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THUNDER BAY LAW ASSOCIATION

SUBMISSION TO LAW SOCIETY GOVERNANCE TASK FORCE

OVERALL COMMENTS

Thunder Bay Law Association (TBLA) thanks the Governance Task Force (GTF) of the LSO for the opportunity to provide comments.

TBLA is concerned that the current focus of the GTF solely on the number of lawyers in Convocation is misplaced.

Why is the Task Force focusing only on the reduction of the number of lawyer benchers?

TBLA proposes that we focus firstly on the ideal size of governing body to suit the mandate of the Law Society. We are not a business corporation – we are a government serving society.

The LSO can recommend to the Government of Ontario the appropriate total number of people to be members of Convocation to serve a Province of 13.5M people with a territory of approximately 1M sq. km.

If the principle of self-governance of the legal profession is to be maintained into the future, what should the correct proportion of the legal profession members be on Convocation? Then we have a number for the legal profession, including lawyers and paralegals. An ancillary question follows as to the number of lawyers versus paralegals: should the division between lawyers and paralegals be proportional to the number of licences in each group? TBLA says yes.



Diminishing the number of elected lawyers tends to give greater weight in governing the profession to the bureaucracy. There is no consideration of the continuing growth in the number of employees of the LSO (currently over 600), and how this bureaucracy is to be supervised properly by Convocation.

Another important principle that should be enshrined in legislation is regional representation of lawyers and paralegals on Convocation. This is the only way to ensure that remote and less populated areas will be represented on Convocation.

Then the profession can decide how to elect its representatives on Convocation.

TBLA respectfully submits that the GTF has not approached the question of numbers on Convocation in proper fashion, and requests that the GTF restart its process taking into account the remarks and comments received from this consultation.

TBLA provides its specific answers to the consultation questions in Schedule A attached hereto.

SCHEDULE A

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

- NO. It is inappropriate to reduce only the number of elected lawyers to Convocation. The Law Society should not request the Provincial Government to amend section 15(1) of the Law Society Act to reduce the number of elected lawyers from 40 without a suggested comprehensive number for Convocation and a thorough analysis of the representative composition by various groups in society.
- The Law Society can only make changes to its by-laws for the regional election of benchers pursuant to s. 15(2) & 16(2) of Law

Society Act R.S.O. 1990, CHAPTER L.8 (hereinafter referred to as "LSA") and for filling of vacancies occurring after elections.

- Most changes being put forward by the Task Force require amendment to the Law Society Act. No one can predict the changes that might be made by the current Ontario Legislature.
- Why does the Task Force want to reduce the present statutory number of lawyers without considering the overall composition of the board called Convocation? This lessens the proportion of lawyers and their voting power in Convocation. This risks the principle of self-regulation of the profession.
- The only reason seemingly put forward is that there are too many benchers in Convocation to conduct the affairs of the Law Society in an efficient manner, so we should solve that problem by reducing the number of elected lawyers. There is no evidence or guarantee of this suggested outcome.
- Why other than by historical accident or evolution, are the numbers of lawyers (40), paralegals (5), lay appointee benchers (8) and ex officio benchers (36) set at these levels?
- Without knowing the "best" number of members of Convocation, it is not possible to answer how many lawyers should be elected to Convocation. It is not possible to come to an informed opinion on what percentage of Convocation should be elected lawyers, without comparison to the other groups (paralegal, lay, ex officio, appointments) and their respective proposed numbers. What about law schools, law students, and diversity groups in society?
- Provided that regional geographical representation remains "as-is", Example 1 would be marginally acceptable, but it is only a partial and not a complete suggestion for reform. It simply removes "ex officio" benchers who can attend and speak, leaving the voting to the 40 elected benchers. TBLA has concerns that we will lose the living history and wisdom of our profession by eliminating "ex officio" benchers.

- Example 2 is not acceptable. As a matter of principle, it is not appropriate for Convocation to appoint its own board members, except for the filling of vacancies between elections as set out in its by-laws. Which of the many "diversities" would be filled by three appointments? If there is a need to have persons elected to represent specific areas of diversity, then set out the list of diversities to have representation on Convocation and allow nominations in each category of diversity so that the voters can elect whomever they feel will best represent that category of diversity.
- Example 3 is not acceptable for the same reasons as expressed above for Example 2. Convocation should not appoint its chosen representatives of diversity, they should all be elected.
- In conclusion, Example 1 is the only possible consideration. Regional geographical representation should be preserved in all proposed options for reform. Diversities should be elected, not appointed. "Ex officio" benchers should be maintained.

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

YES There are risks or problems.

The principle of self-governance by the profession is threatened.

