



Law Society
of Ontario

Barreau
de l'Ontario

Tab 3

Governance Task Force 2016

Report to Convocation

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Governance Task Force 2016 Report to Convocation

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Motion

Recommendation 1

That effective for the bencher term beginning in 2019, Convocation approve that *ex officio* benchers who have served 16 years or more as an elected bencher have no rights or privileges in Convocation.

Recommendation 2

That effective for the bencher term beginning in 2019, Convocation approve that *ex officio* benchers who are former Attorneys-General of Ontario have no rights or privileges in Convocation.

Recommendation 3

That effective for the bencher term beginning in 2019, Convocation approve that *ex officio* Treasurers continue to have the right to participate in a debate in Convocation but not the right to vote.

Recommendation 4

That Convocation approve that the offices of emeritus Treasurer and emeritus bencher be ended effective for the bencher term beginning in 2019.

Recommendation 5

That Convocation approve a reduction in the maximum term of service for elected lawyer and paralegal benchers (the term limit) to eight years, to be effective for the bencher election in 2023.

Recommendation 6

That Convocation adopt the Governance Policies and Practices incorporating the Bencher Code of Conduct and the Declaration of Adherence, set out at [Tab 3.1](#).

Executive Summary

The Governance Task Force 2016 (“the Task Force”) has completed its review of the Law Society’s governance and is proposing six recommendations to improve the Law Society’s governance effectiveness that include

- adoption of new Governance Practices and Policies for the Law Society, which incorporate a Bencher Code of Conduct,
- changes to the term limit for elected benchers, and
- changes to the rights and privileges of *ex officio* and emeritus benchers.

The Task Force is proposing an incremental approach to governance reform. The Task Force concluded that at this stage the appropriate approach to governance reform is to recommend initial changes, determine their effect and pursue further changes to the structure of Convocation at a future date. The issues for future consideration include

- ending all *ex officio* bencher positions in Convocation,
- reducing the number of elected benchers,
- modifying the length of the Treasurer’s term of office, and
- modernizing the terminology used to described the board, board members and the president of the Law Society.

Background and Work of the Task Force

Over the past two years, as reflected in its various reports updating Convocation on the progress of its work, the Task Force

- reviewed the important 2010 governance reforms that introduced a 12 year term limit for service as an elected bencher, limited the *ex officio* offices of life benchers, former Treasurers and former Attorneys General to existing office holders and created new honorary bencher categories - emeritus benchers - for former Treasurers after 2010 and benchers who served 12 years,
- engaged in a research phase, and in addition to its own research, retained Hansell LLP to research and report on governance practices in self-regulatory organizations in various jurisdictions,
- engaged with benchers at an October 2017 bencher governance session to explore structural elements of governance - or “architecture” - for the Law Society and discussed issues relating to process,
- engaged with benchers In a June 2018 session where the Task Force presented options for structural changes for discussion,

- issued a call for comment on various structural components as discussed above and received over 100 submissions from lawyers, paralegals, the public and legal organizations, and
- with respect to governance process, distilled key concepts from the October 2017 benchers governance session and identified content for new, comprehensive governance policies to articulate expectations and obligations for director conduct as board members.

ANALYSIS

Towards More Effective Governance

In the Task Force's view, the way to ensure continued confidence in the Law Society as a regulator and achieve the goal of effective oversight is to create a board structure that will facilitate the following:

- a focussed effort on providing the necessary oversight and strategic direction to the Law Society;
- an ability to more readily coalesce around a vision for the Law Society as a regulator that will guide how the board exercises its governance responsibilities and oversight role;
- more focussed and timely decision-making on important policy issues;
- increased focus on long term goals, which would include assessing and reviewing the measures of the effectiveness of those goals in an organized, consistent way;
- a flexibility and nimbleness to decision-making when necessary to address important issues of governance, risks and challenges;
- a diversity of background, experience and expertise among board members in an environment that fosters inclusiveness and a shared vision;
- the ability for all benchers to invest time and effort in the role of a bencher; and
- a structured plan of effective board education on substantive issues to ensure benchers are equipped for their responsibilities and grow in experience and expertise.

The Task Force concluded that further changes to the structure of Convocation and consideration of changes to committees, including the number and size of committees and meeting schedules, should await future consideration in keeping with its proposal for an incremental approach to governance reform.

RECOMMENDATIONS

***Ex officio* Benchers' Rights and Privileges and the Offices of Emeritus Treasurer and Bencher – Recommendations 1, 2, 3 and 4**

Recommendation 1 - That effective for the bencher term beginning in 2019, Convocation approve that ex officio benchers who have served 16 years or more as an elected bencher have no rights or privileges in Convocation.

Recommendation 2 - That effective for the bencher term beginning in 2019, Convocation approve that ex officio benchers who are former Attorneys-General of Ontario have no rights or privileges in Convocation.

Recommendation 3 - That effective for the bencher term beginning in 2019, Convocation approve that ex officio Treasurers continue to have the right to participate in a debate in Convocation but not the right to vote.

Recommendation 4 - That Convocation approve that the offices of emeritus Treasurer and emeritus bencher be ended effective for the bencher term beginning in 2019.

Implementation:

These recommendations would require Convocation to amend By-Law 3 with respect to ex officio benchers, emeritus Treasurers and emeritus benchers.

The proposal is to modify *ex officio* benchers' rights and privileges so that *ex officio* Treasurers would have the rights and privileges in Convocation of current emeritus Treasurers (the right to take part in a debate) and former Attorneys General and life benchers, like current emeritus benchers, would have no rights as such in Convocation. The offices of emeritus Treasurer and emeritus bencher, which are honorary bencher positions, would be ended. These changes would be effective for the next bencher term beginning in May 2019.

Reasons for Change

The Task Force proposes these changes as progress towards more effective governance. This proposal affirms that lawyers and paralegals participating as members of Convocation should be elected, given the Law Society's legislative mandate to be the independent regulator of Ontario's lawyers and paralegals. Those serving on the board who are not elected should be appointees to the board pursuant to statutory provisions.

The fact that 21 *ex officio* benchers do not attend Convocation is a governance issue. The lawyer and paralegal professions should not have a governing board in which 38 individuals may choose

to attend Convocation but a majority of this number do not. That fact calls into question the level of commitment, usefulness and legitimacy of those not attending who remain eligible to participate as members of Convocation. Seventeen *ex officio* benchers and one emeritus Treasurer participate regularly at the Law Society. This significantly increases the size of Convocation and reduce can the opportunity for effective engagement by elected and appointed benchers. These 18 people approach the number of the 20 elected benchers inside or outside of Toronto and exceed the total number of people on many other boards of directors.

While former Treasurers would continue to have the right to participate in a debate, their voting rights would end. This change would balance the value of their views as past elected leaders of the Law Society with the principle that decision-makers in Convocation should be accountable as governors elected by the professions.

As general observation, with a large elected component with multi-year terms, a reasonable limit for elected office, properly and professionally resourced board support, comprehensive board records (minutes, transcripts and reports), and a comprehensive archive of the materials of Law Society *in camera* committee meetings, the deliberations of which result in the public reports for Convocation, the Law Society is well-positioned to govern without the participation of all those who hold board positions or rights of participation solely based on past years of board service or past leadership service.

Bencher Term Limit – Recommendation 5

That Convocation approve a reduction in the maximum term of service for elected lawyer and paralegal benchers (the term limit) to eight years, to be effective for the bencher election in 2023.

Implementation:

Recommendation 2 would require Convocation to amend By-Law 3 to reduce the term limit.

Reasons for Change

As reflected in the call for comment paper, the Task Force believes the shift of professional regulators and other similar organizations to reduced terms and term limits is intended to ensure that when directors serve, they do so in a manner that is dedicated, energetic, focused and fresh. The large majority of respondents agree with implementing a term limit that is less than 12 years.

The current four year term in the context of an eight year term limit would continue to serve the

needs of governance well. A four year term allows time for benchers to develop sufficient expertise about the regulation of the legal professions and to be effective benchers, and permits benchers to take ownership of and complete their governance responsibility on major policy projects that can sometimes span two or even three years.

The Task Force believes that an eight year term limit will benefit Convocation as a governing body. A limit on the number of terms a bencher may serve will enhance the renewal process. The proposal for a shorter term limit is also in aid of making the governing process of the Law Society more accessible and open. Over time, this may result in greater numbers of lawyers and paralegals participating in governance and gaining an understanding and appreciation for the governance process.

With the numbers of benchers who serve for the maximum number of years, the risk of losing institutional memory should not be an overriding concern. Further, as noted in this report, the Law Society ensures properly and professionally resourced board support and comprehensive board records (minutes, transcripts and reports) which are publicly available online.

A bencher who reaches the term limit after serving only part of a four year term should be entitled to continue in office to the end of that term. This means that some benchers who are elected mid-term would serve more than eight years but less than 12 years.

Governance Practices and Policies - Recommendation 6

That Convocation adopt the Governance Policies and Practices incorporating the Bencher Code of Conduct and the Declaration of Adherence, set out at [Tab 3.1](#).

Implementation:

Recommendation 1 would require an amendment to the By-Law 3 with respect to the Bencher Code of Conduct.

As noted in this report, a number of the issues raised by benchers in the survey and governance session last fall create an opportunity for Convocation to adopt new governance policies, including a bencher code of conduct. The existing 1996 Governance Policies are generally outdated, although they were somewhat useful in helping to frame the content of new governance policies. The proposed Governance and Practice Policies (“the Policies”) were developed after reviewing the existing Law Society policies and those of other law societies, agencies, boards, tribunals and municipalities. The proposed Policies were drafted with significant input from the Chair of the Task

Force, who brings years of expertise in this area to bear, input from the Law Society's Corporate Secretary and information drawn from research and related support from the Office of General Counsel.

The Policies are both informational and instructive, and set out obligations and expectations for the Law Society, Convocation, benchers and management in fulfilling various functions. The proposed Bencher Code of Conduct ("the Code") as an appendix to the Policies sets out the ethical responsibilities of benchers. It guides appropriate behavior for board members and incorporates some existing policies on bencher conduct. The provisions from the 1995 conflicts of interest policy on benchers as adjudicators were recast as provisions within the Law Society Tribunal's Adjudicator Code of Conduct, applicable to all benchers who are adjudicators, where they have existed for some time.

The Code includes a compliance and enforcement process should an issue of non-compliance with the Code arise. It also includes a requirement that benchers acknowledge their obligation to comply with the Policies, including the Code, by signing a declaration to this effect upon election or appointment in a form provided by the Law Society.

Financial Implications of the Recommendations

The Task Force's recommendations are focussed on effective oversight of which good governance is a key component. While it is possible that the effect of the recommendations may result in some cost savings, none of the recommendations are linked to a financial priority. As such, the financial implications of the recommendations are minimal and may result in some minor cost savings.

Background

A. Context

In accordance with its Terms of Reference¹, the Governance Task Force 2016 (“the Task Force”) has completed its review of the Law Society’s governance and is proposing changes to improve the Law Society’s governance effectiveness.

Since 2016, the Task Force has addressed shorter term issues and established the focus on longer term broader governance measures through its reports to Convocation.² It also engaged directly with benchers in a governance session in October 2017 to explore structural and process issues following a survey of benchers on governance issues, in a discussion session on possible reforms in June 2018 and in an information session in early November 2018 on this report. The Task Force has also engaged with the legal community during its mandate. A call for comment issued in August 2018 invited the professions and the public to provide input on a number of governance issues outlined in a call for comment paper.³ A summary of the Task Force’s research, engagement and consultative initiatives appears at **Tab 3.2**.

This report, based on the Task Force’s research, information from benchers and the input from the call for comment, includes recommendations respecting governance practices and policies for the Law Society, including bencher conduct, the elected bencher term limit and the participation of *ex officio* and emeritus benchers in Law Society governance.

¹<https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-september-2016-treasurer-report.pdf>

² <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-may2017-governance-task-force-report.pdf>

<https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-june2017-governance-task-force-report.pdf>

<https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/2/2018-feb-convocation-governance-task-force-report.pdf>

<https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/convocation-sept-2018-governance-task-force-2016-report.pdf>

³ <https://lawsocietyontario.azureedge.net/media/lso/media/about/gtf-call-for-comment-paper-en.pdf>

In the Task Force's view, increased governance effective for the Law Society requires having a smaller board, where terms of office 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. In addition to the issues reflected in the recommendations, the Task Force's work included a detailed review of the structure of Convocation, including the number of elected benchers, the Treasurer's term of office and options for more modern terminology for members of the board, the name of the board and the chair of the board.

While these are matters that the Task Force believes require further consideration, the Task Force concluded that at this stage the appropriate approach to governance reform is to recommend initial changes, determine their effect and pursue further changes relating to the structure of Convocation and related matters at a future date. In this way, the Task Force is proposing an incremental approach to governance reform.

The Task Force also decided that consideration of the structure of committees, including the number and size of committees, and meeting schedules should await the decision on any future changes to the structure of Convocation. The Task Force is of the view that Law Society governance would be enhanced by appointing non-bencher lawyers and paralegals and non-licensees with particular expertise to Convocation committees, as is already permitted pursuant to Law Society By-Laws. This has the potential to increase the participation of lawyers and paralegals in the affairs of the Society, allowing lawyers and paralegals from diverse backgrounds to participate. This would also be a way to orient potential bencher candidates to the work of the Law Society and encourage them to run as benchers in a future election.

B. Previous Governance Reforms, Current Structure and Governing Legislation and Policies

The 2010 Governance Reforms

The Task Force began its work acknowledging the important governance reforms that Convocation approved in 2009 and which were implemented in the spring of 2010. These reforms introduced a 12 year term limit for service as an elected bencher and limited the *ex officio* offices of life benchers, former Treasurers and former Attorneys General to existing office holders. At that time, all current *ex officio* benchers were grandfathered and became subject to attendance requirements to ensure continued engagement in Convocation. The reforms also created new honorary bencher categories - emeritus benchers - for former Treasurers after 2010 and benchers who have served 12 years.

Convocation's Current Composition

There are now 93 benchers including four honorary (emeritus) former Treasurers. Around 70 benchers participate regularly at the Law Society.

