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CONVOCATION

IN PUBLIC SESSION

THURSDAY, JUNE 25, 2015 - 9:00 A.M.

OSGOODE HALL, TORONTO

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

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

2 --- Upon commencing at 9:00 a.m.

3

TREASURER MINOR: Good morning,  
4 everyone. Welcome to Convocation and welcome to anyone  
5 who is joining us via the public webcast today.

6

Today's webcast is the last one. We  
7 agreed to have a pilot project of three webcasts and  
8 then decided that since we were going to debate whether  
9 it's continued today, that it should be webcast today,  
10 too.

11

We introduced those to offer to our  
12 licensees an opportunity to see Convocation on regular  
13 work days and to see what policy issues are considered  
14 and also to, I think, increase the transparency of our  
15 governance. So today we will be moving to a report of  
16 the results of that pilot project and Convocation will  
17 be asked to consider whether webcasting should be  
18 scheduled regularly or whether some other alternative  
19 should be followed.

20

First, I would like to review the  
21 instructions for the phone system for those  
22 participating by phone. We'll take a roll call of  
23 those who are on the telephone. I'll let everyone know  
24 that we will be placing those calling into the meeting  
25 into what we call lecture mode. Mr. Lerner, are you

1 still --

2 MR. LERNER: Still here.

3 TREASURER MINOR: You're our agent on  
4 that. That means from our end we are muting all  
5 callers. Once muted, the persons on the phone will be  
6 able to hear, but can't speak until we free it up for  
7 comments. So it's star 6 from our end for everyone.

8 Could I go to who is on the phone,  
9 please? I think -- Ms. Richardson?

10 MS. RICHARDSON: Present.

11 TREASURER MINOR: Thank you. Mr. Swaye?

12 MR. SWAYE: Present.

13 TREASURER MINOR: Thank you. Anyone  
14 else on the phone?

15 MS. LIPPA: Marion Lippa.

16 TREASURER MINOR: Okay, Ms. Lippa?

17 MS. LIPPA: Present.

18 TREASURER MINOR: Anyone else?

19 MR. MANES: Ron Manes.

20 TREASURER MINOR: Thank you. The  
21 secretary now wishes to announce the results of the  
22 Treasurer's election.

23 SECRETARY: Thank you, Treasurer.

24 Benchers, you will note the results from the e-mail I  
25 sent to you following the closing on May 29th, 2015,

1 but for the purposes of Convocation, I would like to  
2 repeat the message I sent to you on that day.

3                   Following the close of nominations for  
4 candidates for the election of Treasurer at 5 p.m. on  
5 May 29th, 2015, there was one candidate, Janet Minor,  
6 nominated by Malcolm Mercer and Howard Goldblatt for  
7 the position of Treasure. I therefore declare Janet  
8 Minor to be elected at Treasurer.

9                   -- Applause.

10                   TREASURER'S REMARKS

11                   TREASURER MINOR: Thank you, everyone.

12 First on the order of business is a welcome to our new  
13 appointed Benchers.

14                   We received on May 25th notice from the  
15 government that we would have two new appointed  
16 Benchers, Suzanne Clément and Gisèle Chrétien. I'm  
17 very happy that Suzanne was able to be with us today.

18                   -- Applause.

19                   TREASURER MINOR: Unfortunately,  
20 Ms. Chrétien was not, but I know she will be with us in  
21 September.

22                   I'd just like to tell you a little bit  
23 about Suzanne. From 2009 to May of 2014 she was Deputy  
24 Head Status of Women Canada and was responsible to the  
25 minister for all matters pertaining to the departmental

1 agency, including policy development, funding programs,  
2 communications and commemorations, Canada's  
3 participation on the UN Commission for the Status of  
4 Women, and also appearances before the parliamentary  
5 committees. Prior to that she served as the Executive  
6 Direct Portfolio Affairs Office, Department of Canadian  
7 Heritage, and was responsible to the Deputy and the  
8 Minister for coordination and liaison with 13 crown  
9 corporations and agencies of the cultural portfolio,  
10 including CBC, Telefilm, Canada Council for the Arts,  
11 National Film Board, and five national museums.

12           Currently she is vice-chair and member  
13 of the board of directors of Montfort Hospital.

14 Suzanne has a Bachelor of Social Science degree from  
15 the University of Ottawa and a Certificate of Public  
16 Administration also from the University of Ottawa.

17           So, again, we welcome you and look  
18 forward to working with you.

19           Ms. Chrétien is from Sudbury. She has  
20 served as president of Collège Boréal in Sudbury from  
21 1998 to 2006. Prior to this, she was vice-president of  
22 programs and academic support at the College, dean  
23 community and health services and director of health  
24 services.

25           She is currently the chair of the board



1 of directors of the Sudbury Regional Hospital and chair  
2 of the board of directors of TfO. She was also  
3 vice-chair of the board of directors of TV Ontario and  
4 member of the board of directors of the Sudbury Food  
5 Bank.

6 She holds a diploma in nursing from  
7 Cambrian College, a Bachelor of Science in nursing from  
8 Laurentian University, and a Master of Education from  
9 OISE at the University of Toronto. So we will  
10 welcome her in September.

11 As always, June has been a busy month  
12 with calls to the bar, and I would like to acknowledge  
13 the efforts of staff of Professional Development and  
14 Competence, particularly Diana Miles and Priya Bhatia,  
15 for their tremendous efforts in organizing the calls,  
16 which have gone very smoothly.

17 There's two more calls to the bar  
18 tomorrow, as you know, and in total, I think we have  
19 had more than -- we will have had more than 1400  
20 candidates, and I know the staff will breathe a sigh of  
21 relief when the last name is called.

22 We have had very positive responses, I  
23 think, for those people who participated in the calls,  
24 and that is very pleasing.

25 We have also had, as you know, two

1 requests for accommodation from Aboriginal students,  
2 and we agreed that the -- that one candidate could wear  
3 her ceremonial attire along with parts of the  
4 traditional court attire, and she was called on the  
5 23rd. We also agreed that a candidate who is Métis  
6 could wear her Métis sash under her robe, and that  
7 proceeded very well.

8           Again, I'm very grateful for everyone  
9 who assisted in that. I should also point out that the  
10 Court also gave permission for those two  
11 accommodations. Justice Marrocco and Justice McNamara.

12           I would like to congratulate all of the  
13 LL.D recipients this year. We have had a very  
14 impressive group, with two more to go, as I noted.

15           In London we presented our Honourary  
16 LL.D on Janet Stewart from Lerner's. In Ottawa, The  
17 Honourable Peter Milliken, former speaker of the house;  
18 Julian Porter here on June 23rd and Sheila Block  
19 yesterday.

20           Tomorrow we will be conferring on Jean  
21 Teillet in the morning and James K. Stewart from the  
22 International Criminal Court at the afternoon Call  
23 ceremony.

24           Each of our candidates has, in his or her  
25 own way, made a significant contribution to the legal

1 profession, the rule of law and the administration of  
2 justice and are very deserving recipients.

3 I should add that we have had very  
4 positive response from our licensees and others, both  
5 about our awards to recipients of the Law Society  
6 Medals and our LL.D candidates.

7 And moving to the next honorary degree.  
8 On behalf of Convocation, I would like to congratulate  
9 Bencher Cathy Corsetti on receiving an honorary degree  
10 from Humber College at its spring Convocation on June  
11 16th. Cathy, as a graduate of Humber's law clerk  
12 program in 1977, was recognized for her successful  
13 career, her contributions at the Law Society, first as  
14 an elected paralegal member of the Paralegal Standing  
15 Committee and then as an elected Bencher. Her other  
16 activities include being a judge at the Paralegal Cup  
17 Moot Competitions in 2013 and 2014. So, Cathy,  
18 congratulations.

19 -- Applause.

20 TREASURER MINOR: We were saddened to  
21 learn recently of the passing of our former Bencher  
22 colleague, Thomas Cole, on March 3rd of 2014. Tom was  
23 part of a large influx of new benchers who arrived in  
24 1995 and was a dedicated and knowledgeable real estate  
25 lawyer and general practitioner in Lakefield. He

1 served as a Bencher for one term only, from '95 to '99,  
2 and we send our condolences to his family and friends.

3           Yesterday I was honoured to be invited  
4 to give greetings on behalf of the Law Society at the  
5 swearing in of the new Associate Chief Justice of the  
6 Ontario Court of Justice, The Honourable Peter  
7 Defrietas. I look forward to working with him as  
8 Associate Chief for the balance of my term as  
9 Treasurer.

10           Next moving to the CNE. As you know,  
11 each year we appoint a member to the board of the CNE,  
12 and Jack Braithwaite has been our current and  
13 enthusiastic appointee for some years. He serves with  
14 distinction.

15           This year we are going to have a display  
16 booth at the CNE. It won't just be Jack, but ... and  
17 this is a part of our focus on access to justice and  
18 outreach through TAG and we thought -- we have been  
19 offered before and not seen fit to accept it, and this  
20 year we thought it would be a particularly helpful  
21 opportunity to provide Law Society material, access to  
22 justice material, to persons passing through the CNE,  
23 which I think last year was something like 1.36 million  
24 people.

25           So we are going to have our brochure

1 you're familiar with, "Helping You With Your Legal  
2 Needs" brochure, the "Handling Everyday Legal Problems  
3 Guide", the, "You Speak French" brochure and  
4 information on all our services, including the referral  
5 service.

6           So I think this is a really welcome  
7 opportunity to engage the public and best of luck to  
8 all those who are going to be participating and thank  
9 you. It's opening on Friday, the 28th, I think, and  
10 all day -- up to all day Thursday, September 3rd.

11           In July, as many of you already know,  
12 the Law Society and the Federation of Law Societies are  
13 hosting the International Conference of Legal  
14 Regulators. I think it's fair to say these are  
15 generally common-law regulators, but the title is Legal  
16 Regulators. And this offers an opportunity for those  
17 who are involved in lawyer or legal service regulation  
18 to come together to discuss common issues and learn  
19 from each other.

20           I attended the conference last year in  
21 London. It was excellent. So we are hosting this  
22 year. It will take place here on July 27th and 28th.  
23 Registration is open for all those who might be  
24 interested in attending and we will be circulating a  
25 notice to Benchers with that information.

1                   Robert Lapper and I attended a dinner  
2                   event hosted by the Barreau du Québec for the newly  
3                   elected batonnier, Lu Chan Khuong. Look forward to  
4                   working with her in the future.

5                   On Thursday we had the annual Pride  
6                   Event here. It was co-sponsored and the Panel focused  
7                   on challenges facing LGBTQ youth. There was a  
8                   reception to follow which was very well attended and it  
9                   was a very successful event. Thank you to the Equity  
10                  staff who assisted with that.

11                  Right now, in fact, AJEFO, is hosting  
12                  its annual conference in Lafayette, Louisiana. The  
13                  French speaking bar has a strong presence in Lafayette  
14                  and that conference will help AJEFO find ways to  
15                  improve their and our goal of giving the French  
16                  language its place in access to justice, and we have  
17                  staff from our Equity and Aboriginal Issues Department  
18                  attending.

19                  Coming up today, in fact, I'm going to  
20                  be attending a reception for the annual Solo and Small  
21                  Firm Conference, which I understand is expected to be  
22                  very well attended.

23                  Coming up also, and I think this is an  
24                  important event so I wanted to mention it now so that  
25                  people can put it in their calendars. The Truth and

1 Reconciliation Commission, as you know, tabled its  
2 final report, along with 94 calls to action at the  
3 beginning of this month. That included working with  
4 the law societies on access issues for Aboriginal  
5 peoples.

6 We are going to be hosting an event on  
7 Thursday, September the 10th, which will be at the end  
8 of September Committee Day, and our Equity and  
9 Aboriginal Issues Committee, and particularly Dianne  
10 Corbiere, has been active in organizing what I expect  
11 to be a very important session for all of us to  
12 understand better what role we can have in promoting  
13 reconciliation between Aboriginal and non-Aboriginal  
14 Canadians.

15 Again, you will be getting more  
16 information on that, but I would ask you to note that  
17 day right now.

18 I'm also -- I've asked staff to post on  
19 our resource part of our BoardBooks a list of the  
20 outreach activities and engagements that I have been  
21 involved in. I think we're doing it by quarters, and  
22 it's just a list of official events, it is certainly  
23 not everything I am doing as Treasurer, but the  
24 official events where I have been invited to present or  
25 host have been listed.

1                   It's to reassure me that people think  
2 I'm actually doing something. So have a look if you're  
3 in doubt. And this is our outreach activities.

4                   Okay. Moving to our luncheon guest.  
5 Today we are going to be honouring Jack Rabinovitch,  
6 former appointed Bencher, who has retired this term.  
7 He has been a stalwart at Convocation and I'm going to  
8 be saying a few words at lunch, and he and his spouse  
9 will be attending.

