For
Dickson	For	Robins	For
Dray	For	Ross	For
Elliott	For	Rothstein	For
Epstein	Abstain	Ruby	Abstain
Eustace	For	Sandler	For
Fleck	For	Schabas	For
Go	For	Sikand	For
Gold	For	Silverstein	For
Gottlieb	For	Simpson	For
Hainey	For	C. Strosberg	For
Halajian	For	H. Strosberg	Abstain
Hare	For	Swaye	For
Hartman	For	Symes	For
Heintzman	For	Tough	For
		Wright	For

Vote: 46 For; 6 Against; 3 Abstentions

### RECOMMENDATION 2

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

## Convocation

- a. limit the length of time a person may serve as an elected bencher; and
- b. provide that once a bencher reaches the limit for service as an elected bencher, that bencher becomes an *emeritus* bencher, as defined in this report.

CarriedROLL-CALL VOTE

Aaron	Against	Henderson	For
Anand	For	Krishna	Against
Backhouse	Against	Lawrie	Against
Banack	For	Lewis	For
Boyd	For	MacKenzie	For
Braithwaite	Against	McGrath	For
Brett	For	Marmur	For
Campion	For	Minor	For
Caskey	For	Pawlitza	For
Chilcott	Against	Porter	Against
Conway	For	Potter	Against
Crowe	Against	Pustina	For
Daud	For	Rabinovitch	For
Dickson	Against	Robins	For
Dray	For	Ross	Against
Elliott	For	Rothstein	For
Epstein	Against	Ruby	Against
Eustace	For	Sandler	For
Fleck	For	Schabas	For
Go	For	Sikand	For
Gold	Against	Silverstein	For
Gottlieb	Against	Simpson	Against
Hainey	For	C. Strosberg	Against
Halajian	For	H. Strosberg	Against
Hare	For	Swaye	For
Hartman	For	Symes	Against
Heintzman	For	Tough	For
		Wright	Against

Vote: 35 For; 20 AgainstRECOMMENDATION 3MOTION

That Convocation choose the following as the maximum length of time that a person may serve as an elected bencher:

at the later of twelve years, which need not be served consecutively, or the completion of the bencher term in which the elected bencher has completed at least 12 years.

It was moved by Mr. Aaron, seconded by Mr. Wright, that Recommendation 3 be amended by changing the maximum length of time from twelve years to sixteen years that a person may serve as an elected benchner.

Lost

ROLL-CALL VOTE

Aaron	For	Henderson	Against
Anand	Against	Krishna	Against
Backhouse	Against	Lawrie	Against
Banack	Against	Lewis	Against
Boyd	Against	MacKenzie	Against
Braithwaite	Abstain	McGrath	Against
Bredt	Against	Marmur	Against
Campion	Against	Minor	Against
Caskey	Against	Pawlitza	Against
Chilcott	Against	Porter	Against
Conway	Against	Potter	Against
Crowe	For	Pustina	Against
Daud	Against	Rabinovitch	Against
Dickson	Against	Robins	Against
Dray	Against	Ross	Against
Elliott	Against	Rothstein	Against
Epstein	Abstain	Ruby	Against
Eustace	Against	Sandler	Against
Fleck	Against	Schabas	Against
Go	Against	Sikand	Against
Gold	For	Silverstein	Against
Gottlieb	For	Simpson	Against
Hainey	Against	C. Strosberg	Against
Halajian	Against	H. Strosberg	Against
Hare	Against	Swaye	Against
Hartman	Against	Symes	Against
Heintzman	Against	Tough	Against
		Wright	For

Vote: 5 For; 48 Against; 2 Abstentions

It was moved by Mr. Heintzman, seconded by Mr. Banack, that Recommendation 3 be approved.

