



Law Society
of Ontario

Barreau
de l'Ontario

Tab 5

Report to Convocation

October 31, 2024

Governance Review Task Force

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Purpose of Report: Information

Table of Contents

<i>In camera</i> report	Tab 5.1
Request for Comment: <i>Towards More Effective Governance – Governance & Electoral Reforms at the Law Society of Ontario</i>	Tab 5.2



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Tab 5.2

Towards More Effective Governance – Governance & Electoral Reforms at the Law Society of Ontario

Request for Comment

October 31, 2024

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Table of Contents

	Page
Summary	3
Background and context	3
1. Overview of current structure	3
2. Governance review – past, present and future.....	4
Summary of proposed changes.....	8
Discussion	13
Need for change	13
1. Size and composition of the board	13
2. Need for electoral reform	15
3. Legacy	17
Elements of proposed model	18
1. Reduction in the size of the board	18
2. New category of Law Society appointed board member	19
3. Establishment of a Governance & Nominating Committee...	20
4. Electoral regions	21
5. Voting reforms	23
6. Eight-year term limits for board members	26
7. Filling elected bencher vacancies	27
Invitation for feedback and questions for comment	30
Next steps.....	31

Summary

The Governance Review Task Force (Task Force) is considering reforms to the Law Society of Ontario's governance structure, and the process for electing benchers, described in this report. The Task Force is seeking input on the recommendations.

The Task Force has been meeting regularly since October 2023. Pursuant to Convocation's approved strategic priorities, this is a review of the governance structure that provides oversight of the Law Society's regulatory responsibilities, including a review of the board member election process. The Task Force's goal is to determine if changes are required to the Law Society's governance, including election reform, to make the organization more accountable and effective in carrying out its public interest mandate and fulfilling its strategic mission.

The Task Force is proposing a foundational set of future changes for a new governance model in a phased approach, taking an incremental approach to these changes as soon as they are feasible and appropriate. Most of these proposed reforms, if approved, would take effect at the time of the next Law Society election for board members scheduled to take place in April of 2027. The Task Force also proposes a change in the process for filling elected bencher vacancies which if approved, would take effect in 2025.

More reform proposals will follow in the coming year and would also take effect between now and 2027.

Background and context

1. Overview of the Law Society's current structure

The foundation for the Law Society's governance structure is set out in the *Law Society Act*. The Act sets the number of benchers (directors) and provides that 45 benchers who are licensees are to be elected in accordance with the by-laws and that 8 non-licensee benchers are appointed by the provincial government. The Act also provides that the president – the Treasurer – is elected annually by benchers in accordance with the by-laws.

The Act includes extensive by-law-making authority, including on matters of governance. By-Law 3 – Benchers, Convocation and Committees – is the key executive legislation dealing with governance. As Convocation makes the by-laws, it has wide

latitude to create or amend governance sub-structures, processes or procedures. By-Law 3 covers, among other things:

- election of the benchers¹ (including vacancies during the bencher term), election of the Treasurer and election of the Paralegal Standing Committee chair
- bencher remuneration
- Convocation and its procedures and
- committees and mandates of standing committees.

The current composition of Convocation is set out at **Tab 5.2.1**.

2. Governance review - past, present and future

Governance is not static at the Law Society. Some aspect of governance has typically been part of the Law Society's policy agenda over the past decades, and the consideration of governance issues at the operational level has been ongoing for many years. This is because governance structure and process can have a significant impact on how the Law Society fulfils its corporate purpose. An effective board/operations dynamic is critical to achieving the regulatory objectives under the mandate. Regulatory knowledge and skill is required of the operations team to run the organization and in that respect, the governing legislation provides that the CEO has a very broad discretion to ensure that the Law Society is meeting its obligations and standards.

Through the work of various task forces and working groups, some governance changes have been instituted over the past 12 years or so – for example, modernizing and finetuning election processes, ending *ex officio* bencher positions and reducing the number of committees. These types of changes assist in better managing governance protocols, and some of the reviews that prompted the changes touched on but did not pursue more fundamental changes to the governance structure. This means that the reviews to date have not meaningfully engaged the questions of why the Law Society has the structure it does and what options for better governance could or should be

¹ The current qualifications for potential elected board members in by-Law 3 are minimal. To be elected, the person must be a licensee:

- whose license is not suspended
- who has a business address, or if not, a home address, in Ontario
- who is not an undischarged bankrupt
- who is at least 18 years old
- who, if not previously an elected bencher, must complete the candidate orientation and education course.

The regional bencher scheme guarantees that a least one bencher candidate from each of the eight regions (which mirror Ontario's judicial districts) is elected.

explored in today's corporate and regulatory environment. In this present iteration of a governance review, supported by an approved strategic priority where the goal is to address governance reform, the opportunity exists to directly address the "why" and "what" issues related to governance.

Some legal and other regulatory boards have addressed these issues and made structural improvements or changes to adapt to the evolving landscape and expectations about how regulatory mandates should be fulfilled in the public interest. These include moving to smaller boards, public members as board and committee chairs, equal professional and non-professional memberships or a majority of non-professionals, streamlined procedures and technological advances.

The Law Society as an organization is well-positioned for this type of review. Law Society operations under the CEO's leadership function at a high level, with engaged, motivated employees and highly skilled leadership from management. There are no crises or organizational difficulties that will require extraordinary time or effort by the board as an oversight body. This means benchers can focus on their ongoing governance responsibilities, which at present include dealing with important issues of policy and effective decision-making. Through this review, the Law Society will have the chance to make decisions that will have a positive impact on the future of the organization and its ability to fulfil its mandate.

Public interest

Under its terms of reference, the Task Force is to make recommendations for improvements to ensure effective fit-for-purpose governance and alignment of governance processes and actions with the Law Society's objectives. This is to include an examination of how current governance structures assist or inhibit the Law Society to achieve its statutory mandate.

Consistent core themes have guided the Task Force, including:

- The importance of the independence of the bar and the maintenance of self-regulation
- The need to maintain public confidence in the Law Society's ability to regulate and the importance of the public perspective in carrying out this function
- The need for focused, timely and effective decision-making in accordance with good governance principles
- The importance of geographic, linguistic and equity-seeking perspectives in the Law Society's governance structure.

Consideration of these fundamental themes has led the Task Force to conclude that changes to Law Society governance are needed to further the Law Society's public interest mandate. The proposed governance changes will increase the diversity of the board and the board's ability to make efficient and effective decisions, while protecting the independence of the bar and enhancing public confidence in the Law Society's ability to regulate the legal professions.

The Law Society's statutory mandate is referenced throughout this report and is reproduced here:

Function of the Society

4.1 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.

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

- 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
- 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
- 3. The Society has a duty to protect the public interest.
- 4. The Society has a duty to act in a timely, open and efficient manner.
- 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. 2006, c. 21, Sched. C, s. 7.

The Task Force noted the most recent governance improvements that were recommended by the Governance Task Force 2016 (GTF 2016) and were implemented

in 2018 and 2019.² Significant assessment was completed by the GTF 2016, including obtaining an extensive international governance review, a bencher survey and a public consultation, leading up to these changes.

The Hansell Governance Practices Review that was commissioned by the GTF 2016 found that Convocation is significantly larger than almost all regulatory boards across various jurisdictions (Canada, UK, Australia, etc.). The Law Society board is over twice as large than all other Canadian law societies except for British Columbia.³ In a 2017 bencher survey, in which fifteen elements of effective oversight were used as the basis for assessing the effectiveness of the Law Society's governance protocols, the Law Society received an overall governance effectiveness rating of only 55%⁴. Concerns

² On November 30, 2018, Convocation approved the following recommendations:

- a. effective for the bencher term beginning in 2019, *ex officio* benchers who have served 16 years or more as an elected bencher have no rights or privileges in Convocation.
- b. effective for the bencher term beginning in 2019, *ex officio* benchers who are former Attorneys-General of Ontario have no rights or privileges in Convocation.
- c. effective for the bencher term beginning in 2019, *ex officio* Treasurers continue to have the right to participate in a debate in Convocation but not the right to vote; and.
- d. the office of emeritus bencher be ended effective for the bencher term beginning in 2019.

By-Law 3 amendments followed on April 25, 2019.

³ The board of the new legal regulator in British Columbia will have 17 members

⁴ The 15 elements of effective oversight:

1. EFFECTIVENESS OF DECISION-MAKING: Committee process and Convocation decision-making are effective (ie: adheres to Mandate and responds to and advances the implementation of the Society's strategic plan).
2. EFFICIENCY OF DECISION-MAKING: Committee process and Convocation decision-making are efficient (ie: uses the appropriate amount of Convocation and staff time and effort to reach good decisions; makes excellent use of Convocation and staff time)
3. ECONOMY OF CONVOCATION AND ITS PROCESSES: Convocation and its processes, including the number, scope and work of committees, are appropriately economical (ie: the cost of operating Convocation and its committees provides members of the Society with optimal value-for-money)
4. CONSISTENCY OF CONVOCATION DECISION-MAKING: Convocation decision-making is consistent over time (ie: decisions "make sense" given previous Convocation decisions).
5. ACHIEVEMENT OF SOCIETY'S GOALS: Convocation facilitates the Society achieving its goals effectively, efficiently, economically and on a timely basis
6. INTEGRITY – SUBSTANCE: Convocation pursues the mission of the Society with integrity
7. INTEGRITY – APPEARANCE: Convocation appears to pursue the mandate of the Society with integrity
8. NIMBLENESS: Convocation facilitates the Society to be appropriately nimble and quick to act and change as necessary

included the size of board and committees and the length of time it takes to make decisions. The GTF 2016 concluded that effective governance required a smaller board and determined that the approach to change would be to recommend initial modifications (largely focused on reducing the number of *ex officio* members) and pursue further changes at a future date.

The time for change has arrived. The Law Society's current governance size and structure has been in place for many years and has remained largely unchanged, with the exception of adding paralegal licensees to the board. Since the work of the GTF 2016, a number of similarly situated regulators have made governance changes or are in the process of doing so. All of these organizations have focused on the need for change to ensure that the public interest is served through efficient, effective regulatory policy and operations, and the maintenance of public confidence in the ability of the regulator to address its obligations in a timely manner. For more information about developments at other regulators, refer to discussion at **Tab 5.2.2** as well as a snapshot of the current Ontario regulatory landscape at **Tab 5.2.3**).

Summary of proposed changes

The Task Force has engaged in significant deliberation respecting optimal board size and composition. The Task Force agreed that the appropriate approach to governance continues to include an elected component that holds a majority on the board.

