

TAB 6



Report to Convocation February 22, 2018

Governance Task Force 2016

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FOR INFORMATION

NEXT STEPS IN ACHIEVING GOVERNANCE EFFECTIVENESS

INTRODUCTION

1. The Governance Task Force 2016 (the Task Force) was established in September 2016 to review the Law Society's corporate governance, including practical process issues and governance structure issues, engage in research and consultation and make recommendations to Convocation to improve the Law Society's corporate governance through greater transparency, inclusiveness, effectiveness, efficiency and cost-effectiveness.
2. 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); and
 - e. convening a bencher session on governance that included an opportunity for benchers to explore structural and process issues (October 2017).
3. The empirical research completed by Hansell LLP confirms that the Law Society's board is significantly larger than almost all others in the comparator group. Based on this research and the views and opinions shared through the survey and at the bencher session, a number of themes have emerged that are informing the Task Force's ongoing work to recommend improvements for greater board effectiveness:
 - a. Convocation is too large;
 - b. Committees are too large;
 - c. Conduct of meetings and decision-making are affected by the size of Convocation and committees;
 - d. Composition of the board, including the method of composition, the range of diversity and the *ex officio* component, requires review; and
 - e. The Treasurer's term of office should be reviewed.
4. To achieve greater effectiveness for governance at the Law Society, the Task Force proposes to focus on:
 - a. Models for an appropriate smaller size for the Law Society's board (Convocation);

- b. The appropriate board structure;
 - c. Changes to the composition of the board;
 - d. The appropriate terms for the Treasurer and benchers;
 - e. Committee structure and membership, and conduct of board and committee meetings; and
 - f. Governance and conduct policies for board members.
5. The next phase of the Task Force's work will:
 - a. engage benchers in further discussion on the topics of architecture and governance process,
 - b. decide on recommendations for change, and
 - c. determine opportunities for stakeholder engagement once the direction for change is defined.
 6. The Executive Director in the reconstituted Policy Division will also be consulted on any changes. This is an opportunity to co-ordinate the Division's work on enhancing policy development processes with the governance review.
 7. Certain structural changes to the board would necessarily involve a reasonable transition period and legislative amendments. Given the bencher election cycle and the upcoming 2019 election, this means that these changes would not impact the 2019 election but would occur over a five year period, effective in 2023.
 8. In the more immediate term, the Task Force plans to pursue changes that depend only on a decision of Convocation.

OVERVIEW OF THE REPORT

9. This report is organized in three parts. The first provides an overview of the findings in the Hansell report. The second deals with governance architecture and the third deals with issues that relate to board process issues, which the Task Force believes should be utilized in framing governance policies that would guide processes and procedures for board members.
10. At the October 2017 bencher session, benchers explored structural elements of governance - or "architecture" - for the Law Society and discussed issues relating to process and procedure.¹ The session began with a presentation of the Hansell report by Carol Hansell.

¹ The session was designed by the Task Force with the very helpful assistance of facilitator Scott Ferguson of Progress Consulting. The Task Force is indebted to Scott for his guidance in this process and for excellent facilitation of the session.

11. Fifteen elements of effective oversight were used as the basis for questions on a survey (with survey questions numbered according to the elements) that benchers completed prior to the October session.² Benchers rated each of these 15 elements according to a scale ranging from “Always or almost always” or “Strongly agree” to “rarely”, “disagree”, “don’t know”.

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

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

3. ECONOMY OF CONVOCATION AND ITS PROCESSES: Convocation and its processes, including the number, scope and work of committees, are appropriately economical (ie: the cost of operating Convocation and its committees provides members of the Society with optimal value-for-money)

4. CONSISTENCY OF CONVOCATION DECISION-MAKING: Convocation decision-making is consistent over time (ie: decisions “make sense” given previous Convocation decisions).