Carried

ROLL-CALL VOTE

Aaron	Against	Henderson	For
Anand	For	Krishna	For
Backhouse	Against	Lawrie	Against
Banack	For	Lewis	For
Boyd	For	MacKenzie	For
Braithwaite	Against	McGrath	For
Bredt	For	Marmur	For
Campion	For	Minor	For
Caskey	For	Pawlitza	For
Conway	For	Porter	Against
Crowe	Against	Potter	Against
Daud	For	Pustina	For
Dickson	For	Rabinovitch	For
Dray	For	Robins	For
Elliott	For	Ross	For
Epstein	Against	Rothstein	For
Eustace	For	Ruby	Against
Fleck	For	Sandler	For
Go	For	Schabas	For
Gold	Abstain	Sikand	For
Gottlieb	Against	Silverstein	For
Hainey	For	Simpson	For
Halajian	For	C. Strosberg	Against
Hare	For	H. Strosberg	Abstain
Hartman	For	Swaye	For
Heintzman	For	Symes	Against
		Tough	For
		Wright	Against

Vote: 39 For; 13 Against; 2 Abstentions

RECOMMENDATION 4MOTION

That Convocation

- a. end *ex officio* bench status for former Treasurers;
- b. provide that once a Treasurer completes his or her term of office, the former Treasurer becomes an *emeritus* bench, as defined in this report; and
- c. grandparent all current former Treasurers and the current Treasurer when that Treasurer's term is completed as *ex officio* benchers with the current rights and privileges attaching to the status of a former Treasurer as bench, with the following conditions:

- i. A former Treasurer who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* benchler, and
- ii. Rights and privileges lost under i. will be reinstated after the former Treasurer attends three of five consecutive regular Convocations.

Re: Recommendation 4 a.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

Convocation

- a. end *ex officio* benchler status for former Treasurers.

Carried

ROLL-CALL VOTE

Aaron	Against	Henderson	For
Anand	For	Krishna	Against
Backhouse	Against	Lawrie	Against
Banack	For	Lewis	For
Boyd	Against	MacKenzie	Against
Braithwaite	Against	McGrath	Against
Bredt	For	Marmur	For
Campion	For	Minor	For
Caskey	For	Pawlitza	Against
Conway	For	Porter	Against
Crowe	Against	Potter	Against
Daud	Against	Pustina	For
Dickson	Against	Rabinovitch	For
Dray	For	Robins	Abstain
Elliott	For	Ross	For
Epstein	Against	Rothstein	For
Eustace	For	Ruby	Against
Fleck	For	Sandler	Against
Gold	Against	Schabas	For
Gottlieb	For	Sikand	For
Hainey	Against	Silverstein	For
Halajian	For	Simpson	Against
Hare	For	C. Strosberg	Against
Hartman	For	H. Strosberg	Against
Heintzman	For	Swaye	Against
		Symes	Against
		Tough	For
		Wright	Against

Vote: 27 For; 25 Against; 1 Abstention

Re: Recommendation 4 b.

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

## Convocation

- b. provide that once a Treasurer completes his or her term of office, the former Treasurer becomes an *emeritus* benchner, as defined in this report.

Carried

ROLL-CALL VOTE

Aaron	For	Henderson	For
Anand	For	Krishna	For
Backhouse	Against	Lawrie	For
Banack	For	Lewis	For
Boyd	For	MacKenzie	For
Braithwaite	Against	McGrath	For
Bredt	For	Marmur	For
Campion	For	Minor	For
Caskey	For	Pawlitza	Against
Conway	For	Porter	For
Crowe	Against	Potter	For
Daud	For	Pustina	For
Dickson	For	Rabinovitch	For
Dray	For	Robins	Abstain
Elliott	For	Ross	For
Epstein	Abstain	Rothstein	For
Eustace	For	Ruby	Abstain
Fleck	For	Sandler	For
Gold	For	Schabas	For
Gottlieb	For	Sikand	For
Hainey	For	Silverstein	For
Halajian	For	Simpson	For
Hare	For	C. Strosberg	For
Hartman	For	H. Strosberg	For
Heintzman	For	Swaye	For
		Symes	Abstain
		Tough	For
		Wright	Abstain

Vote: 44 For; 4 Against; 5 Abstentions

Re: Recommendation 4 c.

It was moved by Mr. Aaron, seconded by Mr. Wright, that Recommendation 4 be amended by deleting the conditions under Recommendation 4 c.

Lost

ROLL-CALL VOTE

Aaron	For	Henderson	Against
Anand	Against	Krishna	For
Backhouse	For	Lawrie	Against
Banack	Against	Lewis	Against
Boyd	For	MacKenzie	Against
Braithwaite	For	McGrath	For
Bredt	Against	Marmur	Against
Campion	Against	Minor	Against
Caskey	For	Pawlitza	Against
Conway	Against	Potter	Against
Crowe	For	Pustina	Against
Daud	Against	Rabinovitch	For
Dickson	Against	Robins	Abstain
Dray	Against	Ross	Against
Elliott	Abstain	Rothstein	Against
Epstein	Abstain	Ruby	For
Eustace	Against	Sandler	Against
Fleck	Against	Schabas	Against
Gold	Abstain	Sikand	Against
Gottlieb	Against	Silverstein	Against
Hainey	Against	Simpson	Against
Halajian	For	C. Strosberg	For
Hare	Against	H. Strosberg	For
Hartman	Against	Swaye	Against
Heintzman	Against	Symes	For
		Tough	Against
		Wright	For

Vote: 15 For; 33 Against; 4 Abstentions

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

Convocation

- c. grandparent all current former Treasurers and the current Treasurer when that Treasurer's term is completed as *ex officio* benchers with the current rights and privileges attaching to the status of a former Treasurer as bencher, with the following conditions:
  - i. A former Treasurer who fails to attend regular Convocation four consecutive times will cease to have his or her rights and privileges as an *ex officio* bencher, and
  - ii. Rights and privileges lost under i. will be reinstated after the former Treasurer attends three of five consecutive regular Convocations.

Carried

ROLL-CALL VOTE

Aaron	For	Henderson	For
Anand	For	Krishna	For
Backhouse	For	Lawrie	For
Banack	For	Lewis	For
Boyd	For	MacKenzie	Abstain
Braithwaite	Against	McGrath	For
Bredt	For	Marmur	For
Campion	For	Minor	For
Caskey	For	Pawlitza	For
Conway	For	Porter	For
Crowe	For	Potter	For
Dickson	For	Pustina	For
Dray	For	Rabinovitch	For
Elliott	Abstain	Robins	Abstain
Epstein	For	Ross	For
Eustace	For	Rothstein	For
Fleck	For	Ruby	For
Gold	For	Sandler	For
Gottlieb	Against	Schabas	For
Hainey	For	Sikand	For
Halajian	For	Silverstein	For
Hare	For	Simpson	For
Hartman	For	C. Strosberg	For
Heintzman	For	H. Strosberg	For
		Swaye	For
		Symes	For
		Tough	For
		Wright	Abstain

Vote: 46 For; 2 Against; 4 Abstentions

RECOMMENDATION 5

It was moved by Mr. Heintzman, seconded by Mr. Banack, that –

## Convocation

- a. end *ex officio* bench status for former Attorneys General; and
- b. grandparent all current former Attorneys General and the current Attorney General when he becomes a former Attorney General as *ex officio* benchers with the current rights and privileges attaching to the status of a former Attorney General as benchers, with the following conditions:
  - i. Former Attorneys General who fail to attend regular Convocation four consecutive times will cease to have the rights and privileges of an *ex officio* benchers; and



- ii. Rights and privileges lost under i. will be reinstated after the former Attorney General attends three of five consecutive regular Convocations.

