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The Governance Review Task Force
Law Society of Ontario - *Via Email (GovernanceReforms@lso.ca)*

Dear Governance Review Task Force Members:

CLA Submissions on LSO Governance Reforms

A. Background of Our Organization

The Criminal Lawyers' Association (CLA) is one of the largest specialty legal organizations in Canada, with more than 1,800 members. We are a voice for criminal justice and civil liberties in Canada. Our advice and perspective is sought by all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice. We also assist our members in every aspect of the practice of criminal litigation. The Association is not-for-profit and is governed by an [executive and board of directors](#) elected by the [membership](#).

CLA develops and hosts continuing education programs for criminal law practitioners and offers the most comprehensive annual criminal defence law conference in Canada. The three day convention and education program each fall includes leading counsel and lecturers from Canada and elsewhere. The highlight of each convention is the presentation of the G. Arthur Martin Criminal Justice Medal for an outstanding contribution to criminal justice. G. Arthur Martin was Canada's greatest criminal advocate before he became a leading jurist with the Ontario Court of Appeal.



The CLA has long been active in the debate about the importance of a strong, independent and well funded legal aid program. We know from experience that this is the key to equal access to justice for everyone charged with a criminal offence. We will continue to be at the front of this issue in the hope that access to justice will become a reality for those without the income or assets to fund their defence.

Our Legislation Committee is regularly asked to make submissions on behalf of our members to Legislative Committees at both the Commons and Senate level and Provincial Legislatures on all proposed Bills affecting criminal justice. Our Young Lawyers Committee presents free Education Programs for the benefit of our younger members. The Association is often called upon to seek intervenor status in cases before the Court of Appeal and the Supreme Court of Canada.

The CLA is concerned about how the LSO's proposed changes will impact our ability to self-govern and the voice of trial lawyers practicing criminal law, meaning representing clients in one of the areas of the law that has the greatest impact on the public. This impact on the public is two-fold, criminal law has the greatest significance for a person who is facing jail, a deprivation of their liberty and the area of law that has the most significant impact on the public's confidence in the administration of justice. The CLA hopes to see reforms that ensure that the Benchers reflect competent representation, expertise and includes a mechanism to ensure that criminal lawyers, and trial lawyers are reflected among the composition of the board as we represent a valuable perspective, necessary for self governance.

B. Overview of the CLA's position on the Proposed Changes

CLA members generally did not support the core changes proposed. Members were canvassed for their input and provided feedback that they were not aware of the LSO's desire to make such important changes and why this was being done at the initiative of



the LSO rather than by a mandate reflected in Benchers platforms or debated through an election. CLA members supported some changes. This feedback from our members informed our position on the proposed changes.

The LSO currently relies on the Bencher model of self-governance. This is well described in the scholarly article of Ms. Anita Anand, as follows:

The Bencher Model of Governance The Law Society Act and its antecedents have governed the LSO since 1797. Throughout that period, it has declared, simply, “The benchers shall govern the affairs of the Society.”²⁸ These benchers include forty elected lawyers representing specific geographic regions, five elected paralegals, up to eight lay members appointed by the Lieutenant Governor, and at least four ex officio benchers – the Minister of Justice for Canada, the Attorney General for Canada, the Solicitor General for Canada, and the Attorney General for Ontario.²⁹ One of the elected benchers is then elected Treasurer: the name for the leader of the LSO.³⁰

Elected benchers need have no specific skills. To run in a bencher election, benchers must merely practice law in the region they seek to represent, not have been a bencher for more than twelve years, and be nominated by five licensees whose licenses are not suspended.¹

The CLA supports some of the proposed changes the LSO seeks to reform. However, the CLA has concerns about significant changes to the structure of the LSO elections and composition of the board/benchers. We are concerned that these changes will significantly reduce the voice of the lawyers at the table, thereby quieting and homogenizing the voices at convocation, who ultimately represent the bar and the CLA's members.

These changes come as a result of the slate, or group coalitions that occurred during the last election. However, in a system that functions like a democracy, voting may produce

¹ Governance Gone Wrong: Examining Self-Regulation of the Legal Profession, Anita Indira Anand, (2019) Legal Ethics, online, accessed February 10th, 2025: https://scholar.google.ca/scholar_url?url=https://papers.ssrn.com/sol3/Delivery.cfm%3Fabstractid%3D3251067&hl=en&sa=X&ei=l3uwZ7COB9alieoP4pXqgQk&scisig=AFWwaeZuBgmWIPzvMTI-Xn_PzF-I&oi=scholar



results that are not always proportionate to the wishes of the majority. Steps should be taken to ensure fairness during elections but should not strip licencees (the voters) of their rights, or voice. It is crucial to the CLA that we ensure the integrity and independence of our self-governing profession.