There are 45 elected benchers, 20 lawyers from Toronto, 20 lawyers from outside Toronto and five paralegals province-wide. This includes regional lawyer benchers for each of the eight regions (Toronto and seven regions outside of Toronto).

Eight benchers who are not licensees are appointed by the provincial government to Convocation and are called lay benchers. All of the elected and the eight lay benchers have voting rights in Convocation.

There are 40 *ex officio* benchers, including the current Treasurer and the current Attorney General. The remaining 38 are former Treasurers who held that office at any time before January 1, 2010, benchers who by June 1, 2015, held the office of elected bencher for at least 16 years ("life benchers") and former Attorneys General before January 1, 2010. Of this group of 38, only the former Treasurers have a vote in Convocation. Not including the Treasurer, 17 of the *ex officio* benchers participate regularly at the Law Society.

There are four honorary (emeritus) former Treasurers, who hold that office following January 1, 2010. These former Treasurers do not have a vote in Convocation but may participate in a debate at Convocation.

Legislation, By-Laws and Policies Governing Benchers and Convocation

The [Law Society Act](#) establishes the structure of Convocation and the various categories of bencher. [By-Law 3](#) under the Act includes extensive provisions on Convocation, committees and the rights and privileges of certain categories of benchers.⁴

Various governance-related policies have also been adopted by Convocation over the years. They include the 1995 conflicts of interest policy, portions of which continue to apply to benchers, the 1996 Governance Policies as amended, which included a very brief Bencher Code of Conduct, and

⁴ See the table at [Tab 3.3](#) supplemented by the information at [Tab 3.4](#) on the rights and privileges of *ex officio* and emeritus benchers.

the policy on the status of benchers who become subject to regulatory suspensions of their licenses, adopted in March 2007.⁵

C. Research

The Task Force engaged in research and, in addition to its own research⁶, retained Hansell LLP to research and report on governance practices in self-regulatory organizations in various jurisdictions. The report from Hansell LLP was provided to June 2017 Convocation.⁷ It was presented to benchers by Carol Hansell and her colleagues at the October 2017 bencher governance session. The report is of assistance in providing some context for the Law Society's governance structure among similar organizations. This empirical research confirmed that the Law Society's board is significantly larger than almost all others in the comparator group.

Hansell LLP evaluated governance practices that it could identify from publicly available material, covering:

- Board function and size;
- How directors are selected;
- Director terms;
- Director term limits;
- Committee structure;
- How board officers are selected; and
- Adjudication

The research included 33 professional organizations (lawyers, accountants, engineers, teachers, doctors, nurses and dentists). Comparator organizations were drawn from Canada, the United Kingdom, Australia and New Zealand.

⁵ These documents may be accessed on the Task Force's webpage at <https://lso.ca/about-lso/initiatives/governance-task-force>

⁶ For example, the Task Force reviewed the recent governance initiative of the Leading in Regulatory Governance Task Force of the College of Nurses of Ontario (CNO) and the CNO's final report on this initiative. The CNO also decided to generously share the supporting documents from its regulatory governance initiative "to broaden the dialogue about the future governance of regulators of professions": CNO Leading in Regulatory Governance Task Force, *Final Report: A vision for the future* Implementation Recommendation 1 at page 8. These resources are available from: CNO, "Governance Vision 2020" online at <http://www.cno.org/en/what-is-cno/councils-and-committees/council/governance-vision-2020/>.

⁷ See Footnote 2.

The report made the following key findings:

- Convocation is significantly larger than almost all boards in the comparator group;
- The inclusion on a board of *ex officio* and honorary directors, as is the case for the Law Society, is unusual;
- Three year terms for directors are more common than the four year terms of the elected benchers;
- Staggered boards are very common (meaning that only some of the directors are elected each year); and
- The twelve year term limit for elected Benchers is longer than the term limits in any organization in the comparator group.

D. Engagement with Benchers

The October 2017 Bencher Governance Session: Focusing on Effective Oversight

With the benefit of this research, at the October 2017 bencher governance session, benchers explored structural elements of governance - or “architecture” - for the Law Society and discussed issues relating to process and procedure. At the outset, the Task Force adopted the definitions established by Scott Ferguson, the session’s facilitator, of oversight and good governance that set the stage for the engagement with benchers. *Effective oversight* means sufficient and appropriate collective supervision of the management of an organization by individuals who are independent of its management and who are collectively accountable to the organization’s stakeholders for such supervision. *Good governance* means having structures, rules, practices and processes that maintain independence from the management of an organization and achieve effective oversight. In addition, the Task Force also agreed that good governance is built on the integrity of its architecture, group process and director teamwork.

As reported to February 2018 Convocation, 15 elements of effective oversight were used as the basis for questions on the survey that benchers completed prior to the October session (with survey questions numbered according to the elements).⁸ Benchers rated each of the 15 elements

⁸ 1. EFFECTIVENESS OF DECISION-MAKING: Committee process and Convocation decision-making are effective (ie: adheres to Mandate and responds to and advances the implementation of the Society’s strategic plan).

2. EFFICIENCY OF DECISION-MAKING: Committee process and Convocation decision-making are efficient (ie: uses the appropriate amount of Convocation and staff time and effort to reach good decisions; makes excellent use of Convocation and staff time)

according to a scale ranging from “Always or almost always” or “Strongly agree” to “rarely”, “disagree”, “don’t know”. The survey completed by benchers, as reported to the session, showed an overall governance effectiveness rating of 55%. Questions on the efficiency of decision-making and achievement of the Law Society’s goals, group process and overall quality of oversight resulted in similar scores.

Some of the comments benchers offered as part of the survey provided insight into the effectiveness rating. One comment repeated in relation to nine of the 15 questions⁹, where the incidence of the comment per question ranged from one to six individual comments, was that “Convocation is too large.” Another comment in relation to another nine questions¹⁰, where the incidence of the comment per question ranged from one to six individual comments, was that there is “unnecessary speechmaking” and the need for a limit on speaking, and that “people who have nothing to add should not speak.” A further comment under the question related to

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3. ECONOMY OF CONVOCATION AND ITS PROCESSES: Convocation and its processes, including the number, scope and work of committees, are appropriately economical (ie: the cost of operating Convocation and its committees provides members of the Society with optimal value-for-money)
 4. CONSISTENCY OF CONVOCATION DECISION-MAKING: Convocation decision-making is consistent over time (ie: decisions “make sense” given previous Convocation decisions).
 5. ACHIEVEMENT OF SOCIETY’S GOALS: Convocation facilitates the Society achieving its goals effectively, efficiently, economically and on a timely basis
 6. INTEGRITY – SUBSTANCE: Convocation pursues the mission of the Society with integrity
 7. INTEGRITY – APPEARANCE: Convocation appears to pursue the mandate of the Society with integrity
 8. NIMBLENESS: Convocation facilitates the Society to be appropriately nimble and quick to act and change as necessary
 9. PUBLIC CONFIDENCE: The public has confidence in the Society
 10. STAKEHOLDER CONFIDENCE: Stakeholders (including paralegals and lawyers, legal organizations, law schools, government and its agencies) have confidence in the Society
 11. GROUP PROCESS: Group process at Convocation and in committees (to discuss, to decide, etc.) is effective and efficient
 12. CONVOCATION AND ITS COMMITTEES: Convocation does not re-do the work of committees; Convocation strikes the right balance of overseeing and relying on committee work
 13. CONVOCATION AND COMMITTEE MEMBERS: Convocation and committee members arrive at meetings prepared, listen to one another inquisitively, actively engage in discussion and contribute to the quality of decision-making
 14. RELATIONSHIP WITH STAFF: Convocation and staff have an appropriate and constructive relationship
 15. OVERALL QUALITY OF GOVERNANCE AND OVERSIGHT: The overall state of the Society’s governance and oversight today

⁹Questions 1, 2, 3, 5, 7, 8, 11, 13 and 15

¹⁰ Questions 1, 2, 3, 5, 6, 8, 11, 14 and 15

achievement of goals (question 5) repeated at least three times was that “decision-making is too slow”, related to the large size of Convocation.

The information from the survey was then used as the basis for discussion to determine the most significant gaps in the quality of the Law Society’s oversight obligation in an effort to arrive at solutions to improve governance. Benchers were divided into eight discussions groups for this purpose and a range of views were expressed. While there was no unanimity resulting from the gap analysis and some benchers expressed the view that the *status quo* was workable, there were some common issues noted by some groups, with the number of groups that raised them noted, as follows:

- Convocation is too large (3 groups);
- Committees are too large (2 groups);
- There should be clarity around the role and responsibility of benchers (3 groups);
- There is a need for consistent leadership and clarity as to who is governing (2 groups);
- Benchers need to improve the ability to shift priorities when unexpected developments arise (2 groups);
- Convocation does not anticipate issues and becomes reactive (2 groups);
- Materials [for meetings] are too voluminous and unfocused (3 groups).

As reported to February 2018, this information provided direction to the Task Force on the areas on which it should focus.

The June 2018 Bencher Session: Presenting Options for Structural Changes

In a June 2018 session with benchers the Task Force presented options for structural changes for discussion. They included ending *ex officio* bencher positions, reducing the number of elected benchers, considering an increased number of appointments to the board, considering a two-year term for the Treasurer and revising the length of the bencher term and the term limit. A range of views, from maintaining the *status quo* to making the structural changes discussed in the options, were expressed at the session.

E. Responses to the Call for Comment

The Task Force issued a call for comment in August 2018 inviting the professions and the public to provide input on a number of the governance issues it had initially canvassed with benchers in

June 2018. The issues were outlined in a call for comment paper.¹¹ The Task Force received over 100 responses to the call for comment¹² on various structural components as discussed above.

The submissions were received from:

- over 70 individual lawyers,
- 16 individual paralegals,
- 13 organizations¹³,
- the Attorney General for Ontario, and
- several non-licensees or anonymous respondents.

The Task Force thanks all those who contributed their views and suggestions which helped to form the recommendations for change. The Task Force is grateful for this level of engagement.

A variety of views were expressed on all questions in the call for comment paper. The responses are available on the Governance Task Force website.¹⁴ As a general observation about the individual responses, they were varied in their views on many of the questions. However, two thirds of these respondents agreed that the size of Convocation should be reduced through a reduction of both *ex officio* and elected benchers. Some individuals and organizations suggested a smaller board than the smallest option suggested in the call for comment paper. Two thirds also favoured continuing the lawyer regional bencher election scheme. The large majority of respondents agreed that the term limit for elected benchers should be reduced. Most respondents were nearly evenly split between eight years with a four-year term or nine years with a three-year term, although some suggested a term of less than eight years.

F. Consideration of Governance Policies and a Code of Conduct

The results of the bencher survey, noted earlier, and discussions at the October 2017 governance session with benchers on governance process, noted below, has led the Task Force to distill key

¹¹ <https://lawsocietyontario.azureedge.net/media/iso/media/about/gtf-call-for-comment-paper-en.pdf>

¹² See Footnote 3.

¹³ The organizations are: Association of Community Legal Clinics of Ontario (ACLCO); l'Association des juristes d'expression français de l'Ontario (AJEFO); County of Carleton Law Association (CCLA); Equity Advisory Group (EAG); Federation of Ontario Law Associations (FOLA); Hamilton Law Association (HLA); The Indigenous Advisory Group (IAG); Law Students Society of Ontario (LSSO); Ontario Paralegal Association (OPA); Ontario Trial Lawyers Association (OTLA); Thunder Bay Law Association (TBLA); and Toronto Lawyers Association (TLA).

¹⁴ <https://iso.ca/about-iso/initiatives/governance-task-force>

concepts and identify content for new, comprehensive governance policies to articulate expectations and obligations for director conduct as board members.

As noted in the discussion of governance architecture, there is a relationship between some of the bencher scores on governance effectiveness and the comments in the bencher survey. Responses to questions on efficiency of decision-making and achievement of the Law Society's goals, group process and overall quality of oversight set the stage for an analysis of the responses in discussion groups. Comments from some of the bencher discussion groups included:

- The need to set clear goals;
- The need to achieve more effective management of Convocation (e.g. impose time limits for speaking);
- Benchers focusing on serving the public interest;
- The need for clarity the role and responsibility of benchers;
- Relying more on staff expertise; listening more to staff;
- Addressing the issue of benchers arriving unprepared.

The Task Force believes the lack of such current policies is a gap in the Law Society's governance that as a matter of good governance needs to be addressed. The process issues identified at the October 2017 bencher governance session in the Task Force's view support the adoption of governance policies as a key element of effective oversight.

Analysis

A. Towards More Effective Governance

To ensure that the Law Society's governance structure enables effective oversight and helps the Law Society to meet its accountabilities as a public interest regulator, the Task Force considered a series of changes to the structure of Convocation. These changes were grounded in certain principles set out in the *Law Society Act* that direct the manner in which the Law Society is to carry out its regulatory mandate. In the Task Force's view, the governance structure and process should effectively enable work that advances the principles that the Law Society be open, efficient and protect in the public interest.¹⁵

¹⁵ 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.

In the Task Force's view, the way to ensure continued confidence in the Law Society as a regulator and achieve the goal of effective oversight is to create a board structure that will facilitate the following:

- a focussed effort on providing the necessary oversight and strategic direction to the Law Society;
- an ability to more readily coalesce around a vision for the Law Society as a regulator that will guide how the board exercises its governance responsibilities and oversight role;
- more focussed and timely decision-making on important policy issues;
- increased focus on long term goals, which would include assessing and reviewing the measures of the effectiveness of those goals in an organized, consistent way;
- a flexibility and nimbleness to decision-making when necessary to address important issues of governance, risks and challenges;
- a diversity of background, experience and expertise among board members in an environment that fosters inclusiveness and a shared vision;
- the ability for all benchers to invest time and effort in the role of a bencher; and
- a structured plan of effective board education on substantive issues to ensure benchers are equipped for their responsibilities and grow in experience and expertise.

B. An Incremental Approach to Governance Reform

As noted earlier, the issues for future consideration include the following:

- ending all *ex officio* bencher positions in Convocation;
- reducing the number of elected benchers;
- modifying the length of the Treasurer's term of office; and
- modernizing the terminology used to described the board, board members and the president of the Law Society.

The Task Force determined that increased governance effectiveness for the Law Society requires having a smaller board. A significant part of its work was devoted to this structural issue. Currently, the core elected and appointed component of Convocation is 54 benchers, including the

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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.