Carried

ROLL-CALL VOTE

Aaron	For	Henderson	For
Anand	For	Krishna	For
Backhouse	Against	Lawrie	Against
Banack	For	Lewis	For
Boyd	Abstain	MacKenzie	For
Braithwaite	Against	McGrath	Against
Bredt	For	Marmur	For
Campion	For	Minor	Abstain
Caskey	For	Pawlitza	For
Conway	For	Porter	Against
Crowe	Against	Potter	Against
Dickson	Against	Pustina	For
Dray	For	Rabinovitch	For
Elliott	For	Robins	For
Epstein	Against	Ross	For
Eustace	For	Rothstein	For
Fleck	For	Ruby	Against
Gold	Abstain	Schabas	For
Gottlieb	Against	Sikand	For
Hainey	For	Silverstein	For
Halajian	For	Simpson	Against
Hare	For	C. Strosberg	For
Hartman	For	H. Strosberg	For
Heintzman	For	Swaye	For
		Symes	Against
		Tough	For
		Wright	Against

Vote: 34 For; 14 Against; 3 Abstentions

*REPORTS NOT REACHED*

Paralegal Standing Committee Report  
 Government and Public Affairs Committee Report (in camera)  
 Professional Regulation Committee Report  
 Audit Committee Report  
 CEO's Report (in camera)

*REPORTS FOR INFORMATION ONLY*

## Access to Justice Committee Report

- Report of the Executive Director of the Law Commission of Ontario

Report to Convocation  
December 4, 2009

---

## Access to Justice Committee

Access to Justice Committee  
Marion Boyd, Co-Chair  
Paul Schabas, Co-Chair  
Avvy Go, Vice-Chair  
Paul Dray  
Carl Fleck  
Glenn Hailey  
Susan McGrath  
Julian Porter  
Jack Rabinovitch  
William Simpson  
Catherine Strosberg  
Bonnie Tough

Purpose of Report: Information

Prepared by the Equity Initiatives Department  
(Marisha Roman, Aboriginal Initiatives Counsel - 416-947-3989)

## COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on November 10, 2009. Committee members Marion Boyd (Co-Chair), Avvy Go (Vice-Chair), Paul Dray, Carl Fleck, Susan McGrath, and William Simpson participated. Members of the Equity and Aboriginal Issues Committee also attended for a presentation from the Law Commission of Ontario. Staff members Marisha Roman, Josée Bouchard, Julia Bass, Sheena Weir, Mark Andrew Wells, and Nicole Anthony attended. Dr. Patricia Hughes, Executive Director of the Law Commission of Ontario, attended as a guest to make the presentation.

FOR INFORMATION  
PRESENTATION BY THE EXECUTIVE DIRECTOR OF THE  
LAW COMMISSION OF ONTARIO

BACKGROUND

2. Throughout its regular meeting schedule, the Access to Justice Committee invites representatives from legal organizations to provide updates on their current programs, initiatives and projects.
3. Dr. Patricia Hughes, the Executive Director of the Law Commission of Ontario (LCO) attended to present an update on the current and completed research activities of the LCO. The Committee members expressed their support for assisting in the distribution of information about LCO research projects.
4. The following summarizes the five research projects currently underway at the LCO:
  - a. Development of a Coherent Approach to the Law as it Affects Older Adults – The purpose of this project is to develop a framework that can serve as a reference to improve the appropriate application of the law to older adults, whether the law is particularly directed at older adults or is not specific to older adults. To date, the LCO has released a consultation paper, three commissioned research papers and a report on the preliminary consultation.
  - b. Development of a Coherent Approach to the Law as it Affects Persons with Disabilities – This project follows a similar approach to the project for older adults and recognizes that there will be areas of overlap between the two projects. The LCO has released an initial consultation paper and background paper and is establishing an advisory group for the project.
  - c. Vulnerable Workers and Precarious Work – The focus of this project is on studying the degree of protection afforded to persons in part-time, contract and migrant work and other forms of “precarious” work, as it will be defined in the upcoming consultation paper. The LCO is also establishing an advisory group for this project.
  - d. Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the Justice System - The purpose of this project is to improve the process of addressing family law disputes by identifying and recommending best practices at entry points to the family law system. Following the release of a consultation paper, the LCO is conducting public consultations during the fall and early winter of 2009 to identify where people go to try to solve family challenges or problems and what services help them navigate through the complicated Ontario family justice system. It is anticipated that this project will be completed by November 2010.
  - e. Modernization of the Provincial Offences Act (POA) - The LCO is undertaking a public consultation to study options for modernizing the POA, which will result in the release of a final report containing recommendations for reform of the POA.

