From: "Michael T. Mulligan" <mulligan@mtplaw.com>
To:
Sent: Wednesday, July 16, 2014
Subject: We Do Not Need Another Membership Vote on the TWU Issue

Today, the Law Society circulated an emailed E-Brief with a copy of a motion for a Bencher initiated referendum attached. It can also be found on the Law Society website. In bold, it is proposed, "If the thresholds set out in part two of motion 2 are achieved, then the referendum will be binding on and will be implemented by the Benchers." Unfortunately, this may be misleading.

The approval of a faculty of law is, pursuant to rule 2-27 (4.1), a decision that must be made by the Benchers. It cannot be delegated to the membership or decided by a mailed in ballot. Once the Federation of Law Societies has accredited the academic elements of a proposed faculty of law, it is "approved" - absent a declaration, by the Benchers, that it is "not approved".

While some of the language in the motion mirrors the language in Section 13 of the Legal Profession Act, which permits a referendum to be requisitioned by 5% of the membership 12 months following the passage of a resolution at a general meeting (which occurred in June), there is no similar statutory authority for the Benchers to initiate a binding referendum.

Even in the event of a Section 13 referendum, the Benchers can refuse to implement it if they conclude that doing so would be a "breach of their statutory duties." The presently

contemplated motion purports to give advance assurance that will not happen. Whether or not this assurance would be reliable, it does indicate something about its proponents no longer seeing any contrary legal imperative.

The majority of a differently constituted future Bencher meeting would be legally entitled to vote not to make a declaration pursuant to rule 2-27 (4.1) regardless of a previous majority of Benchers voting for a resolution that they would vote in accordance with the result of a plebiscite.

The number of lawyers who attended in person to vote at the Special General Meeting was 4,177. The resolution on this issue passed by 77%. To provide some perspective, only 4,485 lawyers mailed in ballots at the last Bencher election. To the extent that the Benchers are interested in guidance from the membership, that has already been provided.

There is, of course, another way to conduct a pertinent membership vote. Benchers could resign and stand for re-election on this civil rights issue.

However, as we have learned from the hard lessons of history, civil rights generally and particularly protection of minorities from harmful discrimination should not be left simply to elections and referenda. In this high order of business, the existence, protection and advancement of fundamental values and principles require bold leadership.

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