



LSO Governance and Electoral Reforms Proposal

Submitted to: Law Society of Ontario

Submitted by: Ontario Bar Association

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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



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Introduction

The Ontario Bar Association ("OBA") appreciates the opportunity to comment on the Law Society of Ontario ("LSO") proposal on governance and electoral reforms.

Protecting the bar's ability to self-regulate demands that we periodically assess whether the right structures are in place and where improvements can be made. We commend the Governance Review Task Force for examining that important issue. However, we have heard concerns from lawyers across all regions of Ontario, representing firms of all sizes and a variety of practice areas that the proposals would undermine the self-regulation of the profession, and that the intended outcomes (based on the concerns raised in the report) can be addressed without fundamentally impacting the self-regulation of the profession. A principal concern is that lawyers would no longer elect a majority of those with the power to regulate the profession. The proposal includes a suggestion that a committee established by the regulator itself would choose a third of convocation. The proposal also suggests that members of other professions such as accountants should be appointed to regulate the profession. The idea that the bar would be governed by a body they did not choose and the idea that lawyers need to be governed by other professions is antithetical to self-regulation. This jeopardizes not only the bar's status as self-regulators, but also the ability to effectively protect the public.

We recommend the following changes to the proposal:

- Maintaining self-regulation through a strong majority of elected lawyers on convocation:
 - 22 elected lawyers
 - 4 elected paralegals
 - 4 government-appointed benchers
- Increasing diversity through dedicated elected positions or representatives selected by legal associations that represent equity-deserving communities.
- Selecting an executive committee from among the members of convocation to allow for agile decision-making on issues that deal with the operation of the organization, while maintaining a larger democratically-selected convocation, more consistent with public policy making bodies, for policy decisions (example, by-laws, convocation policy, regulations, decisions with respect to changes to the *Law Society Act*, and other policy positions of the LSO).



- Allowing licensees to vote for all elected positions (licensee lawyers voting for all elected lawyer positions).
- Ensuring that the decisions of convocation are informed by perspectives from all regions, even if it means increasing the proposed size of convocation.
- Applying changes on a go-forward, not retrospective basis.

Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by a senior working group of governance experts and practitioners from several practice areas and regions. Members of the working group included barristers and solicitors in public and private practice in large, medium, and small firms, and in-house counsel across every region in Ontario. Feedback was also solicited and considered from the broader OBA membership including numerous practice areas and groups representing equity-deserving communities. There was a strong consensus that the proposals would undermine fundamental principles of self-governance, self-regulation, and democracy, and we speak to these concerns throughout this submission.

Comments & Recommendations

1. Maintaining Self-Regulation

The most concerning aspect of the proposal is the reduction of elected lawyers to a minority of convocation. Currently, approximately 74% of convocation are elected lawyers, elected by their peers through a democratic process. The proposal would reduce the proportion of elected lawyers to approximately 46% of convocation. Self-governance requires that the governed select their governors.



The bar is in the best position to determine what perspectives should be brought to bear on the decisions of the regulator. The report acknowledges this but undermines this principle by suggesting that the profession should be partly regulated by:

- 1) Governors chosen by the governors, not by the governed; and
- 2) Other professions, including accountants and IT professionals.

As a self-regulating body, elected lawyers must remain a strong majority on convocation. The report acknowledges that elected board members provide a strong defense against threats to self-regulation and independence of the bar, something the Supreme Court of Canada has repeatedly reaffirmed. The proposed model suggests a slim majority of lawyers, but the lawyers holding the balance of that majority would not be selected by the governed but selected by a Governing & Nominating Committee (the “**Committee**”) of the governors, through the new LSO-appointed member category.

The nine-member Committee would only have two lawyers elected by their peers, and could ultimately have a minority of lawyers, elected or appointed. This means that both convocation and the Committee tasked with appointing a third of convocation would be a minority of elected lawyers. This raises the question about whether the profession could still be considered a truly self-regulating body. The intention of the Committee is to provide an opportunity to appoint benchers with a diversity of personal characteristics and practice areas. The desire for diverse skillsets confuses the proper role of convocation by suggesting it needs to be partly regulated by other professionals for effective governance. The LSO has a large staff with expertise to support convocation in its duties – the role of convocation is to ask the right questions and test the advice given. That is something lawyers are uniquely suited to do across many different subject areas, through our training, skillsets, and experience. Lawyers routinely test financial statements, HR decisions, and projects plans in the work that they do.

The reality of the proposal is that lawyers would no longer elect the majority of those with the power to regulate the profession, and the balance of power would be held by appointees and other members outside the profession. We recommend reallocating the Committee positions to elected bencher positions and implementing alternative methods to achieve the desired outcomes.



