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CONVOCATION

IN PUBLIC SESSION

THURSDAY, APRIL 27, 2017 - 9:00 a.m.

OSGOODE HALL, TORONTO

1 CONVOCAATION ATTENDANCE

2 Treasurer - Paul Schabas

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

1	Marian Lippa (ph.)	Virginia MacLean
2	William McDowell	Susan T. McGrath
3	Isfahan Merali	Malcolm Mercer
4	Barbara Murchie	Sandra Nishikawa (ph.)
5	Susan Richer	Jonathan Rosenthal
6	Raj Sharda	Andrew Spurgeon
7	Sidney Troister	Jerry Udell
8	M. Anne Vespry (ph.)	Tanya Walker
9	Peter Wardle	Thomas G. Conway
10	Laurie H. Pawlitzka	
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1 --- Upon commencing at 9:00 a.m.

2 -- TREASURER'S REMARKS:

3 TREASURER SCHABAS: Good morning,
4 everybody. Welcome to Convocation. Welcome to anyone
5 who is joining us via the public webcast today and on
6 the telephone, which I'll get to in a moment.

7 Bonjour, bienvenue au Conseil en
8 personne et par la webémission publique.

9 I want to start by recognizing that
10 we're here together in Toronto, which is a Mohawk word
11 that means "Where there are trees standing in the
12 water," to acknowledge that we're meeting on the
13 traditional territory of the Mississaugas of the New
14 Credit First Nation, and also to acknowledge the
15 Haudenosaunee, the Metis and Inuit, and all the First
16 Nation peoples with whom we share our lands in peace.

17 Once we determine who is on the
18 telephone I'll let everyone know that we're placing
19 those calling into the meeting into what we call
20 lecture mode. I say this carefully because I gather
21 there are quite a few people on the phone today, so
22 there may be some who aren't as familiar with it as
23 others.

24 This means that from our end we will be
25 muting you. Once muted, you will be able to hear the

1 meeting, but you will not be able to speak -- well, you
2 can talk to yourself. So star 6. We, of course, will
3 need to come out of lecture mode to hear you, hear
4 those who wish to speak and vote, and we will do that
5 following the presentations of reports and motions.

6 At that time, that's when we take you
7 out of lecture mode. Unless you wish to speak, please
8 star 6 your telephone so that we don't hear you. And
9 we'll repeat this periodically on the -- during the
10 meeting.

11 So I would like to go to the list of
12 those who are on the telephone, and I'll read out those
13 who I'm told are on the phone and then we'll see who we
14 have missed. Peter Beach?

15 MR. BEACH: Yes, present.

16 TREASURER SCHABAS: Paul Copeland?

17 MR. COPELAND: Yes.

18 TREASURER SCHABAS: Cathy Corsetti?

19 MS. CORSETTI: Yes, here.

20 TREASURER SCHABAS: Neil Finkelstein?

21 Patrick Furlong? Carol Hartman?

22 MS. HARTMAN: Good morning, Treasurer.

23 TREASURER SCHABAS: Good morning.

24 Jeffrey Lem?

25 MR. LEM: Present.

1 TREASURER SCHABAS: Marian Lipa?
2 MS. LIPPA: Present.
3 TREASURER SCHABAS: Sandra Nishikawa?
4 MS. NISHIKAWA: Present.
5 TREASURER SCHABAS: Jan Richardson?
6 MS. RICHARDSON: Present.
7 TREASURER SCHABAS: Clayton Ruby?
8 Gerald Sheff?
9 MR. SHEFF: Present.
10 TREASURER SCHABAS: Harvey Strosberg?
11 MR. STROSBERG: I'm here.
12 TREASURER SCHABAS: Great. Roger
13 Yachetti? Anne Vespry?
14 MS. VESPRY: Present.
15 TREASURER SCHABAS: Thank you. Is there
16 anybody I missed on the telephone?
17 MR. LAWRIE: Brian Lawrie.
18 TREASURER SCHABAS: Brian Lawrie, thank
19 you.
20 MR. GROIA: And Joe Groia is here.
21 TREASURER SCHABAS: Mr. Groia. Anybody
22 else? Good, thank you.
23 So I would like to start by welcoming
24 our guests today. Joining us from the Law Society of
25 Manitoba is Roberta Campbell, the president of the Law

1 Society of Manitoba.

2 Ms. Campbell was called to the Manitoba
3 bar in 1995 and is a founding partner of Campbell,
4 Gunn, Innes, a criminal law firm established in 2007.
5 She has been a Bencher of the Law Society in Manitoba
6 since 2010 and was elected president in April 2016, and
7 she will be addressing us in a few minutes.

8 With her is Kristen Dangerfield, the
9 chief executive officer of the Law Society of Manitoba,
10 who assumed that role in November 2014. Prior to that
11 she served as senior general counsel to the Law Society
12 and, as I know well, was previously in private practice
13 in Winnipeg at Thompson Dorfman Sweatman. So welcome
14 to both of you, we look forward to hearing from you.
15 And Roberta and Kristen will also be joining us for
16 lunch.

17 Also in attendance, I believe, from
18 LawPro are Kathleen Waters, president and CEO, and
19 Steve Jorgensen, chief financial officer. Good
20 morning. As well, I believe we have Sadia Kahn of
21 Price, Waterhouse, Coopers LLP, a representative of the
22 Law Society's auditor.

23 Mr. Hull I believe is here. There you
24 are. Good morning, Ian. The chair of the Law Society
25 Foundation is also present this morning because we will

1 be addressing matters relating to that as well.

2 I would like to update you on a few
3 highlights of the Law Society's activities. First, I
4 would like to start by congratulating Michelle Haigh
5 for being elected by the Paralegal Standing
6 Committee's -- by the committee as chair of the
7 committee this year. As you know, the election of the
8 chair occurs annually and is required under the Law
9 Society Act. Congratulations, Michelle.

10 Yesterday we also had -- yesterday we
11 also had the welcome reception for newly licensed
12 paralegals. For those of you who were not able to
13 attend, both Ms. Haigh and I spoke to the fact that
14 2017 marks the tenth year of paralegal regulation.

15 It was on May 1st, 2007, that the
16 enabling legislation came into effect and the Law
17 Society's grandparenting program began. Now, ten years
18 later, we regulate, as of April 21st, 8,311 paralegal
19 licensees. This is a significant milestone. No doubt
20 the implementation of paralegal regulation has had its
21 challenges, but regulation has been tremendously
22 successful in establishing a licensing process and
23 standards of competence, implementing a complaint and
24 discipline process and making legal services more
25 accessible and improving consumer services and public

1 protection.

2 Justice Bonkalo's Family Law Services
3 Review was released since our last meeting. As we all
4 know, the report makes 21 recommendations, many of
5 which are directed towards the Law Society.

6 I've requested that the Access to
7 Justice Committee review the recommendations and work
8 with the government to develop an action plan for
9 Convocation's consideration this fall. I've expanded
10 the membership of the committee to ensure all aspects
11 of the Law Society's policies and mechanisms are
12 considered.

13 The committee has done some preliminary
14 work, but will be informed by submissions that are to
15 be made up until May 15th. I have asked Mr. Goldblatt
16 to keep Convocation apprised.

17 I also wanted to inform you of the
18 conclusion of a discipline matter this week. Due to
19 the nature and profile of the case, some of you will
20 have read about it in the media, as it is been widely
21 reported in the last couple of days. It involved
22 residential school survivors and their lawyer.

23 I can tell you that the case did not
24 unfold as expected, and I was advised at the outcome
25 that supervisory conditions was the only viable option.

1 I believe our experience with this particular case has
2 exposed serious systemic issues involving the Law
3 Society's regulatory and hearing process in relation to
4 Indigenous issues. We need to listen and learn from
5 this so that we can do better.

6 Going forward, I have said that the Law
7 Society will be seeking ongoing engagement with
8 Indigenous peoples to learn more about processes that
9 are valued and trusted so that their expectations can
10 be met.

11 In the spirit of reconciliation and a
12 commitment to do better, I have said that we will
13 review our processes in order to accommodate Indigenous
14 laws and Indigenous customs so that we can think and
15 act differently to ensure that justice can be served in
16 these type of cases in the future.

17 The Action Committee on Civil and Family
18 Matters chaired by Justice Cromwell held its annual
19 meeting in Vancouver at the end of March. The Law
20 Society's Access to Justice leadership was recognized
21 with TAG manager Sabreena Delhon speaking on a panel
22 about the importance of public engagement and the
23 development of meaningful access to justice solutions.
24 Sabreena spoke about TAG's efforts to find new ways for
25 librarians and legal professionals to work together on

1 access to justice challenges in rural and remote
2 communities.

3 An impact report was prepared for the
4 meeting and hard copies can be found outside the room
5 on the Benchers' Landing.

6 The Law Society Awards Ceremony will
7 take place on May 24th at 4:30 p.m. in the Lamont
8 Learning Centre. The ceremony will be webcast and I'm
9 pleased to publicly identify the recipients at this
10 time.

11 The Law Society Medalists are Patrick
12 Case, Larry Chartrand, Sarah Colquhoun, Michael
13 Eizenga, Marie Henein, Joanna Radbord and Gary Yee.

14 The recipient of the Lincoln Alexander
15 Award is Thora Espinet; the Laura Legge Award's
16 recipient is Breese Davies; The William J. Simpson
17 Distinguished Paralegal Award goes to Dena Castro; and
18 the J. Shirley Denison Award will be presented to Grace
19 Alcaide Janicas. I'm very much looking forward to
20 meeting all of them at the ceremony.

21 As well, I would like to publicly
22 announce at Convocation this morning the distinguished
23 individuals who will be receiving LL.D.s from the Law
24 Society at the upcoming call to the bar ceremonies.
25 Those recipients are The Honourable Mary Jo Nolan, who

1 will receive her LL.D. at the June 19th call in London;
2 Thomas Conway, who will receive his LL.D. at the Ottawa
3 call on June 23rd; the Honourable Juanita Westmoreland
4 Traore, Toronto, June 26th in the morning; Sheila Watt
5 Cloutier, on the afternoon of June 26th; Dr. John
6 Borrows, June 27 in the morning; and The Honourable
7 George Strathy, Chief Justice of Ontario, on June 27th
8 in the afternoon.

9 I'd like to remind you that we have our
10 annual general meeting coming up on May the tenth at
11 5:15 in the Lamont Learning Centre. One motion has
12 been filed in accordance with the by-law provisions and
13 has been published in the Ontario Reports and on our
14 website. The meeting will, of course, be webcast for
15 anyone who wishes to observe the meeting.

16 Members who wish to participate at the
17 meeting must attend at Osgoode Hall in the Lamont
18 Centre.

19 The Federation of Ontario Law
20 Associations May plenary is scheduled for May 10th to
21 12th in Ottawa. Mr. Lapper and I will be attending.

22 There will also be a number of equity
23 events in May. I'll just address them quickly.
24 May 9th is the Asian and South Asian Heritage Month
25 Program. This year's program will focus on the role

1 lawyers can play in combating Islamophobia and other
2 forms of racism and oppression, at home and abroad. It
3 begins at 5:15.

4 On May 15th is an event called Promoting
5 Social Harmony in Divided Times, a discourse on
6 competing rights in which we are partnering with the
7 Canadian Race Relations Foundation. The discussion
8 will examine why cultural and faith practices different
9 from our own make us uncomfortable and how we can find
10 common ground and balance rights so as to promote
11 understanding and reduce tensions between communities.
12 And it begins at 5:15.

13 Finally, on behalf of Convocation, I'd
14 like to congratulate Bencher Paul Copeland, who will be
15 awarded the Dianne Martin Medal for Social Justice by
16 Osgoode Hall Law School. The award ceremony will take
17 place on May 17th, 2017, at the Osgoode Hall Law School
18 Alumni Reception. Congratulations, Paul.

19 -- Applause.

20 -- CONSENT AGENDA:

21 TREASURER SCHABAS: With that, I will
22 turn to the agenda. The first item of business is the
23 Consent Agenda, which is moved by Michelle Haigh and
24 seconded by Dianne Corbiere.

25 Is there any discussion? Questions?

1 Anybody on the telephone with anything they wish to say
2 about the consent agenda? If not, I will ask for a
3 show of hands. All in favour? Anybody opposed? Is
4 there anybody opposed on the telephone? Hearing
5 silence, the motion is carried. Thank you.

6 So with that I would call on
7 Ms. Campbell to please address Convocation.

8 -- ADDRESS BY ROBERTA CAMPBELL,
9 PRESIDENT, LAW SOCIETY OF MANITOBA:

10 MS. CAMPBELL: Good morning, everyone,
11 and thank you, Treasurer Schabas, Benchers and staff of
12 the Law Society of Upper Canada.

13 I'm honoured to be here and would like
14 to thank you on behalf of the Benchers of the Law
15 Society of Manitoba. I'm very glad I had the
16 opportunity to meet many of you yesterday when we first
17 came in.

18 We in Manitoba have been very fortunate
19 to have a long and collegial relationship with our
20 friends from the Law Society of Upper Canada. We have
21 frequently been the beneficiaries of the expertise,
22 skills and resources that your Law Society has so
23 willingly shared with us.

24 Last week our Benchers engaged in two
25 days of strategic planning as we looked to the future.

1 I can tell you we did so with eyes on our neighbours to
2 the east, and paid particular attention to the many
3 impressive initiatives you have undertaken.

4 Our Benchers took a look at your random
5 practice review program and overwhelmingly expressed
6 support for strategic initiatives that would implement
7 practice audits as a risk reduction initiative.

8 Your coach and advisory network is an
9 innovative approach to ensuring that lawyers are able
10 to deliver services competently. Your work in access
11 to justice through TAG and responding to calls to
12 action from the TRC have set a standard that every Law
13 Society should aspire to.

14 As a result of our discussions last week
15 about the need to remove barriers to low cost,
16 alternative service providers, the Law Society of
17 Manitoba will, in the future, be taking a much closer
18 look at your model for regulating paralegals.

