



TAB 4

Report to Convocation May 25, 2017

Governance Task Force 2016

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Purpose of Report: Decision and Information

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COMMITTEE PROCESS

1. The Governance Task Force 2016 has held five meetings to date and is currently considering a number of discrete governance issues and completing a research phase.
2. This report includes matters for decision respecting the bencher election and paralegal bencher term limits and an information report on the required five year review of the office of Emeritus Treasurer.

FOR DECISION

REPORT OF THE GOVERNANCE TASK FORCE 2016

MOTION

3. **That Convocation approve that:**
 - a. **with respect to the election of benchers,**
 - i. **the lawyer and paralegal bencher elections occur on a single date, starting on April 30, 2019, and**
 - ii. **the term of the current elected paralegal benchers be extended beyond 2018 to end at the same time as the current elected lawyer benchers term ends; and**
 - b. **for the purpose of the 12 year paralegal bencher term, service by a licensed paralegal as an appointed or elected member of the Paralegal Standing Committee and as an appointed or elected bencher be included in calculating the 12 years.**

Issues Under Consideration

4. In this interim report to Convocation, the Governance Task Force 2016 (the Task Force) recommends that Convocation approve having the lawyer and paralegal bencher election on a single date, starting on April 30, 2019, which will also require a roughly one year extension of the term of the current elected paralegals. The Task Force also recommends that for paralegal benchers, all service at the Law Society as a member of the Paralegal Standing Committee, either appointed or elected, and as a bencher, should count towards the 12 year bencher term limit.
5. The Task Force also provides its five year review of By-Law 3 provisions for Emeritus Treasurers, pursuant to Convocation's requirement that these provision be reviewed by no later than the fifth anniversary of the first emeritus Treasurer in June 2012.

PROPOSAL FOR A SINGLE DATE FOR THE ELECTION OF BENCHERS

6. In February 2017¹, the Task Force proposed that:
 - a. Convocation consider a change to the bencher election process, from the current practice of having the lawyer bencher election and paralegal bencher election in different years to holding them together on a single date;
 - b. The first single election as described be held on the date for the next lawyer bencher election on April 30, 2019; and that
 - c. Prior to reporting this matter to Convocation for decision, the Task Force issue a call for input to give paralegal licensees in particular an opportunity to comment on the matter, given that the transition to a single bencher election date in 2019 will require a one year extension of the term of the current elected paralegal benchers.

Results from the Call for Input

7. Following February 2017 Convocation, the Law Society issued a Call for Input with respect to this matter. The Call for Input closed on on April 28, 2017. The Law Society received eight responses (five from licensed paralegals and three from lawyers).
8. Most submissions strongly support the proposal. It was described, for example, as “a reasonable policy”, an “excellent idea”, and an idea that “makes perfect sense!”. Two submissions expressly address the proposal to extend the current paralegal term by one year, and both support this approach.
9. Of the two paralegal submissions that did not support the initiative, one appears to focus on unrelated issues regarding paralegal regulation. The one submission clearly opposed to the proposal noted that: (i) a single bencher election date would increase the likelihood of high board turnover which could lead to board inefficiencies; (ii) that the separate election dates recognize the differences between the lawyer and paralegal profession and therefore should remain; and that (iii) there is a risk that a single bencher election date would make it difficult for bencher paralegal candidates to campaign, particularly through social media, given the concurrent campaign efforts by lawyer candidates.

The Proposed Single Election

10. As noted above, the input received by the Task Force generally supported the proposal.
11. The Task Force remains of the view, first presented to Convocation in February 2017, that the disparity in election dates no longer serves a useful governance purpose and arguably

¹ The Task Force’s report to February 2017 Convocation may be accessed at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/2017-Feb-Convocation-Governance-Task-Force-Report.pdf

affects the integrity of governance. Holding lawyer bencher elections and paralegal bencher elections at different times requires significant additional work and additional costs. Now that paralegals have been fully integrated into the Law Society's governance processes, a single date for the election for benchers is appropriate.

12. The Task Force recommends that the election for all benchers be held at the time of the next lawyer bencher election on April 30, 2019 and that Convocation extend the term of the existing elected paralegal benchers to 2019. The elections would occur at the same time with separate ballots for lawyers and paralegals and continue the process of lawyer licensees as the electorate for lawyer benchers and paralegal licensees as the electorate for paralegal benchers.
13. If approved, this proposal will require amendments to By-Law 3 and the election provisions, which will be brought to Convocation at a later date.

