

**TAB 4**



## **Report to Convocation August 9, 2018**

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### **Governance Task Force 2016**

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**Purpose of Report: Information**

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## FOR INFORMATION

# NEXT STEPS IN ACHIEVING GOVERNANCE EFFECTIVENESS: CALL FOR COMMENT

## INTRODUCTION

1. As part of its mandate, the Governance Task Force 2016 (the Task Force) is issuing a Call for Comment to obtain input on various components of governance architecture referred to in this report. The Call for Comment, supported by a document attached to this report, will facilitate engagement with the profession, stakeholders and others to obtain views about potential governance changes to enable more effective oversight for the Law Society. The Call for Comment period will run from August to October 15, 2018.

## BACKGROUND

2. The Task Force was established in September 2016 to review the Law Society's corporate governance, including practical process issues and governance structure. The Task Force is mandated to engage in research and consultation and to make recommendations to Convocation to improve the Law Society's corporate governance through greater transparency, inclusiveness, effectiveness, efficiency and cost-effectiveness.<sup>1</sup>
3. The Task Force reported to Convocation in February 2018<sup>2</sup> that the Law Society's board structure and its governance process vary significantly from other similar organizations. Benchers have expressed concerns with respect to the Law Society's overall governance effectiveness. The Task Force also reported that it supports examining more streamlined governance structures for the Law Society to achieve greater governance effectiveness.
4. The Task Force has advised Convocation that it is considering recommending options to enhance the Law Society's governance, including:
  - an appropriate smaller size for the Law Society's board (Convocation) and changes to the composition of the board;
  - changes to the terms for the Treasurer and benchers; and
  - new terminology that better reflects the Law Society's governance structure.

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<sup>1</sup> The Task Force's Terms of Reference are available at [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2016/Convocation-September-2016-Treasurer-Report.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/Convocation-September-2016-Treasurer-Report.pdf)

<sup>2</sup> This report may be accessed at [https://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2018/2018-Feb-Convocation-Governance-Task-Force-Report.pdf](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2018/2018-Feb-Convocation-Governance-Task-Force-Report.pdf)

5. The goal of this governance review is “to ensure that the Law Society’s governance structure enables effective oversight for the Law Society as it fulfills its mandate and meets its accountabilities as a public interest regulator.”<sup>3</sup>
6. To date, the Task Force’s work has included conducting research, including commissioning research by Hansell LLP (Hansell Report), and engaging with benchers for input and discussion during their Fall 2017 planning session and more recently during an information session for benchers. The valuable information and input on the topics of governance architecture and governance process obtained through the research and bencher engagement initiatives have assisted the Task Force in developing ideas for consideration and to focus the discussion around governance.
7. Consistent with its mandated requirement to consult and engage with stakeholders, and its commitment expressed in its February 2018 Report to engage with stakeholders, the Task Force is preparing to receive input from interested stakeholders and individuals on the components of governance architecture described in paragraph 4. The Task Force believes that it is important to obtain the views of the legal professions and the public regarding potential governance changes to enable more effective oversight for the Law Society.
8. The Task Force has developed a Call for Comment document, attached at [Tab 4.1](#). It will invite responses to its Call for Comment by October 15, 2018. The document will be available online on the Law Society’s website, and communications about the Call for Comment will appear throughout the comment period using the usual Law Society media platforms. The Task Force also plans to contact various stakeholder groups to encourage responses to the Call for Comment.

## **NEXT STEPS**

9. The Task Force will consider the input it receives in order to complete its review and finalize its recommendations for Convocation’s consideration.
10. In addition, the Task Force continues to develop governance policies, which include a code of conduct for benchers and conflict of interest provisions. It is expected that a draft set of policies will be provided to Convocation in the fall of 2018, to allow a period of time for benchers’ review.
11. The Task Force is aiming to complete its review and report to Convocation by the end of 2018 with its recommendations for potential changes to the Law Society’s governance architecture and new governance policies.

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<sup>3</sup> *Ibid.* at para. 18.