19 I had the pleasure of attending the
20 reception last night for new licensees. It is clear
21 with your regulation of paralegals you have taken
22 significant steps towards addressing the access to
23 justice crisis that is occurring in our country.

24 In Manitoba we have also engaged in some
25 initiatives of our own over the last few years. The

1 Treasurer invited me to share one of those with you
2 today.

3 In 2014 our Benchers determined that we
4 ought to explore a new governance model that would
5 provide for a mix of appointed and elected lawyers and
6 an increased number of public representatives. We
7 approached the province, and by the fall of 2015 we had
8 legislation in place to reduce our elected Benchers
9 from 16 to 12. Those four elected Benchers were
10 replaced with four appointed lawyers.

11 We also increased our public
12 representatives from four to six. Of our 25 Benchers,
13 nearly 25 percent are now public representatives. We
14 believe that to regulate in the public interest you
15 need significant public input. In order to fill the
16 appointed Bencher positions, we developed a matrix,
17 both for lay Benchers and practising lawyers, which set
18 out a broad range of knowledge, skill sets, core
19 competencies, perspectives and backgrounds.

20 We then advertised our positions, and I
21 can tell you the response was phenomenal from both the
22 public and from the practising bar, who didn't want to
23 fight an election. As a result, almost a year ago we
24 had our first Bencher election under the new regime.
25 When we looked around the table and identified what was

1 missing, we went through a process of reviewing the CVs
2 that we received from interviewing candidates.

3 The Benchers appointed four practising
4 lawyers and a total of six public representatives to
5 sit around the table.

6 We now have a Bencher table that looks
7 vastly different from what it did prior to 2016. We
8 have much greater ethnic and cultural diversity,
9 including representation from the Indigenous community.
10 We have Benchers and public representatives with a wide
11 range of skills, knowledge and life experience.

12 What that has meant in practical terms
13 is we have begun to have conversations around the
14 Bencher table that we've never had before. Thought
15 provoking conversations, insightful conversations that
16 would not have existed without the change in our
17 governance model.

18 I now look forward to hearing the
19 conversation around your table, and, again, thank you
20 very much for giving me the opportunity to do so.

21 TREASURER SCHABAS: Thank you very
22 much.

23 -- Applause.

24 TREASURER SCHABAS: Thank you very much,
25 Ms. Campbell. We look forward to discussing these

1 issues with you. As you know, we have a Governance
2 Task Force and our governance is a little different
3 than yours and our size of Convocation is a little
4 different than yours, so I'm sure many people will be
5 interested in the model that you've adopted and your
6 experience with it. So thank you very much for those
7 remarks.

8 The report of the chief executive is
9 going to be deferred to the in camera portion of our
10 session, so with that I will call on Mr. Bredt -- I'm
11 sorry, we'll move to Audit and Finance, but I'd like to
12 begin, if you don't mind, Mr. Bredt, with Mr. Lerner,
13 who is going to give us a brief report on the Toronto
14 Lawyers Feed the Hungry Program. Mr. Lerner.

15 -- TORONTO LAWYERS FEED THE HUNGRY

16 PROGRAM REPORT:

17 MR. LERNER: Thank you, Treasurer. Last
18 time Mr. Hull and I reported to Convocation I described
19 the Lawyers Feed the Hungry Program as being in
20 critical condition. I'm pleased to report the
21 condition has upgraded to stable, and we are looking
22 forward to increasing improvement.

23 The Toronto Lawyers Feed the Hungry
24 Program has made progress since January of 2016 when
25 Convocation approved funding of \$100,000 per year for a

1 position to support the Lawyers Feed the Hungry
2 Programs. The objective was to support the programs
3 and to assist the Toronto program, in particular, in
4 becoming self-sustaining and less reliant on the Law
5 Society for in-kind support.

6 To refresh your memory, the Toronto
7 Lawyers Feed the Hungry Program was founded in 1998 by
8 the late Martin Teplitsky to provide meals to those in
9 need. The program has expanded over time from meal
10 service once a week to four meals services on Tuesdays,
11 Wednesdays, Thursdays and Sundays.

12 The program also operates in Barrie,
13 London, Ottawa and Windsor under different models of
14 operation where financial support is provided to
15 charitable agencies that help alleviate hunger, and in
16 some locations lawyers from those communities volunteer
17 in serving the meals.

18 It's easy to get caught up in the
19 dollars and cents, but it's crucial to keep the purpose
20 of the program in mind: That is, the Toronto program
21 alone serves over 60,000 meals a year.

22 Returning to the dollars and cents, the
23 cost of operating the Toronto program is about \$400,000
24 annually, predominantly by direct costs. In order to
25 make the best use of funding approved by Convocation in

1 March of 2016, a fundraising consultant was engaged to
2 provide initial guidance and expertise in the
3 development of a fundraising strategy to move the
4 Toronto program in becoming self-sustaining and less
5 reliant on the Law Society. This led to the hiring of,
6 in February of this year, of a professional staff
7 member with fundraising accountability and experience,
8 development manager, Aviva Malka.

9 She will be responsible for implementing
10 the fundraising strategy approved by the Foundation and
11 board to create a self-sustaining model for the
12 program, to provide guidance on fundraising efforts to
13 the Ontario centres, and to assume responsibility for
14 fundraising support services previously being
15 administered by the Law Society.

16 So in the short term the focus will be
17 on increased revenue generation and the adoption of
18 more effective fundraising practices to ensure that the
19 program is on firm footing.

20 According to the fundraising consultant,
21 in conjunction with the hiring of the development
22 manager, an increase in fundraising revenue is
23 achievable, provided a restructured fundraising
24 committee of the foundation is established, existing
25 resources are maximized with a focus on the

1 implementation of a major gift program and planned
2 giving, demand for meal sponsorships, which raised
3 approximately \$160,000 in 2016, is maximized, and fair
4 and sufficient time is provided for fundraising revenue
5 to increase.

6 It's currently envisaged that the
7 development manager requires two years in the role for
8 revenue to increase to a sustainable level. The
9 fundraising consultant noted that it's most likely that
10 the legal community will continue to be the primary
11 funder and the core provider of crucial volunteer
12 leadership.

13 The current financial situation of the
14 program is healthy. Toronto Lawyers Feed the Hungry
15 Program fund balance at the end of 2016 was \$935,000,
16 with annual revenues of \$755,000, up from \$507,000 in
17 2015.

18 Direct costs associated with operating
19 the program have remained relatively unchanged over the
20 last three years of approximately \$400,000 per annum.

21 The Law Society Foundation board has
22 been actively recruiting a chair for the new proposed
23 fundraising committee. In addition, the Law Society
24 Foundation's board chair hosted a fundraising summit in
25 April to engage prospective members of the fundraising

1 committee and to generate new ideas for the growing of
2 the Toronto revenue stream.

3 As a sidebar, I might add that at that
4 particular summit, by my count, we had approximately 35
5 people, all of whom have been either actively involved
6 in the program or who have expressed an interest in
7 becoming involved.

8 On a fundraising note, a bowling
9 challenge held on April 9th and organized by Madam
10 Justice Nancy Backhouse, Mr. Justice Mario Faieta,
11 Jonathan Rosenthal, and group of committed volunteers
12 raised over \$110,000 for the program.

13 I should also mention that the 13th
14 annual Buggy and Ken Charity Tournament in support of
15 the Toronto program is scheduled for June 15th.
16 Benchers support for these events, whether it is by
17 engaging your firms to participate, attending yourself
18 or getting the word out, will go a long ways towards
19 helping the financial stability of the program.

20 In conclusion, we are making progress in
21 the goals of sustainability, and a further reduction of
22 Law Society in-kind support is achievable; however,
23 full achievement is dependent upon the ability of the
24 anticipated fundraising committee to open doors to
25 donor prospects, our ability to compete for finite

1 donor dollars and the fundraising climate in general.

2 For those who are not aware, the
3 committee is chaired by Ian Hull. I am the vice-chair.
4 The members are Sidney Troister, Cathy Strosberg and
5 Derry Millar, and our work is actively supported by
6 Wendy Tysall and Ms. Albuquerque-Boutilier. Without
7 their support our efforts would be far less successful.
8 Thank you.

9 TREASURER SCHABAS: Thank you very much,
10 Mr. Lerner. Any questions for Mr. Lerner?

11 MR. ROSENTHAL: The golf tournament is
12 June 14th.

13 TREASURER SCHABAS: June 14th is the
14 golf tournament, not 15th. And we won't ask how many
15 strikes you got at the bowling event, Mr. Rosenthal.
16 Mr. Bredt, would you address Convocation?

17 -- AUDIT & FINANCE COMMITTEE REPORT:

18 MR. BREDT: Good morning, everyone. So
19 what we're doing here this morning is we're going to
20 ask for your approval of the Law Society's annual
21 financial statements.

22 The motion is at page 117 of BoardBooks.
23 It's that Convocation approve the annual financial
24 statements for the Law Society for the financial year
25 ending December 31st, including some interfund

1 transfers.

2 So the first thing to note is that the
3 financial statements for this year received a clean
4 audit opinion and the report to the Audit and Finance
5 Committee from Price, Waterhouse, Coopers arising from
6 their audit is provided for your information, and we
7 have Ms. Sadia Kahn here, who is with PWC, in case
8 there's any questions that people want to raise with
9 the auditors.

10 So if I could ask you to go to page 129
11 of BoardBooks, and if you just go to the bottom line of
12 those schedules there, you'll see basically that we had
13 a good financial year.

14 Just by way of overview, you can see
15 that we had a surplus of 2.6 million in the Lawyer
16 General Fund and a surplus of 1.2 million in the
17 Paralegal General Fund and so, overall, we had a
18 combined operating surplus of about 3.8 million this
19 year, compared to 2.3 million last year.

20 So how did this come about? Where did
21 we do well and where do we need to pick up our socks?

22 If I can get you to go to page 145. So
23 what you have here, and I find this is kind of helpful
24 to understand and get a big picture of how we did last
25 year, this shows you what our actual results were for

1 this year, what our actual results were for last year,
2 2015, and how we did compared to the budget.

3 So the bottom line I'll come to is
4 you'll see we had projected that we were going to run a
5 deficit this year and we were going to fund that out of
6 our general funds, instead we've run a surplus, so we
7 have added to our general fund balance.

8 So let's have a look just quickly as to
9 where we did and how we did on, first of all, revenues.

10 On annual fees, you can see that our
11 annual fees are up from last year. So we're up to
12 57 million versus 55. That's reflecting the number of
13 new people that we have called, both lawyers and
14 paralegals. And you can see that we didn't do quite as
15 well as budget. That is, that we had budgeted actually
16 for more new people and we didn't do it, but we're
17 still doing well compared to last year.

18 PD&C, you can see that in terms of where
19 we're at, slightly better than last year, but
20 significantly better than what we budgeted for. In
21 part I think this is reflecting the fact that our -- a
22 lot of the PD&C is being delivered on-line and there
23 has been a pick-up in that and you'll see when we come
24 to the expenses, the expenses of providing materials
25 and programs on-line is significantly less, so we're

1 getting some cost savings there too.

2 Investment income down slightly from
3 budget, but you can see that we have had a change in
4 fair value of investments. So overall the investments
5 have been up and other revenues did better than
6 expected. So overall there was a positive revenues
7 variance.

8 When we come to expenses, if you look,
9 first of all, at Professional Regulation, you can see
10 we did better than budget there, and I think it's
11 important to keep in mind here that we did have a
12 significant expense in terms of the expense, the cost
13 award in the Demerchant and Sukonick matter, and that
14 actually came out of the budget, so without that we
15 would have done even better with respect to expenses.

16 We have also been able to reduce a
17 contingent liability because of the uncertainty
18 surrounding some of these issues from \$5 million to
19 \$1-million in terms of potential adverse cost awards.

20 In Professional Development and
21 Competence you can see again we did better there.
22 Again, I talked a bit about the reasons for that, the
23 cost savings that we're obtaining because a lot of the
24 programs are being provided on-line and so forth.

25 Corporate services did better than

1 budget. Governance and Policy Outreach significantly
2 better than budget, services to members slightly
3 under-budget, and then allocations to the Compensation
4 Fund, I'm going to speak a bit more about that.
5 Because of a number of significant cases we have had to
6 allocate a fair bit of money to the Compensation Fund.

7 If you go back -- so just the bottom
8 line, you can see where we're at here. Our actual
9 result is we ran a surplus of about \$3.8 million,
10 versus a budgeted deficit of 2.2. So about 6 million
11 dollars better than budget. So that's the good news.

12 If you go back to page 144, this is the
13 schedule of our restricted funds, and you can see that
14 here we're reporting a combined deficit of 2.7 million,
15 compared with 6.1 million in 2015, and included in the
16 restricted funds is the lawyer compensation funds,
17 which has continued to have adverse claims experience.

18 The deficit for the year was
19 \$2.1 million, which reduced the fund balance for
20 lawyers to \$12.8 million. And I note that this is
21 slightly below our fund policy balance minimum. So we
22 have a fund policy balance where we look at a one in
23 100 year event, and at the low end is 13 million, at
24 the high end it's about 48 million.

25 What the policy says is that we have

1 three years within which to bring the policy balances
2 back up into the appropriate range. So when we come
3 back with a budget, obviously one of the things that we
4 will be looking at is increasing the Compensation Fund
5 levy so that the funds get back up into the approved
6 range.

7 Overall, the balance sheet, which is at
8 page 128, you don't need to turn to it, it shows total
9 assets of 180 compared to 172. Included in the
10 liabilities is a provision for unpaid Compensation Fund
11 grants and, of course, when you look at the amount in
12 the fund, it's net of the provisions that we've made,
13 and the provisions increased to \$23 million from
14 \$19.7 million and, again, it represents our estimates
15 of the number of claims that are coming in as a result
16 of several events that Convocation has been aware of
17 before, primarily dealing with deposits on condominium
18 projects. So we're hoping that that will be addressed
19 in future years.

