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October 15, 2018

Janet Leiper
Chair, Governance Task Force
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N

Via email: submissions@lso.ca

Dear Ms. Leiper,

Re: Call for Comment by the LSO Governance Task Force

We sincerely thank you for soliciting our opinion on the Law Society of Ontario's August 9th, 2018 Call for Comments from its Governance Task Force 2016. The CCLA hereby submits its comments.

The Law Society of Ontario is the largest professional legal organization in Canada. It is tasked with governing the legal profession in the best interest of the public. The Benchers election is arguably the third most important election in Ontario because it affects not only licensees, but all members of the population as a whole.

The interests of the public and of lawyers are inextricably intertwined. It was this to which William Shakespeare referred in Henry VI, Part 2 when he wrote "The first thing we do, let's kill all the lawyers" uttered by an insurrectionist who believed that by disturbing law and order, he could usurp the throne.

An organizational review of an entity as complex as the LSO can not be rushed. What is the vision for the LSO, and whose vision are we considering? The LSO deals with wide-ranging issues such as regulation, including policy and access to justice, has a quasi-judiciary role in discipline, and oversees governance, advocacy and lobbying, education - including continuing education - and competence. There are regional aspects on top of these considerations. Does this governance review address any of these issues? The answer is No. It is about shrinking the number of Benchers who exert control over these issues rather than dealing with the actual issues. To press for governance review without deliberation on a cogent vision seriously risks decreasing diversity, alienating the profession, and creating a vacuum into which government will inevitably move.

The Call for Comment issued by the LSO's Governance Task Force on August 9, 2018 specifies a deadline for submissions of October 15, 2018. These submissions must respond to a number of suggestions that would fundamentally affect the nature of our governing body. Given the time span of only 9 ½ weeks - the initial portion of which straddled the end of



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summer holidays - it is impossible to provide the submissions that this paramount issue demands.

Therefore, we request further time to consider these issues including enough time to consult with our members. There is no compelling rationale to hurry this process. Governance review is too complex a topic not to be a Benchers election issue. The proposal to reduce the amount of Benchers has been considered by the Law Society and rejected at least twice before. The Task Force's Call for Comment does not reference those discussions. It would be precipitous to deal with governance review prior to the 2019 Benchers election.

We also contrast the extremely stringent 9 ½ weeks (from August 9th to today) to provide our comments on Governance review with the comparatively expansive time span allotted to the profession to respond to the LSO's initiatives on ABS, Licencing and other issues deemed important by the LSO.

Given our time restraints, we are largely limiting our submissions to addressing the size and composition of Convocation. We note at the outset that the term "board" is conflated throughout the Call for Comment with "Convocation". Terminology, especially for the legal profession, is important. The CCLA strongly asserts that the Law Society's mandate cannot be circumscribed or restricted by function, or by terminology, to that of a mere board.

Given the LSO's varied, complex and far-reaching roles and objectives, we are strongly of the view that none of the options suggested are viable for the LSO with its multiple responsibilities to the profession and to the public. If, contrary to this position, it is deemed unalterable to consider changes now, the CCLA proposes a much-amended Example 1, including the retention of the current number of elected Benchers and the retention of life Benchers with a non-voting role which includes being on committees and being allowed to speak at convocation.

Whether one believes that life Benchers have a positive contribution to make, as we do, or not, there are no new life Benchers and the number of active life Benchers is small and shrinking. There is no need to change the *status quo*.

A prominent theme in the Call for Comment is that of a smaller size for the Law Society's "board (Convocation)". The strong implication is that reducing or culling Convocation and/or its constituent committees will increase efficiency. The use of the term "streamlined", and "less complex", governance structures connotes that the current quotient of Benchers and committee members is antithetical to effective and efficient operation. This has not been demonstrated, and very likely cannot be demonstrated.

We disagree with the Task Force's contention in Footnote 5 at p. 5 of the Call for Comment that the number of 40 [elected] Benchers at Convocation is "high, for example, when compared to the number of directors on boards of comparable Canadian legal regulators." The

footnote goes on to cite the examples of the Law Societies of British Columbia, Alberta, Manitoba, Nova Scotia and the Barreau du Quebec, which have respectively a maximum of 32, 24, 21, and 16 directors.