Treasurer. The Task Force currently favours a board of 45 members, composed of 32 elected lawyers benchers (16 inside and 16 outside of Toronto), five elected paralegal benchers and eight government-appointed benchers. This would maintain a large majority of elected positions and lawyer and paralegal benchers in equal proportion to all Law Society lawyers and paralegals. The regional bencher election scheme for lawyers would continue. However, the Committee is not bringing forward a specific recommendation to Convocation on the size of the elected board at this time.

Among the factors to be considered in changing the structure is ensuring appropriate diversity across a number of categories. As a large board, Convocation achieves diversity but experiences some ineffectiveness in its process. The Task Force's continuing work will determine how to create the appropriate balance between these requirements. The incremental, staged approach enables the Task force to better assess and achieve the appropriate balance.

The Task Force now makes the recommendations set out in the report as described in more detail below.

Recommendations

A. *Ex officio* Benchers' Rights and Privileges and the Offices of Emeritus Treasurer and Bencher – Recommendations 1, 2, 3 and 4

Recommendations for Change

The Task Force is proposing that the rights and privileges of *ex officio* bencher positions in Convocation be modified. While *ex officio* benchers collectively provide experience and institutional knowledge, current board practice, as noted in the Hansell Report, shows that the participation of *ex officio* and honorary directors as board members is highly unusual.

The 2010 governance reforms ended these offices and grandparented all existing *ex officio* benchers, as noted earlier in this report. The Task Force recommends considering the merits of ending these *ex officio* positions in Convocation at a future date. The current proposal is to modify *ex officio* benchers' rights and privileges so that *ex officio* Treasurers would have the rights and privileges in Convocation of current emeritus Treasurers (the right to take part in a debate) and former Attorneys General and life benchers, like current emeritus benchers, would have no rights as such in Convocation.

In summary, non-voting participation rights in Convocation by former pre-2010 Treasurers would continue and the participation of life benchers and former Attorneys General in Convocation would end effective May 2019, the start of the next bencher term.

The proposal also includes ending the office of emeritus bencher, including emeritus Treasurer, effective May 2019. These positions were created as specific honorary bencher positions in the 2010 governance reforms.

Reasons for Change

The Task Force acknowledges that the contribution of former Treasurers, life benchers and former Attorneys General to Convocation over the years has been substantial. However, the value of the longevity of service must be balanced with the need for accountability, affirmation of democratic principles, what is needed for effective oversight and a structure that enables Convocation to effectively exercise its responsibilities.

Since 2010 and the institution of the attendance requirements for *ex officio* benchers, as noted earlier in this report, 17 *ex officio* benchers and one emeritus Treasurer participate regularly at the Law Society. This significantly increases the size of Convocation and reduce can the opportunity for effective and meaningful engagement by elected and appointed benchers. These 18 people approach the number of the 20 elected benchers inside or outside of Toronto, and the total number of people on many other boards of directors.

Further, some may think that since a majority of non-elected benchers do not attend Convocation, there is no governance issue arising from this circumstance. The Task Force takes the contrary view. The fact that 21 *ex officio* benchers do not attend Convocation is itself a governance issue. The lawyer and paralegal professions should not have a governing board in which 38 individuals may choose to attend Convocation but a majority of this number do not. That fact calls into question the level of commitment, usefulness and legitimacy of those not attending but who are eligible to participate as members of Convocation if they wish. The Task Force believes that effectiveness of governance is affected by having a large unelected component, some with voting rights, who continue to wield a measure of influence within Convocation.

The recommended changes, as progress towards more effective governance, affirm that lawyers and paralegals participating as members of Convocation should be elected, given the Law Society's legislative mandate to be the independent regulator of Ontario's lawyers and paralegals. The integrity of the relationship between the governed professions and the governors depends upon

this democratic principle. Those serving on the board and entitled to participate who are not elected should be appointees to the board pursuant to statutory provisions.

While former Treasurers would continue to have the right to participate in a debate, their voting rights would end. This change balances the value of their views as past elected leaders of the Law Society with the principle that decision-makers in Convocation should be accountable as governors elected by the professions.

As noted above, the Task Force is focussed on effective oversight and good governance. As the fall 2017 benchers survey disclosed, a number of benchers expressed concerns about the effectiveness of the meeting of benchers (Convocation). The size of Convocation was identified as an issue in this respect. The Task Force's research confirms that not only is Convocation larger than nearly every board in the comparator group of organizations but is unusual in having an *ex officio* component. The *ex officio* component contributes to the already large number of directors. Convocation has a core of 53 elected and appointed benchers, and the Treasurer, as directors.

With respect to the participation of the *ex officio* component in Convocation, the Task Force asks what is required for effective oversight and good governance. In the Task Force's view, the participation at present of the core of 53 benchers is more than sufficient to ensure that the board's work is accomplished. Convocation's large democratically elected component is complemented by a government-appointed component for valid public policy reasons. This number is well-equipped to discharge the responsibilities of a board of governors without the participation of a group of *ex officio* benchers.

The Task Force recognizes that every bencher in any status is capable of contributing and providing valuable views on the matters before Convocation. However, simply put, the Law Society has what it needs in Convocation's core elected and appointed component, supported by a large, well-resourced and professional organizational infrastructure. Convocation has the broad representation required to understand the issues it deals with as a governing body and fulfill its obligations as a board.

In summary, with an elected component with multi-year terms, a reasonable limit for elected office, properly and professionally resourced board support and comprehensive board records (minutes, transcripts and reports), the Law Society is well-positioned to govern without the participation of all those who hold board positions or rights of participation solely based on past years of board service or past leadership service. Experience has shown that the value of long-serving, experienced benchers can be realized through means other than board participation. For

example, former benchers and Treasurers, including those who are inactive in the Law Society, continue to provide advice and guidance to the current Treasurer and others when called upon. They willingly offer their views and expertise in this informal way.

B. Bencher Term Limit – Recommendation 5

Recommendation for Change

The Task Force considered a range of potential terms and term limits for directors. The Law Society's current 12 year term limit for elected benchers is longer than the term limits in any organization reviewed in the Hansell Report. The Hansell Report also found that three-year director terms are more common than four-year terms, and that staggered board terms are common. The general trend at least among Canadian law societies has been towards shorter terms and shorter term limits.¹⁶ The Task Force has determined that the four year term of service should be maintained but that the maximum term of service be reduced to eight years.

Reasons for Change

As reflected in the call for comment paper, the Task Force believes the shift of professional regulators and other similar organizations to reduced terms and term limits is intended to ensure that when directors serve, they do so in a manner that is dedicated, energetic, focused and fresh. Longer terms may make an organizational commitment to board renewal an empty promise, may be a barrier to the election of individuals seeking what might become limited board positions, given the historically high rate of election of incumbents at the Law Society, and can create a risk of disengagement of long serving directors. As noted earlier, the large majority of respondents to the call for comment agree with a term limit that is less than 12 years.

The Task Force believes that the current four year term in the context of an eight year term limit would continue to serve the needs of governance well. Experience has shown that learning about the Law Society and its work for new benchers can take many months or longer. A four year term allows sufficient time for new benchers to learn about and undertake their responsibilities. Further, the new Governance Practices and Policies will enhance the information available to new benchers on the Law Society as an organization, the role of Convocation and the role of benchers.

¹⁶ For example, the Law Society of Alberta has a three-year term to a maximum nine years. The Nova Scotia Barristers Society has a two-year term to a maximum of three consecutive terms (six year total). The Law Society of Manitoba has a two year bencher term to a maximum of eight years.

This material will also form part of a more robust benchers orientation program to help benchers become more effective board members. A four year term also permits benchers to take ownership of and complete their governance responsibility on major policy projects that by their nature can sometimes span two or even three years.

As an overarching principle, the Task Force believes that term limits are reasonable in a democratic process to elect board members. Limits are an appropriate way to ensure renewal in the board and the infusion of fresh views and perspectives. This is consistent with the view that Convocation affirmed in the governance reforms of 2010 when it created a term limit. As the Law Society continues to function in the current ever-changing environment, the need for renewal and turnover is crucial. Convocation needs a board that has the ability to be current and that is accessible to those who wish to serve for a reasonable period of time, which will enhance its ability to provide effective governance.

For these reasons, the Task Force believes that an eight year term limit will benefit Convocation as a governing body. This limit on the number of terms a benchers may serve will enhance the renewal process. The Task Force agrees with the following statement that appeared in the 2009 governance report on this issue:

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.¹⁷

The proposal for a shorter term limit is also in aid of making the governing process of the Law Society more accessible and open to more individuals. The benchers on the Task Force themselves recognize that acting as a member of Convocation increases their appreciation for the work of the Law Society. The Task Force can only think that most benchers feel this way. Over time, the shorter term limit may result in greater numbers of lawyers and paralegals participating in governance, and gaining an understanding and appreciation for the governance process. As for the potential risk of losing institutional memory if the 12-year term is ended, apart from the

¹⁷ From "Term Limits: Only 'Perfect' Boards Can Do Without Them" by Michael Wyland, Partner, Sumption & Wyland.

difficulty in quantifying institutional memory, the Task Force's view is that there is no optimum number of long-serving benchers or a particular qualification on the part of benchers that will ensure that memory is preserved. With the numbers of benchers who serve for the maximum number of years, the risk of losing institutional memory should not be an overriding concern. Further, as noted earlier in this report, the Law Society ensures properly and professionally resourced board support and comprehensive board records (minutes, transcripts and reports) which are publicly available and searchable online, and an archive of the materials of Law Society *in camera* committee meetings, the deliberations of which result in the public reports for Convocation. With this infrastructure in place at the Law Society, the Task Force agrees with the following comment:

Some suggest that long-term board members retain institutional knowledge. However, the LSO should not be relying simply on individuals to maintain this history. The LSO requires an explicit strategy for recording, maintaining and accessing institutional knowledge. Capturing institutional knowledge ensures that this becomes explicit organizational knowledge. The appropriate use of technology disseminates this type of knowledge as required.¹⁸

If the eight year term limit is approved, a bencher who reaches the term limit after serving only part of a four year term should be entitled to continue in office to the end of that term. This means that some benchers who are elected mid-term would serve more than eight years but less than 12 years. This is the practice with the current term limit.

C. Governance Practices and Policies – Recommendation 6

As noted earlier in this report, a number of the issues raised by benchers in the survey and governance session last fall create an opportunity for Convocation to adopt new governance policies including a bencher code of conduct. The existing 1996 Governance Policies are generally outdated, although they were somewhat useful in helping to frame the content of new governance policies. For current governance purposes, the Bencher Code of Conduct in the Policies is inadequate.¹⁹

¹⁸ Lawyer Gary Goodwin in responding to the Call for Comment.

¹⁹ Bencher Code of Conduct

1. The benchers commit themselves to ethical conduct.
2. Benchers must declare conflicts of interest and act in accordance with Convocation's policy on conflicts of interest.

The proposed Governance and Practice Policies (“the Policies”) were developed after reviewing the existing Law Society policies, and those of other law societies, agencies, boards, tribunals and municipalities. The proposed Policies were drafted with significant input from the Chair of the Task Force, who brings years of expertise in this area to bear, input from the Law Society’s Corporate Secretary and information drawn from research and related support from the Office of General Counsel.

The Policies are both informational and instructive, and set out obligations and expectations for the Law Society, Convocation, benchers and management in fulfilling various functions. They will also add to the transparency around governance process at the Law Society and will be a key feature of new bencher orientation.

The Policies do not include provisions that exist in the *Law Society Act* or by-laws that address certain bencher responsibilities. They will continue to apply coincident with the Policies.²⁰

The proposed Bencher Code of Conduct (“the Code”) is incorporated as an appendix to the Policies. It sets out the ethical responsibilities of benchers. It guides appropriate behavior for board members and incorporates some existing policies on bencher conduct. The provisions from the 1995 conflicts of interest policy on benchers as adjudicators were recast as provisions within the Law Society Tribunal’s Adjudicator Code of Conduct where they have existed for some time. The Adjudicator Code of Conduct applies to all benchers who are members of the Law Society Tribunal.

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3. Benchers must not use their positions to obtain employment or preferential treatment for themselves, family members, friends or associates.
 4. No bencher shall purport to speak for Convocation or the Law Society unless designated by the Treasurer.
 5. When exercising adjudicative powers, benchers shall behave in a judicial manner.
 6. Benchers shall observe Convocation’s policy regarding confidentiality.
 7. Benchers sitting as members of the Law Society Tribunal must adhere to the provisions set out in the Adjudicator Code of Conduct for applications to proceed in camera and must strictly maintain the confidentiality of all matters subsequently heard in camera.

²⁰ These include the ability of Convocation to remove a bencher as a member of Convocation for non-attendance (section 22 of the *Law Society Act*), measures applicable to *ex officio* and emeritus benchers for non-attendance in By-Law 3 and measures applicable to a member of a committee for non-attendance, also in By-Law 3.

As professional conduct issues of licensee members of Convocation are dealt with under Convocation's policy on the investigation of these regulatory complaints, most recently amended in October 2014, provisions on this subject do not appear in the Code.²¹

The Code also includes a compliance and enforcement process should an issue of non-compliance with the Code arise. The Task Force sees this as an essential feature of the Code, as organizations like the Law Society need to be transparent about their ability to address issues of conduct among board members in an appropriate, fair and meaningful way. The Policies also include a requirement that benchers acknowledge their obligation to comply with the Policies, including the Code, by signing a declaration upon election or appointment to this effect in a form provided by the Law Society.

Implementation

By-Law Amendments

The recommendations in this report if adopted will require amendments to the by-laws made under *Law Society Act*, as set out below. An opinion obtained by the Task Force, at **Tab 3.5**, confirms that these recommendations can be implemented without amendments to the *Law Society Act*.

Recommendations 1 through 4 – Convocation will be required to amend By-Law 3 to effect the changes to the rights and privileges of *ex officio* benchers. As indicated, former Treasurers up to 2010 would have the right to participate in a debate at Convocation but not vote in Convocation. Life benchers and former Attorneys General would have no rights in Convocation. Convocation will also be required to amend By-Law 3 to remove the offices of emeritus bencher and emeritus Treasurer.