20 In summary, I think, overall, the
21 financial results were good. I can say that the
22 committee in our next meeting is going to be moving
23 toward looking at our budget for 2018 and I can tell
24 you it's going to be a challenging year, given all the
25 new initiatives that are coming down the line, and we

1 will get started.

2 So before I conclude, I just wanted to
3 thank the staff for their assistance throughout the
4 year; Wendy Tysall and team of lawyers, Fred Grady,
5 Andrew Cawse and so forth that have helped us
6 throughout.

7 What you have before you is the motion.
8 It's moved by me and I'm going to ask Ms. Donnelly to
9 second that, that Convocation approve the audited
10 annual financial statements for the Law Society for the
11 financial year ending December 31st, 2016, including
12 the interfund transfers listed in note 13 of the
13 financial statement. I'm open for questions,
14 Treasurer.

15 TREASURER SCHABAS: Any questions for
16 Mr. Bredt? Mr. Callaghan, did I see your hand go up?

17 MR. CALLAGHAN: No. Perish the thought.

18 TREASURER SCHABAS: Yes, Mr. Sharda.

19 MR. SHARDA: The tribunal had recently
20 ordered legal fees to be paid. Does that show up in
21 this year or does it show up in next year's?

22 MR. BREDT: The costs that are actually
23 awarded in the Demerchant case were included in this
24 budget, so they were paid -- they were awarded last
25 year, so they -- when they become awarded, instead of

1 being contingent, they become actual expenses. So if
2 you look, when I took you through the expenses from the
3 regulatory division, included in those expenses would
4 have been the costs that were awarded in that matter
5 last year.

6 TREASURER SCHABAS: Anybody on the
7 telephone? Mr. Lerner, could you open the line? Is
8 there anybody on the telephone with questions for Mr.
9 Bredt? Hearing none -- perhaps Siri has a question.

10 MR. BREDT: Usually I'm asking Siri.
11 Siri, I have a question for Mr. Wardle.

12 TREASURER SCHABAS: The question Siri
13 asked is "what's that again?"

14 With that, I'll put it to a vote. All
15 in favour in the room? Anybody opposed? Is there
16 anybody opposed to the motion on the telephone?
17 Hearing silence, the motion is carried. Thank you, Mr.
18 Bredt.

19 MR. BREDT: Treasurer, I'm pleased to
20 say that not only do we save you money from time to
21 time, we also save you time from time to time.

22 TREASURER SCHABAS: It's all
23 appreciated. Thank you, Ms. Kahn, for attending from
24 PWC as well. Ms. McGrath, LawPro.

25 -- LAWPRO REPORT:

1 MS. McGRATH: Thank you, Treasurer, for
2 this opportunity to provide an overview of LawPro's
3 2016 results. The results are more fully explained in
4 LawPro's materials found within the Audit and Finance
5 Committee report, starting at page 220 of BoardBooks.

6 As you know, our goal is to operate the
7 company in a commercially reasonable manner, while
8 providing prudent and stable premiums to our insureds.
9 Our record of consistent premiums, tailored coverage
10 options, and expense management has resulted in another
11 strong year.

12 LawPro reported net income of
13 8.6 million, compared to 3.9 million in the budget.
14 Comprehensive income was 15.4 million, compared to a
15 budget of 6.1 million. Shareholders' equity grew
16 15 million over last year, to reach 253 million.

17 The company's capital position is
18 measured by the minimum capital test or MCT. This
19 calculation is used by regulators to judge an insurance
20 company's solvency. LawPro's MCT ratio at
21 December 31st, 2016, was 253 percent, significantly
22 above our recently established internal target of
23 170 percent, and above the company's preferred
24 operating range of 215 to 240 percent.

25 We are in the second year of a three

1 year phase-in process of a new method of calculating
2 the MCT. Without the phase-in adjustment, our
3 MCT would still be strong at 242 percent.

4 Our financial stability was bolstered by
5 careful expense management. LawPro ended the year with
6 an expense ratio of 20 percent, 8 percent lower than
7 comparable insurance companies. As you know, keeping
8 general expenses at a moderate level is a key value
9 LawPro offers the bar.

10 In 2016 we received 2016 new claims --
11 sorry, 2,616 new claims, representing 100 claims per
12 one thousand lawyers. This is a reasonably stable
13 result, given last year's result of 99 claims per 1,000
14 lawyers.

15 Real estate and civil litigation
16 continue to be the largest areas of law for claims. In
17 particular, we are keeping a close eye on any
18 development in administrative dismissal claims
19 resulting from lawyers not dealing effectively with the
20 changes to rule 48 in January 2017, which was the date
21 the first case had to be set down for trial or
22 dismissed without notice under the revised rules.

23 While it remains to be seen what impact
24 the new rule 48 will have on claims costs, we are
25 confident we have done the best we could to try to stem

1 the tide. So far results are encouraging, but it is
2 early days because some registrars may not yet have
3 issued dismissal notices.

4 In terms of cause of loss, communication
5 errors still lead the pack. Inadequate investigation
6 is taking over time management errors, and failing to
7 know and apply the law is become more frequent as a
8 cause of loss.

9 LawPro has a commitment to service and
10 we test that commitment with a satisfaction survey. In
11 2016, 97 percent of insureds who completed the survey
12 reported that they were satisfied with our efforts in
13 resolving the claims. LawPro defence counsel received
14 high approval ratings, with approximately 90 percent of
15 insureds stating that they would have the same counsel
16 represent them again.

17 LawPro counsel succeeded in nine out of
18 12 matters that went to trial and for which a decision
19 was rendered. We succeeded in three out of three
20 appeals argued and we won 27 out of 30 summary judgment
21 motions completed in the year.

22 I'd like to take this opportunity to
23 provide a few highlights of recent and upcoming events
24 at LawPro, beginning with access to justice
25 initiatives. The TitlePLUS program, which is the only

1 all Canadian bar-related title insurance product, is
2 celebrating its 20th anniversary in 2017. Its mission
3 is to help lawyers better meet their client's needs,
4 while supporting the role of the real estate lawyer in
5 the transaction.

6 In many cases, real estate practice is
7 central to keeping lawyer's offices open in smaller
8 communities. Keeping legal services available
9 throughout the province is vital for access to justice
10 outside the larger centres.

11 LawPro is pleased to have added two
12 initiatives to our slate of approved pro bono programs
13 in 2016. The total now comes to 54 pro bono Ontario
14 programs that are approved for special provisions under
15 the LawPro policy. In other efforts we extended the
16 protection of run-off coverage for lawyers on exemption
17 who are acting as mentors. Mentoring promotes the
18 dissemination of knowledge from experienced lawyers to
19 those with less experience. LawPro recognizes that
20 lawyers are sometimes the best resource for each other.

21 LawPro's success to date has allowed us
22 to plan for a measured reduction in revenues to reflect
23 the company's current capital position and investment
24 environment. This process led to the reduction in base
25 premium for the 2017 insurance program. Through the

1 program -- through the premium reduction, we are
2 purposely giving value back to the primary program
3 insureds.

4 Overall, 2016 was a successful year
5 where LawPro remains strong, with steady financial
6 results, and managed our business to provide
7 commercially reasonable coverage for our insureds at an
8 affordable rate.

9 Next week the board will start the
10 planning process for the 2018 program and at the end of
11 that process we will see whether our assumptions are
12 still valid and what impact they will have on our
13 future revenue needs.

14 The full LawPro annual report is
15 available at page 38 of BoardBooks and on-line at
16 LawPro.ca if you would like a more detailed review. I
17 also encourage you to watch for a special
18 year-in-review edition of LawPro Magazine, which will
19 delve into how the company met its mandate in 2016.
20 That issue should be in your in-box in the next few
21 weeks.

22 Thank you for your attention and I or
23 Ms. Waters, with your permission, Treasurer, will be
24 happy to respond to your questions.

25 TREASURER SCHABAS: Thank you very much.

1 Are there any questions for Ms. McGrath or Ms. Waters?
2 Retiring group today. Are there any comments or
3 questions on the telephone? Hearing nothing, then
4 thank you very much for that report, and thank you,
5 Ms. Waters and Mr. Jorgensen, for coming.

6 With that then we'll move to the
7 Paralegal Standing Committee. Ms. Haigh.

8 -- PARALEGAL STANDING COMMITTEE REPORT:

9 MS. HAIGH: Thank you, Treasurer. We're
10 at tab 3.1, page 374 of BoardBooks.

11 Paralegal Standing Committee has one
12 item for decision today regarding the amendments to
13 rules regarding conflicts of interest.

14 The motion is that Convocation approve
15 the amendments to the Paralegal Rules of Conduct that
16 are set out at tab 3.1.1, which is also at page 375 of
17 BoardBooks. These amendments correspond to amendments
18 to the Lawyers Rules that Convocation approved in
19 February 2016.

20 The changes arise from the work of the
21 Federation of Law Societies on the model of codes of
22 professional conduct, which has led to a review of a
23 number of provisions of the rules governing both
24 lawyers and paralegals.

25 Convocation has approved in principle

1 that rules for lawyers and paralegals should be
2 consistent where possible.

3 The proposed wording for the rule on
4 conflicts of interest is shown at page 376. The
5 redraft is intended to enhance guidance to paralegals
6 on obtaining consent from a client where there is a
7 conflict of interest by eliminating the distinction
8 between express and implied consent.

9 The motion is moved by myself and is
10 seconded by Ms. Criger. And that's what I have.

11 TREASURER SCHABAS: Are there any
12 questions or comments for Ms. Haigh in the room? On
13 the telephone, are there any questions for Ms. Haigh?

14 MR. SHEFF: No, thank you.

15 MS. STROSBERG: It's Cathy Strosberg. I
16 just didn't get a chance to tell you I'm here.

17 TREASURER SCHABAS: Thank you, Ms.
18 Strosberg.

19 All in favour? Is there anyone opposed
20 in the room? Anybody opposed on the telephone?
21 Hearing nothing, the motion is carried. Thank you, Ms.
22 Haigh.

23 MS. HAIGH: Treasurer, just to note,
24 there is a second item on our agenda which is being
25 deferred to next month, I believe.

1 TREASURER SCHABAS: That's relating to
2 the communicating with witnesses. Mr. McDowell, I
3 expect the same thing is being deferred --

4 MR. McDOWELL: That's right. Several
5 members of Convocation have raised issues that I think
6 warrant some further discussion.

7 TREASURER SCHABAS: Thank you. So we
8 will defer the matter of the rules regarding
9 communicating with witnesses and we will turn to the
10 advertising and fee issues. Mr. Mercer.

11 -- PROFESSIONAL REGULATION COMMITTEE

12 REPORT:

13 MR. MERCER: I expect this will be short
14 as well. This is the third report of the working group
15 to Convocation. You will recall that last February,
16 now two months ago, we presented our second report, and
17 at that time Convocation adopted amendments to the
18 advertising rules, including the commentary, and
19 Convocation determined as a policy matter not to
20 prohibit or ban referral fees, but, rather, to cap them
21 and regulate them so as to ensure transparency and
22 consent.

23 The purpose of this report is to give
24 flesh to the policy determination made by Convocation
25 in February.

1 The working group has further areas that
2 it continues to work on. They are contingent fees
3 generally, and those who have been following the press
4 with the Marshall report, the private members' bill in
5 the Ontario legislature, will know that contingent fees
6 are a matter of significant public interest and we have
7 yet to come with a report in respect to that, not
8 because it's unimportant, but because we're doing this
9 in an orderly way and I want to be clear that we will
10 coming back with recommendations in that respect.

11 We are also dealing with the issue of
12 advertising in the real estate area and fixed price
13 advertising and related issues, and I'm not presenting
14 today with respect to that.

15 I want to highlight, as I did in
16 February, the role of Convocation today. And you are
17 aware that, as we reported this, the Professional
18 Regulation Division continues to work diligently on
19 investigating a number of matters in this area, and
20 that is treated as a priority matter.

21 However, that's not our job here. Our
22 job here is not to interfere with that side of the Law
23 Society, our job is to, as a policy matter, set conduct
24 rules and deal with by-laws not in respect of
25 individual cases, but, rather, to deal with policy

1 issues. So I just want everybody to be clear, don't
2 mess it up.

3 The report is at page 419 of BoardBooks
4 and you'll see in paragraph 22 the specific motions
5 which I make and Ms. Horvat seconds. They are to
6 approve the cap and regulator approach for referral
7 fees generally described in paragraph 25 of the report,
8 to approve certain amendments as set out at tabs 4.2.1
9 and .3, to the Lawyers' Conduct Rules. Similarly, to
10 approve amendments in the Paralegal Conduct Rules and
11 to request Paralegal Standing to amend the guidelines.

12 Not everyone will be aware, but the
13 guidelines for the paralegal rules are a matter within
14 the jurisdiction of Paralegal Standing. And, finally,
15 amendment to the by-laws.

16 What I want to do is describe generally,
17 at a fairly high level, the elements of this proposal
18 without getting necessarily into the details of the
19 specific rules and by-laws.

20 The first is a cap. And in reaching a
21 recommendation for a cap, your working group worked
22 hard to come to a consensus position that we could all
23 support, and what we have before you is our unanimous
24 recommendation, which has been approved by the
25 committees through which we report.

1 I hasten to say that this isn't the
2 right cap, there is no right cap. There will be a
3 number of different caps that different people think
4 are better. The trick is to find one which is
5 reasonable. What we've done, we think, is to reach a
6 proposal which is sound and within the range of
7 reasonableness.

8 I make this point because I know that we
9 all like to look at things and think there is, perhaps,
10 a slightly better way of doing it and we could have a
11 long debate about that.

12 What we've tried to do really is achieve
13 two objectives. The first is not to set a cap that
14 would be equivalent to a ban. Convocation decided in
15 February not to ban, but to cap.