TERM LIMIT FOR PARALEGAL BENCHERS

Issue Under Consideration

14. Prior to the *Law Society Act* amendments in Bill 111, passed in December 2013, paralegal benchers were not elected directly by all licensed paralegals to Convocation. Five paralegals were elected by paralegal licensees to the Paralegal Standing Committee, from whom the two benchers were elected by the lay bencher and paralegal members of the Committee. Prior to establishing an election process for paralegals, the paralegal members of the Paralegal Standing Committee and the two benchers among them were appointed by the Attorney General.
15. In December 2009, Convocation amended By-law 3 to provide for a 12 year term limit for elected benchers, and provided that a bencher who has completed the 12 years of service is ineligible to run in a bencher election and becomes an emeritus bencher. Although the report included paralegals in the provisions regarding term limits, there was no specific discussion of service on the Paralegal Standing Committee in the description of the term limit.
16. The issue is what service as a paralegal in the governance of the Law Society should count towards the 12 year term limit.

The Proposed Method of Calculating the Term Limit for Paralegal Benchers

17. In May 2016, the Paralegal Standing Committee considered the interpretation of this provision for paralegal benchers. It determined that all service at the Law Society as a member of the Paralegal Standing Committee, either appointed or elected, and as a bencher, should count towards the 12 year limit.

18. The Task Force agrees with this approach, and recommends it be adopted by Convocation.

FOR INFORMATION

FIVE YEAR REVIEW OF BY-LAW 3 PROVISIONS FOR EMERITUS TREASURERS

Introduction

19. In 2009, Convocation approved reforms the governance structure of the Law Society, based on the recommendations of the Governance Task Force (“the Task Force”). In May 2010, Convocation adopted amendments to By-Law 3 to implement certain aspects of these reforms. During that debate, a number of issues were raised that were referred back to the Task Force for consideration.
20. Following the Task Force’s consideration of these issues, it reported to Convocation in January 2011 with a series of further recommendations which Convocation approved. Among these was approval of certain rights for emeritus Treasurers as participants in Convocation, including a requirement that these provisions be reviewed in five years.
21. This report sets out the results of the review undertaken by the Task Force.

Background Information on Rights and Privileges of Former Treasurers Who Are Emeritus Benchers

22. Currently, former Treasurers once their terms are served become honorary benchers as described in By-Law 3 and are called emeritus Treasurers. They may attend and participate in a debate at Convocation but have no vote in Convocation. They are eligible for appointment to the Law Society Tribunal and a standing or other committee, where as a member of the committee they may vote.¹
23. Convocation’s decision to make former Treasurers emeritus benchers was in the context of a series of recommendations aimed at reducing the size of Convocation’s growing *ex officio* component, as up to the time of the reforms, Treasurers who completed their terms became full voting life members of Convocation for life. The decision also addressed the concern that former Treasurers with a vote can wield significant influence as unelected members of Convocation.
24. The original recommendation respecting former Treasurers approved by Convocation in December 2009 gave the same status to former Treasurers and individuals who had served 12 years as an elected bencher (the term limit): both were made a class of honorary bencher called emeritus benchers who were not part of Convocation and were eligible for appointment to the Tribunal and standing or other committees.

¹ The relevant provisions of By-Law 3 are at [Tab 4.2.1](#).

25. In January 2011, Convocation approved a change in the status of emeritus Treasurers based on the Task Force's report. That report affirmed the soundness of Convocation's policy but acknowledged that it may be appropriate to take a more nuanced approach to defining the ongoing rights and privileges accorded to those who have served as Treasurer.
26. Ultimately, Convocation agreed with the Task Force's view that the significant contribution a Treasurer makes to the Law Society's governance and the valuable knowledge that a Treasurer can bring to Convocation, including following his or her service as Treasurer, would support according former Treasurers the right to attend and speak in Convocation. In addition, Convocation anticipated that the limited number of former Treasurers who may decide to remain active in Convocation would not cause undue concerns about the size of Convocation.
27. For consistency, Convocation agreed that these former Treasurers would lose these rights and privileges for not attending Convocation on the same basis as the *ex officio* grandparented former Treasurers. This would also result in the loss of the right to vote at committees, should the former Treasurers be appointed to them. Status as a member of the Law Society Tribunal is not affected.

Purpose of the Five-Year Review

28. The five year review was built in as a way to ensure that some measure could be taken of how this provision works in practice, whether there is any undue impact on the size or functions of Convocation and the level of engagement and participation of former Treasurers on an ongoing basis. The review is dated from the fifth anniversary of the first emeritus Treasurer in June 2012.

The Review Process

29. Given the limited experience with emeritus Treasurers, the process followed by the Task Force for the review involved reviewing Emeritus Treasurer attendance and participation at Convocation. It also included an invitation to each of the Emeritus Treasurers to meet with Law Society staff at the direction of the Task Force to discuss their experiences as Emeritus Treasurers. This was also an opportunity for them to provide input on role of the Emeritus Treasurer on the Task Force's ongoing work primarily as it relates to the office of the Treasurer.

Results of the Review

Experience to Date with Emeritus Treasurers

30. Since the governance reforms of 2009, there have been three emeritus Treasurers: Laurie Pawlitza, who became emeritus in June 2012, Thomas Conway who became emeritus in

June 2014 and Janet Minor who became emeritus in June 2016.

31. Between the time each became an emeritus Treasurer and the present, neither Thomas Conway or Laurie Pawlitzka have attended Convocation regularly. Both lost and subsequently regained their rights and privileges as an emeritus Treasurer. As of April 2017, Janet Minor had not yet attended a Convocation since becoming an emeritus Treasurer, and has currently lost her right to participate in Convocation (although this right can be regained by attending three out of five consecutive regular Convocations).
32. Both Ms. Pawlitzka's and Mr. Conway's participation in Convocation debates has been limited. The majority of the occasions on which they spoke in Convocation were to present reports relating to the Federation of Law Societies. Ms. Pawlitzka was the Law Society's representative on the Federation Council and would report on Federation council meetings and conferences. Mr. Conway served as President of the Federation of Law Societies from November 2014 to November 2015, and reported at the September 24, 2015 Convocation as Federation President.
33. Mr. Conway has not served nor currently serves on any Law Society committees, task forces or working groups, or on the Law Society Tribunal. Following her term as Treasurer, Ms. Pawlitzka served on the Hearing Panel, as a member of the Articling Task Force and as the Co-Chair of the Retention of Women Working Group.
34. A table detailing the matters spoken to by Ms. Pawlitzka and Mr. Conway at Convocation as Emeritus Treasurers appears at [Tab 4.2.2](#).

Comments on the Tradition of Refraining from Attending Convocation

35. Emeritus Treasurers were asked whether they refrained from attending Convocation for six months after serving as Treasurer (as per tradition). All had or were in the process of respecting this tradition, and some refrained attending for up to one year. For one Emeritus Treasurer, the tradition helped to demonstrate a change in leadership.

Comments on Emeritus Treasurer Functions

36. The Emeritus Treasurers favour continuing the role. They believe that they could be better utilized, and recommended changes to the Emeritus Treasurer functions.
37. Views were expressed that Emeritus Treasurers could provide assistance at the committee level. They can provide historical background, and have experience that can contribute to developing recommendations for Convocation.
38. The Emeritus Treasurers suggested that there should be ways for Convocation and the Treasurer to effectively benefit from the depth and breadth of expertise that Emeritus Treasurers have to offer. They highlighted that former Treasurers have much to offer. Suggestions included using Emeritus Treasurers as:

- a. Law Society “ambassadors”, as Emeritus Treasurers have credibility with stakeholders and could represent the Treasurer / Convocation / Law Society in the community;
 - b. Connectors, as Emeritus Treasurers could help benchers develop connections they need to work effectively, and provide mentoring where appropriate;
 - c. Envoys on particular strategic issues for a particular time; and
 - d. Mentors to Treasurers and benchers, as requested, with respect to matters of institutional history, to serve as a sounding board, provide strategic advice or other support as may be requested.
39. It was also suggested that there should be a Treasurer transition, where the outgoing Treasurer has an informal transition meeting with the newly elected Treasurer to facilitate information sharing.