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9. PUBLIC CONFIDENCE: The public has confidence in the Society
 10. STAKEHOLDER CONFIDENCE: Stakeholders (including paralegals and lawyers, legal organizations, law schools, government and its agencies) have confidence in the Society
 11. GROUP PROCESS: Group process at Convocation and in committees (to discuss, to decide, etc.) is effective and efficient
 12. CONVOCATION AND ITS COMMITTEES: Convocation does not re-do the work of committees; Convocation strikes the right balance of overseeing and relying on committee work
 13. CONVOCATION AND COMMITTEE MEMBERS: Convocation and committee members arrive at meetings prepared, listen to one another inquisitively, actively engage in discussion and contribute to the quality of decision-making
 14. RELATIONSHIP WITH STAFF: Convocation and staff have an appropriate and constructive relationship
 15. OVERALL QUALITY OF GOVERNANCE AND OVERSIGHT: The overall state of the Society's governance and oversight today

The Task Force discussed and concluded that an important component of a self-regulatory model of governance is that licensees of the profession that is being regulated are uniquely suited to regulating the obligations of their profession. This includes the ability to understand the context of various professional situations, the competence and conduct expectations inherent in providing appropriate service to consumers and ensuring that those members of the public are not harmed by the actions of licensees. Task Force members also concluded that the most effective board oversight models, and a best practice in regulatory environments, is to seek the benefit of appointed (unelected) members who have the backgrounds and skills necessary to “round out” the complement of elected board members to ensure a wide diversity of knowledge, abilities and judgment is applied to decision-making.

Having determined that a recommendation would be made for a model of governance that would include both an elected and appointed component to the board, the Task Force is recommending the following working model for board membership in a future state:

Total board Members	Elected licensee members		Law Society-appointed members	Govt appointed members
<p style="text-align: center;">30</p> <p>18 lawyers 3 paralegals 9 non- licensees</p>	<p style="text-align: center;">14 lawyers</p> <p>Toronto 4 Central East 2 Central South 1 Central West 2 East 2 Southwest 1 Northeast 1 Northwest 1</p>	<p style="text-align: center;">2 paralegals</p> <p>Greater Toronto Area 1 Outside GTA 1</p>	<p style="text-align: center;">10</p> <p>4 lawyers 1 paralegal 5 non- licensees</p>	<p style="text-align: center;">4</p> <p>Public members, OIC appointments</p>

The elements of the proposed model are discussed at pages 18-30, but in summary are to:

- a. Reduce the size of Convocation to approximately 30 board members. As a working model, the board could be comprised of:
 - 14 elected lawyers
 - 2 elected paralegals

- 10 board members appointed by the Law Society board (4 lawyers, one paralegal and 5 non-licensees) and
- 4 non-licensee public members appointed by the government.

This model maintains a majority of elected licensees, maintains a majority of lawyer board members, slightly increases the proportion of elected paralegal board members and increases the proportion of public board members.

- b. Create a new category of Law Society-appointed board member.
- c. Create a new, independent, standing committee called the Governance & Nominating Committee, with a mandate to select and recommend board appointments to the board. The composition of the Committee would be:
 - Retired Chief Justice or retired judge (Chair)
 - Current Board Chair/Treasurer
 - 2 licensee board members (1 lawyer, 1 paralegal)
 - 1 government-appointed board member
 - 2 independent non-board member licensees
 - 1 independent non-licensee public representative
 - CEO (*ex-officio* member).

Committee members would be appointed by the board itself, chosen on the basis of criteria for selection of committee members. The committee would be in place for the first set of nominations following an election.

- d. Assuming 14 elected lawyer board positions, positions to be allocated as follows⁵:

⁵ The composition of the electoral regions for lawyers is set out in Law Society by-law 3, section 6:

1. City of Toronto
2. Northwest Electoral Region, composed of the territorial districts of Kenora, Rainy River and Thunder Bay
3. Northeast Electoral Region, composed of the territorial districts of Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury and Timiskaming.
4. East Electoral Region, composed of
 - i. the counties of Frontenac, Hastings, Lanark, Lennox and Addington, Prince Edward and Renfrew,
 - ii. the united counties of Leeds and Grenville, Prescott and Russell and Stormont, Dundas and Glengarry, and

- Toronto (4)
 - Central East (2)
 - Central South (1)
 - Central West (2)
 - East (2)
 - Southwest (1)
 - Northeast (1)
 - Northwest (1)
- e. Establish two regions for elected paralegal board positions, one inside of the Greater Toronto Area and one outside of the Greater Toronto Area.⁶
- f. Create a new voting model, as follows:
1. Eligible voters cast only one vote OR eligible voters may cast as many votes as there are candidates in the region where they work or where they reside (if they have no business address).
 2. Eligible voters may vote only for candidates in their region. A licensee is eligible to vote in a region if, at the time of the election:
 - their licence is not suspended and

iii. the City of Ottawa.

5. Central East Electoral Region, composed of
 - i. the District Municipality of Muskoka,
 - ii. the counties of Haliburton, Northumberland, Peterborough and Simcoe,
 - iii. the regional municipalities of Durham and York, and
 - iv. the City of Kawartha Lakes.
6. Central West Electoral Region, composed of
 - i. the counties of Bruce, Dufferin, Grey and Wellington, and
 - ii. the regional municipalities of Halton and Peel.
7. Central South Electoral Region, composed of
 - i. the counties of Brant, Haldimand and Norfolk,
 - ii. the regional municipalities of Niagara and Waterloo, and
 - iii. the City of Hamilton.
8. Southwest Electoral Region, composed of,
 - i. the counties of Elgin, Essex, Huron, Lambton, Middlesex, Oxford and Perth, and
 - ii. the Municipality of Chatham-Kent.

⁶ The Greater Toronto Area electoral region would include the City of Toronto and the regional municipalities of Durham, Halton, Peel, and York.

- their business address, or, where the voter has no business address, home address, as indicated on the records of the Society, is within the electoral region.

Eligible licensees with no business or home address in Ontario can vote for any one candidate in any region.

- g. Reduce the board member term limits to a maximum of 8 years from the current 12 years.
- h. Fill elected bench vacancies through annual by-elections, held when required.

Discussion

Need for change

The current governance structure makes it challenging to support effective and timely decisions that further the Law Society's statutory mandate. Such challenges are common among regulators and a number of regulators have made changes to address them or are in the process of doing so. The Task Force has reviewed the current regulatory landscape, and governance best practices, to recommend the changes set out in this report.

In considering any potential changes, the Task Force is mindful of the importance of protecting the independence of the bar, which has been repeatedly affirmed by the Supreme Court of Canada.⁷

Nonetheless, change is needed. The following are the key challenges leading to the need for change, all discussed by Convocation during the development of this term's strategic priorities and the selection of governance reform as a key goal:

1. Size and composition of board⁸
2. Need for electoral reform
3. A legacy structure, processes and procedures.

These challenges, and the opportunities presented by change, are discussed below.

⁷ Including *A.G. Can. v. Law Society of B.C.*, [1982] 2 S.C.R. 307 at 335-336, *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 (CanLII), [2015] 1 SCR 401, *Green v. Law Society of Manitoba*, 2017 SCC 20 (CanLII), [2017] 1 SCR 36, *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293.

⁸ For the purpose of this report, Convocation will be referred to as "the board".

1. Current size and composition of board

There are currently 54 voting board members, including the Treasurer, made up of 40 elected lawyers, 5 elected paralegals and 8 government-appointment public benchers. There are an additional 28 *ex-officio* benchers and 4 *emeritus* Treasurers. For details of the Law Society's current structure and numbers, refer to **Tab 5.2.1**.

The size of the Law Society board significantly extends the length of time it takes to reach decisions, often making it more difficult to reach a decision at all, and results in duplicative discussion and debate.

The majority of board members are elected. Other than establishing electoral regions, the Law Society has no input on who is elected to the board. The Law Society also has no input on government appointments. The consequence of an organizational lack of control over the selection processes, results in gaps in the knowledge and attributes of board members.

Enhancing diversity

The background, experience and diversity of board members is currently dictated by the election process (with the exception of government appointed members). Historically, the Law Society's elected board lacked diversity, both in the personal characteristics of board members and in practice areas. Benchers were elected on the basis of name recognition or with the support of associations or large firms. Women, Francophones, racialized and other equity-seeking licensees were under-represented. The Board has been traditionally dominated by the criminal and civil litigation bars.

The Law Society's current board is more diverse than in the past. This is predominantly a result of a concerted effort made by a group of active nominees for board membership to ensure that their complement supported a diverse set of personal, demographic, diversity, practice and geographic attributes that reflected the evolving legal professions.

Maintaining and in fact, enhancing, the diversity of the board is critical to the Task Force. In the proposed model, the number of board members will be reduced, but electoral regions would continue. A new category of Law Society appointed board member would provide an opportunity to supplement the attributes of the board as a whole.

Amplifying the public voice

The Task Force believes that it is critical to increase the representation of public (non-licensee) members on the board. The proportion of public board members at the Law Society is well below other similar regulatory organizations and some law societies. The Task Force's proposal keeps the existing percentage of government nominees to the board relatively unchanged, but proposes that additional non-licensee board members be appointed by the Law Society.

Public board members bring an important perspective to the table in carrying out the Law Society's public interest mandate. The Law Society is mandated to ensure that the public has access to competent licensees and that there is an accountability system in place to regulate them. It is important that the public's perspective and experience is always heard in carrying out this mandate. It is also important to communicate to the public that the regulator is not a guild or advocacy arm for the professions. The make-up of the board, and an increased voice of the public at the board communicates that the Law Society recognizes its role to serve and protect the public interest.

This is not a new concept. It is important to recognize that an increase in public representation is consistent with modern practices in governance. It also provides an opportunity to add board members with attributes that may not be held by elected licensees. With the proposed model, the proportion of government public members is increased from what it is currently. The proposed model also creates an opportunity for the Law Society to choose non-licensee board members, to integrate people with important expertise such as financial, information technology, human resources, marketing or governance, as examples.

Expanding the circle

Further, while the number of board members would be reduced, there remains an opportunity to increase the number of voices and viewpoints at the table. Committees, working groups and task forces could include licensees and others who are not board members based on the perspectives that would be of most value to the policy discussions. This provides an important opportunity for additional viewpoints without the commitment and resources required to be elected or appointed to the board, and for the board to benefit from a diversity of knowledge and expertise. This also presents an opportunity for succession planning for the current board members and to provide mentorship to potential board members.

2. Need for electoral reform

Elected board members provide a strong defence against threats to self-regulation and lawyer/paralegal independence, both of which will be maintained in the proposed model. The recommended changes maintain a majority of elected licensee board members, which was a critical issue for the Task Force.

Under the current structure, there are 8 electoral regions for elected lawyer benchers and eligible lawyer voters can vote for up to 20 candidates in Toronto and up to 20 candidates outside of Toronto. Benchers are elected from each of the regions, and there is no restriction on voters to vote for candidates in their region. Five paralegal benchers are elected by paralegal licensees throughout Ontario (currently without electoral regions).

Feedback from past and current benchers, and other candidates, has been that the election process is time-consuming, challenging and costly, making it harder for sole practitioners and licensees from smaller firms to be elected.

The large number of votes per voter also provides an increased opportunity for election of organized groups of different kinds. Many licensees have raised concerns about the increased emphasis on group voting and resulting party politics in recent bencher elections.

The Task Force is concerned about the negative impact of group campaigning on individual accountability and on the democracy of Law Society elections, which erodes the professions' trust in Law Society governance:

- **Impact on individual accountability.** When candidates are elected as part of a group with a common agenda, they may feel compelled to support the other members of the group and feel less individually accountable for their decisions as board members. This can impact how they carry out their fiduciary duties to the Law Society.
- **Limiting voter choice.** When candidates are bundled together under a common platform, voters may feel that they are prevented from selecting individual candidates based on their qualifications, views, or track records. Instead, voters may feel compelled to vote for an entire group even if they only support certain members or expressed positions of that group.
- **Impact on independent candidates.** Independent candidates may be discouraged from running. If they do run, they may face greater challenges in gaining ballot access and visibility compared to those backed by declared groups, thereby limiting the diversity of choices available to voters.