16 The second thing we did was try to set
17 effectively a cap which restored the practice back to
18 the prior market levels where referral fees were in the
19 ten to fifteen percent range, as opposed to what seems
20 now to be the case, 20, 25, 30, 35 percent. Our
21 principal goal was to get back to levels which, at the
22 time, seemed not to be problematic, there being no
23 perfect answer as to what the right level was. But, in
24 fact, we have taken it slightly back from historic
25 levels nonetheless. What we've proposed is a staged

1 cap, a sliding cap with an absolute limit.

2 For smaller cases, for cases where the
3 lawyer doing the work or the paralegal doing the work
4 earns up to \$50,000, we would have a 15 percent cap.
5 That represents, as we look at the last closed auto
6 study, probably slightly in excess of two-thirds of
7 claims, it's slightly more than that, but, in fact, in
8 that range.

9 Let me tease that out. A lawyer, if you
10 assume, or a paralegal, if you assume a one-third
11 contingency, a 33 percent contingency, would earn
12 \$50,000 on a claim of \$150,000 recovered, so that's in
13 order of magnitude the smaller claim, but the common
14 claim. So for those smaller claims, nonetheless
15 significant, 15 percent is the proposed maximum.

16 As you get above that amount, as lawyer
17 or paralegal earns more than 50,000 who is doing the
18 work, the amount that they can pay as a referral fee
19 drops down on that difference to five percent. And
20 when the total amount reaches \$25,000, there can be no
21 higher referral fee than that, and that works out to
22 approximately a million dollar recovered claim.

23 So, bottom line, we're less than where
24 we were historically and significantly less than some
25 of the aberrant amounts in the market now. We've

1 dropped down below ten to fifteen percent. We're
2 allowing some greater amounts for smaller cases and
3 lesser amounts for larger cases and there is a limit in
4 the total. As I said, not perfect. One can argue
5 whether or not the exact numbers are right, but that's
6 the approach that we propose.

7 Now, in my view, just as important is
8 the other side of the proposal, which is the regulate
9 to ensure consent and transparency. And you will see
10 if you've looked at the report that there are several
11 elements to that which are intended to make sure that
12 clients know what's going on, that clients decide
13 whether or not what's going on is acceptable to them,
14 that clients decide who their lawyer or paralegal will
15 be, and that clients have the basis to make their
16 decisions.

17 We propose the mandatory referral
18 agreement which is set out at tab 4.2.9. That requires
19 that the fact of any relationship between the referrer
20 and the referee be disclosed. It requires that reasons
21 be given for the referral. It requires that more than
22 one name be given, unless it's not reasonably possible
23 to do so. It requires that the client be given the Law
24 Society's disclosure on requirements for referral fees,
25 and you'll see that disclosure at tab 4.2.10. It

1 requires that the client be advised and confirm their
2 understanding that they have no obligation to retain
3 the lawyer or paralegal to whom they have been referred
4 and that they have the right to terminate their
5 retainment at any time for any reason, without this
6 being a breach of this agreement, and that they have no
7 obligation to the referrer or to the referee by virtue
8 of the referral agreement. The intent is that the
9 client have rights and have disclosure, but not have
10 obligations as a result.

11 I won't take you further into it, but my
12 recommendation to you that it is probably more
13 important than the cap that the client be in control
14 and be properly informed, but the cap, of course, is
15 important.

16 We also recommend that there be record
17 keeping and reporting obligations. We recommend
18 that -- and there is an amendment proposed for the
19 by-laws that lawyers paying referral fees and receiving
20 referral fees be obliged to keep accounting records of
21 those. This is both an account ability mechanism, but
22 it's also a practical way of ensuring compliance.

23 If people know that they have to keep
24 accounts and if they know their counterparty have to
25 keep accounts, then they're more likely to be accurate

1 in the way they conduct their affairs. And if the Law
2 Society audit or practice review or otherwise has
3 access to this information, it's a way of looking --
4 ensuring transparency into those arrangements.

5 We also propose that there be annual
6 reporting of the total quantum of referral fees paid
7 and referral fees received. Again, this is in aid of
8 sunlight. If licensees know that attention is being
9 paid in an area, they're more likely to be careful.

10 As well, it allows us to know, similarly
11 to other areas where we do the same, a condominium
12 actually is an example that comes to mind today. We
13 require in the newest annual reporting as to whether or
14 not you do condominium work, that's because that says
15 that you're an area where we may wish to have
16 regulatory scrutiny given to the risks there. This
17 provides a similar access mechanism so we know who is
18 active in this area, and as well, frankly, it allows
19 us, if we see activity in the marketplace, whether it
20 be on buses or otherwise, that suggests there must be
21 referral fees and yet they are not being reported, it
22 allows us to look and to see what is up.

23 Two other advantages. One is if the
24 total paid and the total received in the annual reports
25 doesn't add up in total then we find it rather useful,

1 and, finally, it is at least arguable that as public
2 interest regulators we often make decisions without
3 enough hard data, and this is an area where further
4 hard data going forward may be useful.

5 Many have said that we should be
6 concerned about compliance with these recommendations,
7 and we are very concerned. There is what I describe as
8 an anti-gaming rule in the proposals, which is that you
9 can't do indirectly what you can't do directly, and
10 we've given some examples in the commentary how to
11 think about that. We've adopted some language in the
12 commentary from the Income Tax Act around avoidance and
13 mitigation.

14 In the report you'll note, although we
15 have not put it in the commentary, that licensees
16 should understand if they breach rules in a way which
17 is dishonest, fraudulent, or demonstrates
18 ungovernability, that they put themselves at
19 substantial risk of their licence. We put that in the
20 rules and in the commentary, but the working group
21 wishes all to understand we should be serious about
22 this.

23 We propose that up front referral fees
24 should be prohibited, and I've described previously why
25 we make that proposal. We are concerned about aligning

1 interests, not shopping for the best price at the
2 outset.

3 We continue the proposal that referrals
4 where there's a conflict of interest shouldn't attract
5 a fee, and we recommend that lawyers or paralegals who
6 are suspended and therefore make a referral shouldn't
7 be entitled to recover for that in that disciplinary
8 context.

9 Finally, I would note the transition
10 approach that we take. We recognize that established
11 enforceable legal agreements should not be disturbed
12 retrospectively and so we acknowledge that the changed
13 rules do not apply to enforceable agreements in place
14 as of today. We, however, recommend if you can't show
15 that you've got a written agreement, that you be
16 obliged to notify your client that this arrangement
17 exists so that there is a record of it promptly.

18 I think that's the end of what I want to
19 describe. I can describe the details, if you wish,
20 further in response to questions. I do want to
21 recognize on your behalf the staff assistance in this
22 area, which has been significant over long periods of
23 time. Juda Strawczynski, Naomi Bussin and Margaret
24 Drent have assisted us greatly.

25 TREASURER SCHABAS: Thank you,

1 Mr. Mercer. Yes, Mr. Gottlieb.

2 MR. GOTTLIEB: Thank you, Treasurer.

3 Could I be on the speakers' list?

4 TREASURER SCHABAS: Yes, go ahead. You
5 can speak right now.

6 MR. GOTTLIEB: Thank you, Treasurer.

7 Through you to Mr. Mercer. I appreciate all the work
8 that he and his committee have done on this. I would,
9 however, unless I missed it, I would have liked to see
10 reference to what other professions have done with
11 regards to referral fees.

12 For example, I was at the dentist
13 yesterday, and for those of us who do not have
14 insurance coverage, when the dentist refers you to a
15 specialist we know that the specialist fees are very
16 expensive. I'm happy with my dentist, I'm happy with
17 the specialist I've been referred to, I have been happy
18 with their fees. If I have any concerns I discuss it
19 with them, but the point I'd like to stress is that I'm
20 not asked to sign a mandatory referral agreement. I
21 think that's unnecessary.

22 With regards to today's proposals, I can
23 understand very well the necessity for a cap, for a
24 fair and reasonable cap. I have no quarrel with that
25 at all, however, what I do take issue with is the --

1 what's proposed for the implementation of this cap and,
2 in particular, the mandatory referral fee agreement.

3 In my humble submission, I believe that while the
4 proposal may be well intended, I think it's going to be
5 counterproductive.

6 I understand the need for transparency,
7 but I still feel that it will be counterproductive
8 because many lawyers who should refer a matter on
9 because they do not have the expertise are simply not
10 going to go through all the rigmarole, if I can phrase
11 it that way, to go through a mandatory referral
12 agreement which has to be signed by the client, by the
13 referring lawyer, and the lawyer that the matter has
14 been referred to.

15 I think disclosure should be made to the
16 client and that could easily be done by the lawyer that
17 the matter is referred to. I have no objection to the
18 referral fee being referred to in a statement of
19 account, but I do think that the mandatory referral
20 agreement is going to be counterproductive, and that's
21 all I have to say.

22 TREASURER SCHABAS: Thank you, Mr.
23 Gottlieb. Mr. Callaghan.

24 MR. CALLAGHAN: I wasn't here the last
25 time, and I saw -- I wouldn't have voted to allow

1 referral fees. Clients aren't chattel to be sold, but
2 having lost that vote, and my vote wouldn't have made a
3 difference to the outcome, I can see the merit of the
4 proposal and I applaud the committee. I think that the
5 cap arrangement works.

6 My concern is with the reporting of
7 income, which I think is a precedent which we ought not
8 to go. I don't know of us ever having asked any sector
9 of our membership to do that. It is the ultimate in
10 privacy in respect of a person's livelihood. It is not
11 a matter of disinfectant sunshine necessarily because
12 it could be disinfectant sunshine to ask all of us to
13 report not only our income, but our hours, to determine
14 whether our fees are deemed reasonable, which would
15 meet one of our criteria.

16 I think it's a very, very dangerous and,
17 frankly, as presented, unprincipled approach. If you
18 want to talk policy and say what policy and issues, I
19 don't know how we're going to understand what referral
20 fees mean unless we know the gamut of what contingency
21 fees are and what percentage, so we might as well ask
22 the contingency lawyers to produce their income.

23 While we're at it, since this is driven
24 by the insurance industry, why don't we look at what
25 all personal injury lawyers are making and all those in

1 the insurance industry so we can see whether the
2 plaintiff's bar is proportionate to the defence bar.

3 The argument goes on and on, but it is a
4 very unprincipled thing, as far as I'm concerned, to
5 ask a sector of our bar, our bar membership, to report
6 their income, and only one sector.

7 I personally would have said they can't
8 be there. I personally would have said end referral
9 fees. Clients are not chattels, people walking into a
10 law office are not chattels to be sold, but having gone
11 down that road on the wisdom of Convocation, don't
12 double down and make the mistake of accepting that
13 certain sectors of the profession need to report their
14 income, because you will be next.

15 TREASURER SCHABAS: Thank you, Mr.
16 Callaghan. Mr. Bredt.

17 MR. BREDT: Thank you, Treasurer. So,
18 as usual, I agree sometimes with Mr. Callaghan and I
19 don't agree with him sometimes.

20 MR. CALLAGHAN: I only regret you agree
21 with me sometimes.

22 MR. BREDT: I, like Mr. Callaghan, was
23 not able to be here in February, I was reading to kids
24 in Ghana, which was very rewarding, and I missed the
25 debate, but I would not have supported the initiative

1 either.

2 I'm of the view that lawyers have an
3 obligation to refer matters out if they don't have the
4 expertise and that they should not be charging for
5 that, because that's what we all as lawyers should be
6 doing.

7 That debate has been lost and I agree
8 with Mr. Callaghan with the wisdom on that. That being
9 said, I do strongly support the approach on
10 transparency that the committee has taken. It seems to
11 me that a lot of the business practices that we all
12 find distasteful as lawyers and as benchers are driven
13 by lack of transparency and accountability, and I
14 wholeheartedly support that approach, the fact that it
15 has to be out in the open, because we are here to
16 regulate in the public interest, and I have to say that
17 I don't believe the public has been very well served by
18 the approach that has been taken in this area as
19 previously.

20 So, unlike Mr. Callaghan, I think what
21 is being proposed is reasonable, it's clearly in the
22 public interest and I support it wholeheartedly.

23 The question that I have for Mr. Mercer
24 really relates to the cap. And I guess in principle I
25 would say that you could support a referral fee on the

1 basis that the lawyer is putting in some work to
2 examine the case and to figure out what it's about and
3 then to refer it on.

4 But it seems to me, and this issue will
5 play as well when you come to contingency fees, is that
6 there's no automatic assumption that because you've got
7 a two-million dollar case and requires \$25,000 worth of
8 work, versus a much smaller case where you're going to
9 get \$2500.

10 I can understand there may be some
11 practical approach, but I'd be happy if you could just
12 give us a bit of the committee's reasoning as to why it
13 was seen to make sense that a referral fee should go
14 more significantly for a larger case, even though it
15 might involve the same amount of time and effort
16 amongst the lawyer who is referring it. As I said, in
17 principle, if the lawyer is taking some time to meet
18 with the client, understand what the case is and to
19 figure out who the appropriate person is, I can justify
20 a referral fee on that basis, but it doesn't
21 necessarily change based upon the scale of case.

22 That's my question for Mr. Mercer, but
23 overall I'd say that this is a very sensible approach
24 to this issue and I do believe it's in the public
25 interest.

1 TREASURER SCHABAS: Thank you, Mr.
2 Bredt. Mr. Mercer, do you want to respond to that?

3 MR. MERCER: On the specific question of
4 why a percentage, Mr. Bredt's question, the underlying
5 premise of his question is that there shouldn't be
6 referral fees, but, rather, there simply should be an
7 amount paid based on the amount of work done for the
8 referral.

9 That's certainly a legitimate
10 perspective, but the effect of that perspective is that
11 you should only be charging for work that you do. That
12 wasn't the position that was supported ultimately in
13 Convocation.

14 While it may be that -- while I accept
15 that Mr. Bredt would have voted the other way, the
16 point of this is that we are dealing with a market
17 phenomenon where people attract work and the value of
18 what is being referred and the value of what is being
19 received is tied to the amount of the fee being paid.
20 One can agree with that being legitimate or not.