10                   So let's turn to the agenda now. I  
11 should add, we also have some guests from the  
12 government, those particularly involved in appointments  
13 of representatives like our lay Benchers.

14                   I would now like to comment on some new  
15 initiatives included on today's agenda. As you have  
16 noted in the committee appointments motion today, we  
17 approved the membership for a new working group or we  
18 will approve the new membership for working group, the  
19 Real Estate Issues Working Group, which will report  
20 both to Professional Regulation and Professional  
21 Development and Competence.

22                   This working group will provide us with  
23 an opportunity to review and assess the evolution that  
24 is occurring in the real estate law area with  
25 particular emphasis on technological changes and the



1 impact on day to day activities and professional  
2 obligations.

3 The focus of this working group will  
4 assist the Law Society in keeping ahead of these issues  
5 and to support competence by our members in this area  
6 of law.

7 That group has not been completely  
8 populated and that will happen, but we are grateful  
9 that Sid Troister and Jerry Udell will lead the group,  
10 and I'm sure make a big contribution to the outcome.

11 I'd now also -- I'll just wait until  
12 we're settled.

13 MR. FALCONER: Sorry, Treasurer, I don't  
14 have any musical acumen, but I feel like I'm now one of  
15 your musical chairs.

16 CONSENT AGENDA

17 TREASURER MINOR: No problem. Let us  
18 move to the consent agenda found at BoardBooks. Tab 1,  
19 motion is by Jacqueline Horvat, seconded by Howard  
20 Goldblatt. And the motion for appointments is at tab  
21 14. Any request to move anything out of consent  
22 agenda? Mr. Wright.

23 MR. WRIGHT: I notice that there's no  
24 reference to the ABS task force in the appointments.  
25 Has it been disbanded -- praise be to God?

1                   TREASURER MINOR: No, and I can speak to  
2                   that. The ABS task force is going to continue as is  
3                   throughout the summer and will be reporting to  
4                   Convocation until September. So it will -- we were  
5                   looking for a bit of a roll-up and focus and advice or  
6                   recommendations to be given by the already existing  
7                   task force.

8                   After Convocation receives that advice,  
9                   it is very likely that we will reconstitute a group,  
10                  depending on the advice, and then I will address that  
11                  in September.

12                  I don't know if you -- is there anything  
13                  else you would like to add? No? So that's the status  
14                  of that group.

15                  I think there were a few, either task  
16                  force or working groups that are not part of this  
17                  committee list. If nothing is being changed in terms  
18                  of outside appointments or terms continue so it didn't  
19                  require any new appointment, it's simply not listed.

20                  Someone else have a question or comment?  
21                  If not, all in favour? Any opposed? Any opposed on  
22                  the phone? In that case, could we move to the next  
23                  item from PD&C. Mr. Goldblatt.

24                  PROFESSIONAL DEVELOPMENT & COMPETENCE  
25                  COMMITTEE REPORT

1                   MR. GOLDBLATT: Good morning. Thank  
2 you, Treasurer. The report before you is actually  
3 found at tab 2.1, page 23 of BoardBooks.

4                   And Convocation will recall that at our  
5 last meeting in May the motion which is found at  
6 paragraph 7 was approved; namely, that Convocation  
7 approve the amendment of relevant Law Society by-laws  
8 to ensure they enable law students experiential  
9 learning, provided law students are adequately  
10 supervised and, further, that that by-law be provided  
11 for Convocation's consideration in June 2015.

12                   So the motion now before Convocation is  
13 found at paragraph 2 of tab 2.1, again, page 23. And  
14 that is that Convocation approve the amendments to  
15 by-law 4 and by-law 7.1 in accordance with the motion  
16 set out in tab -- that I will address in a moment.

17                   I am moving this and it's seconded by  
18 Barbara Murchie.

19                   I don't think it's necessary,  
20 colleagues, at this point to review the background to  
21 this. The background is contained not only in the  
22 report before Convocation today, but is also found in  
23 the report that Convocation reviewed back in May. So I  
24 would like, just very simply, if I could, to take you  
25 to page 27 of BoardBooks, which is the non-tracked

1 change version of the amended by-law. And if you want  
2 to see the tracked change version of the amendment to  
3 by-law 4, that's found on page 47.

4 Now, there are some housekeeping issues  
5 that are addressed in this by-law, which I won't take  
6 the time to address, but the key with respect to the  
7 experiential learning is found in section 34, which  
8 begins on page 33, and, most specifically, at the very  
9 bottom of that page in sections 34.1 and then over --  
10 and I'll take you to this specifically in 34.3, which  
11 is found beginning at page 35, but really actually  
12 substantively at page 36 of BoardBooks.

13 There are three sections that are being  
14 added and they are to be read in conjunction with  
15 by-law 7.1, to which I'll turn in a moment. And by-law  
16 4, then, first of all, deals with student legal aid  
17 services societies, it also then deals -- it then deals  
18 with legal clinics and, lastly, deals with the pro bono  
19 law. And it's all done in the same format and  
20 essentially allows for the law student, the Ontario law  
21 student, to provide legal services in Ontario in each  
22 of these areas, and it specifically requires, though,  
23 that there be in subparagraph C of each of these,  
24 "provides the legal services under the direct  
25 supervision of a licensee who holds a Class L1 licence

1 employed by the clinic."

2           Having said that, I would then ask that  
3 Convocation turn to page 60, which is by-law 7.  
4 Because the reference in Convocation's motion required  
5 adequate supervision and so by-law 4 is to be read  
6 together with by-law 7.1. So this is the operational  
7 obligations and responsibilities.

8           You'll note, if you look at page 61,  
9 there's only a tracked changes version of this, there's  
10 not a non-tracked changes version. You'll see that the  
11 application says, "Provision of legal services by  
12 student," is the heading, and then there's reference in  
13 specific part to subsection 2. "This Part applies to  
14 the following, subject to the modifications set out in  
15 subsection 3 and any other necessary modifications, the  
16 provisions of legal service by an Ontario law student  
17 under the direct supervision of a licensee, pursuant to  
18 section 34.3 of by-law 4."

19           So that's how the amendments with  
20 respect to the experiential learning in section 34.3  
21 are tied in to what we have in section 7 -- sorry, in  
22 by-law 7, and for greater certainty, you'll find at  
23 section 4 of by-law 7.1, which is found at page 62, a  
24 reference to what the term "direct supervision" means,  
25 and it is specifically set out in 4(1) and then 4(2)

1 says, "Without limiting the generality of subsection  
2 (1)," and then goes on to list a number of requirements  
3 for direct supervision.

4           So that the packages, tied together,  
5 allows for the experiential learning that we've  
6 addressed and that Convocation has authorized to be  
7 addressed and requires that there be direct supervision  
8 and then defines, in accordance with by-law 7.1, a  
9 general, non-exclusive listing of what is required for  
10 direct supervision.

11           Having said that, I have a couple of  
12 other comments, if I might. Number one is there will  
13 be a communications piece that will explain what this  
14 means which will be part of the passage of the by-law.

15           Number two is this is evolutionary, and  
16 what we have recognized is that there's going to be  
17 changes in the future with respect to experiential  
18 learning, and we have reached out to the various  
19 stakeholders and asked them that they ensure that they  
20 communicate with the Law Society so that we know that  
21 whatever's coming in the future will be able to be  
22 addressed, as you recall from last time, in advance of  
23 something happening as opposed to after something  
24 happens, which is, I think, a much more productive way  
25 of proceeding and, indeed, we have received assurances

1 that they understand the Law Society's position and we  
2 have no reason to expect that they won't respect that  
3 position.

4 Thirdly, I think a number of Benchers  
5 are aware that there have been some concerns raised,  
6 and numbers of you have been communicated with, with  
7 respect to some of the existing programs. And we have  
8 reached out and responded to those who have spoken with  
9 us and we have assured them that the -- that their  
10 concerns are going to be addressed over the summer  
11 months.

12 The view was that it was not a good  
13 idea, to use the expression that we have used, drafting  
14 on the fly. We want to have an opportunity to look at  
15 their concerns to see not how legitimate they are, but  
16 whether, in fact, they need to be met in particular  
17 ways. We want the opportunity to consult obviously  
18 with general legal counsel and ensure that we come  
19 forward with something that is appropriate and  
20 inclusive and addresses the issues that have been  
21 identified for us.

22 I can advise Convocation that to the  
23 extent that we have spoken with some -- and I have  
24 spoken with some people directly myself, they  
25 understand the position that we're taking today and

1 they recognize that this has been raised quite late in  
2 the game, if I can put it that way, and they are  
3 comfortable to proceed in the way in which I have  
4 identified.

5 So, Treasurer, subject to any questions,  
6 that's my report at this point.

7 TREASURER MINOR: And you're moving it,  
8 Mr. --

9 MR. GOLDBLATT: I'm moving it, Ms.  
10 Murchie is seconding it.

11 TREASURER MINOR: Are there any people  
12 in the room who have questions or comments? I have  
13 Mr. Schabas down. Ms. Ross? Mr. Schabas.

14 MR. SCHABAS: Thank you, Treasurer. I  
15 support this. I just wanted to address Mr. Goldblatt  
16 on the issue that he alluded to at the end.

17 This is an important change. We have  
18 made it fairly quickly, actually, and we saw the need  
19 for doing that because of the access to justice issue  
20 and it was intended to provide students the ability,  
21 frankly, to attend in court in certain areas where it  
22 wasn't clear that they could do that.

23 The problem is that by the manner in  
24 which we've defined it, we may be putting some people  
25 potentially offside the by-law, and that's the concern



1 that has been raised in the last couple of days at the  
2 last minute. It does put a number of groups in an  
3 awkward position.

4 I think we -- as you've done,  
5 Mr. Goldblatt, I'm pleased to hear that you have given  
6 them some comfort that that was not intended and I  
7 would urge the committee over the summer to address  
8 this because there are many programs in law schools  
9 where students are engaged in experiential learning  
10 that are defined more broadly than the way we've done  
11 it, which are very valid programs, such as the business  
12 law courses. There are actually human rights programs  
13 at the various law schools where there is a real  
14 concern about this.

15 I'm in support of this. I agree we  
16 shouldn't be drafting on the fly, but I think it is a  
17 matter of some urgency and over the summer we'll fix  
18 this up.

19 TREASURER MINOR: Thank you,  
20 Mr. Schabas. Ms. Ross.

21 MS. ROSS: Thank you, Treasurer. I just  
22 had a question arising out of the tracked change  
23 version of your motion. I apologize, I don't know what  
24 page it is in BoardBooks. It's section 34.2, provision  
25 of legal services by Canadian law student section.

1                   If I'm reading this correctly, the  
2                   experiential learning, the student can qualify when  
3                   under the supervision of a paralegal; is that correct?

4                   MR. GOLDBLATT: Sorry, I'm looking for  
5                   what you're referring to.

6                   MR. WRIGHT: Page 57.

7                   MS. ROSS: The tracked change heading of  
8                   the particular section is Provision of Legal Services  
9                   by Canadian law student. Section number is 34.2. And  
10                  if you move through that section, at subsection --

11                  MR. GOLDBLATT: 55, I have it.

12                  MS. ROSS: At subsection 2 it reads, "A  
13                  Canadian law student may, without a licence, provide  
14                  legal services in Ontario if the Canadian law student,"  
15                  et cetera, and there are a number of criteria.

16                  Over under ii on the next page it says,  
17                  "Where the Canadian law student is employed by a legal  
18                  services firm, under the direct supervision of a  
19                  licensee who hold a Class P1 licence who is part of the  
20                  legal services firm."

21                  Do I understand it correctly that a  
22                  Canadian law student can now qualify, in a sense,  
23                  articling type experience under the supervision of a  
24                  paralegal?

25                  MR. GOLDBLATT: The only changes,

1 Ms. Ross -- that language has been there with respect  
2 to law student. The only change has been to add the  
3 word "Canadian" to it, which is a defined term earlier.

4 So the language, as I say, law student,  
5 now it says Canadian law students. We haven't amended  
6 the substance of that section, we've just amended to  
7 specify Canadian law students. So it's exactly as it  
8 was before.

9 MS. ROSS: Thank you, Mr. Goldblatt.  
10 That doesn't answer my question.

11 MR. GOLDBLATT: Well, with respect to --  
12 I don't know whether it answers your question or not.  
13 Let me put it to you this way. There has been no  
14 change to the by-law from what it was before to what it  
15 is now.

16 MS. ROSS: I understand that to be your  
17 first answer. My follow-up through you, Treasurer, if  
18 I may, is I asked a question about the substantive  
19 effect of this provision. Does it mean that a Canadian  
20 law student will qualify for experiential learning or  
21 articling, if I can use another word, under the  
22 supervision of a paralegal?

23 MR. GOLDBLATT: Okay. I have had that  
24 clarified for me. I'm indebted to Ms. Miles for that.  
25 There is a distinction between the experiential

1 learning and the articling. The articling itself is  
2 addressed, and the LPP program itself is addressed in  
3 34.1.

