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CONVOCATION

IN PUBLIC SESSION

FRIDAY, DECEMBER 2, 2016 - 9:30 a.m.

OSGOODE HALL, TORONTO

## 1 CONVOCAATION ATTENDANCE

2 Treasurer - Paul Schabas

3	Robert P. Armstrong	Vern Krishna
4	Harvey Strosberg (ph.)	Marion Boyd (ph.)
5	Gisèle Chrétien	Suzanne Clément
6	Seymour Epstein	Jan Richardson
7	Gerald Sheff	Baljit Sikand
8	Catherine Strosberg	Larry Banack
9	Neil Finkelstein (ph.)	Patrick Furlong
10	Ron Manes (ph.)	Ross Murray
11	Julian Porter (ph.)	Judith M. Potter
12	Heather Ross	Clayton Ruby (ph.)
13	Gerald A. Swaye	Bradley H. Wright
14	Raj Anand	Peter Beach
15	Fred Bickford	Jack Braithwaite
16	Christopher D. Bredt	Robert Burd (ph.)
17	John Callaghan	Paul Cooper
18	Dianne Corbiere	Cathy Corsetti
19	Janis Criger	Teresa Donnelly
20	Ross F. Earnshaw	Robert Evans
21	Julian Falconer	Rocco Galati
22	Avvy Go	Howard Goldblatt
23	Joseph Groia	Michelle Haigh
24	Carol Hartman (ph.)	Jacqueline Horvat
25	Brian Lawrie	Janet Leiper (ph.)

1	Jeffrey Lem	Michael Lerner
2	Marian Lippa	Virginia MacLean
3	William McDowell	Susan T. McGrath
4	Isfahan Merali	Malcolm Mercer
5	Barbara Murchie	Sandra Nishikawa
6	Gina Papageorgiou	Susan Richer
7	Jonathan Rosenthal (ph.)	Raj Sharda (ph.)
8	Andrew Spurgeon	Joanne St. Lewis
9	Sidney Troister	Jerry Udell
10	M. Anne Vespry	Tanya Walker
11	Peter Wardle	Laurie H. Pawlitza
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23		
24		
25		

INDEX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MATTER :	PAGE NO.
TREASURER'S REMARKS . . . . .	5
CONSENT AGENDA . . . . .	16
CEO'S REPORT . . . . .	16
EQUITY AND ABORIGINAL ISSUES COMMITTEE REPORT . .	25

1 --- Upon commencing at 9:30 a.m.

2 TREASURER'S REMARKS:

3 TREASURER SCHABAS: Well, good morning,  
4 everyone, and welcome to Convocation and welcome to  
5 anyone who is joining us via the public webcast today.

6 I want to start by recognizing that we  
7 are here together in Toronto, which is the Mohawk word  
8 for "where there are trees standing in the water" and  
9 acknowledge that we are meeting on the traditional  
10 territories of the Mississaugas of the New Credit, and  
11 we thank them for sharing their lands with us in peace.

12 Also, I want acknowledge the  
13 Haudenosaunee and the Métis and Inuit and all other  
14 First Nations with whom we share this country.

15 I want to welcome everyone at  
16 Convocation to the Lamont Learning Centre here at the  
17 Law Society. In addition to Benchers and staff, we  
18 have members of the professions and the press, and, of  
19 course, members of the public here, and our meetings  
20 are open to the public and today I can truly say they  
21 are open to the public because we have room for them in  
22 the room.

23 The Lamont Centre, I should just note --  
24 -- Applause.

25 TREASURER SCHABAS: The Lamont Centre is

1 named for Don Lamont, who was a noted real estate  
2 lawyer, a strong proponent of continuing legal  
3 education, and a Life Bencher. I just wanted to  
4 mention that because we all come in and use this  
5 premise all the time and we don't think about who it's  
6 named after; a very distinguished lawyer.

7 I'm pleased also to be in this room for  
8 a number of other reasons. It has been remarked by  
9 many Benchers that, given our size, Convocation Room is  
10 overcrowded and can be uncomfortable. Members of the  
11 public, as I've noted, cannot be in the room at all and  
12 could only view Convocation by webcast. Since we began  
13 webcasting, it has meant that all Benchers must go to  
14 the lectern to speak, often a dangerous activity, as  
15 Mr. Bredt can attest to.

16 -- Laughter.

17 TREASURER SCHABAS: Here we are able to  
18 take advantage of the increased space and enhanced  
19 audio and visual capabilities of this venue for our  
20 meeting, and I look forward to receiving feedback on  
21 this arrangement and considering the possibility of  
22 having future meetings in this space.

23 I am also particularly pleased to be  
24 holding today's meeting here, given the interest shown  
25 by the professions and the public in the main item on

1 the agenda: The Recommendations of the Challenges  
2 Faced by Racialized Licensees Working Group.

3 Their recommendations reflect years of  
4 work on a very important issue, promoting equality in  
5 our professions. Their work and recommendations also  
6 reflect and demonstrate that the Law Society is  
7 committed to being an active and supportive regulator,  
8 and an organization which takes seriously its  
9 commitment to human rights, its obligation to uphold  
10 the rule of law, promote access to justice, and to  
11 truly govern the profession in a manner that is in the  
12 public interest.

13 A few procedural points about today's  
14 meeting. A reminder to those attending, including the  
15 press, that you not take photographs or videos during  
16 the meeting. You may unobtrusively record the meeting,  
17 but only for purposes of confirming the accuracy of the  
18 remarks made during the meeting. I do note, however,  
19 that we produce a full official transcript of the  
20 meeting, and there is an archived webcast of the  
21 meeting which will be available on our website shortly.

22 Second, this is a business meeting and  
23 we will be going through an agenda. Please turn off or  
24 mute all your devices so that we are not interrupted,  
25 and that goes for all the Benchers as well.

1                    Depending on how the agenda progresses,  
2                    I expect we will take a break around eleven o'clock and  
3                    there will be coffee available in the lobby area  
4                    outside the room.

5                    Third, the telephone. Once we determine  
6                    who is on the phone I'll let everyone know that we will  
7                    be placing those calling into the meeting in what we  
8                    call lecture mode. This means that from our end we are  
9                    muting all of you, but, once muted, you will still be  
10                   able to hear the meeting, you just cannot speak.

11                   We will come out of lecture mode to hear  
12                   callers who wish to speak and vote, and we will do that  
13                   following presentations of reports and motions. At  
14                   that time, unless you wish to speak, please press star  
15                   6 to mute your line -- to continue to mute your line.  
16                   We will repeat this throughout Convocation as  
17                   necessary.

18                   Could we, then, Mr. Varro, just  
19                   determine who is on the phone? I'm going to call out  
20                   some names, so take your phone out of lecture mode.  
21                   Marion Boyd?

22                   MS. BOYD: Present.

23                   TREASURER SCHABAS: Robert Burd?

24                   MR. BURD: Present.

25                   TREASURER SCHABAS: Neil Finkelstein?

1 MR. FINKELSTEIN: Present.

2 TREASURER SCHABAS: Janet Leiper?

3 MS. LEIPER: Present.

4 TREASURER SCHABAS: Great. Ronald

5 Manes?

6 MR. MANES: Present.

7 TREASURER SCHABAS: Thank you. Jonathan

8 Rosenthal?

9 MR. ROSENTHAL: Good morning.

10 TREASURER SCHABAS: Good morning. Are

11 there any other Benchers on the telephone whose names I

12 did not call?

13 MR. SHARDA: Raj Sharda.

14 TREASURER SCHABAS: Thank you, Mr.

15 Sharda.

16 MS. HARTMAN: Carol Hartman, Treasurer.

17 Good morning.

18 TREASURER SCHABAS: Carol Hartman, good

19 morning.

20 MR. STROSBERG: Harvey Strosberg.

21 TREASURER SCHABAS: Harvey Strosberg,

22 good morning.

23 MR. STROSBERG: Good morning.

24 MR. FINKELSTEIN: Neil Finkelstein.

25 TREASURER SCHABAS: Thank you,

1 Mr. Finkelstein. Anybody else? Okay.

2 I want to start by making a few remarks  
3 to provide everyone with some, I think, important  
4 activities that have taken place over the past few  
5 weeks.

6 On November 24th I was pleased to attend  
7 the launch of our new Coach and Advisor Network,  
8 approved earlier this year. We had an excellent  
9 turnout from across both the lawyer and paralegal  
10 professions with representatives from stakeholders and  
11 legal associations that the Law Society works closely  
12 with and who have supported professional development  
13 and mentorship. The distinguished criminal lawyer,  
14 John Rosen, brought us some remarks around his own  
15 initiatives in mentoring.

16 The Coach and Advisor Network, as you  
17 know, will work to engage with various organizations  
18 and associations and complement existing mentorship  
19 programs. Anyone interested in volunteering as a coach  
20 or advisor can apply on-line, and, of course, anyone  
21 who wishes to take advantage of coaching and advice  
22 should also request time on-line. Full details are, of  
23 course, available on-line.

24 I want to thank Diana Miles and Kerry  
25 Boniface and their staff in the Professional

1 Development and Competence Division for all of their  
2 hard work and effort to take this program from concept  
3 to reality, and it's now a dedicated unit in the Law  
4 Society's Professional Development and Competence  
5 Division. Again, this is an example of how we act as a  
6 supportive regulator helping our members in the public  
7 interest.

8 Another example of an initiative that I  
9 think will have a major impact and is in the public  
10 interest, very much in the public interest, is the  
11 creation of the Indigenous Legal Issues Specialist  
12 Certification.

13 I hosted a dinner last week to thank the  
14 numerous volunteer subject matter experts who assisted  
15 with the development of the standards and criteria for  
16 this certification designation.

17 This new Specialization in Indigenous  
18 Legal Issues supports a key aspect of the Law Society's  
19 competence mandate by facilitating the development of  
20 specialty expertise.

21 The specialty will identify for the  
22 public lawyers who have met high standards of  
23 experience and knowledge and competence and cultural  
24 competence in the area of indigenous law and I -- it's  
25 reflective of the Law Society's commitment to

1 indigenous initiatives that support the diverse and  
2 significant legal needs of First Nations, Métis and  
3 Inuit communities.

4           Again, I want to thank the Specialist  
5 Certification Board and Law Society staff, Cettina  
6 Cornish, Priya Bhatia, Diana Miles and their team for  
7 their work on this initiative, as well as the whole  
8 group of advisors that worked on it. We should all be  
9 proud of this and I'd encourage Benchers and justice  
10 partners to spread the word about this new designation.

11           In the past two weeks I have met with  
12 both the Federal Minister of Justice, The Honourable  
13 Jody Wilson-Raybould, and the Attorney General of  
14 Ontario, The Honourable Yasir Naqvi. I told them about  
15 our various initiatives. They both commented that the  
16 Law Society seems to be a pretty active place these  
17 days.

18           I told them about the report from the  
19 Challenges Faced by Racialized Licensees Working Group  
20 that we're going to discuss today and the establishment  
21 of the Legal Aid Working Group. I told them about the  
22 Indigenous Specialist Certification. I can tell you  
23 they were impressed with all of this and spoke very  
24 supportively to me of these initiatives.

25           Unified Family Court continues to be a

1 priority on the agendas of both ministers and we  
2 underscored the importance of moving ahead with this  
3 now while there is what we call federal-provincial  
4 symmetry on this issue, a rare event sometimes in this  
5 country.

6 I'm also encouraged that they are both  
7 committed to ensuring greater diversity within their  
8 respective judicial appointments processes and I told  
9 them about what we have already done and what is on the  
10 agenda for approval today to make our process in that  
11 regard more transparent and reflective our province's  
12 identity.

13 I want to remind Convocation that  
14 Justice Bonkalo's report will be coming out at the end  
15 of the month. This is a report to the Provincial  
16 Attorney General and to the Law Society about legal  
17 services in family law. We are awaiting this with  
18 interest and look forward to receiving it and  
19 discussing it as a group.

20 I'm pleased to announce publicly today  
21 our two recipients of Law Society's Human Rights Award,  
22 Dr. Cindy Blackstock and Waleed Abu al-Khair.

23 Dr. Blackstock is a highly respected and  
24 outstanding advocate for First Nations children and  
25 youth in Canada, working to address systemic

1 discrimination in the child welfare system. For more  
2 than 25 years she has engaged in and promoted public  
3 education and key research on the issue.

4 She is perhaps most well-known for her  
5 leadership in bringing a human rights complaint  
6 resulting in Canadian Human Rights Tribunal finding  
7 that the government of Canada was guilty of systemic  
8 discrimination by underfunding child welfare for First  
9 Nations children on reserves.

10 Waleed Abu al-Khair is a prominent human  
11 rights lawyer and activist in Saudi Arabia and the  
12 founder of the Monitor for Human Rights in that  
13 country. He has worked tirelessly to defend human  
14 rights and the rule of law for all in the face of  
15 extreme adversity and at the cost of his own freedom.  
16 In 2014 he was sentenced to 15 years in prison and  
17 given a 15 year travel ban as punishment for his human  
18 rights activities.

19 The public awards ceremony will be held  
20 on February 22nd at five p.m. I gather the  
21 announcement of the award has provoked requests by many  
22 groups around the world to have Mr. al-Khair released  
23 so he can attend the ceremony, highlighting the  
24 injustice of his continued detention.

25 On the topic of awards, just a reminder

1 to everyone that nominations for the Law Society Awards  
2 are now open. The deadline is January 27. Awards for  
3 lawyers include the Law Society Medal, the Lincoln  
4 Alexander Award and the Laura Legge Award. Paralegals  
5 are eligible for the William J. Simpson Distinguished  
6 Paralegal Award, and both lawyers and paralegals are  
7 eligible for the J. Shirley Denison Award.

8           There is information available on the  
9 website and I want to encourage people from all  
10 communities, from all practice areas, firm sizes and  
11 regions across the province to submit their  
12 nominations.

13           Before we turn to the agenda I just want  
14 to say a couple of words about Sophia Sperdakos, who  
15 will be leaving the Law Society later this month. I  
16 want to thank Sophia publicly for her extraordinary  
17 work over the past 26 years. She started at the Law  
18 Society in March of 1990 as bar admission faculty, and  
19 was seconded in 1994 to 1996 to the MCLE subcommittee,  
20 and I circled that because I don't know what that is --

21           MS. SPERDAKOS: Mandatory continuing  
22 legal education.

23           TREASURER SCHABAS: Of course. Why  
24 wouldn't I know that? Thank you. Before she joined  
25 the newly created policy secretariate in 1996, where

1 she has worked for twenty years. Over those twenty  
2 years Sophia has provided all of us with extraordinary  
3 and thoughtful advice and guidance. She has worked  
4 with numerous committees, working groups and task  
5 forces too numerous to count perhaps, but has made a  
6 huge contribution to the advancement of our work as a  
7 legal regulator. We will miss her wise counsel and her  
8 warm and vibrant personality.

9 On behalf of Convocation and the Law  
10 Society, Sophia, thank you for your outstanding work  
11 and your dedication to the Law Society and we wish you  
12 well.

13 -- Applause.

14 -- CONSENT AGENDA:

15 TREASURER SCHABAS: So to the agenda.  
16 Consent Agenda is at tab 1. I take it all Benchers  
17 have reviewed the Consent Agenda. It is moved by Ms.  
18 MacLean, seconded by Mr. Anand.

19 Any discussion, questions on the Consent  
20 Agenda? Anyone on the telephone? Hearing nothing on  
21 the telephone, I will put the matter to a vote. All in  
22 favour? Any opposed? Any opposed on the telephone?  
23 Thank you, the motion is carried.

24 Mr. Lapper, CEO's report.

25 -- CEO'S REPORT:

1                   MR. LAPPER: It's a long way from up  
2 there. I'm going to have to get used to that and maybe  
3 start running before you call me.

4                   Thank you, Treasurer. Every six months  
5 or so, twice a year, I do a written report on the  
6 operations of the Law Society, so this happens to be  
7 one of the meetings in which you have my written report  
8 and I would encourage you to read it. I hope it will  
9 give you, as it always does me, a sense of just how  
10 much we are working on here.

11                   The Treasurer mentioned how active other  
12 people observe us to be and certainly I think this is a  
13 reflection of that and the very diverse agenda that we  
14 are supporting.

15                   I want to briefly highlight a few items  
16 from that report for your information. Now, last night  
17 I was honoured to be invited to drinks with the Lay  
18 Benchers before they had their secret dinner and I --  
19 and the Treasurer and I were admonished to ensure that  
20 speakers delivered new material and didn't just kind of  
21 read their reports or say what was in their reports.  
22 So I struggled overnight to think how I would do that  
23 and I'm not sure I'm going to get quite there, but I am  
24 going to re-profile some of the information that's in  
25 my report, and in the spirit of what Xavier Beauchamp

1 Tremblay was talking about this morning from Silicon  
2 Valley, deliver the minimum viable product.

3           There's two things that I'd like to  
4 just -- two broad areas that I would like to cover.  
5 Firstly, sort of looking at where we are at in  
6 operations currently, and then, secondly, because we  
7 are at the end of the calendar year, just a bit of a  
8 peek into some of the things that we will be actively  
9 pursuing in 2017. So let's start by looking at some of  
10 the interesting trends and initiatives in our day to  
11 day operations as they currently are.

12           First for a few numbers. I want to draw  
13 your attention to complaint trends. On pages 4 and 5  
14 of my report we've noted that after two years of a  
15 slightly downward trend in complaints, we are  
16 experiencing an increase in this year of about two  
17 percent, and page 5 sets out of some of the analysis of  
18 where those complaints originated. Note that for  
19 lawyers the highest proportion of complaints continues  
20 to be in the area of civil litigation. For paralegals  
21 it is criminal and quasi-criminal matters.

22           Looking at our membership, page 13 of my  
23 report notes that we expect by the end of the year that  
24 we will have called over 2200 lawyer licensing  
25 candidates, 1600 in June alone. That in itself is a

1 huge project for our staff, as you can appreciate, and  
2 after last night's reception it might interest you to  
3 note that this year we admitted about a thousand new  
4 paralegal candidates and we have 1600 paralegal  
5 candidates signed up in the pool for 2016.

6 Our Law Society referral service from  
7 January 2016 to October -- to the end of October 2016  
8 made 36,745 referrals, 26,000 on-line, nearly 10,000  
9 through the crisis line. This is certainly an access  
10 to justice and access to legal service initiative that  
11 the Law Society provides that is obviously very well  
12 utilized.

13 I also want to note for a second our  
14 member assistance plan. We're now projecting an annual  
15 utilization rate of about 5.13 percent. That's pretty  
16 much double the rate that it was used when we first  
17 moved to that plan three or four years ago, and it's  
18 certainly the highest it has ever been.

19 We are now actually at the higher end of  
20 the range of what our service provider, Homewood,  
21 advises is expected from an organization like ours, and  
22 that's a good thing, of course. And on page 25 you'll  
23 see some of the details of the types of service that  
24 are being used by our members and their families.

25 I'd like to note, in particular, though,

1 that the MAP program continues a strong volunteer peer  
2 counselling component. In October we held a second  
3 annual peer conclave to bring together our peer  
4 volunteers, and details of that are on page 25 of the  
5 report; and I highlight that because at various times  
6 there has been a suggestion that by moving to Homewood  
7 we would somehow lose the peer support aspect of the  
8 program. That's, in fact, not the case; it has, in  
9 fact, been strengthened.

10 Now, a little less number driving, but  
11 some other initiatives of particular interest, our Law  
12 Society facilitates TAG, The Action Group, which  
13 continues to live up to its name.

14 I'm pleased to note on page 16 of my  
15 report that it coordinated Ontario's first Access to  
16 Justice Week, with a wide range of justice partners,  
17 resulting in excellent public engagement on access  
18 issues and excellent media coverage, as well as  
19 extremely high profile support.

20 The Treasurer has already mentioned two  
21 other new initiatives of which we are very pleased and  
22 proud. Both launched last month out of the  
23 Professional Development and Competence area: the Coach  
24 and Advisory Network and the Indigenous Legal Issues  
25 Specialist Certification, the latter being now the 16th

1 practice area recognized in the Certified Specialist  
2 Program.

3 No report on existing operations would  
4 be complete without telling you about our finances, and  
5 the good news on those is that we are on track to  
6 exceed our 2016 budget expectations, and the financial  
7 position of the Law Society remains very strong. We  
8 are in surplus positions in both lawyer and paralegal  
9 funds, our main revenue sources are above budget, and  
10 our major expense categories are less than budget.

11 Finally, and perhaps most importantly,  
12 some good news about our staff. As you will note in  
13 the report, senior management commissioned two surveys  
14 of our staff this year, an engagement and enablement  
15 survey and a diversity census and inclusion survey.

16 We had very high staff participation  
17 rates in both, which gives us some confidence in the  
18 results, and the results are very good. Our engagement  
19 and enablement scores are very high, positioning the  
20 Law Society well above average and in the highest  
21 cohorts for both public and non-profit organizations,  
22 and for organizations in Canada generally.

23 Our diversity and inclusion surveys  
24 showed very high rates of inclusion overall and a very  
25 diverse staff, again, well positioned against

1 comparable organizations. It also helped us to better  
2 understand the demographic characteristics that make up  
3 our staff.

4 I have presented the details of both of  
5 these surveys to our staff and I want to assure you, as  
6 I did them, that we don't, of course, rest on our  
7 laurels with these results. In each case, in a spirit  
8 of continuous improvement, we are identifying areas  
9 where we can enhance engagement and diversity and  
10 inclusion, and are targeting staff programs and  
11 initiatives to address those. Those will certainly  
12 form a major part of our staff initiatives and  
13 strategies going into 2017 and beyond.

14 That's a bit of a segue into 2017. So  
15 what's on the horizon for 2017? Well, last month Karen  
16 Manarin, Executive Director of Professional Regulation  
17 Division, gave you a brief outline of some of the  
18 changes that she is implementing in the structure of  
19 that division and their work flow processes. I won't  
20 repeat those here. They are outlined briefly on page 8  
21 of my report.

22 Among the most important objectives of  
23 these changes are a more robust early intake, triage  
24 and resolution of complaints, and the creation of a  
25 functional team-based organization structure, each team

1 of which will have both investigators and discipline  
2 counsel working together on matters. Many of these  
3 teams will specialize in particular types of matters or  
4 issues, and I draw your attention particularly today to  
5 the formation of a strategic priority team that has  
6 been set up, the first mandate or task of which is to  
7 undertake investigations and, where required,  
8 prosecutions in the area of advertising and referral  
9 fees. And this is set out on page 6 of my report if  
10 you want more details.

11 Also in the category of new initiatives,  
12 note on page 3 of my report that last year we  
13 introduced electronic billing and an on-line process  
14 for monthly payment by pre-authorized electronic debit.  
15 For 2017 we have added a second payment option to that  
16 that will allow us to withdraw the entire annual fee in  
17 the first week of February each year. There is no  
18 administration fee for signing up to this, but there is  
19 a bonus in that signing on to it offers a \$50 discount  
20 in your fees for full-time practitioners, both lawyers  
21 and paralegals, that, in effect, offsets the increase  
22 in fees that was recently approved by Convocation in  
23 its budget discussions.

24 In 2017 we will also be redesigning our  
25 website to better engage public, professions and

1 stakeholders with a strategic communications tool that  
2 supports our work. We have just completed the content  
3 inventory of that website and we are now moving into  
4 the design phase, and that will continue into early  
5 2017.

6 In a similar technology focused vein,  
7 I'm pleased to tell you now that we are working now on  
8 the development of a new relationship management system  
9 to replace our aging lawyer and paralegal database so  
10 that we can enhance our service capacity and increase  
11 the efficiency of our staff and build capacity to take  
12 on new data intensive initiatives.

13 We will be moving to detailed design and  
14 implementation in 2017 and we expect that an RFP for  
15 that will be released in early 2017.

16 Finally, just to reiterate my thanks to  
17 all of you for your support and work with us over the  
18 past year. It's been a year of exciting and productive  
19 changes in some areas of our operations. These are  
20 never easy and these will continue into next year. We  
21 appreciate your patience and constructive feedback as  
22 we implement them and continue to do so into the new  
23 year.

24 In the interim, on behalf of all of our  
25 staff, I want to wish you the very best for the holiday

1 season and 2017. I'm happy to take questions if there  
2 are any.

3 TREASURER SCHABAS: Any questions for  
4 Mr. Lapper? Yes, Mr. Furlong.

5 MR. FURLONG: Mr. Lapper, I noted in  
6 your written report steps taken to provide security  
7 against hackers and others. I don't disagree with any  
8 of that. I was just wondering, what is the cost of  
9 providing that and is it an annual cost or one --

10 MR. LAPPER: There are both. I don't  
11 have the exact number, but I would be pleased to  
12 provide that to you. The costs will be both annual and  
13 up front, but I'll get you those numbers, I just don't  
14 have them.

15 MR. FURLONG: Thank you.

16 TREASURER SCHABAS: Any other questions  
17 for Mr. Lapper? No. Thank you, Mr. Lapper, that  
18 sounds like quite a viable product, so thank you for  
19 those comments.

20 Next item is the Equity and Aboriginal  
21 Issues Committee report. Mr. Anand.

22 -- EQUITY AND ABORIGINAL ISSUES

23 COMMITTEE REPORT:

24 MR. ANAND: Thank you, Treasurer, the  
25 report of the working group is at page 54 of BoardBooks

1 and it is moved by me, seconded by Mr. Falconer.

2 Chers collègues, c'est un grand privilège  
3 de présenter le rapport final de notre groupe de  
4 travail: Collaborer au Changement: Stratégies de Lutte  
5 contre le Racisme Systémique dans les professions  
6 juridiques. Cette initiative de réforme vise à  
7 éliminer le racisme dans les professions et à  
8 promouvoir l'intérêt public. Ce sont des objectifs que  
9 nous partageons tous et que nous devons atteindre.

10 In a speech last month, Chief Justice  
11 Strathy recognized the importance that policy makers  
12 and the public are placing on a diverse bench and  
13 profession and described 2016 as a watershed year in  
14 this province.

15 Before the year is over, we have a  
16 unique opportunity to prove the Chief Justice right.  
17 The report I am privileged to present today represents  
18 a significant day in the maturation of our professions.  
19 The urgency of the struggles of our Indigenous Peoples  
20 have been highlighted yet again in the report of the  
21 Truth and Reconciliation Commission, which has pointed  
22 out the enormous weight of unfinished business that  
23 Canadians and our Law Society must address.

24 For racialized Canadians, the evolution  
25 of a more diverse society in the last half century has

1 occurred in parallel with increasing recognition in  
2 public policy that every individual deserves to be  
3 treated with equal dignity and respect.

4           We recognize in our earlier report that  
5 racialized licensees face systemic barriers in the  
6 legal professions. As Canadians, as lawyers and  
7 paralegals in 2016, we must root out those barriers and  
8 create lasting change by adopting a toolbox for the  
9 professions that will promote equal recognition and  
10 respect for all of our members.

11           We are past tolerance. Convocation,  
12 through this report, will recognize that systemic  
13 racism exists in our professions just as it exists in  
14 Canadian society and it must be addressed urgently.  
15 Attempting to sidestep issues of race and racism in  
16 Canada is not reality. It is a coping strategy, and  
17 not a very effective one.

18           Certainly systemic racism affects our  
19 lawyers and paralegals long before they enter or even  
20 aspire to the legal professions, but that doesn't  
21 reduce our obligation as professionals or as Benchers.  
22 The privilege of practising law and providing legal  
23 services brings with it special obligations that are  
24 already recorded in our rules of professional conduct.  
25 Equal access to the professions has always been at the

1 core of our role as Benchers.

2 As the Divisional Court said recently,  
3 the Law Society has acted to remove all barriers to  
4 entry in the legal profession save one; merit. It is  
5 the Law Society's position that it is in the public  
6 interest to ensure that the legal profession is open to  
7 everyone. It views that approach as being fundamental  
8 to its functions.

9 In adopting that position, the Law  
10 Society says that it achieves two companion objectives;  
11 one is to ensure diversity in the legal profession, the  
12 other is that if the legal profession is open to  
13 everyone, then, perforce, it is open to the best and  
14 the brightest.

15 Simply put, our report is about ethics,  
16 professionalism, fairness and mutual respect. This  
17 working group came about as a result of long standing  
18 concerns and anecdotal evidence of discrimination in  
19 our professions. Our Law Society accepted its  
20 responsibility and undertook to get to the bottom of  
21 this issue.

22 To that end, our inquiry has been  
23 comprehensive and sequential. We undertook a major  
24 research project and the assistance of lawyers,  
25 paralegals and professional consultants. The original

1 research findings were posted on the Law Society's  
2 website in October 2014 and they constitute a new  
3 starting point for the study of systemic racism in the  
4 legal professions in Canada.

5           The research confirmed the anecdotal  
6 evidence of the previous fifteen years. Race is a  
7 pervasive factor in the lives of racialized licensees.  
8 Racialized licensees experience disadvantage in  
9 obtaining articling or training placements, finding  
10 employment and practising in their preferred area,  
11 advancing within their organizations, and negotiating  
12 concepts of firm culture and fit and the effects of  
13 intersectionality.

14           Race was cited as the single greatest  
15 factor that operated as a barrier to the entry and  
16 achievement and advancement in the professions of  
17 racialized licensees. The professions recognized the  
18 urgency of these issues and their willingness to be  
19 part of the solution. Large majorities in the survey  
20 said that systemic racism affects the reputation of the  
21 legal profession, access to justice, and the quality of  
22 legal services.

23           In 2014 and '15 we conducted four months  
24 of consultations and received broad input from the  
25 professions about the nature and seriousness of the

1 issues, as well as the preferred solutions. Their  
2 views are reflected in the recommendations before you.

3 We also heard from a -- our very  
4 committed partners in the professions, including  
5 equality-seeking organizations and the Equity Advisory  
6 Group of this Law Society, all of whom participated  
7 reliably and to our great benefit throughout this  
8 process.

9 The measures we have proposed are  
10 designed to advance equality by promoting basic  
11 fairness. None of us should be denied access and  
12 advancement within the professions for reasons other  
13 than individual merit. Systemic racism limits or  
14 excludes opportunities that licensees deserve on their  
15 merit.

16 The destructive impact on the licensee  
17 is obvious. Less well understood is the harm done to  
18 law firms in terms of reputation, talent pool and  
19 workplace culture. An inclusive workplace is a  
20 healthier and more productive work environment that  
21 attracts talent and improves the bottom line.

22 We were told and we accepted that the  
23 solutions have to be proactive. We need to facilitate  
24 culture change to signal the importance of an even  
25 playing field, to infuse equality and inclusion in our

1 work as professionals. We were repeatedly advised and  
2 we accepted that this is a multifaceted challenge that  
3 can only succeed if we approach it from a variety of  
4 angles, putting in place mutually reinforcing  
5 strategies and interlocking timeframes.

6 That is what we have done in the  
7 recommendations that comprise this blueprint. You will  
8 see the timeline in lock step in your materials after  
9 the executive summary in the report.

10 Our goal is to accelerate the culture  
11 shift. Adopting and abiding by a statement of those  
12 principles is a start, but legal workplaces need  
13 resources beyond that, so we have said that within the  
14 next year larger firms will put policies in place to  
15 guide their recruitment, retention and advancement,  
16 then within two years they will be able to do a self  
17 assessment of diversity and inclusion in their  
18 workplace to determine where improvement is called for.

19 The Law Society will put together model  
20 statements of principles, policies and self assessment  
21 tools in collaboration with our professional colleagues  
22 and law schools, so we propose the creation of a  
23 diversity and inclusion project.

24 At the same time, real progress for  
25 lawyers and paralegals must be measurable. The

1 collection of information on a voluntary basis is a  
2 best practice that will advance a culture of inclusion  
3 and accountability in the professions. Benchers as  
4 well need to know whether this reform initiative is  
5 succeeding, so we will simply provide legal workplaces  
6 with their demographic information from the Lawyers  
7 Annual Report and Paralegal Annual Report in 2019 so  
8 that they can evaluate their progress and assess their  
9 training policy and practices.

10 At the same time, the Law Society will  
11 continue to collect aggregate information and make it  
12 available by size of legal organization, as it does  
13 right now, so that we can all assess advancement on a  
14 profession-wide basis and provide firms with benchmarks  
15 to assess themselves.

16 But numbers have never been sufficient  
17 to demonstrate progress. They must work together with  
18 qualitative information through inclusion surveys  
19 within two years. American firms are publicly  
20 accountable by publishing their raw demographic  
21 figures. We took a more nuanced approach which we  
22 believe is more effective. After they have developed  
23 appropriate hiring and promotion practices, examined  
24 their numbers and their inclusion answers leading to  
25 self assessments, we will compile an inclusion index in

1 order to measure overall progress and let students,  
2 clients, the public and the profession know.

3 We've integrated these steps in a  
4 timeline that is intended to permit due diligence and  
5 also test at reasonable intervals whether meaningful  
6 change is occurring. Every four years a professionally  
7 designed survey across all Ontario licensees will be  
8 conducted. Since the last one was in 2013, the next  
9 one will be within the next year.