Regional geographical representation should not be compromised in any respect.

The proportional representation of lawyers vs paralegals should reflect the percentages of these groups to total licensees (lawyers and paralegals)

Historically the Government has set representation numbers in the Law Society Act as follows: 40 lawyers (75.5%), 5 paralegals (9.5%), 8 lay appointees (15%). This is satisfactory. Why would the Law Society simply offer to sacrifice the number of lawyers? Has the Government asked for or suggested changes to the number of lawyers? Is there some underlying but undisclosed reasoning for this study by the Law Society?

Does the Law Society have an overall plan or objective on the composition of Convocation when it suggests reducing the number of lawyers? Where will this initiative lead in the Ontario Legislature?

The Law Society should not unilaterally propose to reduce the number of lawyers on Convocation without considering the ideal overall number of benchers in Convocation, what other interest/groups are to be represented, and the appropriate proportions of the different groups for governing.

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

YES. It is very important to the profession to have regional bencher representation. Law practice in less populated and remote regions is far different from law practice in large urban centres. For the Northwest Region (Kenora, Rainy River and Thunder Bay) with less than 300 practicing lawyers and less than 20 practicing paralegals, it is exceedingly difficult to run and be elected in province wide elections of 50,000 lawyers and 9,000 paralegals. Much argument is put forward that democracy is better served with province wide voting for benchers, although both Ontario and Federal elections are based on ridings and voting by residents only of each riding. Democracy is better served by riding based voting, and the Law Society by-law #3 should be amended accordingly so that all areas of the Province have elected representatives to Convocation. It should be noted that representatives of diversities are elected in both Federal and Ontario elections by the riding voting system. No government has the right to appoint further members of the elected body. The Law Society should not be able to make appointments to Convocation.

By example from the 2015 Bencher Elections, there were two candidates from Northwestern Ontario. The current regional bencher received 879 total votes in the province wide voting, while gathering the most votes (101) from the Northwest Region. The second candidate received 87 votes from the Northwest Region, and 1,705 total votes province wide, missing by 514 votes, the cutoff number of 2219 votes for one of the thirteen other benchers elected from outside Toronto.

Applying the proposed reduction of benchers outside Toronto to ten (10), the cutoff number of votes to be elected would have increased to 2,679

votes, making it even more difficult (requiring an additional 974 votes) for the second Northwestern Ontario candidate to be elected province wide. Therefore to ensure minimum representation from all areas of the Province on Convocation, it will be even more important to have regional voting for regional benchers.

It must also be pointed out that the higher expenses of campaigning Province-wide from Northwestern Ontario are a major disincentive for a candidate from Northwestern Ontario.

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

It may not be possible to achieve this for paralegals since their number of representatives on Convocation may be reduced if we apply proportionality between lawyers and paralegals. Perhaps the paralegals should be asked?

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

NO. Appointed positions should be reserved for the Ontario Government to fill through such selection process as it adopts. If the Government is concerned about lack of representation of a particular diversity, it can rectify that through appointment. Convocation should not have the right to appoint unelected representatives of diversities. What are the possible number of diversified groups worthy of a seat in Convocation? This is an area where LSO should not tread.

- **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?**

Convocation can appoint diversity representatives to its Committees who would serve for the life of the Committee's purpose or mandate or for certain specific issues.

Convocation can solicit comments from various associations who represent certain diversities through their membership and/or activities.

As stated above, Convocation should not be able to appoint its own members.

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

The Law Society should make recommendations to the Government of Ontario for the ideal number of members of Convocation, and then the proportions of professional and public representation, recognizing the population and geography of Ontario. Additional recommendations regarding the public representation component could include specific groups who should be represented, and perhaps suggestions as to how appointments could be made.

The Law Society should pass by-laws for, and supervise elections from among its lawyer and paralegal members, preserving regional geographical representation.

The Law Society can request advice from associations which represent diversities, whether societal or professional, and Convocation as a whole can consider the advice before voting.

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

Ladder system

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

Two vice presidents and one president; no past president; two year terms; no requirement for re-election as a bencher

- **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?**

Three year term

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

nine years maximum, ie three 3 year terms

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

“Treasurer” with “President”

“Bencher” with “Board Member”,

“Council Member”, “Director” or “Governor”,

“Convocation” with “Board”, and

“Board of Directors”, “Board of Governors” or “Council”?

YES to replace Treasurer with President

YES to replace Bencher with Director

YES to replace Convocation with Board or Board of Directors

These changes would support transparency and help the public understand how the Law Society is governed.

RESPECTFULLY SUBMITTED ON BEHALF OF TBLA,



RENE LARSON – Past President