



Musings of the Central West Regional Bencher



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Musings

I am not calling this a newsletter or a report instead, I'm calling this musings. That is because it represents a period of reflection on being an elected bencher. News of the business transacted in Convocation is now provided promptly by the Law Society (due, in my opinion, to the example set in the reports of the now ex officio Bencher Larry Banack). In these musings business issues which I see as vital to the legal profession requiring immediate input will be examined but the majority of these musings will be devoted to what it is like to be one of 40 elected benchers in a sea of elected, appointed and ex officio benchers as provided in the *Law Society Act*.

Regional Bencher and Governance

Because of your support in the April 2011 bencher election I was very fortunate to be elected bencher for the Central West electoral region. For those not familiar with the boundaries of the electoral regions it is the same as the courts namely the counties of Bruce, Dufferin, Gray and Wellington and the regional municipalities of Halton and Peel. A review of the *Law Society Act*, by law 3 and discussion with the Treasurer made it clear to me that although there are 8 Regional Benchers it is a function of appearance rather than any real representation. All of the forty persons licensed to practice law in Ontario as barristers and solicitors elected by those licensed to practice law in Ontario to

govern the affairs of the Society with the paralegal and lay benchers are not representative of or accountable to those who have elected them. Why? Because the *Law Society Act* says so. Review the provisions of Part I of the *Law Society Act* and in doing so ask yourself could there and should there be a better model? There are plenty of models to examine and a plethora of legal minds available to suggest new models. A better model would promote interest in voting at elections and make the Law Society relevant to the profession.

Convocation

Since the election I have attended: five Convocations (an archaic term for regular or special meeting of benchers convened to transact business); six meetings of the Access to Justice Committee and other committees; a long-term planning session, orientation session and adjudication sessions and calls to the bar. This is what unpaid elected bencher must do. [The *Law Society Act* provides discretionary powers for the removal of an elected bencher who fails to attend six consecutive regular Convocations.] The meetings on average occupy about 2 days a month and that is not so difficult when you practice fairly close to Osgoode Hall as I do in Oakville but it is much more difficult for those practicing in other parts of the Province and takes much more of their time.

The Civil Service

I have frequently been asked, maybe as an icebreaker or maybe because there is genuine interest, how do you like being a bencher? At the moment I still have not reached a conclusion this is because there are many factors to be assessed to provide an answer.

The Law Society staff is over 500 very experienced and professional persons. This is not surprising given the changes to the *Law Society Act* which included the licensing of paralegals and expansion of powers to regulate in the public interest. I have referred to staff as civil servants because that is an appropriate analogy. From my government background I appreciate that the size of the administration and the issues dictate that the staff carry out the day-to-day operations seeking rubberstamping from Convocation from time to time. The size of the governing body, the complexity and number of issues has resulted in a very hands off role for benchers. The only avenue for input is at committees.

Is there a better way? I don't know but it can be frustrating to be part of this process.

Given the mandate of the Law Society under the *Law Society Act*, the size of the administration and the hiring of the new CEO this may be the right time for the Law Society to reconsider its processes and also to disclose like the provincial and municipal governments the names of all those civil servants earning over \$100,000. This would be informative and enable all members to appreciate where their money is going and why.

Discipline

Under the *Law Society Act* the key functions of the Law Society as it relates to lawyers is the ensuring of professional competence and professionalism. Discipline is a very important and essential function of a self-regulating profession. All benchers sit on discipline hearings. These hearings are not only informative in terms of process and administrative law developments but offer an eye-opener in terms of what is going on in our profession. I have only attended two such hearings to date but I find this to be the most satisfying and rewarding part of being a bencher.

Input

Currently there are two matters pending before the Society in which you can provide an opinion. They are: paralegal review and articling.

Under section 63.1 of the *Law Society Act* the Society on the fifth anniversary on which paralegals regulation came into the *Law Society Act* (paralegal = person who is authorized to provide legal services Ontario) must review the manner in which paralegals have been regulated, the effect of the regulation on both persons and the public. The review is in the form of a report by the Society to the Attorney General. This is the final review provided for in the legislation. It is not an opportunity to consider scope of practice but an opportunity to see if regulation is working. Because of a very strong bias which I have in this area as a result of my long-term dealing with this issue before regulation as a task force member and as president of the Ontario Bar Association I am not inputting directly. I trust that you will all participate in bringing your views and concerns

forward to be considered by the Society in their report. Don't forget that the 2000 odd paralegals have two benchers and that they participate equally in the business of the Law Society. If you look at the Law Society website the deadline for written comments is **January 31, 2012**.

Another issue is articling. The Articling Task Force Consultation Report is on the Law Society website. Your input especially as a lawyer who may be practicing as a sole practitioner or in small firm is vital. Comments are welcome until **March 15, 2012**. Consultation sessions are being held across the province but not in Central West. Have a look at the website maybe you can attend a session in Barrie or Hamilton instead of Toronto. This is without a doubt one of the most important issues to become the business of the law society in this term

Reminder

There is still time to get your nomination in for the Law Society Medal, Lincoln Alexander Award or the Laura Legge Award. Look at the Law Society website the deadline is **January 25, 2012**.

Concluding Remarks

These are difficult economic times. I have heard that some experts believe that we are now in a recession. That is one of the reasons that I was one of two benchers to vote against an increase in the honorarium to the Treasurer commencing for the new Treasurer to be elected by the bencher in June 2012. Perhaps this can be revisited and set aside on or before that time. My Scottish roots are not far away and regardless of the lack of legislation I believe that benchers must be fiscally responsible as well as accountable to all lawyers licensed in Ontario.

In conclusion I would like to wish everyone the best for 2012.

I always want to hear from you and I will try to help where I can . Please feel free to contact me by e-mail at virginia@virginiamaclean.com