



Tab 8

Report to Convocation April 25, 2013

Priority Planning Committee

Committee Members:
Thomas Conway (Chair)
Raj Anand
Marion Boyd
Christopher Brett
Cathy Corsetti
Howard Goldblatt
Michelle Haigh
Carol Hartman
William McDowell
Susan McGrath
Malcolm Mercer
Janet Minor
Julian Porter

Purpose of Report: Decision

**Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. At the October 25, 2012 Convocation, the Treasurer announced the creation of a working group of the Priority Planning Committee to address governance issues. Members of the working group are Raj Anand, Christopher Bredt, Howard Goldblatt, Michelle Haigh and Janet Minor. Jim Varro acts as secretary to the Working Group.
2. The issues and recommendations respecting the structure of Convocation and paralegal governance in the reports of the Five Year Review of Paralegal Regulation published by the Society and the independent reviewer appointed by the Attorney General of Ontario were referred to the Working Group.
3. Following its review, the Working Group prepared a report recommending reforms to Convocation's structure. The Priority Planning Committee agrees with the recommendation and submits this report to Convocation for consideration. The recommendation received the unanimous support of the Paralegal Standing Committee, which reviewed the Working Group's report at the meeting of April 11, 2013.

FOR DECISION

**GOVERNANCE REFORMS RESPECTING ELECTED
PARALEGAL BENCHERS IN CONVOCATION**

Motion

4. **That Convocation approve an increase in the number of elected paralegal benchers from two to five.**

Introduction

5. One of the responsibilities of the Priority Planning Committee (“the Committee”) is to review the priorities established by Convocation and new policy issues that arise, and recommend to Convocation the priorities that should be considered and approved by Convocation going forward.
6. On April 26, 2012, Convocation approved the work plan proposed by the Committee for the priorities for the 2011-2015 bencher term, including Convocation governance effectiveness. Convocation agreed with the Committee’s report that the Law Society’s effectiveness as a regulator is directly linked to the efficacy of its governance processes and procedures. The work plan noted that “going forward, the Law Society will consider what will work to help to facilitate effective governance.”
7. This report, arising from the work of the Committee’s Governance Working Group, focuses on the structure of Convocation as it relates to the participation of paralegals.

Current Paralegal Governance

8. In 2006, amendments to *Law Society Act* established the Paralegal Standing Committee, composed of five paralegals, three appointed benchers and three elected lawyer benchers. The Committee’s five paralegal members are elected every four years by all paralegal licensees. Following that election, two paralegal benchers are elected from the five by eight members of the Committee: the five paralegal members and the three lay benchers.

9. With the experience of five years of paralegal regulation by the Law Society, the time has come to revisit the original structure for electing paralegal benchers and the number of elected paralegal benchers. Both the reports mandated by the five-year statutory review of paralegal regulation – the Law Society’s report and the report of David Morris, the independent reviewer – raised the issue of the appropriate structure of Convocation as it relates to paralegals.
10. While the recommendation of Mr. Morris spoke of proportional representation of lawyers and paralegals in Convocation, the motion in this report is not based on this concept, but on a more fundamental principle: that good governance for the Law Society is supported by having all elected paralegals be decision-makers in Convocation to ensure the effective exercise of the mandate to govern lawyers and paralegals in the public interest.
11. This report proposes that the five candidates obtaining the most votes in the paralegal election be declared elected as paralegal benchers.

Historical Background

12. Based on recommendations in the 2004 report of the Paralegal Task Force, Convocation established the governance structure for paralegal regulation. The following excerpt explains the model:

GOVERNANCE

171. The Consultation Paper set out a model for paralegal governance, involving a Standing Committee of Convocation that would develop policies on paralegal regulation and submit them to Convocation for approval in the same way as other Law Society committees. Unlike other committees, however, it is proposed that Convocation could not at the first instance substitute its own decision for that of the committee, but could send the matter back to the Standing Committee for further consideration. Only on the second consideration could Convocation substitute its own decision.

172. The composition of the Standing Committee would be,

- a. five paralegals, to be elected from all licensed paralegals (until the first election, the five licensed paralegals would be appointed by the Attorney General);
- b. five elected benchers appointed by Convocation on the recommendation of the Treasurer, and
- c. three lay benchers, appointed by Convocation on the recommendation of the Treasurer, for a total of thirteen members.

173. All members of the Standing Committee would be under an obligation to act in the public interest.

174. The Chair of the Committee would always be a paralegal. The Task Force proposes that all thirteen members of the committee choose the chair. The vice-chair would be an elected lawyer bencher or a lay bencher.

175. The Task Force further proposes that two of the paralegal members of the committee sit as full members of Convocation; these two persons would be chosen by eight members of the committee, the five paralegals and the three benchers. The committee chair would also be a member of Convocation, but would not have a vote (unless he or she is one of the two persons chosen as described).

176. The mandate of the Standing Committee would include,
- a. Licensing and educational requirements
 - b. Code of Conduct
 - c. Licensing Fees
 - d. Rules of Incorporation
 - e. Rules for Advertising
 - f. Trust Account Rules
 - g. Complaints, Investigation, Hearing and Appeal Processes
 - h. Insurance
 - i. Compensation fund
 - j. Continuing Education
 - k. Reporting Requirements

177. Consultation with the legal profession indicated general acceptance of the proposed governance model. This represents a change in the view of the profession since the discussions on this topic of 2002, when there was

more opposition to the acceptance of a legitimate role for paralegals and to the proposal that the Law Society should be the regulator.