10 The greatest challenge in terms of  
11 diversity and systemic equality is not knowing what we  
12 don't know. We are all apt to prejudge based on our  
13 personal life experiences. Unconscious bias is the  
14 very definition of this concept. It is simply unfair  
15 and it hurts all of us, so we provide for education and  
16 training so that we can transform workplace cultures  
17 and practices. Equality and inclusion principles will  
18 be required competencies in the licensing process.

19 This step by step approach is designed  
20 to put in place the best practices that have been  
21 adopted by organizations in the employment,  
22 professional service and regulatory areas over the last  
23 ten or twenty years. Any strategy for culture change  
24 must be approached cooperatively and proactively by a  
25 combination of voluntary and mandatory measures.

1                   The Mentoring and Advisor initiative  
2           that the Treasurer spoke of this morning is integral to  
3           the futures of racialized licensees.

4                   Our recommendations will be backed by  
5           changes to our rules of professional conduct and  
6           paralegal rules of conduct and our by-laws. The Law  
7           Society will undertake multiple roles as a regulator in  
8           achieving lasting systemic change; change agent,  
9           facilitator, resource. It will also lead by example by  
10          taking concrete actions to address the same systemic  
11          issues as an employer, as a regulator, and as a service  
12          provider.

13                   The duration of this project deserves  
14          comment. To carry out a seminal study at the  
15          intersection of human rights and professionalism, the  
16          Law Society committed itself to three sequential  
17          phases, all of which involved extensive consultation  
18          and participation from our partners in the professions.  
19          We believe that through these measures issues of  
20          systemic racism will be recognized and addressed. They  
21          are the working group's best concerted effort to  
22          develop a comprehensive plan to address a broad  
23          societal issue in the professions.

24                   After we released our report on  
25          September 22nd, we received about 50 written

1 submissions from professional organizations and  
2 individuals, many oral and written comments from  
3 Benchers, and a legal opinion that confirms that our  
4 recommendations fall within our jurisdiction.

5           In their submissions, all the  
6 professional organizations were supportive of our work.  
7 Our working group collected up and reviewed all of this  
8 input and we responded to it in today's report. We  
9 also considered our consideration of the application of  
10 one of the recommendations to in-house and government  
11 licensees, and at our last meeting, without changing  
12 any of the recommendations themselves on this basis, we  
13 added a clarification to the text, and the footnote  
14 about disagreement has been removed.

15           The report before you is the entirely  
16 unanimous product of fifteen Benchers and we recommend  
17 it to you for passage.

18           Before closing I want to say something  
19 about our working group. They were committed and  
20 focused. They persevered and they received the  
21 untiring and supremely capable assistance of Josée  
22 Bouchard and Ekua Quansah, as well as other senior  
23 staff in other departments in an enormously challenging  
24 and sensitive task.

25           My co-chair of the working group is

1 Janet Leiper, the vice chairs are Julian Falconer and  
2 Howard Goldblatt, and the other members of the working  
3 group are Marion Boyd, Robert Burd, Dianne Corbiere,  
4 Avvy Go, Will McDowell, Isfahan Merali, Malcolm Mercer,  
5 Sandra Nishikawa, Susan Richer, Raj Sharda and Baljit  
6 Sikand. Thanks to them all.

7 TREASURER SCHABAS: Thank you very much,  
8 Mr. Anand. As the Benchers know, there is another  
9 motion that relates to your motion which was delivered  
10 to the Law Society on November 4th, 2016, by  
11 Mr. Troister, seconded by Mr. Lem.

12 I'm going to ask Mr. Troister to speak  
13 to his motion and then we will have discussion on both  
14 motions, because inevitably the comments and questions  
15 will overlap.

16 MR. TROISTER: Thank you, Treasurer. My  
17 motion, seconded by Jeffrey Lem, is at page 299 of  
18 BoardBooks, which, in simple terms, is that each of the  
19 recommendations be discussed and voted on separately,  
20 rather than as a complete package.

21 It's only in the last 48 hours or so  
22 that I have been able to fully synthesize in my own  
23 head the relevance of my motion to debate concerning  
24 this report and what I feel is important to say.

25 I should say that I never expected to

1 get the negative reaction, some with unfair innuendo,  
2 against me personally and, in one case, ridicule from a  
3 very unexpected quarter that I received to this motion.  
4 That I might have a well considered opinion seemed to  
5 be of no interest. Few around this table and no one  
6 from outside bothered to ask what was even on my mind.  
7 Some just wanted to know what could I possibly find  
8 problematic with these recommendations and how could I  
9 object to anything in it.

10 My thinking about the report has evolved  
11 since the report was presented to the Benchers at an  
12 information meeting in September and more so since I  
13 brought my motion some 40 days or so ago. So let me  
14 explain.

15 My motion arose from the following  
16 question I asked at our Bencher information session a  
17 couple of months ago. If I agree with some but not all  
18 of the recommendations, can I pick and choose which  
19 ones I support? I was told no, this is a package, it  
20 all fits together. You vote for all of it or none of  
21 it. And when I asked Mr. Varro if procedurally I could  
22 bring a motion from the floor of Convocation to  
23 Convocation to separate the discussion and the voting  
24 on the recommendations, I was told as a matter of  
25 procedure that I should probably bring a motion, and

1       so here I am.

2                       My motion is a simple one. That each of  
3 the recommendations be discussed and voted on  
4 separately and not as a package. In this I emphasize  
5 the word discussed, because, for me, with an all or  
6 nothing, take it or leave it approach, discussion about  
7 the constituent elements was being foreclosed.

8                       The report is very lengthy and each  
9 recommendation is worthy of individual discussion. In  
10 my opinion, a report such as this deserves careful  
11 thought and Benchers should be prepared, permitted to  
12 discuss and consider each recommendation and  
13 sub-recommendation separately and vote for all, some or  
14 none as they see fit.

15                      I support many of the recommendations  
16 and certainly believe there are serious discrimination  
17 issues that exist in our profession, and not just  
18 affecting racialized licensees; but I am troubled by a  
19 few of the recommendations and would have preferred to  
20 be able to choose which ones I support, rather than  
21 have to decide to vote for all when I would rather not  
22 do that, or reject all when I would rather not do that  
23 either. It really is that simple.

24                      In our country, freedom of thought and  
25 expression and opinion is a cherished value, and yet

1 there are some who appear to have a view that on this  
2 report and on this issue we should limit the analytical  
3 discussion, and approval should be a foregone  
4 conclusion.

5           Having to speak in Convocation on this  
6 issue is a bit of a challenge for me because I make it  
7 a general rule not to talk either politics or religion  
8 because doing so typically results in a zero sum game.  
9 Everyone talks and no one listens. Each person is  
10 right, the other one is wrong, and such discussions  
11 tend to be divisive rather than constructive, so I  
12 avoid it.

13           The irony here is with my simple motion,  
14 without saying what recommendation it is that I do not  
15 support, but asking simply to discuss and deal with  
16 each recommendation separately, I'm really being forced  
17 to publicly discuss both politics and religion.

18           First, please understand that my motion  
19 is one based on principle. I believe in our mandate to  
20 protect the public interest that the public interest  
21 also requires the protection of private rights.

22           I have reviewed the report carefully,  
23 not just the recommendations, but the commentary.  
24 There are a lot of recommendations and  
25 sub-recommendations in the report, and putting them all

1 together as a package means the nuances get overlooked  
2 in the whole. This is important policy and it's  
3 important legislation and it will be with us for many  
4 years to come.

5                   Some might say the report is radical.  
6 It's overkill and even an infringement of licensees'  
7 private rights. Others say it's not enough, the Law  
8 Society must do more and this is a compromised report  
9 at best. I'm not surprised. There is no easy fix to  
10 this problem.

11                   I have seen a couple of e-mails urging  
12 Benchers to vote against my motion. Discussion and  
13 voting separately on each recommendation, some say,  
14 will destroy the integrity of the report. One person  
15 urged against an analysis of the recommendations  
16 separately because doing so will hinder access to  
17 justice.

18                   Two comments: As licensees, we are  
19 trained to analyze and critically challenge the  
20 drafting of legislation. We are trained to interpret  
21 the words in a statute or in a judgment of a court and  
22 to take the words according their plain meaning. Words  
23 and the precision of words matter. We are also trained  
24 to debate and negotiate and to understand the position  
25 of the other party, and yet some want us not to do that

1 with this report, but accept its many pages without  
2 debate of its constituent elements.

3           How unlawyerly. It's what we do. We  
4 licensees should do it for this report and for every  
5 other thing that comes before Convocation. Nothing  
6 should be beyond appropriate discussion by  
7 decision-makers in the Law Society, that is a value I  
8 hold dear and so should everyone in this room, Bencher  
9 and non-Bencher alike. To get that negative kind of  
10 reaction from people from whom I would expect better I  
11 find unsettling.

12           Second, the writer says debating the  
13 report will hinder access to justice. I think saying  
14 access to justice as an answer to every idea that comes  
15 through Convocation is disrespectful of the concept and  
16 is often an excuse. I'm all for promoting access to  
17 justice, be it Legal Aid funding, clinic funding,  
18 encouraging and funding social justice licensees,  
19 simplifying the court process, making licensees more  
20 available to assist the disenfranchised, addressing the  
21 ease and cost of accessing our judicial and  
22 administrative law systems, and we have a great role to  
23 play in that. But this report, in my view, is about  
24 discrimination and access to opportunities in the legal  
25 profession, which I support. I just have some problems

1 with the methods indicated in the report.

2 I support the Law Society's attempt to  
3 address the problem of discrimination in the profession  
4 and believe that the committee has worked very hard to  
5 come up with these recommendations, but good intentions  
6 do not necessarily translate into sound legislation,  
7 and I believe that some of the recommendations do not  
8 make for sound legislation or are not respectful of  
9 private rights. And so on the point of legislation our  
10 mandate is to regulate and, as regulators, we  
11 legislate, and so our legislation, in my view, must be  
12 sound.

13 I've learned a lot by becoming a  
14 Bencher. Among many things, I have discovered a very  
15 diverse group of hard working people whose  
16 responsibility and commitment is either underestimated  
17 or ignored by the vast numbers of licensees.

18 And by diverse, I do not mean just a  
19 number of Benchers of colour or gender. For me,  
20 diversity means that we have men and women of different  
21 ages, races, religions, areas of practice, and we  
22 practice in different size firms, from solos to mega  
23 firms, in private practice and in the public sector.  
24 We live in different parts of the province; we have  
25 different personal and professional experiences and

1 histories; some of us come from poor immigrant families  
2 and others of us can trace their family history in  
3 Canada back generations.

4           It isn't perfect and there are gaps, no  
5 doubt, but our diversity in the broadest sense of the  
6 word results, in most cases, in no single opinion on  
7 any issue. The discussion and the respectful sharing  
8 of ideas is one of the pleasures I enjoy about being a  
9 Bencher. That, for me, is diversity, and not just what  
10 those interested in matters of equity believe makes for  
11 diversity.

12           So I am proud to be part of a diverse  
13 bench. Hey, there are even a few solicitors sitting at  
14 the table. How much more diverse can we get?

15           I have learned that our processes for  
16 decision-making on tough issues such as this leave  
17 something to be desired. And, Treasurer, it is no  
18 fault of yours and I know you are making efforts to  
19 address it.

20           A draft report was released in September  
21 and an information session was conducted in Toronto  
22 when the report was presented. We Benchers then  
23 received a final report one week before Convocation,  
24 amidst 446 pages of material for the Benchers to read  
25 and consider. And Benchers are then required to vote

1 on approval. And two days before Convocation we get a  
2 legal opinion on the report and the jurisdiction of the  
3 Law Society to implement it.

4 I am no expert on legislative procedure,  
5 but I would have thought that on important legislation  
6 the draft legislation, the content of legal opinions,  
7 and the submissions of interested third parties would  
8 be considered and discussed well before it is put to a  
9 vote. And I suspect that had we had that kind of  
10 procedure, some of the issues that I will be raising  
11 shortly might have been considered and resolved, rather  
12 than having to be put on display at Convocation.

13 But in some conversations about my  
14 motion, particularly with those who don't agree with  
15 it, rather than say discussion is good, let's talk  
16 about it, other than from my friend, Ms. Nishikawa,  
17 with whom I have had several very friendly and  
18 respectful discussions, I have been either lectured at  
19 or dismissed.

20 On being asked for the substance of the  
21 recommendations I object to because some fervently  
22 believe that there is something pure about this package  
23 of recommendations, my suggestion that we discuss the  
24 recommendations at Committee of the Whole before  
25 putting it all to a vote was rejected. Convocation is,



1 have been discriminated against, as have people of  
2 different races, Catholics, Italians, people with  
3 accents, other than somebody with a good English  
4 accent, and those with a non-traditional lifestyle or  
5 sexual orientation.

6 I don't like it. As a Jew, identity  
7 politics has not done me and my people much good.  
8 History proves that all too well. Even here in this  
9 Law Society, our Law Society, it countenanced the  
10 discrimination of Jews for decades, even to the extent  
11 of allowing the bigoted, antisemitic, misogynistic  
12 Lawyers' Club, which prohibited membership to other  
13 than white Christian men to hold its meeting in this  
14 building for decades. And the evidence is well  
15 documented that until the mid 70s most Jews articulated at  
16 small law firms started by Jews a generation before,  
17 because the others would not have them.

18 Unwritten quotas, general bigotry  
19 against Jews pervaded the legal profession, medicine,  
20 engineering and other professions for generations, but  
21 things have gotten better, as the diversity of this  
22 bench proves, but discrimination in one form or another  
23 will continue, and, regrettably, it will not end even  
24 with these recommendations.

25 Let me make my motion clear, it is not

1 about the merits of specific recommendations. It is  
2 clear to me in the context of the reaction to my motion  
3 that this is more about democracy, expressing opinions,  
4 respecting the process of voting on a complicated set  
5 of recommendations and stifling debate, as some have  
6 suggested is undemocratic in our country, and  
7 especially at the Law Society, where we supposedly  
8 respect diversity, and that means the diversity of  
9 opinions.

10 My seconder, Mr. Lem, has told me that  
11 he might approve the recommendations and I've told him  
12 that that is his right. He, too, has taken some heat  
13 for seconding my motion, but he believes that the  
14 process of honest discussion and analysis of policy is  
15 more important than anyone's cause, and he respects the  
16 right of any Bencher to vote as he or she sees fit.

17 So what do I object to? First, I object  
18 to a package. There's too much in here and if there's  
19 one item I don't like am I being forced to choose the  
20 package despite my objection to one of the  
21 recommendations? And I don't like to be intimidated,  
22 because that borders on bullying. I don't like the  
23 thought of having to hold my nose and vote on a package  
24 when I find a particular recommendation unacceptable.  
25 I'd rather not vote against the whole thing, so don't

1 force me to do that.

2 It may not matter in the long run, but  
3 at least my conscience will be clear and I will be able  
4 to tell those members of our bar who find some of the  
5 recommendations offensive, over the top and invasive of  
6 our private life that it wasn't me.

7 One of my fellow Benchers said, "You're  
8 spitting in the wind". Another said, "Find another  
9 hill to die on". Another said, "I'm in sole practice  
10 and this is a GTA problem". One even suggested, "I can  
11 sign the declaration, put the CPD on my computer, turn  
12 down the sound and I am done with it. Who will know or  
13 care?" But for me this is principle and I will say  
14 what I think needs to be said and let the chips fall  
15 where they may.

16 So here are my issues. Recommendation 3  
17 at BoardBooks page 81 requires all licensees "to adopt  
18 and abide by a statement of principles acknowledging  
19 their obligation to promote equality, diversity and  
20 inclusion, and ask licensees annually to indicate  
21 whether or not they have adopted and are abiding by the  
22 principles."

23 The statement of principles requires  
24 licensees to promote diversity. What does that even  
25 mean? What is expected of me as a licensee? Is

1 someone going to tell me if I'm not doing enough  
2 promoting? Am I getting an annual report card from the  
3 Law Society about my active promotion of equality? It  
4 is a vague, feel good statement and I don't know where  
5 it's going. I don't believe that it is necessary to  
6 the rest of the package and could be easily removed.

7           And on this issue of the required annual  
8 declaration, it's ironic that before I became a  
9 Benchers, the Law Society voted against Trinity Western  
10 because it required students to make a declaration on  
11 their sexual orientation or they could not attend. The  
12 Benchers decided that it was outrageous that people's  
13 personal views and practices were mandated by the  
14 university.

15           So look at stage 3 in the commentary at  
16 BoardBooks page 82, paragraph 43. Here we are asking  
17 licensees to annually indicate whether or not they have  
18 been abiding by these equality, diversity and inclusion  
19 principles, and it's not an optional declaration.  
20 Paragraph 44 at page 82 says licensees will be  
21 required, required to make a clear commitment to  
22 equality, diversity and inclusion. We are asking  
23 people to make a declaration on their personal beliefs.

24           I wonder, fellow Benchers, do you object  
25 to a declaration of belief or principles because you

1 think it is wrong to require it or because you just  
2 want to pick and choose the content. Is it not okay  
3 for Trinity Western but okay for us? I'm content that  
4 the oath all licensees make on their call to the bar  
5 and the recommendations to amend the rules of  
6 professional conduct are sufficient to satisfy our  
7 obligations on matters of fairness and equality.

8 I suspect many in the working group did  
9 not like the Trinity Western declarations, but the  
10 report seems to have no problem with licensees being  
11 required to make this annual commitment. And what  
12 about the next time someone requires you to pledge  
13 allegiance, salute the flag, toast the queen or declare  
14 some other thing? Do you have a problem with  
15 declarations generally or just the content of some  
16 declarations?

17 I know where I stand. It is a private  
18 matter and not a public one or a condition of my being  
19 a competent lawyer and, in my view, it does not belong  
20 in the report on action against discrimination.

21 The problem about the adoption of  
22 principles in the annual requirement to commit is that  
23 it's part of recommendation 3. So if I like the rest  
24 of recommendation 3, but I don't agree with the  
25 mandatory adoption of principles, does that mean I'm

1 forced to reject the rest of recommendation 3?

2 The working group may have structured  
3 the report to keep it all together, but for me the  
4 declaration could have easily been a separate  
5 recommendation and not taint the rest of recommendation  
6 3.

7 On the issue of the integrity of the  
8 whole package, I suspect that the requirement for the  
9 declaration could easily come out and not affect the  
10 rest of the report at all. To tell me that it's so  
11 vital that everything belongs in a complete package  
12 does not wash with me, especially when it comes to  
13 this. As the Toronto Lawyers Association identified,  
14 it just may conflict with a licensee's duty to his or  
15 her client in the defense of a legal position.

16 I'm almost done, Treasurer.

17 The report asks licensees to fill out  
18 surveys. That's recommendation 7. The Lawyers and  
19 Paralegals Annual Reports ask licensees all kinds of  
20 personal questions about race, disability and sexual  
21 orientation. The report says licensees will be asked  
22 to answer questions. As I said, I'm not a fan of  
23 identity politics and my history says it's not a good  
24 idea to self identify. Some others may say the same  
25 thing about their private life. So I raised that issue

1 and I was told, although it's not in the report, the  
2 human rights legislation says licensees do not have to  
3 answer. I don't know if it says that the Law Society  
4 hasn't even got the right to ask, and I'm no human  
5 rights lawyer, but here we are asking all kinds of  
6 questions and giving licensees surveys to fill out  
7 about their personal lives, and not even saying  
8 explicitly that all licensees have the right not to  
9 answer the questions.

10 In my opinion, it is not fair when the  
11 regulator asks questions which some may regard as  
12 mandatory and not say that answering these questions is  
13 optional. We are all not conversant in human rights  
14 legislation, like some at this table, to assert our  
15 right not to answer.

16 Many of the recommendations called for  
17 law firms to report on their demographics and account  
18 for diversity policies. Recommendation 3's commentary,  
19 paragraph 48 at page 83 says the Law Society will give  
20 legal work places reasonable, but fixed, deadlines to  
21 implement steps that are important to achieving lasting  
22 change.

23 Recommendation 8 says, "The Law Society  
24 will consider developing and implementing progressive  
25 compliance measures for legal workplaces that do not



1 legal workplaces. I understood that the Law Society  
2 may not have the right to regulate law firms, but  
3 regardless, someone please explain to me why these  
4 recommendations have not been coordinated with the  
5 subcommittee dedicated to exploring entity regulation  
6 and with a mandate to work on it.

7 I'm a logical person and that's totally  
8 illogical to me. This report doesn't even acknowledge  
9 the existence of the entity committee that has been  
10 working on this issue for years. Where is the  
11 coordination and the consultation?

12 And, lastly, thankfully lastly.  
13 Recommendation 4 at page 85, the report says the Law  
14 Society will report back to law firms on the results of  
15 the Lawyer Annual Reports from its licensees as to the  
16 answers it receives, presumably about race, gender,  
17 sexual orientation, et cetera. Recommendation 4 has  
18 the Law Society providing legal workplaces with the  
19 self identification data of their workplace's licensees  
20 compiled from the annual report.

21 The Advocates' Society also identified  
22 this whole thing. How dare we? We will take what is  
23 confidential self-identification and then tell the law  
24 firms what their own licensees reported. I can just  
25 imagine the list that the Law Society will give the law

1 firms, and we just may be participating in very  
2 inappropriate outing. Licensees may choose to tell the  
3 Law Society, but not their law firms, about the  
4 information requested and yet the Law Society will have  
5 no concern whatsoever about not protecting their  
6 licensee's privacy. This is wrong, and those are some  
7 of my concerns.

8 I think I have a pretty good eye for  
9 fair and reasonable legislation, and despite the best  
10 intentions, not all of these recommendations satisfy my  
11 litmus test. Despite the criticism I have received for  
12 bringing this motion I'm glad to have done it. I have  
13 no idea what most of you think about the report. I  
14 have not canvassed opinions and I have not campaigned  
15 on my motion, but hopefully I have allowed some  
16 Benchers, and perhaps others in this room, to  
17 reconsider the recommendations carefully and  
18 analytically, as good lawyers and paralegals should,  
19 and as a package it should not be approved just because  
20 it is the best we can come up with right now or let's  
21 just hold our collective noses and hope for the best.  
22 This is not how we should be enacting legislation.

23 I promised myself that I would not be a  
24 Bencher that sits on his hands for four years and goes  
25 along to get along, even if it goes against my

1 principles. My objections are principled. I will  
2 abide by the decision of Convocation as always and  
3 respect the decision-makers, because each of us is  
4 entitled to his or her well considered opinion, but at  
5 least I'll be able to sleep at night knowing that I  
6 stuck by my own principles of fairness, evenhandedness,  
7 and the exercise of good judgment in all things,  
8 including these recommendations.

9 Thank you for listening.

10 TREASURER SCHABAS: Thank you,  
11 Mr. Troister.

12 So just before I open the floor, and I  
13 see more hands going up, I've already got a long list,  
14 I just want to be clear that there are two motions that  
15 people should be speaking to. The first motion is at  
16 tab 3.1, which is that Convocation approve the  
17 following 13 recommendations, so it's all of the  
18 recommendations. And then the other motion is  
19 Mr. Troister's motion, which is tab 8.1, which asks  
20 that they be discussed and voted on separately.

21 We are going to discuss them altogether.  
22 People can address different ones, as Mr. Troister has  
23 done, but the thrust of his motion is that we would  
24 vote on each of the 13 recommendations one by one.

25 At the end of this discussion I will put

1 Mr. Troister's motion to a vote, and depending on how  
2 that goes, we will address the motion at 3.1.

3 So the first person I have on the list  
4 is Ms. Nishikawa. Again, there is a long list, it's  
5 getting longer every second. I would really ask  
6 Benchers to respect the fact that we do have a lot of  
7 speakers and to be brief and succinct in their remarks.  
8 First, Ms. Nishikawa.

9 MS. NISHIKAWA: Thank you, Treasurer.  
10 I'm going to limit my remarks to two things on which I  
11 have a particular perspective; and that's procedure and  
12 the package.

13 First of all, the working group  
14 endeavoured to put together a comprehensive plan, not  
15 just certain recommendations, but a plan to address the  
16 systemic issue that was found, and the systemic issue  
17 was found and substantiated by the first report of the  
18 working group, and that's because we needed something  
19 more than anecdotal accounts of systemic racism in the  
20 legal profession.

21 Secondly, the plan that the working  
22 group has put together is meant to be a proportionate  
23 response to this systemic racism that has been found.  
24 It can only be addressed from a variety of perspectives  
25 all in concert.

1                   And with respect to process -- sorry,  
2 before I get to that. If we were not looking at a  
3 plan, and only looking at particular recommendations,  
4 some of us may have come up with different  
5 recommendations, but we agreed as the working group  
6 unanimously on the package that is before you.

7                   And this is not to say that the  
8 recommendations are the best thing ever, and we could  
9 debate those recommendations to no end because  
10 different people will have different ways and different  
11 ideas about attacking a very complex and multifaceted  
12 issue.

13                   What makes these recommendations the  
14 best that we have and different from motions that have  
15 come before Convocation before is that they're not just  
16 the working group recommendations. The recommendations  
17 were arrived at after substantial consultation, town  
18 halls, surveys that went to the entire profession,  
19 focus groups, and the continued participation of our  
20 partners, including the Equity Advisory Group, the  
21 Roundtable of Diversity Associations, both of which are  
22 umbrella groups that represent a multitude of other  
23 organizations. So these recommendations are not just  
24 the working group's recommendations, they were the  
25 community's recommendations.

1                   So I would urge Benchers to consider  
2           that before voting on a motion to consider all of those  
3           recommendations separately. And I can say that because  
4           I have been on both sides of the table. First as EAG  
5           chair I was involved in the consultations that the  
6           working group had with the Equity Advisory Group and  
7           with the communities, and then I was involved as a  
8           Bencher.

9                   In terms of democracy and fairness, this  
10          is about the fairest and most democratic process that  
11          the Law Society has gone through to bring a motion  
12          before Convocation. This isn't like -- and I was part  
13          of the Professional Development and Competence  
14          Committee, but it's not like putting a proposal  
15          together and then putting it out for input to the legal  
16          profession. The input was sought and obtained,  
17          listened to and considered and deliberated on from the  
18          very, very beginning.

19                   So just on those two points, process,  
20          and the fact that the recommendations are planned. So  
21          the Equity Advisory Group and the Roundtable of  
22          Diversity Associations, among other organizations, urge  
23          to us to adopt the report and the recommendations as  
24          the integrated whole that they were intended to be, and  
25          I urge Benchers to do so to address systemic racism in

1 an increasingly diverse legal profession. Thank you.

2 TREASURER SCHABAS: Thank you.

3 Ms. Corbiere.

4 MS. CORBIERE: Thank you. Washgesh nedo  
5 kwe makwa dodem m'Chigeeng dongebaa. I'm introducing  
6 myself because my identity as Anishinaabe Kwe is  
7 crucial to Anishinaabe law, but I won't do it again,  
8 Benchers, because I've introduced myself this one time.

9 I'd also like to acknowledge the  
10 Mississaugas of the New Credit First Nation and  
11 welcoming us in their traditional territory to look at  
12 this historic report. I'm going to speak to about -- I  
13 thank Mr. Anand for mentioning indigenous people, and I  
14 can say because we were the first people, we have, and  
15 continue to, suffer systemic racism.

16 This report is not only important to the  
17 Indigenous community of Ontario, the Indigenous Bar  
18 Association, which is a national association of  
19 lawyers, paralegals, knowledge keepers, have supported  
20 this report in whole with all recommendations.

21 We also have a new Indigenous Advisory  
22 Group. They, too, have, after careful consideration,  
23 with their knowledge of systemic racism, we support the  
24 work of all Canadians and the Law Society of Upper  
25 Canada to ensure that our brothers and sisters -- that

1 we work with our brothers and sisters to combat  
2 systemic racism.

3 I can say that we too -- you can't do  
4 this work without your partners and we support what our  
5 partners have recommended, and that is that the full  
6 report and all its recommendations be supported, and I  
7 urge Convocation to do so.

8 After careful consideration we look  
9 forward to the implementation of this historic work and  
10 we hope Convocation supports motion 3.1 and we do not  
11 support motion 8.1, with respect, Mr. Troister and  
12 Mr. Lem. Miigwetch, Treasurer.

13 TREASURER SCHABAS: Thank you.  
14 Ms. Merali.

15 MS. MERALI: Thank you. Good morning,  
16 bonjour, Treasurer. I speak today in Convocation to  
17 express my strong support of the motion to approve the  
18 working group's 13 recommendations.

19 I have been honoured to participate in  
20 the working group since joining Convocation after the  
21 last Bencher election. I would like to take a moment  
22 to thank our working group co-chairs, Mr. Anand and  
23 Ms. Leiper, who worked tirelessly to guide and lead us.  
24 We owe an enormous debt to them both. Their passion,  
25 leadership and expertise was invaluable to the group

1 and I am personally grateful to them both.

2 I wish to also acknowledge and thank  
3 you, Treasurer, for how seriously you have taken the  
4 challenges that face racialized licensees and for your  
5 truly inclusive approach since you began as Treasurer  
6 and for your leadership in getting us here today.

7 I would also like to thank and  
8 acknowledge the lawyers, the paralegals, the  
9 equity-seeking legal organizations and associations who  
10 are in attendance today and who are watching via  
11 webcast on this historic date to mark and bear witness  
12 to the Law Society taking a historic and progressive  
13 step towards greater inclusion and equity in our  
14 professions.

15 I am proud of the work we have completed  
16 as a working group and while many may see this as just  
17 a starting step towards change on a significant issue,  
18 I do believe it's a milestone for what has  
19 traditionally been a very conservative legal  
20 profession.

21 Today is our opportunity to demonstrate  
22 that we are, in fact, a progressive, informed and  
23 inclusive institution. Today we have the opportunity,  
24 and I would say the responsibility, to take the lead on  
25 change which is critically needed to address the

1 significant barriers and systemic discrimination that  
2 face racialized licensees.

3 I urge Convocation to support the 13  
4 recommendations as a package designed and aimed at  
5 beginning to take those critical steps. The  
6 recommendations are meant to work together and they  
7 flow from each other in order to holistically and  
8 comprehensively target the diverse challenges that face  
9 racialized licensees. In my view, the recommendations  
10 today ensure that the Law Society reinforces  
11 professional obligations through our rules and through  
12 a statement of principles that, as Professor Adam Dodek  
13 in his recent SLAW post has aptly framed as simply a  
14 positive affirmation to abide by the rules and by the  
15 law.

16 The recommendations together as a  
17 package also work together to ensure that change can be  
18 intelligently guided by appropriate policies and  
19 resources, that attitudes and cultural competence can  
20 be enhanced by meaningful professional development and  
21 education, that changes in inclusion and diversity are  
22 measured and monitored, that progressive compliance  
23 measures are considered and enacted, that complaints of  
24 systemic discrimination are appropriately addressed,  
25 and the Law Society itself, as it should be, lead by

1 example.

2 I speak today also because I know,  
3 having practised human rights law for almost all of my  
4 career, that the barriers that face racialized  
5 licensees and, frankly, racialized persons in society  
6 are real, they are pervasive, and they are extremely  
7 difficult, if not impossible, to eradicate without a  
8 comprehensive approach.

9 I would like to share very briefly why  
10 today is also meaningful for me on a personal basis.  
11 Recently I had the honour of sitting on a Law Society  
12 and Women's Law Association panel on race and gender in  
13 the legal profession. During the Q&A session I was  
14 asked in front of the entire audience if I had ever  
15 been treated differently because of my race during my  
16 career.

17 I have to say that in that moment I  
18 completely froze. I realized in that moment that I had  
19 never spoken about my own personal experiences in such  
20 a public way and certainly had never publicly answered  
21 that particular question. In that moment I wasn't a  
22 recently elected Bencher, a member of the Equity  
23 Advisory Group for six years prior to becoming a  
24 Bencher, I wasn't an experienced human rights lawyer,  
25 mental health and administrative law lawyer, I wasn't a

1 lawyer who had addressed the UN on women's and  
2 children's rights, negotiated language in the  
3 international arena, an author and editor of articles  
4 and texts, a lawyer who directed programs and boards  
5 and mentored students; I was, in that moment, still and  
6 very simply a racialized female lawyer who still did  
7 not feel comfortable or even safe answering what was  
8 really a very simple question. And in that moment I  
9 had to take a breath and remember that those listening  
10 to me, mostly younger lawyers, had already experienced  
11 very similar things to what I have over my career, and  
12 that in answering that question with yes, that was  
13 absolutely my experience and that we have to work  
14 together to ensure accountability for the change that  
15 needs to occur. I believe in doing so I perhaps made  
16 it just a little bit safer for some to say what is true  
17 and what actually exists in our professions.

18           Critical and very real barriers face  
19 racialized and other equity-seeking licensees and we,  
20 as Benchers, must lead the call for accountability, for  
21 change. We, as Benchers, are charged with the  
22 responsibility to protect and advance the public  
23 interest and uphold the rule of law. We must join  
24 together on this historic day to take the lead on  
25 making our profession safer, more accountable, more

1 inclusive and more equitable.

