



Proposed Modifications to the Election of Regional Benchers

Date: October 3, 2013

Submitted to: Law Society of Upper Canada,
Policy Secretariat, Bencher Election Working
Group

Submitted by: The Ontario Bar Association



ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



Contents

Introduction.....	2
The OBA.....	2
Overview	2
The Existing Process and Proposed Modifications.....	3
Comments on the Significance of Regional Representation	4
Comments on the Proposed Modifications.....	4
Lawyers in a region are in the best position to determine who best serves the purposes of regional representation	4
The existing system provides an opportunity for candidates from smaller communities to be elected	5
There is no apparent call for modifications to the current system.....	6
Conclusion	6



Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to comment on the proposed modifications to the process for the election of regional benchers, as set out in the Law Society of Upper Canada (the “Law Society”) Bencher Election Working Group – Proposed Modifications to the Regional Bencher Election Scheme, Call for Input, July 2013 (the “proposed modifications”).

The OBA

Established in 1907, the OBA is the largest voluntary legal association in Ontario and represents 18,000 lawyers, judges, law professors and law students.

OBA members practice on the frontlines of our justice system in virtually every area of law and in every practice type, to provide legal services to a broad range of clients in every region of the province. In addition to providing legal education for its members, the OBA is pleased to assist government, the Law Society, and other decision-makers with several policy initiatives each year – in the interests of both the administration of justice and the public.

Overview

In order to garner input for this submission, the OBA canvassed its elected council members in all seven regions outside of Toronto for their views on the significance of regional representation in Convocation, and on the proposed modifications to the election of regional benchers that is described in the Law Society’s Call for Input.

This submission is divided into three main parts. The first part summarizes the existing process and the proposed modifications set out in the Law Society’s Call for Input. The second part summarizes the OBA’s views with respect to the significance of regional representation. The third part reviews the OBA’s conclusions and recommendations with respect to the proposed modifications.

For the reasons set out below, it is the OBA’s view that the existing system of electing regional benchers better achieves effective regional representation and that the proposed modifications should not be adopted.



The Existing Process and Proposed Modifications¹

The existing regional benchers election process ensures that among the 20 benchers elected from outside Toronto, at least one bencher will be elected in each of the seven regions in the province. The process by which this is currently accomplished is by the election of a regional bencher, who is the candidate in each region who receives the largest number of votes from voters in that particular region.

The Law Society's Call for Input sets out the following key points in the proposed change to the current regional bencher election process:

- a) The regional bencher would be the candidate in a region who, finishing in the top 20 positions inside or outside of Metropolitan Toronto, receives the highest number of votes from voters in all regions.
- b) If the election results based on votes from all voters do not elect a bencher in a region in the top 20, the regional bencher will be the candidate in the region who, placing 21st or lower outside Metropolitan Toronto, receives the most votes from all voters.
- c) When the procedure outlined in (b) occurs, the candidate elected will replace the candidate who would have otherwise been elected as one of at least two benchers in another region and who is the candidate who receives the least number of votes from all voters.

As with the existing process, the proposed process will ensure that there is at least one bencher elected in every region. However, the proposed scheme relies only on the votes tallied from all regions (the "pan-provincial vote"), and eliminates the number of votes a candidate receives from his or her region (the "intra-regional vote") as an independent factor in the bencher election.

The Call for Input notes it is possible that under the current process a candidate from a region may not be elected even though he or she has greater pan-provincial support compared with the regional bencher who is elected (because the regional bencher has a greater intra-regional vote). It also posits that the proposed scheme will preserve the benefits of regional benchers, while giving more weight to the overall democratic process.

¹ The Law Society of Upper Canada, *Call for Input July 2013: Bencher Election Working Group – Proposed Modification to the Regional Bencher Election Scheme*. pp 3-4.