5. ACHIEVEMENT OF SOCIETY’S GOALS: Convocation facilitates the Society achieving its goals effectively, efficiently, economically and on a timely basis

6. INTEGRITY – SUBSTANCE: Convocation pursues the mission of the Society with integrity

7. INTEGRITY – APPEARANCE: Convocation appears to pursue the mandate of the Society with integrity

8. NIMBLENESS: Convocation facilitates the Society to be appropriately nimble and quick to act and change as necessary

9. PUBLIC CONFIDENCE: The public has confidence in the Society

10. STAKEHOLDER CONFIDENCE: Stakeholders (including paralegals and lawyers, legal organizations, law schools, government and its agencies) have confidence in the Society

11. GROUP PROCESS: Group process at Convocation and in committees (to discuss, to decide, etc.) is effective and efficient

12. CONVOCATION AND ITS COMMITTEES: Convocation does not re-do the work of committees; Convocation strikes the right balance of overseeing and relying on committee work

13. CONVOCATION AND COMMITTEE MEMBERS: Convocation and committee members arrive at meetings prepared, listen to one another inquisitively, actively engage in discussion and contribute to the quality of decision-making

14. RELATIONSHIP WITH STAFF: Convocation and staff have an appropriate and constructive relationship

15. OVERALL QUALITY OF GOVERNANCE AND OVERSIGHT: The overall state of the Society’s governance and oversight today

12. The results of the survey, including comments from benchers on the various elements, were used as the basis for discussion at the session. Benchers also analyzed the key findings in the survey (the “root cause analysis”). The discussion and analysis created the areas of focus for the Task Force.
13. The Task Force’s approach has been guided by the premise that good governance is a means to effective oversight of an organization.

THE HANSELL REPORT

14. Hansell LLP was retained by the Law Society to research and report on governance practices in self-regulatory organizations in various jurisdictions, to support the ongoing work of the Task Force.³
15. Hansell evaluated governance practices that it could identify from publicly available material, covering:
 - Board function and size
 - How directors are selected
 - Director terms
 - Director term limits
 - Committee structure
 - How board officers are selected
 - Adjudication
16. The research included 33 professional organizations (lawyers, accountants, engineers, teachers, doctors, nurses and dentists). Comparator organizations were drawn from Canada, the United Kingdom, Australia and New Zealand.

Key Findings

17. The report made the following key findings:
 - a. Convocation is significantly larger than almost all boards in the comparator group;
 - b. The inclusion on a board of *ex officio* and honorary directors, as is the case for the Law Society, is unusual;
 - c. Three year terms for directors are more common than the four year terms of the elected benchers;
 - d. Staggered boards are very common (meaning that only some of the directors are elected each year); and

³ This report was included in the Task Force’s report to June 2017 Convocation, and may be accessed at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/Convocation-June2017-Governance-Task-Force-Report.pdf

- e. The twelve year term limit for elected Benchers is longer than the term limits in any organization in the comparator group.

GOVERNANCE “ARCHITECTURE”

18. The Task Force believes that the ultimate goal of its 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.

What Benchers Said

Information from the Survey

19. The survey completed by benchers, as reported to the session, showed an overall governance effectiveness rating of 55%. Questions on the efficiency of decision-making and achievement of the Law Society’s goals, group process and overall quality of oversight resulted in similar scores.
20. Some of the comments benchers offered as part of the survey provided insight into the effectiveness rating. In particular, one comment repeated at least three times across the questions noted above was that “Convocation is too large.”
21. Another comment under the question related to achievement of goals, repeated at least three times was that “decision-making is too slow”, related to the large size of Convocation.
22. The Task Force believes that there is an opportunity to improve this ‘effectiveness’ score, and make governance more effective – a key component of the mandate Convocation gave the Task Force.

Information from the Root Cause Analysis

23. The root cause analysis engaged benchers in discussions of potential ways that governance could improve the state of the Law Society’s oversight. The analysis was to determine the most significant gaps in the quality of oversight according to the survey in an effort to arrive at solutions that generate lasting improvement.
24. There were eight reports from this analysis at the session. Various questions from the survey were grouped together for this exercise so that each of the eight discussion groups would make a discrete report.
25. In summarizing the root cause input on architecture issues, the following represent issues from the eight discussions groups at the session that were raised by at least two groups:

- a. Convocation is too large
- b. Committees are too large
- c. [Should] Clarify the role and responsibility of benchers
- d. [Need] Consistent leadership and clarity as to who is governing
- e. [Need to] Improve our ability to shift priorities when unexpected developments arise
- f. Convocation does not anticipate issues and becomes reactive
- g. Materials are too long and unfocused

Information from Choices in a Governance Matrix

26. At the session, each of the eight discussion groups was asked to select the elements of governance architecture that they wished to explore further from a matrix showing various elements of structure, and within them, certain options for consideration. Summarized below are the elements that were selected at least four times in the matrix once all eight groups reported.