2 This journey began four years ago.

3 Thank you, Treasurer, for allowing me to be a part of  
4 the culmination of that journey today. Merci.

5 TREASURER SCHABAS: Thank you,  
6 Ms. Merali. Mr. Falconer.

7 MR. FALCONER: Treasurer, I'd actually  
8 indicated that I still was content to wait, and I will.  
9 I'd like to hear more comments from my colleagues.

10 TREASURER SCHABAS: Ms. Potter.

11 MS. POTTER: Thank you, Treasurer.

12 There is no doubt that a great deal of hard work and  
13 passion, enthusiasm, blood, sweat and tears went into  
14 this report on the part of many, many individuals, not  
15 just the people that formed the committee and have done  
16 an outstanding job, but to those who have contributed  
17 in many other ways to having such a fulsome report come  
18 out with the recommendations that are before us today.

19 So having said that, as a Life Bencher,  
20 regretfully, I have no vote on these matters in  
21 Convocation. I don't know if that's ageism, but it's  
22 something. Having said that, I'd like to also point  
23 out that Mr. Troister's comments were thoughtful.  
24 Obviously he's taken a lot of heat because of those  
25 comments. I had no idea about that because, of course,

1 I don't get the e-mails that people are circulating for  
2 votes, but I'm impressed by the thoroughness of his  
3 presentation as to why, not the quality of the report,  
4 but as to why the recommendations should be addressed  
5 individually. And I understand the pain and suffering  
6 that the committee might -- the working group might  
7 feel if it's not done the way they are proposing, but  
8 let me just add, there is precedent for what  
9 Mr. Troister is requesting.

10 When -- at one point in our Law Society  
11 history, I co-chaired, along with Bencher Abe  
12 Feinstein, the task force on the ongoing survival of  
13 small firms and sole practitioners, and I can tell you  
14 that my guess is an equal amount of blood, sweat and  
15 tears went into that working group's task force's  
16 report as has come out of this particular report, and  
17 we had numerous recommendations.

18 Bottom line is, Convocation decided to  
19 vote on the report which we wanted to go before  
20 Convocation as one piece, our 11 recommendations were  
21 voted on individually and one of them was defeated.  
22 Having said that, it was hugely disappointing and it  
23 was also an interesting one that I think Benchers would  
24 not vote against today at this point in time.

25 But having said that, I would hate to

1 think that report would have gone astray and fallen by  
2 the wayside had we insisted on having the report voted  
3 on as we wanted it, as a fulsome recommendation  
4 consisting of 11 various individual recommendations.

5           So I think there is precedent for this,  
6 and I would also add that the comment that Mr. Troister  
7 made about the importance, despite the time it takes,  
8 the importance of being able to take apart these  
9 things -- most of it would not be open to much  
10 discussion, but some of it would be and it may be -- it  
11 may very well be that those are issues that need  
12 further reflection. That the committee may have it  
13 almost perfect but not -- we don't expect it to be  
14 perfect. They may have it almost right, but not quite,  
15 and maybe it can be enhanced in some way.

16           Don't be afraid to look at it and vote  
17 on it individually, because it's a good piece of work  
18 and if it can be made better, so be it.

19           So I just wanted to point out, there is  
20 precedent for the request that's before us today and  
21 with good reason. Thank you, Treasurer.

22           TREASURER SCHABAS: Thank you,  
23 Ms. Potter. Mr. McDowell.

24           MR. MCDOWELL: Thank you, Treasurer. I  
25 wanted to say at the outset, through you to

1 Mr. Troister, that prior to his arrival as a Bencher,  
2 on another occasion, I said that it has to be easier to  
3 dissent at Convocation, and I think that in the Trinity  
4 Western debate we demonstrated what division and what  
5 respectful discussion looks like. And so if he has  
6 experienced the dissent from his motion, if you will,  
7 as being nasty, as being preaching, I sympathize with  
8 him.

9 As the son of a manse, I'm kind of  
10 allergic to preaching and I think that that's not the  
11 way to approach these problem because Mr. Troister  
12 makes a number of principled comments.

13 I echo what Ms. Nishikawa said, that  
14 along the way I think that different members of our  
15 committee have had greater and lesser enthusiasm, at  
16 least at the outset, for some of these recommendations,  
17 but we have, with difficulty, with hard work, with the  
18 leadership of Mr. Anand, reached common ground. It  
19 hasn't been easy, but we have created a report which we  
20 believe will be transformative.

21 In response to a problem which we heard  
22 from one end of the province to the other is insidious,  
23 it's not getting better, and we say that the way to  
24 address these problems is in a coherent report.

25 Je voudrais dire qu'il'y a trent cinq

1       ans (ou à peu près) le Premier Ministre Pierre Elliot  
2       Trudeau a du se faire face au même problème lors du  
3       débat parlementaire sur la Charte des Droits. Là, il'y  
4       avait ceux qui aurait exigés que telle our telle  
5       article soit enlevée de la Charte. Mais M Trudeau a  
6       refusé, dit-il non. C'est la Charte entière; c'est le  
7       projet de loi entier. Votez oui ou non.

8                       And that, I think, is the answer to my  
9       friend and colleague, Ms. Potter. That in a situation  
10      like this, on something that does touch on race and on  
11      the difficulties that we have, it's simply not  
12      appropriate to have a report which comes equipped with  
13      serrated pages and we can pull out this page or this  
14      page or the last page and end up with a highly  
15      compromised product.

16                      So it may be that Convocation will not  
17      accept this report and we would have to live with our  
18      disappointment about that, but I say that we shouldn't  
19      be doing this on a piecemeal basis. Thank you,  
20      Treasurer.

21                      TREASURER SCHABAS: Thank you,  
22      Mr. McDowell. It won't be lost on those who perused  
23      the agenda carefully that I had very optimistically put  
24      down 80 minutes for this debate, that's clearly not  
25      going to happen. Without even knowing who wants to

1 speak on the phone, I think we still have 15 more  
2 people who wish to speak on my current list.

3 So we will take a break of no more than  
4 20 minutes. I'm looking at this clock ticking by, we  
5 will return at 11:25 sharp to continue this discussion.  
6 Thank you.

7 --- Recess taken at 11:05 a.m.

8 --- On resuming at 11:28 a.m.

9 TREASURER SCHABAS: Please take your  
10 seats. All right, we will resume now. I want to let  
11 you know that over the course of, unfortunately, what  
12 turned into a 24 minute break I think I had about six  
13 more people added to the speakers' list.

14 I'm just going to really urge people to  
15 be brief, not to simply go over well trodden ground.  
16 If you feel it necessary to speak and you're agreeing  
17 completely with somebody else, maybe you can edit your  
18 remarks accordingly.

19 So the next speaker will be Mr. Lerner.  
20 Where's Mr. Lerner?

21 MR. LERNER: Thank you, Treasurer. I  
22 have a couple of brief comments and then a question.

23 First of all, I have been very proud to  
24 have been elected a Bencher and to serve in that  
25 capacity until today, and I'm truly saddened that we

1 are obliged in this day and age to have to have a  
2 conversation such as the one that we are having today.

3 I want to apologize to my friend,  
4 Mr. Troister, for the manner in which he has been  
5 treated by my colleagues. I believe that it is  
6 indicative of some of the problems that still exist in  
7 our society and, quite frankly, we haven't come very  
8 far since the days of 1960 when Jews were not allowed  
9 to be treated as full class members of the profession.

10 I am saddened also when I hear the  
11 personal experiences of some of my colleagues as to why  
12 this particular issue is of such great importance to  
13 them.

14 I would have hoped that in 2016, in what  
15 is supposed to be an enlightened country and an  
16 enlightened profession, that these issues would never,  
17 ever have to come before us to be discussed in the  
18 manner that we are discussing them today.

19 I regret that I cannot stay because I  
20 have to catch a train, but I have one question and my  
21 question is this: Should a licensee fail or refuse to  
22 answer one of the mandatory questions contained in the  
23 recommendation, am I correct in assuming that  
24 individual will be subject to administrative  
25 suspension?

1                   TREASURER SCHABAS: Mr. Anand, could you  
2 just very briefly answer that question.

3                   MR. ANAND: We haven't discussed  
4 specific remedies or sanctions. We -- the underpinning  
5 of the report is that this is intended to be  
6 cooperative and collaborative.

7                   With respect to -- what you're asking is  
8 actually whether the person has filled out their  
9 Lawyers Annual Report, and if that's the question, at  
10 this point the sanctions would be same as any other  
11 person who failed to fill out the Lawyers Annual  
12 Report.

13                   MR. LERNER: So currently there are a  
14 number of questions with regard to religion, country of  
15 origin, ethnicity that are voluntary.

16                   MR. ANAND: They are all voluntary.

17                   MR. LERNER: If we make these questions  
18 mandatory, then if somebody fails or refuses to answer,  
19 they would be subject to administrative suspension for  
20 failure to fill out the report in accordance with our  
21 requirements.

22                   MR. ANAND: As I say, I'm not in a  
23 position to say that because we don't make a  
24 recommendation as to that. You'll see in the report we  
25 say there will be progressive compliance measures and

1 -- sorry, am I being heckled by Mr. Troister?

2 MR. LERNER: What happens if I fail to  
3 answer a mandatory question now?

4 MR. ANAND: I believe -- there are  
5 others who can answer better than I, but I think that  
6 that would lead to -- that could lead to an  
7 administrative suspension.

8 MR. LERNER: And so is there any reason  
9 to believe that if I fail to answer a mandatory  
10 question in the future that I would not be subject to  
11 the same remedy?

12 MR. ANAND: I can't give you a reason  
13 that you would.

14 TREASURER SCHABAS: Can you just turn  
15 off your mics? Now my mic is on. Thank you. We can  
16 only have two mics on at the same time, so I better  
17 keep mine on all the time.

18 I see Mr. Falconer quite agitated at the  
19 back, and to you, Mr. Falconer, I'm prepared to give  
20 you thirty seconds if you want to address Mr. Lerner.

21 MR. FALCONER: Yeah, as the co-chair of  
22 the Equity and Aboriginal Issues Committee we have to  
23 deal with the LAR and PAR questions every year in terms  
24 of reviewing them. They are not mandatory. You are  
25 permitted when self identifying, when identifying

1 whether you're a member of a culture, you are permitted  
2 to bypass the question and go on. That is not subject  
3 to administrative suspension and nor is it planned to  
4 be the subject of suspension.

5                   The mandatory data collection relates to  
6 firm provision of information concerning their  
7 diversity. It is a huge difference. So we have to be  
8 very careful in misinformation here. The LARs and PARs  
9 questions about background, your own personal  
10 background, you will always be free to bypass it, and  
11 you will also, of course, be encouraged to cooperate as  
12 we try to measure the demographic of our communities.  
13 Thank you.

14                   TREASURER SCHABAS: All right, thank  
15 you. Mr. Galati, you're next.

16                   MR. GALATI: Thank you. Through you,  
17 Treasurer, everyone knows me as an extremely diplomatic  
18 and underspoken, politically correct guy, but I'm going  
19 to have to shed that today --

20                   MR. FALCONER: Point of order, point of  
21 order.

22                   MR. GALATI: I probably stand in the  
23 unique position that I'm going to speak against both  
24 motions.

25                   I, first of all, want to

1 commend Mr. Troister for bringing his motion on  
2 principle. On principle, I would have otherwise  
3 supported it, but I'm not going to support it in this  
4 instance because, in my respectful view, it would  
5 amount to an exercise of bringing first aid to a well  
6 dressed cadaver, and so there's no point. And I'll  
7 move to the second motion, the main motion that's  
8 before Convocation.

9                   You know, it's 32 years since section 15  
10 of the Charter, 25 years since the Royal Commission  
11 Inquiry on systemic discrimination in Ontario, decades  
12 since the Supreme Court of Canada jurisprudence, and  
13 the avant garde Law Society finally gets around to  
14 dealing with this issue in this report. Well, I guess  
15 better late than never.

16                   When I hear the word "diversity" kicked  
17 around in this place, I don't actually compute  
18 toward -- digest or regurgitate the substantive notion.  
19 What I really hear in code is not diversity but  
20 diversion. Diversion of issues, diversion of reality,  
21 and diversion of action, and that's what these  
22 recommendations are. They're another yet historical  
23 diversion of action. They're nebulous gibberish that  
24 will have the impact akin to a mosquito breaking wind,  
25 in my view.

1                   Because 2016, we can't come up with  
2       recommendations with teeth, with actual enforcement of  
3       making sure that the legal profession does not continue  
4       to be racist? I don't use the word discrimination with  
5       respect to racial discrimination because that's another  
6       whitewash euphemism. If you discriminate on race  
7       you're a racist, the only issue is question of degree.

8                   For me, recommendation number 13 is rich  
9       beyond the pale. Are you kidding? This Law Society,  
10      if you look at the racial mix of who runs it, the  
11      bureaucracy, we might as well be in Pretoria. Why  
12      don't we start with cleaning up our own act right here  
13      in this building?

14                  There is no racial diversity on the  
15      bureaucracy that runs this place, and we should have  
16      done that before these recommendations came forward and  
17      lecture other firms on how to voluntarily take  
18      meaningless oaths and hopefully voluntarily comply. If  
19      they haven't complied by now, they ain't going to  
20      comply with this nonsense, and it's going to be another  
21      four, eight, twelve years, and we'll be here again. I  
22      might not be here, we're not the same people, and we're  
23      going to be having the same whitewash rhetorical  
24      nonsense with no action. This has been going on for  
25      decades.

1                   Now, Mr. Anand -- and I'll finish very  
2 soon, Treasurer -- Mr. Anand talked about the need for  
3 studies and all of that, and I agree, and that  
4 anecdotal experiences inform a person's perspective. I  
5 agree with that, but that's not to dismiss anecdotal  
6 perspectives.

7                   I have grown up in a Canada where I got  
8 regularly strapped in elementary school up until 1972  
9 for speaking my native tongue in the school yard with  
10 my friends. I grew up in a Canada where I got the crap  
11 beaten out of me by police officers on College Street  
12 because you're not allowed to stand after a certain  
13 hour. No laws, just, you know.

14                   Those of us who are racialized from  
15 different races understand this. I have been ranting  
16 and raving against racism my entire legal career. In  
17 2002 some idiot at the Law Society threatened to maybe  
18 strike a hearing because I was quoted in a national  
19 magazine as saying that the Superior Court judiciary in  
20 Canada was no less integrated than the judiciary in  
21 South Africa under apartheid. They only backed off  
22 when I asked them to check the veracity of that  
23 statement. So in 2016 less than three percent of  
24 Superior Court judiciary are a visible minority.

25                   So here we are. I have been called a

1 dirty and dumb wop by a registrar of an administrative  
2 tribunal; two judges -- and I've often been told in  
3 chambers by judges during my short 28 year legal career  
4 that as an immigrant wop I should hold my tongue  
5 because I have done very well in terms of career.

6 Now, that's the attitude, and you think  
7 voluntary compliance is going to change that? No. So  
8 I have to respectfully abstain on the main motion  
9 because often when I'm being introduced at conferences  
10 a lot of people will introduce me as a controversial  
11 constitutional lawyer.

12 My father, as a World War II survivor in  
13 very ugly circumstances, always taught me it's better  
14 to be controversial than complicit.

15 If I voted for these recommendations,  
16 and I sincerely see them as another whitewash, I  
17 couldn't live with my conscience and my duty as a  
18 Bencher to say so. These recommendations, to say that  
19 they don't go far enough is an understatement. They go  
20 nowhere, in my view.

21 TREASURER SCHABAS: Thank you, Mr.  
22 Galati. Mr. Earnshaw.

23 MR. EARNSHAW: Thank you, Treasurer. I  
24 would like to speak to this in my capacity as chair of  
25 the Compliance-Based Entity Regulation Task Force.

1           I want to commend the working group for  
2 taking steps to address issues of systemic racism in  
3 the legal professions and I would ask that my comments  
4 be taken not as contra the motion, but so Benchers can  
5 make an informed decision on the impact that accepting  
6 the motion may have on the Law Society in general and  
7 my task force in particular.

8           I am addressing my remarks to  
9 recommendation 3(1), (2) and (3) and recommendation 8,  
10 because they overlap substantially with the work of my  
11 task force.

12           Benchers will recall that my task force  
13 made a report to Convocation in June of this year; it  
14 had two parts. The second part required us, that is,  
15 my task force, to continue to work on compliance-based  
16 regulation by developing one or more options which  
17 would be the subject of focused consultation with the  
18 professions to obtain feedback on their potential  
19 impact.

20           That report indicated that elements of  
21 these approaches could, and I emphasize the word could,  
22 include mechanisms for providing sample policies and  
23 procedures that lawyers and paralegals might consider;  
24 periodic self assessment of compliance based on a tool  
25 to be developed by the Law Society; reporting to the

1 Law Society that paralegals and lawyers have either  
2 considered the self assessment tool and the extent to  
3 which they're in compliance with it or the result of  
4 their self assessment, and also an appropriate  
5 regulatory response.

6            Benchers will appreciate at once that  
7 those objectives of my task force overlap substantially  
8 with the recommendations I have identified. Our task  
9 force, through the course of the fall and into next  
10 year, is engaged in working on that requirement to  
11 develop options or models, if you prefer. We will also  
12 be looking at the question of the role of what we  
13 described in our report as the designated professional,  
14 who presumably would be the same as the licensee  
15 representative in recommendation 3.

16            Our options under consideration will  
17 also look at the requirement for the method and the  
18 frequency of a self assessment and, of course, will  
19 require the development of a self assessment tool.

20            Importantly, the work of task force is  
21 limited to consideration of private firms. It does not  
22 speak with the same scope as the report of this working  
23 group, which is not just firms in private practice like  
24 my task force, but includes government, in-house, legal  
25 clinics and other practice environments which appear to

1 be measured primarily by numeric yardstick as to  
2 whether there are ten or more professionals or  
3 licensees engaged in practice in that environment.

4           So these recommendations by the working  
5 group step boldly into areas where the Compliance-Based  
6 Entity Regulation Task Force, based on its  
7 consultations with the professions, was hesitant to go.  
8 If accepted, they will establish a precedent in these  
9 areas where the task force is quite likely to follow.  
10 These are not -- my comments today are not an  
11 exhaustive or comprehensive review of the overlap  
12 between the two reports. There are many other issues  
13 that are before my task force that also will be  
14 impacted by acceptance of the report of this working  
15 group and voting in favour of the motion.

16           I really wanted to remind or alert  
17 Benchers to the work of the task force and the impact  
18 of this motion on its work as they deliberate on the  
19 motion. Thank you, Treasurer.

20           TREASURER SCHABAS: Thank you,  
21 Mr. Earnshaw. Ms. Papageorgiou.

22           MS. PAPAGEORGIU: I'm very proud to be  
23 here today to speak in favour of the recommendations of  
24 the Challenges Report, and I also speak against the  
25 motion to sever the recommendations.

1           There has been a long history of racism,  
2           sexism and discrimination in the law and the legal  
3           profession and the exclusion of the other from  
4           positions of power, leadership and privilege. The  
5           academic research is incontrovertible.

6           Indeed, historically the law has been  
7           used as a tool of oppression and we still feel the  
8           effects of this today. All you have to do is look at  
9           the Truth and Reconciliation Report or even just walk  
10          around this beautiful building. The walls are covered  
11          with large portraits of white men. There are hardly  
12          any portraits of women or racialized lawyers. I notice  
13          it every time I come here and I often wonder how  
14          members of the public or younger lawyers with diverse  
15          backgrounds feel. I know it bothers me tremendously.

16          The Challenges Report is an important  
17          first step to address this long-standing inequity, and  
18          I'm not going to repeat all the arguments here today or  
19          all of the reasons that are already in the report, but  
20          I do want to emphasize that in considering the report,  
21          and here I disagree with Mr. Troister, I think that the  
22          legal profession's failure to address these inequities  
23          has had a very strong impact on its ability to fulfill  
24          its statutory mandate to facilitate access to justice.

25          Again, the academic research shows this

1 and, you know, we had an Access to Justice Week a  
2 couple of weeks ago and I was there and members of the  
3 public came to share some of their views as to why they  
4 don't get great access to justice. I was struck by the  
5 number of people who stood up and spoke about how the  
6 reason they don't get access to justice is because of  
7 the legal profession's sexism, racism, ableism and  
8 other aspects of its discrimination.

9           So when we consider this report, I think  
10 we need to do an evidence-based assessment and, in my  
11 view, the evidence all leads to the conclusion that we  
12 support the recommendations. There's evidence of a  
13 widespread and long-standing problem. There's  
14 precedent for each of the recommendations in other  
15 jurisdictions or in the academic literature without any  
16 reported giant issues that have arisen because of the  
17 recommendations.

18           There's overwhelming support from people  
19 and legal organizations who have made submissions,  
20 including organizations who are made up of  
21 equality-seeking groups. I was actually really moved  
22 by all of the expressions of support from all the legal  
23 organizations.

24           You know, I -- for a profession that has  
25 a history of all of these problems, I really think that

1 we are now at the point where people do really care  
2 about this issue and want to do something and take  
3 action, and this is a way to begin that.

4 I see no -- I'm deeply troubled by Mr.  
5 Galati's comments. I have a great deal of respect for  
6 both Mr. Galati and Mr. Troister. In my view, the  
7 committee has, in good faith, set out to honestly study  
8 these issues and arrive at the recommendations. Will  
9 the recommendations solve the problem? Probably not,  
10 to be honest, because no one yet in this world has  
11 figured out a way to solve racism or all the other isms  
12 out there, but these recommendations find significant  
13 support in all the ways that I have said and I actually  
14 think that compiling information and statistics and  
15 inclusions -- an inclusion index for firms will be  
16 particularly effective because people within the legal  
17 community, clients, there is this growing concern about  
18 diversity and I think shining a light is actually going  
19 to make people step up.

20 I also see no reason to sever the  
21 report, and I don't think that the failure to sever the  
22 report has somehow dampened dialogue or debate. We had  
23 the report for many months. We had an informal  
24 information system where it was informally presented  
25 and discussed; we then had it presented to us again at

1 Convocation and now we're here and we're having a  
2 debate. I don't see that there has been any stifling  
3 of any conversation whatsoever.

4 I think we have everything we need to  
5 know, including a supported legal opinion with respect  
6 to the statement of principles that Mr. Troister finds  
7 offensive. And the legal opinion is, frankly,  
8 supportive of it and it states that the statement of  
9 principles is simply a restatement of the obligations  
10 already imposed on licensees.

11 This is not analogous to Trinity; in  
12 fact, it is the opposite of Trinity, where students  
13 were prohibited from engaging in homosexual acts,  
14 which is actually discriminatory. While there might be  
15 some precedent; one example raised for separating out  
16 the recommendations, this is not the usual course and I  
17 don't think that this is the time to do that. This is  
18 not the time to nitpick or tinker around the edges or  
19 speculate.

20 I agree it's a historic opportunity to  
21 take a stand against racism, and it's especially  
22 important today when we see the rise of hatred and more  
23 racism in other parts of the world. We might think  
24 that we have come so far and our intentions are so good  
25 that surely we could never lose ground and will

1 continue to evolve towards more equity, but I think we  
2 all know now that that is not true. Things can change  
3 in the blink of an eye or with a vote that goes the  
4 wrong way.

5 TREASURER SCHABAS: Thank you, Ms.  
6 Papageorgiou. Ms. Walker.

7 MS. WALKER: Thank you, Treasurer.  
8 Treasurer, and through you to Convocation, in a world  
9 seeking justice and fair opportunity for all, our body  
10 politic has become unhinged by politics south of the  
11 border. There has been conversations and debate has  
12 turned away from elevating and encourages all citizens,  
13 to attacks on race, sex, country of origin and  
14 language.

15 I am a black woman and a child of  
16 Jamaican immigrants and I continue to face racism and  
17 discrimination, and it's not right or fair.

18 It is my belief that we must resist the  
19 easy route to diminish standards of conversation and  
20 action in the public square. The action that we take  
21 has inclusiveness at its centre and adds a step of  
22 confidence to those who seek to elevate and encourage.  
23 I didn't know this would get me emotional.

24 TREASURER SCHABAS: Take your time.

25 MS. WALKER: Today's motion of 13 points

1 on the road to equity for the profession reflects on  
2 those of us elected to govern the profession and, in  
3 turn, regulate the public that we serve. I have decide  
4 on the allometric because the 13 together make a  
5 continuing impact and statement on the profession and  
6 in the public square.

7 I hope that the goal lines will be  
8 moved. I hope that equality of opportunity will be  
9 employed. We will be a better society and profession  
10 than we were before this initiative if this motion  
11 passes. I support all 13 points with pride and a hope  
12 for accomplishments for Convocation and a hope for a  
13 better future. Thank you.

14 -- Applause.

15 TREASURER SCHABAS: Thank you,  
16 Ms. Walker. Ms. Go. Ms. Walker, you're going to have  
17 to turn your mic off.

18 MS. GO: Thank you, Treasurer. I would  
19 like to begin by acknowledging the gathering of our  
20 fellow members of the profession -- this is  
21 contagious -- in this room who are here to witness the  
22 historical moment as Convocation debates for the first  
23 time the issue of systemic racism in our legal  
24 profession and the specific strategy that we should  
25 adopt to address this issue.

1                   Many of the people present represent the  
2 various organizations that have been working very hard  
3 to promote equity in the profession and all of them  
4 have thrown their support behind the report by the  
5 working group as a whole. Indeed, many of them, as  
6 Ms. Nishikawa has pointed out earlier, have worked  
7 just as hard as the working group on the report and are  
8 eager to see the entire report adopted. Their support  
9 depends on it.

10                   This gathering today reminds me of yet  
11 another incident or recent historical event. On the  
12 day after the recent U.S. presidential election I was  
13 in Atlanta, Georgia, attending Facing Race Conference,  
14 the largest gathering of social racial justice  
15 advocates in the United States to strategize around how  
16 to enhance racial equality.

17                   Inevitably, the election result was on  
18 the top of everyone's mind. While the advocates  
19 present were not necessarily Clinton supporters, many  
20 of them were still stunned by the Trump victory because  
21 of the calamity the Trump administration would bring to  
22 the tens of millions of people of colour, Muslims,  
23 immigrants and other marginalized groups in the States,  
24 but, more tellingly, many were stunned to find  
25 themselves stunned, as deep down they knew they should

1 have seen the election result coming.

2           Regardless of the outcome, the 2300 or  
3 so advocates vowed to be more committed to the cause of  
4 social justice than ever before and many vowed to reach  
5 out to both the left and the right on the political  
6 spectrum, including people who voted for Trump, but  
7 rejected his misogynist and racist world view.

8           By reaching out, the advocates hope to  
9 build more alliances and make more Americans understand  
10 the critical need to address the growing racial  
11 disparities and inequalities in their country.

12           So it's in that same spirit of building  
13 alliances that I'm reaching out to my fellow Benchers  
14 to ask for your support for the report of the  
15 Challenges Faced by Racialized Licensees in whole, not  
16 in part, because it is critical for this Convocation to  
17 address the growing racial disparities and inequalities  
18 in the legal profession starting today.

19           I'm certain that not one person in this  
20 room would want to roll back the progress we have made  
21 over many decades to make our profession more welcoming  
22 for racialized communities' members. We have come a  
23 long way since the time when Chinese were barred from  
24 entering law school, let alone becoming lawyers,  
25 because of their race. Yet we have all seen the

1 statistics confirming the persistent  
2 underrepresentation of racialized group members in our  
3 profession, especially, but not exclusively, among  
4 senior partners on Bay Street. We have all read the  
5 numerous submissions coming from the sole practitioners  
6 and from firms of all sizes urging the Law Society to  
7 honour and promote diversity, and we have all heard  
8 racialized lawyers sharing their firsthand experience,  
9 including in this room today, with racism, and their  
10 pleas for action so that they will have an equal chance  
11 as their white colleagues to succeed.

12 Understandably, there are Benchers who  
13 have concerns about the report. Some think it does not  
14 go far enough to attack racism. Some are concerned  
15 it's putting too high a burden on individual licensees,  
16 there are others that believe Convocation has no  
17 business in regulating legal entities, and still others  
18 are skeptical whether any meaningful change will come  
19 out of this whole exercise.

20 I actually agree that we have not gone  
21 far enough and that more can and should be done if we  
22 are serious about rooting out racism in our midst. I,  
23 too, was among the skeptics. After all, what can you  
24 expect from an institution that was founded in 1797 and  
25 still has the colonial term "Upper Canada" in its name

1 298 years later? But when I received a call from  
2 former Treasurer Janet Minor urging me to join the  
3 working group, I decided to do so out of respect for  
4 her and for the Convocation.

5 Over the last couple of years I have  
6 come to gain a great deal of respect for my fellow  
7 working group members, all of whom have worked  
8 tirelessly to come up with a thoughtful, moderate and  
9 sustainable plan to combat racism in our profession.  
10 We did not always agree and we debated on many issues,  
11 including those raised by Mr. Troister. At the end of  
12 the day we were all driven by the same desire and need  
13 to promote fair and equal opportunities for all  
14 racialized licensees.

15 This report represents the collective  
16 wisdom of 15 working group members, roughly one-third  
17 of the elected Convocation. It does represent a  
18 compromise we have made, but it also represents the  
19 consensus we have reached. And the report is by no  
20 means a great leap forward, but it is a concrete first  
21 step.

22 I am glad that I have decided to put my  
23 faith in the working group process, and today I am  
24 putting my faith in my fellow Benchers. I urge all of  
25 you to put aside your skepticism, your concerns, and to

1 vote for the report in its entirety because it must be  
2 shown that here today the Law Society recognizes with  
3 one voice that racial equality is an important goal and  
4 one that is worth fighting for.

5 More importantly, I urge all of you to  
6 vote for the report because it is the right thing to  
7 do. Thanks, Tanya. So tomorrow when I wake up I hope  
8 I will not be stunned or stunned that I am stunned by  
9 the outcome of today's vote. Instead, I hope I will  
10 wake up knowing that collectively we have made history  
11 today. Thank you.

12 -- Applause.

13 TREASURER SCHABAS: Thank you, Ms. Go.

14 MS. GO: I do have a question of the  
15 roll call. Do we do it now or later?

16 TREASURER SCHABAS: That's a long way  
17 off, as Mr. McDowell muttered to me. Yes, I expect  
18 there will be a roll call vote and if you're calling  
19 for one, then that's on the record that there will be  
20 roll call votes on this matter.

21 Before -- Ms. Murchie is next. I just  
22 note, I think I'm at the halfway point of the list so I  
23 really do -- I don't want to cut people off, I haven't  
24 done that, but I really do want to urge people to be  
25 concise please. Ms. Murchie.

1                   MS. MURCHIE: Thank you, Treasurer. I  
2 will do my best.

3                   I speak in favour of Mr. Anand's motion  
4 and against Mr. Troister's motion. I think that  
5 lawyers in Ontario serve an increasingly diverse  
6 community and a level playing field within firms for  
7 hiring and advancing racialized lawyers is really  
8 necessarily a step forward. Also, I'm alert to the  
9 fact that lawyers are in the forefront, of course, of  
10 advancing rights before the courts, including equality  
11 rights and Human Rights Code issues before the courts  
12 and tribunals and that we advise our clients on these  
13 issues all of the time.

14                   It's only fitting that we should put our  
15 own houses in order if we're going to fulfill that role  
16 in society and initiating change that seeks to ensure  
17 equal inclusion and opportunity for racialized lawyers  
18 is appropriate in that context.

19                   In terms of Mr. Troister's motion, I  
20 agree with him that we should be free to discuss each  
21 and every element, and I think we're doing that now.  
22 We should be free to consider amendments, if they're  
23 friendly amendments, if they're moved. I do share some  
24 of his individual concerns and applaud his speaking out  
25 on his concerns because I think that's a really

1 important function in Convocation, but I do accept the  
2 recommendation of the racialized working group and of  
3 the racialized community, because so much input was  
4 gained from the racialized community itself, and many  
5 of that community is here today, and I accept that this  
6 is a package that has involved considerable compromise  
7 and that should be voted on in its entirety.

8           It makes sense to me to institute these  
9 changes and the recommendations for these reasons, but  
10 the devil is in the details and those details are part  
11 of implementation.

12           I agree with Mr. Anand that  
13 implementation must be cooperative and I would say that  
14 it must be done with good will and good faith as well,  
15 and that's from the Law Society, for starters, and I  
16 think that I've got Mr. Anand's assurance that the  
17 intent is to implement these recommendations in a way  
18 that focuses on facilitating change and in a way that  
19 assists lawyers to adjust, institute or further develop  
20 policies and procedures to create an inclusive  
21 workplace and to level the playing field. And that,  
22 for instance, the training that's identified in item 12  
23 of the recommendations will include training in  
24 facilitating change.

25           We're going to also need, though, good

1 will from our members; the type of good will that,  
2 regrettably, was not shown to Mr. Troister in the  
3 context of his motion. And we'll also need courage,  
4 all of us, to speak up, courage to speak up, courage to  
5 listen, and courage to honestly address inclusion  
6 issues in the legal workplaces. This is not easy on  
7 either side and we're going to need a lot of good will,  
8 good faith and, as I said, courage.