- **Impact on diversity of perspectives.** With a strong majority voice, political debate can be stifled, during both the election and post-election period. Minority viewpoints that could otherwise enrich policy discourse and represent diverse perspectives may be excluded.
- **Impact on board culture and cohesiveness.** Post-election, the emphasis on groups can exacerbate partisan divisions within the Law Society and negatively impact constructive policy-making.

The Task Force has received suggestions that the Law Society restrict or prohibit organized campaigning. The Task Force is concerned that restricting associative activity in a way that discourages “the collective pursuit of common goals”⁹ would interfere with the democracy of elections and could infringe candidates’ constitutionally protected freedom of association. The Task Force is of the view that the negative impacts of organized campaigning can be addressed in ways that do not infringe on candidates’ protected rights.

Another important goal of the proposed electoral reforms is to assist in strengthening the nexus between the voters and the candidates who they elect. Restricting voting within the region that the licensee is providing legal services (or living, as the case may be), and reducing the number of votes, provides the benefit of licensees supporting exceptional colleagues who are known to them as strong board candidates for positions on the board of the regulator. This protocol has been adopted by many regulatory authorities, leads to active local engagement, and would appear likely to reduce the incidence of voting in blocks.

3. Legacy

The Law Society has a long and proud history, having been established in 1797. The Law Society’s historical legacy, including the large board, the tradition of “parliamentary” debate, and other formalities are vestiges of the past and run counter to modern regulatory oversight. As the regulator of over 70,000 licensees and growing, the Law Society plays a fundamental role in the administration of justice in Ontario and interacts with the public, licensees and other stakeholders daily, in today’s environment. The current rules of board procedure and debate can get in the way of effective and timely decision-making. The legacy traditions and electoral model can also lead licensees to view board members as their representatives in a structure akin to a parliamentary

⁹ *Harper v. Canada (Attorney General)*, [2004 SCC 33 \(CanLII\)](#), [2004] 1 S.C.R. 827, [2004] S.C.J. No. 28 at para 125. See *Black v. Law Society of Alberta*, 1989 CanLII 132 (SCC), [1989] 1 SCR 591, *Mussani v. College of Physicians and Surgeons of Ontario*, 2004 CanLII 48653 (ON CA), *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 (CanLII), [2018] 2 SCR 293

model, which can cause confusion and put board members in conflict with their fiduciary duties to the Law Society.

The Law Society's legacy is important, but it cannot impede the fulfillment of its statutory mandate. The Law Society requires an appropriate governance model, in line with modern governance practices, that supports board member ability to do what they were elected/appointed to do – oversee a regulator to ensure that those who are licensed do not cause harm to the public.

Elements of the proposed model

1. Reduction in the size of the board

The first element of the proposed model is a reduction in the size of the board from 54 to approximately 30.

The proposed model is reflective of an independent, self-governing profession wherein elected licensees continue to have a majority voice and opportunity to guide regulatory responses that are risk-based, realistically achievable, and practical – ensuring that the professions are governed in a way that avoids burdensome policy, while supporting public need and expectations of their legal providers.

Key aspects of the proposal:

- a. As a working model, the Task Force proposes 14 elected lawyers and 4 Law Society-appointed lawyers on the board. This means that lawyers continue to hold a majority on the board (60%).
- b. The model retains geographic diversity through the electoral regions.
- c. The model increases the proportion of paralegals on the board from 9% to 10%.
- d. The model increases the proportion of non-licensees from 15% to approximately 30%. It is critical to retain and, a best practice in modern regulatory organizations, to increase the voice of public representatives, who have an important perspective considering the Law Society's public interest mandate, and it provides an opportunity to add board members with skills that may not be held by licensees.

Why did the Task Force land on an approximate size of 30? The Task Force considered different models for composition and size. One option was to reduce the board size to 12 or 16 members, in keeping with current research that demonstrates that an active board of this size is the most effective. After much consideration, the Task Force concluded that this was simply too small and too much of a change from the Law Society's current size. The majority of the Task Force was of the view that an appropriate size would be between 20 and 30 board members and after extensively reviewing the different aspects, decided on a recommendation of 30 members.

With a board of 30 members, the Law Society could increase the number of non-licensure board members, maintain geographic representation, maintain elections and establish a new process for some board members to be appointed by the Law Society directly. The ultimate proposal of 30 board members is a compromise, which recognizes that there is no perfect solution, but the Task Force submits that the important goals of effective governance can be achieved with this number.

A reduction in the size of the board is consistent with modern governance trends and practices (for more information, refer to **Tabs 5.2.2** and **5.2.3**). The following sets out some of the recent regulatory changes in process or completed at Ontario regulators:

- Ontario College of Teachers – board reduced from 37 to 12
- College of Nurses of Ontario – Council has approved a reduction of board size from 37 to 12
- Ontario College of Social Workers – Council has accepted a governance review recommendation to reduce its board size from 21 to 8-10
- Real Estate Council of Ontario – the government has reduced the board size from 12 to 9
- Royal College of Dental Surgeons of Ontario – proposed to the Ministry of Health a reduction in its board size (in response to consultation)
- College of Physicians and Surgeons of Ontario – proposed to the Ministry of Health a reduction in its board size from 34 to 12-16 members.

The boards of all other Canadian law societies are significantly smaller than the Law Society's board, and the size of some law societies has been reduced:

- In its new iteration as legal professions regulator, the Law Society of British Columbia's board size is reduced from 32 to 17 board members
- In 2014, the Barreau du Quebec reduced its board size from 37 to 16 members
- The Law Society of New Brunswick has recommended reducing its board size from 30 to 21 members.

2. New category of Law Society-appointed board member

The second key element of the proposed working model would be 10 Law Society-appointed board members, to be comprised of 4 lawyers, one paralegal and 5 non-licensees. Law Society-appointed board members would be selected and recommended to the board by a new Governance & Nominating Committee (see following section).

Law Society appointments would permit the Law Society to round out skills and attributes, which can include non-licensees for maximum flexibility. There are significant potential benefits to Law Society appointments that simply cannot be guaranteed through the election process, including a diverse board with requisite expertise. For example:

- For licensee appointments, this provides an opportunity to appoint people with a diversity of skills, experience and attributes: Francophones or Indigenous licensees, licensees from different geographic areas or who practice in different areas of law or legal services. It also provides an opportunity for those highly skilled and competent licensees who wish to contribute, but do not wish to run for election.
- For non-licensees, this provides an opportunity to appoint people with financial, IT, human resources, marketing, governance or other expertise to supplement the policy issues and evolution that the Law Society expects to be addressing as it engages in progressive regulation for lawyers and paralegals. This is also an opportunity to add to the strong public voice in Law Society governance.

Other regulators, including Canadian law societies, have appointed board members. Please refer to the information at **Tabs 5.2.3** and **5.2.4** for more details about the law societies in British Columbia, Manitoba and New Brunswick, as well as the College of Physicians and Surgeons of Ontario.

3. Establishment of a Governance & Nominating Committee

The process for recommending board appointments, and its independence, is critical.

The Task Force proposes that Law Society appointed board members be selected and nominated on the basis of transparent criteria by a new Governance & Nominating Committee. Committee members would be appointed by the board itself and in place for the first set of nominations following an election. Criteria would be developed for

selection of committee members, who would be recommended by a third party for appointment to the board, by the board.

The proposed composition of the Governance & Nominating Committee includes a majority of board members and a majority of licensees or former licensees, as follows:

- Retired Chief Justice or retired judge (Chair)
- Current Treasurer
- 2 licensee board members (1 lawyer, 1 paralegal)
- 1 non-licensee board member
- 2 independent non-board member licensees
- 1 independent non-licensee public representative
- CEO (*ex-officio* member).

The Governance & Nominating Committee would be tasked with the obligation to assess the knowledge, skills, abilities and judgment of those seeking to be appointed, and how those attributes will add value to the current complement of board members. Candidates for the board would be recommended on the basis of identified attributes of board members, to be developed and approved by the board and made public.

The Law Society would retain external expertise in the form of an executive recruitment firm to assist in the development of a final list of attributes that may be used to assess potential candidates, put out a call for interest (including all advertising and outreach to “high potentials”), gather applications and provide input to the new committee following a thorough vetting of the candidates and the creation of a long and then a short-list of candidates for potential appointment. The committee would provide input on attributes needed for the Law Society board, in general and to address any specific gaps. The committee would provide a recommended list of candidates to the Law Society board for approval.

Reference can be made to the composition of nominating committees at other regulators, set out at **Tabs 5.2.3** and **5.2.4**. Nominating committees are generally small and are comprised of current or former directors, with one or two additional representatives from the profession and/or the public.

4. Electoral regions

The Law Society’s electoral regions¹⁰ have been in place for many years and are based on the regions set out in the regulations to the *Courts of Justice Act*. In the proposed model, the number of elected board positions is reduced but the electoral regions would

¹⁰ Refer to footnote 1 for a description of the regions

remain in place. In this model, the City of Toronto is allocated the most positions, but overall the positions are more evenly allocated than they are currently. With fewer elected positions than the current 40, this provides some defined geographic diversity, a factor that the Task Force has identified as critical.

Retaining the electoral regions ensures that regional representation continues in a future governance model. The Task Force understands that the practice of law/provision of legal services, the needs of clients and access to justice issues are different across Ontario and wants regional voices to remain at the table.

Based on 14 elected lawyer board positions, the allocation of electoral regions for lawyers is proposed to be:

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

The two elected paralegal positions would be allocated as follows: one inside of the Greater Toronto Area and one outside of the Greater Toronto Area.¹¹

As background, the following is the current breakdown of licensees by region as of December 31, 2023. These statistics do not include honorary members, lawyers and paralegals whose licences are suspended, and lawyers and paralegals holding positions in judicial office.

¹¹ See footnote 6.

Region	Lawyer	Paralegal	Total
Central East Region	4,861	2,119	6,980
Central South Region	2,913	993	3,906
Central West Region	5,267	1,898	7,165
East Region	7,506	790	8,296
Metropolitan Toronto Region	29,394	4,102	33,496
Northeast Region	719	137	856
Northwest Region	441	30	471
Outside Ontario	5,243	264	5,507
Southwest Region	2,652	728	3,380
Total	58,996	11,061	70,057

5. Voting reforms

As discussed earlier in this report, Benchers and other licensees have expressed the need for electoral reform. These reasons include:

- Resources required for elections, on the part of the Law Society and candidates
- Voter fatigue
- Voting for organized groups of candidates
- Lack of connection between voters and candidates they vote for
- Voters' lack of understanding of the role of a Law Society board member.

The Task Force has also reviewed a number of other regulators, all of whom permit far fewer votes per voter, and almost all of whom require regional voting. See **Tab 5.2.3** for more information.

After considering the issues and reviewing other regulatory models, the Task Force is proposing the following options for change:

1. Eligible voters cast only one vote OR eligible voters may cast as many votes as there are candidates in the region where they work or, if they have no business address, where they reside.