178. The report by Professor Zemans on behalf of the PPAO takes the position that the Law Society has a conflict of interest in regulating paralegals. Justice Cory suggested that the appropriate body to regulate paralegals would be independent of both the provincial government and the Law Society, but that self-government would not be feasible in the short to medium term. He wrote, “Eventually, perhaps, after ten years, the paralegals will become self-governing. This should not occur until the institution is well established and has the confidence of the public and the provincial government.”

179. However, the Cory model, requiring a new, separate body to regulate paralegals would inevitably be more expensive than the modest increase in the scope of the Law Society’s activities required to include paralegal regulation, given the existing expertise and experience the Law Society has in regulatory functions. A new body would also take much longer to become effective, given the work involved in a start-up operation.

180. The Law Society already has a mandate to govern in the public interest, not in the interest of lawyers. The public interest must be the primary consideration in paralegal regulation as well.

The Results of the Five Year Review

13. The Law Society’s June 2012 report on the five-year review of paralegal regulation included the findings of an external research firm on numerous aspects of paralegal regulation, including governance. Almost all aspects of the Law Society’s progress in paralegal regulation received a high level of approval. However, according to data from the survey of paralegals by the research firm, only 27% of respondents approved of the current governance model, while 39% disapproved and 34% said they were unsure.
14. The report noted that the design of the Paralegal Standing Committee has worked well, that paralegal and non-paralegal members of the Committee work together cordially and

that no Committee report has ever been rejected by Convocation. However, the report also recognized that the current governance structure would require revision.

15. David Morris, the independent reviewer appointed by the Attorney General following receipt of the Law Society's report, provided context for his recommendations, including those on governance, in introductory remarks in his November 2012 report as follows:

With the mechanics of paralegal regulation firmly - and admirably - established, the opportunity presents itself for the Law Society to more directly address the challenge inherent in its legislated duties. This observation frames my findings and the recommendations that I offer - many of which are offered in support of initiatives that are already underway.

16. Mr. Morris went on to reflect on the place of the elected paralegals in the Law Society's governance structure:

Two of the five paralegal members may be elected as Convocation benchers. The committee chair, elected from among the paralegal members, may attend Convocation with a voice but no vote, unless s/he is also one of the two elected paralegal benchers.

17. In his summary of recommendations, Mr. Morris proposed "That the governance structure of the Law Society be amended to reflect its requisite impartiality to the professions it regulates." Recommendation #2 in his report proposed that the governance structure provide for proportionally equal representation of lawyers and paralegals.

Discussion and Proposal

18. The responsible and appropriate response of the Law Society to the five-year review governance recommendations is to base the incentive for reforms not on a system of proportionality but on principles of effective governance.

19. As Mr. Morris points out, the Law Society's ability to be responsive and to be seen to be responsive to its regulatory mandate is closely linked to its governance structure. The current structure is based on the notion that Convocation benefits from the contribution of a significant core of elected benchers (40 lawyers and two paralegals) who bring perspectives from various regions and practice experiences.
20. Of note is the decision made early on by Convocation's leadership to increase the involvement of all five paralegals in a meaningful way. Under Treasurer Pawlitz, the three non-bencher elected paralegals were invited to join committees other than the Paralegal Standing Committee, and were appointed to various committees. They were also invited to participate in the bencher planning session in the fall of 2011, at which benchers set the Law Society's priorities for the bencher term. Under the current Treasurer, all five elected paralegals have been invited to attend and speak at Convocation. Since the current Chair of the Paralegal Standing Committee is not a bencher, this has only involved the addition of two extra persons to Convocation. As a result, all elected paralegals are engaged at the governance level and thereby are becoming successfully integrated into the work of the Law Society.
21. The next step is to formalize the participation of additional paralegals in Convocation as elected paralegal benchers.
22. The last increase in the number of elected benchers prior to paralegal regulation occurred many years ago. In the early part of the 20th century, Convocation was composed of 30 lawyer benchers. That number remained the same until the 1970 legislative reforms when the number was increased to 40. The growth in the profession militated against a structure for Convocation based on a strict number of representatives in proportion to the membership if Convocation was to remain a reasonable size. That view must continue to govern any increase in the size of Convocation.
23. Over the years, Convocation has continued to be representative of the profession. With each successive election of the core of 40 benchers, Convocation has also become more

diverse. The number of benchers from sole practices and small to medium sized firms significantly outnumbers benchers from large firms. More women are now elected. A number of lawyers from racialized communities are also elected. The regional bencher scheme also ensures representation from each of the electoral regions (which mirror the judicial districts in the province). An increase in the number of elected paralegals benchers is consistent with this trend and supports effective governance of all licensees.

24. The prevailing view among paralegals is that the candidates with the most votes in the election should become benchers, as is the case with lawyer benchers.
25. At a practical level, the current model for the election of paralegal benchers has proved cumbersome and difficult to administer. The number of voters – eight – is very small, and is rendered awkward by the fact that five of the eight electors are also candidates. This can be disruptive to the otherwise collegial nature of the Paralegal Standing Committee. Moreover, the candidates obtaining the most votes in the paralegal election are not necessarily the persons elected as benchers. The fact that the Chair of the Paralegal Standing Committee cannot move a motion or vote on the Committee's report to Convocation has also proved unsatisfactory.
26. Having a reasonable number of elected paralegal benchers who are willing to contribute time and effort to governance will ensure that a range of views and perspectives informed by practice experiences will be offered. Determining that the five elected paralegals be elected as benchers with decision-making authority will accomplish this effectively for the foreseeable future.

Implementation

27. Legislative amendments will be required to implement this proposal, in the event it is approved by Convocation. The aim would be to have the new scheme in place prior to the next election of paralegals in March 2014, planning for which will begin later this year.