9           Now, I do share Mr. Troister's concern  
10 for the privacy of data collection in the context of  
11 recommendations 3 to 7 and I hope Mr. Anand will tell  
12 me that the intent is to make every effort to protect  
13 the anonymity of racialized lawyers in this context  
14 throughout implementation and that whatever steps are  
15 necessary to amend or change, not direction perhaps,  
16 but to implement in a manner that protects these  
17 racialized lawyers from and guarantees their anonymity  
18 will be taken.

19           I'd also like him to address  
20 recommendation 9, which is the CPD, on inclusion and  
21 equality within the professions. And the focus of the  
22 report is at -- from my perspective, at least,  
23 CPD should be broad enough to assist lawyers, not only  
24 in promoting inclusion within their firms, but also in  
25 gaining the knowledge and understanding that we need to

1       serve an increasingly diverse public.

2                       So those were my concerns or issues,  
3       Treasurer, and perhaps it may be appropriate, if you  
4       see fit, to just have Mr. Anand respond on those  
5       issues.

6                       TREASURER SCHABAS: I think I prefer to  
7       keep going. Mr. Anand will get an opportunity at the  
8       end. Everybody seems to be taking about five minutes  
9       each, which means we're going to be here for a long  
10      time if this continues, but as I say, I don't want to  
11      cut anybody off. It's a very important debate.

12                      Ms. Vespry, you're next.

13                      MS. VESPRY: Thank you, Treasurer. I  
14      regret that I may not stay within that five minutes.

15                      TREASURER SCHABAS: I will note it when  
16      we reach five minutes because there are a lot of people  
17      who have to speak. So please be brief.

18                      MS. VESPRY: I have -- because we are  
19      discussing both motions at once, I have comments  
20      regarding Mr. Troister's motion and also comments  
21      regarding Mr. Anand's motion, and so I will give you  
22      both.

23                      For starters, the recommendations and  
24      most of the work that Convocation does presumes that  
25      the rules of conduct that we write are rules that both

1 we and the profession aspire to follow and that when we  
2 change the rules, that changes behaviour in the  
3 professions.

4           Most of our rules are about duties and  
5 I'd like to think a moment aloud about what the duties  
6 of a Bencher are in this situation. I would like to  
7 hope that our duties, much like the duties of an  
8 advocate, are to be resolute and honourable and  
9 fearless advocates for honest and transparent decision  
10 making. I believe that our decisions must be made in  
11 good faith, with due diligence, after having had a real  
12 chance to make all relevant arguments and ask all  
13 questions, as the rules say, however distasteful, that  
14 we as Benchers believe will advance the Society's  
15 missions of maintaining and advancing the cause of  
16 justice and rule of law, facilitating access to justice  
17 and protecting the public.

18           Several people have said today that we  
19 have the opportunity to make a momentous decision, to  
20 set milestones, to make history. I believe that we can  
21 do that just as well by addressing each of the  
22 recommendations individually. In fact, I would say  
23 that if we address each of the recommendations  
24 individually, vote on each of the recommendations  
25 individually, with options for friendly or unfriendly

1 amendments of some of the recommendations individually,  
2 that we will, in fact, at the end of the day have made  
3 better history because it will be thoughtful, it will  
4 be analytic and it will show on the record that we have  
5 looked at each of the recommendations and said yes,  
6 this is a good idea, yes, this is a good idea, or maybe  
7 this could be improved.

8           In terms of the behaviour prior to  
9 Convocation, I am aware of and have experienced some of  
10 the discouraging influences that were trying to suggest  
11 that any comment or any division of the recommendations  
12 would be tantamount to essentially standing up for  
13 racism in the profession. I believe that that sort of  
14 coercion, and I call it coercion because that's what it  
15 is, or an attempt at coercion, because it isn't  
16 coercion if it doesn't succeed, is both unprofessional  
17 and unbecoming of our profession.

18           Forcing all 13 parts of the motion or  
19 all 13 motions, all 13 recommendations be handled as  
20 one vote is, to my eye, inherently a position of  
21 privilege, and it comes from a position of privilege.  
22 Only somebody who eats regularly can afford to say if I  
23 don't get all 12 courses and dessert, nobody gets  
24 anything. And that is what is being said to us. We  
25 have to have all or nothing.

1                   This is not, to my mind, a principled  
2 position. It is tactical, it's a wager, it's a bet  
3 that says that with these stakes we can risk  
4 everything, any potential good to the racialized  
5 licensees out there in the public if it means that we  
6 win on our terms.

7                   The committee may be correct that  
8 Convocation will bow to that implicit threat. I hope  
9 not. I don't believe that coercion is ever noble,  
10 whether it's used for a good cause or otherwise.

11                   I support Sid's motion and I will vote  
12 for Sid's motion, and depending on whether there is an  
13 option to address some of the other recommendations  
14 individually and possibly amend them, I may or may not  
15 be voting for Raj's motion.

16                   TREASURER SCHABAS: I've indicated that  
17 this is the time. We're dealing with both motions  
18 right now.

19                   MS. VESPRY: Indeed, and I will  
20 continue, with your permission, Treasurer.

21                   With regard to 3.1, the recommendation  
22 that we create a statement of some kind each  
23 individually and agree to abide by it. We are already  
24 obliged by our rules, the rules of the profession, to  
25 uphold the Ontario Human Rights Code. We are already

1 obliged by the Ontario Human Rights Code to not  
2 discriminate in the profession. Adding a third layer  
3 of promising not to discriminate is essentially the  
4 equivalent of going -- travelling to a distant country  
5 and believing that if you speak louder and slower  
6 people will understand what you're saying, even though  
7 they speak a different language. We've said it  
8 already. It's there twice. Why do we need it three  
9 times?

10           And what does it say? That we need this  
11 three times, but we have no other prohibitions of other  
12 things that we're not supposed to do, and there are  
13 many things that we're not supposed to do as lawyers  
14 and paralegals, and those are not being acclaimed or  
15 given positions in statements either.

16           I do actually believe that the analogy  
17 to the Trinity Western situation is apt. Benchers  
18 who -- and I've heard many people say this, they voted  
19 for Trinity Western's accreditation on the basis that  
20 whatever students agree to or sign off on or promise to  
21 do, when they come back or when they come to Ontario  
22 and start to practice, they will not discriminate.  
23 Their practice will not be discriminatory.

24           If you believe that what they promise  
25 there doesn't affect their practice, how can you say

1 that making people promise here is going to affect  
2 their practice? Either promises mean something or they  
3 don't, and I don't think that we can have that both  
4 ways.

5                   Lastly, I am highly against the concept  
6 of creating a thought crime. Making it in some way  
7 punishable by the tribunal for somebody not to think  
8 right. If somebody is actively discriminating in their  
9 practice, the Human Rights Tribunals and our tribunal  
10 should throw the book at them, ideally simultaneously  
11 and really hard.

12                   If somebody is sitting and thinking  
13 well, I don't like those people, whoever "those people"  
14 may be, the right to think what we want inside our own  
15 heads is one that I consider as close to sacred as  
16 anything in human rights can be. So 3.1, to me, is a  
17 barrier that this should not go forward on unamended.

18                   And with regard to recommendations 4, 5  
19 and 6, the recommendations dealing with privacy, I  
20 believe that it creates a situation where licensees  
21 will be forced to choose in a way that I think is  
22 unfair between being honest with their regulator and  
23 having their privacy in the firm where they work  
24 valued.

25                   Getting back a report from the Law

1 Society that enumerates the number of people in your  
2 firm who fit into various categories, when you have a  
3 firm of over 25 licensees, does not mean that whoever  
4 receives a report, managing partner, whoever receives  
5 it, is not going to look around the firm and say, okay,  
6 well, my list of -- our firm says this, this is what  
7 people said on their annual reports, but what I see  
8 around me is slightly different. I see more people or  
9 I see less people who fit into those categories.

10 In a perfect world that wouldn't matter.  
11 If we lived in a perfect world we wouldn't need to sit  
12 here and discuss this. The fact that we're here admits  
13 it is not a perfect world.

14 So in our imperfect world, in some of  
15 those firms that managing partner or whoever is looking  
16 at that list is going to say, hmm, somebody on this  
17 list identified as -- something that I didn't know  
18 about. I don't like that. I want to know who it was.  
19 Why didn't they come out in the firm the way they did  
20 on their Lawyers Annual Report or Paralegals Annual  
21 Report. Whether that creates, and it will create  
22 within the firm, pressure on individuals to be  
23 identified in ways that they may not choose, for  
24 reasons of their own feelings of safety in the firm to  
25 identify is, I believe, a huge breach of the privacy of

1 our licensees.

2 TREASURER SCHABAS: So, Ms. Vespry,  
3 you're over ten minutes. I'd ask you to quickly wrap  
4 it up.

5 MS. VESPRY: Wrapping. The other option  
6 is if there are more people identifying on their annual  
7 report than the firm sees, or fewer people, rather,  
8 identifying, the firm will want to push people to  
9 identify who don't necessarily want to because, hey, we  
10 don't look as good as all of the other firms, we will  
11 look better if our numbers improve. So now we have a  
12 pressure on people who might be comfortable to  
13 self-identify in their firms, but not on the licensee's  
14 annual report.

15 Either way, without aggregating that  
16 data in a way that does not permit each individual firm  
17 to look around and say that's not what I see, that is a  
18 problem and I'm not happy with an assurance that we  
19 will, in implementation, attempt to make this better.  
20 I believe that implementation will be based on what we  
21 decide here today and it should be written into the  
22 recommendation, not just as a we'll try, but that this  
23 will not go forward unless there is a manner figured  
24 out to protect the privacy of licensees and the  
25 licensee annual report.

1                   So whether that's a friendly or  
2 unfriendly amendment to that section of the  
3 recommendations, it is my belief that that  
4 recommendation should be clarified. Thank you,  
5 Treasurer.

6                   TREASURER SCHABAS: Thank you. Ms. St.  
7 Lewis.

8                   MS. ST. LEWIS: Thank you, Treasurer. I  
9 am -- I'm finding this very difficult at a number of  
10 levels, and I'm speaking to Convocation and I'm also  
11 speaking to the persons in the room wearing a number of  
12 hats.

13                   Yes, I'm a Bencher. Yes, I'm also a  
14 black feminist law professor and lawyer, but I'm also a  
15 person who has been working on these issues and has an  
16 institutional memory around these issues that is  
17 actually long-standing and decades long.

18                   Some of the pieces, and it's coming as  
19 no surprise because I've certainly shared with this  
20 with a number of people, that I'm not resonating with  
21 the report as if it's incredibly historic. Part of the  
22 reason for that is because I know -- I was the chair of  
23 the CBA working group on racial equality. I wrote the  
24 complementary report.

25                   This is back in 1999. In 1999 this

1 group, the Law Society of Upper Canada, actually  
2 supported the recommendations. There were a total -- I  
3 think there were 37 in my complementary report and  
4 another 40 in the main report, and Anand, in fact,  
5 critiqued some of those recommendations at that time,  
6 suggesting they could go further.

7           This same body had a bicentennial report  
8 which looked at issues of equity, and I happened to be  
9 the chair of the bicentennial working group which  
10 looked at the degree to which this entity was moving  
11 forward.

12           Why I'm mentioning those two things is  
13 because my perception of the entity is that it has a  
14 far greater capacity to actually address these issues.  
15 I don't think it's back like when I first got elected  
16 in 2001, I'm by myself trying to figure out, oh, my  
17 gosh, how do I get heard? We're sitting in a space  
18 where we have a critical mass and the critical mass  
19 extends beyond just who's racialized. There are a  
20 number of people, and we have been hearing colleagues  
21 speaking about their grave concern about having  
22 meaningful response.

23           Overall, I actually appreciate why this  
24 report has what I'm terming a omnibus bill approach,  
25 but there's a reason for omnibus bills. We do them,

1 and I'm talking in the non-cynical way, when you have  
2 something complex to advance and you do really want to  
3 force an attention to why those things are integrated.

4 I, as I've just said, have a view that  
5 it doesn't go far enough, but when I looked at the  
6 report I decided how much can I compromise and I  
7 decided let me see what's left if I leave things to  
8 trust implementation or that at some future point I can  
9 bring a motion to Convocation on the parts missing.  
10 You all have read my blog posts; it lists the things  
11 that I think are missing, because a lot of the report  
12 is not hitting the living reality of where most  
13 racialized lawyers are. That's my frank opinion and I  
14 think that's what's really happening here.

15 So for us to feel comfortable, even if  
16 we pass, that we're actually touching the reality of  
17 most racialized lawyers, particularly the vulnerable  
18 young lawyers and those in soles and smalls, I don't  
19 want us to feel any complacency at all. I'm not  
20 sitting here to eviscerate the report in any way;  
21 however, the one thing I don't believe is okay is to  
22 have recommendations which could be harmful. And that  
23 is my problem with recommendations 4 and 5.

24 Now, I want to put it -- make it clear  
25 and put it on the record. I am not saying this in the

1 context of the consultation. In December 2015 I put in  
2 writing my concerns and the Racialized Working Group  
3 was very generous in having me speak to them. I am  
4 quite convinced that my views were treated respectfully  
5 and discussed by the working group. They have just  
6 ended up in a place that I don't agree with and, in my  
7 view, I'm entitled to be here to express that,  
8 particularly to have it on the record, because the  
9 basis of my concern is not simply a difference of  
10 opinion.

11                   What I am telling you is that  
12 fundamentally when it comes to doing surveys in the  
13 context of employment equity, the key construct is  
14 actually confidentiality. Now, confidentiality is  
15 actually different from anonymity, which I think  
16 there's a bit of a collapse here. The obligation is  
17 actually to ensure that the person cannot be identified  
18 in any way.

19                   The reality of firms over 25 is that  
20 there is not sufficient critical mass in just about any  
21 firm I can think of to provide that level of cover for  
22 people that will not trigger that kind of  
23 investigation.

24                   To put it a different way, not about a  
25 firm, let's take the University of Ottawa. If you are

1 looking at something at the University of Ottawa and  
2 you're asking my law faculty, with 75 full-time  
3 professors, I'm going to tell you there's one black  
4 woman; it's me, Joanne St. Lewis. If you are looking  
5 at over 1200 professors at the university, you're going  
6 to find out there are maybe four black women in that  
7 university.

8           So at the end of the day, when I  
9 volunteer to assist my institution in talking about my  
10 qualitative experience, for example, of discrimination,  
11 I can very easily be identified at the end of the day,  
12 even if you don't know it's Joanne St. Lewis, it  
13 doesn't take very much to connect the dots between my  
14 qualitative honest statement and the return back to the  
15 firm.

16           Why am I concerned is I actually  
17 understand why my colleagues coming from the racialized  
18 communities say this is really important, this is what  
19 I want you to know about your institutions. But I am  
20 going to tell you that there are people even more  
21 vulnerable than the people speaking to you. There's a  
22 kind of lionization, and I'm going to be really blunt  
23 here, because you've consulted as a racialized working  
24 group, this group of people.

25           I have been a professor since 1989. I

1 have students every single year, especially as the  
2 labour market gets more and more difficult, talking to  
3 me about sanitizing their resumes in every way possible  
4 so that there is not an ability to identify these  
5 vulnerabilities. So as much as we are celebrating that  
6 we are talking about racialization, I have students who  
7 are Métis, I have students who are black, but people --  
8 maybe they can pass for Middle Eastern; I've got  
9 students from the middle east who are saying I'm  
10 worried about Islamophobia. They go out of their way  
11 to sometimes create a resumé for certain firms,  
12 regardless of your approach and openness, that they  
13 anticipate a threat.

14                   Those same people might be willing to  
15 say to us as the regulator give us the information we  
16 need to be accurate, but those individuals should not  
17 be forced into a position where you are returning the  
18 information to their employer they chose not to tell  
19 them. They should not be in the embarrassing,  
20 especially with it being tied to systemic issues --  
21 which I agree with, I agree that we should be looking  
22 at firm human resource practices -- but I'm saying they  
23 should not be in the position where they're going to  
24 find themselves outed in that way, particularly on the  
25 qualitative issues, because if they have not chosen to

1 raise it with the firm in their hiring practice or make  
2 a complaint or have only gone to the DHC, there should  
3 be nothing of that nature.

4 That was my concern. If that concern is  
5 not addressed, I have a very broad back, I don't care  
6 if there's a roll call vote. I don't care history  
7 shows that Joanne St. Lewis voted against this package,  
8 because I am incapable of voting for a recommendation  
9 that I consider to be harmful.

10 The final thing -- I know I'm running  
11 out of time, Treasurer, but the final thing I want to  
12 say, I want to talk about the experience I have had  
13 with this entire conversation. There has been this --  
14 I have had -- and many of you know I went through a  
15 very difficult five year litigation. I am shocked that  
16 I have had echoes of that experience happening to me  
17 during this debate.

18 I have had people writing to me to speak  
19 to me about my legacy and my integrity; I have had  
20 people writing to me, and this includes community  
21 members, so I'm not talking about it just being  
22 Benchers; the majority of Benchers who have disagreed  
23 with me have disagreed with me in the most collegial  
24 way. But do not think for a moment that there is  
25 this -- there is a kind of orthodoxy that I was being

1       faced with.

2                       I found it audacious for people to write  
3       to me, speak to me about respect for me, speak to me  
4       about my legacy, and then tell me in the next breath  
5       that the words that I've uttered to you today are  
6       inappropriate and inconsistent with my legacy. My  
7       legacy includes the words you are using. You are  
8       talking about racialized, and to the best of my  
9       knowledge it was my CBA report that is the first report  
10      to use it in the context of the legal profession.  
11      Academic literature supports that. That's who I am,  
12      okay. And so it is absolutely ridiculous to me, as the  
13      person who founded the first equity program in a law  
14      school to bring diversity about at this level, that I  
15      have been challenged because I'm simply saying separate  
16      it.

17                      And why? Because I'm going to tell you  
18      the bottom line is, this is my last word, Treasurer, is  
19      because I became a Bencher because of my faith in each  
20      and every one of you. I actually have no fear of  
21      whiteness. I do not presume that you are unable to  
22      hear reasoned arguments as to why you should do the  
23      right thing. I had zero fear that if we actually  
24      separated the recommendations that you would not hear  
25      why those recommendations should be improved; that you

1 would not be willing to recognize that those of us who  
2 have been working alongside you are deserving of the  
3 highest level of respect.

4 I am not motivated by fear now, I have  
5 never been. Most of my work I have been alone. I am  
6 very grateful to have the colleagues, all of my  
7 colleagues that I have been speaking -- and I  
8 particularly name my racialized colleagues: Isfahan  
9 talking -- saying what you said, Tanya, Avvy, Dianne,  
10 Sandra, Raj, Julian, Jeff, all of us here, Jack, Ed.  
11 This is an amazing experience for me to be with these  
12 people, but we don't have to all agree, and that is the  
13 key of what I think is at the heart of what Sid is  
14 saying. That we contribute together and trust each  
15 other.

16 Vern and I have had conversations about  
17 this as well. I think that that is the point that we  
18 should really consider trusting ourselves to improve  
19 the recommendations.

20 TREASURER SCHABAS: Thank you, Ms. St.  
21 Lewis. We're going to keep going for a while. I'm  
22 loathe to take this past lunch, but I think it's kind  
23 of becoming inevitable, which troubles me because I'm  
24 worried that some people are going to have to leave and  
25 they won't be here to vote on this.

1                   So let's see how we do for the next 15  
2                   or 20 minutes. I think we have heard a lot of views.  
3                   I think we are hearing -- and I don't mean in any way  
4                   to criticize what we have been hearing, but we have  
5                   been hearing a lot of overlapping views. I really  
6                   would urge people to be concise, and for those I  
7                   think -- there are, I think, 16 people still on the  
8                   list, I was wrong, now we're halfway through. If  
9                   there's some way you can bring yourself to either  
10                  decide you don't have to say anything or you can agree  
11                  with what somebody else said, that would be helpful.  
12                  Mr. Cooper.

13                   MR. COOPER: Concise might be an  
14                   oxymoron with me.

15                   First of all, I'd like to thank the  
16                   working group, its chairs and all of its members. I  
17                   also want to thank all the individuals and groups for  
18                   their input throughout the process.

19                   It has been a process of four years and,  
20                   Treasurer, I'd like to thank you because you called for  
21                   this. It's been four years. It's time that we bring  
22                   this forward.

23                   I'm not a Bencher who likes to study and  
24                   re-study and put off things and study things again. We  
25                   know the challenges, we know the solution, and today we

1 are working on commencement of an action plan and  
2 implementation plan, a plan that will grow, a plan that  
3 will be changed, and a plan that will evolve  
4 positively.

5 Now, I'm Bencher Cooper from Central  
6 East Region, but I have a different name. I have a  
7 name given to me just after my birth. It's Moishe  
8 Pinchus Ben Zalman. That's my family name.

9 Like all of the people in this room and  
10 in our community, we have interesting histories. Let  
11 me share this one with you. Cooper is a name given to  
12 us by an immigration officer.

13 I grew up, and those who knew my  
14 background, I felt racism, I felt discrimination. If  
15 you look at me, and I'll take my glasses off, you'll  
16 notice my nose is not centred, it's to the left,  
17 because I stood up for what was right. My parents  
18 taught me that. Unfortunately, they didn't teach me  
19 how to fight a south paw.

20 -- Laughter.

21 MR. COOPER: It's interesting because  
22 those that don't know me, with the name Cooper and a  
23 white man, and, I admit, middle-aged now, I'm able to  
24 blend in. This has allowed me to be, throughout my  
25 life, at the front row as a witness of racism in our

1 polite Canada. It's overt and it's systematic.

2 I can blend in, but not all Canadians  
3 can blend in. I have a friend, he spoke at a CPD event  
4 that I assisted in, Desmond Cole; read his article in  
5 Toronto Life Magazine to understand: "The Skin I'm  
6 In". He shares his experience. How he's stopped by  
7 the police numerous times.

8 There's systematic racism that exists in  
9 our society, there's systematic racism that exists in  
10 our institutions, and there's systematic racism that  
11 exists in our legal institutions.

12 Look at what our Court of Appeal has  
13 said and articulated 23 years ago in Parks. It looked  
14 at how jurors dealt with conclusions and findings and  
15 looked at the attitudinal and behavioural component  
16 with the expression of prejudice in the jurors'  
17 decision.

18 In that report, or in that case, they  
19 quoted from a report from 27 years ago, let alone, as  
20 Mr. Galati reminds us, of how long we have had our  
21 Constitution and our Charter. 27 years ago in 1989,  
22 the Report on Eliminating Racial Discrimination in  
23 Canada recorded racism and discrimination are facts of  
24 life in Canada. They exist openly, blatantly, in  
25 attitudes and actions of individuals. They exist

1 privately in the fears and prejudice and stereotypes  
2 held by many people and in plain ignorance and they  
3 exist in our institutions.

4           Mr. Troister, who I did call and I  
5 wanted to understand his position for his motion, I  
6 believe in open discussion, but I also believe that  
7 there is a difference between suggesting that we're  
8 trying to in any way here not have open discussions.  
9 There is a difference between discussing the issues and  
10 having discussion absolutely tied to a separate and  
11 independent vote. That may be the case, but let's have  
12 the discussion first, and thank you, Treasurer, for  
13 allowing us to do that; and I invite the chairs,  
14 Ms. Leiper or Mr. Anand, to answer the questions that  
15 arise during this debate.

16           Mr. Troister is a mentor to me. He is a  
17 friend, he's giant at the bar, and he's a solicitor  
18 Bencher. And he has spoke of some issues that are of  
19 concern. I do not agree with him.

20           Recommendation 3, the declaration. The  
21 way I look at it, it's not about exclusion, it's about  
22 inclusion. Let me repeat that. It's not about  
23 exclusion, it's about inclusion.

24           And I find that even though individuals  
25 may think that it's repetitive to have a declaration, I

1 recall back in the 90s when I was a standing agent for  
2 the Department of Justice, as it then was, I worked on  
3 my own, but it was delivered to me, the sexual  
4 harassment policy that I had to display in my office.  
5 Again, I worked on my own, but I put it up and I  
6 followed it, and let me tell you what I think was  
7 important about that. When the public, my clients,  
8 came into my office, they felt safe.

9 Let's have the opportunity discuss  
10 things now, let's have an opportunity to delve into the  
11 issues and to get responses and let's have spirited  
12 debate.

13 Lastly and finally, I would like to end  
14 this way. This is my conclusion. Duh. Because today  
15 is a duh moment. We are discussing something that I  
16 wish had more teeth, that I wish will grow. But,  
17 forgive me, I believe we have to start, it's been too  
18 long. And I trust the committee that worked tirelessly  
19 and hard for over four years, who had an open and  
20 transparent process obtaining remarkable input, and  
21 they come to us with unanimity. It's not that I defer  
22 to them, I applaud them because Moishe Pinchus Ben  
23 Zalman believes in doing what's right, and this is the  
24 start of doing what is right. Thank you.

25 -- Applause.

1                   TREASURER SCHABAS: Thank you,  
2 Mr. Cooper. I have been consulting with staff. We're  
3 going to break in about ten minutes for lunch. If  
4 people have to leave I regret that, but it's clear  
5 there's a lot more people who have to speak and there's  
6 voting, which will take some time. So I just -- if  
7 people want to judge accordingly. Hopefully we can get  
8 a couple of people in between now and 12:45 or so.  
9 Mr. Wright, you're next.

10                   MR. WRIGHT: Thank you, Treasurer. It  
11 should not have to be pointed out in 2016, but exactly  
12 as predicted a number of years ago when some unfair  
13 accusations were being bandied about, diversity in  
14 Convocation has become much more reflective of both the  
15 profession and the population.

16                   When Isfahan Merali joined us at the  
17 2015 May Convocation that brought to ten the number of  
18 Benchers from visible minorities, 25 percent of the  
19 elected Benchers. When, in June 2016, Tanya Walker  
20 joined us, that made 11 or 27.5 percent. That's  
21 actually greater than the demographics of the province.

22                   It took a while for visible minorities  
23 to make it into law school in predictable numbers and a  
24 while for them to achieve enough time in the practice  
25 to be considered ready for election, a consideration

1 that with early in practice exceptions like Tamara  
2 Stomp, Marshall Crowe and Jacqueline Horvat, is  
3 sensibly imposed on all candidates by the electorate.

4           There has been a wonderful, even if  
5 predictable, evolution of Convocation over the decades.  
6 For example, nobody notices when Jews or those of Irish  
7 descent get elected. Nobody cares that names like  
8 Anand, Callaghan, Evans, Nishikawa, Lem, Hartman,  
9 Galati, Goldblatt, Papageorgiou, Go, Sharda, Richer,  
10 Vespry, and so on are on the list. By the way, that  
11 would make one heck of a law firm.

12           We could actually today toot our horns,  
13 except that this is merely the inevitable result of  
14 demographics and the essentially egalitarian nature of  
15 most Canadians.

16           We have achieved this without  
17 affirmative action. Other countries may have needed  
18 affirmative action; we have not needed it. Hurray for  
19 us.

20           Not that our society, small S and big S,  
21 is perfect. Nothing ever is, nothing ever will be, but  
22 Canada is one of the best societies the world has ever  
23 seen. We are a beacon to the planet. While we should  
24 strive to continue to make it even better, the outcome  
25 of that Bencher election was a lovely and irreversible

1 sign and something to feel good about.

2 The profession is not far behind us.

3 After all, they elected the composition of Convocation.

4 Now, it was said that the devil is in  
5 the details. Yes, for sure, and that's why we should  
6 vote on those details as separate items. In fact, we  
7 should have had a Committee of the Whole before now so  
8 that we could have talked about these things and dealt  
9 with some of the issues that Ms. Vespry, for example,  
10 has raised and Ms. St. Lewis has raised in her shy and  
11 retiring way. We could have talked about those and  
12 massaged those elements of the 13 recommendations that  
13 are troubling, and there are troubling elements in  
14 there.

15 I, for one, want to know how are we  
16 going to identify success? One way is to show by  
17 surveys and everything else that the legal profession  
18 mirrors, if not exactly, then very, very closely the  
19 demographics of the province.

20 Here's the problem with that. This is a  
21 pure mathematical exercise. I know athletes like to  
22 say they give 110 percent; no, that's not how it works.  
23 It's based on a hundred percent, one hundred percent.  
24 You have to fit everybody into that one hundred  
25 percent.

1                   Now, Jews comprise two percent of  
2   Ontario's demographics, they are 25 percent of the  
3   profession and 25, actually 27 and a half now, percent  
4   of Convocation. They're over represented. That  
5   doesn't bother me in the tiny slightest, but it's a  
6   mathematical fact, and I speak as somebody who was  
7   elected as rabbi by my Jewish classmates at boarding  
8   school. It doesn't bother me in the slightest, but it  
9   does mean, mathematically, other groups are going to be  
10  under-represented.

11                   So in order to achieve the goal of very  
12  close mirroring of society, the committee has  
13  inadvertently put forth a plan that would reduce the  
14  number of Jews in the profession or in Convocation.  
15  That's anathema to me.

16                   A Committee of the Whole type  
17  arrangement could have brought all these and more  
18  points out. There are a lot of good things in this  
19  report. Anything that says more education, more  
20  holding up of good examples, all of that's great, more  
21  encouragement, all of that's great, but there are some  
22  troubling things in here, too. And it's the reporting  
23  and the possibility of disciplinary action and those  
24  disciplinary tribunals are going to be peopled by --  
25  well, at the bureaucratic stage anyway, by people whose

1 jobs depend on -- just like the Human Rights Commission  
2 and the Ontario Ministry of Labour -- they depend on  
3 the complaints, and they're not going to discourage the  
4 complaints by turning down the complaints. That's my  
5 worry about this.

6 I also disagree that if we were to come  
7 back here in five or ten years we would be having the  
8 same discussion. All you have to do is look at what  
9 has happened in just the last ten years. The strides  
10 we have made in the last ten years are unprecedented  
11 probably anywhere and it's an exhilarating thing.

12 The arc of history is not as long as  
13 Martin Luther King had it because the pace of change is  
14 so much more rapid today, and that arc is bending  
15 toward what we want, the justice and the goals that we  
16 all share, much faster than ever before in history.

17 Five years from now we're going to have  
18 this meeting and we're going to see that the better  
19 goals of this have been achieved within a reasonable  
20 range.

21 People might look at somebody like me,  
22 white Anglo Saxon lapsed Protestant male, but what you  
23 should know is I grew up in a community of 5,000  
24 people, English-speaking protestants in Québec City,  
25 surrounded by 700,000 French-speaking Catholics, only

1 English family on the street, only English boy on the  
2 hockey team and the soccer team; the school I went to  
3 had the United Nations of people there.

4 Look at your own children and the  
5 classmates they have, it's the United Nations of  
6 classmates and they don't even see the differences  
7 anymore. My son married a women from India. Nobody  
8 cares. And that's where the generations are going --

9 TREASURER SCHABAS: So, Mr. Wright, it's  
10 just about 12:45. Can you wrap it up, please.

11 MR. WRIGHT: I know. I have a few other  
12 things to point out.

13 TREASURER SCHABAS: Well, please be  
14 brief.

15 MR. WRIGHT: At the September  
16 Convocation we received a report where racialized  
17 lawyers observed that they were doubly stigmatized by  
18 the LPP. Then we received this report and it struck me  
19 that nothing would more stigmatize them than this kind  
20 of back door quota system. I don't think they need it.  
21 I think they're perfectly capable. I think they're  
22 absolutely the same as everybody else.

23 Genetically speaking, we're  
24 99.95 percent identical; I wrote a poem about it, I'll  
25 send it to you.



1 sort of thing that --

2 TREASURER SCHABAS: Thank you. The last  
3 point, Mr. Wright, please.

4 MR. WRIGHT: -- that worries me. As a  
5 sole practitioner I do get applications from people,  
6 but in the sole practitioner bar, small firm bar in  
7 general, over and over and over again we train the  
8 young lawyer for three to five years and they answer  
9 the ad of the big firm wanting somebody for three to  
10 five years.

11 One fellow came to me, he had articulated  
12 at Gowlings, he was living at a condo in the Byward  
13 Market, that's Ottawa's happening area, he had a narrow  
14 red leather tie, he was a downtown kind of guy. I'm  
15 out in the suburbs. He said he wanted a suburban  
16 practice for the rest of his career; I wasn't so sure  
17 about that. I didn't want to bring him in and lose  
18 him, spend all the money training him, et cetera,  
19 invest in him, have him leave three years later to go  
20 to a big firm downtown.

21 Now, I haven't told you what his  
22 background was because it's irrelevant to my thinking  
23 process, but what if he was part of the victim industry  
24 and said, oh, no, Mr. Wright, you discriminated against  
25 me because of whatever. How do I prove to some

1 tribunal, whose jobs depend on perpetuating the influx  
2 of complaints, that my thinking was I don't want to  
3 train somebody for three years only to have them leave?