4 So it's an experiential program, which  
5 is in 34.2, and articling, which is addressed with  
6 respect to both a clerkship and law practice program,  
7 which is in 34.1. So it is not to provide supervision  
8 with respect to satisfying the requirements for  
9 articling or with respect to satisfying the law  
10 practice program requirements. It is with respect to  
11 the experiential learning aspect of it.

12 So the answer is yes, but to the extent  
13 it's covered by 34.2, it's different from both 34.1 and  
14 34.3.

15 TREASURER MINOR: Any other questions or  
16 comments in the room? Any questions or comments from  
17 the phone?

18 Hearing none, then we'll call the  
19 motion. All in favour? Any opposed? Any opposed on  
20 the phone? Motion carried.

21 MR. GOLDBLATT: Thank you.

22 TREASURER MINOR: Thank you. Our next  
23 is report from Mr. Mercer. Professional Regulation  
24 Committee.

25 PROFESSIONAL REGULATION COMMITTEE REPORT



1 2014, adopted a number of amendments which we've  
2 properly taken into account and reflected on. We've  
3 also had input now from the profession with respect to  
4 particular rules and we have had, as inevitably  
5 happens, issues that come to the fore.

6           So this is not a short report. Happily,  
7 only two of the proposed rule changes are for current  
8 decision. The balance are for your authority to seek  
9 input.

10           The two rule changes which are proposed  
11 for implementation now are at tab 3.1 and the  
12 discussion is at page 68 of BoardBooks. The rules  
13 themselves are summarized -- three, actually, not  
14 two -- are summarized at pages 68 and following.

15           The first is in respect of language  
16 rights, and, as you'll see, the model code did not  
17 address as a rule the ethical obligations to advise a  
18 client of their French language rights. The commentary  
19 continued to address that, from our perspective.

20           The Federation adopted a change to the  
21 model code in October 2014 for a new rule and the new  
22 rule, which is adopted in the model code and proposed  
23 to you as described in paragraph 8, is a rule 3.2-2A,  
24 which would provide, as set out at the top of page 69  
25 as well, that as well as having an obligation to advise

1 that the lawyer not undertake to represent a client in  
2 a language in respect of which the lawyer is not  
3 competent. One could simply take that back to the  
4 general competence rule, but the proposition is that  
5 it's best to be in one place for clarity.

6 To see the rule itself, page 77 of  
7 BoardBooks gives the proposed rule under language  
8 rights. "3.2-2A, a lawyer shall, when appropriate,  
9 advise the client of the client's language rights,  
10 including the right to proceed in the official language  
11 of the client's choice."

12 3.2-2B, "When a client wishes to retain  
13 a lawyer for representation in the official language of  
14 the client's choice, the lawyer shall not undertake the  
15 matter unless the lawyer is competent to provide the  
16 required services in that language."

17 Both, I would think, not controversial,  
18 although I'm always told not to tempt fate.

19 Commentary number one, the advice should  
20 be as soon as possible. Commentary 2, the choice is  
21 the client's choice, not the lawyer's choice. And, as  
22 well, the importance of statutory and constitutional  
23 law with respect to language rights, including the  
24 caution that the lawyer should be aware that provincial  
25 or territorial legislation may provide additional

1 language rights, including in relation to Aboriginal  
2 languages." So that's the proposed rule change in  
3 respect of language rights.

4           The second proposed change for today is  
5 in respect of transferring lawyers, and those  
6 aficionados of conflicts law will know that the  
7 Canadian law of conflicts in this area started with the  
8 case of McDonald estate in 1990 and the problem which  
9 is addressed with respect to transferring lawyers is a  
10 lawyer coming from a firm on one side of litigation to  
11 a firm on the other side of litigation, thereby  
12 carrying with them the virus of confidential  
13 information, putting at risk the administration of  
14 justice and the adversarial process.

15           The transferring lawyer rule was  
16 acknowledged when we amended the rules back in 2013 to  
17 be cumbersome, prolix and somewhat confusing, and so  
18 one of the Federation's jobs was to simplify, tighten  
19 it up and make the drafting clearer and substantively  
20 that's really all that's been done in respect of the  
21 transferring lawyer rule.

22           What has been added, and which may not  
23 be important in many firms, but is very important in  
24 some firms, where transferring lawyers are common,  
25 there is a practical problem sometimes that the



1 transferring lawyer and the former firm may consider  
2 that they are barred from disclosing information about  
3 their client or the existence of their client, and yet  
4 the receiving firm, if I can describe it that way,  
5 needs the information to be able to put up screens to  
6 be able to clear conflicts to know whether they can  
7 bring on the transferring lawyer.

8                   So there has been sometimes an impasse  
9 where one firms says we need it and the other firm says  
10 we can't give it. So there is no issue really as to  
11 the purpose. Both sides are trying to exercise their  
12 ethical obligations properly.

13                   Two years ago the American Bar  
14 Association adopted a rule to address this problem and  
15 the effective -- effect of that rule was that  
16 information can be shared to the extent necessary,  
17 which is not privileged or prejudicial, to be used only  
18 for the purpose of clearing conflicts, and an  
19 undertaking ought to be given to only use that  
20 information for that purpose.

21                   That has been adopted by the Federation  
22 of Law Societies. It was adopted, as I said, by the  
23 American Bar Association. It is broadly thought by  
24 those who have to administer these policies and  
25 procedures to be a useful amendment, and so I commend

1 it to you.

2 That, to be clear, is discussed in  
3 paragraph 15. Paragraphs 18 to 20 is what I described,  
4 though not so bluntly, as the busy work of tidying  
5 things up and you can see the references there. One of  
6 the doctrinal references which is of some interest is  
7 that we don't have the American concept of imputed  
8 conflicts, we're worried about actual information  
9 possessed by real people.

10 The third rule for today is the limited  
11 scope retainer, and you will see at paragraphs 21  
12 through 26 -- 27, a discussion of the rule which was  
13 adopted by Convocation in 2011 dealing with limited  
14 scope retainers and the evolution of limited scope  
15 retainers as a means of facilitating access to justice  
16 has continued.

17 The Rules of Civil Procedure, the family  
18 law rules, have been amended since our rule change back  
19 in 2011. Definitions of limited scope retainers have  
20 been adopted. Those rules are slightly different one  
21 to the other, but the point of our amendment is set  
22 out -- or proposed amendment is set out in paragraph  
23 26. The proposed language is at 3.1.5 at page 96, and  
24 the substance is recited in paragraph 26.

25 26A, "A lawyer should consider advising

1 the client in writing when the limited scope retainer  
2 is complete," not required, because it may not be  
3 necessary in all circumstances, but the concern being  
4 that clients should understand where the lawyer isn't  
5 taking on everything when everything -- when the limit  
6 is reached.

7 As well, it may be necessary, depending  
8 if the rules of the Tribunal are appropriate or  
9 depending on the rules of the Tribunal to provide  
10 notice to the Tribunal. But the way the rule changes  
11 have been formulated, that's not necessarily the case.

12 Paragraph B deals with clients with  
13 diminished capacity, and I'll turn that up at page 96.  
14 Commentary 5.2, by way of commentary, a lawyer who is  
15 asked to provide legal services under a limited scope  
16 retainer to a client who has diminished capacity to  
17 make decisions should carefully consider and assess in  
18 each case if, under the circumstances, it is possible  
19 to render those services in a competent manner.

20 Again, the difficulty with making rules  
21 and commentary in an area where judgments are  
22 contextural, the intent of the commentary is to prompt  
23 the lawyer to consider issues which may be important in  
24 the circumstances.

25 At paragraph C in -- paragraph 26,

1       subparagraph C, the commentary notes that the lawyer is  
2       cautioned against misleading the tribunal regarding the  
3       scope of the retainer.

4                 Again, one could say that lawyers need  
5       not be cautioned against misleading, but the point of  
6       the commentary is that where a lawyer appears in a  
7       limited scope retainer, there is the opportunity or the  
8       risk of misleading, inadvertently or otherwise, and a  
9       note that disclosure -- the limited nature of the  
10      retainer may be required by the rules and the lawyer  
11      should pay attention to that.

12                Subparagraph D at the top of page 72  
13      advises that the lawyer should consider whether the  
14      existence of a limited scope retainer should be  
15      disclosed to the Tribunal. That may sound odd because  
16      if the lawyer is standing in front of the Tribunal,  
17      perhaps what's necessary is to disclose that it's  
18      limited. But the lawyer may not be in front of the  
19      tribunal at all, but may be in the background. In that  
20      circumstance it may be appropriate to disclose as well.

21                The rule doesn't say that it is or it  
22      isn't, but, rather, that it's appropriate to consider  
23      and, of course, to take instructions with respect to  
24      disclosure.

25                Those are the rule changes which the

1 committee has worked to propose to you, and so I move,  
2 seconded by Ms. Richer, that Convocation approve those  
3 amendments as set out in tab 3.1.1, 3.1.3 and 3.1.5,  
4 and wait for the second set, which are simply for  
5 authority to seek input.

6 TREASURER MINOR: Thank you, Mr. Mercer.  
7 Any questions or comments in the room? I have Mr.  
8 Anand. Okay, Mr. McDowell.

9 MR. ANAND: Thank you, Treasurer.  
10 Through you to Mr. Mercer. I just had a couple of  
11 questions about the limited scope retainer commentary.  
12 I take it there's no revision to the rule, if I'm not  
13 mistaken, but the revisions are to the commentary? I'm  
14 looking at page 96.

15 MR. MERCER: Yes, that's right.

16 MR. ANAND: Two questions. Firstly,  
17 5.1, I'm just questioning the word, why "ordinarily" is  
18 there rather than it simply being a statement that a  
19 lawyer should confirm with the client in writing when  
20 the limited scope retainer is complete, because  
21 obviously there's -- the fact of a limited scope  
22 retainer leads to the need for more communication and  
23 different kind of communication with clients about when  
24 it starts and when it ends, because clients tend to  
25 assume that their lawyer is their lawyer forever, at

1 least in many cases. Even despite a limited scope  
2 retainer having been part of it.

3 So is this the issue of the jailhouse  
4 communication?

5 MR. MERCER: That's the paradigm  
6 example. As you say, in many cases that's the  
7 expectation; the problem is that in all cases it's not.  
8 So the intent of the commentary is to highlight exactly  
9 what you say, where there is a risk of misunderstanding  
10 that there be a communication, but not to make a  
11 written communication mandatory in all circumstances,  
12 and the jailhouse example is the classic.

13 MR. ANAND: I just wonder, I don't  
14 really have any language, as we've heard, this isn't  
15 the time to be drafting on the fly. I just wonder  
16 whether something more -- sort of stating that that is  
17 the norm and there may be limited exceptions, that kind  
18 of thing, because in the vast majority of cases I would  
19 have thought that part of the paradigm of a limited  
20 scope retainer is to say clearly when it starts and  
21 when it ends.

22 MR. MERCER: Well, we hope that the  
23 concept of ordinarily captures that thought. We could  
24 say pretty much always, but...

25 MR. ANAND: That's why we don't draft on

1 the fly.

2 The second -- that's fine. The second  
3 question is about the misleading of the Tribunal. And  
4 I guess this is intended to be contextual again,  
5 because if the Tribunal has an expectation because of  
6 past history and because of experience that there  
7 aren't limited scope retainers, then by being on a  
8 limited scope retainer and not disclosing it, you may  
9 be misleading the Tribunal.

10 MR. GOLDBLATT: Well, that's exactly  
11 right.

12 MR. ANAND: I don't know that that is  
13 the proper -- I don't know that there should be  
14 prohibition on that kind of misleading, if you  
15 understand what I mean.

16 MR. MERCER: Well, I understand the  
17 difficulty of parsing misleading, but I think you're  
18 right that the context will be important, and if the  
19 court's understanding and expectation is that limited  
20 scope retainers are invariable, then I think the lawyer  
21 should think about that. I don't think rule drafters  
22 can tell lawyers what the right answer is in that  
23 context, but merely to alert them to think about it.

24 MR. ANAND: Thank you.

25 TREASURER MINOR: Mr. McDowell?

1                   MR. McDOWELL: I apologize for not  
2 raising this earlier. I just was looking at the  
3 language rights section. So, in context, I think, "A  
4 lawyer shall, when appropriate, advise a client of the  
5 client's language rights, including the right to  
6 proceed in the official language of the client's  
7 choice." So official language, Official Languages Act,  
8 English or French, I take it.

9                   There is, then, a bit of a dissonance.  
10 One is fine, two is fine. The choice of official  
11 language is of the client, not the lawyer. Then it  
12 imports the federal analysis. It says, "The lawyer  
13 should be aware that provincial and territorial  
14 legislation may provide additional language rights,  
15 including Aboriginal languages."