**TAB 4.1**



## **Call for Comment August 9, 2018**

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### **Governance Task Force 2016**

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## OPTIONS FOR ENHANCED GOVERNANCE EFFECTIVENESS

### INTRODUCTION

The Law Society of Ontario's Governance Task Force 2016 (the Task Force) was established in September 2016 to review the Law Society's governance, including practical process issues and the Law Society's governance structure. The Task Force is mandated to make recommendations to Convocation to improve the Law Society's corporate governance through greater transparency, inclusiveness, effectiveness, efficiency and cost-effectiveness.<sup>1</sup> The goal of this governance review is "to ensure that the Law Society's governance structure enables effective oversight for the Law Society as it fulfills its mandate and meets its accountabilities as a public interest regulator."<sup>2</sup>

Created by an act of the Legislative Assembly in 1797, the Law Society governs Ontario's lawyers and paralegals in the public interest by ensuring that the people of Ontario are served by lawyers and paralegals who meet high standards of learning, competence and professional conduct. The Law Society [regulates, licenses and disciplines](#) Ontario's more than 50,000 lawyers and over 8,000 licensed paralegals pursuant to the [Law Society Act](#) and the [Law Society's rules, regulations and guidelines](#).

In fulfilling this regulatory mandate, the Law Society observes certain principles set out in the *Law Society Act*. These include a duty to protect the public interest, to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario, and to act in a timely, open and efficient manner.

As members of a self-governing profession, Ontario's lawyers and paralegals oversee their own regulation through the Law Society in accordance with the *Law Society Act* and its regulations,

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<sup>1</sup> Steps already taken in fulfilling this mandate include:

- a. approval of a single election date for the election of lawyer and paralegal benchers (May 2017);
- b. defining the engagement in Law Society governance of paralegal benchers for the purpose of their 12 year term limit as benchers (May 2017);
- c. commissioning governance research resulting in a comprehensive review of the governance structures of other law societies, regulators and comparable organizations to the Law Society prepared by Hansell LLP (June 2017); and
- d. conducting a survey of benchers on governance issues (October 2017);
- e. convening a bencher session on governance that included an opportunity for benchers to explore structural and process issues (October 2017);
- f. an information report to February 22, 2018 Convocation outlining a range structural and process changes to be considered; and
- g. an information session for benchers in mid-June 2018 on possible options for structural changes.

<sup>2</sup> February 2018 Governance Task Force Report to Convocation, online at [https://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2018/2018-Feb-Convocation-Governance-Task-Force-Report.pdf](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2018/2018-Feb-Convocation-Governance-Task-Force-Report.pdf) at para. 18.

The Task Force noted in its report to February 2018 Convocation<sup>3</sup> that the Law Society's board structure and its governance process vary significantly from other similar organizations and that benchers have expressed concerns with respect to the Law Society's overall governance effectiveness. In the Task Force's view, this information supports examining more streamlined, less complex governance structures which could be adopted for the Law Society to achieve greater effectiveness and efficiency, while encouraging diversity and inclusiveness.

The Task Force is considering options to enhance the Law Society's governance, including:

- A. A smaller size for the Law Society's board (Convocation) and changes to the composition of the board;
- B. Changes to the Treasurer's term;
- C. Changes to the term and term limits for benchers; and
- D. New terminology that better reflects the Law Society's governance structure.

The Task Force is also considering a revised committee structure (including the number, size and composition of committees) and potential changes to the frequency of Convocation and committee meetings. These types of changes will depend on the Task Force's ultimate recommendations regarding changes to board structure. It has also considered the process of transition depending on the nature of the changes that may be approved. It is of the view that significant changes must occur gradually. Some changes requiring legislative amendment would occur following the 2019 bencher election and would ideally be in place for the 2023 bencher term.

The Task Force has made no final recommendations and invites comment from lawyers, paralegals and the public on the options currently under consideration. This report features a series of questions on which the Task Force seeks input.

Responses received from this call for comment will assist the Task Force in determining its recommendations for Convocation's consideration. Comments may be provided by **Monday, October 15, 2018**. The Task Force plans to report to Convocation by the end of 2018 with recommended changes.

## **OPTIONS FOR CHANGE**

### **A. Board Structure: A Smaller Board and Changes to Board Composition**

#### **Background: The Current Board**

Currently, Convocation is composed of 45 elected licensees (40 lawyers and five paralegals), eight lay benchers appointed by the Lieutenant Governor-in-Council of the Ontario government,

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<sup>3</sup> See generally February 2018 Governance Task Force Report to Convocation.

the Treasurer, the current Attorney General and 35 *ex officio* benchers, for a total of 90 members. The term “bencher” is the title for a director of the Law Society.