It is the CLA's position that the reforms that reduce the number of lawyers on the board threatens our efficacy as a self-regulated organization. Further, we should not support changes that do not allow for lawyers to vote for representation across the province and we should not support changes that introduce an appointment, rather than an election process.

The CLA supports an overall reduction in the number of members of the Board, provided the percentage of representation, and mode of election stays the same. The CLA would also support changes to the method by which vacancies are filled and term limits. These are reasonable and prudent changes that encourage best practices across the board. The CLA's detailed submissions are below.

C. Overview of the LSO's Core proposed Changes:

Size and Composition of the Board

The current board of the Law Society of Ontario (LSO) consists of 54 members, including 40 elected lawyers, 5 elected paralegals, and 8 government-appointed public members. The proposed reforms recommend reducing the board size to 30 members, comprising 14 elected lawyers, 2 elected paralegals, 10 Law Society-appointed members (4 lawyers, 1 paralegal, and 5 public members), and 4 government-appointed public members. The LSO's position is that the reduction will enhance efficiency and streamline governance.

Electoral Reform



Electoral reforms would significantly change voting practices. Currently, voters can cast up to 40 votes for lawyer candidates and 5 votes for paralegal candidates, with no restriction on voting for candidates outside their region. The proposed changes would limit voters to casting one vote or as many votes as there are positions in their region, and restrict voting to candidates within the voter's region. Additionally, the maximum term limit for board members, currently 12 years, would be reduced to 8 years. Vacancies, which are presently filled by the next-highest vote recipient from the most recent election, would instead require mandatory by-elections. The LSO proposes that these changes will strengthen regional representation and ensure alignment with current priorities.

Legacy structure, processes, and procedures

The LSO's governance structure and procedures were established in 1797, reflecting a legacy of large board size and parliamentary-style decision-making. The proposed reforms aim to modernize these processes to align with the current number of licensees and update governance practices, including reducing the board size and adopting streamlined decision-making processes. The LSO maintains that these updates are necessary to remain relevant and effective in serving the public interest.

1. Size and Composition of the Board

Current Structure

Currently, the board consists of 54 members, including 40 elected lawyers, 5 elected paralegals, and 8 government-appointed public members.

Proposed Structure

Reduce the board to 30 members: 14 elected lawyers, 2 elected paralegals, 10 Law Society-appointed members (4 lawyers, 1 paralegal, 5 public members), and 4 government-appointed public members.



LSO Commentary

A smaller board may improve efficiency but risks limiting diverse representation, particularly from smaller regions or underrepresented practice areas. The LSO proposes the following reduced board size and composition:

Total board Members	Elected licensee members		Law Society-appointed members	Govt appointed members
30	14 lawyers	2 paralegals	10	4
18 lawyers 3 paralegals 9 non- licensees	Toronto 4 Central East 2 Central South 1 Central West 2 East 2 Southwest 1 Northeast 1 Northwest 1	Greater Toronto Area 1 Outside GTA 1	4 lawyers 1 paralegal 5 non-licensees	Public members, OIC appointments

CLA Position

The CLA supports this proposed change in part. The CLA is not opposed to a reduction in the number of positions on the board, provided the percentage of lawyers remains the same, and those lawyers who are selected via an election rather than an appointments process. The CLA does not agree that 10 elected positions should be replaced by appointments. We are concerned about the rationale behind this proposed change and the efficacy of any appointment process. This is an unnecessary additional layer of process and bureaucracy which is unnecessary and with no data to support the conclusion that an appointments process will overcome the current challenges.

2. Appointments to the Board



Current Practice

Currently, Benchers are elected.

Proposed Appointment Process

Create a new category of 10 Law Society-appointed board members (4 lawyers, 1 paralegal, 5 public members)

Commentary

LSO commentary is that this will increase diversity or a more representative board.

CLA Position

The CLA does not support this proposed change to create ten LSO appointed positions and appoint lawyers by way of an appointments committee for all the reasons outlined above under section (1).

While the CLA agrees that ensuring a public voice is heard, this is not a main driver and could be addressed through a clarification of the duties of benchers, to ensure they uphold their duty of loyalty to act in the public interest. An appointment model as outlined is not more likely than the current system to give a voice to members of the public, members of the bar or ensure more diversity. As currently drafted it has the appearance of concentrating more power at the centre of the LSO, rather than ensuring self-governance by licencees.

