

## Fiduciary Duty

# Stop endless debate on SOP at law society Convocation | Omar Ha-Redeye

By Omar Ha-Redeye



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(June 28, 2019, 2:49 PM EDT) -- Most lawyers in Canada don't know or care much about what Convocation is. Effectively, it is the business meeting of the elected benchers of the law society, where decisions are made about the governance of the legal profession.

This body is of profound significance, central to the self-regulation and autonomy of the legal industry. This independence is itself related to the independence of the bar, and more indirectly, the judiciary and justice system as a whole. In other words, Convocation is essential to our democracy.

Yet Convocation operates entirely unlike other democratic institutions we are familiar with. This would be readily apparent to any observer who attended or viewed the meeting on June 27 at the Law Society of Ontario (LSO). The main reason for this is that the members of this institution, the benchers, are operating in a governance fashion in the best interests of the public, under s. 4.2 the *Law Society Act*, RSO 1990, c L.8. The topic of public interest was the highly controversial "Statement of Principles."

How do benchers, elected by lawyers, make decisions to protect the public interest, on an issue as convoluted and complicated as the Statement of Principles? Well, observers to this Convocation found out, with a motion to repeal the Statement of Principles being proposed to be amended, with a further proposal to amend the amended motion.

Ultimately nothing was truly accomplished after many hours of debate, with the initial motion withdrawn after the amendments passed, and then reintroduced at the late hour. This motion, effectively the same one tabled at the outset, is intended to be heard at another Convocation in July.

It's very easy to succumb to skepticism, frustration and cynicism about the law society, and the ability to self-govern our profession, especially after observing countless motions, amendments, rulings, appeals and points of order, all in a single day.

My conclusion, as someone who has attended more Convocations than most of the sitting benchers, despite never running for bencher myself, is quite the opposite — that the system works well.

The effect of the amended motion would have made the Statement of Principles voluntary, which completely addresses the concerns of "compelled expression" raised by some benchers. Indeed, an entire slate of "StopSOP Benchers" was elected on this single issue of perceived compelled expression.

However, when faced with this option to adopt a compromise position that would remove any mandatory component from the Statement of Principles, these StopSOP benchers declined to support it.

Perhaps more importantly, it became readily apparent that the StopSOP benchers voted consistently in unison, without much deviation or dissent between them. These poignant observations are invaluable for members of the professions who want to ensure an inclusive legal community, but also

are concerned about the potential reach or overbreadth of the law society.

The Carver Model of board governance suggests that the ideal size of a board is about seven members. They note that larger boards "are easier to manipulate, find it almost impossible to govern themselves, and give rise to cliques and stage-managing." All of these features were arguably present on June 27 at Convocation among the 52 benchers, a massive board by any standard. Ensure that most of these board members are legal professionals, and you're invariably prone to extensive prose on nearly any subject.

But the Carver Model also concedes that "We know of no right board size. The size in any specific situation should be that which most likely assures that the board will get its job done."

The job here at Convocation is to very carefully consider and contemplate policies that have a direct impact on the legal professions and understanding what that impact is on the public. Most of that work is done in committees, not even at the board level. Where those decisions have not been fully thought out or contemplated, the board necessarily needs to question, scrutinize and dissent from hasty proposals.

The composition and size of Convocation protects against poor decision making. It ensures that the process is drawn out, but this is also sometimes necessary to ensure a measure of stability in the legal industry.

Convocation is a quasi-legislative body, which has its own mechanisms for sober second thought intrinsic to its own constitution.

The process of judicial review and challenges through the court are protracted and costly. Those expenses ultimately come from our legal fees. An ineffective debate at Convocation therefore, despite being less than desirable, is still a better option than the alternatives.

Thousands of lawyers across Ontario have called on the law society to engage in further consultation, to deliberate and carefully reflect and only then make careful proposals about how to best move forward on the Statement of Principles issue. This work is best done in committee, over an extensive period of time and then brought back to Convocation.

Those calls should be heeded by all members of Convocation, including the StopSOP benchers. It is their fiduciary duty to do so.

Otherwise, we can likely expect more of the same in July, with even less accomplished. There is nobody who observed Convocation on June 27 who would be able to credibly justify any of that in the public interest.

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