For the 40 lawyer benchers who are elected by lawyers, 20 are elected from Toronto and 20 are elected from outside Toronto to generally reflect the proportion of lawyers in Ontario who are inside and outside of Toronto. Eight of the elected lawyer benchers are elected based on the highest number of votes from voters in each of the eight electoral regions across Ontario.

The five elected paralegals are elected province-wide by paralegals.

The bencher term is four years and benchers may serve for a total of 12 years.

There are three types of *ex officio* benchers: (1) Life benchers are those who up to 2010 served as an elected bencher for at least 16 years. Life benchers may take part in a debate at Convocation but cannot vote; (2) Former Treasurers up to 2010 attained status as an *ex officio* bencher for life, and may speak and vote in Convocation; (3) Former Attorneys-General up to 2010 are also *ex officio* benchers and have the right to speak in Convocation but not vote.

There have been no new *ex officio* benchers added to Convocation since governance reforms in 2010 which ended these *ex officio* offices. The *ex officio* benchers at that time were grandparented and remain a part of Convocation.

In addition, since 2010, former Treasurers become Emeritus Treasurers, a category of honorary bencher under the *Law Society Act*, and are entitled to speak but not vote at Convocation.

A number of *ex officio* and emeritus benchers are currently disengaged, but five former Treasurers, two Emeritus Treasurers and 10 life benchers typically attend Convocation. Generally, Convocation attendance is in the 50-55 person range.

Benchers serve a number of functions as members of Convocation. These include attending Convocation, usually nine times a year, standing committee/task force/working group meetings two weeks prior to Convocation or occasionally more frequently, serving as adjudicators on the Law Society Tribunal following an application and appointment process and, if appointed, serving on the boards of external organizations that include a Law Society representative on their boards or councils.

### The Task Force's Ongoing Assessment

In assessing board structure, the Task Force is focusing on:

- The best process to achieve the level of diversity, professional expertise and governance experience needed for the Law Society's board;
- The appropriate number on the board of Law Society to meet this goal;
- The operational expertise of the organization;

- The processes developed to engage with and obtain knowledge required for effective governance from all stakeholders;
- Options for the structures that will enable all required perspectives for effective governance to be accessed with the efficiency of a reasonably sized board; and
- Reviewing the need for *ex officio* board positions as a function of effective, efficient governance.

The Task Force is also exploring how individuals become benchers at the Law Society, including, for example, potential appointed board positions to achieve greater diversity across a number of elements – age, race, gender, location, area of practice, size of practice, board experience, community association and language are some examples.. As a related matter, the Task is exploring the type of process that would be required to appoint licensee and non-licensee benchers (apart from government-appointed lay benchers) to board positions.

The Task Force's view is that a smaller membership for Convocation is necessary. Some examples of a smaller structure are discussed below. The Task Force is aware that an unintended consequence of a small board, depending on the environment in which the board operates, may be a concentration of power. The structures for Convocation that the Task Force is considering are unlikely to create this result in the Task Force's view.

The examples set out below are premised on a structure in which all current *ex officio* and emeritus benchers would be phased out by 2023. While *ex officio* benchers collectively provide experience and institutional memory, current board practice, as noted in the Hansell Report <sup>4</sup>, shows that the participation of *ex officio* and honorary directors as board members is highly unusual.

The Task Force considered the multi-year terms for Convocation's elected/appointed component, the reasonable limit for elected office, the properly and professionally resourced board support and comprehensive board records (minutes, transcripts and reports). The Task Force believes that the Law Society can effectively govern without board positions solely based on past leadership, past years of elected service or past service in political office.

The Task Force offers by way of three examples governance structures for a reduced size for Convocation. These examples are for illustrative purposes; the Task Force continues to consider various potential board structures for recommendation.

#### Example 1

In the first example, the board could include an elected component of both lawyers and paralegals and government appointed benchers who are not licensees (lay benchers). This is the current composition of Convocation but without any *ex officio* or emeritus benchers.

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<sup>4</sup>

[https://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2017/Convocation-June2017-Governance-Task-Force-Report.pdf](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/Convocation-June2017-Governance-Task-Force-Report.pdf)

The board could be composed of **53 benchers** as follows:

- 40 elected lawyers (20 inside and 20 outside of Toronto)
- 5 elected paralegal benchers and
- 8 government-appointed lay benchers

### Example 2

In the second example, the board could include a reduced number of elected positions for lawyers and the addition of LSO appointed board positions. The Law Society of Manitoba and the Nova Scotia Barristers Society have each moved to board structures featuring law society appointed board positions.