When it comes to diversity of lived-experience perspectives, that is a critical and shared goal that deserves its own discussion on how it can be best achieved in ways that maintain the democratic will of the profession.

Recommendation

It is crucial that elected lawyers maintain a majority on convocation. We strongly recommend that the ten LSO-appointed bench positions be redistributed to elected bench positions, with at least eight reallocated to elected lawyer positions. This would result in proportions similar to the current makeup of convocation, with 73% being elected lawyers, and 13% being elected paralegals.

2. Increasing Diversity

One of the reasons provided for replacing elected bench positions with appointments is the desire to increase diversity of lived-experience perspectives on convocation. Diversity does not require institutional control over appointments or the elimination of democratic self-regulation – to suggest that it does creates unnecessary antithesis.

Importantly, the current proposal does not guarantee the addition to convocation of a single bench from an equity-deserving group, or that those making the relevant appointments would be diverse and have the knowledge and lived-experience perspectives necessary to do this work. The proposal conflates the need for regional representation, practice area representation, broad skills, and diversity in lived-experience perspectives. The need for diverse lived-experience perspectives in Ontario is a goal deserving of its own focus. It is not clear that the proposal would achieve this intended outcome.

The other proposals also work against the goal of increased diversity. Reducing the size of convocation means there will be less opportunity for diversity. Additionally, by restricting votes to candidates within a voter's region, candidates with the support of equity-related legal organizations will be negatively impacted as their peers from other regions will be unable to support them.

We know that when organizations take diversity seriously, they start with measurement and data. The report does not include data that would help ensure the best solutions. However, below are



solutions that will help increase diversity without positioning it as antithetical to democratic self-regulation or requiring institutional control through appointments.

One alternative is to dedicate seats to licensees with lived-experience in an equity-deserving group while still having them elected by the bar. This guarantees the desired outcomes while respecting the fundamentals of self-regulation and democracy. Another alternative is having candidates selected by legal associations that represent equity-deserving communities (e.g. SAGDA), which could provide diverse recommendations while remaining separate from the LSO, avoiding real and perceived issues of independence. Both proposals strike a better balance and avoid issues with institutional control, and framing the push for increased diversity as opposed to self-regulation and democracy.

Recommendation:

The important goal of increasing diversity on convocation should not be framed as antithetical to self-regulation and democracy or requiring institutional control. This goal should be achieved by dedicating seats for licensees with lived-experience in an equity-deserving group while still having them elected by their peers, or through recommendations from legal associations that represent equity-deserving communities, to remain separate from the LSO as an institution.

3. Gaining Agility While Maintaining Appropriate Public Policy Decision-Making

A small executive comprised of benchers would be more agile and could deal with operational and day-to-day matters while leaving policy decisions to convocation.

The report suggests that convocation should operate more like a corporate board, noting that practices like parliamentary debate are “vestiges of the past”, and that the LSO has no input on who is elected to the board. Convocation is not a typical corporate board – they are more akin to lawmakers, deciding on policy, professional standards, and discipline for over 70,000 licensees. This underpins the concern for pushing for a structure more akin to a corporate board, and the benefits of an executive model. The executive should be determined by convocation to handle day-to-day matters necessary for the functioning of the LSO, while leaving policy and overall governing matters to the profession (through convocation). Convocation should not be tasked with operational matters like executive compensation, expenses, technical support or every aspect of a



budget; they should be focused on deciding policy matters and testing proposals, something lawyers are uniquely capable of doing. An executive model would support more agile and efficient decision-making, while ensuring elected lawyers and convocation continue to decide the policies and regulations of the LSO.

Recommendation

Implement an executive to provide the desired agility and efficient operational decision-making, while leaving policy and overall governing matters to convocation.

4. Ontario-Wide Voting to Ensure Broader Perspectives

The proposal includes significant changes to the voting regime beyond the proposed reduction in the proportion of elected lawyer benchers. Currently, licensees can vote for all 40 elected lawyer positions on convocation (20 inside Toronto; 20 outside Toronto).

The proposal provides two potential options which would limit the votes that licensees can cast:

- One vote per licensee; or
- As many votes as there are candidates in the licensee's region.

We speak about the closely related regional reallocation in the subsequent section, but in summary, the regions are proposed to have 1-4 elected lawyer positions. Four regions are proposed to have one elected lawyer position, meaning licensees in those regions would only be able to cast a single vote. Considering the second option to allow as many votes as there are candidates in the region, Toronto licensees would be able to cast a maximum of 4 votes. This is a drastic change from the current structure which permits licensees to vote for all 40 elected lawyer positions.

