



ACLCO Comments to the Law Society of Ontario Governance Task Force October 4 2018

Background – Call for Comments

The Law Society's **Governance Task Force** issued a Call for Comment to obtain input on various components of governance, with the goal of ensuring that the Law Society's governing structure enables effective oversight for the Law Society as it fulfills its mandate and meets its accountabilities as a public interest regulator.

The Task Force asked to hear from lawyers, paralegals and stakeholders about potential governance changes for the Law Society.

Options under consideration to enhance the Law Society's governance include:

- a smaller size board (Convocation) for the Law Society
- changes to the length of the terms for the Treasurer and Benchers
- new terminology that better reflects the Law Society's governance structure.

A **Call for Comment** paper discussed the work of the Task Force and its areas of focus and included specific questions on the options under consideration.

While not part of the call for comment, the Task Force is also considering a revised committee structure (including the number, size and composition of committees) and potential changes to the frequency of Convocation and committee meetings.

This feedback received will assist the Task Force in determining its recommendations for Convocation's consideration. The Task Force plans to report to Convocation by the end of 2018 with recommended changes.

ACLCO Response

The ACLCO has commented on those options under consideration by the Task Force that we think are most relevant to clinics and clinic members of the Law Society. We did not respond to questions regarding the size of the Law Society's Board, or changes to the Treasurer's term.

We did provide answers to the following questions.

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

Yes. Appointing board positions is a useful method to increase diversity among board members. The appointment process could address the lack of racial, gender identity and disability diversity as well as aim to include lawyers and paralegals from varying types of legal practice.

When considering lay appointments, the Law Society should ensure that persons who have received legal aid services have a board position assigned to them. Community legal clinics who interact daily with those who require legal aid services are in a good position to make recommendations to the Law Society on these appointments.

A.6 Beyond appointments to the board, what other methods could be used to increase the diversity of the Law Society's board with reference to the elements of diversity described above?

Lawyers and paralegals who are racialized or who have a disability, or of varying gender-identities should be actively encouraged to stand for elected board positions. These lawyers do not generally hold the higher paying positions in the legal profession. Lawyers who work in small offices may find it more difficult to take time away from their practices in order to serve on the Law Society's board. Service as a LSO Board member should not be financially onerous. Per diems and reimbursements for Board members should be adequate so as not to place a burden on lawyers, especially lawyers who reflect the province's diversity, or the organizations that they work for.

A.7 Are there other options the Law Society should consider for the composition of its board?

The ACLCO urges the Law Society Board to provide for designated "sectoral" positions. This would mean that a number of seats on the Law Society's governing body should be expressly set aside for lawyers not engaged in private practice. The interests of lawyers and paralegals who work on a basis other than fee for service are considerably different from those who work in private practice.

Historically, lawyers who work in legal clinics, at Legal Aid Ontario and in government have been starkly underrepresented in Law Society governance. This lack of representation has resulted in Law Society decisions that have impacted negatively on clinic lawyers and, we expect, others in underrepresented sectors. The ACLCO has often had to intervene to rectify this impact. If clinic lawyers and lawyers in other non-profit sectors are represented in Law Society governance, directors can be fully

informed of the impact of their decisions on all lawyers during the decision-making process.

To achieve greater equality on the Law Society Board, there should be a number of Board positions set aside for lawyers and paralegals who work in the social justice/non-profit sector such as in community legal clinics, or at LAO. Another set of Board positions should be set aside for lawyers who work in government. These should be elected positions

Consideration should also be given to designating a certain number of Board positions for other underrepresented groups such as women, lawyers of varying gender-identities or indigenous lawyers.

Designating such positions would acknowledge the extent to which the profession has changed demographically, and provide a corresponding change in its leadership.

C.2. Should the term limit of 12 years for service as a bencher remain the same or be reduced to eight years (two four year terms), nine years (three three year terms), or some other limit?

A term limit of 12 years for service as a bencher should be reduced. More frequent renewal of benchers may be more responsive to the changing face of the profession and its evolving exigencies. The fresh energy of newly elected benchers facilitate more nimble action as required by general societal changes, such as increases in poverty; or, international human rights crises that require a response from Ontario's legal profession. Two four-year terms seems reasonable.

**D.1 What are your views on changing governance terminology by replacing:
“Treasurer” with “President”
“Bencher” with “Board Member”,
“Council Member”, “Director” or “Governor”,
“Convocation” with “Board”, and
“Board of Directors”, “Board of Governors” or “Council”?**

Changing the governance terminology is welcome. Terminology such as "President", "Board Member", "Director", "Board of Directors" are more easily understood by the public; better describe the nature of the governing body; and are therefore more transparent. The historical terminology, while honouring tradition, can also symbolically perpetuate a closed governing body tethered to traditions that served to exclude diversity among the governors of the legal profession. Modernizing the terminology can be an acknowledgment of change and progress towards a law society that embraces diversity and that is moving away from the exclusive nature of the traditional terminology.

E. Other Comments

The Task Force welcomes any other comments you may wish to make on the issues discussed in this document as they relate to the governance structure of the Law Society.

The Association of Community Legal Clinics of Ontario serves as the representative body of community legal clinics in Ontario. Legal clinics are instrumental in providing access to justice for low-income and disadvantaged persons throughout the province. Clinics enable people to meet basic and fundamental needs: a source of income, housing and shelter, equality and human rights, access to health care, education, workers' rights and more. Clinics are funded pursuant to the Legal Aid Services Act, which names them as the foundation of clinic law and receive most of their funding from Legal Aid Ontario.

There are 74 clinics across the province that together employ hundreds of lawyers, licensed paralegals and community legal workers. Clinic practitioners practice in a setting which is unlike more traditional law practices in that services are provided other than on a fee for service basis, in a community setting, and, by definition, for disadvantaged and indigent clients. Clinic practice gives rise to unique issues and challenges for lawyers and paralegals.

The ACLCO urges the Law Society to ensure that the voices of clinic lawyers and paralegals are heard in this important consultation on the governance of their profession.