21 The mischief that we've sought to
22 address is the increase in the amount being paid
23 because we are concerned that the amount being paid is
24 pushing up the cost to the ultimate client by pushing
25 up contingent fee rates, or, alternatively, is causing

1 the work to be done to be diminished because the lawyer
2 or paralegal doing the work isn't being paid as much
3 for the work that is to be done.

4 My difficulty in answering Mr. Bredt's
5 question in a way that would satisfy him is that I
6 think his premise is that we've gone down the wrong
7 route. I can't justify it on the basis that he's
8 asked, because it's not justified on that basis in
9 fact.

10 TREASURER SCHABAS: Should have phoned
11 in from Ghana, Mr. Bredt. Mr. Cooper.

12 MR. COOPER: I want to add quickly for
13 everybody's consideration before we vote, I would like
14 to review three things, which is chattels, transparency
15 and referrals.

16 First with chattels. I do not see this
17 as chattels, just like I would imagine anyone in a
18 large firm who was a rainmaker when they sent the
19 client out to other lawyers to do work in their firm,
20 that they were not trading chattels.

21 Small practitioners and practitioners
22 outside of Toronto do not have necessarily the same
23 type of firms. They do have clients, and they have
24 client loyalty and they have client management. As
25 part of that, they, if they refer someone out, they can

1 choose to have a fee or not, and they will still, in my
2 experience, communicate with the clients to ensure that
3 who they referred them to, that they are happy with
4 them and they understand the process. So that's
5 important.

6 Transparency. There's an agreement.
7 That agreement is only for if there's going to be a
8 referral fee. If you're referring, as many have, such
9 as I, traditionally to others for no fee, that's a
10 choice I make, but I don't have to get into that.
11 Transparency in reporting and ensuring that people are
12 complying with the rules. If you want a referral fee
13 and you're following the rules, then as part of our
14 monitoring for the public interest, that's a necessary
15 part of it.

16 And, lastly, again with respect to
17 referral fees, there is a purpose to it. We voted at
18 Convocation, we've come back with a very reasonable
19 cap. If you look at a \$50,000 actual award and a --
20 for example, a fee of ten to fifteen thousand dollars
21 referral on that, the referral fee is between 500 and
22 800. Think about that. Thank you.

23 TREASURER SCHABAS: Thank you,
24 Mr. Cooper. Mr. McDowell.

25 MR. PORTER: Hope you have a literary

1 quote.

2 MR. McDOWELL: I borrowed a quote from
3 Mr. Diefenbaker many years ago which I'll apply to Mr.
4 Callaghan: "I enjoy him when he's witty, but not when
5 he's halfwitty."

6 -- Laughter.

7 MR. McDOWELL: I wasn't going to say
8 that, but I was hectored from the corner.

9 Several brief points. One is that Mr.
10 Callaghan is onto something in speaking about chattels,
11 because where this discussion began was in the spectre
12 of cases where literally we had members of the bar
13 saying if you want to speak to this badly injured
14 person and his family in the next room, you will do a
15 number of things, including giving me \$50,000 up front,
16 and all of this lacked transparency. And the referral
17 and the reasons for the referral were often not clear,
18 so that's where this comes from.

19 But I think that the answer to that, and
20 what makes it not demeaning to the dignity of these
21 vulnerable injured people is largely the transparency
22 that these rules would require.

23 So, you know, where the client knows
24 here is the reason for the referral, i.e., it's not
25 within the expertise, here is the relationship, here is

1 the arrangement, and we've got mandatory language so
2 that there's no backsliding on the disclosure of what
3 the arrangement is. I think that should address Mr.
4 Callaghan's concern about the chattels because you then
5 have an informed client making a decision as to whether
6 or not this arrangement makes sense or not.

7 But to come, then, to the question of
8 disclosure on an annual basis of the amount of the
9 referral fees, I mean, I struggle with this as well,
10 but the Law Society already gets all sorts of
11 information that's a bit intrusive. At some level, why
12 is it anybody's business whether I am practising family
13 law and at what percentage.

14 So another way to do this might be to
15 say looking at your practice in terms of income, how
16 much of your income as a percentage declared on the
17 annual form comes from referral fees, but I think
18 that's actually more interest and I think that's what's
19 being disclosed now, i.e., how much of your income
20 comes -- in what number comes from referral fees is not
21 disclosing income, because we're not asking what
22 percentage is it of your whole practice.

23 So, yes, is it more intrusive to do that
24 than to leave things as they are, admittedly it is, but
25 this is an area in which there has been considerable

1 abuse, where I think we need to have the information to
2 know where to devote our auditing and other resources.
3 For that reason, I support the measure and, indeed, the
4 proposal generally. Thanks.

5 TREASURER SCHABAS: Thank you, Mr.
6 McDowell. Mr. Burd.

7 MR. BURD: Basically I have a question
8 for Mr. McDowell and the working group, and it goes
9 along with Mr. Bredt's comments. And that is, when we
10 weren't capping these referral fees, was there any
11 other consideration other than directly linked to the
12 award of the contingency fee? Is there any other
13 method, and I agree with Mr. Bredt, if I am simply
14 referring a matter, whether it's for a \$50,000 claim or
15 a \$100,000 claim, isn't it just the principle that I
16 referred that matter out and why should I be awarded a
17 greater amount and why should it be directly linked to
18 the outcome of that claim?

19 So I'm asking if the working group
20 considered any other alternatives so that the public
21 was satisfied that we are doing this in their best
22 interest and that it's not directly linked to how much
23 money is awarded, but rather the service that was being
24 offered by the referring paralegal or lawyer. That
25 would be my question.

1 MR. MERCER: Again, it's difficult to
2 know exactly what to say. If I remind you of the
3 process, we started this exercise maybe 16 or 17 months
4 ago. We went out, and through the assistance of Mr.
5 Caskey, a former Bencher, went out to people who are
6 participants in various parts of the professions. We
7 put out a consultation in June of last year, got 90 or
8 so responses. We then met as a working group and
9 considered all of that.

10 There has never been a suggestion that
11 if you do work for someone that is time spent and is
12 worthy of being charged as time spent that you can't
13 earn a fee for doing that work. So if you sit down and
14 spend three hours or four hours working up a referral,
15 charging the client for that assistance is not affected
16 by this proposal.

17 What this proposal does is deal with the
18 amount paid by the lawyer or paralegal to whom the work
19 is referred. While one can imagine other sort of caps,
20 we didn't investigate in any serious way other
21 alternative types of caps because that's not what's in
22 the marketplace and not the phenomenon that we're
23 dealing with.

24 As Mr. McDowell rightly says, we were
25 addressing a particular type of mischief in trying to

1 get back to a situation in terms of the amounts that
2 was thought not unreasonable. So this is one of those
3 situations where the best I can say is we tried to
4 regulate, as I think we should, taking into account the
5 way the world is actually working.

6 TREASURER SCHABAS: Thank you. Mr.
7 Lerner.

8 MR. LERNER: The first question I pose
9 is to Mr. Bredt and Mr. Callaghan on behalf of
10 Mr. Braithwaite, Ms. MacLean and myself: Where were
11 you when we needed you?

12 It's kind of ironic that several of the
13 issues on the agenda today or that are under
14 consideration, one being advertising, one being
15 contingency fees, and one being referral fees, there
16 will be some people in this room who approved those
17 three different concepts at some time while they were
18 sitting around this table. I can only imagine that
19 none of them contemplated, when they initially passed
20 referral fees, for instance, which was clearly in the
21 public interest and was the motivation behind doing so,
22 never expected that we'd be dealing with this issue
23 today.

24 It's somewhat disconcerting to know that
25 we are dealing with these issues again today only

1 because some members of this profession have abused
2 something that was adopted and intended for the public
3 interest. That's why we're back here talking about
4 referral fees again. That's why we're dealing with
5 advertising and that's why we're dealing with
6 contingency fees.

7 To some extent it's somewhat of a sad
8 commentary upon us, but dealing specifically with
9 referral fees, I must say within the working group it
10 was a balancing act. And no one quite knew where
11 exactly the point of equilibrium would be, so that it
12 encouraged people to refer files to somebody who was
13 more experienced, better qualified to do the work,
14 rather than retain it themselves and do any number of
15 things that would be contrary to the client's interest.
16 And a fee that the client would clearly understand was
17 intended in his or her best interest to be passed on,
18 and at the same time restrict the amount that was being
19 paid in consideration of the actual referral.

20 I think Mr. Mercer hit the nail right on
21 the head when he said this was a very interesting
22 dialogue because in trying to determine percentages and
23 amounts, we tried to look back and preserve the
24 original intention when these referral fees were first
25 adopted by the Law Society some years ago.

1 So whether we're right or we're wrong,
2 maybe it's going to take another 20 or 25 years to
3 determine, but none of this was cast in stone and there
4 was certainly not unanimity during the course of the
5 discussion, but those of us on the working group who
6 thought there ought not to be referral fees were
7 satisfied that this was a reasonable compromise and
8 those who were the vocal proponents of referral fees
9 similarly thought this was reasonable, and I think
10 that's the only way we can explain or justify it to
11 anybody who might ask, we believe we've done the
12 reasonable thing.

13 TREASURER SCHABAS: Mr. Anand.

14 MR. ANAND: Thank you, Treasurer. Like
15 Mr. Callaghan and Mr. Bredt, I strongly opposed
16 referral fees in principle; unlike Mr. Callaghan and
17 Mr. Bredt, I attended Convocation and cast a losing
18 vote.

19 My question to Mr. Mercer is, that
20 having been done, my question to Mr. Mercer is about
21 transition.

22 As I understand it, there is a section
23 on transition in the report, but it deals with referral
24 fee arrangements entered into before today versus today
25 and after today, and my sense is that this is a fairly

1 elaborate mechanism that's been put in place, and I
2 wonder whether it's appropriate to put a lawyer who
3 doesn't, or paralegal who doesn't implement this new
4 referral system today or tomorrow in breach of the
5 rules.

6 And I simply ask, should there be some
7 efforts in the area -- by the Law Society in the area
8 of communication and education before the effective
9 date?

10 MR. MERCER: It's a completely
11 legitimate point. I think the answer to it is that
12 there are devils on both sides of that proposition.
13 One of the concerns that we had was that one could
14 have, for those who are prepared to be malignant in
15 their approach, give them time before the effective
16 date, allows gaming to be done, which is of concern.

17 I think Mr. Anand is entirely right that
18 you could have people who in an innocent way don't
19 realize that they're afoul of the rules as they're put
20 in place today.

21 The answer to that, it seems to me, is
22 threefold. One is communication, and there will be
23 communication coming out of today. The second is that
24 those for whom referral fees are any material thing I
25 bet you are watching really carefully; and the third is

1 our Professional Regulation Division is thoughtful in
2 their way of dealing with rule breach where it's
3 innocent and inadvertent.

4 I think we could either try to deal with
5 it in a way which creates risk on one side or the
6 other. My personal view, and we haven't spent much
7 time on the mechanism, is that Mr. Anand is right to
8 identify the concerns, but I think it can be
9 practically dealt with as opposed to a different date.

10 TREASURER SCHABAS: Ms. Ross.

11 MS. ROSS: I, too, would have voted
12 against referral fees; alas, while I was at
13 Convocation, I don't have a vote. And I say that
14 coming from the perspective of having been a member of
15 the Rules Task Force in 2000 when referral fees were
16 first introduced to the legal profession.

17 And none of the other task force members
18 are here today, Gavin MacKenzie, Derry Millar,
19 Mr. Justice John Laskin, Paul Perell, but I do see my
20 friend Jim Varro, who was our policy advisor.

21 The intention, and I'm not trying to
22 reargue what was decided at Convocation in February,
23 but just by way of a little bit of historical
24 background, the honest intention was to encourage
25 lawyers who were not competent to do a matter to refer

1 the matter away.

2 And the rule as it currently stands, and
3 it's pretty much unchanged from the rule that we
4 presented at Convocation and Convocation approved in
5 2000, provides for significant disclosure and
6 transparency. I won't read it to you, but I commend it
7 to you to simply look it up. First of all, there has
8 to be full disclosure about the referral fee, the
9 amount, the client must consent in writing, and the
10 referral fee must not increase the overall proper fee
11 charged to the client between the two lawyers, the
12 referring lawyer and the referred to lawyer or law
13 firm.

14 Clearly, what we neophytes, in our
15 honest intention from a policy perspective, hoped would
16 happen did not, and, in fact, this has been a source of
17 significant abuse. We've heard much of it over the
18 course of this matter being reviewed and brought to
19 Convocation.

20 My concern is, notwithstanding the
21 additional provisions that have been introduced here
22 today in the hopes of creating transparency and
23 accountability, we learned in law school there is no
24 law if it is unenforceable, and my concern is
25 notwithstanding the former rule, which provided for

1 considerable disclosure in writing, what is to
2 guarantee that this new set of provisions is going to
3 provide the kind of accountability, transparency and
4 ability for the Law Society, the regulator, to truly
5 monitor and audit these arrangements.

6 TREASURER SCHABAS: Thank you. Ms.
7 Leiper.

8 MS. LEIPER: Thank you, Treasurer,
9 members of Convocation. I'm carrying two briefs here
10 simultaneously. Mr. Sikand has asked me to raise the
11 point on his behalf that any agreement entered into
12 between the client and the lawyer referring should make
13 it very clear what the client is agreeing to, and he
14 had some concerns about small print and carrying that
15 forward, so that's brief number one.

16 Brief number two on my own behalf, I was
17 present and voted against referral fees and I wanted to
18 start by respecting, it's dating my respect for the
19 work done by the committee on this very difficult set
20 of questions, and to say why I would be voting against
21 it today, again with respect to my colleagues.

22 I see this referral fee as destructive,
23 it's anti-competitive, in my view it's a corruptive
24 business policy, and I feel by voting for a way to
25 manage it I'm settling for a little bit of corruption.