Recommendation 5 – Convocation will be required to amend By-Law 3 to reduce the term limit for elected benchers to eight years.

Recommendations 6 – Convocation will required to amend By-Law 3 to incorporate the Bencher Code of Conduct included in the Governance Policies and Practices.

²¹ This report is available on the Task Force's webpage at <https://lso.ca/about-lso/initiatives/governance-task-force>

Implementing the Benchers Code of Conduct in the Governance Practices and Policies by by-law would be done in consultation with the Office of General Counsel for the Law Society. The provisions of the Code would become by-law provisions, which currently deal with a variety of benchers obligations, including attendance requirements, the requirements for the election of benchers and the Treasurer and rules of procedure for Convocation. It is preferable for certainty and transparency to have in a by-law the enforcement mechanism that includes a process for a matter to be heard by Convocation should it be required.

The amendments to By-Law 3 are proposed to be completed by the beginning of the next benchers term in 2019, although the revised term limit would be effective for the term beginning with the 2023 benchers election.

Financial Implications

The Task Force's recommendations focus on effective oversight of which good governance is a key component. The proposed reduction in the number of benchers participating in Convocation is not driven by financial considerations or budgetary efficiencies. The Task Force offers no analysis to this effect and financial considerations did not form part of the approach taken by the Task Force when considering changes to Convocation. While it is likely that the effect of the recommendations may result in some cost savings, the recommendations are not linked to a financial priority.

There do not appear to be any immediate financial impacts associated with either the structural or governance process changes. It may be that efficiencies will occur with slightly fewer benchers claiming remuneration and expenses, and slightly fewer users of the Law Society's board portal, the cost of which is based in part on the number of users.



Tab 3.1

DRAFT

Law Society of Ontario

GOVERNANCE PRACTICES AND POLICIES

ADOPTED BY CONVOCATION ON 2018

LAW SOCIETY OF ONTARIO

GOVERNANCE PRACTICES AND POLICIES

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LAW SOCIETY OF ONTARIO GOVERNANCE PRACTICES AND POLICIES

PART I: GOVERNANCE FRAMEWORK OF THE LAW SOCIETY

Section 1: The Role of the Law Society

1. The Law Society of Ontario, established by the *Law Society Act* (“the Act”), regulates the practice of law and the provision of legal services in Ontario. According to the Act, a function of the Law Society is to ensure that:
 - a. all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
 - b. the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.
2. The Law Society is a corporation without share capital, governed by a decision-making body (Convocation) which is composed of elected, appointed and *ex officio* benchers. The Chair of Convocation is the Treasurer, who is the president and head of the Law Society. The Chief Executive Officer, under the direction of Convocation, manages the affairs and functions of the Society.
3. The Law Society is required to carry out its functions, duties and powers with regard to the following principles (from section 4.2 of the Act):
 - a. The Society has a duty to maintain and advance the cause of justice and the rule of law.
 - b. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
 - c. The Society has a duty to protect the public interest.
 - d. The Society has a duty to act in a timely, open and efficient manner.

- e. 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.
4. In keeping with the statutory principles above, Convocation is committed to governing the practice of law and the provision of legal services in a manner that will
- a. achieve a reduction of barriers created by racism, unconscious bias and discrimination and better representation of Indigenous and racialized licensees in the legal professions; and
 - b. advance reconciliation, acknowledging a collective responsibility to support improved relationships between Indigenous and non-Indigenous peoples in Ontario and Canada.
5. The Law Society's authority to regulate is a delegated authority from the government of Ontario through the Act. In fulfilling its self-regulatory mandate, the Law Society regulates the practice of law and the provision of legal services, including those licensed to do so, in the public interest.

Section 2: Principles of Law Society Governance

6. These principles are the foundation for governance of the Law Society:
- a. Convocation must govern in the public interest;
 - b. The structure for governance must enable varied perspectives, abilities and backgrounds to be represented at Convocation;
 - c. Decisions made by Convocation are to be the product of careful, thoughtful analysis and review;
 - d. Convocation is to make consistent decisions that are free from conflict of interest, bias or improper influence;
 - e. Convocation is to apply best practices for its governance;
 - f. Convocation decision-making processes are to be predictable, transparent and

informed by input from relevant committees, working groups and/or task forces as established by Convocation, and as required, through a process of engagement with stakeholders;

- g. Convocation will govern so as to maintain the confidence of the public and the professions;
- h. Convocation decision-making will be guided by a Strategic Plan developed with input from Convocation, management of the Law Society and those affected by the Plan, and that will be renewed on a regular basis;
- i. Convocation acknowledges that the appointment of lay benchers to Convocation by the Lieutenant Governor in Council on recommendation of the Attorney General for Ontario ensures that additional competencies and perspectives from the public are represented at Convocation.

Section 3: Responsibilities of Convocation

- 7. The benchers in Convocation are the board of directors of the Law Society and govern the affairs of the Law Society.
- 8. Convocation is responsible for ensuring that the Law Society's mandate is fulfilled and that the Law Society carries out its legal obligations.
- 9. Convocation is to govern the affairs of the Society effectively and efficiently, guided by a strategic plan it adopts for each bencher term.
- 10. In exercising its responsibilities, Convocation is to govern through strategic leadership and the creation of effective accountability mechanisms.
- 11. Convocation is responsible for establishing policies for the governance of the legal professions in Ontario, including standards of learning, conduct and professional competence.
- 12. Convocation may establish and appoint the members of committees it requires to fulfill its governance role, but must not establish more committees than it needs for that purpose. All committees must have a mandate. Committees are to assist Convocation in

setting policy on ongoing matters which further the core mandate and responsibilities of the Law Society.

13. In addition to committees, Convocation may establish task forces it requires to fulfill its governance role for time-limited specific policy initiatives.
14. Convocation is to ensure the integrity and effectiveness of the Law Society's adjudicative function through the Law Society Tribunal.
15. Convocation must be proactive while preserving the capacity to react appropriately to unforeseen challenges and issues.

PART 2: GOVERNANCE PROCESS AND DECISION-MAKING

Section 1: Convocation Process

16. Convocation, which is the meeting of benchers, is to exercise its governance responsibilities in accordance with the principles by which it is required to perform its functions, as set out in the Act.
17. Convocation is committed to transparency of its process, including a live webcast of the public portion of the meeting and the availability of a transcript and minutes of the public portion of the meeting.
18. Convocation is to be governed by the rules of procedure for Convocation in [By-Law 3](#) as set out in Part V of the By-Law.
19. The Treasurer is the president of the Law Society and is responsible for setting and managing the agenda for Convocation.
20. To the extent possible, the Treasurer is to utilize a consent agenda for matters required for decision by Convocation.
21. The Treasurer may impose such time limits for presentation of reports and discussion at Convocation as he or she sees fit, including time allotments for speakers, and benchers are required to observe them.
22. The Treasurer and benchers are to maintain the confidentiality of matters discussed at

Convocation when Convocation meets in the absence of the public (*in camera*).

23. Subject to the Treasurer's advice, reports to Convocation for information are to be taken as read and will not be presented.

Section 2: The Treasurer

24. As set out in the Act, the Treasurer is the president and the head of the Law Society.
25. The Treasurer is responsible for the strategic leadership of the Law Society and overseeing the development for Convocation's approval of the strategic priorities for the Law Society in consultation with benchers and senior management.
26. The Treasurer is responsible for chairing Convocation.
27. In consultation with committee chairs and Law Society management, the Treasurer is to coordinate the work and responsibility of committees and task forces to ensure policy issues are assigned to appropriate committees.
28. The Treasurer is the public representative of the Law Society and the spokesperson for the Law Society on matters of policy.
29. The Treasurer is to recommend to Convocation for appointment all individuals as members of committees, task forces and external boards or other organizations, and is to ensure that recommended appointees reflect an appropriate level of diversity on each committee, task force and in external appointments.
30. The Treasurer is responsible for receiving the report of the CEO on Law Society operations and as chair of the Compensation Committee, fulfilling the obligation of that Committee to evaluate the performance of the CEO on an annual basis. The Treasurer is to work with the CEO to ensure the alignment of operations with the Strategic Plan as approved by Convocation and oversee the annual performance plan for the CEO.
31. The Treasurer should have the following attributes and competencies:
 - a. strong facilitation skills;
 - b. demonstrated ability to encourage thoughtful decision-making, nurture

- collaborative relationships and foster confidence and trust;
- c. the ability to chair meetings effectively, to ensure all points of view are heard and to lead discussion to a clear and timely conclusion;
 - d. strong communication skills;
 - e. excellent judgment;
 - f. deep understanding of the major issues facing the regulation of the legal profession in Canada;
 - g. ability to see both the short term and the longer term implications of any policy or operational issue;
 - h. a commitment to openness, inclusion and transparency;
 - i. understanding of the requirements of effective governance; and
 - j. a willingness to commit the time required to the role during his or her term.

Section 3: Benchers

- 32. As directors, the benchers are responsible for governing the affairs of the Law Society.
- 33. Benchers owe fiduciary obligations, including the duty of loyalty to the Law Society, rather than to its licensees (members) who are “shareholders” of the corporation.¹ In all matters relating to their role as members of Convocation and its committees and task forces, benchers are to act solely in the public interest and to have regard to the principles mentioned in paragraph 3 above.

¹ *Canada Corporations Act*, R.S.C. 1970, c. C-32, s. 157(3) [CCA] (“shareholder” means a member” of a corporation without share capital) – the *Canada Not-for-Profit Corporations Act*, 2010 c. 23, which will change provisions of the CCA, received Royal Assent in 2009 but has not yet been proclaimed into force; *Ontario Corporations Act*, R.S.O. 1990, c. C.38, ss. 119(1) and 121 [OCA] – the OCA will be replaced by the *Ontario Not-For-Profit Corporations Act*, 2010 S.O. 2010 C.15, which has received Royal Assent in 2010 but has not yet been proclaimed into force.

34. Benchers are to exercise their responsibilities as governors of the Law Society through stewardship, policy-making and adjudicative/regulatory functions:
 - a. In their stewardship role, benchers are to fulfill their responsibility through direction to the CEO that recognizes the CEO's responsibility to manage the affairs and functions of the Society and the responsibility of the benchers to govern the affairs of the Society;
 - b. As policy-makers, benchers are required to set standards, make rules and By-Laws and adopt policies to meet the objects described in the Act;
 - c. If and as members of the Law Society Tribunal, benchers are to exercise adjudicative functions pursuant to the Act, regulations under the Act, and in accordance with the Law Society's Rules of Practice and Procedure, the Adjudicator Code of Conduct and other instruments governing the role of the adjudicator.
 - d. If appointed to fulfill certain other statutory decision-making offices, for example, as members of the Proceedings Authorization Committee or as summary disposition benchers, benchers are required to exercise sound judgment and discretion.
35. Benchers may contribute to Law Society governance in numerous ways including as follows:
 - a. Benchers are appointed by Convocation as chairs and vice-chairs of committees and task forces;
 - b. Benchers are appointed by Convocation as members of committees and task forces;
 - c. Benchers are appointed by Convocation as members of the Law Society Tribunal;
 - d. Benchers are appointed by Convocation to fulfil certain statutory functions and to serve on various external boards and organizations that include representatives of the Law Society.
36. Benchers are to hold themselves to the highest standards of integrity and trust in carrying out their responsibilities in the public interest, and must abide by the Bencher Code of Conduct.

37. Benchers must clearly distinguish between their governance role and the role of Law Society management, who are responsible under the leadership of the Chief Executive Officer for operational implementation of Convocation policy.
38. Benchers are to:
 - a. be familiar with Law Society structure, mandate and governance policies and relevant legislation and jurisprudence;
 - b. attend orientation on taking office as a bencher;
 - c. attend continuing bencher development sessions as provided during their term of office; and
 - d. ensure that they have sufficient time to commit to the role of bencher, including taking into account necessary travel time as required.

Section 4: Committee and Task Force Process

Committees and Task Forces

39. The following committees are established under the Act:
 - a. Compensation Fund Committee;
 - b. Paralegal Standing Committee.
 - c. Proceedings Authorization Committee
40. The following standing committees of Convocation are established under By-Law 3, which includes their mandates:
 - a. Audit and Finance Committee
 - b. Government and Public Affairs Committee
 - c. Access to Justice Committee
 - d. Litigation Committee
 - e. Professional Development and Competence Committee
 - f. Professional Regulation Committee
 - g. Equity and Indigenous Affairs Committee
 - h. Inter-Jurisdictional Mobility Committee

i. Tribunal Committee

41. In addition to standing committees, other committees are established to support the work of Convocation, including the Priority Planning Committee, the Paralegal Awards Committee, the Law Society Awards/LL.D. Advisory Committee, and the Compensation Committee.
42. Task forces will be established by Convocation from time to time for specific policy projects and other time limited tasks.

General

43. Committees and task forces are to adhere to their mandates as established by Convocation and may vary same only with the approval of Convocation.
44. Committees and task forces are to identify all reasonable policy options and implications to inform Convocation's decisions. Committees and task forces do not establish policy but assist Convocation in doing so.
45. All task forces must have clearly articulated terms of reference and a sunset clause.
46. Committees and task forces must not perform operational/administrative work.
47. In cases where their mandate affects the work or responsibilities of committees or other task forces, task forces must consult with those committees or task forces before submitting their final report to Convocation.
48. Committees and task forces meet in the absence of the public (*in camera*).
49. Committees may establish working groups for discrete, time limited issues that will benefit from the focus of a smaller group of committee members. The Chair with the committee's agreement is to establish the membership of the working group and the timeline for its report to the committee.
50. The provisions in this section of the Policy applicable to committees apply with necessary modifications to working groups of committees.

