



Memo

To: Benchers
Date: April 24, 2019
Subject: Law Society General Meeting Reform – For Decision

The Governance Committee's report on Law Society General Meeting Reform was before Benchers for discussion at the April 5, 2019 Bencher meeting. Chair of the Governance Committee, Steven McKoen, QC, spoke about the issues that arose at the 2018 Annual General Meeting (AGM) in October 2018 and the continued meeting in December 2018, goals and challenges associated with possibilities for reform, and the Governance Committee's recommendations to Benchers for reform.

Benchers had a thorough discussion about the issues to be addressed and possible options for reform. They had an opportunity to comment on the proposed changes and engaged in a discussion about how those changes may enhance opportunities for members to vote, streamline the in-person meeting process and also retain the ability to make member resolutions.

The Governance Committee recommends Benchers agree to seek the members' authority, in accordance with s. 12(3) of the Legal Profession Act, to amend the Law Society Rules to provide for:

- 1) a process for the submission and publication of member resolutions prior to an annual general meeting,
- 2) a process allowing amendments to member resolutions prior to an annual general meeting, but not at an annual general meeting,
- 3) online voting on Law Society and member resolutions in advance of a general meeting,
- 4) no online voting on Law Society and member resolutions at a general meeting, and
- 5) procedure at a general meeting, not otherwise provided for in the Rules, would not be determined by Robert's Rules of Order but by the Chair

If Benchers approve the Committee's recommendations, pursuant to Law Society Rule 1-40(1), the Benchers should direct the Executive Director to conduct a referendum of all members in May to obtain approval to amend the rules applicable to general meetings as proposed.



Law Society General Meeting Reform

Committee: Governance

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March 25, 2019

Prepared for: Benchers

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Purpose: Discussion

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FOR DISCUSSION

Committee Process

1. In light of the experience with the 2018 Annual General Meeting, the Committee was asked to consider possible reforms to the general meeting rules to avoid the issues experienced at that AGM while maintaining or improving the opportunity that members have to participate in general meetings.
2. The Committee met in January and February to review the experience with the 2018 AGM, consider the issues that arose at the October 30 meeting and the experience at the continued meeting on December 4, and discuss options for reforming the general meeting process.

Background

3. The experience at the 2018 AGM has thrown into sharp relief some issues with our current rules regarding general meetings. The Governance Committee has given consideration to the issues and how they might be addressed.
4. The origin of the current general meeting Rules is found in amendments to the Rules made in 1995.
5. Although the *Legal Profession Act* only required the Benchers to hold an AGM at a place and time designated by the benchers, in April of that year the Benchers approved amendments to the Rules that created the requirement to hold the AGM in at least eight physical locations to be connected by telephone. As a result, the 1995 AGM was the first to be held at more than one location.¹
6. The introduction of *Bill 15 – 1998 Legal Profession Act* in the 1998/99 3rd Session of the BC legislature added another element relevant to any consideration of the current Rules. The *Bill* introduced s. 12 of the current *Act* requiring the Benchers to make certain Rules regarding various matters that were previously covered in the *Act*. One of those matters was the conduct of general meetings of the society. The *Bill* removed most of sections 18 – 21 dealing with the AGM, the appointment of the auditors, special general meetings and quorum at a general meeting and then specifically provided in section 12(2) that the first rules must be consistent with the provisions of the *Legal Profession Act*, R.S.B.C. 1996, c. 255, relating to the same subject matter.
7. Section 12(3) of the *Bill* also provided that the benchers may only amend or rescind rules made under subsection (1) or enact new rules respecting the matters referred to in subsection (1), in accordance with an affirmative vote of 2/3 of those members voting in a referendum respecting the proposed rule, or the amendment or rescission of a rule. As a result, any amendments to the current Rules regarding the conduct of general meetings must be approved by the members, either at a general meeting or by referendum.
8. Subsequent amendments to the Rules have provided the Benchers with the discretion to webcast the meeting and permit members to vote online.

¹ The atrium of the Law Society Building and in teleconference locations in Victoria, Nanaimo, Castlegar, Kelowna, Prince George, Fort St. John, Terrace and Kamloops. A 1992 special general meeting on the Gender Equality in the Justice System report was held by teleconference on November 20, 1992. The meeting was held in Vancouver with remote teleconference locations in Courtenay, Kamloops, Nanaimo, Prince Rupert and Terrace and it was apparently not that successful due to unspecified technical issues.