Lastly, the provincial government currently provides for and appoints public members. It is unlikely convocation would benefit from another appointment process to meet the goals of an increased representative voice or diversity.

3. Transparency in Governance



Current Practice

NA

Proposed Practice

Establish an independent Governance & Nominating Committee to oversee Law Society appointments to the Board

Commentary

The LSO proposes a Nominating Committee to appoint Benchers.

CLA Position

The CLA does not support the proposed change to engage in an appointment process and proposes the LSO maintain an election model for all the reasons already outlined.

The appointment process and nominating committee as proposed while acceptable in principle creates another layer of bureaucracy that is also subject to flaws and is fallable and there is no data to suggest that this model will ensure diversity, competence or expertise.

4. Regional Representation

Current Regulation/Bylaw

Currently licencees can vote for Benchers in each region.

Proposed Change

Maintain existing regions but adjust the allocation of elected positions to reflect licensee distribution (e.g., Toronto gets 4 positions, other regions 1-2 positions each).



The New Proposed Allocations of Benchers by Region:

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

CLA Position

The CLA partly supports this change. If the reform to the size of the board is passed, it is understood that a reapportioning of seats proportionate to the electorate in that region should be configured. However, lawyers in the GTA make up the largest population of voters and should retain the highest number of allocated elected positions.

5. Voting Process

Current Regulation/Bylaw

Eligible voters can vote for up to 40 candidates (lawyers) or 5 candidates (paralegals), unrestricted by region.

Proposed Changes

Eligible voters may cast only one vote or as many votes as there are candidates in their region. Voters may only vote for candidates within their own region.

For example, if the proposed changes were passed, and the licencees' address was



listed as Toronto Region, they can vote for up to four candidates.

Commentary

This change will promote regional representation.

CLA Position

The CLA does not support limiting the ability to vote for candidates all over Ontario. This has been an important tool for lawyers to express their voice through voting.

The reality of practice now post-pandemic is that criminal defence lawyers are appearing in Court in various regions. Very few lawyers are restricted to practice or appearances in just one geographic area. This simply does not reflect the reality of practice and would disentitle lawyers who practice in more than one area from voting for representatives that they choose. Lawyers should be able to vote for the Benchers that align with their values and ought not be restricted by region. This can allow for more diversity, and a variety of candidates from various areas of expertise, type of practice and equity seeking groups.

If the goal of these changes is to disincentivize slate or coalition candidates, the LSO could prohibit that type of structure through campaigning rules rather than the changes proposed.

6. Term Limits



Current Regulation/Bylaw

Board members can serve up to 12 years.

Proposed Changes

Maintain a 4-year term, but reduce the maximum term limit to 8 years (or two terms).

CLA Position

The CLA supports maintaining a four year term, and supports limits for good governance in a system with elected representatives. The CLA agrees there are strong arguments for continuity that favour allowing candidates to run for election for three terms or a total of 12 years.

7. Filling Vacancies

Current Regulation/Bylaw

The next highest vote recipient currently fills vacancies from the most recent election.

Proposed Changes

Introduce mandatory by-elections to fill board member vacancies.

CLA Position

The CLA supports filling vacancies with by-elections.

8. Other Issues

- The LSO may wish to consider the following issues which impact benchers' ability to serve and the public interest. For example, Benchers ought to have accountability and the LSO must have a mechanism to ensure accountability. Benchers should be bound by a duty of loyalty to act in good faith and with care, be required to disclose conflicts of



interest, seek recusal and not vote on matters for which they are in an actual or perceived conflict.

- The LSO could also introduce minimum standards for Benchers to ensure they have the expertise to carry out their duties to act in the best interest of society and carry out the LSO's mandate.

D. Conclusion

The CLA requests that the LSO not pass these changes as currently proposed. The CLA supports some of the proposed changes, but important changes to the board composition, regional voting and an appointment process are not supported. The CLA partially supports the proposed changes but also recommends that the LSO engage in further consultations to obtain greater input from lawyers across the province. These consultations will lead to greater transparency and understanding of these issues among licencees. This would provide stakeholders to liaise with the LSO to better understand intended outcomes and that data relied upon as the basis for the proposed changes and with that understanding propose other possible solutions.

The CLA does support reforms in areas such as a reduction in the size of the board, replacement of bencher vacancies, term limits and we encourage the LSO to review the issues raised by the CLA regarding competency, expertise, conflicts of interest and the Bencher's duties.

The CLA wishes to thank the LSO for the opportunity to provide submissions. We are available to the LSO as a resource and for further consultation.

Sincerely,

Jessyca Greenwood
CLA Treasurer & Governance Chair