16                   But then when we go to 3, "When a lawyer  
17 considers whether to provide the required services in  
18 the official language, again, English or French," so I  
19 just wonder whether there needs to be another clause,  
20 "or in another language permitted under the provincial  
21 and territorial --"

22                   MR. MERCER: Your proposition is we  
23 should be obliged to be competent in whatever language  
24 we're providing services?

25                   MR. McDOWELL: Right.



1 MR. MERCER: It's a radical thought.

2 MR. McDOWELL: Well, maybe, I don't  
3 know, but official language is a term of art.

4 MR. MERCER: I think you're right.  
5 Commentary 3 is clearly drafted in the context of the  
6 original rule which is directed to official languages,  
7 and then the commentary goes on to expand that.

8 So I personally think it makes perfect  
9 sense to say "provide the required services in the  
10 language chosen by the client". If the client says  
11 this is the language that I want to proceed with, it  
12 seems to me that the lawyer needs to be competent to be  
13 able provide those services.

14 TREASURER MINOR: Mr. Galati.

15 MR. GALATI: I think, Treasurer, just  
16 one clarification. Is this meant simply for cases  
17 where the Court or Tribunal proceedings are either in  
18 the official languages of Canada or the territorial  
19 Aboriginal languages, or is this meant to mean that a  
20 client can insist on having a lawyer who speaks their  
21 language, no matter what it is?

22 MR. MERCER: We obviously aren't --  
23 don't have the authority and don't have the interest in  
24 telling the court system what to do, but rather to  
25 ensure that lawyers advise their clients of their

1 rights in the administration of justice.

2 I think Mr. McDowell's point, and it's a  
3 good one, is that clients get to choose whether or not  
4 to retain a lawyer and the lawyer should say if the  
5 lawyer is asked to work in a language that the lawyer  
6 is not competent in, I am not competent to do that. I  
7 don't think it's any higher than that.

8 MR. GALATI: Okay. So it doesn't  
9 mean -- for instance, I conduct my practice in 90  
10 percent in non-English, non-French, whether it's  
11 Spanish or whatever --

12 MR. MERCER: Competently, no doubt.

13 MR. GALATI: Right. Does it mean that a  
14 lawyer under this commentary is forced to either be  
15 able to communicate directly with the client in Spanish  
16 or transfer him to a lawyer who can or this has nothing  
17 to do with that?

18 MR. MERCER: I think it doesn't have  
19 anything to do in the sense that the commentary states  
20 the lawyer should consider carefully whether it's  
21 possible to render those services. I wouldn't have  
22 thought there would be any issue about translation, for  
23 example, as being a way of competently providing those  
24 services.

25 It's certainly not the intent to say the

1 lawyer must speak the same language and no assistance  
2 to make communication effective is permitted.

3 TREASURER MINOR: Any other questions or  
4 comments in the room? Questions or comments from the  
5 phone?

6 Could you just clarify, Mr. Mercer, are  
7 you intending that there be a friendly amendment?

8 MR. MERCER: I would accept a friendly  
9 amendment to strike the word "official" in front of  
10 "language" in commentary 3.

11 TREASURER MINOR: Better check with your  
12 seconder.

13 MR. MERCER: Better find her. Ms.  
14 Richer?

15 MS. RICHER: I'm here. I thought the  
16 obligation was in the law in terms of the two official  
17 languages, so it's quite different if we expand that.

18 MR. MERCER: I think the commentary at  
19 the end -- the sentence at the end of commentary 2 is  
20 important in that respect. "The lawyer should also be  
21 aware that provincial or territorial legislation may  
22 provide additional language rights."

23 So we're dealing with language rights  
24 given by legislation and whatever the law is in  
25 Ontario, Ontario lawyers are routinely, as a result of

1 mobility rights, practising in other jurisdictions as  
2 well. And so I take the intent to be referenced back  
3 to official languages or language rights by provincial  
4 or territorial legislation.

5 MS. RICHER: If that's the way it's  
6 understood, I would second it. Thank you.

7 TREASURER MINOR: If there's nothing  
8 further, we'll call the vote. All in favour? Any  
9 opposed? Any opposed on the phone? Motion carried.

10 MR. MERCER: The call for input  
11 proposals are set out at tab 3.2, and there are five as  
12 set out at paragraph 29, the first dealing with  
13 conflicts of interest; second dealing with doing  
14 business with the client; and, thirdly, short term  
15 legal services and then in incriminating evidence and  
16 then advertising.

17 I will be briefer in taking you through  
18 these to highlight the intent because, of course, this  
19 is a call for input, and to the extent that members of  
20 Convocation have input, they're, of course, equally  
21 welcome.

22 The intent is to seek input by October  
23 16 for the consideration of the Professional Regulation  
24 Committee, and then to conclude what should be brought  
25 back to you.

1           The discussion of conflicts of interest  
2 starts in paragraph 32 at page 100 of BoardBooks and  
3 it's a short discussion. I would say that the thrust  
4 of the proposed amendment which is addressed obviously  
5 had conflicts. The conflicts rule itself simply says  
6 that a lawyer shall not act in a conflict of interest,  
7 except with consent where permitted, and I paraphrase.

8           A conflict of interest is defined to be  
9 a circumstance where there is a substantial risk of  
10 material or adverse impact on the representation or  
11 loyalty as a result of a competing or as a result of a  
12 personal interest, a duty to a current client, a duty  
13 to a former client, or a duty to anyone else.

14           The commentary as we have proposed it  
15 for input essentially follows the structure of the  
16 rule. So the structure of the commentary would be to  
17 describe what the concepts are about, to describe what  
18 a substantial risk is, to explain what risk to  
19 representation or loyalty means and then to go through  
20 the types of conflicts, the personal interest conflict,  
21 the current client conflict, the former client  
22 conflict, and the duties to others conflict with a view  
23 to helping lawyers in what is acknowledged by all to be  
24 a complicated area. To have some explanation of the  
25 rationale for each of those parts of the rule and an

1 example or two to help better understand that part of  
2 the rule. That's mostly what the commentary does.

3 The commentary then goes on to provide  
4 accessibility to other ethical rules which are often  
5 engaged. The duty of commitment to the client's cause,  
6 the duty of candour, the duty of confidentiality, all  
7 of which can intersect with the obligation to avoid  
8 conflicting interests.

9 The rule is intended to be, and probably  
10 isn't, user friendly. That's a challenge in this area.  
11 We need to be clear and principled, and at the same  
12 time to be helpful, and we've tried to achieve that.  
13 Of course, if there are suggestions of how to better  
14 achieve that, we would be grateful.

15 There is an acknowledgment for those who  
16 have followed the bright line rule and the decision in  
17 McKercher, which is that crossing the bright line rule  
18 is deemed to be a conflict of interest.

19 The commentary says that. The  
20 commentary says for current clients if the conflicts  
21 rules, substantial risk or the bright line rule is  
22 transgressed either, then there is a conflict. The  
23 rule is circumscribed in McKercher, and so the view of  
24 the committee is that that's appropriate.

25 I would also mention the consent rule.

1 The consent to waive a conflict was taken in the former  
2 or the current rule based on the Neil case to implied  
3 consent for sophisticated clients. As the committee is  
4 of the view that that falls now within the scope  
5 definition of the bright line rule, that's no longer  
6 necessary, nor appropriate.

7 The second category or the second rule  
8 is doing business with a client, and that's described  
9 in paragraph 36, set out at tab 3.2.4 at page 143.

10 The essential rationale for the  
11 amendments here are not to change a lot, but, rather,  
12 to make it less confusing for people in real life  
13 having to comply with the rule. What was discovered  
14 after the amendments of 2014 was that there was a  
15 challenge in compliance because the rules were opaque,  
16 might be a way of describing it.

17 So the first rule essentially says  
18 substantively that transactions between lawyers and  
19 clients must be fair and reasonable. The rule then  
20 goes on to give procedural direction, which is that  
21 independent legal advice must be recommended. In some  
22 circumstances, independent legal representation must be  
23 recommended, and by way of commentary for vulnerable  
24 clients, it may be that independent legal  
25 representation is mandatory.

1           I won't take you through the detail of  
2 the rule, it would take a while and you should consider  
3 it and we'll have the benefit of input.

4           Short term legal services reflects,  
5 again, and I suppose we should be pleased about this in  
6 the sense that it's evidence that issues of access have  
7 actually evolved. Back in 2010 Convocation put in  
8 place a rule to deal with what one might call duty  
9 counsel in Small Claims Court, in other proceedings,  
10 where PBLO, and it was a rule directed only at PBLO,  
11 was providing short term limited services.

12           There was a practical problem. Those  
13 who were at the Tribunal couldn't clear conflicts,  
14 because calling back to the home ship to find out  
15 whether or not the person sitting in front of them was  
16 a client of the firm in which they practised ended up  
17 being such a time commitment, by the time you cleared  
18 conflicts you weren't able to provide the service.

19           So the rule in 2010 permitted those who  
20 were sitting in front of a person in small claims  
21 court, for example, under the auspices of Pro Bono Law  
22 Ontario to be able to assess only their personal  
23 information, as opposed to the information of the firm,  
24 their personal representations. And if they personally  
25 were cleared, they could proceed with that short term



1 representation. Of course, they couldn't continue on  
2 if it turned out they were conflicted through the  
3 ordinary rules, and if they were conflicted through the  
4 ordinary rules they were obliged to put in place  
5 protective measures when they got back to the office,  
6 if I could say it simply.

7           The point of the amendment described in  
8 paragraphs 39 and following is to extend that rule in  
9 two respects. The first is to recognize that there are  
10 other providers other than PBLO that we should be  
11 facilitating this sort of representation without  
12 causing problems in clearing conflicts that are  
13 unnecessary.

14           The second is to move this beyond  
15 Tribunal work to other sorts of work. And so an  
16 example is given of the Ryerson program where, if I  
17 recall correctly, it's landlord and tenant work, which  
18 is not necessarily tribunal or advocacy in the  
19 immediate sense, but is necessary access to legal  
20 services and advice to people who need that.

21           So I expect that no one would have any  
22 issue with the policy goals. We propose to put this  
23 out for input so that if we get any instructive  
24 feedback, or destructive, I suppose, is fine as well,  
25 but I won't expect it.

1                   The next rule is with respect to  
2     incriminating physical evidence. That's described in  
3     paragraphs 44 and 45. Page 170 is where you find it.  
4     And the proposed amended rule for consultation is part  
5     of the section dealing generally with the ethical  
6     obligations of the lawyers in the advocacy process and  
7     the proposed rule is found on page 172, 5.1-2A, "A  
8     lawyer must not counsel or participate in the  
9     concealment or destruction or alteration of  
10    incriminating physical evidence or otherwise act so as  
11    to obstruct or attempt to obstruct the course of  
12    justice."

13                   The commentary provides assistance first  
14    as to the meaning of physical evidence, then the  
15    proposition that some evidence can be incriminating,  
16    some can be criminating and some can be mixed.

17                   Then the commentary number 3, the lawyer  
18    is not required to take or keep possession of the  
19    incriminating physical evidence, possession of illegal  
20    things could constitute an offence. The lawyer should  
21    carefully consider their options, which seems sensible.  
22    And what is more useful, or most useful, is the first  
23    option which is proposed, is that the lawyer seek  
24    advice. And retaining independent counsel who would  
25    not be informed of the identity of the client,

1 instructed not to disclose the identity of the  
2 instructing lawyer and may be the means by which, if  
3 necessary, the evidence is dealt with, is intended by  
4 the committee to be a practical way of saying to  
5 lawyers out there facing this circumstance. As they  
6 say in late night television, "don't do this alone at  
7 home," instead, get the expert assistance of senior  
8 counsel. And the view of the committee is with that  
9 assistance, much of the rest of the rule is rendered  
10 safer.

11                   The last is advertising, and the  
12 discussion of advertising, the short discussion is at  
13 paragraph 48. The advertising proposed rule for input  
14 is found at page 178 and there are two areas where  
15 there has been comment from quite different  
16 perspectives with respect to lawyer advertising and  
17 concern. The first is with respect to advertising in  
18 places and with statements which are considered to be  
19 problematic. Buses appear to be some of those places  
20 and places at the Air Canada are thought to be others.

21                   MR. McDOWELL: The least problematic is  
22 the Air Canada Centre.

23                   MR. MERCER: Perhaps. The other area,  
24 if I can be sufficiently enigmatic, is with comments by  
25 legal academics with respect to some of the marketing

1 and advertising collateral in areas of alleged sexual  
2 crime and the defence thereof.

3           The -- I recognize that's controversial.  
4 There's clearly a real question of where and there  
5 should be a line drawn and whether it should be a clear  
6 line and what judgment is involved. I'm not suggesting  
7 any particular direction, but simply to say those are  
8 the two areas where there has been controversy in the  
9 past couple of years.