2. Eligible voters may vote only for candidates in their region.
 - a. A licensee is eligible to vote in a region if, at the time of the election:
 - i. their licence is not suspended and
 - ii. their business address, or, where the voter has no business address, home address, as indicated on the records of the Society, is within the electoral region.
 - b. Eligible licensees with no business or home address in Ontario can vote for any candidate¹².

This model has two key elements – the number of votes granted to each eligible voter, and a regional approach to voting. The reasons for the proposed changes are discussed further below.

Number of votes per voter

It is the Task Force's view that reducing the number of votes per voter will have a positive impact on the election process and outcome, and the way it is perceived by the public and the professions.

While the proposed changes are significant, they are not as radical as it may appear. Historically, voters used very few of their allotted votes on average. In the most recent election, there was an upward trend in the average number of votes cast by voters, which may relate to campaigning and block voting for organized groups:

For 2015 –

Lawyer in Regions: Average # of votes = 5.8 per voter

Lawyer in Toronto: Average # of votes = 7.7 per voter

Paralegal: Average # of votes = 3.6 per voter

For 2023 –

Lawyer in Regions: Average # of votes = 15.6 per voter

Lawyer in Toronto: Average # of votes = 15.4 per voter

Paralegal: Average # of votes = 4.1 per voter

¹² 6197 lawyers and 342 paralegals. In the 2023 election, 5,201 lawyers in this category were eligible to vote and 890 of them voted, and 262 paralegals in this category were eligible to vote and 26 of them voted.

The Task Force would like feedback on two separate options which are being considered.

Option 1 - One vote per voter

The Task Force acknowledges that one vote per voter is a drastic change from all eligible licensees being able to cast 40 votes. However, there are important reasons to consider this option. The following are the key supporting reasons for this option:

- **Equal say:** One vote per voter ensures that every voter has an equal say in the election, reinforcing the principle of "one person, one vote."
- **Simplicity and clarity:** One vote per voter is simple and clear, making it easier to understand and participate. This can lead to higher voter turnout and greater democratic engagement.
- **Prevention of coordinated voting:** One vote per voter reduces the risk of a coordinated group dominating the election by spreading their votes across multiple candidates.
- **Focus on Candidate Quality:** With one vote, voters are encouraged to select the candidate they believe is the best fit for the position, rather than strategically distributing their votes among multiple candidates.

Option 2 - Eligible voters may cast as many votes as there are positions in their region (1-4, depending on the region)

This option is less of a drastic change, but still a reduction from the current 40 votes for lawyer voters and 5 votes for paralegal voters. There are important reasons why this change may further the public interest, including:

1. **Proportional representation:** Allowing voters to vote for the number of candidates who are running in the region is a democratic and equitable approach that results in a more accurate representation of voter preferences in the region.
2. **Increased competition:** The possibility of more votes encourages candidates to compete more actively for votes, potentially leading to higher-quality candidates and more dynamic campaigns.
3. **Outcomes reflective of voter choices:** When voters have the choice to support the candidates they believe are suitable for the open positions, this allows for more nuanced expression of voter preferences and a board that more accurately reflects the diverse opinions of the electorate in each region.
4. **Less strategic voting:** In regions with multiple positions, licensees may not vote for their top choice if they only have one vote, thinking that person will be elected

anyways, and vote for their second choice. Having as many votes as positions in the region would be more representative of voter preferences.

Regional voting

The other key electoral change being proposed is that a voter may only cast their vote for a candidate in their own region. This change is recommended for the following reasons:

- Because voters are voting only for candidates in their region, the number of votes received by successful candidates will be more proportionate to the number of licensees in each electoral region than is the case currently
- Licensees are voting for people in their communities and whose background and experience are more likely to be familiar to them and less likely reliant on province-wide name recognition
- This model would not allow voters in the Greater Toronto Area to control who is elected in other regions
- This model would simplify the election process for candidates, who would campaign only in one region. It would also likely reduce the costs for candidates.

6. Eight-year term limits for board members

As part of the proposed governance changes, the Task Force is seeking approval to change board member term limits to a maximum of 8 years from the current 12 years.

Reducing term limits was a recommendation of the GTF 2016 but the 2018 motion to make this change was not passed by Convocation. At the time, the GTF 2016 noted the governance trends toward shorter term limits and the fact that the large majority of respondents to the public consultation agreed with implementing a term limit that is less than 12 years. The current Task Force is of the view that this decision should be revisited.

The Task Force considered a range of terms and term limits. The general trend at Canadian law societies and Ontario regulators has been towards shorter terms and shorter term limits, with an average limit of 8-10 years. The Task Force has determined that the four-year term of service should be maintained but that the maximum term of service be reduced to 8 years.

Limits are an appropriate way to ensure renewal in the board and the infusion of fresh views and perspectives. This is consistent with the view that Convocation affirmed in the

governance reforms of 2010 when it created a term limit. The Task Force agrees with the following statement that appeared in the 2009 governance report on this issue:

Term limits also protect both the board member and the organization against stasis. They are emblematic of a formal process for assuring the periodic introduction to the organization's governance of new energy, new viewpoints, and diverse skills. For the board member, term limits are the assurance that their service is valued, though limited, and that the unique leadership they bring to one board will be freed to serve the nonprofit in other ways, and to serve other boards or other pursuits.¹³

A limit on the number of terms a board member may serve will enhance the renewal process. The proposal for a shorter-term limit is also in aid of making the governing process of the Law Society more accessible and open. Over time, this may result in greater numbers of lawyers and paralegals participating in governance and gaining an understanding and appreciation for the governance process and the Law Society's critical regulatory role in support of the public interest.

With the numbers of board members who serve for the maximum number of years, the risk of losing institutional memory should not be an overriding concern. Further, the Law Society ensures properly and professionally resourced board support and comprehensive board records which are publicly available online. This approach will also result in staggered terms, which assists the board in managing the number of new board members at any one time.

The term limits would apply to any category of board member, whether elected or appointed, or a combination of both. The proposed 8 year limit is a lifetime maximum, whether or not the terms are served consecutively.

To assist in managing board expertise and experience in the face of shorter terms, the Task Force has also discussed staggering Law Society board member appointments with elections. For example, board licensee appointment terms could be structured such that appointments would not end the same year as elections. Staggering terms is a way to ensure that there is not a large turnover of board members at any one time and will be considered further if Law Society appointed board members are approved.

¹³ From "Term Limits: Only 'Perfect' Boards Can Do Without Them" by Michael Wyland, Partner, Sumption & Wyland.

7. Filling elected board member vacancies by by-election

As part of the group of governance reforms, the Task Force is proposing that vacancies in *elected* board positions be filled through by-elections rather than by the person in the region with the next highest number of votes obtained in the last general election. The Task Force recommends that if approved, this change be implemented prior to the 2027 elections, as part of the phased approach towards more effective governance.

Public interest

The process for filling vacancies on the board of a regulator is a key component of modernizing Law Society governance, in the public interest. While fundamental principles guiding the Law Society are constant – public protection; maintenance of standards; preservation of self-regulation and independence of the bar, new mechanisms are needed to address a changed environment. The current process has been in place since the 1990's and is outdated.

The process for filling vacancies is within the Law Society's statutory public interest mandate to determine. There has been significantly more turnover in recent years than in the past (7 vacancies filled since the 2023 election).

This governance reform is also important to the licensee electorate, who should have confidence that those who are elected to participate in the regulation of the professions reflect the views of lawyers and paralegals, at the time that they are given the privilege of governing.

The wishes of its licensee electorate should be respected when elected benchers vacancies are filled. Automatically filling a vacancy with the runner-up in an election does not respect those wishes. The process for filling vacancies should ensure that the board reflects the views of the majority of licensees who voted in an election, not result in an outcome that the majority of voters explicitly voted against. The benefit of holding a by-election is that there can be little doubt that the wishes of the majority of licensees are being respected at the time it is held.

This is particularly the case in light of the results of the last election, where one group of licensees was elected with a significant majority of votes compared to all other candidates. The effect of the current by-law provisions is that candidates who received significantly less votes are replacing those individuals on the Law Society's board of directors when vacancies arise. This has the anomalous result that the votes of the majority are voided, or no longer count when vacancies arise.

Circumstances change following an election. Individuals campaign on platforms that may no longer be relevant to the board process. Voters should feel that they have had the opportunity to choose the candidate who best represents current issues and context, not those relevant at the time of the original general election. In a by-election voters may decide to elect a person who was a runner-up in the general election, but the key is that they choose and the choice is not made for them.

If comparing the Law Society's electoral process to the way in which the public votes federally, provincially or municipally, it is unlikely, in those circumstances, that the electorate would be in favour of the runner-up in a previous election being automatically chosen. This model supports the ability to vote for a preferred candidate based on current circumstances and regulatory issues.

Evolution in elections and voting patterns

The results of the April 2023 election are relevant to the need for change in vacancy procedures for elected board members of the Law Society. The 40 lawyer candidates¹⁴ who were elected received an overwhelming majority of the vote. They received, on average, more than twice the number of votes than the candidates who were not elected, a big change from the past elections. For example:

For 2015 –

- Lawyer candidate #20 from outside of Toronto received 1,996 votes and candidate #21 received 1,947 votes.
- Lawyer candidate #20 from inside of Toronto received 3,019 votes and candidate #21 received 2,877 votes.

For 2023 –

- Lawyer candidate #20 from outside of Toronto received 11,186 votes and candidate 21 received 5,877 votes.
- Lawyer candidate #20 from inside of Toronto received 10,697 votes and candidate #21 received 6,170 votes.

The effect of the current process for dealing with vacancies is that candidates who received significantly less votes in the election than the successful candidates are replacing those individuals on the board, an anomalous result.

¹⁴ The difference was not as dramatic for paralegals, who were not involved in the same type of organized voting.

Alignment with other regulatory bodies

Most regulatory bodies fill vacant positions through a by-election process. Set out at **Tabs 5.2.3** and **5.2.4** is an overview of the provisions at similarly situated regulators. In summary, by-elections to fill vacant elected positions are required or permitted at the Law Society of British Columbia (both in its current and future state), the Law Society of Manitoba, the College of Physicians and Surgeons and the Ontario College of Nurses. These regulators also have discretion as to the timing of these by-elections.

While some regulators have discretion as to whether to hold a by-election or appoint a runner-up, the Task Force does not recommend this approach. Filling vacancies through by-elections is a more fair and reasonable process. A by-election does not target any one individual, nor does it disqualify the runner-up in the most recent election from being elected in the by-election.

The Task Force recommends a set procedure and scheduling for by-elections, should they be necessary, that formalizes all significant dates and deadlines in the process. This would result in a by-election at a set time (once per year) that would be used to fill all board seats that become vacant during a proscribed time frame within that annual period. This is preferable to holding elections immediately after every vacancy occurs, which would be time consuming, inefficient and costly to the organization.

Such a model also makes onboarding of new board members more efficient, as they will be joining at the same time as opposed to sporadically throughout the year. For the Law Society to continue operating effectively, an engaged and knowledgeable board is required. Constant turnover or the prospect of constant turnover in the composition of the board undermines board efficacy and efficiency.

Fairness to candidates who were unsuccessful in the 2023 election

The Task Force has considered the interests of candidates who ran in the 2023 election and were unsuccessful. In the Task Force's view, the proposed change would not disadvantage candidates who were unsuccessful in the 2023 election, as they would be free to run again in a by-election.

Invitation for feedback and questions for comment

The Governance Review Task Force invites feedback from the professions, stakeholders and the public about the recommendations for Law Society governance reform outlined in this report.

As noted previously, the Task Force has given extensive consideration to possible changes and recommends the set of cohesive reforms described in this report. The Task Force acknowledges that there is no “perfect” solution and that stakeholders may not favour all of the recommended changes. However, the proposals fit together as a new governance model and changing one element has an impact on other elements. The Task Force urges stakeholders to consider the proposed changes individually and in their totality when providing feedback.

In providing responses, stakeholders may wish to provide input on the proposals set out in this report, in particular:

1. Reducing the size of the Law Society’s board
2. A new category of Law Society appointed board member
3. The composition of a new, independent Governance & Nominating Committee
4. The allocation of elected board positions among the electoral regions
5. A regional voting model linking voters and candidates in the region where the voter works or resides (if the voter has no business address)
6. Changing the number of votes granted to each voter
7. Reducing bencher term limits
8. Changing the process for filling bencher vacancies to a by-election process
9. Changing the process for filling bencher vacancies as the first phase of governance changes
10. Any other comments related to these recommendations.

Next steps

The Task Force seeks input by January 31, 2025.

All feedback received will be reviewed by the Governance Review Task Force to assist in determining whether to request Convocation’s approval of the recommendations outlined in this report.

CONVOCATION

A core of **54 elected and appointed benchers** including the Treasurer with full voting and speaking rights in Convocation, total number of benchers is **86**.

Elected benchers – 45

- last elected 2023
- 5 paralegals
- 20 lawyers inside Toronto
- 20 lawyers outside Toronto
- includes lawyer regional benchers for each of the 8 regions (Toronto and 7 outside of Toronto), meaning 32 are elected on the basis of the general vote and 8 are elected based on votes from voters in the region)

Appointed (lay) benchers – 8

- Appointed by Ontario government
- Last appointed/reappointed 2023

Ex-officio benchers – 28¹

- Attorney General for Ontario (may speak and vote in Convocation)
- the Treasurer (LSO president and Convocation chair, with limited voting rights)
 - an elected bencher elected annually by benchers who have a vote in Convocation
- former Treasurers before January 1, 2010
 - 8 benchers
 - may speak in Convocation but cannot vote
- a person who, by June 1, 2015, has held the office of elected bencher for at least 16 years (life benchers)
 - 11 benchers
 - no rights in Convocation
- a person who has held the office of Attorney General for Ontario before January 1, 2010
 - 7 benchers
 - no rights in Convocation

Honorary emeritus benchers – 4²

- former Treasurers after January 1, 2010
- Under the *Law Society Act* honorary benchers have rights and privileges prescribed by by-law - By-Law 3 provides that emeritus Treasurers have the right in Convocation to participate in a debate but not vote.

¹ Of this number, other than the Treasurer and Attorney General, 5 are still engaged with the LSO.

² Malcolm Mercer is an emeritus Treasurer but his status is 'inactive' due to his appointment as the Law Society Tribunal Chair. Justice Paul Schabas' status as an emeritus Treasurer is in abeyance as a result of his judicial appointment.



Law Society
of Ontario

Barreau
de l'Ontario

**REGULATORY ACTIVITY, REGULATORY APPROACHES AND
DEVELOPMENTS IN PROFESSIONAL REGULATION**

THE ONTARIO LANDSCAPE

October 2024

I. INTRODUCTION

This report provides information on developments in professional regulation in Ontario, including the structure of other regulators, regulatory approaches and governance processes, the changing landscape for professional regulation and the response of some regulators (and government) to address the intersection of various factors that influence or impact regulation - including the ultimate purpose and value of regulation, the views of the public and registrants/licensees and governmental imperatives.

Some regulators within Canada have come under increased scrutiny by governments or have themselves undertaken reviews and assessments. These developments have resulted in some significant changes to the regulatory landscape. In Ontario:

- A governance review undertaken by the Ontario College of Social Workers and Social Service Workers resulting in a report and recommendations on improving governance.
- A consultation by the Assistant Deputy Minister of Health with the Royal College of Dental Surgeons of Ontario for feedback on proposed key reforms to regulatory governance and modernization in the regulated health professions in Ontario.
- Legislative reforms implemented to institute a new governance structure for the Ontario College of Teachers, based on a governance review that made recommendations to improve the efficiency and efficacy of key governance practices and structures of the College.
- An external regulatory governance review by the College of Nurses of Ontario from which the College created an evidence-based plan to enact major changes to the size, structure and associated processes of its Council so it is better focused on the public's needs and interests.
- In December 2023, the College of Physicians and Surgeons approved a number of governance changes, some in place and some to be implemented in time.

Details of these developments and others appear in Part III of this report.

II. THEMES

A number of themes emerge from the studies, reviews and assessments that are described. The themes include:

- Affirming the duty of professional regulators to protect the public interest
- A focus on outcomes, not procedures or rules
- Smaller boards
- Appointed, not elected, skills-based boards with defined competencies utilized in a nomination process to ensure experience, expertise and diversity
- Appropriate orientation or 'induction' to board service prior to appointment
- Ongoing governance education
- Adopting reasonable term limits for board members

- Increase in the public component of boards towards equal representation of public members and licensees
- Appointment of members of the professions and public to committees
- The end of members' annual meetings
- Ending the use of parliamentary rules of procedure in favour of less formal processes that support dialogue, constructive challenge, dissent and consensus
- Board/council members not sitting on regulatory committees or performing adjudicative functions.

III. RECENT REGULATORY DEVELOPMENTS IN ONTARIO

A. Ontario College of Social Workers and Social Service Workers (the College)

A report and recommendations on improving governance

Harry Cayton and Deanna Williams

May – October 2022

The College¹ commissioned a review of its governance structure and practices which was conducted between February and May 2022 in two phases:

- an initial assessment of governance training needs and delivery of two training sessions for the College's Council and senior staff in March 2022; and
- based on the findings from the first phase, a comprehensive review of the effectiveness of the College's overall governance policies and practices, identifying opportunities for improvement and recommendations for change.

The review, using the Standards of Good Governance² as an assessment tool, found both

¹ The Ontario College of Social Workers and Social Service Workers regulates two professions. There are around 26,500 people on the register, of whom 22,500 are Social Workers and 3,600 are Social Service Workers.

² The Standards of Good Governance were developed by the Professional Standards Authority, an independent UK based organization, accountable to the UK Parliament, that works primarily in the health regulation sector.

1. The regulator has an effective process for identifying, assessing, escalating and managing risk of harm, and this is communicated and reviewed on a regular basis by the executive and board
2. The regulator has clear governance policies that provide a framework within which decisions can be made in-line with its statutory responsibilities and in the interests of clients and the public
3. The board sets strategic objectives for the organisation. The regulator's performance and outcomes for clients and the public are used by the board when reviewing the strategic plan
4. The regulator demonstrates a commitment to transparency in the way it conducts and reports on its business
5. The regulator engages effectively with clients and the public
6. The regulator engages appropriately with the profession
7. The board takes account of equality and diversity in its decision-making
8. The board has effective oversight of the work of the Executive

strengths and weaknesses in the College's governance practices. With respect to governance structure, Mr. Cayton found that a number of the existing legislative requirements, particularly those mandating the current size and composition of Council; its electoral system, the functions assigned to the Executive Committee; and the requirement that College must hold an Annual Meeting of Members, do not align with contemporary good regulatory governance practices and accordingly challenge effective governance. With respect to effective governance, Mr. Cayton found that the College is hampered by an over reliance on rules, procedures and policies which result in a bureaucratic and cautious style of governance.

The report's 21 recommendations include several that address these issues. In the discussion leading to the recommendations, the authors of the report say the following about contemporary governance:

Contemporary thinking about effective governance is focused on outcomes rather than structures and procedures. It looks for informed decision-making and delivery of results. It doesn't care for Robert's Rules of Order, first published in 1876, nor for Wainberg's Rules, first published in the 1920s, since an effective board is not a parliament. Contemporary non-executive boards are small; they are skill based not "representative;" they use performance data and outcome measurement to monitor the delivery of their objectives; they limit committees and working groups in favour of well-researched papers by competent staff; and they call in external expertise as required. They do not interfere in operational matters but oversee the implementation of their objectives and strategy. Boards ensure that organization's resources are used to deliver its goals rather than allowing its goals to be determined by the available resources. As well, boards assess their own performance and seek to learn and improve. Boards are externally accountable, whether it be to the public, to shareholders or to members, but they should not be subservient to external pressures or to professional or self-interest.

...

Neither election nor appointment guarantees competence, nor does it guarantee a balance of skills on a board. In Canada, regulatory bodies are hampered by legislation which limits their ability to have board members chosen on merit and against published competencies.

...

Elected boards are only representative of those who are willing to stand and those who vote for them. They are often likely to be drawn from a narrow socio-

9. The board works corporately, with an appropriate understanding of its role as a governing body and of members' individual responsibilities

economic group and from older members of a profession. It has been observed that when boards believe they are representing the “democratic” interests of members they fall into error and lose sight of their primary purpose of protecting the public. ... Regulatory boards should not be beholden to the profession they regulate but to the public they serve. Good governance, as observed above, by delivering transparent, fair, effective and efficient regulation, will build confidence and trust in all stakeholders. A board that is only interested in its shareholders or members and not its customers or its public duty will inevitably fail.

The Recommendations

Included in the recommendations are the following:

- The College should open the membership of advisory committees and groups to suitably knowledgeable, experienced and diverse members of the professions and the public. The College should actively engage the public and social service and social work service users in developing its policies
- The College should use the word ‘registrant’ rather than ‘member’ to make clear it is a regulator and not an association. The ‘president’ should become the ‘chair’ to stress that this is a role with responsibility for effective chairing of meetings and not an honour. The ceremonial titles and positions of vice-president should be abolished.
- The Eligibility for Election criteria in the Elections By-law should be revised to include the requirement that professional candidates seeking to stand for election must go through a defined and accountable screening process using a skills matrix with a view to identify the desired skills and competencies that each would bring to Council and to ensuring a collectively skilled Council. The College should share their skills matrix with the Ministry for its consideration when appointing public members.
- In the practice of governance the College should give priority to outcomes not to procedures or rules. When there are disagreements and dissent, the focus should be on discussion and resolution at the time. Checking rules and policies after the event is not helpful.

In October 2022, Lisa Betteridge, the Registrar and CEO, provided this statement posted on the College’s website, as a follow up to the initiative:

In response to the Governance Report, the Council’s Governance Committee (at Council’s direction) developed a draft action plan based on the Report’s 21 recommendations. ...

- During its September Council meeting, College Council reviewed the draft action plan and made a number of decisions in relation to

the recommendations from the Governance Report. I'd like to highlight one of these: that the College use the word "registrant" – rather than "member" – to make clear its role as a regulator rather than an association. ...