Issues

9. In 1995, Jeff Hoskins, QC provided the Benchers with a memorandum covering a number of points raised by Benchers during the discussion that led to holding the AGM in more than one location. In particular, he provided a prescient summary of our efforts to expand the general meeting:

In the past, our experience has been that there is no technical service available to provide all of the various services necessary to conduct a meeting with remote locations. Nor is there a service available to take responsibility for making all the arrangements and ensuring that the operation works smoothly. As a result, considerable staff time is involved in organizing such an event. The lack of coordination among service providers can result in a technical product that is less than adequate, as was the case at the 1992 special meeting

10. The introduction of webcasting and online voting at the most recent AGMs, in addition to maintaining the teleconference locations, has made Mr. Hoskins' observations even more telling.
11. The most recent experience with our AGM highlights the problems with our current procedure. Our present Rules reflect their origin: a meeting of perhaps 100 members in a single location once a year. To this concept we have tacked on Rules providing for at least eight satellite locations and for online participation by way of a webcast and online voting. While it made sense to require that members had to be present at a general meeting to vote by a show of hands when everyone attended in person at one location, the result is a legal fiction when we pass a Rule to provide that a person participating in a general meeting at any location connected by telephone or the internet is present at the meeting for the purpose of voting.
12. The Committee considered a number of aspects of the current general meeting procedure in light of the experience with the 2018 AGM and other past meetings where member interest and attendance has been considerable.

Attendance

13. As noted above, the Rules require that the Executive Committee must designate at least eight satellite locations around the province in addition to the main location in Vancouver at which members may attend the meeting and may provide for virtual online attendance and voting.
14. While all other law societies in Canada have a similar requirement to ours regarding holding an AGM, no other Canadian law society provides for more than one physical location or currently provides for online attendance and voting.

15. The Committee recognized the challenges with coordinating communication and participation among multiple physical locations and the online participation and voting. In particular, the Committee was mindful of the sometimes unsatisfactory experience that coordinating and communicating with all of the physical and virtual participants during the course of a continuous meeting presents.

Member Resolutions

16. Rule 1-8(6) requires that the participation of only two members is necessary to place a resolution on the agenda for the annual general meeting.

17. For comparison, section 13 of the *Legal Profession Act* requires at least 5% of members in good standing to request a referendum on any resolution passed at the annual general meeting in order to require that the Benchers implement the resolution.

18. Similarly, calling a for a special general meeting requires 5% of the members in good standing at the time the request is received by the Executive Director and the proponents must state the nature of the business that is proposed for the meeting (Rule 1-11).

19. The considerable interest in amending the three member resolutions that were presented to the 2018 AGM highlighted for the Committee the challenge presented by requiring that only the support of two members is necessary to place a member resolution before the members at the AGM.

Amendments

20. Rule 1-13(13) provides that a dispute concerning the procedure to be followed at a general meeting not provided for in the Act or these Rules is to be resolved in accordance with the most recent edition of Robert's Rules of Order Newly Revised. The result is that amendments properly before the AGM are permitted.

21. Roberts Rules of Order Newly Revised provides for a wide variety of permitted amendments to matters before meetings. Most notable was the notice we received prior to the first 2018 AGM of two motions to substitute. This type of amendment motion essentially permits the mover to substitute a different resolution for the one under debate as long as the subject matter of the amendment is germane to the subject matter of the main resolution.

22. The Committee considered the consequence of using Robert's Rules of Order Newly Revised for the conduct of the AGM.

23. The first consequence was that, if a motion to substitute is permitted, the purpose of giving 21 days' notice to members about the resolutions to be considered at the meeting is largely undermined, in the sense that members who chose not to attend

based on the notice might have decided otherwise if they had known about the language of a substituted motion.

24. The second consequence is that permitting amendments at the meeting can lead to the experience at the 2018 AGM where the mover of one of the member resolutions proposed an amendment to the original resolution and another member proposed an amendment to the amendment to the original resolution, resulting in the need for three separate votes in relation to original resolution. The result was numerous anecdotal reports that some members were not sure what they were voting on when asked to vote at various times during the meeting.