10           So what is proposed for input is  
11 essentially under 4.2-1.1, to move what was commentary  
12 up into a rule without changing any more than the  
13 commentary said this might be a breach of the rule.  
14 What the rule proposed says, yes, it is. So it's a  
15 stronger advertising rule intended to draw attention  
16 and to cause greater care in the advertising which is  
17 undertaken.

18           The commentary itself, which is found on  
19 page 179, notes that the rule isn't exhaustive. And  
20 then commentary 2, the rule establishes, amongst other  
21 things, requirements for communication in the marketing  
22 of legal services. Examples of marketing practices  
23 which may contravene these requirements included, A,  
24 failing to disclose that the legal work is routinely  
25 referred to other lawyers for a fee without being

1 performed by the lawyer.

2           The committee is concerned that there  
3 appears to be a practice of advertising for work that  
4 is not intended to be done by the lawyers advertising  
5 for the work, but, rather, to be referred. That may or  
6 may not be proper substantively, we don't seek to  
7 address that at this time, but we do seek to highlight  
8 the transparency so people know what they're getting is  
9 highlighted.

10           Obviously B is simple. Misleading about  
11 the size or nature of the lawyer's practice. Referring  
12 to fee arrangements in an unqualified way where they're  
13 qualified, and advertising rewards and endorsements  
14 from third parties without disclaimer are  
15 qualification. All of this is intended not to be  
16 deemed to be breach of the rules, but, rather, to  
17 highlight these may be breaches. It will be context  
18 specific, but we recognize that there is an issue here  
19 which needs to be addressed.

20           The commentary in 3 notes the  
21 requirement of advertising consistent with a high  
22 standard of professionalism, unprofessional marketing  
23 is not in the best interests of the public. It  
24 reflects adversely on the reputation of lawyers, the  
25 profession, and the administration of justice.

1                   We are concerned about the dignity of  
2 individuals and the diversity of the community in  
3 Ontario, and advertising must take that into account.

4                   Then to be more specific, examples in  
5 commentary 4 of marketing practices that may be  
6 inconsistent with a high degree of professionalism  
7 would be images, language or statements that are  
8 violent, racist or sexually offensive, take advantage  
9 of a vulnerable person or group, or refer negatively to  
10 other lawyers, the legal profession or the  
11 administration of justice.

12                   I recognize that this is all stuff which  
13 is important and there will be views about it all.  
14 These are the sorts of areas where the Law Society is  
15 directly within its obligation to think clearly and to  
16 regulate properly in the public interest.

17                   I commend all of these to you by way of  
18 consultation in the call for input that is being  
19 proposed, and Ms. Richer, again, seconds that motion.

20                   TREASURER MINOR: Thank you, Mr. Mercer.  
21 Any questions -- sorry, you're moving that again?

22                   MR. MERCER: Yes.

23                   TREASURER MINOR: And seconded by  
24 Ms. Richer again? Thank you. Any comments or  
25 questions in the room? Okay, Ms. Go.

1 MS. GO: I guess I have a question,  
2 since we're talking about getting public consultation.  
3 I recently received the annual report from the Special  
4 Investigations Unit Director. I'm on the advisory  
5 group of the SIU.

6 One of the issues, a long-standing issue  
7 that has been raised by the SIU to the Law Society  
8 since the previous SIU director, Mr. Ian Scott, is  
9 around the issue of joint retainer in the context of a  
10 lawyer representing different -- more than one police  
11 officer involving in an SIU matter.

12 This issue was again raised by the  
13 current SIU director in his annual report. I just want  
14 to read part of the annual report to give people some  
15 context.

16 "On November 6, 2012, the Law Society  
17 issued an advisory to lawyers representing police  
18 officers regarding the combined effect of the rules  
19 relating to joint retainers and the SIU regulations  
20 which govern SIU investigations. The Law Society  
21 observed that it is difficult to see how lawyers could  
22 act for multiple police officers, given their  
23 professional obligation in joint retainer situations,  
24 to share information between clients and the  
25 prohibition in the regulations of "direct or indirect"

1 communication among police officers involved in SIU  
2 investigations. The upshot of the Law Society advisory  
3 was to strongly suggest that lawyers should not be  
4 retained by multiple officers in SIU cases."

5 And it goes on to say that the previous  
6 officer -- director has filed a complaint with respect  
7 to certain lawyers. This issue has also long been  
8 recognized, including from George Adams, QC, who has  
9 done previous reports on SIU operation.

10 It ends by saying, "Notwithstanding the  
11 Law Society advisory, some lawyers involved in SIU  
12 investigations continue to represent multiple officers.  
13 In an effort to achieve clarity in this area, the SIU  
14 launched a complaint to the Law Society hoping to use  
15 it as a test case. In June 2013 the Law Society  
16 dismissed the SIU complaint."

17 So I guess this is an ongoing issue,  
18 clearly it's still in the mind of many involved -- I  
19 guess, police issues, including the current  
20 SIU director.

21 It ties to some of the issues I think  
22 we're discussing today. Lawyers' obligation in a  
23 conflict situation, as well as a lawyer not to be  
24 impeding access -- the administration of justice by  
25 assisting clients in, you know, sort of illegal



1 conduct.

2 I'm wondering whether this is an issue  
3 that will be considered as part of the -- I guess  
4 public consultation around whether a change may be  
5 required or some kind of additional commentary should  
6 be added.

7 MR. MERCER: It's not proposed in this  
8 call for input. That's not to say that it shouldn't be  
9 subject to input.

10 So everyone is clear about what, as I  
11 understand the essence of the point to be, a lawyer who  
12 has a joint retainer has a duty of candour with both  
13 clients and is obliged to disclose all that the lawyer  
14 knows that's relevant to both clients in respect of the  
15 retainer.

16 On the other side, if you're dealing  
17 with officers in the context that Ms. Go just  
18 described, there may well be an obligation not to  
19 disclose, and so we have competing obligations  
20 legislatively by regulations not to disclose and with  
21 respect to the candour obligation to disclose, and  
22 where that exists, the classic learning is the lawyer  
23 has a problem, not an excuse.

24 We haven't addressed that through the  
25 implications since the Supreme Court of Canada

1 decision, and it may well be appropriate that they  
2 revisit that. But I'm not here today briefed and  
3 really having thought that through.

4 TREASURER MINOR: Thank you, Mr. Mercer.  
5 Mr. Falconer.

6 MR. FALCONER: Through you, Madam  
7 Treasurer, I'm just following up on my colleague,  
8 Ms. Go's, comment.

9 The Supreme Court of Canada in William  
10 Schaeffer, 2013 SCC 71, dealt with this issue. Not, I  
11 would say, on all matters, but frankly dealt in  
12 particular with the issue the director of the  
13 SIU raised in the Law Society complaint.

14 So the difficulty I have is that,  
15 frankly, the issue has sort of morphed into something  
16 different, which is when an SIU investigation is being  
17 conducted, especially a shooting that involves multiple  
18 numbers of police officers, not subject officers, but  
19 witness officers. It could be twenty or thirty witness  
20 officers.

21 The practical problems of having a  
22 separate lawyer for each of the 30 officers is  
23 manifest. So while I end up acting for families and  
24 often raise concerns around conflicts when they truly  
25 represent a problem, as in representing subject

1 officers jointly, I frankly suggest that this problem  
2 is a little more nuanced than that, because there is a  
3 practical reality where joint retainers actually make  
4 sense for witness officers.

5           If our committee -- and I sit on  
6 Professional Regulation, if the committee is to look at  
7 this again, it would have to be looked at through the  
8 lens of the Schaeffer and Minty judgment and the fact  
9 that there is a practical reality that we don't want to  
10 be describing 30 lawyers for 30 witnesses. I simply  
11 raise that to say that the problem has gone a little  
12 further than what it was originally.

13           TREASURER MINOR: Thank you,  
14 Mr. Falconer. Any other questions or comments? Mr.  
15 Burd.

16           MR. BURD: I was just going to ask in  
17 regards to the marketing. We hear and see a lot of  
18 firm names being used, for example, jurisdictional  
19 references saying "Toronto's Best," things of that  
20 nature, which is actually the firm's name. They're  
21 Toronto whatever.

22           Is there any discussion that in the  
23 input that we would look at, since it is part of the  
24 marketing or the advertising of that firm, that we look  
25 at firm names and tie that into the --

1                   MR. MERCER: I think the way that I  
2 would respond to that is that the approach of the  
3 advertising world is not designed to be  
4 micro-regulatory in a rules-based way, but rather  
5 principled regulation.

6                   So the point is not to say you can't use  
7 the firm name or your firm name can't include a  
8 geographic designation, but, rather, these are the  
9 principles which govern whether the advertising is  
10 proper or not. So if you said this is Toronto's best  
11 law firm or paralegal firm and that was the name of the  
12 firm, I expect that that would raise issues as to  
13 whether or not that was misleading, as opposed to you  
14 can't have a name that is a geographic reference.

15                   I think that's, in my view anyway, the  
16 better way to analyze it.

17                   MR. BURD: Thank you.

18                   TREASURER MINOR: Thank you. Mr.  
19 Wright.

20                   MR. WRIGHT: Thank you. The name of my  
21 firm is the Wright Law Firm, which means, by  
22 definition, your clients are not going to the Wright  
23 law firm.

24                   MR. MERCER: Sometimes people want to  
25 get all the attention.

1                   MR. WRIGHT: I'm always very reluctant  
2 to seek the limelight.

3                   TREASURER MINOR: Thank you. We'll keep  
4 that in mind, Mr. Wright. Any questions or comments on  
5 the phone?

6                   Okay, hearing none, I'm going to call  
7 the vote. All in favour? Thank you. Any opposed?  
8 Opposed on the phone? Motion carried. Thank you,  
9 Mr. Mercer.

10                   Could we have one more matter before the  
11 break, please? Ms. Haigh, Paralegal Standing.

12                   PARALEGAL STANDING COMMITTEE REPORT

13                   MS. HAIGH: Thank you, Treasurer. So we  
14 are at tab 4.1, or page 188 of BoardBooks. The  
15 Paralegal Standing Committee has only one item for  
16 decision today and this item mirrors the recommendation  
17 from Professional Regulation Committee found at tab  
18 3.1.1 regarding client rights to service in the  
19 official language of their choice.

20                   The motion is that Convocation approve  
21 the amendments to rule 3.02, the Paralegal Rules of  
22 Conduct, set out in the report. The amended wording is  
23 shown at paragraph 7 on page 188.

24                   If I could just ask for a point of  
25 clarification, Treasurer. In the Paralegal -- sorry,

1 in the Professional Regulation report that we just  
2 heard, was the amendment to remove the word "official"  
3 out of the commentary only or was it out of the rule?

4 TREASURER MINOR: Commentary.

5 MS. HAIGH: Okay. I just want to make  
6 sure, because then we'll leave the word official in the  
7 paralegal rule.

8 TREASURER MINOR: They should mirror  
9 each other.

10 MS. HAIGH: Correct, yes. As you had  
11 just heard by Mr. Mercer, in October 2014 the  
12 Federation model code was amended to provide guidance  
13 regarding the ethical obligation to advise clients on  
14 language rights, an issue that had not previously been  
15 addressed in the model code.

16 The Professional Regulation Committee  
17 developed changes in the lawyer rules to follow the  
18 wording of the model code and on this particular issue,  
19 and the Paralegal Standing Committee has also developed  
20 a parallel amendment to the paralegal conduct and  
21 recommends the wording to Convocation for approval.

22 This amendment would clarify that  
23 clients have the right to be served in the official  
24 language of their choice and that a paralegal should  
25 decline to take a file if the paralegal cannot

1 competently provide service in the client's preferred  
2 language.

3 So the motion is moved by myself and  
4 seconded by Ms. McGrath.

5 TREASURER MINOR: Thank you. Any  
6 questions or comments in the room? Mr. Wright.

7 MR. WRIGHT: Concerning the wording of  
8 the language rights rule, it's now incomplete because  
9 if we leave the word "official" in the rule, it doesn't  
10 mention that there are provincial and territorial  
11 approved languages. So the wording should be "a lawyer  
12 or paralegal," we're talking about the paralegal one,  
13 but they'll mirror each other, "shall, when  
14 appropriate, advise the client of the client's language  
15 rights, including the right to proceed in the official  
16 or provincially or territorially approved language of  
17 the client's choice". That would be the only way to  
18 make it absolutely clear.

19 If we take the word "official" out,  
20 well, there are 6,000 languages in the world, plus  
21 Vulcan, so we have to make sure that the rule specifies  
22 that it's official and provincially and territorially  
23 approved. Then after that you can leave the  
24 description out of the commentary.

25 TREASURER MINOR: So that's a comment

1 vis a vis the last motion also then?

2 MR. WRIGHT: Well, because the two  
3 provisions have to mirror each other.

4 TREASURER MINOR: Ms. McGrath.

5 MS. McGRATH: Just to address  
6 Mr. Wright's point. First of all, there's no mobility  
7 for paralegals, they're only authorized to practice in  
8 Ontario, so they're unlikely to be in jurisdictions  
9 where other languages have been approved, which is why  
10 this one just deals with official languages.

