



Tab 3

Priority Planning Committee

For Decision and Information

June 26, 2020

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Law Society
of Ontario

Barreau
de l'Ontario

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Law Society
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Barreau
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Tab 3.1

Priority Planning Committee

Recommendations for Strategic Change

June 26, 2020

Committee Members:

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Motion

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

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

Introduction

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

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

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

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

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

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

Strategic Change Items

1. Administrative Calls to the Bar

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

3

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

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

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

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

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

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

a) Recommendation

The Committee recommends that Convocation approve:

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

b) Rationale

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

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

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

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

c) Implementation

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

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

2. Publishing the names of administratively suspended licensees

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

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

a) Recommendation

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

b) Rationale

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

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

c) Implementation

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

3. Use of the Law Society Portal by all licensees

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

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

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

a) Recommendation

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

b) Rationale

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

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

c) Implementation

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

4. Requirement to Approve Professional Corporation Names

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

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

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

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

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

a) Recommendation

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

b) Rationale

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

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

c) Implementation

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

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

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

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

There are approximately 10 active MDPs and approximately 50 affiliations.

a) Recommendation

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

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

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

b) Rationale

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

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

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

c) Implementation

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

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

6. Reciprocity Requirement for Foreign Legal Consultants

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

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

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

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

a) Recommendation

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

b) Rationale

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

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

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

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

c) Implementation

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

7. Implementation of the Quebec Mobility Agreement

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

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

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

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

a) Recommendation

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

b) Rationale

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

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

c) Implementation

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

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

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

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

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

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

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

a) Recommendation

The Committee recommends that the PCPO course be discontinued.

b) Rationale

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

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

c) Implementation

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



Law Society
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Barreau
de l'Ontario

Tab 3.1.1

Priority Planning Committee

Recommendations for Strategic Change Supplementary Report

June 26, 2020

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Issue

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

Strategic Change Items

1. Administrative Call to the Bar

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

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

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

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

Deemed Call

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

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

Costs and Revenues

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

Candidate Costs

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

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

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

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

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

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

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

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

Law Society Costs

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

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

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

Signing of the Rolls

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

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

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

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

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

Task Force Recommendations

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

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

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

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

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

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

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

2. Publishing the names of administratively suspended licensees

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

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

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

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

3. Use of the Law Society Portal by all licensees

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

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

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

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

4. Requirement to approve Professional Corporation Names

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

- Demonstrably true, accurate and verifiable;

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

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

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

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

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

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

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

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

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

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

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

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

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*



Tab 3.3

Priority Planning Committee

Proposed Changes to the Bencher Election Process

June 26, 2020

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Issue

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

A. Executive Summary

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

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

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

Background

A. Election Process Review

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

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

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

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

The Proposals

A. Key Issues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Consider shortening the voting period for the election

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

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

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



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

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

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

B. Next Steps

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

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

DRAFT**Call for Comment****PROPOSALS FOR REFORMS TO THE BENCHER ELECTION PROCESS**

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

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

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

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

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

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

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

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

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

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

Comments:

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

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

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Comments:

Consider shortening the voting period for the election

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Comments: