



The County & District
Law Presidents' Association

L'Association Des Bâtonniers
De Comtés et Districts

CDLPA Professional Governance Committee
June 30, 2009

The County and District Law Presidents' Association

**Commentary and Position Paper
on Governance Reform of the
Law Society of Upper Canada**

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De Comtés et Districts

June 30, 2009

To the Benchers of the Law Society of Upper Canada in Convocation Assembled
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Ladies and Gentlemen:

Attached herewith is the Commentary and Position Paper ("Report") of the County and District Law Presidents' Association on the issue of the Law Society of Upper Canada's (the "Law Society") Governance Structure and its proposed reform. The Report has been approved by the Presidents of the 46 county Law Associations of Ontario at the May, 2009 CDLPA Spring Plenary.

As you will see from the Report, considerable effort has been undertaken in respect of the review of existing structures, the deliberation on the objects and purposes of the Law Society and the recommendations concerning reform and amendments to the governance of the Law Society. The recommendations are intended to enhance transparency, further governance of the Law Society in the public interest and increase participation, engagement and input by lawyers, other legal service providers and the public, in the self-regulation of legal service providers.

Although these issues have been under study by the CDLPA Executive for some time, the solicitation of CDLPA's views on governance by the Law Society's own Governance Working Group helped to expedite and focus our originally scheduled longer term review of this important topic. CDLPA would like to thank Tom Heitzman and his group for their diligent and tireless effort spent on the Governance issue.

Throughout its august and unique history the Law Society has previously re-cast itself to perpetuate its duty as the rightful body of self-regulation for the legal profession in the Province. Lawyers know that self-governance has a price, but that price is simply the wage for affording a rigorous and independent Bar the opportunity to continue as a touchstone of a free and democratic society. This laudatory and essential object is perhaps the greater compensation paid to the public in exchange for an avid, but self-regulating, legal profession.

It is in this spirit of good faith that this Report is delivered to Convocation with a request that a representative of the CDLPA Executive be afforded the opportunity to address Convocation on the subject of this Report at the appropriate time later this year.

Respectfully Submitted,

A large, dark, handwritten signature in black ink, appearing to be "Randall S. Bocock", written over a horizontal line.

Randall S. Bocock,
Chair of the CDLPA Professional Governance
Committee,
CDLPA Chair

SECTION A

INTRODUCTION

Executive Summary

Caveat

This executive summary is meant as a convenience to the reader and must ultimately be read in all regards with the content and greater detail contained within the full Report. Any reference to content contained with the executive summary without reference to the complete content and detail within the Report is neither a fair nor accurate reflection of the authors' intentions or ideas.

Background

The County and District Law Presidents' Association ("CDLPA"), in its capacity as the umbrella organization group for Ontario's 46 county and district law associations and in association and affiliation with the Toronto Lawyers Association ("TLA"), has undertaken an intensive consultative and comparative review of the existing Law Society of Upper Canada ("Law Society") governance structures, an analysis of what governance structures ought to exist within the Law Society and what necessary changes, if any, are required to achieve those optimal structures. This effort was undertaken by the CDLPA Standing Committee on Professional Governance. The CDLPA Commentary and Position Paper on Governance Reform of the Law Society of Upper Canada (the "Report") which follows represents the culmination of many months of review, more recently intensified and expedited to align with the timeline of the Law Society's own working group on governance issues (the "Law Society Working Group").

As part of its more recent process, the CDLPA Professional Governance Committee (the CDLPA Committee) met with the Law Society Working Group. The CDLPA Committee then revisited its detailed historical review of the Law Society and its governance structures, consulted further with the Presidents of the counties and districts law associations, obtained the approval of the Presidents for this Report after an extensive review session at the May, 2009 CDLPA Spring Plenary. The finalized Report has been submitted to Convocation after further review at the CDLPA 2009 Strategic Planning Session. This detailed Report constitutes the most fulsome collation of CDLPA's longstanding commentary and input on Law Society governance reform. The Report also likely represents the most extensive external review and input from the legal profession generally on the issue of professional self-regulation and governance. The Report is respectfully submitted in order to encourage Convocation to fully, openly and expeditiously address governance reform of the Law Society.

Critical Concepts

The Report extensively reviews the history of Law Society governance structures and previous governance reform efforts and ensuing results. Attached in Appendices "A" (Section F), "B" (Section G) and "C" (Section H) are the detailed results of that review. Cognizant that any

external review of Law Society governance structures would draw comparison with other jurisdictions and regulated professions, the CDLPA Committee studied the comparative landscape of law society governance structures in other provinces and other regulated professions in Ontario. Generally, the CDLPA Committee found that there has been an erosion of self-regulation in other jurisdictions and professions. Moreover, self-regulation of the legal profession, or other professions for that matter, is not at the forefront of public discourse. At best, it is ignored and, at worst, simply misunderstood.

Essential to the principle of self-regulation is the concomitant principle of self-governance best guaranteed through the periodic election of a majority of governors by a profession seeking to regulate itself. Although public attention is not focussed presently on self-regulation, once such attention is directed, the absence of an understandable and open “governor” selection process will erode public support for continued self-regulation.

Similarly, the public interest mandate, as enunciated in the Law Society Act, requires a governance model that is recognizable, understandable, representative, adaptive and effective within the public viewscope. This is best accomplished by ensuring that the hallmarks of accountability, transparency, responsible representation and efficiency are easily found in the governance structures and reforms undertaken in that regard. Compliance with the public interest mandate (Section 4.2(3) of the Act) and the requirement of a timely, open and efficient manner of governance and undertaking (Section 4.2(4) of the Act) will form the bulwark of a best defence against any assault on self-regulation. Self-regulation of the legal profession has deep and historical connections to the independence of the Bar and, in turn, that concept’s fundamental importance as a touchstone to a free and democratic society.

Accordingly, in formulating its recommendations, the CDLPA Committee examined those present challenges which need to be addressed in order to enhance the badges of good governance described above. Generally, elected professional Benchers must be elected on a periodic and representative basis. The public and the profession should have access to debate and the decision making process and a modern *in camera* protocol should be adopted to ensure this. Participation by members will be enhanced upon implementing enhanced access and input at the committee and working group level and the creation of more public and member friendly *fori* for same. The public, through its appointees, should also have increased presence and input at the decision making table in order to highlight governance reform efforts undertaken. An increase in the number of public appointees to Convocation would align more closely the ratio of professional members to lay appointees with other self-regulated professions.

Upon examining the core functions of the Law Society it is clear that discipline and related activity constitute both a fundamentally important facet to self-regulation and a large (almost one-half) use of resources. It is also likely that not all Benchers wish to participate in discipline hearings. Moreover, not all governance decisions of Convocation require the input of all Benchers. In fact, Convocation generally, when in full session and under its present by-laws, is too large a decision making body to be efficient, adaptive or effective. Any governance report which does not address the issue of Convocation’s present size, composition or role misses a large issue.

Many arguments can be assembled within the confines of Osgoode Hall as to why reform is not needed, but ultimately the public and government, not Convocation, will decide whether self-regulation survives. The survival will depend upon a governance structure that is, while self-regulatory, also responsive, effective and accountable and, as always, governs in the public interest in an open, fair and efficient manner. Convocations' role is to act to ensure such governance structures are achieved.

Recommendations

On the basis of the foregoing, there are twelve (12) broad recommendations for Law Society governance reform. These are meant as broad principles and require much refinement and discussion.

The recommendations are as follows:

1. All Benchers in Convocation should be streamed (likely annually) into a Governing Council or a Discipline Bench.
2. All Benchers would be elected or appointed to Convocation as at present, but Convocation annually would choose a sufficient number (likely 25 and 25) to populate the Governing Council or Discipline Bench. Governing Council would carry out all non-discipline functions of Convocation while discipline matters would be exclusively assigned to the Discipline Bench.
3. Ex-officio members of Convocation would be reduced as described below and the Government of Ontario would appoint two (2) more lay benchers by Order-in-Council.
4. Two (2) further appointed Benchers would be reserved for appointment by Convocation in order to address representational deficiencies which might be apparent after a post-election assessment of the composition of Convocation. Further, as and when needed additional non-elected or appointed members of the Discipline Bench could be appointed by Convocation on a case by case basis.
5. Each present life Bencher would be allowed one final four (4) year term after which he or she would leave Convocation. On a forward going basis, each Bencher after serving the maximum number of terms (as described below) would serve one final four (4) year term as "Bencher Emeritus" and then leave Convocation.
6. Only the Treasurer and immediate Past-Treasurer would have a vote in Convocation.
7. Only the current Attorney-General would sit in Convocation.
8. The position of Deputy Treasurer would be created and the position filled by the Treasurer. The Deputy Treasurer's role would be to serve as the chair of the Discipline Bench.

9. The number of committees would be reduced to more closely reflect core roles and functions ascribed to the Law Society under the Act. The creation and use of a Committee of the Whole of the Governing Council would allow non-Bencher deputations on issues. The use of *in camera* proceedings should be amended in order to conform to a more modern notion consistent to present standards of access to information under freedom of information legislation applicable to quasi public institutions; which given the Law Society's "public interest" mandate is relevant.
10. Recommendations are made within the Report regarding the selection process of chairs, vice-chairs and members of the Law Society committees.
11. Non-Benchers from stakeholding groups would be afforded seats on certain committees and working groups of Convocation; subject to confidentiality issues.
12. Each elected Bencher would have terms limited to three (3), four (4) year terms and thereafter become a Bencher Emeritus as described above.

Summary

Upon review, the recommendations above optimally meet the goals of accountability, transparency, greater specialization, efficiency and responsible representation while respecting and maintaining, but modernizing worthwhile traditions and traits of the Law Society.

SECTION B BACKGROUND

1. The CDLPA Approach and Process to Law Society Governance Reform

a) Reference to Counties and Districts in Section 26.1 of the Law Society Act:

The County and District Law Presidents' Association ("CDLPA") is the umbrella organization which represents the forty-seven (47) County and District Law Presidents' Associations in Ontario. It meets twice annually in Plenary which is an assembly of a representative of each of the Forty-Six (46) county and district law associations plus a representative of the Toronto Lawyers Association ("TLA"). Plenary is an opportunity for a review of issues confronting practitioners in Ontario and deliberation upon issues brought before it by the CDLPA Executive.

The reference to the County and District Law Association Presidents in s.26 of the *Law Society Act* and the statutory annual obligation of the Treasurer to consult with the law association presidents provides a unique statutory colour of right to CDLPA, as the representative group of such presidents, and thereby affording it an opportunity to proffer the thoughts of practising lawyers in Ontario on the issue of Law Society governance reform.

b) Scope of Review and Input

In September of 2008, the CDLPA Executive charged its Governance Committee, whose membership was comprised of Randall S. Bocock, as Chair, Patricia Meehan, Executive Representative, Michael Johnston, Second Vice-Chair and Eastern Region Representative, Janet Whitehead, South Western Region Representative, and Richard Wozenilek, the TLA Representative on the CDLPA Executive, with the issue of Law Society governance reform. Previously, the members of the CDLPA Executive had submitted reviews of certain Law Society Governance Reports, but these reviews had not generally come before CDLPA Plenary for prior approval. An exception to this was that a resolution of Plenary was submitted in November of 2006 with regard to the method of tie-breaking in Treasurer's elections. Over the course of the next year certain memoranda also provided general commentary on Law Society governance and By-law #6 in January of 2007. This included a resolution regarding bench and Treasurer election(s). The CDLPA Governance Committee (the "Committee") began its review of these past reports in the early part of 2009, as consideration of governance issues again confronted Convocation. The process followed by the CDLPA Committee was to submit for consideration to the Presidents in Plenary, commentary and a position paper regarding issues of the Law Society governance and potential reform. CDLPA has done so after submitting these materials to the Executive and gaining its direction to refer the materials to the Law Association Presidents in Plenary.

c) Review Outline

In May of 2009, these materials and proposed recommendations were first submitted to each and every county and district Law Association President in Plenary and were

approved. Discussion of the debate and votes are described in the paper. After amending the Report in accordance with Plenary direction and reviewing it again with the CDLPA Executive, the Report is now submitted to the Law Society Governance Task Force. The general approach and process was described in a preliminary process outlining the following elemental review:

- a. An assessment of the historical model of governance of the Law Society as a self-regulatory body;
- b. A focus on ideal forms of governance on a “static state” model;
- c. A re-evaluation of an ultimate governance model filtered through the prism of reality related to its history and practical reality of this unique institution; and
- d. The development of a fulsome list of recommendations tempered and informed by:
 - i. the critical number of reforms needed to achieve and appreciably improve and amend the model of governance;
 - ii. a realistic assessment of the will and desire for change within Convocation of the Law Society; and
 - iii. subsequent stewardship of the recommendations to ensure a fair review and consideration of governance reform by Convocation.

In the spirit of this process, the process with respect to Law Society governance was undertaken and the recommendations in this Report represent the recommendations of the CDLPA Executive and the Forty-Six (46) County and District Law Presidents and a representative of the TLA having met in Plenary at Toronto in May of 2009.

SECTION C CRITICAL CONCEPTS

2. Self Regulation

The following represents an abbreviated primer of fundamental and statutory authority for governance of the Law Society. A more detailed description of the history of the Law Society, its present governance structure and previous governance reform debate and action is described more fully in Appendix A (Section F) of the Report. However, the following is an abbreviated summary:

(a) Statutory References contained within the Law Society Act (the “Enabling Act”)

- Section 4.1 – Enabling Act (Function of Society)

It is a function of the Society to ensure that,

- (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario. 2006, c. 21, Sched. C, s.7.

- Section 10 – Enabling Act (Benchers to Govern)

The Benchers shall govern the affairs of the Society. 2006, c. 21, Sched. C, s. 11.

(b) Self-Regulation Generally

A brief comparison of other self-regulatory bodies is provided as background for the discussion of governance reform.

- (i) Other Law Societies

- Legal Profession Act – British Columbia (B.C.)

Name of Body: The Law Society of B.C. (the “LSBC”).

Objects and Purpose: The LSBC is the regulatory body for the B.C. legal profession. The primary responsibility of the LSBC under the provincial *Legal Profession Act*

is to protect the public interest in the administration of justice.

Composition: The Benchers are the board of directors of the LSBC. They govern the work of the LSBC in accordance with the *Legal Profession Act*. There are 25 elected Benchers who are lawyers – chosen by the lawyers in nine regions across B.C. – and up to six non-lawyer (lay) Benchers, appointed by Order-in-Council. The senior Bencher is the President, who serves a one-year term in that position. The Attorney General of British Columbia is also a Bencher although, in practice, the Deputy Attorney General attends Bencher meetings on the Attorney's behalf.

Committees: LSBC Benchers sit on one or more committees of the LSBC. Each committee has specific functions, most of which are governed by provincial legislation.

Terms and Limits: Benchers serve two (2) year terms and can be re-elected. Benchers who have served for four (4) complete or partial terms, whether consecutive or not, are ineligible to be elected or appointed as Benchers, and are Life Benchers on leaving office as Benchers. Life Benchers may attend and speak at meetings of the Benchers, however, Life Benchers have no votes in Bencher Meetings, Committee Meetings and may not exercise any of the powers of a Bencher.

Meetings: Bencher meetings are held monthly, along with an annual general meeting, to review the activities of the LSBC and debate and vote upon matters of general policy.

- **Legal Profession Act – Nova Scotia**

Name of Body: The Nova Scotia Barristers' Society (the "NSBS").

Objects and Purpose: The NSBS is the regulatory body for the Nova Scotia legal profession. The purpose of the NSBS under the provincial *Legal Profession Act* is to uphold and protect the public interest in the practice of law.

Composition: The Council is the legal governing body of the NSBS who govern the work of the NSBS in accordance with the *Legal Profession Act*. There are 21 elected Council members who are lawyers – chosen by the lawyers in four (4) regions across Nova Scotia – and three (3) non-lawyer (lay)

Council members who are appointed. The Attorney General of Nova Scotia for the time being or a representative appointed by the Attorney General of Nova Scotia, the Attorney General of Canada for the time being or a representative appointed by the Attorney General of Canada, the President, First Vice-president and Second Vice-president of the NSBS, the Dean of the Faculty of Law of Dalhousie University, the President of the Canadian Bar Association (Nova Scotia Branch), the President of the Association des jurists d'expression française de la Nouvelle-Écosse and the Chair of the Board of Directors of the Lawyers' Insurance Association of Nova Scotia are also Council Members.

Committees: Council appoints a variety of committees each year. The officers of the NSBS as well as two other members of Council constitute the Executive Committee, which has governance responsibilities between meetings of Council. The main regulatory committees are the Discipline Committee, the Qualifications and Bar Admission Course Committee and the Trust Accounts Committee. Council also appoints committees to address a variety of other responsibilities including Legal Ethics, the Administration of Justice and Liaison with the Courts, Practice Assistance and the Lawyers Assistance Program, Unauthorized Practice and the Board of Directors of the Nova Scotia Barristers' Liability Claims Fund.

Terms and Limits: Council members serve two (2) year terms and can be re-elected for a maximum of three (3) consecutive terms. There are no Life Benchers.

Meetings: Council meets ten (10) times per year to address the full range of policy issues affecting the NSBS. The work and agenda of Council are premised on the NSBS's objects of governing the membership in the public interest.

(ii) Other Professions in Ontario

• **Regulation Health Professions Act (“RHPA”) – Doctors**

Name of Body: The College of Physicians and Surgeons of Ontario (“CPSO”).

Objects and Purpose: The CPSO is the self-governing authority responsible for regulating the practice of medicine to protect and serve the public interest.

Composition: The council (the “CPSO Council”) is the governing body of the CPSO. The RHPA stipulates that it consist of at least thirty-two (32) and no more than thirty-four (34) members including sixteen (16) physicians elected by their peers on a geographical basis every three years (members are only eligible to vote in the electoral district in which they practice), physicians appointed from among the six faculties of medicine and not fewer than thirteen (13) and no more than fifteen (15) non-physician or ‘public’ members appointed by the provincial government for terms decided by the provincial government.

Both medical faculty members and public members may be re-appointed at the end of their terms. The CPSO President is elected from and by the CPSO Council and serves a one (1) year term.

Committees: CPSO Council members sit on one or more committees of the CPSO. Each committee has specific functions, most of which are governed by provincial legislation.

Terms and Limits: Maximum of three (3) years. CPSO Councilors may not serve more than three (3) terms (nine (9) consecutive years).

Meetings: General Council meetings are held five times a year to review the activities of the CPSO and debate and vote upon matters of general policy.

- **RHPA – Physiotherapists**

Name of Body: The College of Physiotherapists of Ontario (“CPO”).

Objects and Purpose: The CPO is the self-governing body that regulates physiotherapists/physical therapists to protect and serve the public interest.

Composition: The council (“CPO Council”) is the governing body of the CPO. The *Physiotherapy Act* stipulates that it consist of at least seven (7) and no more than eight (8) persons who are members elected in accordance with the by-laws (members are only eligible to vote in the electoral district in which they practice), at least five (5) and no more than seven (7) persons appointed by the Lieutenant Governor in Council who are not members, members of a college as defined in the *RHPA*, or members of a council as defined in the *RHPA*, and one (1) or two (2) persons selected from among

members who are members of a faculty of physiotherapy or physical therapy of a university in Ontario.

The CPO President and Vice-President are elected from and by the CPO Council and serve a one-year term.

Committees: CPO has seven (7) statutory committees and two non-statutory committees which are populated by CPO Council members.

Terms and Limits: Three (3) year terms with no term limits.

Meetings: Two (2) to three (3) per year.

- **RHPA – Optometrists**

Name of Body: The College of Optometrists of Ontario (“COO”).

Objects and Purpose: The “COO” is the self-governing authority responsible for regulating the practice of optometry to protect and serve the public interest.

Composition: The council (“COO Council”) is the governing body of the COO. The *Optometry Act* stipulates that it consist of at least eight (8) and no more than nine (9) persons who are members elected in accordance with the by-laws (members are only eligible to vote in the electoral district in which they practice), at least seven (7) and no more than eight (8) persons appointed by the Lieutenant Governor in Council who are not members, members of a college as defined in the *RHPA*, or members of a council as defined in the *RHPA* and one (1) or two (2) persons selected from among members who are members of a faculty of optometry of a university in Ontario.

The COO President is elected from and by the COO Council and serves a one-year term.

Committees: COO Council members sit on one or more committees of the COO. Each committee has specific functions, most of which are governed by provincial legislation.

Terms and Limits: Maximum of three (3) years. COO Councilors may not serve more than three (3) terms consecutively (nine (9) consecutive years).

Meetings: General COO Council meetings are held at least three times a year to review the activities of the COO and debate and vote upon matters of general policy.

- **Professional Engineers Act - Engineers**

Name of Body: The Association of Professional Engineers of Ontario (“APEO”).

Objects and Purpose: The APEO is the self-governing body that regulates engineers in order that “the public interest may be served and protected.”

Composition: The council (the “APEO Council”) is the governing body of the APEO. The *Professional Engineers Act* stipulates that it consist of not fewer than fifteen (15) and not more than twenty (20) persons who are members of the APEO and who are elected by the members of the APEO as provided by the regulations (thirteen (13) members are elected to the APEO Council of whom three members are elected as councilors-at-large and two (2) members are elected by the members in each of the five (5) regions), not fewer than five (5) and not more than seven (7) persons who are members of the APEO and who are appointed by the Lieutenant Governor in Council (the persons to be appointed by the Lieutenant Governor in Council are appointed for one (1) year, two (2) year or three (3) year terms in order that one-third (1/3), or as near thereto as possible, are appointed in each year), and not fewer than three (3) and not more than five (5) persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under the *Professional Engineers Act* and who are appointed by the Lieutenant Governor in Council.

The APEO President is elected by the APEO Council and the APEO Vice-President is appointed by the APEO Council. Both serve one-year terms.

Committees: APEO Council members sit on one or more committees of the APEO. Each committee has specific functions, most of which are governed by provincial legislation.

Terms and Limits: Elected APEO Council members serve two year terms with no term limits.

Meetings: General APEO Council meetings are held at least four times a year to review the activities of the APEO and debate and vote upon matters of general policy.

- **Accountants – “the Exception to the Norm”**

The accounting profession in Ontario is self regulated and governed by the Certified General Accountants Association of Ontario (“CGAAO”), the Society of Management Accountants of Ontario (“SMAO”) and the Institute of Chartered Accountants of Ontario (“ICAO”).

The Public Accounting Act (“PA Act”) came into force as of November 1, 2005. The PA Act provides for a seventeen (17) person Public Accountants Council (“PAC Council”), consisting of nine (9) public representatives (including the Chair), four (4) Chartered Accountants (“CA”), two (2) Certified Management Accountants (“CMA”) and two (2) Certified General Accountants (“CGA”), and was constituted to develop the new standards required by the PA Act, as well as to assume an oversight role of the CGAAO, the SMAO and the ICAO (collectively referred to as the “Designated Bodies”).

Objects and Purpose: The objects of the PAC Council are to oversee the regulation of public accounting in the public interest by developing and maintaining the standards that a Designated Body must meet in order to be authorized to license and govern the activities of its members as public accountants, determining whether the Designated Bodies meet the standards, overseeing the Designated Bodies in their capacity to license and to govern the activities of their members as public accountants, and maintaining public confidence in public accounting through the appropriate prosecution of offences under the PA Act.

Composition: The PAC Council members are appointed by the Lieutenant Governor in Council or one of the Designated Bodies, as the case may be. The Chair and Vice-Chair are appointed by the Lieutenant Governor in Council from among the public representatives and hold office for two years from the date of their appointment.

Committees: The PAC Council members sit on one or more committees of the PAC.

Terms and Limits: The PAC Council members hold office for a term of up to three years from the date of their appointment and may be reappointed for up to four additional terms.

(iii) Loss of Self-Regulation in other Jurisdictions

It has been observed that self-regulation to one degree or another has been surrendered or repealed in certain jurisdictions where it has been longstanding, such as England & Wales, New Zealand and Australia. A recent article in MacLean's Magazine, titled "Law Societies Under Fire" (May 4, 2009), blasted the self-regulation of lawyers in Canada as a real or perceived conflict of interest which has seen "many Canadians losing faith in the justice system or feeling shut out of it entirely." The article contrasted the self-regulating regimes in Canada to those in England & Wales and Australia, where, the complaint and discipline process has recently been taken away from self-regulating lawyer organizations and given to independent bodies to remove or lessen the real and/or perceived conflicts of interest.

(iv) Societal View of Self-Regulation

Like many issues, professional self-regulation is not at the forefront of the public consciousness *per se*. However, issues such as fraud, access to legal services and discipline are from time to time. Any inability on the part of a professional regulatory body to demonstrate the primacy of the public interest and a fair, open and efficient system of service provision and discipline will undoubtedly draw public attention and the ensuing political clamour for change. Such change would inevitably spell the end of self-regulation.

(c) Does Self-Regulation equate to Self Governance?

A working definition of a self-regulatory profession would include a governance model where standards of learning, professional competence and professional conduct are established, maintained and/or implemented by a body where the majority of decision makers are members of that profession.

Definitionally, where a profession does not elect a current majority of its professional governors from its ranks, such a model of governance appears to lack a current reflectiveness of the input and expression of the members the body seeks to govern. Moreover, the question is posed whether elected governors are essential, or whether appointment *ex officio* or arising from service after a certain period of elected terms is sufficient to ensure self-regulation and self-governance. The subsequent question must be asked: to what degree does this "half-life" of previous selection discourage voting in elections, participation and engagement in the Law Society by its Membership, especially among those younger members who may perceive this constraint to change or fresh ideas (perceived or otherwise) as a justification for apathy?

(d) Public Understanding of Self-Regulation and Self Governance

The right of self regulation and self governance are not widely understood nor appreciated by the public. To suggest a higher level of understanding during any approach of this issue by the public in the legal service area stretches creditability to its limits. Oddly enough, given the importance of the independence of the Bar and, for that matter of the judiciary, to a high functioning democracy, one would expect a greater appreciation of self-governance and regulation among the public in this area. Coincident with any appreciation would logically follow a general appreciation that self-regulators be elected fairly and openly by its members. It is noted that public debate has never developed to that level.

3. The Public Interest

The Public Interest concept figures prominently in the *Law Society Act*.

For example:

(a) Principles by which the Law Society carries out its functions.

Simply put, the Law Society's mandate is informed by the following statutory principles:

- 4.2 (1) The Society has a duty to maintain and advance the cause of justice & rule of law;
- 4.2 (2) The Society has a duty to act so as to facilitate access to justice for the people of Ontario ;
- 4.2 (3) The Society has a duty to protect the public interest;
- 4.2 (4) The Society has a duty to act in a timely, open and efficient manner;
- 4.2 (5) Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

(b) Analysis of Section 4.2 Statutory Principles

These "informative" principles have no ranking as to priority from a statutory interpretative perspective. However, politically and instructionally two have become prima inter pares. Chiefly relevant to the issue of governance reform and self-regulation are 4.2(2), 4.2(3) and 4.2(4); however, this interpretation opens much debate.

(c) Governance Structures and the Public Interest

Notwithstanding any debate on the appropriate weight to be given to these provisions, when examining whether a governance structure passes muster under Section 4.2, generally speaking, the following questions (from the vantage point of the public) ought to be asked; namely, is the governance structure:

- a) recognizable;
- b) understandable;
- c) representative;
- d) adaptive; and
- e) effective?

In being so, when examined objectively, any model must be seen to carry out the Section 4.1 (Section 2(a) above) objects in accordance with the Section 4.2 (Section 3(a) above) principles. To answer this requirement, the following core principles of assessment were utilized: accountability, transparency and responsible representation.

4. Accountability

Definition

Does the governing and regulatory body account for its decisions to the parties it seeks to respectively, regulate, represent and/or protect. What mechanisms in the model of governance should be present to ensure accountability?

Again, the following sub-sections of Section 4.2 are particularly relevant to the accountability question. In the making of decisions regarding the Law Society, the Law Society....

4.2 (3) ...has a duty to protect the public interest;

4.2 (4) [must]...act in a timely, open and efficient manner; and,

4.2 (5) [maintain]...standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objective sought to be realized.

The Law Society is accountable to its members tempered by its obligations to regulate the profession in accordance with the principles enunciated clearly within Section 4.2.

5. Transparency

In order for a governance system to be recognizable it must act and be “seen” to be acting according to the objects and principles enunciated in its Enabling Act. Some general trends and thoughts in modern principles of governance are:

a) Democratic Elections

The open, fair and frequent selection of decision makers is essential to an objective understanding of the source of authority and method of decision making.

b) Public Notice of Issues

Advance notice of the issues to be decided and the time for debate and discussion surrounding same, on the part of the public and the regulated, add to a sense of engagement, input and support for the decision, once made.

c) Access to Information

(i) General Trend

The general trend in governance is to provide disclosure of debate, consideration, reports and deliberative processes on the basis of adding credibility to the decision once made. The Law Society, as a body governing in the public interest, has made recognizable strides in this area over the past years; however, the landscape continues to change as the transparency for decision making and access to information thresholds continue to rise in society and specifically in the area of regulation and governance for any decision making body.

(ii) Freedom of Information (“FOI”) and Governing Bodies

The test as to which information should be disclosed and withheld has evolved to a standard of higher disclosure unless personal information or sensitive competitive or commercial information is the subject matter of discussion or decision.

(iii) Balancing Accountability with Effectiveness

Governing structures must be accountable, but also insightful and responsible decision makers in the wake of unpredictable issues.

(iv) Transparency and an Open, Clear and Understandable Process

Rules, procedures and practices must be accessible, generally understandable and fair.

(v) Participation

Any effective self-regulatory governance structure should demonstrate broadly based participation in processes, discussion and input.

6. Responsible Representation

Any test of responsible representation is whether the decision makers are responsible to the ideas and constituency that they represent and protect. In the case of the Law Society these would be the “public interest”, the “cause of justice”, “rule of law” and the electors and the profession in whose name the Law Society carries out these goals.

7. Core Functions of the Law Society

(a) Statutory Reference

The core functions of the Law Society are very clear in Section 4.1(a) and (b), as informed by Section 4.2(1) thru (5).

(b) Adherence to the Enabling Statute

The best insurance policy for continued self-regulation is a balanced and continued reference to the enabling legislation as the touchstone of its governance and operations.

To the extent any body can justifiably be seen to be adhering to its legislative mandate, the “political”, “legislative” and “public” incentive to limit, alter or withdraw self-regulation will evaporate.

8. The Public Interest Override and The Price for Self-Regulation

When, as feared, a serious challenge to self-regulation is marshalled, it will likely come in the form of the public insistence and assertion that the Law Society lacks the ostensible badges of recognizable forms of governance, discipline, decision-making and openness needed and required by the “public interest” in a modern society. While debate will likely ensue of what properly constitutes the public interest, once the debate reaches a certain volume, the clamour for the end of self-regulation will prove unstoppable.

Presently, the “rebuttal” arguments countermanding Law Society governance reform may be summarized as follows:

- (ii) Consultation on reform is high risk and low return;

- (iii) Reform should be discussed, debated and generated primarily from within the Law Society;
- (iv) Until all consequences are “known”, reforms should not be undertaken;
- (v) Experience and longevity are more important for decision making than renewal and change;
- (vi) Further representation quotas or requirements will render a meritorious selection process meaningless;
- (vii) Life Benchers add more valuable service than novice benchers until newly elected Benchers mature;
- (viii) Former Attorneys-General, Life Benchers and Ex-Treasurers usually do not participate in decision making at Convocation and therefore do not thwart the “democratic will” of currently elected and appointed Benchers;
- (ix) Ex-Treasurer’s and Life Benchers at Convocation or in Committee, as the case may be, who are not required to seek re-election as Professional Benchers or current re-appointment as Lay Benchers are free of the curse of courting favour among electorate or patrons; respectively, the professional electorate in the case of lawyers or the Lieutenant Governor-in-Council in the case of appointees;
- (x) Substantive reform requires amendment to the Law Society Act which is, *per se*, a risky and unwanted process.

In a fair, balanced and restricted forum (such as entirely among licensees within the confines of Osgoode Hall), these arguments might well gain the needed amount of attention and adherence necessary to provide some relative cover and otherwise relieve a self-regulating profession from the need for governance reform. However, in the court of public opinion, where any government of the day defines “public interest” as its interest and relationship with the public electorate, there is no such reasonable engagement, civility or learned debate of these issues. Against the backdrop of an ever increasingly hostile media¹ towards self-regulation, the government will scrutinize legal service governance structures with renewed avidity. Unless these structures conform to a template which is recognizable, understandable, representative, adaptive and effective in the opinion of government and the public, then self-regulation of lawyers may cease to be a proud democratic legacy in Ontario and simply become part of its history.

¹ MacLean’s Magazine, Volume 122, Number 16, May 4, 2009, page 48.

The Law Society has, to date, been masterful in recently staking out clear and decisive positions on protecting the public in:

- (i) regulating all legal service providers;
- (ii) punishing unauthorized practice; and
- (iii) proceeding quickly against practice fraud.

The Law Society has done so in the name of protecting the public interest. Convocation must further protect the public interest by critically examining its governance structures and after doing so, effect or initiate reforms which:

- (i) Enhance accountability and responsibility;
- (ii) Heighten the transparency of debate, decision making and governance;
- (iii) Assign specific roles and goals to certain categories of decision makers, namely, Benchers; and,
- (iv) Improve the Law Society's overall efficiency in decision making.

9. The Proper Threshold of Self-Regulation

(a) What level of professional participation constitutes self-governance?

Different professional regulatory bodies as reviewed in Section 2(b) of this Report have various levels of professional versus lay governors. By comparison to other professions (physicians, engineers and accountants), lawyers, even before counting ex-treasurers, past Attorneys-General, life benchers, have the highest number of professional governors within its governing body. Of note, Convocation also generally meets more frequently than other self-governing bodies.

(b) Does every act of the Law Society require Bencher approval?

Under the *Law Society Act*, and specifically Section 10, the Benchers govern the affairs of the Law Society. This is roughly akin to the mandate provided to directors of a corporation or to the overall oversight, management and control of the body corporate. Within such entities, high levels of specialization and delegation are permitted. Provided ultimate authority vests and remains with the "Benchers in Convocation", legal authority for delegation would appear permitted subject to appropriate oversight, reporting and granting authority. The argument for "full Convocation" debate of all governance and decision issues is therefore a thoughtful preference, but not a legal requirement. In any event, legislative amendment, if necessary, could solve such an impediment, if any.

SECTION D RECOMMENDATIONS

On the basis of the foregoing analysis and the material contained in Appendices A, B and C hereof, CDLPA respectfully makes the following general recommendations for governance reform of the Law Society.

Recommendation #1

10. Separation of Governance and Discipline

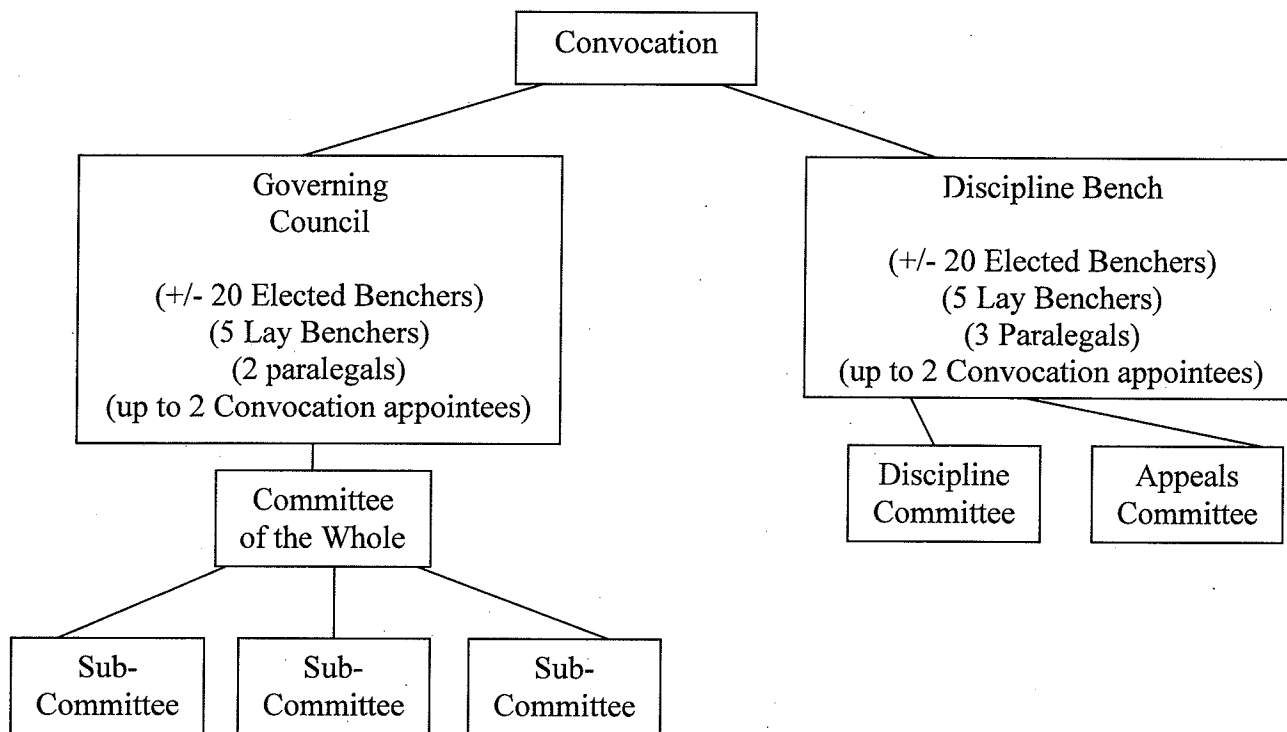
Subject to appropriate By-Law provisions, there is no need for all Benchers to be involved in all decisions of Convocation. On balance, the thought of fifty (50) (excluding *ex-officio*) members considering and voting on each issue coming before Convocation does not lend itself to a responsible, open, fair or efficient governance model. Therefore, through possible limited statutory amendment and thorough by-law revisions Convocation could specifically elect and designate members of Convocation to sit on a governance decision making body (“Governing Council”) or a discipline decision making body (“Discipline Bench”).

Recommendation #2

11. Selection of Benchers to Either Governing Council or Discipline Bench

The attractive features of a separation between a Governing Council and Discipline Bench are:

- (i) Convocation would elect, appoint or designate persons to one of the governance or discipline bodies annually;
- (ii) the Governing Council would carry out the present governing functions of Convocation save and except for discipline hearings and appeals;
- (iii) the Discipline Bench would execute only discipline and appeal functions directly elected with vacancies to be filled by Convocation. The continued presence of a Lay Bencher on discipline is essential;
- (iv) a diagram of the structure would approach something like the following:



Recommendation #3

12. Composition and Size of Convocation

a) Lay versus professional representation

Reducing the Ex-officio members is simply the right thing to do, both intellectually and temporally. This will increase the assured proportion (Professional vs. Public numbers) to eighty percent (80%). Therefore, the Lieutenant Governor-in-Council should appoint an additional two (2) public appointees in order to bring the governing structure more in line with the ratio of professional member to lay appointees in other “self-regulated” professions; although still maintaining the highest proportion of professional versus lay participation among other self-regulated professions.

Recommendation #4

b) Elected Benchers

- (i) Once elected, Benchers would choose either to be elected by Convocation to sit on Governing Council or the Discipline Bench. Annually, they would be elected by Convocation to be on one or the other each year.

- (ii) The number of Benchers on Governing Council would be twenty-five (25) elected Benchers and twenty-five (25) on the Discipline Bench.
- (iii) In addition, two professional Bencher positions (either lawyers or paralegals) would be reserved and appointed by Convocation upon nomination by the Treasurer for the purposes of addressing under-representation within Convocation once the intake of elected Benchers is analysed for representational balance.
- (iv) The structure of regional bencher elections should not be altered. In fact, where possible, representation from all regions should be a goal in the selection of Benchers to sit on the Governing Council and the Discipline Bench.
- (v) Additional non-Bencher committee members should be named to the Discipline Bench as needed.

Recommendation #5

c) Life Benchers

- Sunset Provision

All present life Benchers would be permitted to serve a final four (4) year term and then retire from Convocation in that capacity.

- Benchers Emeritus

After the maximum number of permitted elected terms, each Bencher would serve one final four (4) year term (the "Non-Elected Term"). All present Life Benchers would be re-designated "Benchers Emeriti" and would service one final Non-Elected Term. Their present role would not be modified during that Non-Elected Term. Again, similarly to elected Benchers above, Benchers Emeriti would sit on either the Governing Council or on the Discipline Bench to ensure flexibility.

At Plenary in May 2009, it should be noted that many arguments were proffered in support of keeping the concept of Life Benchers in the present format. Specifically, Plenary heard, and did not dispute, that many of the present Life Benchers served the profession dutifully and competently, sat on lengthy Discipline Hearings and provided mentoring and continuity to newer Benchers. Ultimately, Recommendation #5 (repeal and modification of Life Benchers) passed narrowly and therefore forms part of this submission. There was no such equivocation on the issue of past Attorneys-General or Ex-Treasurers and Recommendations #6 and #7 were passed unanimously.

Recommendation #6

d) Ex-Treasurers

It is proposed that former Treasurers would sit for one term in Convocation after their term as Treasurer, until the selection of the next Treasurer unless he or she chooses to run for elected bencher (or otherwise qualifies as a Bencher Emeritus). Thereafter Ex-Treasurers may attend convocation or committee, but would have no voting rights.

Recommendation #7

e) Attorneys-General

The right of all past Attorneys-General to sit and vote is an historical anomaly and should be repealed. The current Attorney-General, as the chief legal officer of the Province, should continue to sit in Convocation.

Recommendation #8

f) The Office of Treasurer

The Treasurer would continue in the role as the Chair of Convocation and President of the Governing Council. It may be advisable for the purposes of role separation to have Convocation select a Deputy Treasurer who would act as Chair of Discipline. This would designate two persons to communicate, officer to officer, for the purposes of ensuring administrative efficiency of the Discipline Bench and coordination of its activities with the Governing Council.

Recommendation #9

g) Committee Functions

- Streamlined into Core Functions as outlined under the Act provides

The three (3) basic functions of the Law Society as mandated under Section 4.1 of the *Law Society Act* should provide the information for the committee structure in order to allow a comprehensible and recognizable governance structure. Education, competence and conduct may form the direction for a re-evaluation of a streamlined sub-committee structure. In doing so, the legislation and the governance model will be somewhat more symmetrical, comprehensible and concordant. Obviously, a Finance Committee is required.

With a smaller Governing Council, a Committee of the Whole Structure could be implemented whereby its sub-committees would report to the Committee of the Whole. The Committee of the Whole would then allow stakeholder deputations and input using an advance agenda system with a specific amount of notice. Time allotments and meeting scheduling would be essential.

The Committee of the Whole would then debate and formulate final motions to Convocation, which would meet not less than two (2) weeks later than the Committee of the Whole in order to further receive and approve decision items. This would allow further stakeholder discussion and input leading up to a considered and refined decision making process. No deputations would be allowed at Convocation, but, as stated, only at Committee of the Whole.

The Law Society should develop a revised and consistent set of clearly established, *public vs. in camera* criteria for the debate, notice and decision of any matter. While simply stated, this recommendation is essential to transparency and accountability.

Recommendation #10

h) Governing Council Committee Chairs

Committee Chairs within the Governing Council should be selected by Convocation's Governing Council.

Vice-Chairs should be selected by the Treasurer.

Committee members would be nominated by the Chair and Vice-Chair and confirmed by the Treasurer.

Recommendation #11

i) Committees and Sub-Committees

Serious consideration should be given to stakeholder representation (non-voting) at the committee level. Obviously, this would not include *in camera* matters. This would provide critical input at an early stage and, in CDLPA's view, enhance and expedite decision making and more importantly perhaps, communication and acceptance of decisions affecting the public and the legal service industry.

Committees would report to the Committee of the Whole, not less than two (2) weeks before meetings.

Recommendation #12

j) *Term Limits*

The absence of any term limits leaves the Law Society unique among professional self-regulatory bodies. Elected Benchers should be allowed to be elected for no more than three (3), four (4) year terms after which time they would serve as a Bencher Emeritus as indicated in Recommendation #5 above. Where a Bencher is elected or selected to the role of Treasurer or Secretary Treasurer after three (3) terms, an exception might be created.

SECTION E SUMMARY AND CONCLUSION

13. Review of Recommendations

(a) Attainment of Goals

The Recommendations fulfill the objects and goals initially established.

1. ***Accountability*** – This goal has been met by:
 - (i) streamlining and fixing both the number and role of Benchers and resetting the ratio between the number of elected members of the profession and the number of government appointed lay members of the public; and,
 - (ii) establishing a process whereby stakeholders, both professional and public, can effectively provide early input into issues being considered by Convocation.
2. ***Transparency*** – This goal has been met by:
 - (i) creating a set of policies and procedures for public access to information regarding the issues, debates and decisions addressed by convocation.
3. ***Greater Specialization*** – This goal was achieved by:
 - (i) defining and segregating responsibility between governance and discipline, whereby benchers are able to focus efforts and manage time requirements more efficiently both these important tasks.
4. ***Responsible Representation*** – This goal has been achieved by:
 - (i) ensuring control of the decision making process is held by specifically elected or properly appointed individuals accountable to the profession or government, as the case may be.

(b) Specific Recommendations achieving Goal Attainment

The submissions and recommendations within this Report are meant to be an entire recommendation with a much considered nexus of one recommendation with the others. Attempts to endorse a substantive part of the Report without another would derogate from the recommendation as a whole and its desired object of rendering a Law Society governance structure which when viewed by the public and government as recognizable, understandable, representative, adaptive and effective. However, as sacrosanct as the substantive recommendations may seem, CLDPA recognizes that the specifics of the number of Benchers assigned to Governing Council or the Discipline Bench, the terms of reference and numbers of committees and other operational details are all matters that the present Benchers shall and

should decide and determine based on changing institutional demand, professional requirements and financial considerations.

(c) Process for Achieving Implementation of Governance Reform

CDLPA intends to monitor the progress of this issue and for that purpose:

- (i) has placed this matter as standing report item on the 2009 CLDPA Fall Plenary to be held in November of 2009;
- (ii) has requested that the Chair address Convocation on this issue in the early fall of 2009; and,
- (iii) will canvass Benchers in Convocation on reaction to the Report and the overall will of Convocation to proceed to consider and deliberate upon the issue of Law Society Governance Reform.

Respectfully Submitted,

Professional Governance Committee
County and District Law Presidents' Association

June, 2009

SECTION F
Appendix A

History of Constating Legislation

The Law Society of Upper Canada ("Law Society") was founded by the passing of *An Act for the Better Regulating of the Practice of Law*, 37th Geo.III c.13 (the "Enabling Act") by the Parliament of Westminster, on July 3, 1797. The reasons for the creation of the Law Society, as set out in the Enabling Act, were to provide the Province with a "learned and honourable body, to assist their fellow subjects as occasion may require, and to support and maintain the constitution of the said Province."

The Enabling Act has been amended and/or replaced numerous times since 1797. Below is a brief summary chart of the legislative history of the provisions of the Enabling Act and subsequent revisions:

Year	Membership/ Admission to the Bar	Governing Body	Selection	Miscellaneous
1797	<p>All persons now admitted to practice law in the Province</p> <p>Entered of and admitted into the Law Society as a student of laws and in good standing during the space of five years.</p> <p>Must be 21 years of age or older</p>	<p>Body of rules and regulations to be formed by Benchers under inspection of the judges of the Province.</p>	<p>Appointment of six senior members or more of the present members and six senior members or more for all times to come (whereof the Attorney General and Solicitor General shall be considered two) and also to appoint a librarian and a Treasurer.</p>	
1803	<p>Governor, Lieutenant Governor or person administering the government of the Province to add up to six lawyers by license under his hand and seal</p>			
1815	<p>All persons whose names are entered in the books of the Law Society as students at law and barristers shall be deemed legally entered in the Law Society</p>			
1822	<p>No person admitted to practice as an attorney with less than five years actual service</p>	<p>Treasurer and Benchers of the Law Society incorporated. The Law Society can hold land.</p>		

Year	Membership/ Admission to the Bar	Governing Body	Selection	Miscellaneous
1834	Attorney or Solicitor General admissible as attorneys without having served with an attorney of this Province			
1837	English or Irish attorneys or solicitors may be admitted after three years of service and if a graduate of any university of the UK, after two years of service.			
1840				The Law Society may appoint a reporter to report the decisions of the Court
1859				The Chief Justices and Puisne Judges of the Superior Courts of Common Law and the Chancellor and Vice-Chancellors of the Court of Chancery shall be Visitors of the Law Society
1871		<p>On the first day of Easter Term, 1871, the present Benchers cease to hold office and after that day, the Benchers of the Law Society, exclusive of ex-officio members, shall be thirty in number and selected by election</p> <p>First reference to ex-officio Benchers.</p>	<p>The Attorney General for the time being of the Province, all members of the Bar of Ontario who have at any time held of the Office of Attorney General for the Province and any retired Judge or Judges of the Superior Courts of Law or Equity for the Province of Ontario are ex-officio Benchers of the Law Society</p> <p>Members of the Law Society can vote. Benchers must be members of the Law Society. The thirty</p>	<p>Act titled "An Act to make the Members of the Law Society of Ontario elective by the Bar Thereof"</p> <p>Preamble states: "Whereas it is expedient that a change be made in the manner and election of Benchers of the Law Society and petitions have been presented, praying for same [...]"</p>

Year	Membership/ Admission to the Bar	Governing Body	Selection	Miscellaneous
			persons who receive the highest number of votes are Benchers – five year term.	
1872				Benchers to furnish members with details of revenue and expenditure
1875			Benchers may appoint such officers and servants as may be necessary for the management of the business of the Law Society.	Benchers may establish a fund for the benefit of widows and orphans of barristers, attorneys and solicitors
1897				Benchers may make rules providing for the admission of women to practice as barristers and solicitors
1914	Members of the Bar of Ontario and persons admitted to the Law Society as students at law shall be members of the Law Society		Ex-officio Benchers: The Minister of Justice, the Solicitor-General of Canada and every person who has held either of those offices, the Attorney General of Ontario and every person who has held that office, every person who has for seven consecutive years held the office of Treasurer of the Law Society, every person who has been elected a Bencher at four quinquennial elections, every retired judge of the Supreme Court of Canada or the Exchequer Court of Canada (who at the time of their appointment was a member of the Bar of Ontario and every retired Judge of the Supreme Court of	Benchers may make regulations for promoting the efficiency of county law libraries

Year	Membership/ Admission to the Bar	Governing Body	Selection	Miscellaneous
			Judicature for Ontario	
1960				<p>Benchers may establish a plan to provide legal aid to persons in need thereof and for such purpose may make such regulations as are deemed appropriate</p> <p>Benchers may establish, maintain and administer a fund to be called "The Compensation Fund" in order to relieve or mitigate loss sustained by anyone in consequence of dishonesty on the part of any member of the Bar of Ontario in connection with such member's law practice</p>
1970	Introduction of four classes of members: honorary members, life members, members and student members	<p>Provision for annual meeting</p> <p>Change to forty elected Benchers</p> <p>Creation of the Law Society Council to consider the manner in which the members of the Law Society are discharging their obligations to the public and generally matters affecting the legal profession as a whole</p>	<p>Ex-officio Benchers lose right to vote at Convocation (except for the Minister of Justice, the Attorney General for Ontario and every person who has held the office of the Attorney General for Ontario</p> <p>Twenty Benchers to be elected from Toronto, twenty from outside of Toronto. Elections every four years</p>	Legal Aid plan no longer in Act
1980				Law Foundation of Ontario established for the purposes of

Year	Membership/ Admission to the Bar	Governing Body	Selection	Miscellaneous
				legal education and legal research, legal aid and the establishment, maintenance and operation of law libraries
1990				Law corporations authorized
2006		Addition of function and principles statements		
2007				The Law Society now regulates Paralegals

SECTION G

Appendix B

Summary of Present Governance Structure

The Law Society's governance mandate is to ensure that lawyers and paralegals meet the requisite standards of competence and professional conduct. The staff and day-to-day operations of the Law Society are overseen by the Chief Executive Officer ("CEO") and a nine-member senior management team. The CEO is accountable to Convocation for implementing Convocation's policy decisions.

The composition of Convocation, which is the meeting of Benchers of the Law Society, is established by the *Law Society Act* (the "Act"), which provides for elected, appointed and *ex-officio* Benchers (who include former Treasurers, current and former Attorneys General of Ontario and life Benchers). Currently, the total number of Benchers is eighty-three (83), as follows:

- The Treasurer;
- Forty (40) elected lawyer Benchers;
- Two (2) paralegal Benchers appointed by the Attorney General;
- Eight (8) lay Benchers appointed by the Attorney General; and
- At present thirty-two (32) *ex-officio* Benchers: Twelve (12) life Benchers, ten (10) former Treasurers, the Attorney General of Ontario and nine (9) former Attorneys General.

Benchers oversee the affairs of the Law Society in accordance with its mandate to govern lawyers and paralegals in the public interest. Benchers gather nine (9) times a year in Convocation to make policy decisions and to deal with other matters related to the Law Society's mandate. Benchers also sit on various Law Society committees, and are members of the Hearing and Appeal Panels, which hear cases concerning lawyer and paralegal conduct, competence and capacity.

Half of the 40 elected Benchers are from Toronto and the other half are from outside Toronto, including a regional Bencher from each of the eight electoral districts. Benchers are elected every four years to serve in Convocation. The Benchers elect the Treasurer, who is the chair of the board, every year. By tradition, the Treasurer usually serves for two years, and runs unopposed for the second year.

Benchers attain *ex-officio* status as life Benchers when they have served as elected Benchers for sixteen (16) years. These Benchers may elect life Bencher status or may run again to become an elected Bencher. Life Benchers may attend and speak at Convocation but do not have a vote in Convocation. They may attend and vote in committees. They may sit as a member of the Law Society's Hearing and Appeal Panel.

The ten (10) former Treasurers who are *ex-officio* Benchers are permitted to vote in Convocation.

Of the nine (9) former Attorneys General, who are also *ex-officio* Benchers, none regularly participates in Convocation. Former Attorneys General may speak in Convocation but may not vote. They may vote in committee.

Convocation typically meets monthly, nine (9) months out of twelve (12) to transact the business of the Law Society. The work of Convocation is supported through the deliberations of thirteen (13) committees active in a wide range of subjects, including professional regulation, finance, professional development and competence, paralegal regulation, equity and aboriginal issues and government relations. Most committee membership is confined to Benchers. Task forces may also be established for specific purposes.

The concept of 'Life Benchers' has not always existed. Prior to 1914, all past Attorneys-General of Canada and Ontario and any retired Judge of the Supreme Court were *ex-officio* Benchers. The 1914 legislative amendments significantly added to the then current and future Bencher roster by giving 'Life Bencher' status to every person who had, for seven consecutive years, held the office of Treasurer of the Law Society and to every person who had been elected a Bencher at four quinquennial elections.

Assuming that all Benchers who qualify as Life Benchers in 2011, accept the appointment rather than seek re-election, and including two (2) more former Treasurers the number of un-elected, *ex-officio* Benchers will exceed the number of elected Benchers in Convocation.

There is no executive committee of Convocation.

SECTION H Appendix C

History of Discussion by Law Society of Governance Reform

On September 23, 2004, Convocation established the Governance Task Force (the “Task Force”) as part of an ongoing commitment to ensure that the Law Society’s self-governance of the legal profession is sound and continues to focus on the public interest. The Task Force terms of reference included, *inter alia*:

- The Bencher qualification process and how Convocation is constituted;
- The size of Convocation as a board;
- The role of the Treasurer as chair of the Board (Convocation);
- The notion of an Executive Committee;
- The frequency and the procedural and substantive efficacy of Convocation including the process of setting priorities for Convocation;
- Benchers in the dual roles of directors of a corporation and representatives in what has been characterized as a parliamentary assembly;
- Benchers in the dual roles of policy makers and adjudicators; and
- A Bencher code of conduct.

On February 23, 2006, the Task Force delivered its final report to Convocation, which included, *inter alia*, the following general recommendations:

- That enhancements be made to the existing communications strategy for the Bencher election, through appropriate Law Society and other media, to encourage more members to vote in the Bencher election;
- Law Society members who are candidates in the Bencher election be educated through material produced by the Law Society on the subject of the society’s public interest mandate, the importance of a self-regulating legal profession and the role of a Bencher;
- That the Law Society begin the process to institute electronic voting and other improvements to the Bencher election process that might reasonably be expected to increase voter participation;
- That rules of procedure for Convocation be adopted;
- That Convocation affirm the Bencher’s role as a fiduciary to the Law Society;
- That Convocation affirm that when a Bencher is appointed as a Law Society representative to the board of another organization, insofar as the issues the Bencher addresses affect the Law Society’s mandate, the Bencher must strike a balance between duties as a Law Society representative and duties owed to the board by virtue of the appointment; and
- Increase efforts to encourage potential Bencher candidates from all communities.

In May of 2006, the Task Force was reconstituted to consider improvements to the corporate governance of the Law Society by Convocation. Following two reports to Convocation on specific governance issues, the Task Force has entered a consultative phase and is seeking the views of lawyers and paralegals on governance issues.

SECTION I
Appendix D
Specific Responses to Law Society Governance Reform Working Group

The following chart represents a summary response implicit within the CDLPA Report to the Law Society of Upper Canada's Governance Working Group's list of Questions posed as Appendix "A" in the Consultation Materials submitted in March/April of 2009. This is a summary only and reference to the complete Report is required.

A. CONVOCAATION'S ELECTION PROCESS AND LAW SOCIETY'S RELATIONSHIP WITH LAWYERS AND PARALEGALS

Question Posed by Working Group	Relevant Governance Concept(s)	CDLPA Commentary	Governance Reform Recommendation(s)
Are the elected Benchers adequately representative of the legal profession in Ontario?	Responsible representation as detained in Section 6 of Report.	Regional Benchers should be maintained. Representation should be assessed after the intake of each bench post election.	Regional Bencher election process should continue Recommendation 4(d). Two (2) Bencher positions should be reserved for appointment to ensure representation of certain groups after the intake is reviewed and assessed.
Should the majority of Benchers be elected?	<ul style="list-style-type: none"> • Accountability Section 4. • Responsible Representation and selection process Section 6 	Modern governance requires self-regulatory professions to elect the vast majority of professional members.	Recommendations 4, 5, 6, 7 and 8 regarding the phasing out of Life Benchers, other Benchers for life and the substitution with elected Benchers and one-term bencher <i>emerti</i> .
Is the level of voter turnout a symptom of how the profession relates to the Law Society?	<ul style="list-style-type: none"> • Transparency Section 5. • Voter turnout reflects an non-representative system. 	A revised governance structure and participation will increase turnout.	Recommendations 9, 11 and 12.

Question Posed by Working Group	Relevant Governance Concept(s)	CDLPA Commentary	Governance Reform Recommendation(s)
If so, is that symptom related to the governance structure?	As above.	As above.	As above.

B. CONVOCAION/BENCHERS/THE TREASURER/EXECUTIVE COMMITTEE

Question Posed by Working Group	Relevant Governance Concept(s)	CDLPA Commentary	Governance Reform Recommendation(s)
Should the size of Convocation be reduced?	<ul style="list-style-type: none"> • Specialization Section 3(c) • Efficiency Section 3(c) • Transparency Section 5 	Convocation should have 2 more public appointees be split annually between a governing council and Discipline Bench.	Recommendations 1 and 2.
Are there alternatives to reducing the size of Convocation that would be preferable?	<ul style="list-style-type: none"> • Governing Section 3 • Specialization 	Half of resources go into Discipline. Annually, the allocation should be completed.	Recommendations 1 and 2.
Should term limits be imposed on elected Benchers?	<ul style="list-style-type: none"> • Transparency Section 5 • Accountability Section 4 • Adaptability Section 3(c) 	Some form of term limit is required. Three terms is likely the right number.	Recommendation 12.
Should Convocation continue to have <i>ex officio</i> life Benchers?	<ul style="list-style-type: none"> • Transparency Section 5 • Accountability Section 4 	Continuity is important, but must be limited to an acceptable term.	Recommendation 5.

Question Posed by Working Group	Relevant Governance Concept(s)	CDLPA Commentary	Governance Reform Recommendation(s)
Should former Treasurers continue to be <i>ex officio</i> Benchers?	<ul style="list-style-type: none"> • Transparency Section 5 • Accountability Section 4 	Past Treasurers should be Treasurer Emeritus for one four (4) year term.	Recommendation 6.
Should former Attorneys General continue to be <i>ex officio</i> Benchers?	<ul style="list-style-type: none"> • Accountability Section 4 	Current Attorney-General should be maintained, but not past Attorneys-General.	Recommendation 7.
Should Convocation have an Executive Committee? If so, what role should such a committee play in the governance structure?	<ul style="list-style-type: none"> • Efficiency Section 3(c) • Specialization Section 3(c) 	With the advent of a Governing Council reduced in size and with more broadly based committees the Governing Council would function more efficiently.	Recommendation 9.

C. THE DISCIPLINE FUNCTION

Question Posed by Working Group	Relevant Governance Concept(s)	CDLPA Commentary	Governance Reform Recommendation(s)
Should Benchers continue to be both policy makers and adjudicators?	<ul style="list-style-type: none"> • Specialization Section 3(c) • Efficient size Section 3(c) 	Governing Council and the Discipline Bench would be annually allocated.	Recommendations 2 and 3.
Should the Law Society have more non-bencher lawyers and/or non-lawyers as hearing panel members? If so, to what extent?	<ul style="list-style-type: none"> • Self Regulation Section 9(ii) • Public Interest Section 8 	Should additional discipline committee members be required, same could be named to a pool.	Recommendation 4.