

THE HAMILTON LAW ASSOCIATION

The Hamilton Law Association exists to enable its members to become successful, respected and fulfilled in their profession.

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October 9th, 2018

Ms. Janet Leiper
Chair, Governance Task Force
Law Society of Ontario
130 Queen Street West
Toronto, ON M5H 2N6

RE: Hamilton Law Association Submission in Response to Governance Task Force Call for Comment

I am writing on behalf of The Hamilton Law Association's ("HLA") Board of Trustees and members in response to The Law Society of Ontario's ("LSO") Governance Task Force call for comment paper, dated August 9th, 2018. After careful review of the options for enhanced governance effectiveness in consultation with our Board of Trustees, please accept the enclosed submission, dated September 26th, 2018, for consideration by the LSO Governance Task Force Committee.

The HLA agrees with the Task Force's view that a smaller membership for Convocation is necessary. It is our view that the removal of the 35 *ex officio* benchers – comprised of (1) Life benchers who up to 2010 served as an elected bencher for at least 16 years, (2) Former Treasurers up to 2010 who attained status as an *ex officio* bencher for life, and (3) Former Attorney-Generals up to 2010 who also attained status as *ex officio* benchers from Convocation – would effect many of the goals that the Task Force seeks to achieve, including transparency, inclusiveness, effectiveness, efficiency and cost-effectiveness. It is submitted that if Convocation becomes smaller in this way, it either may not be necessary to reconstitute Convocation, or perhaps reconstitution is possible in one revision.

Further to the above recommendation, we provide additional commentary for consideration:

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?

While, as above, we agree that a smaller membership is necessary, the membership should not be reduced such that the pool of members is too low so as to ineffectively support committees. Removing the *ex officio* benchers alone may achieve many of the objectives. Please see below for further commentary.

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

Aside from our comments above, and as identified in the Call for Comment paper, there is a concern that a reduced elected component may have the consequence of effecting an imbalance of power. However, provided that there remains strong, diverse and proportional regional representation, we see little risk of reducing the elected component of Convocation. We again repeat that the removal of the *ex officio* members may address many of the issues.

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

Absolutely. The continuation of the regional bencher component is essential. It ensures regional interests are heard and represented at Convocation. Additionally, regional representation achieves geographical and community diversity and likely “firm size” and “area of law” diversity and inclusion. Given that the majority of elected benchers are from Toronto in any event, perhaps the Toronto region need not have a “regional bencher”, and the elimination of a “regional bencher” from Toronto may be one means to address the elected component numbers.

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

We see regional representation as beneficial to all stakeholders.

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

Please see below for further discussion.

With respect to Board structure, the HLA recommends the Task Force's proposed second option of a ladder system composed of a Vice-President, President, and Past President, with appropriately defined and clear role descriptions.

With regard to each Board member's term length, the recommendation of three-year terms arguably serves multiple purposes, namely, ensuring benchers' engagement and dedication, ensuring against benchers' "burn-out" and providing opportunity for new, more diverse and fresh outlooks on issues through more frequent elections and newly elected members. Three-year terms would also allow focused engagement and time for achievable results as opposed to shorter terms. In this scenario, we would recommend term limits of three, to a maximum 9 years, as in Alberta.

Finally, with respect to the addition of LSO appointed Board positions to achieve greater diversity, it is submitted that more information as to the demographics of current Convocation (i.e. age, race, gender, location, area of practice, size of practice, board experience, community association and language) would be beneficial to the analysis. We note that in Part 2 of the September 22, 2016 Report to Convocation Part 2 of Initiative #13 the Strategic Plan 2015-19 contemplated an internal diversity assessment, and that by the time of the September 2016 report, that initiative was underway. However, we were unable to locate the outcome of this assessment.

Significantly, while the HLA acknowledges and supports the importance of diversity within the LSO and in Convocation, it must be recognized that "greater transparency" alongside "inclusiveness" conforms to the Task Force's mandate. The HLA is concerned

about the *potential for* lack of transparency in having yet another body of appointed benchers versus those who are democratically and demographically elected. If a model that contemplates a further body of appointed benchers is being considered, adequate measures should be in place for transparency in the nomination and appointment process including defined qualifications of potential candidates that take into account the board's concern regarding regional "concentration of power", diversity measures (i.e. "elements of diversity"), practice area, skill and knowledge base.

Thank you very for the opportunity to provide feedback in this matter.

Yours truly,



W Patric Mackesy,
President



Andrew Keesmaat,
Professional Matters Chair

cc. Andrew Spurgeon, Regional Bencher, Central South
Janis Criger, Bencher, Central South
Ross Earnshaw, Bencher, Central South
David Howell, Bencher, Central South
Michael Winward, FOLA 1st Vice Chair, Treasurer
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