

Other Areas of Practice**Law society secrets | Joseph Groia**By **Joseph Groia**

Joseph Groia

(January 26, 2023, 2:30 PM EST) -- *"With great power there must also come—great responsibility!"*

Stan Lee, Spider Man (Marvel Comics, 1962)

The Law Society of Ontario (LSO) possesses great power, which must be exercised responsibly. Good and responsible governance requires transparency. This is codified in the LSO's Governance Practices and Policies, which, among other things, (i) imposes a duty upon the LSO to act in an open manner; (ii) requires Convocation to be committed to transparency of its process; and (iii) personally requires the treasurer to be committed to openness, inclusion and transparency. The LSO has not been fulfilling these requirements.

When regulators operate behind closed doors more than necessary, the public should be concerned. Under Bylaw 3 of the Law Society Act (LSA), unless they have a conflict of interest, benchers entitled to vote or participate in debate at Convocation are also entitled to attend committee meetings. Bylaw 3 does not explicitly require that notice of committee meetings must be sent to these benchers, but such a notice requirement is implied in the right of attendance, as it is quite difficult for benchers to attend meetings of which benchers are unaware.

Nonetheless, last year benchers discovered that a meeting of the Strategic Planning and Advisory Committee (SPAC) had been held on Sept. 12, 2022, without notice to benchers at large. This prompted bencher John Fagan to bring a motion on Oct. 27, 2022, for, among other things, a direction that, as a matter of good governance, all benchers with a right to attend committee meetings be provided with notice of such meetings. That motion was amended (to exclude Proceedings Authorization Committee meetings) and finally approved at the Dec. 1, 2022, Convocation. While this motion might improve transparency among benchers at the LSO, the public, who are prohibited from attending committee meetings, remain mired in translucency.

In my view, it is time to open all committee meetings to the public and the professions, with a few exceptions when secrecy is justified. LSO committee meetings address many issues of public concern. Some of Convocation's most important work occurs in committee meetings, as does some of the benchers' worst behaviour. To improve its poor record on transparency and to fulfil its requirements of responsible governance, the LSO should look to the practices of local branches of government. Pursuant to the *City of Toronto Act, 2006*, city hall council and its committee meetings are open to the public, with limited circumstances requiring closed meetings. Similarly, aside for a few exceptions, the Legislative Assembly of Ontario opens meetings to the public through its public galleries, TV broadcasts and live-streaming. While elected officials in Queen's Park and Ottawa have a residual discretion to hold committee meetings in-camera, such secrecy is the exception rather than the rule.

A second area requiring greater public disclosure relates to the LSO's Bencher Code of Conduct (BCC). The BCC requires nearly all complaints of bencher misconduct to be publicly disclosed. Yet this does not always happen. In my view, the LSO needs to amend the BCC to ensure that all complaints and findings are publicly disclosed.

A third area of secrecy concerns LSO operations. In May 2022, some LSO benchers brought a motion to require the LSO to publicly reveal the number of employees annually earning \$200,000 or more.

The basis of this motion was to increase transparency and openness through the *Public Sector Salary Disclosure Act*, 1996. The professions and the public should know what the LSO is paying its senior staff and executives. The motion was not presented for open debate at the May Convocation. To date, this motion has not been discussed. Similarly, we need full disclosure of each bencher's remuneration and expenses. In addition, a few years ago we finally sold off the benchers' private wine cellar.

It's no secret that there will be an election this year for a new group of benchers. We now regrettably have a two-party system in law society politics. Hopefully these issues will be addressed by the masters of each.

Joseph Groia was called to Ontario's bar in 1981. He was a founder of Groia and Company where he has been a principal for over 20 years. He is a frequent speaker at conferences, law schools and seminars where he teaches about civility, legal ethics, securities regulation and more. He has held a position as a bencher of the Law Society of Ontario since 2015. Ryan Greenspoon and Bianca Costantino contributed to this article.

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