1 So I can't vote for it obviously and I wanted to say
2 that. Thank you.

3 MR. MERCER: So no cap. Thank you.

4 TREASURER SCHABAS: Mr. Falconer.

5 MR. FALCONER: Thank you, Treasurer. I
6 don't propose to re-litigate the vote that's already
7 taken place. What occurs to me is that as is so often
8 the case with the work that we do, there is a balancing
9 act to be done. I respect the balance we've achieved.
10 I don't think that there is a right and a wrong.

11 Here's my difficulty. My difficulty is
12 not with the proposal that we've made. It is that
13 there is very little discussion, very little discussion
14 about communication with the public about what we've
15 done. And by that I'm not talking about the direct
16 accountability to the client, per se, but why and how
17 this is intended to operate.

18 My experience with our failings as a Law
19 Society is exactly in this area, our inability to
20 communicate our good work to the public. This is a
21 very obviously difficult issue. Words like chattels,
22 et cetera, with all due respect to my colleague, don't
23 advance the issues.

24 This is a question of monetization of
25 legal services. It happens every day. Why we're doing

1 this has to be communicated to the public and I worry
2 in a very concrete way that this is again where we're
3 going to fail. I raise it now because I say it's not
4 going to be in our rule amendments where we fall, it's
5 going to be in our inability to communicate to the
6 broader public how we're operating in the public
7 interest.

8 I, for one, want to indicate that I
9 happen to practice in an area that many don't ascribe
10 to, police accountability work. There are very few
11 people, very few members of the profession who actually
12 practice in an area in which your return, your ability
13 to deliver for a client in a case where, sadly, a
14 member of the public has died at the hands of police is
15 dependent, dependent on a contingency arrangement, and
16 it is hoped that lawyers out there who don't practice
17 in this area won't dabble. So this actually addresses
18 that in a real way.

19 What I want to emphasize is if there is
20 not education of the people who are actually being
21 protected by these kinds of arrangements then we fail.
22 So, again, I repeat, I think there are good things
23 here, but if we don't explain ourselves, we talk about
24 transparency, but frankly transparency is actually
25 about people understanding what you're doing. I'm not

1 at all convinced we've conquered that particular hill
2 and that's what I think we have to direct our attention
3 to once the mechanics are finished. Thank you,
4 Treasurer.

5 TREASURER SCHABAS: Thank you,
6 Mr. Falconer. I would note that you're the chair of
7 the Communications Steering Group so...

8 -- Laughter.

9 MR. MERCER: While it's not a broad
10 communication, I do direct Convocation's attention to
11 requirements for referral fees, what clients need to
12 know, tab 4.2.10, which is required to be given to
13 individual clients.

14 MR. FALCONER: That's the individual.

15 MR. MERCER: Of course.

16 TREASURER SCHABAS: Thank you. Point
17 taken, Mr. Falconer. Thank you very much for that.
18 Mr. Wright.

19 MR. WRIGHT: Thank you, Treasurer. Mr.
20 Lerner will be interested to know that at the time
21 there were Benchers who argued against it and predicted
22 the very harms that have now manifested.

23 I think it's outrageous that you can get
24 upwards of \$25,000 for following the Rules of
25 Professional Conduct and referring out work that you're

1 not competent to do. I think the mischief of referral
2 fees is that they're too lucrative and people can make
3 a living just doing referrals.

4 To address Ms. Ross' point about
5 monitoring and enforcement and so on, if we make it
6 non-lucrative to do the referrals then the problem
7 essentially goes away.

8 I think the problem with this proposal
9 is that the cap is way too high, the percentage amount
10 is way too high, and it should go back to the task
11 force or committee working group, should go back to the
12 working group to rethink the cap and the percentages
13 that are in this proposal. Thanks.

14 TREASURER SCHABAS: Mr. Sharda.

15 MR. SHARDA: Two points. It seems to me
16 we're responding to a particular aspect of our services
17 in that we're responding to personal injury
18 predominantly from the values that we are showing,
19 because I don't know any other area where we have such
20 significant amounts of referrals.

21 I don't think I can support the -- the
22 losing side of it, which is fine -- I don't think I can
23 support the proposed rule change because I agree with
24 Mr. Callaghan that I don't think it's our business to
25 be asking for how much of your fees come from money --

1 either you don't make referrals or you do your work and
2 you earn your money appropriately.

3 That having been said, I'm concerned
4 about communication in ethnic communities, because I
5 often hear paralegals on the ethnic radios and the
6 ethnic newspapers and TV shows who are receiving --
7 they're out there being the people who fill out the
8 forms and then handing off files to lawyers and they
9 often say in their own respective languages we have a
10 team of lawyers who will do this case for you, et
11 cetera, and I'm concerned about whether the
12 communication will be done to the appropriate ethnic
13 communities, because that's where you're going to have
14 a lot of people who do not understand your rules, that
15 do not understand that there should be an issue on
16 referrals.

17 They see -- they find a person who can
18 speak English, they think that's competent, that's good
19 enough, but they may not understand all this other
20 stuff that you're trying to achieve.

21 So I don't know that you'll achieve that
22 in these respective communities, so I have concerns.
23 That being said, I will exercise my right to vote.

24 TREASURER SCHABAS: Thank you,
25 Mr. Sharda. The point on communications is well taken.

1 Staff are here and we will, I'm sure, be looking at all
2 those issues as we are. Thank you for those remarks.
3 Going to go -- Mr. Ferrier.

4 MR. FERRIER: Just briefly, I was not
5 here as well and I would have voted against continuing
6 of referral fees.

7 TREASURER SCHABAS: Timing is
8 everything.

9 MR. FERRIER: I wanted to state that for
10 the record, but since Convocation has rather
11 overwhelmingly approved continuation of referral fees I
12 think what has been proposed by the committee is a fair
13 and reasonable solution.

14 TREASURER SCHABAS: Thank you very much.
15 We'll then go to the phone, Mr. Lerner. Is there
16 anybody on the phone who wishes to address Convocation
17 on this issue?

18 MR. STROSBURG: I do. It's Harvey
19 Strosberg.

20 TREASURER SCHABAS: Go ahead, Mr.
21 Strosberg.

22 MR. STROSBURG: Treasurer, thank you.
23 The report focuses on the personal injury areas,
24 primarily motor vehicle accidents. There is no
25 provision for the \$25,000 to be increased by the cost

1 of living, a \$100,000 limit for general damages in the
2 trilogy, so I think that should be added. In this
3 committee report there is no mention --

4 TREASURER SCHABAS: Could you please
5 press star 6 on the telephone if you're not addressing
6 Convocation because we're hearing some noise.

7 MR. STROSBURG: I'm sorry, can I
8 continue?

9 TREASURER SCHABAS: Yes, sorry to
10 interrupt, Mr. Strosberg, it's just we're hearing some
11 people on the telephone that are interrupting you.

12 MR. STROSBURG: I understand. People
13 always interrupt me.

14 TREASURER SCHABAS: Please proceed,
15 Mr. Strosberg.

16 MR. STROSBURG: In the committee report
17 there's no mention about class actions and the concept
18 of referrals in the class action context.

19 In class actions the firms involved
20 routinely deal with referral fees from other lawyers
21 and/or from other provinces and/or from other
22 countries. I suggest that class actions should be
23 excluded from this report, and until the committee
24 addresses this issue fully.

25 In class actions, class counsel reports

1 to the Court and the fee is set by the Court and all
2 information has to be given to the Court. It is not in
3 the public interest to set a system in advance unless
4 the committee hears from the class action bar and from
5 the judiciary and the public.

6 I'd offer friendly amendments to, one,
7 except class actions until the committee has studied
8 class actions and, two, that the \$25,000 should be
9 increased by the cost of living. That's my suggestion.
10 Thank you.

11 TREASURER SCHABAS: Thank you,
12 Mr. Strosberg. Is there anybody else on the telephone
13 who wishes to address Convocation? Hearing nobody,
14 then I'll ask Mr. Mercer to respond. I suppose I
15 should ask at the outset with respect to Mr. Strosberg,
16 is that a friendly amendment?

17 MR. STROSBURG: Yes.

18 TREASURER SCHABAS: We know you
19 described it that way, Mr. Strosberg.

20 MR. MERCER: I don't think I can accept
21 it as a friendly amendment, given the work of the
22 working group. I think it would be outside of the
23 process that we've taken for me to make that
24 assumption.

25 We can certainly consider whether or not

1 we should do anything else at our next working group
2 meeting, but I don't propose to accept it as a friendly
3 amendment.

4 What I should say, though, is that we
5 have input that we've been asked for through
6 consultation process and ironically the current rules
7 prohibit referral fees paid to lawyers in other
8 provinces and other countries. If that's actually a
9 process or a practice that we're supposed to not be
10 getting in the way of, it's currently contrary to the
11 rules. It may be that we should open that up. That's
12 arguable, but that's not part of my report.

13 As to the CPI adjusted \$25,000, I can
14 see the merit of that, but we can deal with that
15 request another time.

16 TREASURER SCHABAS: Mr. Strosberg, do
17 you wish to respond?

18 MR. STROSBERG: Yes, maybe someone in
19 Convocation will second my proposed amendment.

20 TREASURER SCHABAS: Mr. Sharda is
21 seconding your amendment.

22 MR. STROSBERG: Thank you.

23 TREASURER SCHABAS: So we have a motion
24 to amend.

25 MR. STROSBERG: I think they should be

1 set for at least -- \$25,000 will be one amendment, and
2 the second amendment, excepting class actions until
3 further study by the committee.

4 TREASURER SCHABAS: Okay. I think
5 that's pretty clear. Thank you for that. So I will
6 have to open the floor for debate on the amendment.
7 Prior to doing that I think we'll take the coffee
8 break.

9 --- Recess taken at 10:51 a.m.

10 --- On resuming at 11:15 a.m.

11 TREASURER SCHABAS: We'll resume. So
12 there's now a motion to -- we'll just make sure we're
13 hooked in and the phone is open.

14 So there is an amendment by
15 Mr. Strosberg, seconded by Mr. Sharda. Mr. Varro, do
16 you want to state what the amendment is and open the
17 floor to those who feel the need to address it.

18 SECRETARY: Benchers, the amendment is
19 as follows: That the 25,000 absolute limit be indexed
20 to the consumer price index and that the cap and
21 regulatory approach and the proposed amendments to the
22 rules and by-laws not apply to referral fees in class
23 actions.

24 TREASURER SCHABAS: Mr. Mercer, do you
25 wish to address it at the outset?

1 MR. MERCER: I want to say two things
2 briefly. First of all, it's not that we didn't
3 consider class actions. One of our members in our
4 working group is expert in the area and the
5 consultation dealt with class actions, so it wasn't
6 that it wasn't considered.

7 Secondly, I think the concern is mostly
8 misplaced, because the rule deals with referral of a
9 client from one licensee to another licensee, and much
10 of what Mr. Strosberg referred to isn't about referring
11 clients.

12 The American cases which are "referred"
13 to Canadian lawyers are not referring clients obviously
14 because they are different plaintiffs, different
15 representative plaintiffs. What they are is referring
16 cases and referring the work-up of a case. So in an
17 interesting way it's the referral of a fact pattern as
18 opposed to the referral of a client.

19 The same is true with respect to
20 carriage motions where class action lawyers fight over
21 who is going to move forward as the lead case and share
22 fees, then, with the others who stand down. In that
23 case, it is not necessarily the case, but it could be,
24 that you refer the representative plaintiff, but rather
25 you're reaching an agreement to stand down your

1 client's case as against another client's case and have
2 your client then be a class member.

3 While there might be unusual
4 circumstances where this rule affects class actions, it
5 mostly shouldn't, and so I say the motion is
6 unnecessary. As to the indexing, it's not a bad idea,
7 but frankly it's a complication that we shouldn't, in
8 my submission, deal with at this point.

9 TREASURER SCHABAS: Thank you very much.
10 Anybody else wish to speak to the amendment, proposed
11 amendment? On the telephone, does anybody wish to
12 address the amendment?

13 Mr. Strosberg, you heard Mr. Mercer's
14 comments. Did you wish to respond to that at all?

15 MR. STROSBERG: Yes, I didn't understand
16 why there wasn't a word in the report about class
17 actions, and Mr. Mercer misapprehends the issues.

18 Oftentimes the clients were -- the
19 people from Nova Scotia have a client in Ontario and
20 the lawyers in the U.S. have a client in Ontario that
21 registered with our office, so he's just mistaken. For
22 the first time he is mistaken.

23 -- Laughter.

24 MR. MERCER: But not for the last.

25 TREASURER SCHABAS: I'm glad you

1 qualified that, Mr. Strosberg. Is there anybody else
2 who wishes to address this matter? Mr. Callaghan.

3 MR. CALLAGHAN: I do class actions and,
4 in fact, I co-authored probably the leading text in the
5 area. I know Mr. McDowell, undoubtedly Mr. McDowell
6 will refer to that next time he's at the podium, but
7 there is a bit of a concern insofar as the courts, I
8 think Mr. Strosberg is right, the courts do take a
9 parental view as to costs and it's in their
10 jurisdiction.

11 I just -- I don't know whether it's been
12 properly considered as to the interplay between the
13 jurisdiction of the statute and our sub, sub-delegated
14 legislative role and I just worry a little bit because
15 we had some courts step in in respect to a number of
16 areas, particularly in the cost area, and it's -- I'm
17 not -- because I do defence side, I'm not versed on how
18 the plaintiffs deal with this because it's usually done
19 between the plaintiff's counsel and the courts.

20 I can't express anything, I think
21 Mr. Strosberg probably still remains the leading person
22 in that area, so you'd have to listen to him on this,
23 but there is an element here of jurisdiction as to
24 whether we should not pause and consider that, given
25 the fact the courts do take a parental view with

1 respect to costs in class actions and it is under the
2 supervision of the court. So there's a mischief we're
3 talking about that's already been addressed.