Role of the Chair

51. The Chair of a committee or task force is responsible for setting and managing the agenda for the meeting.
52. The Vice-Chair(s) of a committee or task force support the Chair and are to assume the role of the Chair in the Chair's absence.
53. The Chair is required to manage the work of the committee or task force within the scope of its mandate.
54. The Chair is to ensure that the matters on the agenda for a particular meeting are appropriate for the time available for the meeting and must respect the time limitation imposed for the meeting.
55. The Chair is to ensure that planning for the meeting's agenda takes into account the time needed by Law Society management to adequately and appropriately prepare materials for the meeting.
56. A plan and timetable for the work of their committee should be established on an annual basis in consultation with committee members, management and the Treasurer.
57. The Chair is responsible for ensuring that
 - a. materials for committee deliberations are appropriate for their purpose and include an appropriate level of detail to permit informed discussion;
 - b. reports to Convocation are provided at regular intervals;
 - c. matters for Convocation's decision include a motion that is clear in its meaning and purpose;
 - d. reports include an appropriate level of detail to permit informed decision-making; and
 - e. reports include, where appropriate, a range of options for each matter recommended for approval together with the implications thereof.
58. The results of committee and task force meetings reported to Convocation are public unless the committee or task force determines otherwise in accordance with Convocation's policy on confidentiality.

PART 3: CONVOCATION'S RELATIONSHIP WITH MANAGEMENT

Section 1: Chief Executive Officer (CEO) of the Law Society

59. In accordance with the Act and By-Law 2, under the direction of Convocation, the CEO is responsible for the day-to-day management and co-ordination of all aspects of the operation, administration, finance, organization, supervision and maintenance of all Law Society activities.
60. All authority and accountability of Law Society management to Convocation is through the authority and accountability of the CEO.
61. The CEO reports to Convocation. Convocation instructs the CEO through the Treasurer.
62. The CEO is the public representative of the Law Society and the spokesperson for the Law Society for management and operations.

Section 2: Role of the CEO

63. The CEO provides leadership to the Law Society's programs and operations and ensures their effective contribution to meeting the objectives set out in the Strategic Plan. In particular, the CEO:
 - a. ensures that the programs and services offered by the Law Society contribute to its mission and reflect the Strategic Plan; and
 - b. ensures that Convocation has opportunities to consider the continuing relevance of the Strategic Plan in light of trends and other developments.
64. The CEO manages the resources of the Law Society. In particular, the CEO:
 - a. Develops and presents the annual budget to the Audit and Finance Committee and ensures that actual revenues and expenses are in line with the budget approved by Convocation;
 - b. Ensures the provision of administrative and policy support for Convocation and all committees;

- c. Determines overall staffing requirements of the Law Society and selects, appoints and oversees the performance of senior management. The CEO determines their remuneration, nurtures their development and ensures appropriate succession planning for senior positions;
 - d. Sets the tone of the Law Society, fostering a positive results-oriented organizational culture and promoting a philosophy of teamwork;
 - e. Establishes a healthy and safe work environment and a sound human resource management regime;
 - f. Implements a performance management process for all employees;
 - g. Ensures that all employees are appropriately trained to carry out the responsibilities of their positions;
 - h. Terminates the employment of individuals when necessary using appropriate and legally defensible procedures;
 - i. Ensures the soundness of accounting practices and financial systems; and
 - j. Ensures that the Law Society complies with all legal obligations and legislation covering taxation and related financial matters.
65. The CEO supports the work of Convocation and its committees and ensures effective implementation of policy decisions. In particular, the CEO:
- a. Collaborates with the Treasurer in the development of agendas for meetings of Convocation;
 - b. Works closely with Convocation in the periodic review of the Law Society's vision for the future and in the development and periodic updating of the Strategic Plan;
 - c. Ensures the development and timely distribution of materials for Convocation decision-making, including policy proposals on important issues;
 - d. Provides regular financial reports on operations, revenues, expenditures and cash

position of the Law Society;

- e. Ensures that an orientation program is provided for new members of Convocation and that ongoing bench development through continuing education about their roles is provided; and
 - f. Identifies and evaluates risks to the organization (people, property, finances, reputation and image) and implements measures to mitigate risks.
66. The CEO develops and maintains positive external relationships to advance the organization's interests at home and abroad. In particular, the CEO:
- a. Builds a broad base of understanding for the work of the organization amongst the profession, government officials, key stakeholders, the media and the public;
 - b. Builds and nurtures collaborative relationships with stakeholders, partners and others; and
 - c. Takes part in events as appropriate to promote the reputation of the Law Society and improve awareness of its mission and programs.

Section 3: CEO Performance Expectations and Review

67. As directed by Convocation, and in accordance with an annual performance plan agreed to between Convocation, through the Treasurer, and the CEO, the CEO is expected to achieve specified results as articulated in the Strategic Plan, monitor progress on results and report regularly on operational implementation of the Strategic Plan.
68. The Compensation Committee, in consultation with Convocation, is to carry out a CEO performance review based on the performance plan on an annual basis, and such review will include a self-assessment by the CEO.
69. The results of the performance review are to be reported to the CEO and Convocation for discussion in the absence of the public.

PART 4: STRATEGIC PLANNING CYCLE

70. The Law Society is to engage in a strategic planning exercise following the election of benchers and approve a Strategic Plan by the end of the election year.
71. The Strategic Plan is to assist Convocation in determining the initiatives and projects to be undertaken in the bencher term and in identifying the policy agenda for the work of standing or other committees, task forces and working groups.

Section 1: Role of the Priority Planning Committee

72. The Priority Planning Committee is responsible for management of the strategic planning exercise which includes a strategic planning meeting of benchers following each bencher election, to prepare for Convocation's consideration and approval a Strategic Plan for the bencher term.
73. Through the Priority Planning Committee, Convocation approves its priorities and is to receive annual reports on the progress on the priorities through the Committee.
74. Two years into the bencher term, the benchers are to reconvene in a meeting to review the strategic plan. This will include an assessment of its progress and determination of any changes or adjustments that are required to the plan as a result of developments or events that may reasonably affect the integrity of the plan for the remaining two years of the bencher term.
75. The Treasurer is to provide oversight in the management of the strategic plan and may consult with the CEO to obtain information from operations for this purpose.

Section 2: Role of the CEO and Management

76. The CEO, together with the Law Society's Senior Management Team, is responsible for informing benchers on the operational (including financial) implications of the strategic planning during its formation and two years into the bencher term.
77. The CEO will monitor the progress of the implementation of the Strategic Plan and report regularly to the Treasurer and Convocation on its progress.

PART 5: BENCHER ORIENTATION AND PROFESSIONAL DEVELOPMENT

Section 1: Orientation Program

78. Immediately following each bencher election, all benchers are required to attend an orientation program which will include, but is not limited to, information about:
- a. the Law Society's governance and organization structure
 - b. The roles and responsibilities of benchers
 - c. The roles and responsibilities of management
 - d. The Law Society budget
 - e. Convocation, committees and task forces
 - f. The Law Society Tribunal
 - g. Bencher professional development
 - h. Strategic planning
 - i. The Law Society's commitment to equality, diversity and inclusion
 - j. The Law Society's commitment to Indigenous cultural competence.

Section 2: Bencher Professional Development Program

79. Benchers are required to attend various professional development sessions throughout the bencher year that are designed to orient, educate and equip benchers for their governance responsibilities.
80. Bencher attendance is monitored and is to be reported to the Treasurer, who will take appropriate steps to ensure bencher attendance at the sessions.

PART 6: CONVOCATION AND BENCHER EVALUATION

81. Convocation is committed to periodically reviewing and considering its effectiveness in carrying out its responsibilities.
82. As part of this commitment to ongoing assessment and improvement, benchers are to complete an annual evaluation in a form provided by the Law Society on the effectiveness of Convocation, the results of which will be compiled and reported to Convocation in the aggregate, without attribution.

83. The Treasurer will determine the action, if any, to be taken in response to the annual evaluation respecting the effectiveness of Convocation in carrying out its responsibilities.
84. Benchers are committed to self-reflection on board process and effectiveness.
85. As part of this commitment, each bencher is required to complete an annual self-reflection survey in a form provided the Law Society on their effectiveness as a bencher, the results of which will be provided to the Treasurer for review and, as required, discussion between the Treasurer and the bencher.

PART 7: COMPLIANCE

Section 1: Agreement

86. The Treasurer and benchers agree to comply with the Governance Practices and Policies, which incorporates the Bencher Code of Conduct at [Appendix A](#), and commit to exercising diligence in fulfilling their roles and duties and meeting the standards for governance in the Governance Practices and Policies.
87. The Treasurer and each bencher are required complete the Declaration of Adherence in the form provided in [Appendix B](#) to the Governance Practices and Policies upon election or appointment as a bencher.
88. Benchers are encouraged to seek to address matters of compliance with the Governance Practices and Policies among themselves, where appropriate, as respectful and timely dialogue is encouraged as a way to deal with these matters. Benchers may also seek the assistance of the Treasurer or an appropriate neutral bencher colleague to discuss and deal with an issue.



APPENDIX A

BENCHER CODE OF CONDUCT

PART 1 INTRODUCTION

- I. Purpose and Application
- II. Definitions
- III. Principles

PART 2 BENCHER CONDUCT

- I. Professionalism
- II. Confidentiality
- III. Whistleblowing
- IV. Avoiding Improper Use of Influence
- V. Public Statements
- VI. Relationship with Management
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- IX. Benchers in the Law Society's Regulatory Process

PART 3 CONFLICTS OF INTEREST

- I. Introduction
- II. Benchers Serving on Committees and at Convocation
- III. Benchers and Regulatory Functions
- IV. Outside Activities
- V. Acceptance of Gifts and Benefits
- VI. Post-Term Responsibilities

PART 4 COMPLIANCE

- I. Referral of Issue
- II. Role of Treasurer
- III. Treasurer's Report to Convocation
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- V. Referral for Determination and Role of Convocation

PART 1 INTRODUCTION

I Purpose and Application

1. The Law Society of Ontario Benchers Code of Conduct (the “Code”) sets out the ethical responsibilities of the Law Society’s benchers. As a regulator of the conduct of professionals, the Law Society recognizes a corresponding obligation on the part of the benchers to conduct themselves with the highest degree of ethical behaviour and integrity.
2. Benchers conduct should support the fulfillment of the Law Society’s mandate and maintain public confidence in the Law Society. Benchers adherence to the Code helps to foster a culture of honesty, integrity and accountability at the Law Society.
3. The Code applies to all Law Society benchers, including the Treasurer. The Code applies to the following areas of benchers responsibility: as members of Convocation, committees, task forces, working groups and related boards. Benchers who are Law Society Tribunal members are also subject to the [Adjudicator Code of Conduct](#).

II Definitions

4. In the Code,

Benchers means elected, appointed, ex officio, emeritus benchers and includes ex officio and emeritus Treasurers;

Ethics Lead means the Treasurer of the Law Society;

Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;

Law Society means the Law Society of Ontario;

Treasurer means the currently elected Treasurer/President of the Law Society;

Tribunal means the Hearing Panel and the Appeal Panel of the Law Society Tribunal;

Sexual Harassment means an incident or series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

- a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the recipient(s) of the conduct;
- b. when submission to such conduct is made implicitly or explicitly a condition for a professional services;
- c. when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files, matters of promotion, raise in salary, job security, and benefits affecting the employee); or
- d. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

Management means an individual or individuals employed by the Law Society of Ontario;

CEO means the Chief Executive Officer of the Law Society of Ontario, appointed by Convocation.

III Principles

5. As stewards and governors of the Law Society, benchers are held to high standards of ethical conduct. In carrying out their responsibilities, benchers are to observe the following principles:
 - a. Benchers must act in the best interests of the Law Society and not for personal or third-party gain;
 - b. Benchers commit to carrying out their duties with diligence and in good faith;
 - c. Benchers must adhere to the spirit and letter of the laws of Canada, Ontario and the policies and procedures of the Law Society, including the Code;
 - d. Benchers must arrange their professional and personal affairs in a manner that will bear close public scrutiny to prevent conflicts of interest from arising;
 - e. Benchers are required to acknowledge and respect the decisions of Convocation;
 - f. Benchers must act and be seen to act in accordance with the values and principles within the Code;
 - g. Benchers are to seek advice, as appropriate, on their responsibilities for adherence to the Code.

PART 2 BENCHER CONDUCT

I Professionalism

7. Benchers are to carry out all bencher-related duties in the public interest, must act professionally and ethically and are to hold themselves to the highest standards of integrity and trust in carrying out their responsibilities.
8. Benchers are to conduct themselves in a way that contributes to a respectful, inclusive and safe work environment that is free from violence, discrimination and harassment. Interactions with management, fellow benchers and the public are to be courteous and respectful.
9. Benchers must not engage in conduct that constitutes discrimination, harassment or sexual harassment towards bencher colleagues, management or any other person connected with a bencher's duties.
10. As holders of a public office, benchers should be aware that that their conduct outside of their bencher duties may have a negative impact on the reputation of the Law Society. As such, benchers must not engage in harmful or criminal conduct in their other activities.
11. Benchers must clearly distinguish between their governance role and the role of Law Society management, who are responsible under the leadership of the Chief Executive Officer for operational implementation of Convocation policy.
12. Benchers are to:
 - e. prepare appropriately for and regularly attend Convocation, meetings of committees, task forces and working groups of which they are members;
 - f. attend meetings of external bodies to which they are assigned or appointed; and
 - g. observe the rules of procedures for Convocation found in By-Law 3.

II Confidentiality

13. All Committee and task force meetings are held in the absence of the public and are confidential. Some portions of Convocation are also held in the absence of the public and are confidential. All benchers are required to maintain the confidentiality of materials for

and the deliberations of meetings or portions of meetings that are held in the absence of the public. In particular, benchers must not comment publicly on matters that have been considered in the absence of the public.

14. Benchers are often provided with confidential documents or information, electronically or in other formats. Benchers must not share, copy (other than for personal use), transmit or disclose any materials or information that they receive in their capacity as a bencher that is confidential, sensitive or proprietary to the Law Society. Where formerly confidential information is released to the public by Convocation, benchers may refer to this information subsequent to any such release by Convocation.
15. Benchers must not use confidential information for personal gain or any improper purpose.
16. Benchers must not seek out confidential information from management that is not required for their bencher work.

III Whistleblowing

17. Benchers should encourage disclosure of wrongdoing at the Law Society to ensure that the Law Society abides by its Business Conduct Policy.

IV Avoiding Improper Use of Influence

18. Benchers must not use their positions in an improper way to further their private interests or those of associates, friends or relatives. Benchers must not use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing management with the intent of interfering with management's duties or another person's interests, including the duty to disclose improper activity.
19. Benchers must refrain from influencing or interfering in the award of external contracts or offers of employment at the Law Society to their partners, firms, associates or family members. It is the role and responsibility of Law Society management to follow fair, transparent and defensible processes for the award of Law Society contracts and the recruitment of employees.