4 So there are problematic aspects to this  
5 and they should be severed out and maybe not even voted  
6 on today, but severed out, we can come back in January  
7 and talk about them, but at least vote on them  
8 separately today. Thank you.

9 TREASURER SCHABAS: Thank you. We are  
10 going to have a vote and we're going to reach that vote  
11 sometime this afternoon.

12 We're going to break. I'm going to ask  
13 the Benchers to all be back in their chairs at two  
14 o'clock. I'll hope our catering staff can quickly  
15 serve us lunch.

16 I would just remind people of that old  
17 adage from Mark Twain. Given that we're all going to  
18 have lunch, those of us who are still on the speakers'  
19 list, "If you have more time, you can be briefer".

20 --- Luncheon recess at 12:50 p.m.

21 --- On resuming at 2:00 p.m.

22 TREASURER SCHABAS: We should just  
23 confirm who's on the phone. I'll go through the list  
24 from before. Marion Boyd, Robert Burd?

25 MR. BURD: Present.

1                   TREASURER SCHABAS: Thank you, Robert.  
2 Neil Finkelstein? Janet Leiper?

3                   MS. LEIPER: Present.

4                   TREASURER SCHABAS: Thank you, Janet. I  
5 had suggested earlier that you might have been able to  
6 get an hour in at the beach with the break, so I'm glad  
7 to have you back. Ron Manes?

8                   MS. LEIPER: Not at the beach. More  
9 important to be here.

10                  TREASURER SCHABAS: Ronald Manes, are  
11 you on the line? Jonathan Rosenthal? He's off at the  
12 art fairs. Okay. Is there anybody else on the phone?

13                  MS. HARTMAN: Good afternoon, Treasurer.  
14 Carol Hartman.

15                  TREASURER SCHABAS: Thank you,  
16 Ms. Hartman.

17                  So we're going to resume going through  
18 the list. I've given a little bit of thought to this  
19 and how we can finish before the festive dinner  
20 tomorrow night. I'm aware we've got to get through the  
21 list, and I told Mr. Anand and Mr. Troister that, of  
22 course, as the movers they would have an opportunity to  
23 respond briefly, emphasis on brevity if we can, and so  
24 I'm going to aim to -- optimistically, hope springs  
25 eternal, I think we should aim to try to be in a

1 position to have a vote or votes on this at about four  
2 o'clock.

3 I know some people are going to have to  
4 leave. When we think we're about 15 minutes away from  
5 the vote my assistant, Zelia, is going to send an  
6 e-mail to all the Benchers who aren't here so that  
7 those who have had to leave can at least have the  
8 opportunity, if they're available, to join again by  
9 phone for the vote. We'll see how that goes.

10 So with that, Ms. Ross, you're next.

11 MS. ROSS: Thank you, Treasurer. Today  
12 is truly an historic day. It wasn't long ago, in  
13 November and December of 1999, that Convocation agreed  
14 to create the standing committee called Equity and  
15 Aboriginal Issues, that was in November of 1999, and  
16 after a full day debate in December of 1999 we won a  
17 large budget of almost a million dollars in order that  
18 it could truly begin to carry on its work.

19 And today is the culmination of those, I  
20 think, 17 years of work by many unbelievably talented,  
21 committed and dedicated people, and manifested by the  
22 people on the task force who are bringing this report  
23 to us today.

24 It is also historic because today,  
25 December 2nd, is the International Day for the

1 Abolition -- pardon me -- of Slavery. I think this is  
2 contagious. It marks the adoption by the UN General  
3 Assembly in 1949 of the Convention for the Suppression  
4 of Traffic in Persons.

5 I want to say that I support this  
6 report, although, regrettably, I'm not able to cast  
7 anything more than my moral support rather than a vote  
8 today. I also want to say that I echo and am most  
9 grateful for the remarks of Ms. Walker and Ms. Go, in  
10 particular. But I would ask that there be an amendment  
11 to this report, although it's not an amendment I can  
12 move either.

13 I support the report, but would want to  
14 see it strengthened. Recommendations 2 and 3, which  
15 are found on page 81 of BoardBooks, has exemptions for  
16 law firms or firms of less than ten licensees in  
17 Ontario for two important provisions in the report, and  
18 for me, most significantly, provision 3(2). It's an  
19 exemption of law firms of nine or fewer from a  
20 provision that requires the licensee representative of  
21 each workplace of at least ten licensees in Ontario to  
22 develop, implement and maintain a human rights  
23 diversity policy for the legal workplace, addressing,  
24 at the very least, fair recruitment, retention and  
25 advancement, which will be available to members of the

1 professions and the public upon request.

2 My firm, Dianne Corbiere's firm, Julian  
3 Falconer's firm, we're all firms of nine lawyers.  
4 Anecdotally I am told and have observed and experienced  
5 myself that where the dreams and aspirations of  
6 racialized law students and lawyers for fair  
7 recruitment, retention and advancement intersect  
8 significantly with the profession, it is in these very  
9 smaller firms. Firms of fewer than ten are the  
10 majority of the law firms in Ontario.

11 I have raised this objection at the  
12 information session, at Convocation, and in an e-mail  
13 to the working group, and now today.

14 At paragraph 40 on page 81 of BoardBooks  
15 the report states, "Recognizing that sole practitioners  
16 and small legal workplaces may have limited resources,  
17 the working group has determined that the requirements  
18 under recommendations 3(2) and 3(3) should apply to  
19 legal workplaces of at least ten licensees; however,"  
20 and then there's an exhortation to those of us in firms  
21 of nine or fewer to develop human rights policies and  
22 diversity policies, et cetera.

23 I'm going to state that I find this  
24 statement without evidence and paternalistic. It  
25 assumes that those of us who are in smaller firms,

1 those under ten, are somehow struggling and therefore  
2 unable to comport ourselves to recommendation 3(2). It  
3 assumes that we have limited resources, and there's no  
4 evidence in this report to support that conclusion.

5           At minimum, all firms should have the  
6 very basic human rights diversity policy described in  
7 3(2), and as with other equity policies, which my firm  
8 has adopted, the Law Society has developed those  
9 policies and they are available for any law firm or  
10 paralegal firm who wants to avail themselves of them  
11 and adapt them to their own particular practice. They  
12 can be made available and it is not an onerous thing to  
13 take those draft policies and make them usable in your  
14 own firm.

15           A policy that addresses the minimum  
16 essentials of recruitment, retention and advancement is  
17 absolutely, I think, not negotiable. This report may  
18 have been as a result of compromise and negotiation;  
19 however, I believe and I think many in this room and  
20 outside of this room believe that human rights are not  
21 negotiable.

22           I don't support the notion necessarily  
23 of separate votes, but I would ask that this be adopted  
24 by the working group or by the task force and by  
25 Convocation as a friendly amendment so as to eliminate

1 the exemption at least in paragraph 3(2). Thank you.

2 TREASURER SCHABAS: Thank you, Ms. Ross.  
3 Mr. Krishna.

4 MR. KRISHNA: Thank you, Treasurer.

5 There are three principal issues that are floating  
6 around today and I'll try and address each of them  
7 briefly because much has been said about them.

8 Before I start, however, I want to go on  
9 the record to express my extreme admiration to  
10 Mr. Troister for his courage in taking the position  
11 that he did and my disappointment in some of my Bencher  
12 colleagues and others for taking the position that they  
13 did against him.

14 I find that offensive in every sense of  
15 the term that a person and an individual who, in good  
16 faith, takes a position is subjected to such treatment  
17 from his colleagues. That is what you call oppression  
18 of the minority by the majority, and that is what we  
19 are talking about here today in a different context.

20 Mr. Troister, I have never met with you  
21 and discussed -- had the opportunity to discuss with  
22 you matters in great detail, but you are right now very  
23 high on my list of people I respect.

24 There are two other issues. I'm looking  
25 at the guests in the gallery. I came here 52 years

1 ago. Is there anyone there who was born --

2 TREASURER SCHABAS: Mr. Krishna, they  
3 don't answer the questions. We're not opening it up to  
4 the floor here.

5 MR. KRISHNA: I arrived before  
6 Ms. Horvat was born. In fact --

7 TREASURER SCHABAS: Long before.

8 MR. KRISHNA: In fact, I may have been  
9 here before Ms. Horvat's mother was born. It was a  
10 very different Ontario, believe me, it was a very  
11 different Ontario. They didn't even have taxi drivers  
12 who were coloured in those days. Today they say the  
13 best place to have a heart attack in Toronto is in a  
14 taxi because your driver is likely to be a cardiologist  
15 from India or Afghanistan.

16 The history of our province and the  
17 history of our profession, in particular, is tied up  
18 with racism. We are the most exclusionary of all of  
19 the professions compared to medicine, engineering,  
20 computing science, dentistry, look at all of those,  
21 accountants. Look at the Globe & Mail when they put  
22 out pictures and photographs of their graduating  
23 students.

24 We have discriminated against Jews,  
25 blacks, brown, Aborigines, Catholics, Islam. We are

1 completely non-discriminatory in our discrimination,  
2 and it has been a terrible record.

3           Having said that, I must say, I have  
4 seen a remarkable improvement in the last 52 years. We  
5 are nowhere near perfect, but I can tell you there has  
6 been an evolution in 52 years and that we have done so  
7 well.

8           Why do I say that? Not because I  
9 conducted any great empirical study over four years.  
10 When I entered law school I was the only person of  
11 colour in the entire school all three years. When I  
12 started teaching in 1975 in Dalhousie I was the only  
13 person of colour in the country who was a law  
14 professor. Today I teach in the university and I look  
15 at my class and I see all races, genders, and the  
16 composition is completely different. So we have done  
17 well and we can do better and we must do better.

18           I sometimes think, God, I wish I don't  
19 ever have to go through neurosurgery, but if I do,  
20 please make my surgeon a Jew, because that person would  
21 have come up against such struggles to achieve success  
22 that I would be in the best of care.

23           So this little issue that seems to have  
24 divided us as to all or nothing troubles me. There's  
25 no doubt that this thing is going to pass and that all

1 of it is going to pass, there's no doubt about that,  
2 and I don't understand why, given that inevitable  
3 result, you have to put it to Convocation that that is  
4 the only way we will do it. That's against all  
5 legislative tradition; you know, almost putting on the  
6 party whips to vote in a particular way, which we do  
7 usually only with finance bills.

8 And I've had it confirmed to me by  
9 senior staff of the Law Society that not filling out  
10 the questionnaire with that information will lead to  
11 administrative suspension and I want to put this  
12 question on the record --

13 MR. FALCONER: That's not right, Mr.  
14 Krishna.

15 MR. KRISHNA: Excuse me, Mr. Falconer.

16 MR. FALCONER: You shouldn't say things  
17 that are incorrect.

18 TREASURER SCHABAS: Mr. Krishna, just  
19 carry on and Mr. Anand, in due course and Mr. Falconer  
20 is yet to speak, so go ahead.

21 MR. KRISHNA: I have an e-mail, and two  
22 of them, confirming that information from people who  
23 are responsible for the administration of that. Now,  
24 that is all I'm saying. I may be wrong and the staff  
25 may have given me the incorrect information, but I

1 have it.

2 All I want is this. I don't need to get  
3 into a particular fight with anybody, and certainly not  
4 somebody as eminent an advocate as Mr. Falconer. I  
5 just want an unequivocal answer on the record, yes or  
6 no, will it lead to administrative suspension, period,  
7 and that will settle the matter. That's not a  
8 complicated question to put on the record. Will it --  
9 it will settle the matter.

10 So the other aspect of this all or  
11 nothing that troubles me, it troubles me in this sense,  
12 it implies that there is absolutely no room for  
13 improvement in the 13 recommendations, which is a very  
14 strange position to take. That there is absolutely no  
15 room for any improvement, no tinkering, no tightening  
16 of the words, and I find that very troubling.

17 I've never met such a level of  
18 perfection, seen it anywhere that you say, look, this  
19 is the only way we can vote, otherwise we're not doing  
20 our duty.

21 Those are my comments, Treasurer. I  
22 hope that you will conclude the debate today, but  
23 however, however, having said that, if you do not and  
24 the matter actually goes over to January or February,  
25 the world will not stop spinning on its axis. We have

1 lived with this discrimination in my life for 52 years,  
2 I can live with it for two more months.

3 TREASURER SCHABAS: Donald Trump will be  
4 president, though.

5 MR. KRISHNA: Well, we can always  
6 arrange for us to meet before his inauguration. That,  
7 too, will pass.

8 TREASURER SCHABAS: Thank you, Mr.  
9 Krishna.

10 MR. KRISHNA: Thank you, Treasurer, for  
11 your indulgence.

12 TREASURER SCHABAS: Mr. Goldblatt.

13 MR. GOLDBLATT: Treasurer, thank you, I  
14 am going to be very brief, I'm going to be well under  
15 the five minutes. Challenge me on that, sir --

16 TREASURER SCHABAS: I will.

17 MR. GOLDBLATT: -- because I am a  
18 Vice-Chair of the working group, been privileged to be  
19 so from the commencement, and my views on the report  
20 are reflected in the fact that we have a unanimous  
21 recommendation coming forward to Convocation for  
22 consideration and acceptance. I don't see there's any  
23 tremendous value in my emphasizing how proud and  
24 pleased I am with, A, the report and, B, the unanimity.

25 However, I just want to raise this as a

1 procedural issue, and just to have some clarification,  
2 if I may, Treasurer. We are debating two motions. We  
3 are debating Mr. Troister's motion and Mr. Anand's  
4 motion, and I want to be clear whether, if you can  
5 assist me, the vote will be consecutive on both or  
6 whether, because a number of significant issues have  
7 been raised by Mr. Troister, Ms. Vespry, Ms. St. Lewis  
8 and others, whether -- forgive me, Mr. Troister,  
9 assuming, but not acknowledging, that your motion is  
10 defeated, will there be an opportunity for further  
11 debate and discussion on amendments to the  
12 recommendations?

13 TREASURER SCHABAS: Yes, that spectre  
14 had been raised with me over lunch, Mr. Goldblatt, and  
15 the answer is that if Mr. Troister's motion is defeated  
16 and someone wishes to move to amend Mr. Anand's motion,  
17 I'm advised by Mr. Varro that I should permit that and  
18 then I have to open the floor to debate. But I will  
19 open the floor to debate for a small number of minutes  
20 and I will limit debate -- I will limit anybody's  
21 contribution to that debate to about 60 seconds.

22 I don't expect that the proposed  
23 amendment will be a friendly amendment and I think  
24 everybody is saying what they need to say about their  
25 positions now, so that's my current thinking.

1                   MR. GOLDBLATT: Treasurer, may I just  
2 ask this then. I would assume that because of what  
3 Mr. Troister and Ms. Vespry and Ms. St. Lewis have  
4 said, that they may have specific proposals in mind  
5 that they would like to bring forward.

6                   I say this with great respect,  
7 Mr. Troister. Would you consider withdrawing your  
8 motion so that we can move to that discussion  
9 immediately and have the debate to the extent there are  
10 some specific suggestions for amendment?

11                   TREASURER SCHABAS: I'll let  
12 Mr. Troister speak. Go ahead.

13                   MR. TROISTER: There are people who have  
14 presented their position on the basis of my motion, so  
15 I would not feel comfortable withdrawing my motion  
16 without the approval of those other people who are in  
17 support of it. So the answer, simple answer, is I  
18 would not.

19                   TREASURER SCHABAS: Thank you,  
20 Mr. Troister. Mr. Goldblatt, did you want to say  
21 anything else?

22                   MR. GOLDBLATT: No, I will save it for  
23 the next 60 seconds I may have. I tried, Treasurer,  
24 what can I say.

25                   TREASURER SCHABAS: Fair enough. Mr.

1 Wardle.

2 MR. WARDLE: Thank you, Treasurer. I'll  
3 try to keep my comments brief. I think the last three  
4 or four hours has demonstrated that it's difficult for  
5 such an emotional subject as this to lend itself to  
6 clause by clause debate and, with some reluctance,  
7 because I have some concerns that I'll come to in a  
8 moment, I'm prepared to trust my colleagues, who have  
9 worked long and hard on this over a period of about  
10 four years, and accept the recommendations that they  
11 have made, knowing that they've made a lot of  
12 compromises along the way and knowing that this is a  
13 very important step forward for our organization.

14 But I also want to say that I have a  
15 couple of the same concerns that Mr. Troister does and  
16 I haven't heard anything today that actually alleviates  
17 those concerns. And the first concern is with  
18 recommendation 3(1), which requires every licensee to  
19 adopt and abide by a statement of principles.

20 As I understand the report, and I'm  
21 speaking specifically to paragraph 43, it suggests that  
22 this will be -- you will have to, as part of the LAR,  
23 the Lawyer Annual Report, check off the box saying  
24 you're agreeing to abide by these principles. And I  
25 can -- Mr. Falconer may not know this, but I know this,

1 that if you don't complete the LAR you don't pass go  
2 and you don't get to practice law.

3 So one of the unanswered questions in my  
4 mind is what exactly this proposal is. Is it something  
5 that's intended to be voluntary? And, if so, I suggest  
6 that the language in this recommendation needs to be  
7 changed. If, in fact, the committee is suggesting that  
8 this be a mandatory requirement and that lawyers can,  
9 in fact, be administratively suspended because they do  
10 not comply with it, then I think the room needs to  
11 understand that before we vote on it.

12 And personally I have the same concerns  
13 that as Mr. Troister, that this really is a fancy -- a  
14 fancy oath, not too different from the oaths that in  
15 the 15th and 16th centuries, if you were practising my  
16 religion, you had to take an oath that you go to the  
17 Protestant Mass, for example, or you would face some  
18 very significant sanctions. So I have the same  
19 concerns as Mr. Troister about some kind of mandatory  
20 oath of affirmation.

21 And just for the people in the room and  
22 the various groups that are supporting the report as a  
23 whole, I think everybody should ask the question, are  
24 these -- are these recommendations going to be  
25 effective in taking us down the road we need to go

1 down?

2 I have to say, this particular  
3 recommendation I don't see as having any practical  
4 effect. It may make a lot of people feel good, it may  
5 add to the administrative burden of the Law Society,  
6 but I don't see that it actually will change behaviour  
7 on the ground. That being said, I will reluctantly  
8 support the report as a whole.

9 The other concern I have, and I'll just  
10 raise it for the future because I really do think it is  
11 a concern for the future, is with recommendation 8.  
12 And recommendation 8, and it's been very carefully  
13 crafted and I'm grateful for that, says, "The Law  
14 Society will consider and enact as appropriate". So I  
15 have a feeling that one of my friends, probably  
16 Mr. Mercer, stuck in the words "as appropriate",  
17 progressive compliance measures for legal workplaces.

18 I hope we're not going down the road of  
19 hiring some thought police to monitor and enforce  
20 licensee behaviour in this area.

21 I recognize that there are different  
22 views on that. I recognize that we have a serious  
23 problem that we have to deal with and I recognize that  
24 many people from some of our stakeholders say that we  
25 have to take radical action, but I just hope that we're

1 very careful about what we do in this area and we think  
2 it out very, very seriously, because it can backfire on  
3 us and we may find ourselves in a position where,  
4 again, we're trying to do good work, but we're actually  
5 making the situation worse rather than making it  
6 better.

7           So those are the two comments I have  
8 with respect to the report. It's an excellent report  
9 in many respects. I'm prepared to support it and I  
10 echo what others have said. I'm a bit surprised and  
11 shocked, to be honest, that Mr. Troister's motion has  
12 received some of the commentary it has. This  
13 organization needs to encourage and support dissent.  
14 Some of the people in this room will remember that the  
15 Treasurer and I were in a similar position not too long  
16 ago.

17           And so I say hats off to Mr. Troister  
18 for having the guts to get up and take a very unpopular  
19 position and I hope that it will have no long term  
20 consequences for him or for anyone else. Thank you  
21 very much.

22           TREASURER SCHABAS: Thank you, Mr.  
23 Wardle. Mr. Bredt.

24           MR. BREDT: So I want to say that I  
25 commend the committee. I think the report as a whole

1 is an important contribution to increasing diversity  
2 within the profession. I support his goal  
3 wholeheartedly. It's important that we proceed, it's  
4 in the public interest.

5           However, like Mr. Wardle and others,  
6 there's one part of this report I do not support, and  
7 that is recommendation 3(1). You know what that is, it  
8 requires every licensee to adopt and abide by a set of  
9 principles acknowledging their obligation to promote  
10 equality, diversity and inclusion generally.

11           My objections are twofold. First, bad  
12 regulatory policy and, second, on fundamental freedom  
13 ground. First, bad regulatory policy. These  
14 principles, as part of this report, if they're not  
15 there already are going to be incorporated into our  
16 rules of professional conduct. That's where they  
17 should be. Every licensee is required to abide by all  
18 of the rules and it's not appropriate to single out  
19 certain rules to the exclusion of others.

20           The obligation to comply with the Human  
21 Rights Code is important, but so are rules that  
22 preclude lawyers from taking trust funds and require  
23 lawyers to maintain solicitor/client privilege. We  
24 shouldn't be singling one aspect of our rules of  
25 professional conduct out.

1                   Secondly, fundamental freedoms. The Law  
2 Society is in the business of regulating conduct, not  
3 thought. While I believe in and strongly support  
4 diversity, others may not. We should not compel speech  
5 or thought, but build support for diversity through  
6 action and education.

7                   In 1943 the United States Supreme Court  
8 grappled with a similar issue. The U.S. was at war and  
9 patriot fever ran strong. A challenge was brought to  
10 requirement that all students salute the flag and  
11 pledge allegiance. Here's what the U.S. Supreme Court  
12 had to say in West Virginia Board of Education versus  
13 Barnette: "It is to be noted that the compulsory flag  
14 salute and pledge requires affirmation of a belief and  
15 an attitude of mind. It's not clear whether the  
16 regulation contemplates that pupils forego any contrary  
17 convictions of their own and become unwilling  
18 convertants to the prescribed ceremony or whether it  
19 will be acceptable if they simulate a sense by words  
20 without belief and by a gesture barren of meaning."

21                   "To sustain the compulsory flag salute,  
22 we are required to say that a bill of rights which  
23 guards the individual's right to speak his own mind  
24 left it open to public authorities to compel and to  
25 utter something that was not in his mind."

1                   And then in concluding the Court says,  
2       "If there was any fixed star in our constitutional  
3       constellation, it is that no official, high or petty,  
4       can prescribe what be orthodox in politics,  
5       nationalism, religion or other matters of opinion, or  
6       force citizens to confess by word or act their faith  
7       therein."

8                   I conclude by saying that a society that  
9       does not admit of, and accommodate differences of,  
10      thought, opinion and belief cannot be a free and  
11      democratic society, one in which its individuals and  
12      citizens are free to think, to disagree, to debate and  
13      to challenge the accepted view without fear of  
14      reprisal.

15                  I say recommendation 3(1) is not  
16      necessary nor appropriate. If the motion to split the  
17      recommendation is accepted I will vote in favour of  
18      every section of the report except for 3(1). If the  
19      motion to split is not approved, I'll vote in favour of  
20      the report as whole, but I want to put on the record my  
21      objections to that aspect of the report. Thank you,  
22      Treasurer.

23                  TREASURER SCHABAS: Thank you. Thank  
24      you, Mr. Bredt. Mr. Braithwaite.

25                  MR. BRAITHWAITE: Thank you, Treasurer.

1 Good afternoon, everyone.

2 I've had the opportunity to hear most of  
3 what people had to say about this. I haven't really  
4 spent any particular time stating my position one way  
5 or the other, other than to people who came to me and  
6 asked me specifically what position I would be taking.

7 I've given the matter a lot of thought  
8 and ultimately I'll have to say this so that there's no  
9 wondering where I'm going with the words that I'll be  
10 saying shortly.

11 I support the motion that Mr. Anand has  
12 put forth. I do not support the motion of  
13 Mr. Troister. I believe this is something that has to  
14 be taken in its entirety and I will speak a little bit  
15 about that.

16 I've heard the arguments and some of the  
17 legal arguments and some of the concerns about some of  
18 the recommendations that we have heard, be it article  
19 3.1 or position 3.1 or 8 or 9, or any one of those  
20 things. Therein lies the concern that I have, and the  
21 concern is we could spend the rest of time going  
22 through each one of those articles and trying to come  
23 up with the perfect language for it.

24 We must be mindful that when we're  
25 talking about a democratic society, this is what we

1 have been doing. This thing has been discussed and  
2 discussed and discussed and spent a heck of a lot of  
3 time getting opinions from everyone.

4                   What we're doing today is that exercise  
5 in democracy. This is not something that's being  
6 foisted upon everybody, this is something that we have  
7 been discussing openly. Yes, I rue the fact that  
8 Mr. Troister has been in the position where he stated  
9 his position and there was some opposition to what he  
10 had to say. Yes, clearly we have to, being Benchers,  
11 being lawyers, we do have to appreciate dissent. In  
12 fact, it's dissent that has made the law of the future.  
13 We know that.

14                   So with respect to the concerns that  
15 have been brought up here, I hear those concerns, but,  
16 nevertheless, I'm taking the position that we should be  
17 taking this thing in as -- holus bolus, because I  
18 believe that any one of those recommendations, they may  
19 not be perfect, but, nevertheless, it's something that  
20 we have to move forward with.

21                   So here's what we're looking at, and  
22 these are some of the reasons why I take the position  
23 that I'm taking. Quite simply, race matters. I can't  
24 say why, but history tells us that it does.

25                   Regrettably, if the present is any

1     indication, it's not going away. We have seen over the  
2     history of time, we have seen the global wars, we've  
3     seen civil wars, it tells that us that race matters.  
4     This very country was based and grew on immigration,  
5     again emphasizing that race matters. We have seen  
6     people come to this country from all over the globe,  
7     arguably to rid themselves from the social geographical  
8     constraints or confinements of the land from which  
9     they're coming from, ostensibly to build better lives  
10    in liberty, freedom, economic opportunity, to rid  
11    themselves of the concept of class distinctions.

12                 However, it would appear at the time, on  
13    arriving in this country, class has been displaced, it  
14    probably always has been displaced, but clearly in this  
15    new world class has been displaced by the concept of  
16    race. Race is the new class differential. Race  
17    matters.

18                 The Indigenous people already here, they  
19    did not get the benefit of new immigrants and the  
20    concepts that new immigrants were bringing forth.  
21    Their particular rights and beliefs and freedoms were  
22    not respected. Why? Because of the issue of race.

23                 No matter what we think, no matter what  
24    this history has taught us, again, race matters. The  
25    distinction of coming to this country, not respecting

1 the rights of the Indigenous people, that was an issue  
2 of race.

3 We are seeing in North America alone  
4 people coming to this part of the world, to the south  
5 of us, you had that Statue of Liberty, freedom,  
6 liberty, but, again, not for everyone. The distinction  
7 was race.

8 Civil War in the States, declaration in  
9 1864 about freedom for all, but history tells us the  
10 distinction was not for everyone; race was a  
11 distinguishing factor.

12 That takes us all the way through to the  
13 years following through, it has taken us to about 1964  
14 when, as we see in the U.S. with the Civil Rights Act a  
15 hundred years later, what are we talking about? Issues  
16 of race. Even the fundamental aspect of voting, it  
17 took another hundred years after the Civil War. The  
18 issue is race.

19 That takes us to today. How far have we  
20 gotten? That's pretty hard to say. One would have  
21 thought that there has been some progress, but if we  
22 take note of the last two weeks, an election down  
23 south, we haven't gotten that far, it's all starting  
24 all over again; the issue is race. People are  
25 uncomfortable with that.

1                   The racialized report we have before us  
2           is a product of the past and, regrettably, emphasizes  
3           these race matters. The fact that it would take  
4           right-thinking people schooled in the rule of law,  
5           committed to issues of fairness and equity based on the  
6           principles set out in the United Nations Charter of  
7           Rights, the Charter of Rights and Freedoms in this  
8           country, the Canadian Human Rights Act, the Provincial  
9           Human Rights Code throughout this country, the fact  
10          that that would take four years, in and of itself is  
11          disconcerting. Four years of compromises to get to  
12          this particular day. I think that's another clear  
13          indication that race matters.

14                   That it would take this long, four  
15          years, in this august body with a group of people who  
16          are all really of the same mind, schooled in the rule  
17          of law, schooled in the essence of equity and fairness,  
18          that it would take four years to come up with this  
19          compromised package. And yet, despite the fact that we  
20          have this compromised package, we're still having to  
21          debate whether or not it meets perfection.

22                   Race is one of the protected groups  
23          under the legislation; it's one of those equity-seeking  
24          groups, but the thing about race is that, arguably, not  
25          so much so, but it stands above all of the other

1 groups, protected groups. Why is that? Well, if we  
2 take a look at the issue of race, race contains --  
3 let's be clear about this, because race contains all of  
4 those equity-seeking protected groups.

5           You can be, for example, black and gay,  
6 you can be black and a woman, you can be black and have  
7 a different religion; every one of those equity-seeking  
8 groups distinguishes itself because -- and compounds  
9 itself when it comes down race.

10           The reason why we've had this particular  
11 report and took four years is because the whole issue  
12 of race stands above all of the other concerns, and  
13 it's the single thing that has divided us possibly  
14 today, but has divided this country, has divided the  
15 country to the south, if not worldwide. It's that  
16 issue always because race matters.

17           As I said before, when I say race  
18 matters, I can't tell you why, but it is the case.

19           So if we're looking at equity-seeking  
20 groups and we're looking at the issue of race, I'll  
21 give you an example --

22           TREASURER SCHABAS: Mr. Braithwaite, I  
23 just want to note you have been eleven minutes. I'm  
24 not cutting you off, but I want to make that  
25 observation.

1                   MR. BRAITHWAITE: I'll try to wrap it up  
2 in about four more minutes.

3                   TREASURER SCHABAS: A couple more  
4 minutes. Do your best, please.

5                   MR. BRAITHWAITE: Okay. I'll try.

6                   TREASURER SCHABAS: Thank you.

7                   MR. BRAITHWAITE: I'm going to give you  
8 an example of why race is a distinguishing factor.  
9 This is on a personal note. The personal note is my  
10 father.

11                   My father was a heck of an athlete. He  
12 was approached to play in the major leagues, an  
13 incredible ballplayer. He tells me this. The thing  
14 about him, this was pre Jackie Robinson, pre 1947 when  
15 Jackie Robinson was inducted. That was a momentous  
16 time in the world of baseball, that Jackie Robinson  
17 would be the first black person to break a colour  
18 barrier in baseball. Prior to that, though, my father  
19 was approached, but they said to my father, given your  
20 colour, that's a problem, but if you were to declare  
21 yourself to be Puerto Rican we can get you in. My  
22 father, being a very proud person, brilliant person,  
23 refused.

24                   But, again, that's just an example, it's  
25 about race, it's always about race. Here is a person

1 who had -- they recognized the talent, the skill, but  
2 it was about race and it's always been the case, and  
3 that's what's driving us today.

4           The racialized report tends to address  
5 this social -- this phenomenon is arguably the ultimate  
6 compromise. In fact, I would personally opine that  
7 it's sad that after, I would say, 400 years of  
8 immigration into this country and the evolution of  
9 principles we supposedly espouse on fairness and  
10 equity, that this racialized report is not only needed,  
11 but it's as far as we are prepared to go at this stage.  
12 I think it represents the minimum that we should be  
13 looking at.

14           I deplore the fact that we would even  
15 need to have such a report in this day and age, but we  
16 do. It's a minimal step, but, nevertheless, we have to  
17 go there. So given my concerns -- and I'm wrapping it  
18 up now.

19           TREASURER SCHABAS: Thank you.

20           MR. BRAITHWAITE: I can't accept  
21 breaking the extremely modest proposal which is before  
22 you today into -- which is being heralded in some  
23 circles as groundbreaking and a momentous occasion, I  
24 think it's sad that minimal steps such as this should  
25 be placed in that type of historic position. It isn't.

1 It's basic human rights that we're talking about.

2 With that said, and I'll jump to my end,  
3 what we're looking at here, the concept that some of us  
4 are looking at this and saying that this is a first  
5 step, it frightens me to think that this is the first  
6 step after 400 years. I'm concerned that if this is  
7 the first step, is it going to take us another 400  
8 years to get to a second step?

9 This is very disconcerting for me.  
10 That's why I said we have to. This is something that  
11 has to be accepted now. We can't -- in fact, if I  
12 could just take you back to -- in closing --

13 TREASURER SCHABAS: For the third time.

14 MR. BRAITHWAITE: But this is the real  
15 closing part. Just to remember, back in 1964 Martin  
16 Luther King, while in jail in Birmingham, he wrote a  
17 series of letters. They were entitled, "Why We Can't  
18 Wait". That's where we are, folks. We just can't  
19 wait. Thank you.

20 TREASURER SCHABAS: Thank you,  
21 Mr. Braithwaite.

22 -- Applause.

23 TREASURER SCHABAS: Mr. Udell, you're  
24 next.

25 MR. UDELL: I have been a Bencher for 18

1 months, this is the first time I've chosen to speak.