- The College remains dedicated to achieving regulatory effectiveness, and this includes good governance. We must continue to consider trends in regulatory governance modernization across Canada and internationally – especially amidst the COVID-19 pandemic and other societal challenges – and make appropriate changes based on what is happening in the regulatory sector in Ontario and across Canada. This includes, for example, considering the implications of the College Performance Measurement Framework developed by the Ontario Ministry of Health for the regulated health profession colleges.³

As of October 2024, the College has implemented the majority of the recommendations set out in the action plan, in part or in full, including terminology changes, streamlining committees while expanding their composition, and updating their governance policies.

B. Royal College of Dental Surgeons of Ontario (the College) Consultation by the Assistant Deputy Minister of Health February 2022

In February 2022, the College responded to an invitation from the Assistant Deputy Minister of Health for feedback on proposed key reforms to regulatory governance and modernization in the regulated health professions in Ontario, issued in a consultation in January 2022. The following information is taken from the College's response, in which certain governance proposals are identified and the College's input is provided.

The College initially noted how it has successfully implemented a number of important reforms to date, including:

- robust cooling off provisions,
- a competency-based approach to elections
- detailed competencies for Committees and a dedicated focus on Board development through training, education around governance and equity, diversity and inclusion,
- the development of a Council work plan and skills matrix.
- at Council meetings, a standing item for declarations of conflicts of interest which are assessed by general counsel who advises on next steps.

³ This framework is discussed later in this report.

Public Members

The College proposes that the Ministry ensure:

- Recruitment and appointment of public members are competency-based, and include diversity, technical, regional and behavioral requirements, and include an assessment of skills, using a skills matrix tool.
- Public members receive a rate of compensation that is equal to that of professional members and receive payment in a timely manner.

Smaller Council size

With respect to the transition to a smaller Council size, the College.

- suggests that the Ministry specify a timeline on which transition occurs – the proposal is a period of at least twenty-four (24) months.
- recommends that the transition of Council and statutory and standing Committees occur on the same timeframe.
- supports the Ministry's suggestion of reducing Council by moving some Council members to serve exclusively on statutory Committees.

Council and Committee separation

The College advised that it was unclear whether the Ministry intends statutory committees to be comprised of public members in addition to professional members, and believes it is imperative that statutory committees include members of the public. If the Ministry proceeds with a complete separation between Council and Committee and intends to have public members sit on statutory Committees, clarity is required with respect to how and by whom public members will be appointed to Committees and the required competencies for those public members and how and by whom compensation for those public members will be provided.

Enable equal public and professional representation

A common set of competencies should be established for Council members of all health regulatory Colleges and applied to both professional and public members of Council. These competencies should drive professional and public appointments to Council, along with a skills matrix and therefore be applied on a post-transition basis.

Competencies should be sufficiently robust so that Councils can truly represent the diversity that exists in the profession and the public. This will require a sophisticated definition and understanding of diversity and inclusion where individuals can express and represent different views, lived experiences, practice experience and knowledge (for professional members) and geographic or regional differences, along with technical and behavioural requirements and language skills, particularly French language skills.

Professional Members Selection

Respecting comments on an appointment model for Council, to replace the current approach of electing professional members of Council by geographic district, the College's view is that a hybrid model of elected and appointed Council members is preferred. Through important structures the College has implemented, concerns of professional interest and dominance have been mitigated. Those structures are: competency based elections, rigorous cooling-off periods, and the use of an external review committee comprised of experts in regulation.

With these structures in place, the College believes that a hybrid model will best allow Colleges to meet their public interest mandate, and importantly ensure that individual members of Council are skilled, diverse, and are not the product of political patronage. Additionally, a hybrid model will enable regulatory Colleges to maintain important engagement with the regulated professions, which contributes to overall success in regulating to serve and protect the public interest.

Regarding the Selection and Nomination Committee, the College

- recommends that the Selection and Nomination Committee be a statutory Committee and that the *RHPA* set out duties, composition and terms of reference for this Committee.
- recommends that the Selection and Nomination Committee be appointed by individual Colleges, not government.
- believes the Committee should be comprised (at least initially) of a majority of individuals who are external to health regulatory Colleges and knowledgeable about governance to help ensure that the public and other external stakeholders have confidence that the selection process is impartial and objective.
- believes that the Committee and the selection process it uses should be supported by structures and practices aimed to increase transparency, and ensure rigor and accountability:
 - The selection process should be supported through an open application process;
 - If existing professional members are being considered for a further term, their renewal should be evaluated against a specified set of criteria, such as an annual performance review; and
 - After each selection cycle, the Committee should prepare a final report.
- believes that recruitment strategies – for both professional and public members - must involve cultivating relationships with networks that serve diverse and underrepresented groups; prioritizing ability over experience (where needed to break down barriers); and tailoring onboarding to meet diverse needs.
- supports the implementation of a competency matrix as well as a diversity matrix for Council and Committees, which would essentially map applicants' self-reported skills, expertise and elements of diversity. This would allow health regulatory Colleges to identify gaps that can be supplemented through future recruitment, orientation, education and training.

Term limits/eligibility for Council

The College recommends that a staggered appointment and/or election cycle be adopted, so that health regulatory Colleges can retain institutional memory imbued in seasoned members of Council, allow for important supports such as mentorship and succession planning to be implemented while also welcoming the inclusion of fresh perspectives.

Housekeeping

The College supports changes to existing titles and terminology. The title 'College' is confusing to the public, the profession and key stakeholders. Changing this title would complement the Ministry's other proposed changes and align with its stated objectives.

Modernization

The College supports right-touch regulation and red-tape reduction. Proposed reforms will result in a significant increase in the type and degree of oversight to which health regulatory Colleges are subject. Balance is necessary so that health regulatory Colleges are able to engage in the core regulatory functions that the College is required by law to fulfill.

2024 Update

The College has made governance review and modernization one of its projects within its 2023-2025 strategic plan. In June 2023, the College reported through minutes of its Council meeting that it had established a Governance Committee as a standing committee of Council to review proposals for additional governance reform and to make strategic recommendations to Council regarding governance modernization initiatives.

In June 2024, Governance Committee Chair Anne Coghlan presented to Council a proposal for three integrated modernization concepts for the 2026 election term: adopting a province-wide election (one district for all registrants); reducing the size of Council from 12 to 10 elected dentists; and implementing staggered terms for Council members. Governance modernization is a priority for the College and is one of the six projects in the strategic plan.

An Ontario-wide election would help reinforce that dentists elected to Council serve the public at large. It would also allow for greater diversity on Council (beyond geography). It would enable the selection of a slate of candidates who bring a mix of skills, lived experience, and attributes that reflect the diversity of the Ontario public and communities the College serves. Governance modernization initiatives at other Ontario health regulators include province-wide elections.

Ms. Coghlan outlined the rationale for reducing the size of Council: better communication; more effective decision-making; and developing a culture of inclusiveness. Reducing the number of elected dentists by two further advances the parity of professional (12) to public (11) members

and demonstrates RCDSO's leadership in using existing legislative provisions to achieve governance goals.

The Governance Committee is also exploring staggered terms for Council members. This would address the risk of complete or substantial turnover on Council. Staggered terms would support retention of institutional knowledge; continuity; effective transitions and succession planning; and a balance of experience and new perspectives on Council.

**C. Ontario College of Teachers (OCT)
Governance Review Report - Governance Solutions - 2018
Legislative Reforms in 2020-2021**

Overview

Legislated governance reforms were implemented in 2021 and included a new governance structure for the OCT. The following are the particulars:

- Council is now composed of 12 people - six OCT members who are appointed by the Council from among a list of nominees prepared by the Selection and Nominating Subcommittee; and six lay members who are appointed by the Lieutenant Governor in Council.
- Council members are initially appointed for one- or two-year terms. Terms thereafter will be for two years. A person appointed to Council, a committee or a roster for appointments to specified committees will be limited to no more than six consecutive years of service. Individuals who served on previous Councils or rosters for a total of six years cannot be appointed until three years have elapsed since the end of their last day of service.
- The Act requires that Council members shall, in carrying out his or her duties, serve and protect the public interest and act in accordance with such conflict of interest rules as may be prescribed by the regulations.
- Before taking office, Council members must swear an oath or affirm with respect to their duties as members of Council
- The regulations provide that at least one member of Council must be Francophone and at least one member identifies as Indigenous.
- The Selection and Nominating Subcommittee creates lists of nominees for Council's consideration for appointments of OCT members, lay members and committee members based on a number of criteria set out in the regulations.
- The chair of Council is appointed by the Council for a one-year term.

Reasons and rationale for reforms

The reforms resulted from an independent review completed in 2018 by Governance Solutions who prepared the Governance Review Report. The objective was to identify, consult and present recommendations to improve the efficiency and efficacy of key governance practices

and structures of the OCT. The report made 37 recommendations, including a number related to governance structural reform.

Legislative changes (Bill 229) included many of the recommendations approved by Council based on the report, including changing the OCT's election-based governance model to a competency-based selection process.

The report reflects some of the issues with the existing governance model:

- The OCT's corporate governance is highly politicized. With a 37-person governing body, it is practically challenging to solve complex problems or engage in constructive dialogue. Council's size is unwieldy and is essentially imposed by the need to populate 14 committees from its 37 members.
- At election time, some Council members are actively solicited to step down – you will not have our support – and other prospects are solicited to step forward. Low turnout and many prescriptive districts leverage politicization further, resulting in some elected Council members essentially being hand-picked by a very small number of people, based on connections and voting record, rather than competencies or leadership fit.
- The Council's governance structure has every elected Council member serve identical three year terms, with a limit of two terms. This means that every three years there is an upheaval in Council, with a 50% or higher turnover of elected members, resulting in dislocation of institutional memory and a challenging learning curve for new Council and Committee members who are expected to contribute on day one.
- A small minority of members are selecting governors for three years from a small pool of candidates often selected based on connections and voting record, then the successful Council and Committee members are expected to be fully functional regardless of their experience, fit or training.
- Every three years, once the new Council is convened, a rushed process of selecting its Chair, Committee Chairs and members puts real power in the hands of the small number of returning Council members. There is no easy way for Council as a whole to change its mind on its leadership even if it agreed on better choices six months or eighteen months down the road.
- The structural requirement for a majority of elected members on Council, Committees and panels further politicizes corporate governance.
- Even more fundamentally, the continued politicization of the OCT's corporate governance has led to a widely-held perception among the membership – shared by some Council members too – that the true purpose of the OCT is to protect and represent the teaching profession. Some Council members and their political supporters

even ran on this platform. This fundamental flaw stands in the way of the OCT from being able to unashamedly and unrestrictedly focus on its real purpose, protecting Ontario's students

- Council meetings are dominated by a parliamentary process that stifles dissent and even dialogue. Council meetings descend into debates about member fees, council perks and staff performance evaluations and pay.

The following are key points from the governance review report and its recommendations that provide the rationale for the changes.