V Public Statements

20. The spokesperson for the Law Society is the Treasurer for policy issues and the CEO for operational issues, or their designates. Where benchers are not so designated, they should make it clear in any public statement that they are not speaking for the Law Society but in their own capacity.

VI Relationship with Management

21. Under the direction of the CEO of the Law Society, who is accountable to Convocation, management supports the operations of the Law Society. In their relationship with members of Law Society management, benchers must be respectful of management's role and their professional responsibilities.
22. No bencher shall attempt to induce a member of the Law Society management to engage in partisan political activities or subject such member to threats or discrimination for refusing to engage in such activities.

VII Use of Law Society Resources

23. Benchers must not use, or permit the use of, Law Society facilities, equipment, supplies, services, management or other resources for activities other than the business of the Law Society. Nor must any bencher obtain personal financial gain from the use or sale of Law Society-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the Law Society.

VIII Political Activity

24. Benchers must observe a boundary between their role as governors and political activity. Benchers must not use property of the Law Society (including materials, management's time, technology, proprietary material and confidential information) for political or partisan purposes including when running for office as a bencher.

IX Benchers in the Law Society's Regulatory Process

25. Benchers who are licensees who are the subject of a conduct, capacity or competence application before the Law Society Tribunal shall withdraw from all activities giving rise

to a conflict of interest as a bencher as a result of the application until those proceedings are formally concluded, including any appeals.

26. A bencher who is a licensee whose license is suspended following a finding of professional misconduct or conduct unbecoming is not permitted to act as a bencher as of the date of the order suspending the license, or as of the date of the unsuccessful appeal order with respect to the suspension.
27. A bencher who is a licensee whose license is suspended as a result of an interlocutory suspension order is not permitted to act as a bencher as of the date of the order and for the duration of the suspension.
28. A bencher who is a licensee whose license is suspended as a result of a summary order under sections 46 to 49 inclusive of the *Law Society Act* is not permitted to act as a bencher as of the date of the order. If the bencher fails within three months of the date the suspension begins to take the action that will end the suspension, he or she is not permitted to act as a bencher for the duration of the suspension.

PART 3 CONFLICTS OF INTEREST

I Introduction

29. As directors, benchers can be expected to have conflicts between their roles and other interests from time to time. Managing conflicts fairly, effectively and transparently serves the public interest. Avoiding conflicts of interest contributes to confidence by the public and the profession that both policy and adjudicative decision-making is being made free from external or improper interest, favour or bias.

II Benchers Serving on Committees and in Convocation

30. Benchers are to identify material conflicts between their personal and/or professional responsibilities or interests and matters for deliberation in committee and/or in Convocation. In considering whether there is a conflict, benchers should ask themselves whether or not a well-informed, reasonable member of the public would conclude that their decision-making could be influenced by duties owed to others or to personal interests. In doing so, the focus should be on actions, not on motives. Benchers are seen from afar and it is for this reason that conflicts of interest should be considered not just

from the bencher's own perspective but also from the perspective of licensees, stakeholders and the public whose confidence in the Law Society must be maintained.

31. Benchers should not participate in discussion of or decision on a matter where the bencher or the bencher's firm acts for a client whose interests will be significantly affected by Convocation's decision, or where the bencher or the bencher's firm is, through the professional relationship with the client, in possession of confidential information related to the issue under consideration which may tend to influence the bencher's decision on the matter.
32. Where a bencher is an employee, the bencher should not participate in the discussion of or decision on a matter where the bencher's employer has a significant interest, which is distinct from the interests of the professions at large, in a matter before Convocation, or where the bencher, because of the employment relationship, is in possession of confidential information pertaining to the issue under consideration which may tend to influence the bencher's decision on the matter.
33. Upon recognizing a conflict, the bencher is to declare the conflict and remove themselves from the consideration or discussion of the matter related to the conflict.
34. A bencher who is a member of the Professional Regulation Committee or the Proceedings Authorization Committee shall not also be a member of the Tribunal Committee.
35. Benchers are encouraged to discuss potential conflicts with the Ethics Lead or with experienced and neutral colleagues whenever there is a question in the mind of the bencher as to whether they ought to withdraw from a discussion, a vote, or both.

III Benchers and Regulatory Functions

36. Benchers must not:
 - a. act for licensees before the Law Society Tribunal;
 - b. act for the Law Society or a licensee as counsel in the matter of a Law Society complaint, audit or investigation;
 - c. provide written or oral evidence as a character witness in support of a party before the Law Society Tribunal unless the party demonstrates that the inability to put

such evidence before the Panel would unfairly prejudice the party, in accordance with s. 63 of the Adjudicator Code of Conduct;

- d. provide written or oral expert evidence for a party before the Law Society Tribunal unless the party demonstrates that the inability to put such evidence before the Panel would unfairly prejudice the party; or
 - e. act as a supervisor or mentor of a licensee who is in the Law Society's regulatory process.
37. It is not a breach of the Code for members of a bencher firm to act for a licensee with respect to a Law Society complaint, audit or investigation or to appear as counsel before the Law Society Tribunal, provided there is no actual conflict of interest.
38. It is not a breach of the Code for members of a bencher firm to represent the Law Society on a matter or before the Law Society Tribunal provided there is no actual conflict of interest and they are chosen through a process for the selection of outside counsel that includes appropriate and specific selection criteria.
39. Benchers who are members of the Proceedings Authorization Committee shall recuse themselves from consideration of a matter before the Committee in circumstances where their decision-making on a matter before the Committee could be influenced by duties owed to others or to personal interests.
40. A bencher or a bencher firm may act for the Lawyers' Professional Indemnity Company ("LawPRO") on a matter provided there is no conflict of interest and they are chosen through an independent process for the selection of outside counsel.

IV Outside Activities

41. Benchers are to arrange their outside affairs, external appointments and other responsibilities to provide sufficient time to carry out their Law Society duties and attend meetings as required under By-Law 3.
42. Where a particular outside activity places a bencher in a conflict between his or her duties as a bencher and that outside activity on an ongoing basis, the bencher should consider resigning as a bencher or withdrawing from the outside activity to resolve the conflict.

V Acceptance of Gifts and Benefits

43. Benchers may not accept gifts, benefits or hospitality connected to their work as benchers with the exception of the following:
- a. attendance at meetings, dinners, receptions or continuing professional development sessions hosted by legal organizations, associations or other Law Societies, where the bencher is attending as part of his or her role as a bencher, as an invited speaker, or to represent the Treasurer; and
 - b. nominal gifts which are received as an incident of protocol.

VI Post-Term Responsibilities

44. Upon a person ceasing to be a bencher or becoming an emeritus Treasurer or an emeritus bencher who has no engagement with the Law Society, for a period of one year, the person is not permitted to engage in any of the following:
- a. Appearing as counsel for a licensee before the Law Society Tribunal;
 - b. Acting as counsel for a licensee in Law Society regulatory matters;
 - c. Appearing as a character witness or an expert witness before the Law Society Tribunal as described in paragraph 36; and
 - d. Acting as a supervisor or a mentor for a licensee who is in the regulatory process.

PART 4 COMPLIANCE

45. The Treasurer is the Ethics Lead for Convocation and may be consulted for advice by benchers concerning compliance with the Code.
46. It is the responsibility of each bencher to hold herself or himself accountable for complying with the Code.
47. Benchers also have a responsibility to hold each other accountable for complying with the Code.

I Referral of Issue

48. A person who has information suggesting that a bencher has not complied or is not complying with the Code may refer the information in writing to the Treasurer.

49. The Treasurer shall notify the bencher who is the subject of the issue disclosed in the information (“the subject bencher”) and provide them with the information.
50. The subject bencher shall be given an opportunity to provide a written response to the issue to the Treasurer.

II Role of the Treasurer

51. Upon receipt of the response or if no response is provided, the Treasurer shall determine the appropriate action, and may:
 - a. Conclude his or her review of the issue and
 - i. take no action;
 - ii. caution the subject bencher about the issue;
 - iii. require an apology from the subject bencher to those affected by conduct related to the issue;
 - iv. require an undertaking from the subject bencher with respect to conduct related to the issue;
 - v. advise the subject bencher on any other steps to be taken to remedy or resolve the issue; or
 - b. Where he or she reasonably believes that it is in the interests of fairness and the integrity of the Law Society’s governance process to do so, refer the issue to an independent third party investigator for review and investigation with appropriate terms of engagement for the investigation.

III Treasurer’s Report to Convocation

52. Where the Treasurer concludes his or her review with any of the steps set out in paragraph 51 a. ii. through v., he or she shall report the matter to Convocation.
53. The Treasurer’s report to Convocation shall form part of the public record of Convocation.

IV Investigator’s Report

54. Where the Treasurer refers the issue to an investigator, the investigator shall provide a written report to the Treasurer upon completing the investigation.
55. Based on the investigator’s report, the Treasurer may:

- a. Conclude the review of the issue and provide a report to Convocation as described in paragraph 52; or
- b. Determine that the issue should be referred to Convocation for the purpose of determining compliance with the Code.

V Referral for Determination and Role of Convocation

56. The Treasurer may refer an issue to Convocation for a determination of whether the Code has not been complied with.
57. The referral shall be in writing and the issue shall be considered and determined by at least a quorum of Convocation in the absence of the public.
58. The Law Society's rules of practice and procedure apply, with necessary modifications, to the consideration of the issue by Convocation. Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration of the issue by Convocation.
59. After considering the issue, Convocation shall determine whether or not the Code has been complied with and shall provide written reasons for its decision.
60. Following the preparation of its decision and reasons, Convocation shall provide the decision and reasons to the subject bencher.
61. Where Convocation determines that the Code has not been complied with by the subject bencher, Convocation may:
 - a. reprimand the subject bencher;
 - b. suspend for a period of time certain rights and privileges of the subject bencher; or
 - c. remove the subject bencher as a member of Convocation or, if the subject bencher is lay bencher, request of the Council to the Public Appointments Secretariat that it remove the lay bencher.
62. The decision of Convocation is final.
63. Convocation shall report publicly on the issue once it has been concluded pursuant to paragraph 61.



APPENDIX B
LAW SOCIETY OF ONTARIO BENCHER DECLARATION OF ADHERENCE

I acknowledge that as a member of Convocation:

1. I am aware of my obligations as a director of the Law Society of Ontario under the *Law Society Act* and agree to abide by the Act, the By-laws, the rules of conduct (if a licensee) and the policies applicable to members of Convocation.

2. I stand in a fiduciary relationship to the Law Society.

3. I have read and am familiar with the Law Society’s Governance Practices and Policies, including the Bencher Code of Conduct, and agree to abide by the Policies including the Code.

Signature: _____

Print Name: _____

Date: _____

GOVERNANCE TASK FORCE 2016 SUMMARY OF INPUTS AND ENGAGEMENT

Date	Initiative
September 22, 2016	Convocation approves the creation of the Governance Task Force 2016 (“Task Force”), mandated by its Terms of Reference to “make recommendations to Convocation to improve the Law Society’s corporate governance through greater transparency, inclusiveness, effectiveness, efficiency and cost-effectiveness”.
Winter - Spring 2017	As part of the Task Force’s Five Year Review of By-Law 3 Provisions for Emeritus Treasurers, the Task Force obtains Emeritus Treasurers’ views about the Emeritus Treasurer role and functions, and related governance issues being considered by the Task Force. This is reported for information to May 2017. The Task Force proposes that any recommendations with respect to Emeritus Treasurers be considered and developed in the context of other Convocation governance issues.
June 29, 2017	<p>The Task Force reports to Convocation describing its proposed next steps for consideration of broader governance issues. The Task Force releases a research report on governance practices in self-regulatory organizations in various jurisdictions prepared by Hansell LLP, which was retained by the Task Force for this purpose. Among the key findings are that:</p> <ol style="list-style-type: none"> 1. Convocation is significantly larger than almost all boards in the comparator group; 2. The inclusion of <i>ex officio</i> and honorary directors is unusual; and 3. The 12 year term limit for elected Benchers is longer than any in the comparator group.
August 2017	The Chair of the Task Force attends the Treasurer’s <i>Ex Officio</i> Bencher Dinner at which some governance issues are discussed.
October 2017	Benchers complete an online survey on governance effectiveness in advance of a bencher governance session later that month, with responses provided directly to the facilitator of the session. The survey resulted in an overall governance effectiveness rating of 55%.
October 25, 2017	Benchers attend a facilitated governance session to explore structural elements of governance and issues relating to governance process.
February 22, 2018	The Task Force reports to Convocation outlining key findings contained in the Hansell Report, and the results of the discussions on governance architecture and board process issues addressed at the bencher governance session. An outline of proposed new governance policies is included in the report.

June 12, 2018	Benchers attend a discussion session where the Task Force presents options for structural changes for discussion; a variety of views are expressed by benchers, some in favour of the <i>status quo</i> and some in favour of change.
August 9, 2018	The Task Force reports to Convocation outlining options under consideration to enhance the Law Society's governance, and launches a Call for Comment on structural components of governance.
August 9, 2018 to October 15, 2018	During the Call for Comment, over 100 submissions are received from lawyers, paralegals, the public and legal organizations and are posted to the Law Society's public governance webpage.
November 7, 2018	Benchers attend an information and discussion session on a draft Task Force Report for November 30, 2018 Convocation.