One of the reasons cited for the change is preventing coordinated and group voting and a lack of connection between the voters and candidates they vote for. Limiting licensee votes may have the effect of preventing coordinated voting, but it would only achieve this by taking away the democratic will of the bar. Essentially, the goal of preventing coordinated voting is achieved by removing the votes of the bar. To be clear, we are not saying that group campaigning or voting is desirable, but the methods sought to minimize it are not. We think that issue should be addressed directly and not through indirect means that raise a plethora of fundamental issues.



The reference to a lack of connection between voters and the candidates they vote for is also questionable. Convocation decisions impact all lawyers in Ontario. Benchers do not make decisions only for their region. Limiting licensees' votes by region is unwise and further minimizes the voice of the bar. It would also likely result in the largest cities in each region dominating the smaller localities while simultaneously restricting the votes of lawyers in rural areas to only their region.

Recommendation

Lawyer licensees should be permitted to vote for all elected lawyer positions. They should not be limited to only voting for their region.

5. Equitable Regional Allocation

The proposal suggests reallocating bencher positions by region. Currently, there are 40 elected lawyer positions on convocation (20 from inside Toronto, and 20 from outside Toronto).

The regional reallocation proposes to further break this down by region as follows:

- Toronto (4)
- Central East (2)
- Central South (1)
- Central West (2)
- East (2)
- Southwest (1)
- Northeast (1)
- Northwest (1)

We spoke to the concerns with the closely related voting reforms above, which would limit licensee votes to either one vote, or as many votes as there are candidates in their region. We strongly oppose limiting licensee's votes and recommend continuing to allow votes for all elected lawyer positions, regardless of region.

Focusing on the regional reallocation, there is an inequity in proportional representation when looking at the number of licensees in each region, with Toronto being the clearest example. Almost half of all lawyers in Ontario (49.8%) practice in Toronto. This is reflected in the current breakdown of elected lawyer positions on convocation, with half being from Toronto. The proposal would reduce this number to four elected lawyer positions in Toronto, which is 13.3% of



convocation (compared to 37% of convocation currently, reflecting half of the elected lawyer positions).

The effect of this means that the votes of Toronto licensees would hold significantly less weight than others. There are other imbalances between the proportion of lawyers in a region and the number of elected lawyer positions proposed¹:

Region	Proportion of lawyers in the region	Proportion of convocation based on proposed regional reallocation
Central East	8.2%	6.6%
Central South	4.9%	3.3%
Central West	8.9%	6.6%
East	12.7%	6.6%
Toronto	49.8%	13.3%
Northeast	1.2%	3.3%
Northwest	0.7%	3.3%
Southwest	4.5%	3.3%

If the LSO proceeds with the regional reallocation it should do so while permitting licensees to cast votes for all elected lawyer positions, and with better proportional representation.

Moving away from the “inside Toronto” and “outside Toronto” categories and decreasing the size of convocation will inevitably leave certain regions underrepresented. The breakdown should reflect representation by population as much as possible, including adding additional seats if necessary.

With the additional 8 elected lawyer positions that we recommend be redistributed from the Governing & Nominating Committee, an *example* of the distribution could be as follows:

Regions and Proposed Allocation	Distribution of the 8 additional positions	Resulting total elected lawyer positions	Proportion of lawyers in the region	Proportion of convocation
Central East (2)	+1	3	8.2%	10%
Central South (1)	+1	2	4.9%	6.6%
Central West (2)	+1	3	8.9%	10%
East (2)	+1	3	12.7%	10%
Toronto (4)	+4	8	49.8%	26.6%
Northeast (1)	0	1	1.2%	3.3%
Northwest (1)	0	1	0.7%	3.3%
Southwest (1)	0	1	4.5%	3.3%

¹ Chart excludes lawyers outside Ontario.



This would result in a Convocation that is composed of:

- 22 elected lawyer benchers
- 4 elected paralegal benchers
- 4 government appointed benchers

This also better aligns with the proportion of lawyer licensees and paralegal licensees. Of the 70,000 total licensees under the LSOs purview, approximately 84% are lawyers and 15.7% are paralegals. The proposal suggested 14 elected lawyer positions, and 2 elected paralegal positions, representing 46.6% of convocation, and 6.6% respectively. With the changes we propose, the proportion is more reflective of licensees, with approximately 73% being elected lawyers, and 13.3% being elected paralegals.

Recommendation

Regional reallocation should reflect the proportion of lawyers in the region. The alternative reallocation provided above is an example based on the reduction of convocation to 22 elected lawyer benchers with an overall size of 30 benchers. Additional positions would be required to achieve regional equity.