An appropriate method of selecting the LSO appointments would be determined, including a comprehensive nomination/application and selection process. The appointed members would be full voting benchers for the same term as elected or government-appointed benchers. This example maintains lawyer geographic diversity in reduced numbers and paralegal representation at the current level. The addition of three Law Society appointed benchers is a means to attain greater board diversity as previously described, and a range of skills and director competencies.

The Board could be composed of **40 benchers** as follows:

- 24 elected lawyers (12 inside and 12 outside of Toronto)
- 5 elected paralegal benchers
- 8 government-appointed lay benchers and
- 3 LSO appointments

In both of the above examples, if prescribed geographic diversity is to be preserved, with the eight electoral regions and at least one bencher elected from each region, this would require a larger board than might typically exist for legal or other professional regulators.<sup>5</sup>

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<sup>5</sup> The number of 40 benchers is high, for example, when compared to the number of directors on the boards of comparable Canadian legal regulators. The Law Society of British Columbia has a maximum 32 directors, the Law Societies of Alberta and Manitoba have 24 directors, the Nova Scotia Barristers Society has 21 directors, and the Barreau du Québec has 16 directors. The College of Nurses of Ontario, which recently engaged in governance reform based on empirical best practices, recommended reducing its board to 12 directors.

### Example 3

In the third example, the board could include a more significantly reduced elected component and reduced government appointments, but would maintain LSO appointed positions.

- 16 elected lawyers (8 inside and 8 outside of Toronto)
- 4 elected paralegals and
- 3 government-appointed lay benchers
- 7 LSO appointments

In this example elected members of the board are still a majority. The example provides for an increased number of LSO appointed benchers to address the greater need to ensure diversity and expertise in a smaller board.

#### **Questions**

**A.1. Should the Law Society reduce the elected lawyer bencher component and if so, considering the examples provided, what would the appropriate number be, and why?**

**A.2 Do you see any risks or problems arising from reducing the elected component of Convocation?**

**A.3 Should the elected component continue to include a regional bencher component?**

**A.4 Should a regional election scheme be available to paralegal benchers?**

**A.5. Should the Law Society have board positions that are filled by appointment, assuming an appropriate nominating/appointments process? Why or why not?**

**A.6 Beyond appointments to the board, what other methods could be used to increase the diversity of the Law Society's board with reference to the elements of diversity described above?**

**A.7 Are there other options the Law Society should consider for the composition of its board?**

#### **B. Board Structure: Term of Chair – Two Years or a Ladder System**

As the Task Force noted in its February 2018 Report, currently the Treasurer's term, through an election, is one year (by virtue of the *Law Society Act*), although by custom this becomes a two year term as the incumbent typically runs unopposed for a second term.

The Treasurer serves as the chair of Convocation, but the additional duties and obligations as the president and elected head of the Law Society are extensive. He or she is responsible for developing and instituting the work on strategic priorities for the Law Society in consultation with benchers and senior staff for the approval of Convocation. The Treasurer also coordinates, in consultation with staff and committee chairs, the work and responsibility of committees, ensures that policy issues are assigned to appropriate committees, and appoints chairs and vice-chairs and members of committees subject to ratification by Convocation. The Treasurer also chairs the Priority Planning Committee and the Compensation Committee. In this latter role, he or she manages the evaluation of the performance of the Chief Executive Officer. The Treasurer is the public and ceremonial representative of the Law Society and engages extensively in that role with legal and other organizations.

The Task Force is currently considering two options for changing the Treasurer's term. Both are premised on enhancing continuity at Convocation.

*Option 1: Two Year Term*

In the Task Force's view, a two year Treasurer term would improve the existing system. Although the Treasurer usually serves two one year terms, the *de facto* term is two years. The one year term creates a situation where, if the first year served is the last year in a bencher term, the current Treasurer must run in the election and be elected as a bencher in order to run again for Treasurer. The Task Force views this as an ineffective way to require a sitting Treasurer to continue to serve for what has become more or less a governance norm for the Law Society.

Under this option, if the Treasurer were elected in the final year of a four year bencher term, there would be no need for the Treasurer to run in the bencher election. The Treasurer's term would straddle the bencher terms, and once the two years are served, the Treasurer's engagement with the Law Society at the board level would end.