- a. How the board is composed
 - Elected and appointed directors
 - *An ex officio* director component
- b. Who are directors (benchers)
 - Licensees (general)
 - Non-licensees who are public representatives
 - Non-voting *ex officio* directors
- c. Board diversity
 - Gender
 - Geography
 - Community
 - Official language
 - Firm size
 - Area of law
- d. Style of board
 - Municipal council
 - Corporate board with a separately populated policy forum
- e. Length of service
 - Term of four years
 - Limit of two terms
 - Limit of three terms

- f. Committees of the board
 - Governance committee
 - Audit committee
 - Finance committee
 - Executive committee
 - Policy committee(s)

- g. Chair
 - Elected
 - Term of two years
 - OR
 - Ladder to office – options: one Vice President; two Vice-Presidents; Executive – Vice-President, President, Past President (three year engagement)

- h. Adjudicative function
 - Within the Law Society but constituted separately

- i. Role of stakeholders
 - Input through consultation as required

- j. Meetings of the board
 - More than six times a year
 - Separate from committee meetings

- k. Size of board
 - Smaller

Proposed Areas of Focus

27. The Task Force is using the results of the survey, comments of benchers from the survey, the root cause analysis and the choices from the governance matrix to decide where to focus its work.

Size of the Board

28. As noted earlier, the size of Convocation is a common theme among benchers. Using that information, the Task Force believes that discussion should begin on reducing the size of the board. With 45 elected licensees, eight appointed benchers, the Treasurer, the current Attorney General and 36 *ex officio* benchers, the board has 91 members, of which between 50 and 60 typically participate in Convocation.

29. In discussing the number of directors required for effective Law Society governance, the Task Force proposes to focus on:

- a. The best process to achieve the level of diversity, professional expertise and governance experience need for the Law Society's board;
 - b. The appropriate number on the board of directors to meet this goal;
 - c. The operational expertise of the organization;
 - d. The processes developed to engage with and obtain knowledge required for effective governance from all stakeholders; and
 - e. Options for the structures that will enable all required perspectives for effective governance to be accessed with the efficiency of a reasonably sized board.
30. While the concept of a smaller, corporate-style board was raised at the benchers session, the Task Force's view is that the logical approach to addressing the size of the board is to design a smaller elected and appointed board with a streamlined committee structure.

How the Board is Composed

31. Benchers also indicated an openness to discussing the method by which individuals become directors at the Law Society. This may involve, for example, filling certain director positions by appointment versus by election, beyond the current number that are appointed by the government as lay benchers. This would create an opportunity to appoint licensee and non-licensee directors to capture a range of disciplines, experience and diversity.
32. In discussing a board composed of licensees and non-licensees, elected and appointed, the Task Force proposes to focus on:
- a. Enhancing the qualifications/criteria for candidates for election;
 - b. How to create a robust, comprehensive process to appoint licensee and non-licensee directors (apart from government-appointed lay benchers) for specific expertise and diversity; and
 - c. The ability to ensure accountability by instituting a robust board evaluation process.

Ex Officio Component

33. Any discussion of the size of Convocation must include a discussion of the *ex officio* component. This is because, as noted, apart from the Treasurer and the current Attorney General, there are 36 *ex officio* benchers. They include former Treasurers up to 2010 (full voting members of Convocation), life benchers and former Attorneys General. Eighteen of these 36 benchers are active participants in Convocation. There are also three Emeritus Treasurers since 2010 who are accorded speaking privileges in Convocation but no voting privileges.
34. In discussing the value of *ex officio* experience for the Law Society, the Task Force proposes to consider:
- a. The need for *ex officio* board positions as a function of effective, efficient governance;

- b. How the value of long-serving, experienced benchers may be realized through means other than board participation, including, for example, membership on restructured policy committees; and
- c. If structural changes are to be made, the appropriate means and timing (including length of time) of transitioning to a different structure.

The Treasurer's Term of Office

35. The current term of the Treasurer is one year, which by custom effectively becomes a two year term as the incumbent typically runs unopposed for a second term. This means that some Treasurer's terms span the last year of the bencher four-year term and the first year of a new term. This then requires the incumbent, under current rules, to be elected as a bencher to qualify for election as the Treasurer for the second year.
36. Benchers indicated that options should be explored for the term of the Treasurer and the Task Force proposes to focus on:
- a. The benefits of a two year term for the Treasurer or a three year engagement if the model of choice is a vice-president (president-elect), president and past president; and
 - b. The merits of an executive committee that would include the three-person executive as described above and others.