- f. Joint and Several Liability under the Ontario Business Corporations Act - The purpose of this project is to consider whether the Business Corporations Act should be amended to bring it in greater alignment with the Ontario Securities Act, federal legislation and trends in the United States, the United Kingdom and Australia to provide for proportionate liability, capped liability, a variant of these approaches or other approach to minimizing the impact of the joint and several liability principle. The project is currently in the consultation phase and the LCO and the Hennick Centre for Business and Law at York University hosted a roundtable of experts in the area and organizational representatives of professionals affected by joint and several liability on October 28 in Toronto.
5. The LCO has completed work on the following two research projects:
    - a. Charging Fees for Cashing Government Cheques – This project looked at the issue of fees for cashing government cheques in response to concerns regarding the impact of cheque cashing fees on low-income communities and on remote Northern communities without access to mainstream financial institutions such as banks or credit unions. The LCO commissioned a consultation paper and released a final report on November 7, 2008.
    - b. Division of Pensions Upon Marital Breakdown – This project was the first project initiated by the LCO as the subject matter was identified as an issue of high concern. The final report, released on January 30, 2009, set out the LCO's recommendations for reform, which were released in October 2008, and added background on pension and family law and a detailed analysis of the issues. On May 7, 2009, the Legislative Assembly of Ontario enacted changes to how pensions are divided when couples separate and divorce, based in part on the LCO recommendations. The Family Statute Law Amendment Act, 2009, received Royal Assent on May 14, 2009.
  6. Further information about the research mandate and future projects can be accessed through the LCO's website at <http://www.lco-cdo.org/en/index.html>.
  7. Dr. Hughes also informed the Committees that the LCO's mandate expires on January 1, 2011. The LCO's intention is to apply to each of the partners throughout 2010 for renewal of its mandate.

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

- Parental Leave Assistance Program Report
- Public Education Equality Series Calendar 2009 – 2010

Report to Convocation  
December 4, 2009

---

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

Committee Members  
Janet Minor, Chair  
Raj Anand, Vice-Chair  
Paul Copeland  
Mary Louise Dickson  
Avvy Go  
Susan Hare  
Doug Lewis  
Dow Marmur  
Judith Potter  
Linda Rothstein  
Beth Symes

Purpose of Report: Information

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

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on November 10, 2009. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Avvy Go, Doug Lewis, Dow Marmur, Judith Potter and Beth Symes participated. Milé Komlen, representative of the Equity Advisory Group/Groupe consultatif en matière d'équité, also participated. Dr. Patricia Hughes, Executive Director of the Ontario Law Commission, made a presentation about the work of the Commission to the Committee and to the Access to Justice Committee, jointly. Professor Michael Ornstein, York University, made a presentation to the Committee. Staff members Nicole Anthony, Josée Bouchard, Denise McCourtie and Mark Andrew Wells attended.

## FOR INFORMATION

### PARENTAL LEAVE ASSISTANCE PROGRAM - REPORT

## BACKGROUND

2. The Law Society launched the three-year pilot parental leave program to enable more lawyers to stay in practice after the birth or adoption of a child. Effective March 12, 2009, the Parental Leave Assistance Program ("PLAP") provides financial benefits to practising lawyers who are sole practitioners or partners in firms of five lawyers or fewer who do not have access to other maternity, parental, or adoption financial benefits under public or private plans and who meet the eligibility criteria. Anyone who is eligible for Employment Insurance (EI) is not eligible under the Law Society's PLAP.