- A much smaller appointed Council is optimally positioned to provide effective strategic direction and oversight to the OCT's corporate and regulatory governance, and staff through its Registrar. An equal number of members from the profession and outside brings equity and balance to a self-regulatory body with the profession having a self-regulatory voice but not unduly dominating. It moves away from more of a representative model where protection of the profession can obscure protection of students, both in perception and in practice.
- Council members will be selected from a pool of qualified applicants following a robust, transparent process. Both members of the profession and the public will be encouraged to apply for Council membership, selected by a nominating committee which will vet their competencies and attributes to an optimal profile for Council. The nominating committee will need to ensure a robust, transparent process from beginning to end. Board and governance experience, leadership, strategy, risk and human resources expertise will be central criteria. Public members will be appointed by the Province, informed but not limited by the recommendations of nominating committee. Profession members will be appointed by Council on the recommendation of the nominating committee. This is a democratic process, just a different approach than elections by members; it is not undemocratic to seek relevant competencies
- Similarly, both members of the profession and the public will be encouraged to apply for committee membership, selected by the nominating committee which will vet their competencies and attributes to optimal profiles for these. The mix of profession and public members on committees will be driven by best outcomes.
- Governance is a tool that can transform organizational culture, Enhanced, mandatory governance education will go a long way to addressing one of the two underlying obstacles to effective governance: a shared and clear understanding of what governance is, the "why" and "how" of effective governance (the other obstacle, extensive politicization, is addressed in the first set of recommendations.)
- The study demonstrated, among a significant number of Council members and members of the profession, both a lack of respect for staff, and a "them vs. us" in terms of teachers

vs. public members. Council needs to reframe its thinking in this regard. Council members should respect the role and professionalism of staff, and then build on their work, including through constructive engagement, but not resent or distrust this work. Public members should be respected and treated as equals in each step in governance

- Currently a Steering Committee deals with agendas and motions and a Presiding Officer deals with chairing meetings. Managing Council meetings will now be the responsibility of a Chair.
- A smaller Council, unencumbered by a Presiding Officer, and well led by a capable Chair, embraces best practices in board effectiveness by promoting open dialogue, constructive engagement, challenge and dissent, all in the spirit of curiosity, enquiry and fiduciary duty.
- Strict parliamentary procedure at Council meetings will give way to a less formal process to promote dialogue, constructive challenge and dissent – parliamentary procedure and enforcement of Robert’s Rules of Order quash these essential ingredients in board effectiveness; these were never designed for boardrooms but for members’ and shareholders’ meetings.

D. Ontario College of Pharmacists (the College) Governance Renewal – 2018-2020

The College’s Board of Directors approved a review of its governance structure in December 2018, with the goals of strengthening public trust in the ability of the College to regulate the profession in the public interest and responding to international, Canadian and provincial trends regarding best practices in self-regulation.

Through to September 2019, the Board approved changes related to Board composition, competencies, and selection, as well as remuneration and composition of committees. These changes were codified in a new By-Law approved in March 2020.

The following summarizes the key changes made to the governance structure of the College:

- The Board was reduced from 28 to 20 (which is the minimum required by the *Pharmacy Act*) with nine elected members (two pharmacy technicians), nine public members (appointed by the Lieutenant Governor in Council of Ontario) and the two deans of the Universities (University of Toronto and University of Waterloo).
- Elected Board members are limited to a maximum of two consecutive three year terms
- For the election of pharmacy professionals to the Board, they must now have experience serving various patient populations, with key competencies established to guide qualifications to run for election and screening of applications by a Screening Committee for the key competencies and experience

- To maintain the public voice on committees, the College is recruiting and appointing lay members to committees as needed using the same competency-based recruitment and screening process as professional committee appointments
- The name of the governing body is now the Board of Directors (previously it was named Council), with individual members referred to as Directors. The President is now known as the Chair and the Vice-President as the Vice Chair. In alignment with this change, and in recognition of the College's relationship to pharmacy professionals, members are now referred to as "registrants."

**E. College of Nurses of Ontario (CNO)
Leading in Regulatory Governance Task Force – "Vision 2020"
2014– 2017**

After an external review of its governance structure that began in 2014 through its Leading in Regulatory Governance Task Force, the CNO created an evidence-based plan to enact major changes to the size, structure and associated processes of its Council (board) so it is better focused on the public's needs and interests. So-called "Vision 2020" includes a plan to enact necessary legislative change to enable this evolution.

The Task Force's final report in 2017, *A Vision for the Future*, included a series of recommendations to support the goal of the plan – to be recognized as a leader in regulatory governance. These included a smaller governing board made up of an equal number of public and nurse members - with all members having the needed governance competencies, appropriate conflict of interest provisions and ongoing education and evaluation. The following summarizes the recommendations:

- The board will have 12 members
- An Executive Committee will no longer be needed.
- The members of the board will together provide a balance of the needed competencies and diversity.
- The addition of advisory groups (e.g. consumer, educator, clinician) and a stakeholder engagement approach will ensure diverse input on issues the board will consider
- The board will have equal numbers of public and nurse members (including at least 1 RN, 1 RPN, 1 NP)
- Directors will be selected based on having the competencies (knowledge, skills and attitude) needed for the role. Individual directors will have required competencies: governance, leadership and regulation (protecting the public interest), and analytic, strategic and creative thinking, and a commitment to the public interest and a passion for nursing regulation.
- Appointments are to be done using a transparent, open appointments process, including structure and terms of reference of a Nominating Committee (composed of directors and non-directors) that would recommend appointments of board and committee members and of a Governance Committee to recommend the competencies and board and committee leadership.

- Attendance at a “boot camp” for individuals interested in applying for appointment will be required
- All applications will be reviewed by the Nominating Committee.
- Each year the board will review the criteria for appointment, including addressing any specific needs for the coming years.
- The board will identify the needed checks and balances in the process to promote appropriate succession and ensure the needed competencies are in place.
- Each director will be supported in understanding and meeting their role expectations and accountabilities.
- Continuous learning will be part of the board culture.
- Advisory Groups will be constituted by the board to help inform the board on views across the profession and the public.
- Directors will serve 3-year terms with a 2-term maximum

The report highlights that Council is individually and collectively committed to regulating in the public interest in accordance with the following governance principles:

- Accountability
- Adaptability
- Competence
- Diversity
- Independence
- Integrity
- Transparency

While the governance restructuring reforms have yet to be implemented in legislation, some components of the reforms have been adopted. In 2021, the CNO indicated that for the last three years, the new members of the CNO’s statutory committees have been appointed based on a competency assessment and that the CNO is now establishing a competency-based Nominating Committee that will assist in making competency-based committee appointments — and eventually the appointment of the restructured Board. With support from an independent third-party consultant, the CNO selected members of its first Nominating Committee for Council.

In 2024, the CNO reported on governance as part of its annual College Performance Measurement Framework required by the Ministry of Health. The CNO reported on eligibility requirements for candidates who wish to run for election, recommends a competency-based appointments process and enhancements to its existing competency-based election process through self-assessments.

F. College of Physicians and Surgeons (CPSO)

The College's Board of Directors (previously Council – see name change below) has approved a set of governance modernization initiatives to be effected through by-laws. The changes include a new election model for province-wide elections, in place of district elections, with candidates reviewed and nominated by a Governance and Nominating Committee through a competency, skills and diversity-based process, including geographic representation. In addition to making the governance changes, all of the by-laws have been revised for drafting improvements, process improvements, streamlining and clarification.

Most of the governance modernization initiatives will be implemented over time, once the necessary preparatory steps have been taken. Accordingly, many of the by-law changes addressing these initiatives will not take effect until a future date to be determined by the Board. The first election under the new model is expected to be held in 2025.

Below is a high-level summary of the key changes.

Governance Terminology

The changes promote clarity by aligning CPSO's governance terminology with conventional terms more commonly used and understood by the public and other corporations and organizations. In addition, the language has been made more gender inclusive.

- Council > Board of Directors (the Board)
- President > Board Chair
- Vice-President > Board Vice-Chair
- Council members/councillors > Directors
- Public Directors
- Elected Directors
- Academic Directors
- Members > Registrants
- Annual General Meeting > Annual Organizational Meeting

New Election Model: Competency-Based Elections

The new election model is expected to be in effect in 2025. One component of this change would see the implementation of a process for determining candidates for election to the Board based on their competencies, skills and diversity attributes, including geography representation, with the goal of achieving a balanced Board composed of skilled, qualified directors who also reflect the diversity of Ontario's population and the practice of medicine.

A Board Profile has been created which reflects the desired competencies, skills and diversity attributes (including practice settings and geography) for Board Directors. The Governance and Nominating Committee will assess the competencies, skills and diversity attributes of election candidates based on the Board Profile.

New Election Model: Province-Wide Elections

The other election model change would replace district elections with province-wide elections. A regular election will be held annually for approximately one-third of the elected Board seats (i.e. based on expiry of three-year terms). Under this model, all members are eligible to vote for any of the candidates in every election.

Academic Representation

This change would see a total of three Academic Directors sit on the Board, and selected based on their competencies, skills, and diversity attributes in line with the Board Profile. Currently, each of the six medical schools have an academic representative on the Board (although only three are voting members).

Eligibility Criteria for Board Directors and Committee Members

Eligibility criteria are threshold requirements that a Registrant must satisfy to be eligible to stand for election as an Elected Director, be appointed as an Academic Director or be appointed to a committee. These new and revised criteria are intended to achieve a Board and committees whose members satisfy more stringent eligibility criteria.

Eligibility criteria are separate and distinct from the competencies, skills and diversity attributes in the Board Profile that will be used to assess which of the candidates for Director or committee positions who have met the eligibility criteria are qualified to stand for election or be appointed to the Board or a committee.

Grounds for Disqualification of Board Directors and Committee Members

Grounds for disqualifying Board Directors and committee members are divided into two categories:

- a) Grounds that would automatically result in disqualification.
- b) Grounds where the Board may exercise its discretion to disqualify the member.

The revised disqualification criteria were approved to maintain a Board and committees composed of Directors and committee members, respectively, who continue to meet more stringent criteria.