Term of Office for Directors

37. In discussing the term of engagement for directors, the Task Force, based on bencher feedback, proposes to focus on:
- a. The merits and challenges of an eight year (two term) engagement and a 12 year (three term engagement); and
 - b. Any impact of the length of the term on a board with an increased number of appointed (vs elected) directors.

Meetings

38. The feedback from benchers included significant comment on the effectiveness of bencher meetings and related matters. While this discussion will also be relevant to process, it relates to architecture given that the size of committees in the Law Society's structure is directly influenced by the size of the board.
39. In discussing the meetings of the board and committees, the Task Force proposes to focus on:
- a. The effectiveness of the frequency of the meetings;
 - b. The merits of a schedule that considers the effectiveness of policy development related to the board's agenda;

- c. How the schedule affects the timing of decision-making and the quality of decision-making;
- d. The level of diligence in management of the meeting, presentation of reports and discussion; and
- e. The appropriate size and structure of various standing committees and the best utilization of board expertise.

GOVERNANCE PROCESS

Governance and Director Conduct Policies

40. The Task Force believes that the numerous issues relating to governance process raised by benchers through the survey and at the governance session present an opportunity to distill key concepts and identify content for new governance policies. These process issues, as noted earlier, may be influenced by benchers' experience with or views about the current governance structure.

What Benchers Said

Information from the Survey and the Root Cause Analysis

41. As noted in the discussion of governance architecture, there is a relationship between some of the scores and the comments in the survey. The questions on efficiency of decision-making and achievement of Society's goals, group process and overall quality of oversight scored similarly at around 55%. Comments repeated at least three times across these questions included the following:
 - a. Views that some benchers engage in unnecessary "speechmaking" at Convocation;
 - b. Addressing the presentation of some benchers at Convocation that may be viewed by other benchers as self-aggrandizement;
 - c. Views that time limits should apply to Convocation debate;
 - d. Views that benchers who have nothing to add to the debate should not speak;
 - e. The need for benchers to arrive prepared for the meeting, with consequences for the failure to do so ;
 - f. The need for "real" discussion, not "formal" discussion;
 - g. Views that Convocation spends too much time on non-strategic issues, and that it should reduce number of initiatives to increase discussion on core issues.
42. Mirroring some of the issues noted above, comments from the eight discussions groups undertaking the root cause analysis that came from at least two groups include:
 - a. The need to set clear goals;
 - b. The need to achieve more effective management of Convocation (e.g. impose time limits for speaking);
 - c. Benchers focusing on serving the public interest;

- d. The need for clarity the role and responsibility of benchers;
- e. Relying more on staff expertise; listening more to staff;
- f. Addressing the issue of benchers arriving unprepared.

Exploring Governance/Conduct Policies

- 43. The survey and root cause analysis findings include many issues around group process and working collectively. The Task Force considers this as direction for deeper discussions on creating comprehensive governance policies to articulate expectations for director conduct as board members.
- 44. The Task Force has already begun research on how the Law Society could frame a policy on benchers conduct as board members. The Task Force believes the lack of such a policy is a gap in the Law Society's governance that needs attention and as a matter of good governance is required. The process issues identified at the October session in the Task Force's view support the adoption of governance policies as a key element of effective oversight.
- 45. The Task Force has begun work on this document, and has outlined the contents of a set of policies, at [Tab 6.1](#). The Task Force plans to continue its work and proposes to prepare a draft for Convocation's discussion by the end of 2018.

NEXT STEPS

- 46. The Task Force is aiming to complete its review and report by the end of 2018.
- 47. In the next months, the Task Force will prepare materials for the next phase of discussion on architecture, based on the areas of focus outlined in this report. That material will include a range of possible recommendations for change, preliminary consideration of the process of transition depending on the nature of the change and a prospective schedule to guide the process. The schedule would anticipate those matters that may be dealt with in the shorter term and in the longer term. It is anticipated that the Task Force will report next to Convocation by June 2018.
- 48. The Task Force will also turn its attention to how stakeholders may be engaged and consulted once more definition is given to the direction for change.
- 49. As noted above, the Task Force's development of governance policies will continue and will result in a draft set of policies for Convocation's review.

Tab 6.1



Draft
(for information only)

LAW SOCIETY OF ONTARIO GOVERNANCE POLICIES

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