11 MR. WRIGHT: Well, then we should change  
12 the one for lawyers.

13 MS. McGRATH: There is mobility for  
14 lawyers. We have a number of lawyers in Ontario who  
15 are also members of the bar of Nunavut. So -- and  
16 there are a number of languages that are approved in  
17 that jurisdiction and that's the reason for the rule  
18 and the difference in the rules.

19 MR. WRIGHT: I understand the word  
20 official to be English and French.

21 MS. McGRATH: It is.

22 MR. WRIGHT: And if we've got mobility  
23 and we have to address other languages that have been  
24 provincially or territorially approved, shouldn't the  
25 rule say that?



1 MS. McGRATH: This rule just applies to  
2 paralegals, it does not apply to lawyers. So if you  
3 want to go back and talk about revisions to rules of  
4 lawyers you can do that. Right now we're just dealing  
5 with paralegals. Paralegals are just Ontario. They  
6 can't go anywhere else.

7 MR. WRIGHT: That is what I would want  
8 to see happen is the rule respecting lawyers to be  
9 amended in the way described and the rule for  
10 paralegals can stay the same.

11 TREASURER MINOR: Can we deal with the  
12 paralegals one right now, please?

13 MR. WRIGHT: Yes.

14 TREASURER MINOR: Thank you. Any other  
15 questions or comments in the room? Questions or  
16 comments on the phone? Any questions or comments on  
17 the phone? If not, I'm calling this motion.

18 All in favour? Any opposed? Any  
19 opposed on the phone? Motion carried.

20 MS. HAIGH: Thank you, Treasurer. There  
21 are no more items for decision on our report, but if I  
22 may, I'd like to comment briefly on one of the  
23 information items.

24 TREASURER MINOR: Yes.

25 MS. HAIGH: The report at tab 4.3.1 on

1 page 191 of BoardBooks. This report was commissioned  
2 by the Law Society's Equity and Aboriginal Issues  
3 Committee following on the work on the Retention of  
4 Women in Private Practice, which had produced detailed  
5 statistics on patterns in the careers of women lawyers.

6 Navigator Ltd. has now analyzed the  
7 statistics on paralegal licensees who indicate on their  
8 paralegal annual report that they have changed their  
9 work status in the last year.

10 The report itself is very detailed and I  
11 won't go through the whole document, but I just thought  
12 I would highlight some key points for Convocation.

13 First is the analysis is based on a  
14 voluntary survey completed by 27 percent of those  
15 asked. As you probably know already, a majority of  
16 paralegal licensees are women, approximately 60  
17 percent; however, those changing their status in 2014  
18 was 67 percent -- 67 percent of them were women. It is  
19 particularly younger women who are reporting changes.

20 The statistics show a decline in  
21 employment in paralegal or law firms from 47 percent to  
22 43 percent, mostly due to a decline in law firm  
23 employment. There is no significant decline in  
24 employment in paralegal firms.

25 For women, remuneration and job security

1 played a greater role in change, while for men control  
2 over and scheduling of work are top factors. The  
3 majority of paralegal licensees, 57 percent, are not  
4 currently practising in a paralegal or law firm. 13  
5 percent work in a corporate, government, or educational  
6 setting, while another nine percent indicate they are  
7 using their paralegal skills in another setting; an  
8 example would be Prosecution Department or as a legal  
9 assistant or law clerk.

10 I would like to recommend that you  
11 review the rest of the report and the slide show that's  
12 included in the material. It shows that the Law  
13 Society takes a great interest in the work environment  
14 of paralegal licensees, and this will inform our work  
15 in the future.

16 TREASURER MINOR: Thank you, Ms. Haigh.  
17 Can we have the morning break now. I think I'm going  
18 to ask Mr. Mercer and Mr. Wright to confer.

19 --- Recess taken at 10:30 a.m.

20 --- On resuming at 11:05 a.m.

21 TREASURER MINOR: Please be seated.  
22 Come to order. I understand that Mr. Mercer and  
23 Mr. Wright have conferred and there is now an  
24 indication from Mr. Mercer that that issue will be  
25 referred back to PRC for consideration.

1           I also -- now we're coming to the  
2   Treasurer's report on two new task forces. Before I  
3   deal with those, I also wanted to indicate that I've  
4   decided to establish a round table composed of some of  
5   the newest members of our profession.

6           As you know, we have an equity advisory  
7   group which gives advice, as requested, or on their own  
8   motion to the Equity and Aboriginal Issues Committee.  
9   We also have a Treasurer's liaison group where I meet  
10  with the leaders of many of the legal organizations and  
11  others, again, to get input and have discussion about  
12  some of our initiatives.

13           Last year I added to that group the  
14  president of what's called the Students' Law Society.  
15  It's an umbrella organization of student societies from  
16  the law schools and I was very pleased, I think it made  
17  quite valuable input and, of course, was useful for the  
18  students to hear some of the other issues that we're  
19  dealing with.

20           I noted, however, that it still  
21  doesn't -- we don't really have any advice coming from  
22  younger or newly called lawyers and I think it would be  
23  useful to us. So I'm going to establish what I'm  
24  calling a round table. It's not written in stone yet  
25  as to exactly what its composition would be. We would

1 be looking for lawyers and paralegals who have  
2 practised under ten years, so somewhere between five  
3 and ten years.

4 We can look to some of the organizations  
5 who have younger lawyer sections to nominate someone,  
6 but I'm not sure it will only be that. Again, that  
7 will be developed over the summer so that it can be up  
8 and running in September, but I look forward to that  
9 and their advice. Are you wanting to speak?

10 MS. ST. LEWIS: Thank you, Treasurer. I  
11 think this is an excellent initiative and the only  
12 observation that I would have is that as the initiative  
13 is being composed that we consider the equity  
14 dimensions in it, because in these organizations we  
15 don't always get the compounded inequality.

16 I would say if we could keep a lens on  
17 ensuring that we have students with disabilities,  
18 Aboriginal students, or persons coming with those  
19 various experiential expertise from the equity groups,  
20 so that it's not just organizational, but also  
21 dynamically experiential, I think that would be really  
22 great. So I just want to define that.

23 TREASURER MINOR: Thank you, Ms. St.  
24 Lewis. Ms. Potter.

25 MS. POTTER: Thank you, Treasurer. Just

1 to add to Ms. St. Lewis' comments, I think it would  
2 important to recognize that young lawyers are not  
3 always young lawyers. I --

4 TREASURER MINOR: That's why I said  
5 newly called. Five to ten years.

6 MS. POTTER: Because I was one of those  
7 who went back and did my law degree later.

8 TREASURER MINOR: I do recognize that.  
9 That's why I said five to ten years of practice. So  
10 there's going to be some overlap, but not a hundred  
11 percent.

12 MS. POTTER: Because they have special  
13 concerns as well. Thank you.

14 TREASURER MINOR: Thank you. I would  
15 like to move on now to Treasurer's report. There are  
16 two new initiatives which we have had included and two  
17 new working groups. I've mentioned one.

18 I would like to call on Carol Hartman to  
19 deal with the mental health -- sorry, compliance  
20 initiative.

21 TREASURER'S REPORT.

22 MS. HARTMAN: Thank you, Treasurer, and  
23 good morning, Benchers. The task force that I will be  
24 addressing is found at tab 5 of your BoardBooks,  
25 starting at page 311, and it has to do with

1 compliance-based entity regulation.

2           The motion at paragraph 24 reads that  
3 Convocation establish a task force to study and make  
4 recommendations on a process for professional  
5 regulation that focuses on compliance measures for  
6 entities for which lawyers and paralegals provide legal  
7 services with membership of the task force and terms of  
8 reference as set out in this report.

9           Treasurer, it is moved by me and  
10 seconded by Mr. Groia.

11           So some of you are probably asking what  
12 is compliance-based entity regulation. Well, it is  
13 proactive -- a proactive approach to regulation whereby  
14 the Law Society, as the regulator, will encourage  
15 improved practices. And it will do so primarily by  
16 setting goals and expectations and by providing support  
17 and information as needed to law firms and legal  
18 practices.

19           I believe you will all agree with me  
20 when I say that our current approach is very much a  
21 reactive approach. We get a complaint and then we deal  
22 with it.

23           The beauty, if I may say, of  
24 entity-based regulation is that its focus is on  
25 prevention of complaints. So in February of this year,

1 those of you who were here in February, will remember  
2 that Convocation approved moving forward with the  
3 development of a framework to consider entity  
4 regulation. The report, as I said, is at page 311 of  
5 your BoardBooks. I'm not going to go through it in  
6 great detail, but I do want to highlight for you some  
7 facts.

8           The first fact is that the Law Society  
9 Act gives the Law Society the authority to regulate  
10 professional corporations in the same way as we  
11 regulate individuals. But to date we have yet to  
12 implement any policies or by-laws to put this authority  
13 in place.

14           We have compliance entity regulation in  
15 Canada; in fact, Nova Scotia will have it soon. Out  
16 west, some of the province, B.C., Alberta, Manitoba,  
17 have some form of entity regulation over lawyers.

18           Also in Ontario other regulators have  
19 entity regulations, such as the pharmacists, the  
20 engineers and the accountants.

21           We know that many complaints we receive  
22 from clients relate to how we manage our law firms and  
23 how paralegals as well manage their practices.

24           We often get complaints about  
25 communication, conflicts, accounting issues, and I



1 suggest to you that all of these could easily be  
2 avoided by putting in place appropriate practice  
3 management tools.

4           So a compliance-based approach will  
5 include developing objectives and support for licensees  
6 to improve how they organize and manage their  
7 practices. Currently, the individual licensee in a  
8 firm is personally responsible for management of trust  
9 accounts, for advertising and for marketing, but we  
10 know in reality that these responsibilities really are  
11 part of the overall firm's practice and do not  
12 necessarily fall to only one individual.

13           So when this issue came before PRC, we  
14 thought that it made a lot of sense to further  
15 investigate whether firms, whether entities, should be  
16 required to be accountable for those responsibilities  
17 and ultimately be subject to regulation.

18           The Treasurer agreed that it made sense  
19 to move forward and she believed the best way to go on  
20 and do this investigation is through a task force. So  
21 at page 47 -- or paragraph 47, page 314 of BoardBooks,  
22 you will see some of the issues at paragraph 47 that  
23 the study will address. I will leave it to your  
24 leisure to read those issues. You also have at page 48  
25 and 49 the list of proposed members.

1                   Then with respect to the terms of  
2                   reference, as you will read ,if you haven't already  
3                   done so, the task force will be mandated to review  
4                   current research and information, consider the various  
5                   models, prepare a proposal, consult on the proposal  
6                   and, once that's done, report back to Convocation, and  
7                   it's anticipated the report will be next year at this  
8                   time, June 2016. In between we will be giving you  
9                   interim reports.

10                   Part of the work plan, as I anticipate  
11                   either Mr. Wardle or Mr. Bredt may ask, is to develop a  
12                   budget with respect to the task force, and, if  
13                   necessary, to seek approval if the budget is going to  
14                   exceed the monies that are already earmarked for these  
15                   types of incentives.

16                   So, Treasurer, that is my very brief  
17                   introduction. It is my pleasure to have presented this  
18                   part of your report and I know it will now be your  
19                   pleasure to answer any questions.

20                   TREASURER MINOR: Ms. Haigh, who are you  
21                   asking?

22                   MS. HAIGH: Treasurer, you. I see the  
23                   proposed list of appointed members to the task force.  
24                   Is it possible to get a paralegal appointed?

25                   TREASURER MINOR: Yes, I should say not

1 just with respect to this, but a couple of other  
2 working groups, we put together a core group so that it  
3 could get started, but that's an obvious example of  
4 something I missed because I would have liked to have a  
5 paralegal there, so one will be added.

6 MS. HAIGH: Great, thank you.

7 TREASURER MINOR: Okay. Mr. Wright.

8 MR. WRIGHT: May the same consideration  
9 be extended to the solicitor bar? To have a solicitor  
10 on these important task forces and committees?

11 TREASURER MINOR: Yes.

12 MR. WRIGHT: Thank you.

13 TREASURER MINOR: I should also say on  
14 the mandate, again, it's general. If the working group  
15 gets going and thinks there's an area that needs some  
16 other or further consideration on it -- task force,  
17 sorry. And part of this is, again, so that we can get  
18 moving on it because I would really like to see some  
19 action. Ms. Vespry.

20 MS. VESPRY: With regard to the issues  
21 of focus, it occurs to me ,and has occurred to me since  
22 I read the report on this, that the compliance-based  
23 method of regulation seems to make a certain amount of  
24 sense. It is completely the opposite of the way the  
25 Law Society has been looking at regulating educational

1 institutions, and I think that if we can come up with  
2 compliance-based standards for things like ethics, we  
3 should be able to come up with compliance-based  
4 standards for education.