2 TREASURER SCHABAS: Can you move the mic  
3 closer? The mics are new, it's okay.

4 MR. UDELL: It's okay, Paul, if they can  
5 hear me on a stage with a thousand people in front of  
6 me, they can hear me without the mic, but that's okay.

7 Treasurer, thank you for the opportunity  
8 to speak. I applaud the working group for working hard  
9 on a very difficult matter and doing, in my opinion, an  
10 amazing job with a very difficult and controversial  
11 subject; however, I also applaud and commend  
12 Mr. Troister for his honesty, courage and integrity in  
13 his motion and, more importantly, so eloquently stating  
14 the reasons for his motion. My only regret is that  
15 Mr. Troister got to Mr. Lem first before he got to me  
16 to second his motion.

17 Many Benchers have expressed surprise  
18 when I advise them that I, too, have been the recipient  
19 of what I call a poison pen e-mail. Many have e-mailed  
20 me, lobbying me to support the recommendations  
21 unblocked, without change. When I took the time to  
22 express my concerns to those who e-mailed me, I was  
23 chastised and belittled. Even though I took the time  
24 to reply, in my opinion, courteously and with great  
25 endeavour to explain my position to those people who

1 e-mailed me trying to explain that while I embraced the  
2 vast majority of recommendations, I had issue with a  
3 few of the recommendations and would feel badly having  
4 to vote with my conscience and probably abstain on the  
5 motion if it was an all or nothing approach. The  
6 responding e-mails were offensive and in many ways a  
7 form of bullying.

8           In those e-mails I, too, was accused of  
9 hindering the access to justice if I wanted to have an  
10 open debate on a clause by clause basis, and took great  
11 offence to the suggestion that while people who do not  
12 know me, but who only know that I don't agree with  
13 them. How sad.

14           We all have agendas. Honestly, my  
15 agenda is to do what my conscience tells me is the  
16 right thing to do after having the confidence of those  
17 who took the time to vote for me and after being fully  
18 apprised of the issues and understanding the  
19 ramifications of what I'm voting on.

20           The report is tabled as extremely  
21 comprehensive and well designed, and as I sit here and  
22 I start to add names to this, it amazes me, but as  
23 noted by Mr. Earnshaw, Ms. Murchie, Ms. St. Lewis, Ms.  
24 Vespry, Mr. Wardle, Ms. Ross and Mr. Troister, there  
25 are concerns that should and need to be discussed,

1 reviewed or, if necessarily, amended.

2 Counting myself and Mr. Lem in that  
3 number, that makes ten, that's a quarter of  
4 Convocation, and you don't want to talk about it? What  
5 am I missing?

6 A few of the issues Mr. Troister pointed  
7 out I hadn't even considered. A few of the other  
8 issues that others have pointed out, I hadn't  
9 considered. I'm fortunate enough to hear the comments  
10 and concerns and I share those concerns, but they have  
11 reaffirmed my belief that a full and open discussion of  
12 other concerns would not only be in my best interest,  
13 but in the interest of all stakeholders.

14 I refuse to be intimidated, coerced or  
15 bullied into voting for something that I still need and  
16 require answers to. I think the members of the  
17 committee are doing themselves a great disservice in  
18 insisting that it be voted on on an all or nothing  
19 basis.

20 Is there a need for change? You bet.  
21 Should the report be voted on and passed quickly? Yes.  
22 But somewhere along the line I get the feeling that  
23 people will interpret a vote in favour of  
24 Mr. Troister's motion against the report. That's not  
25 the case, and in my opinion, let me make it clear it is

1 strictly not the case, but I can't, in clear  
2 conscience, vote on something either for or against it  
3 that I don't know all the facts about or haven't been  
4 fully informed about issues. Others have offered to  
5 fill me in on those issues, but I prefer to do it in an  
6 open forum, not behind closed doors. Thank you,  
7 Treasurer.

8                   TREASURER SCHABAS: Thank you, Mr.  
9 Udell. I have been noticing there's been some activity  
10 and whispers and so on. I gather from Mr. Lapper that  
11 he's going to clarify for us the question that's been  
12 raised about the mandatory nature of, or not, of some  
13 of these requirements.

14                   MR. LAPPER: Thank you, Treasurer.  
15 Because staff have been invoked in this debate, I have  
16 spoken to staff and now spoken to Mr. Falconer as well.  
17 Here is my understanding of the intention of these  
18 proposals.

19                   The information with respect to racial  
20 cultural identity, similar to what is currently on the  
21 LAR and PAR and is voluntary, will remain voluntary.  
22 That is, one does not have to give that information.  
23 It is not compulsory, it is not compelled.

24                   Now, that will mean that the information  
25 that goes to firms of 25 or more may be incomplete and

1       there may be gaps in it and it may not be accurate, but  
2       as I understand it, that is accepted as part of this  
3       proposal.

4                       The person -- or the statement is  
5       mandatory and ultimately one could be administratively  
6       suspended for failing to comply with that provision.

7                       TREASURER SCHABAS: Thank you very much,  
8       Mr. Lapper. So I have four more people in the room on  
9       the list before we go to the telephone and then I'm  
10      going to ask Mr. Anand and Mr. Troister to speak.

11                      The four people in order that they're  
12      going to speak before we go to the phone are going to  
13      be Mr. Mercer, Ms. Criger, Mr. Callaghan and Mr.  
14      Falconer, and then we will go to the telephone. So  
15      with that, Mr. Mercer.

16                      MR. MERCER: It should be no surprise  
17      that as one of the members of the working group I speak  
18      to ask you to support and approve the recommendations  
19      before you.

20                      As Ms. Nishikawa said at the outset,  
21      these are designed to work together. It's not a  
22      political cram down, it's a package of proposals  
23      designed to work together to achieve a result, and on  
24      that basis I ask you to support it.

25                      As Mr. Krishna described, and as is

1 obvious, I think, to all of us, the human condition is  
2 frail, it has its strengths, it has its weaknesses.  
3 Our professions are part of humanity. We have our  
4 faults as a result and we progress as a result.  
5 Leaving aside recent elections, I believe the long arc  
6 of our condition is positive, that the world that Mr.  
7 Galati describes for Italians is less so than it once  
8 was.

9                   We know that the various groups who have  
10 been strangers in the society to which they have come  
11 are met with hostility and fear and, over time, with  
12 familiarity, they become part of society, they always  
13 were, but they're understood to be.

14                   So I am both concerned about where we  
15 are and optimistic about where we will be and so,  
16 taking that thought, I want to quote from Mr. Anand on  
17 something he said at the outset, which is the point of  
18 this project is to accelerate cultural change. We  
19 don't have a mandate beyond our professions, but within  
20 our professions we do, and it seems to me we should be  
21 working to accelerate that which takes too long which  
22 we all acknowledge is the right thing to do.

23                   So this report is practical in that  
24 respect. It requires that those in our professions  
25 acknowledge their human rights obligations. If I

1 thought this was a statement of belief that was being  
2 mandated I would have the same concern as Mr. Bredt.  
3 That's not how I understand it. I understand it's a  
4 statement of obligation and acceptance of obligation,  
5 no different than an obligation to accept your mortgage  
6 fraud avoidance obligations.

7 We ask that the firms and the licensees  
8 address these obligations and advance their cultures.  
9 We hold them accountable by self assessment and by  
10 reporting. We hold them accountable, we hold ourselves  
11 accountable by reporting back to each other. All of  
12 this is designed to maintain confidence within our  
13 workplaces, to ensure that within our workplaces people  
14 are hired fairly, promoted fairly, advanced fairly,  
15 treated fairly with a desired outcome of diversity and  
16 inclusion.

17 Now, is the report perfect? No. Not  
18 because it's a terrible compromise, but the nature of  
19 reports such as this is that they will never be  
20 perfect. They will evolve. There are things that we  
21 still need to address and probably need to address  
22 better. The points which are made about  
23 confidentiality on one side and I say accountability on  
24 the other side are correct concerns; they should not be  
25 discounted and we discussed them in the working group

1 and it was acknowledged that that was so.

2                   It may be that what you can report to a  
3 firm of 25 is different than what you can report to a  
4 firm of 300. We have to be sensitive to that in the  
5 way we actually make this work, but saying we have to  
6 have solved everything before we solve anything is a  
7 recipe for stasis, and we shouldn't stay there.

8                   Also I ask you to vote in favour of the  
9 substance, recognizing the details will evolve, that  
10 things which trouble you will get addressed, and in the  
11 end it won't be perfect either. The question is  
12 whether this project, the substance of this project  
13 should go forward, and I ask you to say  
14 enthusiastically yes.

15                   What is our mandate? Our mandate is  
16 regulation of professional conduct. Mr. Troister said  
17 we shouldn't impose obligations on individuals, and in  
18 their own lives he's entirely right, but in their  
19 professional workplaces, in their dealings with their  
20 clients, their employees, their colleagues, human  
21 rights is part of our professional obligation,  
22 diversity and inclusion is part of our goal, and it is  
23 no invasion of individual rights to say as a matter of  
24 your professional conduct that you should abide by  
25 this, nor is it an invasion of individual belief if we

1 ask people to acknowledge, to confirm that they accept  
2 their obligations, their professional obligations.

3 So I say this isn't any infringement of  
4 private rights. I see this as no infringement of  
5 private thought. What I say is this is a project  
6 designed to achieve that which is squarely in our  
7 bailiwick.

8 It was argued that TWU was to the  
9 contrary of this. I say TWU is exactly what this is  
10 about. We said to a law school that you cannot exclude  
11 people because of who they are. We are saying to the  
12 members of our professions you can't do that in your  
13 workplaces either.

14 -- Applause.

15 TREASURER SCHABAS: Thank you,  
16 Mr. Mercer. Miss Criger.

17 MS. CRIGER: Thank you, Treasurer.

18 The -- I have no doubt about the goals and intentions  
19 of this report and I fully support all of the goals and  
20 all of the intentions of this report; however, I  
21 support Mr. Troister's motion because I cannot vote for  
22 something which permits a breach of privacy for an  
23 employee who may or may not wish to disclose to his or  
24 her employer his or her private circumstances. That's  
25 the first thing. So recommendations 4 and 5 cause me

1 great difficulty and perhaps 6 and 7 as well.

2 Recommendation 8 also causes me some  
3 trouble, and as I listened to Mr. Wardle I found that I  
4 agreed with every word Mr. Wardle said, except that it  
5 led me to the conclusion that I must support  
6 Mr. Troister and ask that we consider the  
7 recommendations individually so that we get as much as  
8 we can of this very, very worthy report, without  
9 necessarily going over to the point where we start  
10 compromising people instead of helping people.

11 And, Mr. Udell, I'm number 11. Thank  
12 you.

13 TREASURER SCHABAS: Thank you,  
14 Ms. Criger. Mr. Callaghan.

15 MR. CALLAGHAN: When I arrived and I saw  
16 Mr. Troister's motion, I thought it was an important  
17 issue of governance, but I wasn't entirely attracted to  
18 delaying what is obviously a long process by a  
19 committee that's done a great deal of work and they  
20 should be commended.

21 But when I heard Ms. Vespry and  
22 Professor St. Lewis talk, I began to think that there  
23 are substantive issues that need to be addressed and  
24 it's not just a neat little issue of governance, and  
25 it's of concern.

1                   I can tell you that Mr. Braithwaite is  
2 right. You know, prejudice in the law -- legal world  
3 has gone back, I can't say 400 years. My family, our  
4 history goes back a hundred years. As an Irish  
5 Catholic, my grandfather was called in 1916, a hundred  
6 years ago, and they were ghettoized as lawyers.

7                   In fact, about ten years ago, I was  
8 telling somebody, a young lawyer came to me and they  
9 wanted their grandfather to meet me, who was 90. So I  
10 went and met the grandfather, and I couldn't understand  
11 why he wanted to meet me. He was Jewish. He said when  
12 he went to get an articling job, the only place a Jew  
13 could get it was with Callaghan, because that's the way  
14 it was.

15                   Now, many of you know, my father rose to  
16 some of the highest ranks in the paralegal professions  
17 in Canada and he did it in the 80s and the 70s and he  
18 was amongst the first, if not the first, Catholic in  
19 many of those roles.

20                   I have been blessed in the sense that I  
21 have not had the prejudice that many of you in the room  
22 have had. I know it's real. I know we have to address  
23 it. I know that now is the time, but I am a little  
24 concerned and I echo Professor Krishna's view that, you  
25 know, 1916 was a hundred years ago. If we have an

1 opportunity to do this right or at least better, I  
2 appreciate nothing's going to be right and I appreciate  
3 it's probably not going to solve everything, but we  
4 ought to take the time. We owe it to the constituency,  
5 we owe it to the people in this room, the people who  
6 have come and watched. And when people like  
7 Professor St. Lewis and Ms. Vespry tell me we are  
8 missing a crucial part, it causes me a great deal of  
9 consternation.

10 TREASURER SCHABAS: Thank you, Mr.  
11 Callaghan. Mr. Falconer.

12 MR. FALCONER: I'm not used to staying  
13 on my rump, Mr. Treasurer. Let me begin by saying  
14 this. As one of the individuals that's been on this  
15 exercise for the full four years and has had the honour  
16 of serving as Vice-Chair of this task force, I want to  
17 congratulate the leadership of the task force and my  
18 fellow members for getting us here.

19 Today is an example of what it looks  
20 like to talk about racism in Canada. This is what it  
21 looks like. People are struck to the core, no matter  
22 where they come from or who they are.

23 I have been a very fortunate  
24 professional, I'm a lucky guy. For 27 years on behalf  
25 of racialized communities, in particular, my brothers

1 and sisters from the African-Canadian communities, on  
2 behalf of Indigenous people, I have had the honour of  
3 pursuing issues of race in various forms.

4 Like Professor St. Lewis and like other  
5 colleagues, this is our calling, this is what we do.  
6 So for us it's not that surprising to feel the raw core  
7 emotions that are coming out in this room. This is  
8 what it looks like to discuss racism in Canada, but  
9 make no mistake about it, I learned something over the  
10 last few years that I don't think I ever really got  
11 before, and this is what I learned. First of all,  
12 there's no magic bullet.

13 Joanne, you're right, the problems with  
14 it you've identified are right, and you're right.  
15 Brad, you're not right, but there's others that are  
16 right -- no, I'm kidding around, I love Brad.

17 The bottom line, and it's this and it's  
18 so important to understand. Not decades, centuries,  
19 this was created from centuries of oppression. So 13  
20 recommendations ain't going to do it and there's no  
21 magic bullet. But I did learn this, and this really  
22 matters to me. What I learned, and I'm trying to  
23 practice it, is you can't foist solutions on people.  
24 You can't tell people who are the subject of oppression  
25 this is your answer, and you particularly can't do it

1 when you have been so poor historically at doing it  
2 and, in fact, you were the actual agent of the  
3 oppression.

4                   So what do you have to do to change?  
5 And since 2012, as chair of -- I'm sorry, 2014 as chair  
6 of the Equity and Aboriginal Issues Committee I have  
7 had the honour of co-chairing with a number of great  
8 people, Janet Leiper, Dianne Corbiere. I can tell you  
9 we have made our priority -- equity-seeking groups is  
10 great, but we actually wanted equity partners. They're  
11 sitting here in the room. They sat with us all day.  
12 They sat with us for four years, and they have told us  
13 what would work to restore confidence for them.

14                   And what is our answer? And it's very  
15 interesting, our answer is you don't know what will  
16 work for you. You don't know. We're going to protect  
17 your privacy because you don't understand how to do it  
18 for your community members.

19                   This is not the way to embrace  
20 confidence and credibility in creating solutions.  
21 Community is showing us the way in partnership.  
22 They're respectful. They have not jeered us all day  
23 like they should have, right? They're with us.  
24 They're with us.

25                   They wrote me an e-mail on behalf of

1 every single racialized community today, they wrote me  
2 an e-mail after Mr. Troister's submissions and said if  
3 they had known there would be the changes in the  
4 recommendations now being discussed they would not have  
5 supported this report.

6                   Why? Not unlike the Canadian Charter of  
7 Rights and Freedoms that we listened to Mr. McDowell's  
8 French about, you can't have a charter without section  
9 1; you can't have a charter without section 7. You  
10 remove constituent elements, you wreck the package.  
11 This is isn't a tactical move. This was a finely  
12 balanced, finely balanced exercise that was a struggle  
13 for us all. There's no magic bullet.

14                   Peter Wardle is right, there's concerns,  
15 but I need to address this thought police idea because,  
16 you see, the Whole Human Rights Code is a thought  
17 police, right, the Criminal Code is a thought police.  
18 We govern ourselves in a civilized society because  
19 there's certain behaviour that's unacceptable. What  
20 we're governing here is respect for the workplace and  
21 the creation of a healthy workplace, and a statement of  
22 principles that says I will maintain a healthy  
23 workplace is okay and, yes, it is disciplinable if you  
24 don't, after seeing the rule, getting repeated requests  
25 from the Law Society reminding you of the obligation,

1 if you ignore all of the prodding eventually it is  
2 disciplinable. Just like, by the way, if you don't  
3 photocopy the idea of your client, we remind you ten  
4 times, you don't care, we write you, you don't care,  
5 it's disciplinable. We make rules that are  
6 disciplinable, that's life.

7           And this statement that we will treat  
8 our brothers and sisters with respect and we will fix  
9 the fact that Bay Street firms and smaller firms, for  
10 the most part, their senior management teams are  
11 white. The dominant culture is white, like it or not.  
12 We have to face the truth and then we have to work  
13 together to fix it.

14           So, Professor St. Lewis, when I hear  
15 from all of these organizations that despite the  
16 confidentiality or privacy issues that you have fairly  
17 identified, very fairly identified, they want to come  
18 out of hiding. They don't want any more secrets. They  
19 don't want their kids sanitizing their resumés, they  
20 just want us to pass the damn report.

21           And they don't want us knowing what's  
22 good for them. They want to be listened to, so for God  
23 sakes, it's fine to not listen to them, it's okay. You  
24 can vote against the report. There's no thought  
25 police. I will circulate to you the message from EAIC.

1 I've got it on my e-mail. There's no bullying. If  
2 someone took it as bullying, I am circulating it to  
3 every Bencher in this room.

4 I can tell you, I went through the ABS  
5 debates and I got the e-mails from organizations,  
6 including ones I belong to like OLA. Was I unhappy at  
7 the lobbying? Of course I was, but who gives -- you  
8 know, get some thick skin, that's what it's about.

9 MS. ST. LEWIS: I have thick skin.

10 MR. FALCONER: I am saying get some  
11 thick skin when it comes to our consumers and public,  
12 get some thick skin. Amongst Benchers we have to be  
13 respectful of one another, which is exactly why I asked  
14 Sid what I asked him, and I've asked others. We are  
15 respectful to each other, but the public has  
16 expectations. Some have suffered severe histories of  
17 racism and are frustrated.

18 So maybe the notes are emotive, but  
19 amongst ourselves we are respectful. But when the  
20 public comes to us and are upset, we understand the  
21 context they came to us in and we don't make that the  
22 subject of our debate or give them a code of conduct on  
23 how they should approach us.

24 So all I say, and I say this in closing.  
25 There are pieces to this that you may find difficult to

1 swallow. I found them difficult to swallow. I used  
2 the word milquetoast more than once. They didn't seem  
3 to me to go far enough.

4                   You've heard from whether it's Mr.  
5 Galati, whether it's Jack Braithwaite, you've heard  
6 them say it doesn't go far enough. You've heard some  
7 say it goes too far. This feels like, yes, a  
8 compromise, so that's okay.

9                   Our next question is to the people who  
10 we're trying to help, the ones facing the challenges,  
11 how do you feel about it. They say we need you to pass  
12 this. So, please, hear them. Don't just listen to  
13 them because I know you listen; hear them.

14                   This is a chance to go forward. Why is  
15 it historic? The Law Society has no reputation and no  
16 history for being supported by racialized communities  
17 across the board. We have broken an important barrier.  
18 We have taken down a wall. We are asking them to come  
19 in our house and making it their house, right, they've  
20 sat with us right through Convocation, not to  
21 intimidate, to live this experience with us.

22                   In 1989 I was in an interview, starting  
23 to practice, just finished articling, and the man  
24 interviewing me asked me about my black Jamaican  
25 father, he must have heard it from somebody, it wasn't

1 in my resumé. He asked me about him, and I made a joke  
2 because that was the only way I knew how to manage the  
3 most bizarre question that came out of nowhere. He  
4 goes, "You don't look black. You got a Jamaican  
5 father, right?"

6 We're humans, we make all these  
7 mistakes. But the one mistake we don't have to make is  
8 to not listen to them today. So they say this works  
9 for them. They say they're prepared to forego the  
10 privacy issues that you've fairly raised. They say  
11 they need all of this because it's only a start. So,  
12 please, give them the respect they deserve. That's why  
13 it took us four years. We have to give each other  
14 respect.

15 Malcolm, I learned so much from that  
16 guy, right down to the last day we fought about the  
17 usage of the word racism, how it should be used, but  
18 you know what, we made it respecting each other.

19 There is -- discussing racism in Canada,  
20 it's brutally hard. We're doing it, I'm very proud of  
21 us, every single one of us, every one of us,  
22 congratulations wherever this vote goes. Thank you.

23 -- Applause.

24 TREASURER SCHABAS: Thank you, Mr.  
25 Falconer. So that concludes the speakers in the room,

1 other than we'll come back to Mr. Anand and  
2 Mr. Troister.

3 On the telephone I have three people at  
4 least who have sent us e-mails that they wish to speak.  
5 Those are Mr. Sharda, Mr. Burd and Ms. Leiper. So I'm  
6 going to call -- sorry, who was that?

7 MS. CHRÉTIEN: Gisèle Chrétien on the  
8 line as well. I don't need to speak.

9 TREASURER SCHABAS: Okay. Thank you.  
10 So we'll ask Mr. Sharda if he's on the line to speak  
11 first. Are you there, Mr. Sharda? Did I hear you,  
12 Mr. Sharda? Okay. Then we'll ask Mr. Burd to go.

13 MR. BURD: Thank you, Treasurer. I,  
14 too, am a member of this working group and have been  
15 since the inception. I come from a different  
16 perspective, realizing that lawyers are predominantly  
17 Caucasian males that ruled the roost for a large  
18 majority of the time.

19 I think we can learn in many  
20 circumstances a lot from the paralegal community in  
21 that almost 40 percent of licensed paralegals are, in  
22 fact, minorities and 60 percent are women. It is a  
23 sign of things to come and I think this is one time  
24 where lawyers may take a back seat and see the  
25 involvement of how the paralegal community has evolved.

1           There's a couple of issues that I wanted  
2 to discuss that I feel have been raised today. One is  
3 the issue of democracy, on how we've concluded and come  
4 to the recommendation as a package. There were ample,  
5 and I mean ample, opportunities either at the inception  
6 of this when we were doing the town hall meetings or  
7 into the information sessions that we had most recently  
8 for Benchers to get involved, for Benchers to voice  
9 issues, and I know Ms. St. Lewis was one of those ones,  
10 she voiced her issues. It was brought to our attention  
11 as a working group and we addressed it. We have never  
12 turned aside any Bencher's issues or requests.

13           So when we hear today, those from the  
14 working group, that their -- democracy has not been  
15 done, I'm sorry, but I have to disagree. I mean, I  
16 can't recall more debate on any committee I've ever  
17 been on than I have in the four years on the working  
18 group. So for that -- that's my response to the  
19 democracy issue.

20           But what I really wanted to address is  
21 the following, the concerns that I've heard about some  
22 of the recommendations; that people will be singled out  
23 by the firms or that these are obligations and things  
24 of that nature. And then it brings me back to what my  
25 first beliefs were when I was appointed to this working

1 group, and I sat there and I thought to myself what is  
2 a caucasian male doing on this working group,  
3 Challenges Facing Racialized Licensees, and it wasn't  
4 far into the process when I realized it was my  
5 mentality, not mine specifically, but the dominant  
6 caucasian male, that needed to be changed.

7           So when I hear people saying things such  
8 as they will be singled out by the firms, guess what,  
9 people, that's the culture that we need changed. We  
10 need those fears to be written. And the only way we  
11 can accomplish it is by calling out the elephant in the  
12 room and forcing it -- and I agree that there should be  
13 more teeth, but by forcing it to happen, by having it  
14 written there as recommendation, as rules, so that we  
15 as a whole come to the same understanding and belief  
16 system.

17           Right now it's all hidden. All of the  
18 attempts have failed, and as a part of the working  
19 group I ended up finding myself leaning towards, when  
20 we were having battles, about having it more mandatory,  
21 and I'm a caucasian male. And the reason why is I  
22 realized it is my mentality of the people that I  
23 represent, of caucasian males that needed to change.  
24 And the people that we met at the town hall meetings  
25 all across this province were begging us, begging us to

1 make that happen. And so I ask you all to support this  
2 motion for those reasons.

3 And to bring some levity as to why this  
4 should be done as a whole, I dare anyone to build IKEA  
5 furniture and skip a step. Thank you.

6 TREASURER SCHABAS: We know what happens  
7 then. Thank you very much, Mr. Burd, the levity is  
8 welcome.

9 I gather Mr. Sharda is back on the line,  
10 so I'll call on Mr. Sharda next.

11 MR. SHARDA: Thank you, Treasurer. Can  
12 you hear me?

13 TREASURER SCHABAS: Yes, we can.

14 MR. SHARDA: Okay, great. First of all,  
15 I'd like to say I'm very proud that Convocation is  
16 truly public today. As I watched and listened to you  
17 from Kauai, I am thankful we agreed to continue the  
18 webcast at Convocation earlier this year, hence I am  
19 able to participate fully today even from afar.

20 I want to express, first of all, a very  
21 warm aloha from the garden island of Kauai. I start  
22 with aloha, because aloha, among other things, means  
23 respect amongst one another.

24 I want to thank the committee and, in  
25 particular, Bencher Sikand for his repeated and strong

1 voice to see the Law Society, that the Law Society be  
2 an example in the area of equity. He's always said we  
3 should clean our house first. We continue on this  
4 journey today.

5 I recall last year I attended the 40th  
6 year celebration against discrimination, which was  
7 founded by the now Justice Juriansz Law School Survey  
8 of Law Firms.

9 Leadership takes courage; we need to be  
10 the change we want to see. As for participation for  
11 over four years, the committee has been open to all. I  
12 was on the outside of Convocation when the public  
13 sessions were held by the committee. I can say that  
14 when I attended the peer focus group, the attendees  
15 thought the session, the public session was, at best, a  
16 photo op. Many attendees did not believe this  
17 committee was going to lead to any change.

18 The many organizations from diverse  
19 communities have spoken to us over the four years and  
20 they have recommended that we move with these  
21 recommendations as a package, as they have been  
22 developed with this foundation in mind.

23 We must take this opportunity to take  
24 leadership on this issue. Now is the time to act.  
25 Let's not allow these last four years to be a photo op;

1 we must be an agent of change.

2 I ask my colleagues to vote for all the  
3 recommendations as a package. We will continue to  
4 debate and discuss the points raised of privacy and the  
5 questions of law, which can be answered as we proceed  
6 through implementation. The changes will still have to  
7 come back to Convocation after the vote today.

8 As Mr. (inaudible) has suggested, we  
9 should not stop our work just because we do not have  
10 the final wording in place.

11 I hear the fears of my colleagues for  
12 the first -- for and against these recommendations. As  
13 in life, I reflect on my experience of my daughter  
14 today. She just started walking a month ago. Over the  
15 lunch break I took her to the beach. I was very  
16 careful she wouldn't be scared of the ocean, but she  
17 ran into the water with laughter and joy. She overcame  
18 her fears. I think we can do the same.

19 I thank you for this opportunity to  
20 speak to you from afar. I'm by the ocean, it's pretty,  
21 and I wish you all mahalo. Thank you.

22 TREASURER SCHABAS: Thank you,  
23 Mr. Sharda. Ms. Leiper is by the ocean, too. You're  
24 next, Ms. Leiper, if you're with us.

25 MS. LEIPER: Thank you, Treasurer.

1 Members of Convocation, many of us run for Bencher to  
2 make policy collaboratively in a principled,  
3 evidence-based way and to tackle the key challenging  
4 issues, to be a part of positive change in our  
5 professions and to debate and to dissent when we felt  
6 it was important, and to respect each other around the  
7 table when we did.

8           This is that kind of policy.  
9 Consultative, deliberate, community-based, open,  
10 respectful, and, as we all know, painstaking at times.  
11 We reported to you on our progress and, importantly, on  
12 our process over the past four years. We listened  
13 across the profession, that included large firms and  
14 small, who all recognized the need for change, and we  
15 heard that the regulator has a real role to play in  
16 accelerating the changes that we have been talking  
17 about today, driven by many organizations like Legal  
18 Leaders for Diversity, the Law Firm Diversity and  
19 Inclusion Network, and the assistance of these groups  
20 and their equity-seeking partner groups speak to the  
21 ongoing need for action and policy in this space.

22           As you know, we put our recommendations  
23 out for comment earlier this fall and we heard some  
24 concerns from some of you and we responded, we received  
25 the legal opinion which is now public, we took the

1 advice and the opinion, we made some amendments, and  
2 this has led us to a unanimous recommendation that we  
3 believe enjoys broad-based support across the  
4 profession.

5           The capacity to make policy is best  
6 accomplished today on this report by not now moving  
7 into what would be, in effect, a Committee of the Whole  
8 style revision and review because we are at the end of  
9 an iterative process that has included consultation,  
10 review, reporting to you periodically, and  
11 recommendations.

12           Mr. Mercer has pointed out, don't forget  
13 that there are proposals within our proposal to measure  
14 progress and, by implication, to revise and improve as  
15 we go forward.

16           Benchers, this project does not end  
17 here, but if you cannot make it begin here now, today,  
18 what can this group ever do about complex issues that  
19 face our profession and Society? We need to stay  
20 relevant. I ask you to move ahead together on this  
21 with us, with the working group, and on their behalf I  
22 ask you to please vote in favour of our recommendation.  
23 Thank you, Treasurer.

24           TREASURER SCHABAS: Thank you,  
25 Ms. Leiper. Is there anybody else on the telephone

1 that wishes to speak? Hearing nothing, it's 3:30, I  
2 think we should take a short break and then, Mr. Anand  
3 and Mr. Troister, I'm hoping neither one of you will go  
4 for more than ten minutes so that we can reach some  
5 sort of new step at about four o'clock.

6 So we will come back in 15 minutes.

7 That will be at about 3:44. How's that?

8 --- Recess taken at 3:29 p.m.

9 --- On resuming at 3:44 p.m.

10 TREASURER SCHABAS: Please take your  
11 seats. I see that the rule against bringing coffee  
12 into the meeting has been breached. Out of order, Mr.  
13 Bredt, Diet Coke is beyond the -- okay. Mr. Ruby used  
14 to bring in cans of Coke, actually, I observed when I  
15 first came here.

16 Right, so Mr. Troister. If you want to  
17 go to the lectern, you can. You're one of the  
18 presenters, so it's up to you.

19 MR. TROISTER: I could do with the  
20 exercise. Treasurer, I will be very brief.

21 I spoke about the report about four and  
22 a half hours ago and maybe -- and I gather some of you  
23 have forgotten what I said because you have turned, in  
24 some cases, a discussion and commentary on discussion  
25 about the recommendations and some observations about

1 three aspects of the recommendations into a wholesale  
2 discussion about racism, and I find that a bit of a  
3 stretch, frankly -- I'm going to be as polite as I can  
4 be on this -- because I have heard no one say that race  
5 doesn't matter. I have never said race doesn't matter.  
6 No one here has said we are in great shape and there is  
7 no discrimination in our professions. I have never  
8 said that at all.

9                   Discrimination existed for me in 1972  
10 when I was looking for an articling job and no firm  
11 other than a small Jewish firm would hire me. It  
12 existed for Mr. Krishna, Ms. Vespry, Ms. St. Lewis,  
13 Mr. Lem, and a whole lot of other people in this room,  
14 and it isn't stopping. And I have never said that I  
15 don't support the purpose of this report, so to suggest  
16 that this is a discussion about fixing an issue of  
17 discrimination isn't what I have been talking about.

18                   If you cared to know me, you would know  
19 that I don't care about anybody's race, I also don't  
20 care about your gender, about where you came from, who  
21 or what you pray to, if at all, or who you sleep with.  
22 I don't care; it is not on my agenda.

23                   What is on my agenda is good, sound  
24 legislation, and all I asked four and a half years --  
25 feels like four and a half years ago -- four and a half

1 hours ago was that we discuss the items and vote on  
2 them separately and vote -- and deal with it that way  
3 in order to generate discussion.

4 I am content in many ways that my motion  
5 has succeeded, even if we don't vote, because perhaps  
6 without my motion we wouldn't have had the kind of  
7 fulsome discussion that we have had today, so succeed  
8 or not on the motion in many respects doesn't bother me  
9 because my purpose was achieved.

10 To remind you, my objections or comments  
11 were these. I do not believe that the declaration in  
12 3.1 should be mandatory. If someone were to move that  
13 the word "required" be changed to "encourage," I would  
14 be content.