STATUS, RIGHTS AND PRIVILEGES AND SOURCE OF STATUS, RIGHTS AND PRIVILEGES OF *EX OFFICIO* AND HONORARY EMERITUS BENCHERS

TYPE OF BENCHER	WHERE STATUS FOUND	CONVOCATION VOTING RIGHTS	COMMITTEE VOTING RIGHTS ¹	PARTICIPATION IN CONVOCATION DEBATE	OTHER
Ex officio					
Attorney General	Act ²	Act	Act	By-Law 3	
Former Treasurers to 2010	Act	By-Law 3	By-Law 3	By-Law 3	By-Law 3 requires them to attend Convocation regularly or lose rights in By-law 3
Life benchers to 2015	Act	none	Act	By-Law 3	By-Law 3 requires them to attend Convocation regularly or lose rights in By-law 3
Former Attorneys General to 2010	Act	none	Act	By-Law 3	By-Law 3 requires them to attend Convocation regularly or lose rights in By-law 3
Honorary					
Emeritus Treasurers (from 2010 forward)	By-Law 3	none	By-Law 3	By-Law 3	Eligible for appointment to Law Society Tribunal and to committees; By-Law 3 requires them to attend Convocation regularly or lose rights in By-law 3
Emeritus benchers	By-Law 3	none	By-Law 3	none	Eligible for appointment to Law Society Tribunal and to committees

¹ By-Law 3 provides that Convocation may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

² Law Society Act

RIGHTS AND PRIVILEGES OF *EX OFFICIO* AND EMERITUS BENCHERS

Emeritus Benchers

[Section 11](#) of the *Law Society Act* provides for honorary benchers and also provides that such individuals only have the rights and privileges prescribed by the by-laws. By-Law making authority under [s. 62\(0.1\)](#) of the Act provides that Convocation may make by-laws governing honorary benchers and prescribing their rights and privileges.

[By-Law 3](#), made by Convocation under the authority of the Act, provides for the class of honorary bencher known as emeritus benchers. These benchers are every person who has held the office of Treasurer and every person who has held the office of elected bencher for at least 12 years, and for paralegal benchers includes the time they were appointed as a bencher or appointed or elected as a member of the Paralegal Standing Committee. Benchers by virtue of an office are not emeritus benchers, and as such, exclude the benchers by virtue of office (*ex officio* benchers) under the Act (the current Treasurer, the current Attorney General for Ontario, former Treasurers to 2010, life benchers (see below) and former Attorneys General).

Rights and Privileges

Under By-Law 3, emeritus benchers are eligible to be appointed to the Law Society Tribunal and to a standing committee. An emeritus bencher may vote in committees.

Emeritus benchers who are former Treasurers also have the right to participate in a debate at Convocation. They can lose this privilege if they fail to attend a regular (vs special) Convocation four consecutive times. They may not vote in committees and may not take part in any debate at Convocation until after they attend three of any five consecutive times a regular Convocation is held after they lose the right to vote in committees and the right to take part in a debate at Convocation.

***Ex Officio* Treasurers (Former Treasurers to 2010)**

[Section 14](#) of the *Law Society Act* provides that every licensee who held the office of Treasurer at any time before January 1, 2010 is a bencher by virtue of his or her office. The Act is silent on the rights and privileges of these benchers. By-Law making authority under s. 62(0.1) of the Act provides that Convocation may make by-laws governing persons who are benchers by virtue of their office and prescribing their rights and privileges.

Rights and Privileges

By-law 3 provides that benchers by virtue of their office under s. 14 of the Act may vote in Convocation and in committees. The By-Law also provides that a bencher by virtue of his or her office under s. 14 of the Act who has not lost the right to vote in Convocation may take part in a debate at Convocation. A bencher by virtue of his or her office under s. 14 of the Act who fails to attend a regular Convocation four consecutive times may not vote in Convocation or in committees until after he or she attends three of any five consecutive times a regular Convocation is held after he or she loses the right to vote in Convocation and in committees.

Ex officio “Life” Benchers, the Attorney General and Former Attorneys General

[Section 12](#) of the Act provides for offices of benchers by virtue of office. These people, if and while they are licensees, are the Minister of Justice and Attorney General for Canada, the Solicitor General for Canada, every person who, by June 1, 2015, held the office of elected bencher for at least 16 years (who are called life benchers), the Attorney General for Ontario and every person who held the office of Attorney General for Ontario at any time before January 1, 2010.

Rights and Privileges

The Act provides that these benchers have the rights and privileges prescribed by the by-laws and except as provided for in the Act may not vote in Convocation or in committees. The Act provides that the Attorney General for Ontario may vote in Convocation and committees and former Attorneys General and those who have served 16 year as elected benchers (life benchers) may vote in Committees.

As noted, by-Law making authority under s. 62(0.1) of the Act provides that Convocation may make by-laws governing persons who are benchers by virtue of their office and prescribing their rights and privileges. By-Law 3 provides that former Attorneys General and those who have served 16 years as elected benchers may participate in a debate at Convocation. A former Attorney General or a life bencher who fails to attend a regular Convocation four consecutive times may not take part in any debate at Convocation until after he or she attends three of any five consecutive times a regular Convocation is held after he or she loses the right to take part in a debate at Convocation. They also cease to be a member of a committee immediately after they fail to attend a regular Convocation four consecutive times.

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November 16, 2018

**BY E-MAIL AND COURIER
PRIVILEGED AND CONFIDENTIAL**

Law Society of Ontario
130 Queen Street West
Toronto, Ontario
M5H 2N6
Attn. Elliott Spears, General Counsel

Dear Ms Spears:

RE: Opinion Letter - Proposed Changes to the Law Society of Ontario's By-Laws Respecting Voting Rights for Former Treasurers

We write to you in response to your question, on behalf of the Law Society of Ontario [the "LSO"], which seeks our legal opinion concerning a proposal to change the LSO's by-laws. Our opinion is set out below.

Summary of Question Being Asked

In sum, the LSO proposes to change its By-Law #3 to provide that former Treasurers may participate in future Convocation and committee meetings but may not vote at either. By-Law #3, as it is presently worded, permits former Treasurers – in their legislative capacity as *ex-officio* benchers – to both attend and vote at Convocation and committee meetings.

As a result of this proposal, a question has arisen as to whether the LSO is legally permitted to make this change by way of an amendment to its by-laws or whether the LSO is required to seek a legislative amendment to the *Law Society Act*, R.S.O. 1990, c. L.8 [the "Act"] to effectuate the change.

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Summary of Answer to the Question

We have concluded that a legislative amendment is not required. We have concluded that the LSO can make the proposed voting changes by way of an amendment to its by-laws.

Materials Reviewed in Forming this Opinion

In addition to the *Act* and the jurisprudence cited below, we reviewed the following documents provided to us by the LSO to help educate us concerning the question being asked:

1. Three pages, including a table, summarizing the voting and participation rights of *ex officio* and honorary emeritus benchers;
2. The November 30, 2018 Governance Task Force 2016's "Report to Convocation"; and,
3. The DRAFT "Governance Practices and Policies" document that may be proposed to Convocation.

While we reviewed those sections of these documents that set out precisely the relevant changes the Governance Task Force 2016 recommends be made so that we could understand the proposed changes themselves, we did not focus at all on the rationale for the proposed changes. In our estimation, while those tasked with the authority to make any decision here will want to be well-versed on the rationale, our opinion is not guided by the wisdom (or not) of the proposed changes. Our opinion solely considers the legality of effectuating the change by by-law and not by way of legislative amendment.

The Legislative Interpretation Principles that Guide Any Review of the Act

Administrative bodies, such as the LSO, have only those powers, both express and implied, authorized by the Legislature. A law society's implied authority includes all powers necessary to accomplish the ends of its authorizing legislation.¹

In general, law societies have broad rule-making authority, which corresponds with their mandate to self-regulate the profession and protect the public interest.² Recognizing the discretion that legislatures have granted law societies, courts have recognized that law societies are best situated to determine the manner of managing their affairs and

¹ *Green v. Law Society of Manitoba*, 2017 SCC 20, at para. 42.

² *Ibid.* at paras. 28-31.

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governing the profession to advance and protect the public interest. Accordingly, they have wide latitude "in making rules based on their interpretation of the 'public interest' in the context of their enabling statute".³

The LSO is no exception.⁴ Section 4.2 of the *Act* provides that the LSO "has a duty to protect the public interest" as well as to facilitate access to justice and to "act in a timely, open and efficient manner". The expansive language in the LSO's authorizing statute, as well as similar language in other law society legislation, "manifests the legislature's intention to 'leave the governing of the legal profession to lawyers'".⁵

Our Review of the *Act*

1. The *Act's* treatment of benchers

When it comes to outlining the role, powers, rights, duties and privileges of benchers, the *Act* is decidedly silent, offering a few prescriptions concerning certain types of unelected benchers. The *Act*, for instance, describes the Attorney General as an *ex officio* bencher that "may vote in Convocation and committees"⁶. The *Act* adds that those who have served as an elected bencher for at least 16 years as of June 10, 2015 "may vote in committees".⁷

In other sections, the *Act* sets out certain rights certain benchers cannot have. Thus, the *Act* states that the Minister of Justice and every person who held the office of Attorney General for Ontario at any time before January 1, 2010 "may not vote in Convocation or in committees".⁸

These specific prescriptions regarding the right to vote aside, the *Act* either expressly states that benchers have those rights given to them in the by-laws [see s. 11, for instance, for honorary benchers] or the *Act* is outright silent about rights, privileges, and powers altogether.

The *Act* has very little to say about all benchers, the few references earlier to rights to vote or not vote for a few *ex officio* benchers aside. The *Act* merely,

³ *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, at paras. 34-36 [internal quotations and citations omitted].

⁴ *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, at paras. 15-16.

⁵ *Law Society of British Columbia v. Trinity Western University*, *supra* at para. 33 [citing *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at p. 888].

⁶ *Act*, s. 12(5)1.

⁷ *Act*, s. 12(5)2.

⁸ *Act*, s. 12(4).

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1. Defines "bencher" as all those who are benchers except honorary benchers [s. 1];
2. Defines "elected bencher" as one who is elected as a bencher [s. 1];
3. Protects benchers from liability for acts done in good faith [s. 9];
4. States, using some of the only language that actually tells the reader what a bencher does or can do (language we will revisit shortly), that the benchers "shall govern the affairs of the Society";
5. Provides that former Treasurers as of January 1, 2010 are benchers by virtue of their office [s. 14];
6. Provides that elected benchers are elected or selected in accordance with the process outlined in ss. 15 and 16;
7. Sets out that benchers can be removed for certain acts of non-attendance [s. 22];
8. Provides that eight lay benchers are to be chosen [s. 23]; and,
9. States in s. 24 that ten benchers "present and entitled to vote" in Convocation make up a quorum, without setting out in s. 24, or anywhere, who is "entitled to vote" (save for the provisions set out earlier entitling the AG to vote and disentitling others to vote).

All told, the only bencher with a legislative right to a vote in Convocation is the Attorney General.

Insofar as it might seem odd, at first, that the *Act* does not at least specify that elected benchers have this right to vote, the *Act* signals why the Attorney General is given this right. In section 13, the *Act* adds that the Attorney General's role in the governance of the profession is significant: the Attorney General "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". If the Attorney General, by statute, is the "guardian of the public interest", it makes perfect sense that it would be given a concomitant *legislative* right to vote at Convocation. Absent this, its vote could be taken away by a majority vote in Convocation itself, limiting its ability to exercise its public interest role.

What follows from the legislative granting of the Attorney General's right to vote and the silence elsewhere is that no bencher can claim a right to vote in the statute [except for those with the s. 12 legislative right to vote in committee only]. The *Act* appears to have deliberately left the question of who is to vote, or not, to be decided elsewhere.

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2. Convocation's authority to make by-laws

In the absence of express language regarding voting rights, we must consider whether Convocation has the implied authority to determine through its by-law making power which benchers have voting rights. In our opinion, the *Act* gives Convocation by necessary implication the power to make by-laws specifying who can and cannot vote at Convocation and at Committee.

Section 62 (0.1) gives Convocation the power to make by-laws "governing honorary benchers, persons who are benchers by virtue of their office and honorary members, and prescribing their rights and privileges" [s. 62(0.1)3.]. The reference to "benchers by virtue of their office" covers both the s. 12 benchers [for instance, the Attorney General] and the s. 14 former Treasurer benchers. Both s. 12 and s. 14 state that these persons are known as benchers "by virtue of their office".

Further, s. 62(0.1) more broadly indicates that Convocation may make by-laws "relating to the affairs of the Society". In our estimation, s. 62.01's plain language, interpreted broadly in light of the LSO's self-governance and public interest objectives, strongly supports the LSO's authority to prescribe which *ex officio* benchers may or may not vote at Convocation and on committees.

This conclusion is bolstered by s. 62(1), which adds in broader language that Convocation may make by laws (i) "respecting Convocation" and, (ii) "providing for the establishment, composition, jurisdiction and operation of standing and other committees".

We close by adding that our reading of these sections has been conducted through the lens of the latest Supreme Court jurisprudence cited above (*Trinity Western and Green*) which we take to mean that such provisions should not be construed narrowly but broadly to enable the LSO to govern its own internal affairs.

3. The *Act* tasks Benchers with governing the LSO's affairs

In addition to Convocation's broad by-law making mandate, and as noted above, s. 10 gives benchers the power to "govern the affairs of the Society". This "govern the affairs" language given to benchers mirrors s. 62(0.1)1, *i.e.* that Convocation can make by-laws "relating to the affairs" for the Society.

In our view, s. 10, suggests that a bencher is nothing more and nothing less than the locus of government. Section 10, as a stand-alone section, has been the core governance section in the statute since at least the major amendments in 1970.⁹ Section 10 has been judicially interpreted on a few occasions. Of those few decisions, Borins J.'s decision in *Law Society of Upper Canada v. Ontario (Attorney General)*¹⁰

⁹ See s. 10 of *The Law Society Act*, R.S.O. 1970, Chap. 238.

¹⁰ (1995), 21 O.R. (3d) 666 (Gen. Div.)

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provides some guidance. In this decision, the Court held that s. 10 of the *Act* could not be construed so as to give Convocation the power to determine how its benchers are elected. Other sections in the *Act* governing elections indicated that the actual election of benchers was a matter of legislation and legislative amendment alone.

In coming to this conclusion, Borins J. observed that s. 10 and s. 62 (the by-law making power), by setting out that Convocation governs "the affairs of the Society" and makes rules concerning these same "affairs", confers on Convocation a great deal of self-governance powers. Referring to a 1968 report that resulted in the 1970 amendments that are still found in s. 10, Borins J. held that these conferred wide powers of governance on the benchers. Ironically, it was the presence of such widespread powers that, along with other provisions regarding elections found in the *Act*, bolstered the Court's view that the actual election of persons with such significant self-governance powers should itself be the subject of legislative action. The main takeaway from this decision, for our purposes, is that s. 10's general governance provision grants Convocation wide powers of internal regulation.