3. Under PLAP, the Law Society provides a fixed sum of \$750 a week to eligible applicants for up to twelve weeks (maximum \$9,000 per leave, per family unit) to cover, among other things, expenses associated with maintaining their practice during a maternity, parental or adoption leave.
4. To be eligible for benefits under the PLAP, the applicant must satisfy all of the following requirements:
  - a. be a birth parent (mother or father) or an adoptive parent (mother or father);
  - b. be a member in good standing;
  - c. be a sole practitioner or a partner in a firm of five lawyers or less;
  - d. have no access to other maternity, parental, or adoption financial benefits under public or private plans (anyone who is eligible for Employment Insurance is not eligible for the PLAP);
  - e. cease to engage in remunerative work or to practise law during the leave for which he or she is receiving payments under PLAP.
5. The first report relating to the PLAP is presented at Appendix 1.

#### PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES 2009 – 2010

6. The calendar for the Public Education Equality and Rule of Law Series is presented at Appendix 2.

#### APPENDIX 1

#### Parental Leave Assistance Program Statistics for the Period March 12, 2009 to October 30, 2009

##### 1. Application Status (All Applicants)

	Pending	Approved	Completed	Denied	Withdrawn	Total
Count	2	17	22	1	3	45
Percent	4%	38%	49%	2%	7%	100%

##### Reasons for withdrawals:

Applicant determined after applying that he/she would not be able to take time away from his/her practice: 1 applicant

Applicants who applied for parental leave benefits with incomplete applications and have not responded to our requests to provide further information. It is assumed that the applicants have withdrawn their applications as more than 60 days have passed since submission: 2 applicants

Reason for denial:

Applicant gave birth prior to the program start date of March 12, 2009.

The following categories of statistical information contain data relating only to Applicants who have had their application approved by the Law Society.

## 2. Approved Applicants by Gender and Practice Type

	Sole Practitioner		Small Firm		Total	
	Count	% of Total	Count	% of Total	Total Count	Total %
Female	24	62%	5	13%	29	74%
Male	6	15%	4	10%	10	26%
Total	30	77%	9	23%	39	100%

## 3. Approved Applicants by Type of Leave

Type of Leave	Count	Percentage
Birth of Child	39	100%
Adoption of Child	0	0%
Medical Leave Before Birth	0	0%
Miscarriage/Stillbirth	0	0%

## 4. Approved Applicants by Number of Weeks of Benefits Requested

Number of weeks benefits requested	Number of Applicants - Women	Number of Applicants - Men	Total	Percentage
< 4	1	2	3	8%
4 – 11	1	1	2	5%
12 (max)	27	7	34	87%
Totals	29	10	39	100%

## 5. Applicants by Age Group and Gender

Age Group	20-30		31-35		36-40		40+		Total	
Gender	F	M	F	M	F	M	F	M	F	M
Number of Applicants	1	1	14	4	8	3	6	2	29	10
Percentage of Total Applicants	3%	3%	36%	10%	20%	8%	15%	5%	74%	26%



## 6. Number of Approved Applicants by Years Since Call to the Bar

Years Since Called to the Bar	0-5		6-10		11-15		15+	
Gender	F	M	F	M	F	M	F	M
Number of Applicants	13	4	13	4	3	0	0	2
Percentage of Total Applicants	33%	10%	33%	10%	7%	0	0	5%

## APPENDIX 2

## PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES 2009 – 2010

Rule of Law Series Event - International Human Rights Day Reception  
 Convocation Hall Postponed until March 2010  
 December 9, 2009  
 6:00 - 8:00 p.m.

Women's Law Association & Law Society Symposium  
 Lamont Learning Centre  
 February 18 or 22, 2010  
*(Date and time to be determined)*

Topic: Guide to Success – A Dialogue with Women in Law

The Women's Law Association of Ontario and the Law Society of Upper Canada are pleased to host a forum that will feature a panel of successful and influential women lawyers who will share their stories from diverse areas of legal practice and work.