15 The report ignores the role of entity  
16 regulation and there has been no coordination between  
17 the two groups. I made that comment. I did not have  
18 an objection to anything about that, but I observed  
19 this it made no sense to me that the report did not  
20 address the fact that we've got a whole other committee  
21 doing exactly the same thing. And my other comment was  
22 that there were holes in the issue of confidentiality  
23 and I have a problem with that, and Ms. St. Lewis has  
24 spoken about that, and that was it.

25 So I have nothing more to say. I have

1 confidence in the Benchers to decide as they choose to  
2 decide, but lastly, and my last comment, and this is in  
3 some respects what I consider to be the elephant in the  
4 room, just because anybody votes one way or the other  
5 on my motion or on the whole, it doesn't mean you are a  
6 racist. People are here to make good sound decisions  
7 on legislation. And with that, thank you very much.

8 -- Applause.

9 TREASURER SCHABAS: Thank you,  
10 Mr. Troister. Mr. Anand.

11 MR. ANAND: I want to say only a couple  
12 of words about Mr. Troister's motion. I want to speak  
13 to the issues of privacy and confidentiality and to  
14 make the point that self identification is always  
15 voluntary, because I have heard from several Benchers  
16 around the table that they may be under a  
17 misunderstanding.

18 I want to speak briefly to the  
19 interaction with entity regulation, to address Ms.  
20 Murchie's comment about CPD in recommendation 9, and  
21 speak to the statement of principles and the reason  
22 that that's not thought control and that it is  
23 essential to the initiative if we are going to take the  
24 history of racism, systemic racism in this profession  
25 and elsewhere, seriously and do something about it.

1                   I'm proud to have participated in this  
2 eloquent and spirited debate today. Some people used  
3 the word historic when they were sending e-mails in  
4 advance of this and I was hesitant to give our  
5 proceedings that self-aggrandizing description, but  
6 maybe that's closer to the truth.

7                   I was -- I had decided not to speak  
8 about my personal background and I actually took  
9 comments about that in and out of my remarks several  
10 times over the last week, but I'm saying something  
11 about that because of what we have heard about the  
12 urgency, or the lack thereof, of dealing with these  
13 issues. And I'm not taking issue with Mr. Troister's  
14 overall comment that I think we share a concern that  
15 there is a serious problem that needs to be addressed  
16 and that is overdue in being addressed by the Law  
17 Society.

18                   My concern is that when that unpacks  
19 into the positions that some have taken, it results in  
20 delay and a lack of seriousness in taking these issues  
21 forward.

22                   I too, like Mr. Cooper, who is, I think,  
23 still here, had my name changed by an immigration  
24 officer when I came to this country, which is why I  
25 never use my middle name, except every Superior Court

1 pleading has my incorrect name on it.

2           You can readily envision the racial  
3 slurs that were heard by the second South Asian family  
4 in Montreal. I was very fortunate to have a very  
5 large, brown, but large brother, who took care of not  
6 just me when he chose to, but protected me against  
7 others.

8           I was hesitant to say anything because I  
9 have not suffered the kind of disadvantage that we  
10 found in our exhaustive research, but some of the  
11 statements that have been made about the importance or  
12 the lack of importance of reminding licensees across  
13 the province of their obligations and the pressing need  
14 to address issues of systemic racism in their own  
15 workplaces and in their practices, where appropriate,  
16 have caused me to say this. That on every day that has  
17 passed since my call to the bar 36 years ago, in my  
18 work as a lawyer, as a teacher, as a Bencher, I have  
19 had occasion to be conscious of my race and how it  
20 affects what I'm doing today and any other time and how  
21 I'm seen to be doing it.

22           I can tell you that -- two very quick  
23 incidents about two icons of the legal profession whom  
24 you know and whom I will not name. I was the subject  
25 of racial slurs from the first and I was told by the

1 second, when I objected to something else, that human  
2 rights codes don't matter to the legal profession.

3 Everything we've heard in this room  
4 clarifies and exemplifies, I think, in terms of its  
5 bona fide clash of perspectives, that we must recognize  
6 and act decisively and now to take immediate steps. It  
7 is important and it's destructive to every licensee in  
8 Ontario and to the profession in Ontario. And let me  
9 go directly to this issue of the statement of  
10 principles in that regard.

11 Mr. Troister called it offensive, he  
12 called it over the top, and I would simply say that we  
13 often react reflexively to human rights issues and it's  
14 difficult to talk about race.

15 The recommendation has nothing whatever  
16 to do with anybody's thoughts. The Human Rights Code  
17 and the Charter do not govern people's thoughts. There  
18 is no offence and there's no prohibition against  
19 thinking malevolently and, hopefully not, about  
20 racialized people or anyone else, and the Law Society  
21 doesn't prohibit the thoughts of anyone either.

22 The provision says that "Every licensee  
23 is to adopt and to abide by a statement of principles  
24 acknowledging their obligation to promote equality,  
25 diversity and inclusion generally and in their

1 behaviour toward all people that they will interact  
2 with professionally". It essentially reiterates their  
3 obligations under the Human Rights Code and under the  
4 current Rules of Professional Conduct.

5           The Rules of Professional Conduct say  
6 that a lawyer has a special responsibility to respect  
7 the requirements of human rights laws in force in  
8 Ontario. The commentary says this rule sets out the  
9 special role of the profession to recognize and protect  
10 the dignity -- to protect, that's an active verb -- the  
11 dignity of the individual and the diversity of the  
12 community in Ontario.

13           The commentary says, "A lawyer should  
14 take reasonable steps to prevent or stop discrimination  
15 by any staff or agent who is subject to the lawyer's  
16 direction or control". That, again, is a positive  
17 obligation. It is not what people sort of reflexively  
18 think of as discrimination. When you've -- like the  
19 racial slur I talked about a moment ago, we all have an  
20 obligation to look at the systems and the culture and  
21 the actions of people in our offices and those in  
22 control have to take reasonable steps. That's the  
23 existing Human Rights Code obligation.

24           Now, put that next to the provision in  
25 the recommendation and it says nothing more or less

1 than that.

2 Point number 2 on that -- that's the  
3 Rules of Professional Conduct. Point number 2 is this.  
4 Not only do we have an oath which is permitted by the  
5 by-laws and which Andrew Pinto's opinion analyzed under  
6 the Charter and under the Human Rights Code, and he  
7 didn't look at American freedom of expression case law,  
8 which doesn't govern and is quite different, but he  
9 looked at the laws that govern us.

10 If you're a real estate lawyer, like  
11 Mr. Troister, in filling out your Lawyers Annual  
12 Report, you have to answer -- we all have to answer,  
13 "Did you act on a real estate transaction in 2015?" So  
14 I say no, so I skip a few pages.

15 Mr. Troister and other real estate  
16 practitioners have to answer yes, and if you answer  
17 yes, you then have to certify upon pain of not properly  
18 filling out your Lawyers Annual Report and being  
19 subject to an administrative suspension, seven  
20 questions, and they all relate -- they're called real  
21 estate acknowledgment. So substitute the words Human  
22 Rights Acknowledgment.

23 Number one, "I declare that I complied  
24 in 2015". There's a number of those that say, "I  
25 declare that I complied." So you have to -- your

1 thoughts have to be brought to bear to address, to  
2 think about and address that you have complied with  
3 your professional obligations.

4           Number 5 reads -- and compare this to  
5 the language of our current recommendation. "I  
6 acknowledge my professional obligation in the practice  
7 of real estate law to not act or do anything or omit to  
8 do anything to assist a client," and it goes on, to  
9 commit mortgage fraud essentially.

10           Now, why did we put this in place  
11 without any concern about thought police or forced  
12 speech? Because we were addressing an urgent concern,  
13 mortgage fraud, and the cases at the Tribunal where  
14 people were saying I didn't know about this, I didn't  
15 read LawPro's magazines and I didn't read the alerts  
16 and I didn't know the red flags of mortgage fraud.  
17 Sound familiar?

18           What we're dealing with here is people  
19 generally not knowing what they don't know about their  
20 human rights obligations. It's not about the Globe &  
21 Mail understanding of human rights where you're shouted  
22 at on a street. That's intentional discrimination,  
23 that's not our primary issue here. I'm simply saying  
24 if that isn't thought police and if that isn't a breach  
25 of the freedom of expression and it's a -- and it's an

1 urgent problem that we need to address, what more  
2 urgent would a problem be to address than inequality on  
3 grounds of race in this province?

4 TREASURER SCHABAS: So, Mr. Anand, I  
5 know you've got a number of other points. I know  
6 people are phoning in now. I know I'm not stopping  
7 you, but if we want to give people who have phoned in  
8 an opportunity to vote, I would urge you to move  
9 quickly through things, bearing in mind that many of  
10 these things have been addressed.

11 MR. ANAND: Well, not that one.

12 TREASURER SCHABAS: No, fair enough, not  
13 that one.

14 MR. ANAND: So I'm going to move away --  
15 the final point with respect to this is Mr. Bredt's  
16 point about all rules being important, like trust  
17 accounts, he said. Well, I'm saying systemic racism is  
18 important and the point is that people don't recognize,  
19 for good historical reasons, that there's a systemic  
20 issue in their office when they readily recognize that  
21 there's a problem with their trust accounts.

22 So our goal here is to raise the  
23 profile, to make it known that this is a concern to the  
24 regulator and it's a concern to society and that people  
25 should look at this in the -- in the easiest and

1 simplest way of getting a statement of principles from  
2 the Law Society in a template, analyzing it and looking  
3 at it, and saying that they've read it, which  
4 essentially says their human rights obligations, and  
5 they'll abide by it.

6           Numbers, Mr. Wright spoke of numbers.  
7 There are no targets or timetables, there are no  
8 quotas, and, quite frankly, my hope is that the figures  
9 and the inclusion indices will be -- for law firms will  
10 be emblems of pride and success over time, and we are  
11 not talking about any obligation of a legal workplace  
12 to meet arbitrary standards.

13           CPD. The CPD, as we phrased it, speaks  
14 to advancing equality and inclusion in these programs  
15 and I would certainly acknowledge what Ms. Murchie  
16 said, that advancing equality and inclusion means  
17 serving diverse communities, and by promoting access to  
18 justice, by learning the best practices for serving  
19 vulnerable communities.

20           We have those kinds of policies on our  
21 website right now with respect to disability, with  
22 respect to the obligation to serve Francophone clients,  
23 with respect to serving other linguistic minorities,  
24 and I would readily agree that that comes within it.

25           Entity regulation, I'll just say this.

1 I appreciate Mr. Earnshaw's comments on this; of course  
2 I'm on the task force as well, and I don't think that  
3 there's any doubt, and I think I've said this  
4 repeatedly over the last year or two, that our work  
5 would have been easier if we had had entity regulation  
6 in place, because racism issues and human rights issues  
7 generally are systemic issues. They relate to the  
8 system in place, not usually to individual actions, and  
9 so it would be worthwhile if we had direct jurisdiction  
10 over the workplaces.

11 We've drafted the recommendations to  
12 take account of the fact that the senior management,  
13 like the management committee or otherwise, of any  
14 workplace has the same obligations as the system or the  
15 entity itself in human rights law and, therefore, in  
16 our rules of professional conduct. And I will -- I  
17 would certainly say that, as we move forward, the hope  
18 is that we can -- entity regulation will, if you like,  
19 catch up and that they will be harmonized, but given  
20 everything you've heard about the time that this has  
21 taken and the urgency of the problem, it didn't seem  
22 right to shelve it pending those concerns.

23 Final point, privacy and  
24 confidentiality. Self-identification is always  
25 voluntary. It's contrary to the Human Rights Code to

1       compel it, and clearly the Law Society doesn't on the  
2       LAR and PAR and that continues. That's recommendation  
3       4, so it's voluntary.

4                       Recommendation 5 expressly -- we  
5       expressly added in response to submissions and comments  
6       by Benchers and others. We added the words "voluntary"  
7       so that the -- answering the inclusion survey is  
8       voluntary.

9                       Now, Professor St. Lewis raises another  
10      issue which we haven't considered certainly in any  
11      detail, and that is the possibility because of  
12      vulnerability of an individual saying I will answer for  
13      purposes of the Law Society learning about it, but I  
14      don't want my employer to learn about it so it doesn't  
15      come back.

16                      So I would say this, the same thing that  
17      I've said to her. As we said in the report, the  
18      implementation of these, surveying and demographically,  
19      and in terms of qualitative questions is not -- it's  
20      not new, it's not rocket science. It's being done, it  
21      requires expertise, and the report says that we will  
22      tap the expertise of consultants, if necessary.  
23      Certainly the experts behind me, who have a great deal  
24      of experience and knowledge about the issues of  
25      vulnerability of minority communities in surveying of

1 this kind and who have said go ahead with this, I'm not  
2 avoiding the question so much as to say that there's a  
3 great deal in this report, I think that as Mr. Mercer  
4 said, that involves implementation, and the working  
5 group was very conscious of issues of vulnerability and  
6 confidentiality and, in short, if the numbers are low  
7 and the person can be identified, the data will not be  
8 provided to the firm. That's sort of the general  
9 practice.

10 So in implementing these  
11 recommendations, and we couldn't get into every aspect  
12 of implementation because we are not the experts in  
13 that area, nor -- we would have been talking about more  
14 delay; in implementing it we will certainly have to  
15 take those factors into account.

16 So for all of those reasons our working  
17 group is asking that the -- Mr. Troister's motion be  
18 defeated and the report approved.

19 TREASURER SCHABAS: Thank you very much.  
20 I thank everybody for their remarks today, I was about  
21 to say submissions, but remarks.

22 MR. FALCONER: Mr. Treasurer, I'm  
23 seeking a vote by roll call, please.

24 TREASURER SCHABAS: Yes, that's already  
25 been requested. We're going to call Mr. Troister's

1 motion first and we're going to do a roll call. We  
2 should open up the phone lines so that we're going to  
3 go through the names of the Benchers alphabetically.  
4 You will be asked whether you are -- so we're now  
5 hearing noises on the telephone, that's fine, we've  
6 opened the lines, but just try to be -- I gather  
7 there's some people out in the hall we should bring in  
8 for the vote.

9           When your name is called you will say  
10 audibly and clearly whether you are for or against or  
11 whether you wish to abstain. So that's how this is  
12 done, for those of you who haven't experienced this  
13 before. We actually haven't had one of these for a  
14 year or so.

15           So with that -- quiet, please, it's  
16 important we have quiet while this is going on. So  
17 this is Mr. Troister's motion at tab 8.1. If you  
18 support the motion you should say for, if you're  
19 against you say against, and you can abstain. Mr.  
20 Varro.

21           SECRETARY: Mr. Anand?

22           MR. ANAND: Against.

23           SECRETARY: Mr. Armstrong?

24           MR. ARMSTRONG: For.

25           SECRETARY: Mr. Beach?

1 MR. BEACH: For.

2 SECRETARY: Mr. Bickford?

3 MR. BICKFORD: Against.

4 SECRETARY: Mr. Braithwaite?

5 MR. BRAITHWAITE: Against.

6 SECRETARY: Mr. Bredt?

7 MR. BREDT: For.

8 SECRETARY: Mr. Burd?

9 MR. BURD: Against.

10 SECRETARY: Mr. Callaghan?

11 MR. CALLAGHAN: For.

12 SECRETARY: Ms. Chrétien?

13 MS. CHRÉTIEN: Against.

14 SECRETARY: Ms. Clément? Mr. Cooper?

15 MR. COOPER: Against.

16 SECRETARY: Ms. Corbiere?

17 MS. CORBIERE: Against.

18 SECRETARY: Ms. Criger?

19 MS. CRIGER: For.

20 SECRETARY: Ms. Donnelly?

21 MS. DONNELLY: Against.

22 SECRETARY: Mr. Earnshaw?

23 MR. EARNSHAW: For.

24 SECRETARY: Mr. Evans?

25 MR. EVANS: Against.

1                   TREASURER SCHABAS: There may be people  
2 on the phone. Mr. Epstein said he might phone in.

3                   SECRETARY: I'm sorry. Mr. Epstein, are  
4 you on the phone?

5                   MS. CORSETTI: Cathy Corsetti's on the  
6 phone. I think I got missed.

7                   SECRETARY: Yes, you did. Okay, thank  
8 you, Ms. Corsetti.

9                   BENCHER: Can you let us know how people  
10 are voting? We can't hear on the phone.

11                  TREASURER SCHABAS: We'll go back to the  
12 beginning. I'll repeat the way people have voted and  
13 we're going to call out everybody's name because we  
14 don't know whether some people are on the phone.

15                  So Mr. Anand has voted against.  
16 Mr. Armstrong voted for. Mr. Beach voted for.  
17 Mr. Bickford voted against. Ms. Boyd, are you on the  
18 line?

19                  MS. BOYD: Yes. Against.

20                  TREASURER SCHABAS: Thank you. And Mr.  
21 Braithwaite voted against. Mr. Bredt voted for.  
22 Mr. Burd voted against. Mr. Callaghan voted for.  
23 Ms. Chrétien voted against. Ms. Clément did not  
24 respond. Mr. Cooper voted against. Ms. Corbiere has  
25 voted against. Ms. Corsetti has now voted...

1 MS. CORSETTI: Against.

2 TREASURER SCHABAS: Against. Thank you.

3 Ms. Criger voted for. Ms. Donnelly voted against.

4 Mr. Earnshaw voted for. Mr. Epstein, are you on the

5 line? No, he's not. So Mr. Evans voted against. And

6 we'll continue. Why don't you push the button when you

7 vote.

8 MR. FALCONER: Against.

9 SECRETARY: Mr. Falconer, thank you.

10 Mr. Ferrier, I don't believe you were here, but I'm

11 calling your name, in any event. Mr. Galati?

12 MR. GALATI: Abstain.

13 SECRETARY: Ms. Go?

14 MS. GO: Against.

15 TREASURER SCHABAS: Sorry, I didn't hear

16 you, Ms. Go. Ms. Go votes against.

17 SECRETARY: Mr. Goldblatt?

18 MR. GOLDBLATT: Against.

19 TREASURER SCHABAS: He votes against.

20 SECRETARY: Mr. Groia?

21 MR. GROIA: For.

22 TREASURER SCHABAS: Mr. Groia votes for.

23 SECRETARY: Ms. Haigh?

24 MS. HAIGH: Against.

25 TREASURER SCHABAS: Ms. Haigh votes

1       against.

2                   SECRETARY: Ms. Hartman?

3                   MS. HARTMAN: Against.

4                   TREASURER SCHABAS: Thank you.

5                   SECRETARY: Ms. Horvat?

6                   MS. HORVAT: For.

7                   TREASURER SCHABAS: Ms. Horvat votes

8       for.

9                   SECRETARY: Mr. Krishna?

10                  TREASURER SCHABAS: He's absent.

11                  SECRETARY: And not on the phone. Mr.

12       Lawrie?

13                  MR. LAWRIE: Against.

14                  SECRETARY: Ms. Leiper?

15                  MS. LEIPER: Against.

16                  SECRETARY: Mr. Lem?

17                  MR. LEM: For.

18                  TREASURER SCHABAS: Mr. Lem votes for.

19                  SECRETARY: Mr. Lerner?

20                  MR. LERNER: Abstain.

21                  TREASURER SCHABAS: Mr. Lerner abstains.

22                  SECRETARY: Ms. Lippa?

23                  MS. LIPPA: Against.

24                  SECRETARY: Mr. MacKenzie? Ms. MacLean?

25                  MS. MacLEAN: For.

1 SECRETARY: Mr. McDowell?

2 MR. McDOWELL: Against.

3 SECRETARY: Ms. McGrath?

4 MS. McGRATH: For.

5 SECRETARY: Ms. Merali?

6 MS. MERALI: Against.

7 TREASURER SCHABAS: Ms. Merali votes

8 against.

9 SECRETARY: Mr. Mercer?

10 MR. MERCER: Against.

11 TREASURER SCHABAS: Mr. Mercer votes

12 against.

13 SECRETARY: Ms. Murchie?

14 MS. MURCHIE: Against.

15 TREASURER SCHABAS: Ms. Murchie votes

16 against.

17 SECRETARY: Ms. Nishikawa?

18 MS. NISHIKAWA: Against.

19 TREASURER SCHABAS: Ms. Nishikawa votes

20 against.

21 SECRETARY: Ms. Papageorgiou?

22 MS. PAPAGEORGIU: Against.

23 TREASURER SCHABAS: Ms. Papageorgiou

24 votes against.

25 SECRETARY: Ms. Richardson?

1 MS. RICHARDSON: For.

2 TREASURER SCHABAS: Ms. Richardson votes

3 for.

4 SECRETARY: Ms. Richer?

5 MS. RICHER: Against.

6 TREASURER SCHABAS: Ms. Richer votes

7 against.

8 SECRETARY: Mr. Rosenthal?

9 MR. ROSENTHAL: Against.

10 SECRETARY: Mr. Sharda?

11 MR. SHARDA: Against.

12 SECRETARY: Mr. Sheff?

13 MR. SHEFF: For.

14 SECRETARY: Mr. Sikand?

15 MR. SIKAND: Against.

16 TREASURER SCHABAS: Mr. Sikand votes

17 against.

18 SECRETARY: Mr. Spurgeon?

19 MR. SPURGEON: Against.

20 TREASURER SCHABAS: Mr. Spurgeon votes

21 against.

22 SECRETARY: Ms. St. Lewis?

23 MS. ST. LEWIS: For.

24 TREASURER SCHABAS: Ms. St. Lewis votes

25 for.

1 SECRETARY: Ms. Strosberg?  
2 MS. STROSBERG: For.  
3 TREASURER SCHABAS: Ms. Strosberg votes  
4 for.  
5 SECRETARY: Mr. Strosberg?  
6 MR. STROSBERG: For.  
7 SECRETARY: Mr. Troister?  
8 MR. TROISTER: For.  
9 SECRETARY: Mr. Udell?  
10 MR. UDELL: For.  
11 TREASURER SCHABAS: Mr. Troister and Mr.  
12 Udell vote for.  
13 SECRETARY: Ms. Vespry?  
14 MS. VESPRY: For.  
15 TREASURER SCHABAS: Ms. Vespry votes  
16 for.  
17 SECRETARY: Ms. Walker?  
18 MS. WALKER: Against.  
19 TREASURER SCHABAS: Ms. Walker votes  
20 against.  
21 SECRETARY: Mr. Wardle?  
22 TREASURER SCHABAS: He's absent.  
23 SECRETARY: And not on the phone. Is  
24 there anyone whose name I haven't called?  
25 Treasurer, the motion fails 31 to 19

1       against. 31 against, 19 for, two abstentions.

2                   TREASURER SCHABAS: Thank you.

3                   -- Applause.

4                   TREASURER SCHABAS: I'm going to call  
5 the motion by Mr. Anand.

6                   MS. ST. LEWIS: Treasurer, point. Are  
7 we allowed to do any amendments to that?

8                   TREASURER SCHABAS: If there's an  
9 amendment it should be made right now. So put on your  
10 microphone.

11                   MS. ST. LEWIS: Apologies. Treasurer, I  
12 realize that the way it's been presented has been in  
13 such a manner that it suggests amendments are not  
14 possible. But if I read the room and I read the  
15 comments of everybody that has been heard, everybody is  
16 actually sharing the concern --

17                   TREASURER SCHABAS: Ms. St. Lewis,  
18 what's your amendment?

19                   MS. ST. LEWIS: Yes, the amendment is to  
20 number 4. If people take up the text, what I'm  
21 suggesting is in the amendment right after line 3,  
22 where it talks about "compiled from the Lawyers Annual  
23 Report and the Paralegal Annual Report", I'm suggesting  
24 the insertion of the following text. I'll read it  
25 slowly.

1                    "In a manner consistent with the best  
2 practices established to protect licensees vulnerable  
3 to harm that may flow from this disclosure." And then  
4 the rest of the provision would read the same way.

5                    TREASURER SCHABAS: Sorry, could you  
6 just -- these are words you would add at the end of  
7 number 4?

8                    MS. ST. LEWIS: No, it's words that I  
9 would add immediately after on line 3 of number 4.  
10 Number 4 reads "each year the Law Society". So I'm  
11 saying the third line starts with "compiled from the  
12 Lawyers Annual Report and the Paralegal Annual Report".  
13 And I am inserting these words there in the middle, and  
14 then it would continue with, "so they can compare their  
15 data with the aggregate".

16                    TREASURER SCHABAS: Could you read the  
17 words again slowly?

18                    MS. ST. LEWIS: Yes, I can, Treasurer.  
19 "In a manner consistent with the best practices  
20 established to protect licensees vulnerable to harm  
21 that may flow from this disclosure."

22                    TREASURER SCHABAS: Mr. Varro is just  
23 going to reread it to make sure we've got it correct.

24                    SECRETARY: Should I read the whole  
25 thing?

1                   TREASURER SCHABAS: Yes, please, Mr.  
2 Varro. Do you have a seconder?

3                   MS. VESPRY: I'll second.

4                   TREASURER SCHABAS: Ms. Vespry.

5                   SECRETARY: The proposed amendment to  
6 recommendation 4, the entire recommendation would read  
7 as follows: "Each year the Law Society will measure  
8 progress quantitatively by providing legal workplaces  
9 of at least 25 licensees in Ontario with the  
10 qualitative self-identification data of their licensees  
11 compiled from the Lawyers Annual Report and the  
12 Paralegal Annual Report in a manner consistent with the  
13 best practices established to protect licensees  
14 vulnerable to harm which may flow from this disclosure  
15 so that they can compare their data with the aggregate  
16 demographic data gathered from the profession as a  
17 whole through the annual reports."

18                   TREASURER SCHABAS: It's not a friendly  
19 amendment.

20                   All right. So I'm going to open the  
21 floor for ten minutes at most if people feel the urge  
22 that they have to say something, I think we've heard a  
23 lot of views already about this, and then I'm going to  
24 call the vote. Hopefully in less than ten minutes,  
25 but, Ms. Criger, you have your hand up?

1 MS. CRIGER: Yes, Treasurer, thank you.  
2 I have another amendment proposed, seconded by Mr.  
3 Bredt, but I'll await the outcome of the vote on first  
4 amendment.

5 TREASURER SCHABAS: All right. Then  
6 we'll proceed. Does anybody have anything they feel  
7 compelled to say about Ms. St. Lewis' amendment that  
8 hasn't already been said? Mr. McDowell.

9 MR. McDOWELL: I just believe that  
10 there is a real danger to drafting on the fly matters  
11 as important, and that's all I have to say.

12 TREASURER SCHABAS: All right.

13 MS. VESPRY: I believe --

14 TREASURER SCHABAS: Ms. Vespry?

15 MS. VESPRY: I believe that refusing to  
16 include the requirement for best practices is  
17 shortsighted and leaving this less than it could be.

18 TREASURER SCHABAS: All right. Is there  
19 anybody else who wishes to say anything about the  
20 amendment?

21 MR. ANAND: Could I just inquire about  
22 procedure? We're going to be voting on the whole  
23 package, so why are we considering amendments to  
24 individual --

25 TREASURER SCHABAS: I think the proposal

1 is that's the amendment to the whole package. That's  
2 Ms. St. Lewis' proposed amendment to the entire  
3 package. She's dealt with something right there.

4 So the question would then be whether we  
5 vote on the whole package with this amendment added.

6 MR. ANAND: Right, versus voting on the  
7 whole package.

8 TREASURER SCHABAS: We're about to vote  
9 on her amendment and whether that should be included in  
10 the package.

11 MR. ANAND: I don't know whether that's  
12 procedurally --

13 MR. FALCONER: A point of order,  
14 Treasurer.

15 TREASURER SCHABAS: Yes, Mr. Falconer?

16 MR. FALCONER: The point of order is  
17 that our practices generally, and Mr. Varro, of course,  
18 will guide us with your rulings, Treasurer, but our  
19 practice is when a motion is before Convocation, the --  
20 there is an opportunity to seek a friendly amendment to  
21 the motion so that the mover voluntarily changes. But  
22 if the mover doesn't accept the amendment to the motion  
23 as a friendly amendment, then what's next is to vote on  
24 the motion.

25 If we were to do what we're starting to

1 do right now, then you will be amending the report line  
2 by line. Each Bencher here can bring a motion to  
3 change the report.

4           The motion was actually -- the Troister  
5 motion was to consider it individually, that failed.  
6 This is a motion to pass the report as framed and the  
7 only way that can be altered is through, with respect,  
8 a friendly amendment; in other words, something the  
9 mover consents to. If it were otherwise, we would be  
10 ground down with you need a notice, you need the proper  
11 provisions. Otherwise we will do this for hours  
12 because each amendment to the report will -- it's the  
13 difference between the motion and the report itself.  
14 The motion is to pass the report as framed.

15           So I'm seeking a ruling, Treasurer, that  
16 as a result of the debate and where we're at in respect  
17 of the Troister motion that, absent a friendly  
18 amendment, we are voting on the report as before  
19 Convocation. Otherwise this is an endless circle.

20           TREASURER SCHABAS: Mr. Anand, very,  
21 very briefly on this point.

22           MR. ANAND: I'm just saying we are doing  
23 exactly what Mr. Troister was asking us to do now.  
24 We're looking at a specific recommendation. We are  
25 making -- there are amendments proposed to it, and if

1       there are ten amendments to 13 recommendations, I'm not  
2       quite sure how we're going to vote on them.

3                   If the issue is -- if you want to vote  
4       on them individually then you have just granted Mr.  
5       Troister's motion.

6                   TREASURER SCHABAS: Okay. Just give me  
7       a moment to discuss this with Mr. Varro.

8                   All right, the rules provide that a  
9       motion to amend may be made at any time and there's --  
10      if it's not a friendly amendment then we have to vote  
11      on the motion to amend.

12                   So there is a motion to amend Mr.  
13      Anand's motion to add those words. Does anybody else  
14      have anything to say about that motion? Mr. Falconer?

15                   MR. FALCONER: If we go down this path  
16      you have ruled, Treasurer, that it amounts to a motion  
17      to amend, I wish to be clear, if we go down this path,  
18      we will, in essence, be inviting an interminable  
19      process.

20                   TREASURER SCHABAS: I don't think so,  
21      Mr. Falconer. I think we're going to reach pretty  
22      clearly a resolution to this.

23                   The rules are that a motion to amend can  
24      be made at any time. Mr. Troister's motion was a  
25      substantive motion to vote on everything individually.

1 That's not -- that was not a motion to amend, it was a  
2 different kind of motion, so that's where we are.

3 Is there anybody who wishes to speak  
4 further to Ms. St. Lewis' motion, otherwise I will call  
5 a vote.

6 Unless there's a request for a roll call  
7 vote I'm going to ask for a show of hands. All in  
8 favour of Ms. St. Lewis' motion? Just hold up your  
9 hand and Mr. Varro will call -- will count.

10 All right, 22 for in the room. Let's  
11 ask on the telephone. I guess we'll have to go through  
12 on the telephone who's in favour.

13 MS. HARTMAN: Carol Hartman in favour.

14 TREASURER SCHABAS: Go ahead.

15 MS. MacLEAN: Virginia MacLean in  
16 favour.

17 TREASURER SCHABAS: Thank you.

18 MS. CORSETTI: Cathy Corsetti in favour.

19 MR. LAWRIE: Brian Lawrie.

20 TREASURER SCHABAS: Brian Lawrie, are  
21 you in favour?

22 MR. LAWRIE: Yes, in favour.

23 TREASURER SCHABAS: And Jonathan  
24 Rosenthal?

25 MR. ROSENTHAL: Against.

1 MS. BOYD: Marion Boyd in favour.

2 MS. LIPPA: Marian Lipa in favour.

3 MR. STROSBERG: Harvey Strosberg, in  
4 favour.

5 TREASURER SCHABAS: Thank you, Mr.  
6 Strosberg.

7 MR. WARDLE: Peter Wardle in favour.

8 TREASURER SCHABAS: Was that Mr. Sharda,  
9 did you want to vote on that?

10 MR. SHARDA: I think my daughter already  
11 did.

12 TREASURER SCHABAS: I take it you're in  
13 favour of the motion, Mr. Sharda?

14 MR. SHARDA: No, she was crying, so I  
15 think that's an against.

16 TREASURER SCHABAS: Okay. Thank you.

17 MS. LEIPER: I'm in favour, Treasurer.  
18 Janet Leiper.

19 TREASURER SCHABAS: All right.

20 MR. WARDLE: Sorry, did you get me,  
21 Treasurer? Peter Wardle, in favour.

22 TREASURER SCHABAS: Yes, Mr. Wardle.  
23 All right. We probably know the outcome from that, but  
24 let's just see where we are, Mr. Varro. 35 in favour.  
25 I think -- I don't know that we need to count the

1       against. I think it carries. Are there any other  
2       amendments? Ms. Criger.

3                   MS. CRIGER: Yes, Treasurer. I move,  
4       seconded by Mr. Bredt, that in recommendation 3(1) the  
5       word "require" be replaced with the word "encourage".