*Option 2: Treasurer Ladder – Vice-President, President, Past President*

The Task Force proposes as a second option a ladder system. The Law Societies of British Columbia, Alberta, Manitoba and Nova Scotia have all moved to such a system.

A ladder system could be based on a three year engagement, with a vice-president, president and past president role. Under this approach, the vice-president, who would be elected, would serve for a year before serving as a president for a year. The outgoing president could then serve as past president for the third year, after which engagement with the Law Society at the governance level would end. Clear role descriptions would ensure that the duties and functions of the each of these offices are understood and expected to be observed by those elected to them.

The benefits of this approach include:

- Enhanced continuity at the board executive level;
- Enhanced learning opportunities and supports for incoming Treasurers; and
- Greater opportunities to consider delegation of certain Treasurer ceremonial or other responsibilities to others.

*Option 3: Treasurer Ladder – Two Vice-Presidents, President*

The Task Force proposes as a second ladder option two offices for a vice-president and a president. The first vice-president would eventually become a vice-president/president elect. As compared to Option 2, this structure may avoid a dynamic where a past president may either become disengaged or, despite the best intentions, continue to be more actively engaged than expected and create challenges for a current president.

This ladder system could also be based on a three year engagement after which involvement with the Law Society at the governance level would end.

**Question**

**B.1. Should the Treasurer's term be an elected one year, an elected two years or structured as part of a ladder system to the office of Treasurer?**

**B.2 If a ladder is favoured, which option is preferred?**

**C. Board Structure: Bencher Terms – Status Quo or Reduced Terms and Limits**

The Task Force considered a range of potential terms and term limits for benchers. 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 3 year terms are more common than 4 year terms, and that staggered board terms are common.

The general trend has been towards shorter terms and shorter term limits. For example, the Law Society of Alberta has a 3 year term to a maximum 9 years. The Nova Scotia Barristers Society has a 2 year term to a maximum of 3 consecutive terms (6 year total). The Law Society of Manitoba has a 2 year bencher term to a maximum of 8 years.

This shift to reduced terms and term limits is intended to ensure that when benchers 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 high rate of election

of incumbents and risk creating earlier disengagement of long serving benchers.

### **Questions**

**C.1. Should the term for service at Convocation for benchers remain at four years, or be reduced to a three year term, or some other term?**

**C.2. Should the term limit of 12 years for service as a bencher remain the same or be reduced to eight years (two four year terms), nine years (three three year terms), or some other limit?**

### **D. Terminology**

Law societies in Canada have varied approaches to how they describe their boards and those who participate on them. In British Columbia, the meetings are called “Bencher meetings”. There is a President, and members of the board of directors are known as Benchers. In Alberta, there is a President and a Board of Directors, but the directors are referred to as Benchers. In Nova Scotia, the board is referred to as Council, there are Council Members, a Chair and Vice-Presidents.

Currently the Law Society uses terminology that is rooted in the Law Society’s traditions. The meeting of the board is described as Convocation. The chair or president is described as the Treasurer. Members of the board are described as Benchers.

The Task Force recognizes that the term “Treasurer” may be misleading to the public, who may believe that this role is responsible for oversight of financial matters rather than the Board as a whole. The meaning of the terms “Bencher” and “Convocation” are assumed to be unknown to most outside of the legal professions. That said, these terms are known with the legal professions in Ontario, and some may value the tradition reflected in these terms.

The Task Force offers some proposed changes. The term “Convocation”, used to describe the meeting of benchers, could be changed to a term that is more descriptive of what it is as a body. These terms include “Board”, “Council”, “Board of Directors” and “Board of Governors”. The meeting could be referred to as the “Board meeting”, the “Council meeting” or the “meeting of the Board of Governors”. The term “Treasurer” would be known as the “President”. The term “bencher” would transition to “Board Member”, “Council Member”, “Director” or “Governor”.

### **Question**

**D.1 What are your views on changing governance terminology by replacing:**

**“Treasurer” with “President”**

***“Bencher” with “Board Member”, “Council Member”, “Director” or “Governor”, and  
“Convocation” with “Board”, “Board of Directors”, “Board of Governors” or “Council”?***

**E. Other Comments**

The Task Force welcomes any other comments you may wish to make on the issues discussed in this document as they relate to the governance structure of the Law Society.