5           Since the phrasing is quite general in  
6 the initial research on compliance-based regulation, I  
7 understand that once it gets past that initial research  
8 stage it will be looking in a more focused manner at  
9 law firms and paralegal firms, but in that initial  
10 research stage, would it be possible to request that  
11 some of the research also look at compliance-based  
12 regulation of educational organizations included in  
13 that mandate?

14           TREASURER MINOR: I have to say that  
15 much of that kind of review is done by the Federation  
16 of Law Societies on behalf of various provincial  
17 societies. So they are looking now at their national  
18 requirements. They have a working group on national  
19 requirements and I think that's something that can be  
20 referred to them as a question. I think it should go  
21 there first.

22           MS. VESPRY: With respect, Treasurer, I  
23 don't believe that the Federation is dealing directly  
24 with paralegal educational institutions.

25           TREASURER MINOR: No, that's fair.

1 MS. VESPRY: That would be my --

2 TREASURER MINOR: I think we need to  
3 hear, though, how they're proceeding with respect to  
4 law schools to inform how we want to approach paralegal  
5 education, and that can be dealt with through the  
6 Paralegal Standing Committee. Mr. Anand.

7 MR. ANAND: Treasurer or Ms. Hartman or  
8 both, I just wanted to point to the terms of reference  
9 and the timing in this respect.

10 Clearly a significant issue in terms of  
11 compliance-based regulation and in terms of entities  
12 looking at their practice is equity, is the manner in  
13 which they structure themselves and the policies that  
14 they have in place for admission and advancement and  
15 treatment of women and other equity-seeking groups.

16 Clearly, the racialized working group is  
17 looking at that issue as part of the follow-up to the  
18 reports that have been done thus far on the challenges  
19 facing racialized licensees in the province and what  
20 should be done about that.

21 As Ms. Hartman said, solutions which  
22 address individual conduct are -- and it's been  
23 established in human rights jurisprudence for the last  
24 quarter century, are clearly secondary to solutions and  
25 measures which are proactive and which are designed to

1 avoid complaints of that kind as well as this kind.

2 So I ask about that for two reasons.

3 One is that I think, Treasurer, you indicated that the  
4 terms of reference could be massaged and discussed by  
5 the task force.

6 TREASURER MINOR: Yes.

7 MR. ANAND: And I would suggest that  
8 that's an area that might be done.

9 TREASURER MINOR: Well, I think it was  
10 intended -- in fact, I know it was intended that that  
11 kind of consideration be part of what's referred to  
12 under 47B.

13 MR. ANAND: The deferred demographics.

14 TREASURER MINOR: Yes.

15 MR. ANAND: Yes. I guess I was pointing  
16 to firm practice -- in any event, that's fine.  
17 Secondly the timing. June 2016, I think, is what you  
18 indicated.

19 MS. HARTMAN: Correct.

20 MR. ANAND: Like lots of Law Society  
21 initiatives, like mentorship, for example, there is an  
22 interaction between different initiatives and they are,  
23 in a sense, inter-dependent. I don't know what the  
24 intention is in terms of the timing issue because the  
25 racialized working group is, I think, intended to

1 report this fall.

2 TREASURER MINOR: That's right. And  
3 that will be within the scope of the compliance group  
4 to look at.

5 MR. ANAND: Okay. To look at what, the  
6 racialized --

7 TREASURER MINOR: What the  
8 recommendations are.

9 MR. ANAND: All right. Thanks.

10 TREASURER MINOR: Thank you. Ms. Go.

11 MS. GO: I guess my question is similar  
12 to Mr. Anand and also in the context of the racialized  
13 working group, because in the context of that  
14 discussion we were -- I guess some issues were raised  
15 as to whether or not the Law Society has any particular  
16 regulatory authority over certain matters.

17 So I guess I'm more interested in  
18 looking at 47E and how it interacts with the racialized  
19 working groups because it's not just about the issue of  
20 gathering statistics, but it's how do we encourage  
21 firms to implement equity-based policies.

22 So -- and I don't know how that fits  
23 into this.

24 TREASURER MINOR: My answer would be  
25 generally if it's within our authority now, the

1 racialized working group should look at what's in our  
2 authority now. If it's not within our authority, but  
3 could be within our authority, looking at  
4 compliance-based regulation, that's something taken  
5 into account by the task force.

6 Can I ask right now, could everyone  
7 please silence their devices. During the time before  
8 the break there was enough dinging going on here I was  
9 wondering if I was losing it.

10 MS. HARTMAN: No comment.

11 TREASURER MINOR: It's not just phone.  
12 It's when people have their iPads or Blackberries set  
13 to indicate every time they get an e-mail. Thank you.  
14 All right. Back to Ms. Hartman.

15 MS. HARTMAN: The motion, as I said,  
16 Treasurer, is moved by me, seconded by Mr. Groia.

17 TREASURER MINOR: Any comments or  
18 questions on phone? I should have asked, sorry. Any  
19 questions or comments on the phone?

20 Okay. Call the vote, then. All in  
21 favour? Any against? Carried.

22 MS. HARTMAN: Thank you, Treasurer.

23 TREASURER MINOR: Next, Ms. Leiper.

24 MS. LEIPER: Thank you, Treasurer.

25 Through you to Convocation, good morning. This is a



1 second task force motion. It is at page 305 of  
2 BoardBooks and it is a proposed task force to create a  
3 strategy to promote wellness and address mental health  
4 and addictions issues.

5 I'll speak to three parts of the report  
6 that is in the following pages. The vision, the reason  
7 and the logistics.

8 This is a very good example of proactive  
9 regulation. Mental health and wellness are central to  
10 supporting the professional responsibilities of lawyers  
11 and paralegals, and so the Law Society seeks to create  
12 an aligned wellness and mental health strategy to  
13 enhance its effectiveness as a regulator and to serve  
14 the profession and the public.

15 You will see that on page three of the  
16 report, which would be 307 -- sorry, 306 of BoardBooks,  
17 there are three main reasons why the task force is  
18 being proposed today. First of all, our policies and  
19 procedures here at the Law Society should ensure that  
20 we are responsive to members of the public who  
21 experience mental health or addictions issues,  
22 including issues that are referred to the Law Society  
23 about our licensees.

24 We must be sure that our licensees are  
25 able to appropriately and competently represent people

1 experiencing mental health or addictions issues and  
2 these issues that, of course, affect our licensees,  
3 because we are a subset of the larger population who  
4 are impacted by mental health issues, about one in five  
5 and almost every family that I'm sure everybody is  
6 connected to knows of people who are affected or have  
7 been affected.

8           So this is related to our obligations to  
9 ensure that our licensees are people competent to  
10 fulfill professional responsibilities. It's good for  
11 the profession, it's good for the regulator, it's good  
12 for the public.

13           You will see at paragraph 13 of the  
14 report the ways in which the Law Society has already  
15 set about to look at some of these questions and to  
16 provide programs and services within our mandate are  
17 listed there. They include our member assistance  
18 program operated through Homewood Human Solutions,  
19 which is operated independently of the Law Society and  
20 is offered to lawyers, paralegals and law students as  
21 well.

22           There's reference to the program that  
23 the Law Society hosted on May 6th, 2015. We've spoken  
24 about this before, but I think it's important again to  
25 underline the number of people who signed up for that

1 program, subscribed within 24 hours and filled the  
2 room, and people on the webcast sending in questions  
3 during that panel discussion that was a very stark, I  
4 guess, demonstration to me of how many people are  
5 suffering in our profession and how large an appetite  
6 there is to understand what can be done to help our  
7 profession be as well as it possibly can in the  
8 aggregate.

9                   So the improvement that I think the task  
10 force will really be trying to address is how do we  
11 make sure that we, as a regulator, are operating a  
12 centre of excellence in relation to serving the public  
13 and serving members who may have mental health and  
14 addiction issues.

15                   The idea behind the task force is to  
16 have a dedicated focus to draw in all the  
17 intersectionalities, and you will see that part of  
18 what's anticipated is that this task force would work  
19 in conjunction with a number of the communities to make  
20 sure that all the issues that appear in all the various  
21 policy streams that we work in are assessed through  
22 mental health and addiction and best practices.

23                   Paragraph 15 lists some of the questions  
24 that might be explored by the task force. I think  
25 worthy to mention whether or not we should be

1 enhancing our own processes to deal more effectively  
2 with these as co-factors in misconduct proceedings.  
3 Can we be more responsive, can we reach out earlier,  
4 can we assist with reducing stigma such that licensees  
5 are comfortable dealing more with the capacity stream  
6 than perhaps with the conduct stream in a way that  
7 supports them and allows them to get back to practice.

8           What can we learn from other regulators  
9 as to how they deal with these approaches? It's not  
10 just legal regulators, but medical regulators. All of  
11 the helping professions experience these issues and  
12 they all have members who can be supported by a  
13 thoughtful range of programs and interactions with  
14 their regulators when the early warning signs appear.

15           Can we partner with others to educate  
16 better lawyers and paralegals about these issues?  
17 Again, coming back to the Panel program, we heard over  
18 and over you need to tell us more, you need to offer  
19 more of these. People need to know. We need to reach  
20 out to people who practice in isolation and form  
21 communities of lawyers who help support each other.

22           So the details. The details begin at  
23 paragraph 16. You will see that we've already started  
24 to look at what exists now in order to find out how can  
25 we do better, how can we fill gaps. So that's the

1 first piece. Taking stock of our existing programs.

2 Our strategy will be framed around the  
3 key areas identified in paragraph 18 that include  
4 assisting licensees and their families, competency in  
5 representing clients, regulation of conduct, where the  
6 issues manifest themselves, facilitating access to  
7 justice for those who experience these issues and may  
8 not be able or capable in a way that other clients are  
9 to access legal help and to apply equity principles  
10 across the board.

11 You will see at paragraph 22 the  
12 proposed members of the task force are there. I have  
13 noted in response to the former question, there is  
14 paralegal representation and solicitor representation  
15 on our proposed task force. If we've missed anything,  
16 of course we would be happy to hear that.

17 TREASURER MINOR: Can I interrupt you  
18 there, Ms. Leiper, for one minute. I have also had  
19 some people come forward saying they are quite  
20 interested in being on this and I'm certainly prepared  
21 to add some people, so it's not written in stone.

22 MS. LEIPER: Thank you, Treasurer. So  
23 the terms of reference are at paragraph 23 and they are  
24 set out in detail for you.

25 I will be moving the motion that

1 Convocation establish a task force to create a Law  
2 Society strategy to promote wellness and address mental  
3 health and addictions issues within the terms of  
4 reference and membership of the task force, as set out  
5 in this report. Mr. McDowell is my seconder.

6 TREASURER MINOR: Thank you. Any  
7 questions or comments in the room? Ms. Go?

8 MS. GO: I'm sure the task force will be  
9 speaking to, I guess, the broader members of the  
10 profession. I just want to point out that because of  
11 the intersectionality that you mentioned, there is a  
12 very high percentage of the clients served by legal  
13 clinics who are people with mental health issues and  
14 from low income and often from racialized communities  
15 or immigrant communities.

16 Certainly I would encourage the task  
17 force to be speaking to those who are providing  
18 services to clients with mental health challenges and  
19 seek their input as to how we could better provide  
20 services to the broader public, but also to talk about  
21 how do we maintain our own wellbeing as we serve these  
22 clients.

23 MS. LEIPER: I think it's an excellent  
24 point and, in fact, Ryan Fritsch from Legal Aid Ontario  
25 was on the Panel and talked about Legal Aid's mental

1 health strategy. I can see that as being a legitimate  
2 point of contact for exactly that kind of thing.

3 TREASURER MINOR: Thank you.

4 Mr. Falconer.

5 MR. FALCONER: Through you, Madam  
6 Treasurer -- or through you, Treasurer. I apologize,  
7 I'm learning.

8 TREASURER MINOR: I'll answer to  
9 anything.

10 MR. FALCONER: Except for a ringing cell  
11 phone. Through you, Treasurer, to Ms. Leiper.

12 We were treated to the very poignant  
13 address of Mr. Orlando DaSilva on the issue of mental  
14 health matters and I want to laud the Treasurer and us  
15 as a group for taking this on.

16 I think that the reality is that there  
17 is such a stigma within our profession, a stigma that  
18 burdens us every day, and the stigma really relates to  
19 our fear of admitting any kind of human frailty.

20 What Ms. Leiper is speaking to with her  
21 actual expertise in this area is all about rescuing us  
22 from ourselves. This is an important start. Obviously  
23 action and deliverables in the end will decide whether  
24 this important initiative is seen to properly, but I  
25 simply want to commend this exercise and this day.

1                   It's by taking these things on and  
2                   having the courage to be innovative that we actually  
3                   truly regulate and support the profession. Thank you.