Comments on the Significance of Regional Representation

Through consultations with elected council members, the OBA achieved a broad consensus that regional representation on Convocation is important for the following three reasons:

1. ***In order to properly fulfill the Law Society's public-protection mandate.*** The “public” that the Law Society seeks to protect is not uniform across the province, so the Law Society must ensure a broad understanding of regional issues and differences.
2. ***In order to instill confidence in the Law Society as regulator.*** In order to sustain the self-governing status of the profession, the regulator must have the confidence of those it governs.
3. ***In order to provide a known and trusted liaison with the Law Society.*** Lawyers in the region should have a known and trusted liaison to the Law Society. This will also assist in building confidence in the regulator.

Comments on the Proposed Modifications

The OBA considered the proposed modifications to the regional benchers election process in light of the key reasons for regional representation set out above, and reached the following conclusions:

Lawyers in a region are in the best position to determine who best serves the purposes of regional representation

Each of the three key reasons for regional representation described above is best achieved by having a regional benchers with strong ties in the region.

The OBA's view is that lawyers (voters) within a given region have the best understanding of the communities in which they practice, and are consequently in the best position to choose the lawyer amongst them who has the understanding of community needs and realities that is necessary to fulfill the three key regional representation roles.

A lawyer (voter) who understands the needs and realities of the community in which he or she practices is in the best position to determine what measures are necessary to protect the public in that community, and similarly who best to represent and communicate that understanding on Convocation.

For lawyers in a region, confidence in the regulator is improved by the knowledge that they have had the ability to select a representative on Convocation who understands and can voice the issues and concerns of their region.



Similarly, a system in which lawyers in a region can select a regional bencher increases the ability for the region to have a known and trusted liaison in Convocation, and further builds confidence in the regulator.

In contrast, choosing a lawyer who has a broad base of support from outside the region (reflected in a strong pan-provincial vote) provides less confidence to those practicing within a region that the elected regional bencher will have the requisite understanding of local issues.

In terms of specifically assessing the proposed modifications, the OBA is more concerned about the potential negative impact on effective regional representation if the proposed modifications are adopted (i.e. that a regional bencher could be elected with little or no support from within the region) and less concerned about the potential negative impact under the current process (i.e. that a regional bencher can be elected with significant support from the region and little or no pan-provincial support).

The existing system provides an opportunity for candidates from smaller communities to be elected

The OBA recognizes that, in regions that combine large urban centres with smaller communities, it may be difficult for lawyers from the smaller communities to be elected to the regional bencher position.

This concern is based on the belief that the more numerous votes from the local urban centres are likely to be cast for lawyers from those same urban centres. The result would be that lawyers from smaller communities would more often need to rely on votes from outside the region in order to be elected (i.e. they would more often need to rely on a strong pan-provincial vote).

However, having identified this concern relating to candidates in smaller communities, the OBA's view is that the current bencher election process achieves a balance that addresses this issue without compromising the region's ability to determine who can best address the regional issues as outlined above.

This view is based on the fact that, while 7 benchers are elected based on their intra-regional vote, there are still 13 outside Toronto bencher positions that can be filled by candidates from the regions who can attract votes from outside the regions. Consequently, the OBA believes that the existing system provides an opportunity for candidates from smaller communities to be elected as benchers through a pan-provincial vote.



There is no apparent call for modifications to the current system

In considering the proposed changes to the regional benchers election process, our members did not perceive, at present, any call for change in the election process from either the profession at large or the public. This further reinforced the OBA's belief that the existing process strikes an appropriate balance and that the proposed changes should not be adopted.

Conclusion

The OBA is of the view that effective regional representation on convocation is important in order to properly fulfill the Law Society's public-protection mandate; to instill confidence in the regulator; and to provide a known and trusted liaison with the Law Society.

In order to best achieve effective regional representation, the lawyer voters in a given region are in the best position to understand the particularities and needs of the public they serve, and are in the best position to determine the lawyer amongst them who has the understanding of community needs and realities that is necessary to fulfill the three key regional representation roles.

It is the OBA's view that the existing system for the election of regional benchers strikes a balance between effective regional representation and an opportunity for candidates from smaller communities to be elected, and consequently that the proposed modifications to the election process should not be adopted.