Voting

25. Under the Rules, a member must be present at a general meeting in order to vote. Since no one can vote until the President calls for the vote, the meeting can extend for several hours where there are a number of resolutions to be voted upon, such as occurred at this year's AGM. Members must therefore attend throughout the entire meeting to be able to vote on all of the resolutions.
26. The usual society AGM resolutions relating to the business of the society, being in our case the appointment of the auditors and the election of the Second Vice-President, do not generate much interest or participation, as the low turn-out at the 2017 AGM evidenced.
27. What does generate member engagement are member resolutions, such as the one considered at the TWU special general meeting or the resolutions at the 2018 AGM. Participation in the 2018 AGM, both online and in person, confirms that members do want to participate in voting on these types of issues.
28. The Committee noted that the requirement to be present at the meeting, even with multiple physical locations and online participation, gives rise to the concern expressed by many members that it is not possible for them to attend at all on the date and time set for the meeting or that they cannot attend throughout the entire meeting due to commitments in court or otherwise.

Timing of the AGM

29. The AGM has been held some time in the fall for a number of years now. This timing was necessary when the members had to approve the annual practice fee at the meeting, since development and presentation of the budget for the following year usually took at least until the July Benchers meeting.
30. As the members are no longer required to approve the annual practice fee, the timing of the annual general meeting is now dictated only by the requirement in Rule 1-8(7) that, at least 21 days before an AGM, the Executive Director must make available to

Benchers and members a notice containing, inter alia, the audited financial statement of the Society for the previous calendar year.

31. The Committee noted that holding the AGM sometime earlier in the year might reduce the number of events in the fall each year that must be managed by staff at the Law Society. Many years ago, AGMs were held much earlier in the year.

Discussion

32. Given the experience with the 2018 AGM and the concerns expressed by many members, the Committee agreed that the status quo is not an option.
33. The current necessity for attendance during the entire course of the physical and virtual meeting to be able to vote on the resolutions caused the Committee the most concern. The Committee recognized the merit in the substantial number of complaints that this requirement effectively disenfranchised members who simply wanted to vote on the resolutions but were unable to attend at the date and time set for the meeting, or could only attend for part of the meeting.
34. The Committee discussed at some length the current requirement that only two members are required to place a resolution before the meeting. While recognizing that this threshold can and did lead to resolutions that were controversial and were opposed by a number of members, the Committee also recognized that imposing a higher threshold might unduly constrain resolutions that ought to be before the members, even if controversial.
35. The Committee was very much of the view that permitting amendments at the meeting was not conducive to the orderly conduct of the AGM and not in keeping with much of contemporary practice regarding resolutions at AGMs. In particular, the Committee was also mindful that permitting motions to substitute undermined the utility of giving members notice of the resolutions to be considered.
36. The Committee spent some time considering whether to recommend removing Roberts Rule of Order Newly Revised as the basis for the conduct of the AGM in the absence of specific direction in the Rules. The Committee considered whether an alternative, such as Nathan's Company Meetings For Share Capital and Non-Share Capital Corporations, 11th Edition was more in keeping with the type of meeting which is our AGM. The Committee also considered a simple Rule stating that procedure not otherwise provided for in the Act or Rules was at the direction of the Chair.
37. The current practice of requiring members to be present at the meeting (including present online) in order to vote caused the Committee considerable concern. The requirement certainly limits the ability of all eligible members to express a view regarding the resolutions, given the practicalities of attending at the physical locations.

And while making online participation available in recent years has certainly increased the opportunity for members to vote without having to take the time to travel to a physical location, it still requires members to be present throughout the entire meeting to vote on all the resolutions. In the case of the continued 2018 AGM, this meant sitting online for nearly 4 ½ hours.