4 TREASURER SCHABAS: Not hearing any
5 other voices on the telephone or --

6 MR. SHEFF: I have one other comment
7 here.

8 TREASURER SCHABAS: Mr. Sheff, go ahead.

9 MR. SHEFF: You presented the amendment
10 as one item. I'm under the impression that
11 Mr. Strosberg suggested two amendments to be voted on
12 separately. Maybe I have that wrong, but that's what I
13 thought he said.

14 MR. STROSBERG: That's right.

15 MR. SHEFF: So I think you want to be
16 dealing with two separate amendments voted on
17 separately.

18 TREASURER SCHABAS: Thank you.

19 Mr. Sharda, are you prepared to second both of them?

20 MR. SHARDA: Sure.

21 TREASURER SCHABAS: All right. Thank
22 you for that clarification, Mr. Sheff. Hearing no
23 other voices, seeing no other hands, we will put the
24 first proposed amendment to a vote, which, Mr. Varro,
25 is the one relating to the CPI indexing. Do you want

1 to just state it again?

2 SECRETARY: That the \$25,000 absolute
3 limit be indexed to the consumer price index.

4 TREASURER SCHABAS: So moved by Mr.
5 Strosberg, seconded by Mr. Sharda. All in favour? A
6 very small number of hands. Against in the room? So
7 for those on the phone, the room clearly defeats the
8 motion. Unless anybody wishes to state otherwise on
9 the telephone, I think it's clear that the motion has
10 failed.

11 So with that, we'll move to the second
12 one.

13 SECRETARY: That the cap and regulatory
14 approach and the proposed amendments to the rules and
15 by-laws not apply to the referral fees in class
16 actions.

17 TREASURER SCHABAS: All in favour in the
18 room? Those against? All right. Again, there's a
19 clear vote against in the room, so I think the motion
20 again fails. Thank you.

21 We'll then put the main motion. So this
22 is the motion, Mr. Mercer, moved by you, seconded by?

23 MR. MERCER: Ms. Horvat.

24 MR. SIKAND: Treasurer, can I ask for a
25 roll call vote for the main motion?

1 TREASURER SCHABAS: Yes, I'm okay with
2 that. So we'll do a recorded vote, a roll call vote
3 for the main motion, which is found at paragraph 22 on
4 page 419 of BoardBooks. Mr. Varro, would you call the
5 roll?

6 SECRETARY: Mr. Anand?

7 MR. ANAND: Abstain.

8 SECRETARY: Mr. Beach?

9 TREASURER SCHABAS: We're hearing some
10 noise. Mr. Beach, could you just repeat what your vote
11 was?

12 MR. BEACH: Against.

13 SECRETARY: Mr. Bickford?

14 MR. BICKFORD: Against.

15 SECRETARY: Mr. Braithwaite?

16 MR. BRAITHWAITE: In favour.

17 SECRETARY: Mr. Bredt?

18 MR. BREDT: For.

19 SECRETARY: Mr. Burd?

20 MR. BURD: Abstain.

21 SECRETARY: Mr. Callaghan?

22 MR. CALLAGHAN: Against.

23 SECRETARY: Ms. Chrétien?

24 MS. CHRÉTIEN: In favour.

25 SECRETARY: Ms. Clément?

1 MS. CLÉMENT: For.

2 SECRETARY: Mr. Cooper?

3 MR. COOPER: For.

4 SECRETARY: Ms. Corbiere?

5 MS. CORBIERE: For.

6 SECRETARY: Ms. Corsetti?

7 MS. CORSETTI: For.

8 SECRETARY: Ms. Criger?

9 MS. CRIGER: For.

10 SECRETARY: Ms. Donnelly?

11 MS. DONNELLY: For.

12 TREASURER SCHABAS: Mr. Earnshaw?

13 MR. EARNSHAW: For.

14 SECRETARY: Mr. Epstein?

15 MR. EPSTEIN: For.

16 SECRETARY: Mr. Evans?

17 MR. EVANS: For.

18 SECRETARY: Mr. Falconer?

19 MR. FALCONER: For.

20 SECRETARY: Mr. Ferrier?

21 MR. FERRIER: For.

22 SECRETARY: Ms. Go?

23 MS. GO: For.

24 SECRETARY: Mr. Goldblatt?

25 MR. GOLDBLATT: For.

1 SECRETARY: Mr. Groia?
2 MR. GROIA: For.
3 SECRETARY: Ms. Haigh?
4 MS. HAIGH: For.
5 SECRETARY: Ms. Hartman?
6 MS. HARTMAN: For.
7 SECRETARY: Ms. Horvat?
8 MS. HORVAT: For.
9 SECRETARY: Mr. Krishna?
10 MR. KRISHNA: For.
11 SECRETARY: Mr. Lawrie?
12 MR. LAWRIE: For.
13 SECRETARY: Ms. Leiper?
14 MS. LEIPER: Against.
15 SECRETARY: Mr. Lem?
16 MR. LEM: For.
17 SECRETARY: Mr. Lerner?
18 MR. LERNER: For.
19 SECRETARY: Ms. Lippa?
20 MS. LIPPA: For.
21 SECRETARY: Ms. MacLean?
22 MS. MacLEAN: For.
23 SECRETARY: Mr. McDowell?
24 MR. McDOWELL: For.
25 SECRETARY: Ms. McGrath?

1 MS. McGRATH: For.

2 SECRETARY: Ms. Merali?

3 MS. MERALI: Against.

4 SECRETARY: Mr. Mercer?

5 MR. MERCER: For.

6 SECRETARY: Ms. Murchie?

7 MS. MURCHIE: For.

8 SECRETARY: Ms. Nishikawa?

9 MS. NISHIKAWA: For.

10 SECRETARY: Ms. Richardson?

11 MS. RICHARDSON: For.

12 SECRETARY: Ms. Richer?

13 MS. RICHER: For.

14 SECRETARY: Mr. Rosenthal?

15 MR. ROSENTHAL: For.

16 SECRETARY: Mr. Sharda?

17 MR. SHARDA: Against.

18 SECRETARY: Mr. Sheff?

19 TREASURER SCHABAS: Mr. Sheff, you were
20 there a moment ago.

21 MR. SHEFF: Sorry, for. I forgot to
22 take it off mute.

23 SECRETARY: Mr. Sikand?

24 MR. SIKAND: Against.

25 SECRETARY: Mr. Spurgeon?

1 MR. SPURGEON: For.

2 SECRETARY: Ms. Strosberg?

3 MS. STROSBURG: For.

4 SECRETARY: Mr. Strosberg?

5 MR. STROSBURG: Against.

6 SECRETARY: Mr. Troister?

7 MR. TROISTER: For.

8 SECRETARY: Mr. Udell?

9 MR. UDELL: For.

10 SECRETARY: Ms. Vespry? Ms. Walker?

11 MS. WALKER: For.

12 SECRETARY: Mr. Wardle?

13 MR. WARDLE: For.

14 SECRETARY: Is there anyone whose name I
15 haven't called?

16 TREASURER SCHABAS: So the motion
17 passes; 41 in favour, eight against, and two
18 abstentions. Thank you very much.

19 We will move to the next item on the
20 agenda, which is the Human Rights Monitoring Group
21 Interventions. Ms. Donnelly.

22 -- EQUITY AND INDIGENOUS AFFAIRS

23 COMMITTEE REPORT:

24 MS. DONNELLY: Thank you, Treasurer.

25 The motion found at tab 5.1 of BoardBooks at page 509

1 is that Convocation approve the letters and public
2 statements in 12 cases involving 14 individual lawyers
3 and 27 judges and prosecutors. The interventions
4 relate to eleven different countries.

5 All the requests for intervention fall
6 within the mandate of the Human Rights Monitoring
7 Group. There are no concerns with the sources of
8 the -- quality of the sources used for the reports.

9 In each case, the lawyer and judge's
10 human rights have been violated as a result of the
11 discharge of their legitimate professional duties. The
12 violations or persecutions involve maltreatment while
13 in detention in China; arrest, conviction and detention
14 in Kazakhstan; arrest and detention in Zambia; arrest
15 and administrative conviction in Russia; dismissal of
16 227 judges and prosecutors in Turkey; detention in
17 Sudan; convictions in Belarus; and, tragically, the
18 four murders and one attempted murder.

19 The murders are the murder of Muhammad
20 Jan Gigyani in Pakistan, who was one of the lawyers
21 that had survived a suicide bomb attack on the
22 Shapqadar Courts in March of 2016; the murders of
23 Tetyana Popova and Valeriy Rybalchenko in the Ukraine;
24 the murder of criminal lawyer, Jhon Fredy Concha
25 Valbuena and the attempted murder of criminal lawyer,

1 Jorge Enrique Belalcazar Gutierrez in Colombia; and the
2 murder of Mia Mascariñas-Green in the Philippines, who
3 was gunned down while in the presence of her three
4 children and the children's nanny. The children and
5 the nanny survived, were unharmed. Ms. Mia
6 Mascariñas-Green was murdered before her children's
7 eyes.

8 You will recall that only in February of
9 2017 that we intervened in the case of Arlan Castañeda,
10 another Filipino lawyer.

11 The motion is to approve the letters and
12 public statements in these cases. It is moved by me
13 and seconded by Ms. Go.

14 TREASURER SCHABAS: Thank you. Any
15 comment or questions? On the telephone, any comments
16 or questions on the phone? Hearing nobody, I'll put it
17 to a vote. All in favour? Anyone opposed? Anyone
18 opposed on the phone? The motion is carried. Thank
19 you, Ms. Donnelly.

20 MS. DONNELLY: Thank you, Treasurer.

21 TREASURER SCHABAS: If I can call upon
22 Ms. Leiper to give us an update on the Governance Task
23 Force.

24 -- GOVERNANCE TASK FORCE 2016 REPORT.

25 MS. LEIPER: Thank you, Treasurer. This

1 is a brief update on our work. As you know from
2 earlier reports, we have divided our work into smaller,
3 shorter process issues and some longer, more involved
4 policy possibilities for governance throughout the Law
5 Society.

6 With respect to the shorter term issues,
7 you'll recall that in February we talked about the
8 paralegal election and the lawyer Bencher election and
9 trying to bring those into sync. As you know, there is
10 an ongoing consultation period that ends tomorrow, so
11 we should be back with the results of that consultation
12 and the decision for you to make in June.

13 We also have reported to you about the
14 paralegal term limits, and, again, that will be coming
15 forward sooner rather than later. In relation to
16 voting periods, because we were suggesting a together
17 kind of election, we were not going to propose it for
18 the shortening of the election period of time to allow
19 for any additional work that needs to be carried out by
20 the election officer. So that's the shorter things.

21 Some of the shorter to medium things,
22 board evaluation. We are continuing to look at a
23 number of potential instruments with the view to seeing
24 whether board evaluation processes could help us in the
25 sense of board excellence and whether or not it's

1 appropriate. It's not an obvious answer because of our
2 size and because of the nature of our work, however,
3 we're continuing to look at that and we will be
4 reporting to you on any recommendations. Hope to do
5 that in June.

6 We have now spoken through staff to all
7 three emeritus Treasurers as part of the Emeritus
8 Treasurer Review that was negotiated during the first
9 round of governance reforms, so we will again be
10 reporting to you further on the outcome of those
11 conversations. We would like to thank the emeritus
12 Treasurers, who are here, for participating.

13 Advice to the Treasurer. At the request
14 of the Treasurer, we were asked to look at a number of
15 governance-type matters which don't require decisions
16 by this body, but something to assist in the sense of
17 how Convocation operates at a more granular level.
18 These include use of the Lamont Centre for meetings of
19 Convocation. I would say that our task force is
20 generally in favour of that as the permanent home of
21 Convocation. I'm not certain that that's ready to be
22 decided, but that's kind of where we're leaning and
23 where we will likely be giving whatever advice we can
24 on that to the Treasurer.

25 Bencher education about rules of

1 procedure. We see that as a very logical and good idea
2 for ongoing Benchers education. We were asked to
3 consider the continuation of designated seating in
4 Convocation for certain committee chairs. I don't
5 think we've landed totally on that one, but I have the
6 sense we weren't totally thinking that that was
7 necessary as an ongoing matter, but, again, that will
8 hinge on the decision of where we will be sitting.

9 Work ahead. So the broader governance
10 issues, and we have had a few conversations with a
11 number of Benchers who have asked us about this and
12 where we're going. I think the key point here is there
13 is no predetermined outcome at all. We are walking,
14 not running, we are looking for best practices and the
15 evidence that will help us take on whatever
16 transformation we might recommend to Convocation in a
17 very collaborative way, really, and we haven't
18 completed the evidence gathering, so we can't even tell
19 you we've got a sense in the room of where or what any
20 such reform might look like, but I think the important
21 thing here is it's not going to be our appetite that
22 determines any of those changes, it will be
23 Convocation's appetite, and we will need to have lots
24 of participation about what it is, what are the
25 possibilities, what would serve the future of the Law

1 Society, and we're hoping to come to you with a
2 concrete plan for how that will happen in June, but
3 with those conversations really to start happening in
4 the fall.

5 Our report touches on questions of the
6 ongoing nomenclature that we use, whether or not we're
7 accessible, we've mentioned this before. I think there
8 is an appetite around the table of our task force at
9 least to have consideration given to modernizing the
10 name of the Law Society, perhaps the name of our
11 officials, perhaps the name of our board. So we think
12 there is merit to explore that, but we're not yet
13 coming forward with saying, and we may never be the
14 group that says, here's what we think should happen,
15 but we do think it ought to be explored.

16 With that, Treasurer, I think I'll
17 complete my report.

18 TREASURER SCHABAS: Thank you, Ms.
19 Leiper. Maybe I could add for you, and welcome any
20 comments, but to point out again that we are going to
21 be having a day in the fall, a mini retreat, as it
22 were, and we will be dedicating a good portion of that
23 to a broader discussion of governance at that time, so
24 we'll be able to talk in an informal and more extensive
25 way about governance at that time involving everybody.