6. Rule of Law – Prospective Application of By-Election Changes

The report proposes to change the way that vacancies are filled during a term. Currently, the candidate who received the next most votes, or the runner-up, steps in. The proposal recommends that vacancies instead be filled through annual by-elections, citing increased turnover in recent years, and the need to respect the views of the majority of licensees. The report states that this would better represent the views of the bar as the runners-up were explicitly voted against. It is incorrect to say that the runners-up do not reflect the views of licensees, or that licensees explicitly voted against them. They were the next most voted candidate – licensees do not vote “against” candidates, they vote for their preferred candidates, with results reflecting the candidates in order of preference.

The report cites increased turnover in recent years and the need to streamline replacements. An annual by-election would increase the amount of time that a seat remains vacant until the annual by-election process is completed, whereas currently, the runner-up can take over in short order. An



annual by-election means seats could remain vacant for almost a year until the next by-election is held. Voter fatigue and the costs associated with running an election were also mentioned as reasons for these changes. Annual by-elections would work against these stated concerns.

We also have concerns with the proposal to implement this change immediately and for it to apply retrospectively to the previous election. The report cites the results of the April 2023 election as a reason to make this change. Changing the expectations and ground rules for an already completed election is unfair and undemocratic. The results of the previous election may not be what the LSO anticipated, but the candidates were selected based on the democratic votes of licensees. This change is contrary to the stated goal of respecting the views of licensees.

Recommendation

If this change is enacted despite the increased costs, voter fatigue, and the length of time that seats will remain vacant, this change should apply on a go-forward basis after the next bench election.

7. Preserving Institutional Knowledge

Reducing term limits from the current 12-years to 8-years is not one of our primary concerns. We note that this change would have the effect of prohibiting passionate individuals from continuing to serve and that it would reduce the institutional knowledge that comes with experience. This should ideally be left to the democratic will of the bar to decide on their preferred candidates rather than an arbitrary prohibition.

8. Unintended Impacts of Reducing the Size of the Board

On its face, reducing the size of the Board is not problematic. It becomes an issue when considering the justifications for the reduction, the other changes proposed, and the intended goals. There is no compelling reason to make this change if it comes at the expense of insuring broad perspectives.

Comparing the size of the LSO to other Canadian Law Societies is unhelpful. Ontario is the most populous province in Canada – it is only natural that the LSO would be a larger board than other Canadian Law Societies. When looking at the boards of other Canadian Law Societies compared to the membership it represents, Ontario is an outlier. With a membership of over 70,000 licensees, the proposed reduction to 30 benchers would result in each bencher representing 2,335 licensees.



No other common law province comes close or even breaches 1,000.² When considering that only 14 out of 30 benchers are proposed to be elected lawyer benchers, elected by their peers, the result is that each elected lawyer bencher would represent 5,000 licensees.

Considered in the context of the other proposals, reducing the size of the board will further diminish the democratic voice of the bar to govern and regulate itself by minimizing licensee votes, providing less opportunity for diversity, and hampering the fair distribution of seats in the regional reallocation.

Conclusion

We reiterate our appreciation to the Governance Review Task Force for undertaking this important analysis. Our recommendations acknowledge the legitimate goals of the proposal, while maintaining the fundamental principles of self-regulation and democracy. It is incumbent that lawyers remain a strong majority on convocation, and that we protect the “self” in self-regulation.

To summarize our recommendations, we recommend the following changes be made to the proposal:

- Maintaining self-regulation through a strong majority of elected lawyers on convocation:
 - 22 elected lawyers
 - 4 elected paralegals
 - 4 government-appointed benchers
- Increasing diversity through dedicated elected positions or representatives selected by legal associations that represent equity-deserving communities.

² Number of licensees per bencher (excl. Quebec’s unique regime):

- British Columbia – 528 (new regime – 995)
- Alberta – 672
- Saskatchewan – 123
- Manitoba – 106
- Nova Scotia – 150
- PEI – 34
- Newfoundland – 52
- Yukon – 63
- Northwest Territories – 117
- Nunavut – 62



- Selecting an executive committee from among the members of convocation to allow for agile decision-making on issues that deal with the operation of the organization, while maintaining a larger democratically-selected convocation, more consistent with public policy making bodies, for policy decisions (example, by-laws, convocation policy, regulations, decisions with respect to changes to the *Law Society Act*, and other policy positions of the LSO).
- Allowing licensees to vote for all elected positions (licensee lawyers voting for all elected lawyer positions).
- Ensuring that the decisions of convocation are informed by perspectives from all regions, even if it means increasing the proposed size of convocation.
- Applying changes on a go-forward, not retrospective basis.

The OBA would be pleased to discuss this further and answer any questions that you may have.