Discussion

40. The Task Force thanks the Emeritus Treasurers for their candid, helpful comments reflecting on the Emeritus Treasurer role to date. The Task Force greatly appreciates the insights shared by the Emeritus Treasurers and their willingness to engage with the Task Force on the review.
41. The Task Force recognizes that given the two terms each Treasurer typically serves, a five year review in the period since 2012 when the first emeritus Treasurer took office may not provide very extensive information.
42. The Task Force believes that while it is limited, there is sufficient experience with the operation of the Emeritus Treasurer function to consider and develop recommendations for the future. However, rather than consider the Emeritus Treasurer experience in isolation, the Task Force is proposing to add this information into its review of the broad Law Society governance issues.
43. The Task Force believes that any recommendations with respect to the Emeritus Treasurer function should be developed at the same time as other Convocation governance issues are considered, and after all benchers are provided an opportunity to consider these issues collectively. The Task Force will present recommendations, if any, with respect to the Emeritus Treasurer role at a later date.

EXCERPT FROM BY-LAW 3

PART II HONORARY BENCHERS

Convocation may make honorary benchers

47. Convocation may make any person an honorary bencher.

Transition

48. Every person who is an honorary bencher of the Society immediately before May 1, 2007 is an honorary bencher of the Society.

Emeritus benchers

48.1 (1) There shall be a class of honorary benchers known as emeritus benchers.

Who are emeritus benchers

(2) The following, if and while they are licensees, are emeritus benchers:

1. Every person who has held the office of Treasurer.
2. Every person who has held the office of elected bencher for at least 12 years.

Benchers by virtue of office not emeritus benchers

(3) Despite subsection (2), any person who is a bencher by virtue of office is not an emeritus bencher.

Licence in abeyance

(4) Subsection (2) does not apply to a person whose licence is in abeyance under section 31 of the Act.

If elected bencher is eligible to become emeritus bencher

(5) An elected bencher who becomes qualified as an emeritus bencher under paragraph 2 of subsection (2) continues in office as an elected bencher despite the qualification.

Eligibility for appointment

- (6) An emeritus bencher is eligible to be appointed,
- (a) to the Hearing Division under clause 49.21 (3) (b) of the Act;
 - (b) to the Appeal Division under clause 49.29 (3) (b) of the Act; and
 - (c) to a standing or other committee.

Voting rights

(7) An emeritus bencher may vote in committees.

Former Treasurers: right to participate in debate at Convocation

(8) An emeritus bencher under paragraph 1 of subsection 48.1 (2) may take part in a debate at Convocation.

Removal of rights

(9) Despite subsections (7) and (8), an emeritus bencher under paragraph 1 of subsection 48.1 (2) who fails to attend Convocation held under section 77 four consecutive times may not vote in committees and may not take part in any debate at Convocation until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in committees and the right to take part in a debate at Convocation.

Excused from attending Convocation

(10) On application by the emeritus bencher, where there is good and sufficient reason to do so, the Treasurer may excuse an emeritus bencher from the requirement to attend Convocation for a definite or indefinite period and, where the Treasurer has done so, while the bencher is excused from the requirement to attend Convocation, subsection (9) does not apply to the emeritus bencher.

Laurie Pawlitz – June 2012 to April 2017

Year	Convocation Date	Matter spoken to:
2012	November 22	Equity and Aboriginal Issues Committee Report (re: Parental Leave Assistance Plan)
2013	November 21	Federation of Law Societies of Canada Report
2014	May 22	In Camera Report
	September 24	Professional Development and Competence Committee Report (re: joint degree program and dual degree program) Federation of Law Societies of Canada Report
	November 28	Federation of Law Societies of Canada Report
2015	October 29	Audit and Finance Committee Report (question re: reduction in funding for the Federation) Federation of Law Societies of Canada Report
2016	June 23	Federation of Law Societies of Canada Report
	September 22	Professional Development and Competence Committee Report (question re: new law programs)
2017	February 23	Professional Development and Competence Committee Report (re: dialogue on licensing engagement protocol)

Thomas Conway – June 2014 to April 2017

Year	Convocation Date	Matter spoken to:
2015	September 24	Address by Thomas G. Conway, Federation of Law Societies of Canada
2017	April 27	Comments re: Federation of Law Societies of Canada Report