1 Are there any questions for Ms. Leiper?
2 Any questions on the telephone? No. Thank you very
3 much. Thank you, Ms. Leiper. Mr. Earnshaw, Federation
4 of Law Societies of Canada.

5 -- FEDERATION OF LAW SOCIETIES OF CANADA
6 UPDATE:

7 MR. EARNSHAW: Let the record show that
8 I survived an attempt by Mr. Falconer to trip me on my
9 way to the podium.

10 You'll find the report to Convocation on
11 the Federation of Law Societies of Canada in your
12 BoardBooks at page 692. I'm indebted to Mr. Varro, who
13 is the author of that report. I think you'll find it
14 quite comprehensive and I don't propose to review it
15 with any great particularity.

16 I have been on the agenda a couple of
17 times before, and I'm doggedly determined to make the
18 report this time that I was unable to make in January
19 and February.

20 A lot has happened since I was appointed
21 to the council effective as of last December, and most
22 of it is summarized in the report you have before you.

23 We met in Quebec City in March during a
24 howling blizzard and managed to have a quorum that was
25 able to stay and address a number of issues that I

1 think would best be summarized by reference to three
2 things: The strategic plan that was first developed in
3 a session which was conducted in November of last year
4 at St. Andrews by the Sea and resulted in a number of
5 formulations and drafts which eventually came before
6 the council in March; an international engagement plan
7 that is something that this Law Society has been
8 requesting for some time, and also the Truth and
9 Reconciliation Advisory Committee. These were by no
10 means the only agenda items, but they are the ones that
11 are first and foremost and that I wanted to bring to
12 your attention.

13 So the strategic plan, not yet
14 finalized, was presented in penultimate draft form in
15 March. The March meeting included not only a meeting
16 of counsel, but also a CEOs forum at which Mr. Lapper
17 was present, and a president's forum at which our
18 Treasurer was present and which I also attended.

19 Each of those two forums provided
20 commentary with respect to the draft strategic plan and
21 we, that is the Law Society of Upper Canada, were asked
22 particularly to submit comments in writing. Others
23 were invited to do so, but I would say that our
24 comments were probably the most substantive.

25 There was general agreement that we had

1 three thrusts in the strategic plan that we should go
2 forward with, and these are that the Federation be a
3 knowledge leader and effectively share information and
4 facilitate collaboration. Secondly, that the
5 Federation identify and promote best practices in
6 professional regulation and, third, that the Federation
7 demonstrate excellence in governance and service
8 delivery.

9 There was a recognition by the council
10 in March that these may not be the most ambitious of
11 strategic objectives, but on the other hand, the
12 Federation is not accustomed to dealing with a
13 strategic plan at all and it was felt this was a
14 significant leap forward.

15 For the forthcoming year three
16 priorities were identified. These are and will be the
17 work of the Truth and Reconciliation Committee Calls to
18 Action Advisory Committee, that's a mouthful, but that
19 is, as the name implies, an advisory committee that was
20 struck at the December meeting and was populated
21 largely at the March meeting.

22 Our own Bencher, Dianne Corbiere, is a
23 member of that advisory committee. Another appointee
24 recommended from Ontario, Mr. Stuart Wuttke, general
25 counsel of the Assembly of First Nations, was also

1 appointed to that committee, which will now proceed
2 under the chairmanship of Karen Wilford and will be
3 meeting throughout the balance of this year and until
4 recommendations can be brought forward.

5 The second priority for this coming year
6 is the completion of the National Committee on
7 Accreditation Program Review and how to address the
8 recommendations that will arise from that review. And
9 the third is the efforts of the working group
10 established to examine Law Society anti-money
11 laundering rules for the profession and the approaches
12 for how those rules are enforced. That working group
13 was newly established last December and is co-chaired
14 by our own Mr. Varro.

15 This month, the National Requirement
16 Review Committee issued its report. Mr. Peter Wardle
17 has had a big hand in the preparation and delivery of
18 that report. It affirms the jurisdiction of the
19 approval committee, a subcommittee, a standing
20 committee of the Federation on which I serve and in
21 respect of which Ms. Pawlitzka, who is here today, was
22 my predecessor. It affirms its jurisdiction to address
23 many of the process issues related to review of
24 programs against the national requirement.

25 So I commend to your reading not only

1 our own report, which is in BoardBooks, as I said, but
2 also a report that is generated by the president of the
3 federation, Mr. Maurice Piette, and which has been
4 posted in the resources section of your BoardBooks.

5 A person reading the two reports closely
6 will notice certain tensions between the two, and I
7 might say that the relationship between this Law
8 Society and the Federation has been somewhat strained
9 over the past couple of years, there have been
10 differences of opinion and there are still a number of
11 issues that remain somewhat thorny between us, but they
12 are being addressed and, for example, the international
13 engagement plan of which I spoke is the first time that
14 there was, in the history of the organization of the
15 Federation, ever an international engagement plan that
16 was tabled and discussed at the council meeting.

17 The concern that has been expressed from
18 the Law Society has been that international engagement
19 is a costly exercise and that the merits of attending
20 at some of the international events, such as the
21 opening of courts in England and France, for example,
22 do not have any apparent benefit to the membership of
23 the Federation such as ourselves.

24 That robust debate took place and
25 essentially I would summarize the result as follows:

1 It was agreed that the international engagement plan
2 would go forward for this coming year, but that there
3 was a real concern not only expressed by your humble
4 correspondent, but also by others at the meeting, to
5 the effect that there should be thorough reports of the
6 result of the international engagement with an emphasis
7 on whether or not they actually benefit the member
8 societies and with a view to reviewing the engagement
9 plan in years going forward to see whether it's
10 appropriate that all of the international outreach in
11 which the Federation now engages is appropriate and
12 should continue.

13 So I think, Treasurer, I have conveyed
14 the gist of what you and I attended in March and from
15 which we escaped by train through the blizzard. I am
16 open to any questions that any Benchers may pose.

17 TREASURER SCHABAS: Thank you,
18 Mr. Earnshaw. Mr. Bredt has a question.

19 MR. BREDT: So my question, directed,
20 Treasurer, through you to Mr. Earnshaw, relates to the
21 travel and expense policy for senior staff and for the
22 executive and just to put a bit of context in, this was
23 raised with the Federation some time ago.

24 In the meantime, we had a look here at
25 the Law Society, we had a look at some of our policies

1 and put in place some changes to make them much more
2 responsible and so I guess what I'm wondering is is
3 that -- has that issue now been addressed, and if it
4 hasn't been addressed, when can we expect that it will
5 be addressed?

6 MR. EARNSHAW: So, yes, the travel
7 policy is an issue that was one that had been raised by
8 the Law Society as part of our questioning of, amongst
9 other things, the cost of the international engagement.

10 There was a partial policy in place
11 which was brought forward as a result of our inquiry.
12 As Mr. Bredt will know, and this may have informed his
13 question, one of the improvements of the Federation
14 over the past couple of years since the governance
15 policy was put in place with the considerable effort
16 and input from this Law Society is that it now goes
17 through a much more rigorous budgeting process than it
18 ever did in the past.

19 Part of that process is to peruse a
20 draft budget, which was done I believe in February of
21 this year, and then that draft budget is circulated to
22 the member societies, including ours.

23 So it came before our Audit and Finance
24 Committee, which identified not only the issue that Mr.
25 Bredt raises, but also three others that were then

1 conveyed to the Audit and Finance Committee of the
2 Federation on which Mr. Lapper serves, and as a result,
3 there were revisions made to the draft budget which was
4 presented in March.

5 There will be a further presentation of
6 that budget which will come before our audit committee
7 in its May meeting, but as I understand it, the actual
8 travel policy has not yet been put in place.

9 I would say that the International
10 Engagement Plan that we saw and debated that led to the
11 proposal to scrutinize that aspect of the activities of
12 the Federation going forward would lead to, in the
13 natural course of things, the establishment of a
14 policy. I also know that the policy that was adapted
15 by the Law Society here and is applicable to our
16 Treasurer and staff was shared with the Federation, so
17 they have that as a precedent, but it's not in place
18 yet, to answer your direct question.

19 TREASURER SCHABAS: Any other questions
20 in the room? Mr. Conway.

21 MR. CONWAY: Thank you, Treasurer. I
22 want to make one comment as someone who has led the
23 Federation in recent years and as someone who has also
24 served as Treasurer and have attended many of these
25 international conferences, either on behalf of our own

1 Law Society or on behalf of the Federation.

2 With all due respect, I think the debate
3 about international travel and international attendance
4 at these conferences has been cast in a somewhat
5 parochial manner, and I say it for this specific
6 reason. At a lot of these international bar
7 association conferences and regulatory -- conferences
8 among regulators around the world, Canada is often
9 asked to participate because of its successful
10 experience in such things as the National Mobility
11 Agreement, regulating in the public interest as opposed
12 to the interests of the profession, and the Canadian
13 regulatory system is often used as a model for other
14 countries and we contribute -- so the question
15 shouldn't be what does this Law Society get out of the
16 international travel that is engaged in by members of
17 the Federation, but, rather, the question should be
18 more broadly framed, and that is what is Canada, what
19 is the Canadian regulatory system giving to other
20 jurisdictions in the world, including the United
21 States, developing countries.

22 I hope that in the weeks and months to
23 come as this issue gets debated more fully that
24 Convocation will keep that in mind. That we as a
25 country contribute greatly to the development of modern

1 regulatory approaches, not just in our own country, but
2 in other countries as well. I would suggest that it
3 would be very regrettable if we simply framed the issue
4 as what do we get out of it, as opposed to what are we
5 giving to others. Thank you, Treasurer.

6 TREASURER SCHABAS: Thank you,
7 Mr. Conway. Ms. McGrath.

8 MS. McGRATH: Just very briefly, maybe I
9 can do it from here. I just want to echo what
10 Mr. Conway has said. I've attended some of these
11 meetings when I was president of the Canadian Bar
12 Association and, indeed, Canada is looked up to as a
13 model and our participation in those conferences really
14 does help developing countries.

15 TREASURER SCHABAS: Thank you.
16 Mr. Falconer.

17 MR. FALCONER: Yes, Treasurer, I just
18 want to make sure I understood what Mr. Bredt raised.
19 I didn't hear Mr. Bredt or understand Mr. Bredt to be
20 raising the question of the merits of participation or
21 the important role Canada may have to play on the
22 international front from a regulatory point of view.

23 What I heard him to raise is the notion
24 of transparency and structure and accountability, which
25 is, if there are going to be serious expenses incurred

1 in respect of international travel and the like, we
2 want to make sure that we're in 2017 and that we are
3 accountable for the fees that we spend, whether it's
4 here in Toronto or in Ontario at the Law Society or
5 when we're a Federation member, a major subsidizer of
6 the Federation. That's my issue.

7 I agree with everything Mr. Conway said
8 in terms of the role of Canada, but that doesn't take
9 away from the importance of accountability and proper
10 rules governing expenses, which is the only thing I
11 heard Mr. Bredt talk about.

12 I just don't think we should conflate
13 the issues, because if you conflate them you risk
14 actually doing harm to the objective, which is just to
15 create proper rules for expenditures.

16 TREASURER SCHABAS: I'll risk saying
17 this, Mr. Falconer. I agree with you.

18 MR. McDOWELL: He must be right,
19 Treasurer, because I agree with him too.

20 MR. FALCONER: That is as backhanded as
21 it gets, Treasurer.

22 TREASURER SCHABAS: And, Mr. Conway, I
23 was at the debate about the discussion and your point
24 is well taken, it was well taken at council too. There
25 wasn't a discussion that we didn't have a role to play

1 as a country that is often looked to as an example and
2 to provide that benefit, but it was directed more
3 towards the issue of accountability because eyebrows
4 have been raised about a number of expenses and trips
5 that seem to, at least on the face, have much less
6 value to anybody than -- that justified the expense.

7 So Mr. Falconer is right in saying the
8 discussion was really about accountability, which
9 involves what's the benefit on both sides and what's
10 the accountability with respect to expenses.

11 MR. EARNSHAW: Indeed, if I may,
12 Treasurer, that was my understanding of the conclusion
13 of the debate, which was that we will go forward with
14 the international engagement as we have in the past,
15 but there will be more robust reporting, there will be
16 a critical eye to the benefit, as defined by yourself
17 and Mr. Conway, with a view to refining that process
18 going forward.

19 And I also agree with Mr. Falconer that
20 the question of the travel policy is one of
21 accountability and transparency, quite unrelated to the
22 nature and extent of the international engagement.

23 TREASURER SCHABAS: Thank you.
24 Mr. Porter, you had your hand up. I know you've just
25 returned from some international travel.

1 MR. PORTER: Supporting Mr. Conway and,
2 I think, the sense of the house, but you as Treasurer
3 will know, and Mr. Conway knows that one of the great
4 advantages of being Treasurer is that you learn what's
5 going on in the world and you bring to this table in
6 subsequent discussions your experience as to views
7 elsewhere.

8 We have had in the last three or four
9 years great discussions about what's going on in
10 England concerning financing law firms, what's going on
11 in Australia concerning review of the power of bar
12 associations, and it is an immense resource that you
13 can listen to the world and bring its knowledge to us
14 and it's very valuable.

15 TREASURER SCHABAS: Thank you. Is there
16 anybody else in the room or on the telephone? Anybody
17 on the telephone wish to address this issue relating to
18 the Federation or any issue relating to the Federation?
19 Hearing silence, I'll thank you, Mr. Earnshaw, for that
20 presentation.

21 MR. EARNSHAW: Thank you, Treasurer.

22 TREASURER SCHABAS: So that concludes
23 the public portion of the meeting. So we will then
24 proceed to the in camera section of the agenda. Mr.
25 Varro is going to turn off the screen.

1 --- Whereupon the in public portion adjourned at 11:57
2 a.m.

3 I HEREBY CERTIFY THE FOREGOING
4 to be a true and accurate
5 transcription of my shorthand notes
6 to the best of my skill and ability

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