Solutions

38. In considering all of the experience with the 2018 AGM and the concerns expressed by members about that AGM and previous general meetings, the Committee concluded that it should recommend to the Benchers that the Rules be amended to provide for voting on resolutions in advance of the AGM.
39. The Committee was of the view that voting in advance over a period of time prior to the AGM would certainly enable those who, in the past, have been willing to make the time to attend, either online or in person, to more conveniently express their view on the resolutions before the meeting if they choose. It might also enable, and perhaps even encourage, those members who have not been able to attend due to work or other commitments to express their views by voting on the resolutions in advance.
40. The Committee suggested that there be a 30 day period during which members may submit resolutions for consideration at the AGM. Resolutions would be published on the Law Society website and circulated via email as they were received during that period. Following the initial 30 day period, members would then have 15 days to propose amendments to the movers of the resolutions or to persuade the movers to withdraw a resolution. If proposed amendments were accepted by the movers, the resolutions would be amended accordingly. Following the conclusion of the 15 day amendment period, members would be given a 15 day period to vote online with respect to the resolutions. The results of the online vote would be disclosed only in conjunction with the vote at the AGM on the day of the meeting.
41. The Committee was of the view that there should not be any change to the number of physical locations but that the opportunity to participate online should be limited to the period prior to the scheduled date and time for the AGM. Experience with advance voting may evidence a decline in the number of members willing to take the time to attend at the physical locations or online during the scheduled AGM. However, the Committee thought that any discussion or decision on this issue should be left for future consideration.
42. The Committee was of the view that the Rule 1-13(9), providing that a dispute concerning the procedure to be followed at a general meeting not provided for in the Act or these Rules is to be resolved in accordance with the most recent edition of Robert's Rules of Order Newly Revised, should be revised, either by adopting rules of order more conducive to the general meeting of a society, such as Nathan's company

meetings including rules of order or by providing that matters of procedure not otherwise covered in the Act or Rules shall be decided by the Chair.

Impact Analysis

43. The proposal for voting in advance and amending the present Rule regarding reference to Robert's Rules of Order Newly Revised will have impacts on both the operations of the Law Society and the conduct of general meetings.
44. Provided we retain the current physical locations, the addition of an online voting process in advance of a general meeting will increase the cost of conducting the AGM. Past experience with online voting in conjunction with our biennial election process suggests the cost would be in the range of \$10,000 - \$15,000 to the provider and time and resources on the part of Law Society staff. In particular, staff time and resources would be required to develop a means for acquiring and publishing proposed resolutions in advance of the meeting, likely in conjunction with revisions to the Law Society website Member Portal. And staff time and resources would also be required to police and publish the member resolutions, and any amendments, when received. The Committee's recommendation is to limit online participation to the period prior to the AGM. If this recommendation is adopted, the savings from not providing online participation at the AGM would offset the cost of providing voting in advance.
45. The provision of voting in advance would necessarily preclude amendments to resolutions during the actual AGM, as voting on the resolutions as stated would have been conducted during the 15 day online advance voting period.
46. Without making changes to the number of physical locations or the opportunity to participate online during the actual AGM, advance voting may not lessen the risk of a technical failure during the period of the actual meeting necessitating an adjournment of the meeting. It is expected, however, to reduce the likelihood of a significant number of members attempting to attend online during the meeting which may reduce the chance of a technical failure due to the volume of users.
47. As noted above, the Benchers may only amend Rules regarding general meetings in accordance with an affirmative vote of 2/3 of those members voting in a referendum respecting the proposed rule, or amendment or rescission of a rule. Should the Benchers wish to propose amendments to the existing Rules regarding general meetings, a referendum would require staff time and resources to set up the referendum question(s), along with the cost of conducting an online referendum. Past experience suggests that we should expect the cost of the online referendum to be in the range of \$10,000 - \$15,000.
48. In addition to the practical implications of the Committee's suggestions, there is also the possibility that a more inclusive process may encourage members to be more

active in putting forward member resolutions. While the current procedure for members to initiate a resolution is not cumbersome, voting in advance online may make the resolution process appear more like an opinion poll than general meeting resolutions. This, in turn, may have an impact on the Benchers and their decision-making process.

Next Steps

- 49. The background, issues and solutions provided in this report are for initial consideration by the Benchers. Following any discussion or directions at the Bencher meeting, the Committee proposes to bring a final report back at the May Bencher meeting for decision.
- 50. The Committee envisions the following timetable is required to enable any amendments to the Rules to apply to the 2019 AGM:

April 5, 2019	Benchers consider proposals for reform
May 3, 2019	Benchers approve proposals/authorize referendum of members
May 15, 2019	Electronic referendum of all members starts
May 30, 2019	Electronic referendum concludes - votes counted
July 12, 2019	Bencher meeting approves Rules amending AGM procedure
October, 2019	AGM conducted under new Rules