In fact the very opposite is true; Ontario has the lowest per capita Common Law representation by elected benchers, both per population and per number of lawyers, as demonstrated in the table below:

Provincial Population vs. Elected/Lay Bencher numbers (PPEB) and Lawyers per Elected Bencher (LPEB):

	Pop.*	Lawyers**	Benchers/Lay	PPEB	LPEB
Ontario	13.5M	55,681	40/8	337,500	1392
BC	4.6M	14,307	25/6	184,000	572
AB	4M	14,981	20/4	200,000	749
SK	1.1M	2,598	17/3	64,705	153
MB	1.3M	2,339	12/7	108,333	195
NB***	747K	1,320	23/3	32,478	57
NS	923K	3,357	13/5	71,000	258
NL	519K	1,021	17/4	30,529	60
PEI****	142K	339	9/2	15,777	80

* Populations - 2016 Statistics Canada

** Lawyers – 2016 Federation of Law Societies of Canada

Benchers/Lay Benchers – Each province’s Law Society website

*** NB does not have Benchers; it has a council of 23 members, an Executive Director and 3 public representatives

**** PEI does not have Benchers; it has a council of 9 elected members, 1 Secretary/Treasurer (Lawyer) and 2 public representatives

Thus, if the LSO kept pace with BC and Alberta, we would increase our elected Bencher quotient from 40 to 71 and 67.5 respectively. If we had the elected Bencher representation proportional to that in Nfld, we would have 1040 elected Benchers. Using BC and Alberta as examples of smaller legal regulatory bodies instead points out the exact opposite, conversely demonstrating how minimal our quotient of elected Benchers actually is.

Likewise, the number of Ontario lawyers per elected Bencher is almost twice that of Alberta - the next highest ratio in Canada common-law jurisdictions - with other provinces trailing far behind.

We believe that any proposal to reduce the number of elected Benchers for purposes of “efficiency” is wrong and threatens the engagement and involvement of members of the



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profession with their governing body. Ours is a highly complex organization. The rest of Canada looks to the LSO to lead. Reducing the number of benchers will default the operation of the LSO to the Treasurer and select Benchers, and senior staff. It can have no other effect.

The term of elected Benchers should remain at three, i.e. a total of 12 years. Otherwise the only long-term corporate memory residing in the LSO would be that of staff, whose employment is not similarly circumscribed. The memory of staff and volunteers is not the same, and should not be considered as the only repository for history and information as it also resides in the memory of elected and life Benchers.

The CCLA states reducing elected Benchers will inexorably and negatively impact Diversity. The harm to Diversity is both human and professional. It cannot exist without sufficient numbers. Currently Convocation is composed of 27.5% Benchers who are from equity-seeking groups. Thus, Convocation is even more diverse than the provincial population. We have 50 types of lawyers. While not every type is represented, Convocation is far from homogeneous, but this would still be the case even if 'rectified' by 7 appointees as posited in Example 3.

We further note the difference between physical, gender, and skill-set diversity. One can find females who aren't feminists who would vote like their male counterparts. Or one could get a rainbow committee of 7 appointees who might vote as per their appointer. Further, as Convocation shrinks, lawyers from small firms or from the perimeter regions of Ontario would be less likely to put their names forward at election time. We see the election of Benchers as democratization, coming as they do from different areas of practice and the province. They import into Convocation a bottoms-up genre of expertise, which we would lose if we diluted this elected diversity.

Further, the reality is because our profession is so diverse, Convocation might often appear discursive. Ours is a profession which is, and should be diverse, and which will not benefit from a downsized board-like structure. We will lose outliers who are part of what diversity is. There will be more rubber-stamping simply to get the reports passed by the increasingly-burdened remaining Benchers. None of this is healthy for either the public or the profession.

As well, Ontario has one of the last self-regulating law societies in the Commonwealth. This assures the public protection from state intrusion. If we reduce the ranks of elected Benchers we begin to create a vacuum which historically gets redressed by government intervention.

The CCLA supports its Paralegal members and submits on their behalf that of the five Paralegal Bencher seats at Convocation, at least two should be reserved for East/West regional representation. We agree that a regional election scheme should be available to Paralegal Benchers.



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In summary, the CCLA requests that more time be given for submissions, requests that these issues inform the Benchers election in 2019, and in the meantime, submits as follows:

- No change to the number of elected Benchers.
- Retention of the ex officio Benchers.
- No change to the nomenclature.
- No need for ladders, reduced terms, staggered elections and the like.
- Other than lay Benchers, no votes for unelected Benchers.

Respectfully submitted,

Karen Ann Reid
President, CCLA