INFORMATION ON GOVERNANCE STRUCTURES AT OTHER ONTARIO REGULATORS

Regulator & Membership (approx.)	Size & Composition of Board	Selection/Governance & Nominating Committee	Elections – Regions & Voting	Term Limits	Process for filling vacancies of elected board members
<p>College of Nurses of Ontario</p> <p>220,000 registrants</p>	<p>37 members currently, 21 elected members and 14-18 public representatives</p> <p>Council has approved a reduction to 12 members, with an equal number of nurses and public members</p>	<p>Nominating Committee is a standing committee, it makes recommendations about board elections, committee appointments and reappointments and succession planning</p> <p>Only by-law requirement is that the Chair is the immediate past president of the board. By terms of reference, there are 5 members, at least 3 of whom are not members of the board. At least one but no more than 2 members of the committee may be current or past registrants or applications. The ED/CEO acts as a resource to the committee.</p>	<p>9 regions for each of RNs and RPNs, some regions have two members and some have one</p> <p>RNs can only vote for RNs and RPNs can only vote for RPNs</p> <p>Nurses can only vote in elections where their address is in the district for which the election is being held (elections are staggered)</p> <p>A person is eligible to cast as many votes on a ballot as there are positions to be elected</p>	<p>6 years (2 terms)</p>	<p>If an elected councillor seat becomes vacant < 16 months before the expiry of the term, the Council shall leave the seat vacant or appoint a replacement</p> <p>If an elected councillor seat becomes vacant > 16 months before the expiry of the term, the Council shall direct the holding of a by-election or appoint a replacement</p>
<p>College of Physicians and Surgeons of Ontario</p> <p>46,000 registrants</p>	<p>15-18 elected directors, 13-15 public directors appointed by the government, 3 academic directors appointed by the board</p>	<p>Governance & Nominating Committee is established by by-law. New provisions coming into force expand the role of the committee – they will be assessing current skills and gaps of the board to select appointees and screening applicants for election.</p>	<p>10 electoral districts – for 6 of the districts there is one elected director, for 3 of the districts there are 2 elected directors and for Toronto there are 4 elected directors</p> <p>A voter is eligible to vote for a candidate if they practise in that electoral district or if not in practise, reside in the district.</p> <p>A person is eligible to cast as many votes on a ballot as there are positions to be</p>	<p>9 years (3 terms)</p>	<p>If the seat of an elected director becomes vacant, the board may leave the seat vacant, appoint the person who had the next most votes or hold a by-election.</p>

Regulator & Membership (approx.)	Size & Composition of Board	Selection/Governance & Nominating Committee	Elections – Regions & Voting	Term Limits	Process for filling vacancies of elected board members
		The Committee is chaired by a past Board Chair and is comprised of the current Board Chair, Vice-Chair and past Chair, a physician board member who is not a member of the executive and 2 public directors who are not members of the executive.	elected in their region. New provision not yet in force expands the number of votes to the total number of candidates to be elected.		
Ontario College of Teachers 230,000 registrants	12 board members – 6 elected members of the profession and 6 public members appointed by the government	Selection & Nominating Committee is established in the Act and is comprised of members of the board, with the proviso that there be more public appointees than other members. Duties include assessing applications and making recommendations about appointments to the board and to the government.	N/A	N/A	N/A
Royal College of Dental Surgeons of Ontario 11,000 registrants	10-12 elected members and 9-11 members appointed by the government, plus 2 academic members	The Governance Committee is a standing committee, responsible for nominations for committee appointments	12 electoral districts, with one person elected from each region Elections are held every two years Voters get only one vote	8 years (4 terms)	If there is a vacancy < 6 months from the next scheduled general election, the position can be left vacant, Council can appoint a member or can hold a by-election. If there is a vacancy > 6 months from an election, Council is required to hold a by-election.

Regulator & Membership (approx.)	Size & Composition of Board	Selection/Governance & Nominating Committee	Elections – Regions & Voting	Term Limits	Process for filling vacancies of elected board members
Ontario Association of Architects 5,000 members	Board is 12-20 elected members	None	6 electoral regions, the number of positions per region varies from 1 – 5 Voters have one vote in their own electoral region and one vote for the general member for the Ontario region	9 years (3 terms)	Vacancies generally do not have to be filled as long as there remains a quorum Vacancies of elected members do have to be filled – where there remains a quorum, Council can appoint a replacement. Where there is no quorum, the replacement is elected
Professional Engineers of Ontario 90,000 licensees	25 members of Council currently, must consist of 15-20 elected members plus 3-5 public members and 5 appointed licensee members, both categories appointed by government	None, but PEO does provide feedback to government on gaps in board and skills matrix for its consideration	5 electoral regions, 2 from each region plus 3 councillors at large Voters may cast votes only for candidates in the regions where they work as well as vote for the positions-at-large and the president-elect Voters have as many votes as positions there are available	6 years for elected members (president's term is additional)	Vacancies are filled by the last runner-up in the region.

INFORMATION ON GOVERNANCE STRUCTURES OF OTHER CANADIAN LAW SOCIETIES

Province/ Territory and Membership (2023)	Number of Benchers/ Governors	Process to Fill Bencher Vacancy	Bencher Term	Life/ Honorary/ ex officio Bencher Office
British Columbia current 16,918	32 benchers include: Attorney General, six lay benchers, elected benchers (25 elected from 9 electoral districts (Rule 1-20)) (Act s. 4 and 5)	By-election held to fill vacancy for remainder of the term (Rule 1-38)	Two-year bencher term (Rule 1-1); limit of seven years (cumulative) (Rule 1-2)	Office of life bencher after term limit; no vote in bencher meetings (Rule 1-4)
British Columbia – new Legal Professions regulator	17 board members: 5 elected lawyers, 2 elected notaries, 2 elected paralegals, 3 public members appointed by the government and 5 members appointed by the board. Of the appointed members, 4 must be lawyers, one must be a notary public and one must be an Indigenous person.	If balance of term < 6 months, board can appoint to fill vacancy, if > 6 months, a by-election must be held	Three-year term, limit of six years.	None
Alberta 16,130	24 benchers: 20 elected benchers (Act s. 10), 4 lay benchers (Act s. 11); 5 districts for the bencher election (Rule 9)	Appointment process to fill vacancy (Rule 17) - Benchers may to consider any factors they consider relevant, including a potential Bencher's competencies, diverse characteristics, and results in the most recent Bencher election,	Elected for three-year terms (Act s. 12 (1.1)); limit of three terms (Rule 10(2))	The Minister, past Presidents of the Society (who do not hold office as Benchers), and appointed honorary Benchers - participation but no vote (Act s. 9)
Saskatchewan 2711	22 benchers - 17 elected benchers from 9 districts, at least 5 each from Regina and Saskatoon, 4 lay benchers (Act s. 6 and 7; Rule 301)	Benchers appoint a member who is not under suspension to fill the vacancy for the balance of the term. (Act s. 20)	Three-year term (Rule 302); a limit of two consecutive terms (Rule 303).	Ex officio: Dean of the College of Law of the University of Saskatchewan (voting); federal and provincial

INFORMATION ON GOVERNANCE STRUCTURES OF OTHER CANADIAN LAW SOCIETIES

Province/ Territory and Membership (2023)	Number of Benchers/ Governors	Process to Fill Bencher Vacancy	Bencher Term	Life/ Honorary/ ex officio Bencher Office
	and 1 elected as new lawyer (less than 10 years licensed) (Rule 315)			Attorneys General (non-voting) (Act s. 6, 7)
Manitoba 2652	25 benchers - 12 elected benchers, including 8 lawyers from Winnipeg, 1 lawyer from each of the 4 other districts; one articling student; 4 appointed lawyers ¹ , 6 lay benchers; the Dean of the Faculty of Law of the University of Manitoba; the immediate past president (Act s. 5);	Benchers appoint a practising lawyer in the region to fill the vacancy (Rule 2-62)	Two-year term (election held every even-numbered year) (Rule 2-3); limit of four terms (Act s. 9(1); Rule 2-5) Student bencher services 1 year term. (Rules 2-30)	Life Benchers -who have completed a term as president and members who have served as a bencher for at least eight years (Act s. 9) Honorary benchers may also be appointed (Rule 2-31)
Quebec (Barreau) 30,528	16 directors - the Bâtonnier, 4 from the Bar of Montreal (elected by its members), 3 from Bar of Quebec (elected by its members), 4 from four other groups of 13 Bars (elected by the members in those groups) (2 vice-presidents are among these 15); 4 directors appointed by the Office des professions (Act s. 10)	Directors elect a director to fill the vacancy for the remainder of the term from nominations submitted by eligible members of the Bar(s) of the director who vacated the position. (Regulation respecting elections to the Barreau du Québec, CQLR c B-1, r 8.1, s. 32)	Two year term for elected directors; term limit of two terms, but may run again two years after the end of the second term (Act s. 12)	
New Brunswick 1932	Amendments coming into force in July 2024 permit the Law Society to determine the size of the board in its rules. The new Act also provides	Council appoints an eligible member from the region to fill the vacancy for the balance of the term. (Act s. 10)	New Act provides for a two-term limit, reduction from a three-term limit	

¹ These appointees must meet the criteria that are established from time to time by the benchers to achieve representation by region, demographics, type of law practice, professional, leadership or management skills or other identified skills and attributes (Rule 2.32-2).

INFORMATION ON GOVERNANCE STRUCTURES OF OTHER CANADIAN LAW SOCIETIES

Province/ Territory and Membership (2023)	Number of Benchers/ Governors	Process to Fill Bencher Vacancy	Bencher Term	Life/ Honorary/ ex officio Bencher Office
	for 3 members appointed by the Law Society (Act s. 6 and 7)			
Nova Scotia 3454	23 members - 13 lawyers elected from four districts, including 3 at large members; Attorney General or representative appointed by the Attorney; the President, the First and Second Vice-presidents; Dean of Dalhousie Law School; 5 lay benchers appointed by the Council (Act s. 7; Reg s. 2.7.3))	Council appoints a lawyer from the appropriate district to fill the vacancy (Reg s. 2.3.5)	Maximum of three two-year terms (Reg. s. 2.3.3; 2.5.1))	FLSC council member is an <i>ex officio</i> non-voting member of Council (Reg s. 2,7,2)
Prince Edward Island (2022) 412	12 members - president, past president, vice-president; secretary-treasurer; 6 members; 2 lay council members appointed for 3-year term by the Lieutenant Governor in Council (Act s. 7)	Council appoints members to replace members who resign/unable to serve (Act s. 8(1))	One-year term; retiring members of council are eligible for re-election (Act s. 7(2) and (6))	
Newfoundland 1103	21 benchers - 17 elective benchers from various regions; and 4 appointed benchers. (Act s.7)	Remaining benchers elect a member in good standing to fill a vacancy. (Act s. 16)	Bencher election held every year (Act s. 9); Four-year term, but benchers can serve two terms (eight years) and wait 12 months following the term to run again (Act s. 13). In each year four elective benchers and one appointed bencher cease holding office. (Act s. 14)	Honorary benchers are former treasurers or presidents of the society who are members in good standing. (Act s. 7)
Yukon (2022) 507 (322 non- resident)	Currently, 8 members (called the Executive) – 6 elected lawyers and 2 appointed lay members (Act s. 4 provides for:	Executive can either appoint a lawyer or hold a special election to elect a lawyer to fill a vacancy on the Executive (Rules s. 17)	Three-year term for elected members of Executive (Rules s. 9)	

INFORMATION ON GOVERNANCE STRUCTURES OF OTHER CANADIAN LAW SOCIETIES

Province/ Territory and Membership (2023)	Number of Benchers/ Governors	Process to Fill Bencher Vacancy	Bencher Term	Life/ Honorary/ ex officio Bencher Office
	five elected lawyers, of whom one is selected, in accordance with the rules, as President of the Society and chair of the Executive; the immediate past President of the Society; two public representatives and the number of additional members of the Executive authorized by a rule under the Act.).			
Northwest Territories (2022) 585 (296 non- resident)	5 members called the Executive: at least 4 elected at an annual election (see Rules s. 8), 1 lay appointee (Act s. 3) Members of the Executive are the President, the Vice-President, the Secretary and the Treasurer (Act s. 6)	Executive appoints and active resident members to fill a vacancy (Rules s. 18)	Three-year term (Rules s. 13).	Executive may appoint honorary members of the Executive (Act s. 7) The Attorneys-General (NWT and Canada) and past Presidents of the Society are honorary members of the Executive (Rules s. 4)
Nunavut (2022) 312 (243 non- resident)	5 members - virtually the same as NWT			