Access Awareness - Disability Issues and Law Forum  
 Lamont Learning Centre (2:00 p.m. – 5:00 p.m.)  
 Convocation Hall (5:00 p.m. – 6:00 p.m.)  
 February 3, 2010

Topic: Parenting with a Disability and the Legal System

The Ethno-racial People with Disabilities Coalition of Ontario (ERDCO) in collaboration with ARCH Disability Law Centre and the Law Society of Upper Canada, and Community Partners, Present a symposium on "Parenting with a Disability & the Legal System."

**Black History Month**

Lamont Learning Centre 4:00 - 6:00 p.m.

Convocation Hall 6:00 - 8:00 p.m.

February 10, 2010

**International Women's Day**

Lamont Learning Centre (*time to be determined*)

Convocation Hall 6:00 - 8:00 p.m. (*to be determined*)

March 1 or 8, 2010

**Rule of Law Series**

Lamont Learning Centre 4:00 - 6:00 p.m.

Convocation Hall 6:00 - 8:00 p.m.

March 22 or 24, 2010

**Journée de la Francophonie 2010 Réception**

Convocation Hall

March 25, 2010

6:00 – 8:00 p.m.

**Holocaust Memorial Day**

Lamont Learning Centre 4:00 - 6:00 p.m.

Convocation Hall 6:00 - 8:00 p.m.

April 12, 2010

**Asian Heritage Month**

Lamont Learning Centre 4:00 - 6:00 p.m.

Convocation Hall 6:00 - 8:00 p.m.

May 10, 2010

**National Aboriginal Day**

Lamont Learning Centre 4:00 - 6:00 p.m.

Convocation Hall 6:00 - 8:00 p.m.

June 14, 2010

**Pride Week**

Lamont Learning Centre 4:00 - 6:00 p.m.

Convocation Hall 6:00 - 8:00

June 24 or 29, 2010

**Tribunals Committee Report**

- Pre-Proceeding Consent Resolution Conference
- Tribunals Office Quarterly Statistics

Report to Convocation  
December 4, 2009

---

Tribunals Committee

Committee Members  
Mark Sandler (Chair)  
Alan Gold (Vice-Chair)  
Thomas Conway  
Jennifer Halajian  
Tom Heintzman  
Paul Schabas  
William J. Simpson

Purposes of Report: Information

Prepared by the Policy Secretariat  
(Sophia Sperdakos 416-947-5209)

## COMMITTEE PROCESS

1. The Committee met on November 11, 2009. Committee members Mark Sandler (Chair), Alan Gold (Vice-Chair), Thomas Conway, Tom Heintzman and Bill Simpson attended. Staff members Katherine Corrick, Grace Knakowski, Lisa Mallia, Sophia Sperdakos, and Elliot Spears attended. Part of the meeting was a joint meeting with members of the Professional Regulation Committee and Paralegal Standing Committee and additional staff.

## INFORMATION

### PRE-PROCEEDING CONSENT RESOLUTION CONFERENCE

2. The Committee met with members of the Professional Regulation Committee ("PRC") and the Paralegal Standing Committee ("PSC") to discuss a PRC proposal respecting a new consent process for the Society.
3. The Committee, along with PRC and PSC recommend to Convocation approval of the policy to implement the "pre-proceeding consent resolution conference" process for a two-year pilot project.
4. The formal motion and the supporting report are contained in the PRC Report to Convocation.

## TRIBUNALS OFFICE QUARTERLY STATISTICS

5. The Tribunals Office quarterly statistics for July 1 to September 30, 2009 are set out at Appendix 1 for information.

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

Copy of the Tribunals Office Third Quarter Report – 2009 Statistics – (July 1 – September 30, 2009).

(Appendix 1, pages 4 – 23)

CONVOCATION ROSE AT 2:00 P.M.

Confirmed in Convocation this 28<sup>th</sup> day of January, 2010.

Treasurer