6                   TREASURER SCHABAS: Any discussion on  
7       that that people feel compelled to say? Mr. Falconer.

8                   MR. FALCONER: The credibility of our  
9       work relies upon our ability to make decisions. What  
10      we're showing right now is we are struggling with  
11      making decisions.

12                   I encourage us to understand that if we  
13      pick this report apart piece by piece, including what  
14      is being suggested right now, and particularly what is  
15      being suggested right now, moving from the mandatory  
16      nature of some of the recommendations, we will lose the  
17      support of people behind us. So that --

18                   -- Applause.

19                   MR. FALCONER: That may not be  
20      determinative for some people in this room, I get that.  
21      As the chair of the Equity and Aboriginal Issues  
22      Committee I'm telling you that I cannot do my work  
23      without that partnership.

24                   So as you water this thing down and we  
25      lose their support, you guarantee, you absolutely

1 guarantee that our initiative is sabotaged. I'm sorry  
2 to sound that dramatic. I think you're much better off  
3 voting against the report than this small gashes and  
4 ripping apart this project. I think we should show  
5 some integrity to our decision-making progress.

6 Just simply vote against the report, but  
7 this picking it apart piece by piece, it really lacks  
8 credibility as an exercise. Thank you, Treasurer.

9 -- Applause.

10 TREASURER SCHABAS: Thank you. Mr.  
11 McDowell.

12 MR. McDOWELL: I will tell you candidly  
13 that I had some misgivings about this in the committee,  
14 but what carried me over the line was the reflection  
15 that Mr. Anand had, which is we require this in all  
16 sorts of different contexts, and that this is an acute  
17 problem. This is something where, frankly, we have to  
18 hit the profession over the head with a plank to get  
19 them to listen.

20 This is actually a fairly elegant means  
21 of doing it, number one, and, number 2, as Mr. Anand  
22 says, it simply draws to the attention of members of  
23 the professions their existing obligations under the  
24 Human Rights Code. So I support the inclusion of the  
25 mandatory language.

1                   TREASURER SCHABAS: Ms. Vespry.

2                   MS. VESPRY: We have already said that  
3 we will be amending the rules to give more prominence  
4 to the Human Rights Code in one of the other  
5 recommendations. I don't believe that we need to speak  
6 loudly and slowly to our membership for them to  
7 understand what we're saying and saying that this is  
8 important.

9                   I don't see any need to redouble, and  
10 making it an option, making it a recommendation carries  
11 that weight of knowing that if you're not doing it  
12 properly you can get in trouble, without demanding  
13 what, yes, does essentially come down to requiring  
14 people to say that they think a certain way, whether  
15 they do or not.

16                   TREASURER SCHABAS: Mr. Braithwaite.

17                   MR. BRAITHWAITE: I have a significant  
18 concern. This motion is taking the position that we  
19 move from a mandatory language to a permissive  
20 language. That clearly waters down the proposal, so  
21 that, in and of itself, is certainly not a friendly  
22 motion.

23                   I'm also extremely concerned about this  
24 particular day, because we just went through the  
25 exercise of arguing why this particular motion is

1 important to us, then we had a vote on Mr. Troister's  
2 proposition. That vote was to not go through each one  
3 of these things individually.

4 This is just another mechanism to find a  
5 way to go through each one of these things again.  
6 That's what we're doing. That already has been  
7 defeated and we've opened up the door again to do what  
8 they couldn't do directly. It's hurting the whole  
9 process. So I can't -- obviously my position is I  
10 can't accept that amendment and I'm having extreme  
11 difficulty accepting the process.

12 TREASURER SCHABAS: Ms. Criger.

13 MS. CRIGER: Thank you, Treasurer. I  
14 recognize very much the importance of this report. I  
15 recognize very much the work that went into it. I  
16 agree with almost everything in this report except for  
17 the privacy issue that has been addressed by Ms. St.  
18 Lewis' amendment and except for the notion of requiring  
19 a particular way of thinking.

20 I very much, very much wish to vote in  
21 favour of this report. I very much want to, I believe  
22 it's time. I agree with everything everyone said about  
23 it being time, but I cannot get over that one thing and  
24 I don't want that to defeat my participation in this  
25 historic moment.

1 I'm with Ms. Vespry. I believe that the  
2 emphasis we will give this in the rules and the  
3 emphasis in the Ontario Human Rights Code will carry  
4 the day without us requiring a triple hit simply for  
5 our licensees, thank you.

6 TREASURER SCHABAS: Thank you.  
7 Mr. Mercer.

8 MR. MERCER: I'm very much -- very much  
9 against this amendment because I think it sends  
10 unintentionally the worst possible message. This --  
11 what is in the report is an acknowledgment of  
12 obligations under human rights law. Those shouldn't be  
13 optional. The idea of saying to people you can  
14 optionally confirm that you accept your lawful  
15 obligations to me is not just a watering down, it's a  
16 step in exactly the wrong direction.

17 -- Applause.

18 TREASURER SCHABAS: Ms. Papageorgiou,  
19 you wanted to...

20 MS. PAPAGEORGIU: Same point. When you  
21 have mandatory language about the trust accounts and  
22 about mortgage fraud and then you have permissive on  
23 this issue, it telegraphs that the issue of racism is  
24 simply less important than mortgage fraud, and I can't  
25 imagine that we would send that message.

1                   TREASURER SCHABAS: Mr. Galati, go  
2 ahead. Very quickly.

3                   MR. GALATI: Very briefly, during the  
4 course of the day I think I have been swayed by the  
5 intellect of Mr. Braithwaite and the good looks of  
6 Mr. Mercer.

7                   For what this report is worth, it  
8 constipates the mosquito, and if you water it down any  
9 more, what's the point. I fully endorse --

10                   -- Applause.

11                   TREASURER SCHABAS: Thank you, Mr.  
12 Galati.

13                   MR. COOPER: Thank you, Treasurer. I  
14 had said earlier this is a duh moment. In ten years  
15 this will really be a duh moment, because they will be  
16 looking back at us and saying what were you thinking?

17                   Like this is not -- and I echo what Mr.  
18 Mercer has said, what Mr. Galati has said, Ms.  
19 Papageorgiou has said. It's about us sending a message  
20 to the community, it's about us sending a message to  
21 the public who we are to protect. They need to feel  
22 safe when they come in our offices. They need to know  
23 that this is a simple declaration, it's long overdue.

24                   TREASURER SCHABAS: Thank you. On the  
25 telephone I heard a couple of requests to speak to this

1 very briefly. I think it is Ms. McGrath.

2 MS. McGRATH: I just wanted to speak to  
3 the matter already being in the rules. Frankly, we  
4 heard a lot of that during mortgage fraud cases and  
5 also at LawPro, and even though the rules prevent us as  
6 lawyers from sharing the TerraNet password or TerraNet  
7 key with their staff, people did it time and time and  
8 time again until we actually put an affirmative  
9 declaration into the MAR so that they had to certify  
10 that they had not shared their key with -- their  
11 TerraNet key with anyone.

12 So the fact that it's in the rules does  
13 not in and of itself ensure compliance among the  
14 profession.

15 TREASURER SCHABAS: Thank you, Ms.  
16 McGrath. Anybody else on the telephone?

17 MR. SHARDA: Mr. Sharda here.

18 TREASURER SCHABAS: Yes, Mr. Sharda, did  
19 you want to say something about this motion?

20 MR. SHARDA: Yes, I think what we're  
21 just doing, Mr. Troister's motion, what he wanted to  
22 do, and I think we better just move on to a vote. If  
23 you don't like it just vote against the recommendation,  
24 that's fine.

25 TREASURER SCHABAS: I don't think

1 there's anybody else on the phone, is there, who wants  
2 to speak to this? Mr. Anand -- sorry, did someone say  
3 something on the telephone?

4 MS. HARTMAN: It's Carol Hartman. I  
5 agree, we need to call the vote.

6 TREASURER SCHABAS: Mr. Anand, can we  
7 call the vote? Do you wish to say something more?

8 MR. ANAND: I just want to say that I'm  
9 shocked by the -- I'm shocked by the suggestion that we  
10 would be taking out the most minimal mandatory measure  
11 and I wanted to say we've heard again from Benchers who  
12 have said that I approve the whole report, but I want  
13 to change one or two of the provisions. Well, that's  
14 what we had the debate about.

15 So it doesn't sit right with me that the  
16 rules could provide -- what we're saying is that  
17 Mr. Troister's motion was completely unnecessary, we  
18 could have gone through this from the beginning.

19 TREASURER SCHABAS: I think that point  
20 has been made many times. I think it's time to call  
21 the vote on that. So we will -- unless there's a call  
22 for a roll call, we will do that by a show of hands  
23 again.

24 MR. ANAND: Roll call.

25 TREASURER SCHABAS: Roll call vote.

1 There's a call for a roll call. So Ms. Vespry --  
2 sorry, it's Ms. Criger's motion. Ms. Criger's motion  
3 is to amend the recommendation in -- just a second --  
4 3(1) to change the word "require" to "encourage".

5 So if you're in favour of changing that  
6 wording you vote for. If you're against, you vote  
7 against. We're going to go around the room. Okay, Mr.  
8 Varro, call the vote.

9 SECRETARY: Mr. Anand?

10 MR. ANAND: Against.

11 TREASURER SCHABAS: Mr. Anand is  
12 against.

13 SECRETARY: Mr. Armstrong? Mr. Beach?

14 MR. BEACH: For.

15 TREASURER SCHABAS: Mr. Beach votes for.

16 SECRETARY: Mr. Bickford?

17 MR. BICKFORD: Against.

18 TREASURER SCHABAS: Mr. Bickford is  
19 against.

20 SECRETARY: Ms. Boyd?

21 MS. BOYD: Against.

22 SECRETARY: Mr. Braithwaite?

23 MR. BRAITHWAITE: Against.

24 SECRETARY: Mr. Bredt?

25 MR. BREDT: For.

1 SECRETARY: Mr. Burd? Mr. Callaghan?

2 MR. CALLAGHAN: Against.

3 TREASURER SCHABAS: Sorry, Mr. Callaghan  
4 is against, and I neglected to say that Mr. Bredt, who  
5 seconded it, is for.

6 MR. FALCONER: They couldn't hear the  
7 call for the votes on the phone.

8 SECRETARY: Mr. Burd?

9 TREASURER SCHABAS: Mr. Burd, are you  
10 still there?

11 MR. BURD: Against.

12 TREASURER SCHABAS: He's against.

13 SECRETARY: Ms. Chrétien?

14 MS. CHRÉTIEN: Against.

15 SECRETARY: Ms. Clément? Mr. Cooper?

16 MR. COOPER: Absolutely against.

17 TREASURER SCHABAS: He is against.

18 SECRETARY: Ms. Corbiere?

19 MS. CORBIERE: Against.

20 TREASURER SCHABAS: She's against.

21 SECRETARY: Ms. Corsetti?

22 MS. CORSETTI: Against.

23 SECRETARY: Ms. Criger?

24 MS. CRIGER: For.

25 TREASURER SCHABAS: Ms. Criger is for.

1 SECRETARY: Ms. Donnelly?  
2 MS. DONNELLY: Against.  
3 TREASURER SCHABAS: Ms. Donnelly's  
4 against.  
5 SECRETARY: Mr. Earnshaw?  
6 MR. EARNSHAW: Against.  
7 TREASURER SCHABAS: Against.  
8 SECRETARY: Mr. Epstein? Mr. Evans?  
9 MR. EVANS: Against.  
10 TREASURER SCHABAS: He's against.  
11 SECRETARY: Mr. Falconer?  
12 MR. FALCONER: Against.  
13 TREASURER SCHABAS: Against.  
14 SECRETARY: Mr. Ferrier? Mr. Galati?  
15 MR. GALATI: Against.  
16 TREASURER SCHABAS: Mr. Galati's  
17 against.  
18 SECRETARY: Ms. Go?  
19 MS. GO: Against.  
20 TREASURER SCHABAS: Against.  
21 SECRETARY: Mr. Goldblatt?  
22 MR. GOLDBLATT: Against.  
23 TREASURER SCHABAS: Against.  
24 SECRETARY: Mr. Groia?  
25 MR. GROIA: Against.

1                   TREASURER SCHABAS:  Against.  
2                   SECRETARY:  Ms. Haigh?  
3                   MS. HAIGH:  Against.  
4                   TREASURER SCHABAS:  Against.  
5                   SECRETARY:  Ms. Hartman?  
6                   MS. HARTMAN:  Against.  
7                   SECRETARY:  Ms. Horvat?  
8                   MS. HORVAT:  Against.  
9                   TREASURER SCHABAS:  Against.  
10                  SECRETARY:  Mr. Krishna?  Mr. Lawrie?  
11                  MR. LAWRIE:  Against.  
12                  SECRETARY:  Ms. Leiper?  
13                  MS. LEIPER:  Against.  
14                  SECRETARY:  Mr. Lem?  
15                  MR. LEM:  For.  
16                  TREASURER SCHABAS:  Mr. Lem is for.  
17                  SECRETARY:  Mr. Lerner?  
18                  MR. LERNER:  Against.  
19                  SECRETARY:  Ms. Lippa?  
20                  MS. LIPPA:  Against.  
21                  SECRETARY:  Mr. MacKenzie?  Ms. MacLean?  
22                  MS. MacLEAN:  Against.  
23                  SECRETARY:  Mr. McDowell?  
24                  MR. McDOWELL:  Against.  
25                  SECRETARY:  Ms. McGrath?

1 MS. McGRATH: Against.

2 SECRETARY: Ms. Merali?

3 MS. MERALI: Against.

4 SECRETARY: Mr. Mercer?

5 MR. MERCER: Against.

6 TREASURER SCHABAS: Sorry, Ms. Merali  
7 and Mr. Mercer are both against.

8 SECRETARY: Ms. Murchie?

9 MS. MURCHIE: Against.

10 TREASURER SCHABAS: She's against.

11 SECRETARY: Ms. Nishikawa?

12 MS. NISHIKAWA: Against.

13 TREASURER SCHABAS: She's against.

14 SECRETARY: Ms. Papageorgiou?

15 MS. PAPAGEORGIU: Against.

16 TREASURER SCHABAS: Against.

17 SECRETARY: Ms. Richardson?

18 MS. RICHARDSON: Against.

19 TREASURER SCHABAS: Against.

20 SECRETARY: Ms. Richer?

21 MS. RICHER: Against.

22 TREASURER SCHABAS: Against.

23 SECRETARY: Mr. Rosenthal?

24 MR. ROSENTHAL: Strongly against.

25 SECRETARY: Mr. Sharda?

1 MR. SHARDA: Against.

2 SECRETARY: Mr. Sheff? Mr. Sikand?

3 MR. SIKAND: Against.

4 TREASURER SCHABAS: Mr. Sikand is  
5 against.

6 SECRETARY: Mr. Spurgeon?

7 MR. SPURGEON: Against.

8 SECRETARY: Ms. St. Lewis?

9 TREASURER SCHABAS: Can't hear you.

10 MS. ST. LEWIS: Abstain.

11 TREASURER SCHABAS: Ms. St. Lewis  
12 abstains.

13 SECRETARY: Ms. Strosberg?

14 MS. STROSBURG: Against.

15 TREASURER SCHABAS: She's against.

16 SECRETARY: Mr. Strosberg?

17 MR. STROSBURG: Against.

18 SECRETARY: Mr. Troister?

19 MR. TROISTER: For.

20 SECRETARY: Mr. Udell?

21 MR. UDELL: Abstain.

22 TREASURER SCHABAS: Sorry, Mr. Troister  
23 voted for and Mr. Udell abstained.

24 SECRETARY: Ms. Vespry?

25 MS. VESPRY: For.

1                   TREASURER SCHABAS: Ms. Vespry votes  
2     for.

3                   SECRETARY: Ms. Walker?

4                   MS. WALKER: Against.

5                   TREASURER SCHABAS: Against.

6                   SECRETARY: Mr. Wardle?

7                   TREASURER SCHABAS: All right. The  
8     motion fails. Are there any...  
9                   -- Applause.

10                  TREASURER SCHABAS: Mr. Varro will add  
11     up the numbers, but it's clear. Overwhelmingly failed.  
12                  Are there any other amendments? Could  
13     we move to Mr. Anand's motion? Seeing and hearing  
14     nothing, I will call the vote. Again, a roll call has  
15     been requested. So, Mr. Varro, please call the vote.

16                  SECRETARY: So this is the motion --

17                  TREASURER SCHABAS: So this is the  
18     motion that is at tab -- it is Mr. Anand's motion with  
19     the amendment that was passed in recommendation 4.  
20     That's what is before us.

21                  SECRETARY: Mr. Anand?

22                  MR. ANAND: For.

23                  SECRETARY: Mr. Armstrong? Mr. Beach?

24                  MR. BEACH: Abstain.

25                  SECRETARY: Mr. Bickford?

1 MR. BICKFORD: For.

2 TREASURER SCHABAS: Mr. Bickford is for.

3 SECRETARY: Ms. Boyd?

4 MS. BOYD: For.

5 TREASURER SCHABAS: For.

6 SECRETARY: Mr. Braithwaite?

7 MR. BRAITHWAITE: For.

8 TREASURER SCHABAS: He's for.

9 SECRETARY: Mr. Bredt?

10 MR. BREDT: For.

11 TREASURER SCHABAS: For.

12 SECRETARY: Mr. Burd?

13 MR. BURD: For.

14 SECRETARY: Mr. Callaghan?

15 MR. CALLAGHAN: For.

16 TREASURER SCHABAS: He's for.

17 SECRETARY: Ms. Chrétien?

18 MS. CHRÉTIEN: For.

19 SECRETARY: Ms. Clément? Mr. Cooper?

20 MR. COOPER: For.

21 TREASURER SCHABAS: He's for.

22 SECRETARY: Ms. Corbiere?

23 MS. CORBIERE: For.

24 TREASURER SCHABAS: For.

25 SECRETARY: Ms. Corsetti?

1 MS. CORSETTI: For.

2 SECRETARY: Ms. Criger?

3 MS. CRIGER: For.

4 TREASURER SCHABAS: For.

5 SECRETARY: Ms. Donnelly?

6 MS. DONNELLY: For.

7 TREASURER SCHABAS: For.

8 SECRETARY: Mr. Earnshaw?

9 MR. EARNSHAW: For.

10 TREASURER SCHABAS: For.

11 SECRETARY: Mr. Epstein? Mr. Evans?

12 MR. EVANS: For.

13 TREASURER SCHABAS: For.

14 SECRETARY: Mr. Falconer?

15 MR. FALCONER: For.

16 TREASURER SCHABAS: For.

17 SECRETARY: Mr. Ferrier? Mr. Galati?

18 MR. GALATI: Reluctant for.

19 TREASURER SCHABAS: He's for.

20 SECRETARY: Ms. Go?

21 MS. GO: For.

22 SECRETARY: Mr. Goldblatt?

23 MR. GOLDBLATT: Unreluctant for.

24 TREASURER SCHABAS: For.

25 SECRETARY: Mr. Groia?

1 MR. GROIA: For.

2 TREASURER SCHABAS: For.

3 SECRETARY: Ms. Haigh?

4 MS. HAIGH: For.

5 TREASURER SCHABAS: For.

6 SECRETARY: Ms. Hartman?

7 MS. HARTMAN: For.

8 SECRETARY: Ms. Horvat?

9 MS. HORVAT: For.

10 TREASURER SCHABAS: For.

11 SECRETARY: Mr. Krishna? Mr. Lawrie?

12 MR. LAWRIE: For.

13 TREASURER SCHABAS: Ms. Leiper?

14 MS. LEIPER: For.

15 TREASURER SCHABAS: She's for.

16 SECRETARY: Mr. Lem?

17 MR. LEM: For.

18 TREASURER SCHABAS: For.

19 SECRETARY: Mr. Lerner?

20 MR. LERNER: For.

21 SECRETARY: Ms. Lippa?

22 MS. LIPPA: For.

23 SECRETARY: Mr. MacKenzie? Ms.

24 MacLean?

25 MS. MacLEAN: For.

1 SECRETARY: Mr. McDowell?  
2 MR. McDOWELL: What? Oh, for.  
3 TREASURER SCHABAS: Mr. McDowell is for.  
4 SECRETARY: Ms. McGrath?  
5 MS. McGRATH: For.  
6 SECRETARY: Ms. Merali?  
7 MS. MERALI: For.  
8 TREASURER SCHABAS: For.  
9 SECRETARY: Mr. Mercer?  
10 MR. MERCER: For.  
11 TREASURER SCHABAS: For.  
12 SECRETARY: Ms. Murchie?  
13 MS. MURCHIE: For.  
14 TREASURER SCHABAS: For.  
15 SECRETARY: Ms. Nishikawa?  
16 MS. NISHIKAWA: For.  
17 TREASURER SCHABAS: For.  
18 SECRETARY: Ms. Papageorgiou?  
19 MS. PAPAGEORGIOU: For.  
20 TREASURER SCHABAS: For.  
21 SECRETARY: Ms. Richardson?  
22 MS. RICHARDSON: For.  
23 TREASURER SCHABAS: For.  
24 SECRETARY: Ms. Richer?  
25 MS. RICHER: For.

1                   TREASURER SCHABAS: For.

2                   SECRETARY: Mr. Rosenthal?

3                   MR. ROSENTHAL: For.

4                   TREASURER SCHABAS: For.

5                   SECRETARY: Mr. Sharda?

6                   MR. SHARDA: For.

7                   SECRETARY: Mr. Sheff? Mr. Sikand?

8                   MR. SIKAND: For.

9                   TREASURER SCHABAS: For.

10                  SECRETARY: Mr. Spurgeon?

11                  MR. SPURGEON: For.

12                  TREASURER SCHABAS: For.

13                  SECRETARY: Ms. St. Lewis?

14                  MS. ST. LEWIS: For.

15                  TREASURER SCHABAS: For.

16                  SECRETARY: Ms. Strosberg?

17                  MS. STROSBURG: For.

18                  TREASURER SCHABAS: For.

19                  SECRETARY: Mr. Strosberg?

20                  MR. STROSBURG: For.

21                  SECRETARY: Mr. Troister?

22                  MR. TROISTER: Abstain.

23                  SECRETARY: Mr. Udell?

24                  MR. UDELL: For.

25                  TREASURER SCHABAS: Ms. Vespry?

1 MS. VESPRY: Abstain.

2 TREASURER SCHABAS: Abstain.

3 SECRETARY: Ms. Walker?

4 MS. WALKER: For.

5 TREASURER SCHABAS: Ms. Walker votes  
6 for.

7 SECRETARY: Mr. Wardle?

8 TREASURER SCHABAS: I'm sorry, I didn't  
9 announce, Mr. Troister, you abstained, is that right?

10 MR. TROISTER: Yes.

11 TREASURER SCHABAS: All right. There  
12 are three abstentions. Everybody else voted for; the  
13 motion is carried.

14 -- Applause.

15 TREASURER SCHABAS: So we're not  
16 finished yet. I want to first -- don't go. Some of  
17 you may want to stick around in the audience, there is  
18 a related motion of Ms. Murchie's at tab 8.2, but I  
19 want to just finish this round by expressing my thanks  
20 and admiration to the work of the working group.

21 This is an extraordinary day. I think  
22 they have great reason to be proud of the work they've  
23 done. I want to thank EAG, which has participated in  
24 this, and their support.

25 I, too, want to single out the staff.

1 First, Josée Bouchard, who has moved on to other  
2 things, and Ekua Quansah, both of whom worked extremely  
3 hard with the working group. Today I think you make  
4 all of us at the Law Society very proud. So thank you  
5 for that.

6 -- Applause.

7 TREASURER SCHABAS: There is a related  
8 motion at tab 8.2, moved by Ms. Murchie, seconded by  
9 Ms. St. Lewis, that -- Ms. Murchie, do you want to just  
10 get up and read your motion?

11 MS. MURCHIE: If I can, I can do it from  
12 here.

13 TREASURER SCHABAS: Sure, please.

14 MS. MURCHIE: This is a motion that  
15 would require the Law Society, as it moves forward with  
16 the implementation of the recommendations that have  
17 just been approved, to ensure that policies,  
18 procedures, measures, initiatives are extended as  
19 appropriate to all equality-seeking groups while  
20 continuing to ensure that the needs of racialized  
21 licensees are fully acknowledged and addressed.

22 And this motion is moved by me and  
23 seconded by Ms. St. Lewis.

24 Treasurer, you can see by the preamble  
25 that the motion is intended to acknowledge and

1 celebrate the leadership of the Racialized Working  
2 Group and the larger racialized community in developing  
3 this set of recommendations, that it turns out are  
4 relevant to other equity, equality-seeking groups.

5 I should say that before I proceeded  
6 with the motion I did consult with the Equity Advisory  
7 Group and with the Indigenous Advisory Group and both  
8 were very open to the motion and supportive to the idea  
9 of proceeding in this manner.

10 I've also spoken to some of the other  
11 organizations and had a positive reaction. I've  
12 reviewed the submissions received from the stakeholder  
13 groups and found that there seemed to be general  
14 support for this idea and, in some cases, for the  
15 motion itself, if they had notice of it.

16 So the rationale is threefold. First of  
17 all, there's not much appetite in the equality  
18 community or the Law Society for a separate task force,  
19 for separate regimes for each of the separate  
20 equality-seeking groups, and there's a recognition that  
21 there is some commonality of issues and concerns,  
22 particularly the ones addressed by the recommendations  
23 we've just passed. And there's also a recognition that  
24 not every single recommendation might be perfect for  
25 all of the groups, and that's why you see in the

1 motions that it provides for an extension "if  
2 appropriate".

3           The second consideration or reason is  
4 just basic Human Rights Code. It addresses protections  
5 for all equality-seeking groups, and we should too.  
6 And the third reason or rationale is that this motion  
7 recognizes the intersectionality issues associated with  
8 discrimination and disadvantage and the need for more  
9 comprehensive data.

10           So subject to any questions, Treasurer,  
11 I'm moving the motion, as I said, and it's seconded by  
12 Ms. St. Lewis.

13           TREASURER SCHABAS: Thank you very much.  
14 Is there anybody who wishes to speak to this motion? I  
15 think it's been the subject of discussion by people  
16 around the table over the last few weeks.  
17 Mr. Braithwaite.

18           MR. BRAITHWAITE: The motion has been  
19 put forward at this time. I can't accept the motion --  
20 I can't accept the motion because I believe the motion  
21 in itself weakens and distracts from the very motion  
22 that we've just passed.

23           The idea of adding specifically  
24 equity-seeking groups is something that's unnecessary.  
25 We already know that it's there and, in fact, given the

1 vote -- the policy that we've just passed related to  
2 race, that is inclusive of equity-seeking groups,  
3 that's not isolated from equity-seeking groups. It is  
4 possible to have black women, it is possible to have  
5 black people who have mental distress; it is possible  
6 to have black people who suffer from -- who are -- deal  
7 with sexual orientation or creed or religion, that's  
8 not separate and apart. We don't need to have this  
9 second motion.

10 My concern is, as I have originally put  
11 forth, is that I indicated that race does matter. This  
12 is a salient issue of all equity-seeking groups. To  
13 now throw in the balance of equity-seeking groups, I  
14 think it takes away from the focus that we have been  
15 spending this whole day trying to deal with. It takes  
16 away from the focus that we have been -- that this  
17 particular racialized report has been dealing with for  
18 the last four years. It takes away from the focus, as  
19 I had argued earlier, of the last 400 years.

20 We don't need to actually deal  
21 specifically with equity-seeking groups. Do not divert  
22 from the very issue that we're talking about.

23 Let me give you an example. If we are  
24 left with a situation with a black disabled versus a  
25 white disabled, I daresay that the white disabled will

1 be the choice of the majority, not the black disabled.  
2 It gives another excuse to avoid race.

3 So we already have the equity-seeking  
4 groups well protected under the Human Rights Code,  
5 under the Canada Human Rights Code, it's already  
6 protected. We don't need to, at this particular stage,  
7 to dilute what we have just passed.

8 That is my concern about adding this  
9 particular group. It's unnecessary, it's already  
10 included in the language that we've just passed.

11 TREASURER SCHABAS: Thank you,  
12 Mr. Braithwaite. Ms. Criger.

13 MS. CRIGER: Thank you, Treasurer.  
14 Respectfully, there are people who are simply women and  
15 are discriminated against for the entirety of their  
16 careers; whether they be white women, whether they be  
17 black women, whether they be any other colour of woman.  
18 There are also disabled people who are discriminated  
19 against solely because they are disabled.

20 I believe it's important to recognize  
21 that and to recognize the equality of all people  
22 without regard to irrelevant personal characteristics.  
23 And so I support Ms. Murchie's motion, thank you.

24 TREASURER SCHABAS: Ms. St. Lewis.

25 MS. ST. LEWIS: I just want to clarify

1 with regards to the concern that what it does is water  
2 down the motion. In fact, I was quite surprised in  
3 this day and age that it automatically in the report  
4 did not assert intersectionality.

5 The experience in this area, whether you  
6 go back to the birth of the Wilson Task Force or to  
7 even our own retention of women, is that at the end of  
8 the day racialized women, in particular, black women,  
9 have had to try to find a way to shoehorn themselves  
10 back into the conversation.

11 There's a really kind of famous quote,  
12 it says, you know, "All the women are white, all the  
13 men are black, and some of us are brave". It's a very  
14 powerful black feminist quote.

15 In the context of the Racialized Report,  
16 there are going to be persons who are racialized, but  
17 the compounded inequality that they will need to have  
18 addressed and acknowledged will not necessarily make  
19 race a primary filter, but we need to address their  
20 concerns and their vulnerability. So what we've  
21 specifically done in this motion, if you look at it, is  
22 to say where appropriate; race is to come first, it's  
23 coming out of the Racialized Task Force, we have zero  
24 intention to water it down, but we do need to not bury  
25 those people at intersections of compounded inequality

1 who are racialized and would need special asymmetrical  
2 remedies that may not be otherwise contemplated if we  
3 don't survey to identify those vulnerabilities, et  
4 cetera, et cetera, et cetera.

5 I don't have much else to add. I think  
6 it's self-explanatory. I just hope everyone supports  
7 the motion. I do not believe in any way it waters down  
8 the motion. I think it enhances it, makes it more  
9 powerful and more comprehensive.

10 TREASURER SCHABAS: Thank you, Ms. St.  
11 Lewis. Mr. Bickford.

12 MR. BICKFORD: After hearing  
13 Mr. Braithwaite speak, I wonder if it would -- and if  
14 no one else is speaking, I wonder if the motion can be  
15 reread so we could vote on it.

16 TREASURER SCHABAS: It's at tab 8.1,  
17 specifically at page 300 of BoardBooks. Is there  
18 anybody else who wishes to speak to this on the  
19 telephone?

20 I don't see any other hands in the room.  
21 Anybody on the phone wishes to address this? Yes?

22 MS. CHRÉTIEN: This is Gisèle Chrétien.  
23 I'm not against the motion, I'm just thinking of with  
24 the time that we have left today if it would be best to  
25 bring this back to the January one. It just seems like

1 it's thrown in at the last minute and I don't want to  
2 spend a whole day on this again.

3 TREASURER SCHABAS: Well, I think that  
4 you're the last one to speak, Ms. Chrétien. So we're  
5 going to put it to a vote.

6 MS. CHRÉTIEN: Okay.

7 TREASURER SCHABAS: So thank you.

8 Mr. Bickford, do you need it read or have you found  
9 again? It's at tab 8.1.

10 The motion is that as it moves forward  
11 with implementation of the recommendations for  
12 racialized licensees, the Law Society will ensure that  
13 the policies, procedures, measures and initiatives are  
14 extended as appropriate to all equality-seeking groups  
15 while continuing to ensure that the needs of racialized  
16 licensees are fully acknowledged and addressed.

17 All right, so with that, I will call a  
18 vote. All in favour? I see a lot of hands in the room  
19 in favour. Are there any opposed? I see just a couple  
20 of hands in the room opposed.

21 So I will declare the motion carried  
22 unless -- I don't think I need to go to the telephone.  
23 Are there people on the phone who are opposed who wish  
24 to record their opposition? No, then the motion is  
25 carried. Right, thank you very much.

1                   I am going to ask the Benchers to bear  
2 with me for five minutes. We have two matters that we  
3 have to deal with in camera, then you'll be -- everyone  
4 can go. I'm going to have to ask the public to leave.

5                   MR. WRIGHT: Treasurer, before they  
6 leave I have a point of information that I think our  
7 guests and everybody else will find very interesting.  
8 I timed it, it's less than a minute.

9                   TREASURER SCHABAS: I'm sorry,  
10 Mr. Wright. We can -- it's been an extremely long day.

11                   MR. WRIGHT: They would love to hear it.

12                   TREASURER SCHABAS: You can go out and  
13 tell them, feel free, but we have to deal with  
14 something in camera. We have been here a very long  
15 time.

16                   So if the public could quickly slip out  
17 of the room.

18 --- In Public proceedings adjourned at 5:00 p.m.

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I HEREBY CERTIFY THE FOREGOING  
to be a true and accurate  
transcription of my shorthand notes  
to the best of my skill and ability

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