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FOLA'S RESPONSE TO LSO'S GOVERNANCE TASK FORCE

Submitted to: Janet Leiper
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FOLA Response to Call for Comment August 9, 2018

Governance Task Force 2016

OPTIONS FOR ENHANCED GOVERNANCE EFFECTIVENESS

INTRODUCTION

The Federation of Ontario Law Associations (“FOLA”) thanks the Governance Task Force for the opportunity to make submissions on this important issue of enhanced governance effectiveness for the Law Society of Ontario (“LSO” or the “Law Society”).

By way of background, FOLA’s membership is composed of the presidents of the 46 local law associations (plus the Toronto Lawyers’ Association), represented in every judicial district in Ontario. These local law associations collectively represent nearly 12,000 lawyers who are in private practice in firms across Ontario. These lawyers and our member associations are on the front-lines of the justice system. FOLA advocates for a better justice system that recognizes the crucial role competent and professional lawyers play in that system and in the case of this submission, how they are governed through the LSO.

The Law Society’s Governance Task Force 2016 (the Task Force) was established in September 2016 to review the Law Society’s governance, including practical process issues and the Law Society’s governance structure.

The Task Force was mandated to make recommendations to Convocation to improve the Law Society’s corporate governance through greater transparency, inclusiveness, effectiveness, efficiency and cost-effectiveness.

In its Call for Comment the Task Force set out its goal “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.”

The Task Force has put forward a menu of options relating to proposed governance changes for consideration by the profession. For ease of reference we will be using the numbering system set out in the call for comments to respond to same.

GENERAL BACKGROUND

What must be highlighted at the outset of any analysis or comment on governance is that we are a self-governing profession which, through bencher **elections**, **elects** from its own membership, a government (Convocation) to govern Ontario’s lawyers and paralegals. It is through this **elected** Convocation, that the Law Society regulates, licenses and disciplines Ontario’s more than 50,000 lawyers and over 8,000 licensed paralegals pursuant to the *Law Society Act*, R.S.O. 1990, c.L.8 (“the ‘Act’) and the Law Society’s rules, regulations, bylaws and guidelines. The privilege of self-governance, through **elected** representation of members of Law Society must be cherished and jealously guarded and not ceded in the name of efficiency.



The Act sets out the function of the Law Society at Section 4.1, with reference to five (5) guiding principles found at Section 4.2. Arguably, the applicable principle that supports this “governance” review would be 4.2 (4) that is to say, a duty for the LSO “to act in a timely open and efficient manner.”¹

In its report to Convocation, the Task Force stated that the Law Society’s board structure and its governance process varied significantly from other similar organizations. In addition it stated that benchers themselves have expressed concerns with respect to the Law Society’s overall governance effectiveness.² In an attempt to address these findings and concerns, the Task Force put forward options which may enhance the Law Society’s governance, including:

¹ *Function of the Society*

4.1 It is a function of the Society to ensure that,

- (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario. 2006, c. 21, Sched. C, s. 7.

Section Amendments with date in force (d/m/y)

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized. 2006, c. 21, Sched. C, s. 7.

² With regards to the critique of overall effective governance offered through the self-assessment of the benchers, those providing feedback to FOLA suggested that “efficiency” could be accomplished through vigorous adherence to rules of order found in the bylaws of the LSO.



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

RESPONSES TO QUESTIONS POSED

The Task Force has posed the following questions, which were communicated to our member associations. The responses received are incorporated in our answers that follow.

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

The positions on this questions varied from outright rejection of the notion of reducing the number of elected lawyer benchers, to support of the proposition with a requirement that the proportion or ratio of lawyer bencher to paralegal or appointee bencher be reflective of the current ratio or in the alternative be proportionate to the actual numbers of licensees in the province. Those opposing a reduction of elected bencher membership suggested that there is no evidence to support the conclusion that this reduction would enhance governance; in fact, the opposite was suggested - that reducing the number of elected benchers would adversely affect the ability of the legal profession, through the LSO, to properly self-regulate.

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

There was acknowledgement that the work load of the elected benchers at the LSO was high and as we understand it, currently divided amongst their number. There was consensus that reducing the number of elected lawyer benchers would result in transferring the work load and decision making process/governance to an unelected bureaucracy, which would not be appropriate in a self-regulating profession.

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

There was consensus that regional representation was essential for the proper governance of the profession given the geography of our Province and the differences found in various jurisdictions.

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

FOLA takes no position on this issue.

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

There was consensus opposing any proposal to have the LSO appoint benchers. Elections are the central institution of democratic, representative self-governance. As noted at the outset of this submission, our profession's self-governance must be jealously protected and the process of



electing members be preserved. Currently, the Province is vested with the power to appoint Benchers in order to ensure representation of "public interest" on Convocation; in our view, such appointment power should not be expanded. While the Task Force noted in its Call for Comment that LSO appointments could increase the diversity of Convocation, no evidence has been put forward to substantiate the same, and we believe that there are better ways to enhance diversity without infringing on our democratic self-governance, as discussed immediately below.

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

There was consensus that promoting and ensuring diversity at the LSO could be **best** accomplished through appointments to various committees and work groups established during a given term. It was also noted that diversity at the bencher level could be enhanced by increasing the current remuneration offered to benchers. The reasoning behind this was that a more diverse group of bencher candidates could potentially seek office if the financial impact of same, was in some way reduced. By removing a potential economic barrier, candidates from all parts of the province and in all nature of practices could take on the leadership roles within the profession.

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

Please see above.

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

There was consensus that a ladder system to the office of Treasurer be employed.

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

There was consensus that the third option of "two Vice –Presidents, President" was optimum for the reasons set out in the commentary on that option.

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

There was consensus that a three-year term would be appropriate.

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

There was consensus that the current 12-year term limit was too long and that three three-year terms would be appropriate.

D.1 What are your views on changing governance terminology by replacing: "Treasurer" with "President"; "Bencher" with "Board Member", "Council Member", "Director" or "Governor", and "Convocation" with "Board", "Board of Directors", "Board of Governors" or "Council"?



There was consensus that the suggested name changes were appropriate with the terms, President, Director and Board of Directors being favoured.

CONCLUSION

FOLA again thanks the Task Force for the opportunity to make these submissions on this important issue of options for enhanced governance effectiveness for the LSO.