We are of the opinion that the question of who votes at Convocation falls within that power. The word "govern", according to the Merriam-Webster dictionary, has a broad meaning, and certainly not one confined to voting. To "govern" is to either "control and direct the making and administration of policy", to "control, direct, or strongly influence the actions and conduct", and/or to "exert a determining or guiding influence in or over". In plain English, s. 10 is saying that the benchers, today, get to "control and direct" the affairs of the Society.

According to Borins J., this does not extend to controlling and directing who gets to control and direct those affairs, as that is a matter for the Legislature. But, once the Legislature has given a person the status of "bencher", then by definition, they have no less than the right to "control" and "direct" the Society's affairs. No broader wording, in our estimation, could have been afforded the benchers by the Legislature.

4. Additional Principles Confirm Our Opinion

While our opinion largely turns on what we have just stated concerning: (1) Convocation's powers to make by-laws and govern its affairs and, (2) reciprocally, the absence of language in the *Act* that would purport to limit those powers or otherwise confer a voting right on a past Treasurer bencher, additional provisions in the statute confirm this conclusion as well.

More on s. 10

As we observe earlier, the *Act* is largely silent about benchers. Apart from the very narrow exceptions conferring a right to vote on the Attorney General, the right to vote in Committee on life benchers (in committee), and excluding the right to vote on other *ex officio* benchers, the only provision in the *Act* itself from which one can find some reference to the benchers' powers, duties, and privileges, is section 10.

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As noted earlier, section 10 states that "[t]he benchers shall govern the affairs of the Society". When we first considered the question of whether the *Act* must be amended to remove former Treasurers' voting rights, we assumed that the *Act* would at least state that all benchers or, at least, all elected benchers, have a right to "vote". We assumed that the issue of voting would in fact be addressed for all benchers. When this turned out to be incorrect, our natural inclination was to wonder what it is that benchers have the power to do altogether apart from the admittedly wide power to make by-laws. We appreciate that s. 24 sets out that a quorum consists of ten benchers "entitled to vote at Convocation"; yet even there, the question of who can or cannot vote is not addressed.

An argument could be made that the statute's silence on the question of voting rights (apart from the few examples earlier) could give rise to an argument that, implicit in the role of "bencher", is a right to vote. In other words, it is almost a given that elected benchers must be allowed to vote at Convocation and committees and, insofar as this right to vote is "assumed" in the absence of statutory language to the contrary, does it not follow that the same assumption must be made in favour of all benchers absent those who are explicitly excluded from the right to vote? From this assumption comes the apparent conclusion that a s. 14 former Treasurer bencher is a bencher and, by virtue of that title alone, is granted an implicit right to vote.

It is our opinion that the *Act* cannot be read in this fashion for a number of reasons.

First, the *Act* is not entirely silent on the question of what it means to be a bencher. Section 10, again, tells us that the bencher is nothing more and nothing less than the locus of government. They "shall govern the affairs of the Society".

While s. 10 was relied on earlier to support our opinion that the *Act* confers wide-ranging powers of self-regulation, s. 10 is equally important as we consider this notion that being a bencher, in and of itself, includes an assumed right to vote. If such had been intended, s. 10 itself could easily have said that. Section 10 could have been written with the words "shall govern the affairs of the Society including, but not limited to, by voting on any business transacted at Convocation" [underlined words added by us]. Instead, in deliberately amending the *Act* in 1970, the Legislature's primary power-granting provision adopted the single verb "govern" to describe the powers of benchers acting in Convocation. The word "govern", according to the Merriam-Webster dictionary definition relied on earlier, means to "control and direct the making and administration of policy", to "control, direct, or strongly influence the actions and conduct", and/or to "exert a determining or guiding influence in or over". Thus, in setting out that the benchers "govern" the Society's affairs, the act of governing could include having a "guiding influence" over its affairs or the act of even "strongly influenc[ing]" the actions of others.

The effect of section 10 is that a bencher could argue, at its highest, that the legislative act of appointing a person a bencher is an act of appointment to "govern" the Law Society's affairs. But to "govern" is quite different from to "vote". A bencher could thus make a plausible argument that s. 10 gives them the right to have some influence over decision-making, be it by attendance at Convocation, the right to speak at Convocation,

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the right to make written submissions at Convocation, and/or the right to participate in a similar fashion in committee. In other words, s. 10, while conferring a broad right of governance, one giving Convocation the power to amend its own by-laws to set out who can and cannot vote, cannot be interpreted so far as to crystallize the right to vote itself in the *Act*.

The Expressio Unius Argument

Secondly, we have considered whether the provision in s. 12 providing that certain life benchers may not vote at Convocation can be interpreted to imply that, but for that prohibition, they would have had the right to vote. Or, put another way, could it be argued that the act of taking away the right to vote of one type of bencher implies that there was something (a right to vote) to be removed in the first place? This mode of argument reflects somewhat the *expressio unius est exclusio alterius* principle: having expressly set out that one type of bencher has no right to vote, it follows that silence respecting other benchers means that they do have the right to vote.

We do not regard this argument as persuasive for the simple reason that, if this argument were true, the logical corollary would be that the express grant of voting rights to the Attorney General must, in turn, mean that every other bencher does not have a right to vote unless this is conferred by the *Act* itself. As we see it, s. 10 of the *Act* grants all benchers rights of governance (and not rights to vote), while s. 12 adds two specific rules (the Attorney General may vote, life benchers may not) that cannot be derogated from by those who would otherwise set the process at Convocation.

In short, and consistent with Borins J.'s opinion in *Law Society* referred to earlier, the *Act's* various references to the fact that some benchers are elected and others are appointed *ex officio* or by other means, simply means that the line is legislatively drawn the following way: the *Act* says who gets to be a bencher and how they get to be a bencher, while the benchers themselves say (with the two voting exceptions) how they themselves conduct the affairs of the Society in Convocation and in committee.

Legislative History

Finally, a review of the *Act's* history, in our opinion, refutes the idea that the fact of being a former Treasurer bencher means, in and of itself, an implicit right to vote. In *The Law Society Act* of 1970, nine categories of *ex officio* benchers were recognized in s. 12(1). In s. 12(2), a right to vote was taken away from every one of the nine categories of *ex officio* benchers as of 1971 and then, in s. 12(3), was given back to the Attorney General. More importantly for our purposes, the voting rights of *ex officio* former Treasurers was specifically spelled out in s. 14 of the 1970 statute:

14.-(1) Every member who has been or is elected to the office of Treasurer is an *ex officio* bencher with all the rights and privileges of an elected bencher.

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(2) Every *ex officio* benchner under subsection 1 shall, upon attaining the age of seventy-five years, continue to be an *ex officio* benchner with all the rights and privileges prescribed by the rules, except that he no longer shall have the right to vote in Convocation or in a committee.

While s. 14 does not go so far as to say "every former Treasurer has the right to vote in Convocation or in a committee", it provides that they have the same rights as elected benchers [s. 14(1)] and that they lose the right to vote at age 75 [s. 14(2)]. The fact that they lose the right to vote tells us that they had such a right before age 75. If the Law Society, in 1971, had tried to remove a voting right from a former Treasurer in the by-laws, that former Treasurer could complain that he was being denied "all the rights and privileges of an elected benchner" contrary to the statute itself. He would also be able to say that the Legislature has spoken clearly in favour of his having the right to vote, at least until age 75. A legislative amendment would be needed to remove his voting rights in 1971.

Such a legislative amendment occurred in 1998. Section 14 of the 1970 statute carried forward into the 1980 consolidation¹¹. Then, in 1986, and following the passage of the *Canadian Charter of Rights and Freedoms*, Ontario passed *An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms*.¹² Amongst many amendments, s. 25(1) repealed s. 14(2) of the *Law Society Act*. The net effect of this amendment was to take out the age 75 limitation in s. 14(2): thus, a former Treasurer who turned 75 years old would no longer lose the right to vote. In our view, the idea of ensuring that one not lose a vote because of age implies that one had a right to vote in the first place. The repeal of s. 14(2) therefore confirms that s. 14(1) formerly gave former Treasurers the right to vote by according them the same rights as elected benchers.

Section 14(1) [now merely s. 14] thereafter continued into s. 14 of the 1990 consolidation and until its repeal in 1998.¹³

In 1998, the Legislature passed the *Law Society Amendment Act, 1998*.¹⁴ In section 8 of this amending legislation, the Legislature repealed section 14 of the former statute, replacing it with the current wording. Thus, in 1998, the Legislature took away the provision granting former Treasurers equal rights with elected benchers, replacing it simply with the current language providing that such former Treasures are benchers by virtue of their office.

11 *The Law Society Act*, R.S.O. 1980, Chap. 233, s. 14.

12 S.O. 1986, c. 64

13 See *The Law Society Act*, R.S.O. 1990, c. L.8 (as amended to S.O. 1998, c. 18, Sched. B, s. 8) for the former legislation on the eve of the 1998 amendments.

14 S.O. 1998, c. 21

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Legislative changes, such as this one, are interpreted as purposive. In the absence of internal or admissible evidence to show that the change was only "language polishing," we must presume that these amendments were intended to change the statute's meaning.¹⁵

We conclude that the Legislature has taken it upon itself, by way of amendment, to take away a right former Treasurers had to be treated equally as benchers in respect of the rights and privileges accorded both sets of benchers. Before the 1998 amendments, a by-law amendment removing former Treasurers' right to vote, while preserving the right for elected benchers, would have run afoul of s. 14 or s. 14(1). By removing this right to equal treatment, it must follow that former Treasurers cannot turn to the statute for some sort of right to vote. Put another way, the effect of the s. 14 repeal and replacement is that all references any sort of right or privilege in respect of former Treasurers lost a legislative source altogether. Returning to the primary question then, it follows that a legislative amendment to remove a right to vote is not needed because the question of former Treasurers' rights and privileges has already been answered: these rights and privileges find no source in the *Act*.

Conclusion

Our conclusions are, therefore, as follows:

1. A legislative amendment to the *Act* is not required to change former Treasurers' voting rights from a right to vote at Convocation/committees to a right to participate, but not vote.
2. Convocation has the power, right, and authority, pursuant to the *Act*, to effectuate the Task Force's proposed change regarding Treasurer voting, and this by way of an amendment to its by-laws.

These conclusions presume that the Task Force's purpose is to advance the public interest and otherwise fulfill the LSO's mandate established in the *Act*. As explained above, the LSO's powers are broadly construed when exercising its authority to this end. If the LSO's authority to amend its by-laws as proposed were questioned, the LSO would likely have to demonstrate a reasonable basis for these amendments and how they are consistent with its public interest mandate.

Because it was outside the scope of your question, we have not expressed an opinion on whether the Task Force's justification for the proposed amendment would meet this standard. However, we are happy to provide further assistance on this issue.

¹⁵ *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, at para. 34.

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We trust that this letter answers the questions posed of us. If you require anything further, please do not hesitate to contact the undersigned.

Yours very truly,

CAVALLUZZO LLP



Stephen J. Moreau
SM/ma

STEPHEN MOREAU

Stephen's Practice Areas

Administrative Law Charter/Constitutional Law Civil Litigation/Class Actions Employment Law/Wrongful Dismissal Health Law Human Rights Labour Law Professional Regulation/Discipline

EDUCATION

- Call to the Bar, 2002
- University of Toronto, LL.M., 2003
- University of Manitoba, LL.B., 2001
- University of Toronto, SSHRC Graduate Fellowship, LL.M. Thesis

Stephen is a member of the firm's litigation and labour groups, and is the co-chair of the civil group with responsibility over employment law, civil litigation, and class actions. He is bilingual and provides client service in both French and English. His practice focuses primarily on employment law, civil litigation, class actions, administrative law, and in assisting numerous unions, employees, and administrative agencies with litigation before courts, arbitrators, and numerous tribunals and agencies. In addition to extensive appearances before arbitrators, mediators, and other tribunals, he has appeared in all level of courts in Ontario, Manitoba, and Nova Scotia, the Saskatchewan Court of Appeal, the Federal Court, the Federal Court of Appeal, and the Supreme Court of Canada.

Recently, Stephen has engaged in extensive and successful class action work, with notable victories. He conducts pro bono litigation involving employment insurance benefits and is now recognized as a leader in this field, resulting in a significant and novel class action alleging negligent administration of the EI sickness benefits regime for claimants on parental leave. In recognition of this expertise, Stephen testified in 2012 before a Parliamentary and Senate committee considering major reforms to the EI special benefits regime. Stephen volunteers his time for Multiple Births Canada as a member of its Advisory Board, as an advisor on employment insurance.

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On the administrative law front, Stephen writes and teaches extensively and has represented unions on a number of successful judicial review applications and has represented the Ontario Review Board in several appeals and reviews, including in the *Conway* Supreme Court case which synthesized the law regarding the jurisdiction of administrative bodies to apply the *Charter*.

Stephen was born and raised in Winnipeg and is proud of his Manitoba roots. He is a Citizen of the Manitoba Metis Federation. He obtained an LL.B. at the University of Manitoba, which awarded him the University Gold Medal. While a student, he worked for Legal Aid and was an Associate Editor of the Manitoba Law Journal. He articulated with the firm of Taylor McCaffrey in Winnipeg and, after completing his articles, Stephen clerked at the Supreme Court of Canada for Madam Justices L'Heureux-Dubé and Deschamps, working in both official languages. He was subsequently employed as Legal Counsel at the Law Branch of the Supreme Court, where he advised the Justices of the Court on leave to appeal applications. The following year, Stephen won a SSHRC Graduate Fellowship to study public law, human rights, and the Charter through the pursuit of a thesis-based LLM at the University of Toronto.

Stephen has a deep interest in developing and protecting rights in the workplace, and in working to ensure greater access to justice. His aim is to serve his clients by developing practical, creative legal strategies that make use of his knowledge of a variety of areas of law. Stephen is a member of the Canadian and Ontario Bar Associations, the Canadian Association of Labour Lawyers, the Advocates Society, and the Association des juristes d'expression française de l'Ontario.

For more information on Stephen Moreau's cases and news on his practise, please visit the following site: <http://www.advocatedaily.com/profile/stephen-moreau.html>

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