4                   TREASURER MINOR: Thank you,  
5                   Mr. Falconer. Any comments or questions? I'm sorry,  
6                   in the room, Ms. Murchie.

7                   MS. MURCHIE: Thank you. I just wanted  
8                   to make sure, Ms. Leiper, I think it goes without  
9                   saying, that the kinds of initiatives that you're  
10                  looking at or will be looking at will include practice  
11                  supports in the sense that protecting the public from  
12                  lawyers who are undergoing difficulties in actually  
13                  providing that service, as well as personal services to  
14                  the lawyers and the family.

15                  MS. LEIPER: Yes, I think that is  
16                  definitely encompassed by that.

17                  TREASURER MINOR: Yes, trustee services  
18                  is one area that deals with that and that will be one  
19                  part of the review.

20                  MS. MURCHIE: Yes. I guess the concern  
21                  is that I think trustee services is a very dramatic  
22                  intervention, if you will, and there may be something  
23                  that we can do that is a little less dramatic to  
24                  support lawyers and -- in providing services to the  
25                  public in that time frame. Thank you, Treasurer.



1 MS. LEIPER: I think there is an  
2 opportunity to work on something that looks like a  
3 regulation where we have a whole range or a continuum  
4 of support services, an intervention so that these  
5 programs can move to the most extensive wherever  
6 possible.

7 TREASURER MINOR: Thank you. Any  
8 questions or comments on the phone? If not, I'm going  
9 to call the vote.

10 All in favour? Any opposed? Any  
11 opposed on the phone? Carried. Thank you very much,  
12 Ms. Leiper.

13 Next could we move to the Equity and  
14 Aboriginal Issues Committee. Mr. Schabas, Human Rights  
15 Monitoring Group.

16 EQUITY AND ABORIGINAL ISSUES COMMITTEE  
17 REPORT

18 MR. SCHABAS: Thank you, Treasurer. The  
19 Human Rights Monitoring Group report is at tab 7.2 or  
20 page 349 of BoardBooks.

21 There are two proposed interventions  
22 this month. The first relates to Ms. Mahlenour  
23 El-Masry, a prominent Egyptian human rights lawyer who  
24 has been subject to a range of charges and imprisoned  
25 arising from her efforts to represent clients. The

1 proposed statements and letters begin at page 353.

2                   The second one deals with two lawyers in  
3 Kyrgyzstan, Valerian Vakhitov and Khusanbay Saliev,  
4 both, again, prominent human rights lawyers who have  
5 been recently subjected to what have been found by  
6 their domestic courts to be unlawful searches and  
7 persecution by state authorities, including seizing  
8 their client files, and we have prepared letters and  
9 statements that we propose the Law Society send, which  
10 are found at page 358 of BoardBooks.

11                   Moved by me, Treasurer, seconded by  
12 Ms. Go.

13                   TREASURER MINOR: Thank you. Any  
14 questions or comments for Mr. Schabas in the room? Any  
15 comments or questions from the phone? Thank you.

16                   Hearing none, I'll call the motion. All  
17 in favour? Any against? Any against on the phone?  
18 Motion carried. Thank you, Mr. Schabas.

19                   Next we're going to have the secretary's  
20 report, which will be presented, if I can put it that  
21 way, by Mr. Wardle.

22                   SECRETARY'S REPORT

23                   MR. WARDLE: Thank you, Treasurer. So  
24 the material with respect to this matter is found at  
25 tab 6, and let me just give you the background quickly

1 for those in the room who are not as familiar as some  
2 of us with this issue.

3 We have been experimenting with  
4 webcasting of Convocation proceedings for a number of  
5 years. It started with the debates over the articling  
6 task force in 2011. Some of us in this room still have  
7 bullet holes in our clothes from that debate, but it  
8 was -- captured the interest of the profession and we  
9 had significant -- a significant audience for the two  
10 convocations that were webcast.

11 We then webcast the Trinity Western  
12 debate for Convocation more recently and, again, that  
13 was something that captured the interest of, I would  
14 say, both professions and was well watched.

15 In January of this year we started  
16 routinely webcasting every Convocation and, as you'll  
17 see from the materials, we have been reminding the  
18 professions that the fact that these proceedings were  
19 being webcast, there's an e-mail that goes out that  
20 everyone here gets which reminds you that today is  
21 Convocation and it's going to be webcast and how you  
22 can access it. And the Treasurer also has made  
23 comments at the beginning of every Convocation dealing  
24 with webcasting.

25 However, we have discovered, perhaps a

1 little to our chagrin, that our membership is perhaps  
2 not as interested in these affairs as we are, and the  
3 uptake on regular webcasting has been disappointingly  
4 small and roughly, with the exception of May it bumped  
5 up a little bit, roughly 25 participants every month  
6 and, of course, we know that there are some staff who  
7 watch these proceedings because they need to watch the  
8 proceedings from their offices, and we have even had  
9 one or two Benchers, one of them is no longer here but  
10 used to be present in the room and watch it by webcast  
11 to get perhaps a sort of a stereo kind of impression.

12 So we have now come to a point where we  
13 need to make a decision about what we do going forward.  
14 It's not an inexpensive process. It costs roughly  
15 \$1600 a month, plus there is staff time involved.

16 On an annual basis for regular  
17 webcasting, we're probably looking at a cost of around  
18 20 to \$25,000 when we factor in staff time. There are  
19 also limitations on this room. Right now we have two  
20 cameras, one at each end, so there is a limit on what  
21 viewers can see.

22 TREASURER MINOR: That may be just as  
23 well.

24 MR. WARDLE: That may be just as well,  
25 but it's not the House of Commons and it's -- it has

1 its limits.

2 We have, I think, informally discussed  
3 over the last four or five years whether these  
4 proceedings should be moved at some stage to the Lamont  
5 Learning Centre. If that happened in the future, that  
6 would make webcasting much easier because there would  
7 be obviously more camera angles.

8 So those are kind of the considerations.  
9 The issue really is -- and I may be oversimplifying,  
10 but the sort of big picture issues are costs,  
11 affordability, and, on the other side, the transparency  
12 of our processes. Of course, the reason for webcasting  
13 originally was to -- as part of an initiative to ensure  
14 that our processes are completely open and transparent.  
15 The question is whether this particular mechanism is a  
16 good way of doing that.

17 So you'll see in the materials at tab 6  
18 there's a motion, and it's expressed in the  
19 alternative, and the reason it's expressed in the  
20 alternative is this is not an issue that -- it has been  
21 discussed at PPC and we couldn't reach any consensus  
22 around the issue.

23 So there are two alternative motions. I  
24 understand Mr. Falconer is going to move the first  
25 motion, seconded by Mr. Goldblatt, and I'm going to

1 move the second motion, seconded by Mr. Bredt.

2 TREASURER MINOR: That's the  
3 alternative, if the --

4 MR. WARDLE: The alternative motion.

5 TREASURER MINOR: If the first one  
6 fails, we move to the next.

7 MR. WARDLE: Correct. And I'm happy to  
8 take questions. I just want to say a word to thank Mr.  
9 Varro for putting these materials together. I'm sure  
10 he's glad he doesn't have to be up here dealing with  
11 this issue. And I'm happy to take any questions, but I  
12 think this is a matter where we really should just  
13 debate it and reach a decision.

14 TREASURER MINOR: Mr. Falconer, you were  
15 first on the list.

16 MR. FALCONER: Treasurer --

17 TREASURER MINOR: You're going to be  
18 moving it.

19 MR. WARDLE: We could stand together and  
20 wave.

21 MR. FALCONER: Treasurer, as shy as I am  
22 about cameras, I want to say, first of all, in support  
23 of this motion -- I'm just going to flip this down. In  
24 support of the motion for webcasting, I want to make a  
25 few comments that I say, Treasurer, go to the very

1 issues that we're called upon to decide here.

2           Firstly, we consider ourselves a body  
3 and we are legislatively mandated to act in the public  
4 interest. And I say, Treasurer, that public means  
5 something, public means accessibility. Accessibility  
6 both in fact and appearance.

7           Now, the last time an individual Bencher  
8 served a motion under section 93 of our by-laws was in  
9 March 2012, when, with the assistance of Bencher  
10 Lerner, then Bencher Wadden, who is now Justice Wadden,  
11 and Bencher Leiper, I served a motion in 2012 to have  
12 the articling debate webcast. That's the last time a  
13 Bencher served a motion outside of committee and we did  
14 it at the time and ultimately the wisdom of it was  
15 recognized by then Treasurer Pawlitzka, and that was the  
16 first time we webcast our debate.

17           I'm told by professors at law schools  
18 that some convened classes to watch that webcast, and I  
19 recall very clearly the pride we all took in being  
20 accessible and transparent.

21           Accessible means doors being open. It  
22 wasn't a set up this morning when you saw me standing  
23 here for some five minutes, Treasurer, not being able  
24 to find a chair. I didn't rig that. When a very  
25 distinguished senior Bencher of decades of service,

1 being Mr. Gottlieb, didn't have a chair, I gave my  
2 chair, but what I realized is we had reached a musical  
3 chairs point of capacity in this room, and I stood for  
4 five minutes while staff very helpfully found me  
5 seating.

6           We are not accessible to the public in  
7 this room. There are many that support keeping this  
8 room, but the act of keeping this room means physically  
9 we are accessible to no one outside of ourselves. That  
10 means the 15 or the 12 or the 14 people that may watch  
11 on a given week could not attend, could not attend our  
12 premises.

13           Some say, well, it's okay, we have a  
14 media room upstairs. I defy folks to go up to that  
15 room and sit in that room and think you have been  
16 invited in and feel a sense of openness. The staff are  
17 very cooperative, but the surroundings don't speak to  
18 openness. We can't just act and speak the platitudes,  
19 we have to dance the dance. In 2015 that means  
20 accessible.

21           The interesting historical reality is  
22 the Law Society knows that internally. We have  
23 live-streamed to our over 500 staff for more than five  
24 years, I'm told, meaning, in effect, our staff enjoy  
25 access to our process and have for many years. The



1 question is should licensees have that same right of  
2 access. I say, with the greatest of respect, this is a  
3 no-brainer. This is what 2015 is about.

4 When the Treasurer spoke to students  
5 getting support, those students, they're not going to  
6 come and try to find a chair ahead of Bencher Falconer  
7 in this room. They're going to log on. They're going  
8 to want to know. We have an obligation to make  
9 ourselves more available.

10 That means, as an example, getting the  
11 webcast message out, because I fear one of the  
12 reflections, not the only ones, one of the reflections  
13 of the 15 or 17 people is we may not have gotten our  
14 message out entirely that we are available by webcast  
15 yet. It's no criticism of anybody.

16 Finally, I close with this. People  
17 speak to the existence of transcripts, and you can see  
18 that in the report. Not trying to cause any mischief,  
19 but in March before the election I asked my clerk to  
20 access the transcripts from June 2014 to present. Not  
21 identifying herself as staff for a Bencher, she was  
22 sent from the records department to the licensing  
23 department to the membership department to the  
24 communications department, until finally when she  
25 identified herself as staff for Falconer,

1 Ms. Fisher-Mitchell assisted, and has assisted  
2 extensively since then to give us transcripts.

3           We're not ideally set up for perfect  
4 public access. It's no criticism of anyone in  
5 particular, this is an important safeguard to make us  
6 do what people do in 2015. Webcasting, with the  
7 greatest of respect, is a bit of a no-brainer, and I  
8 encourage us to use it as simply one tool. There are  
9 many others we need to use, but it is one essential  
10 tool for people to have access on how we do business.

11           In the end we are part of the justice  
12 system, and Lord Denning's words count. "Not only be  
13 done, but be seen to be done." Thank you, Treasurer.

14           TREASURER MINOR: Thank you. Next on  
15 the list I have Mr. Lerner.

16           MR. LERNER: Thank you, Treasurer.  
17 There may be some connection between me speaking to  
18 this matter and Mr. Falconer referring to it as a  
19 no-brainer.

20           Initially when we proposed the articling  
21 debate to be webcast, although we didn't have the exact  
22 information as to the cost, I must say when I saw in  
23 the material today the cost, I was somewhat surprised.  
24 Surprised, pleasantly surprised, because it's  
25 significantly less than the discussion we had

1 surrounding the webcasting back then.

2 I suspect that transparency and  
3 accountability are like pregnancy, you can't be just a  
4 little bit. And if we are going to be transparent and  
5 accountable, then we need to support this motion.

6 I don't think the issue is how many  
7 people have actually tuned in, because, quite frankly,  
8 I'm disappointed, as I'm sure everybody in this room is  
9 disappointed, but it's the fact that people have the  
10 opportunity to tune in should they wish to. That's the  
11 transparency aspect of it, that any one member of the  
12 profession can tune in to Convocation and see what is  
13 happening in public session.

14 It's regrettable that the numbers are  
15 what they are. We should take steps to try to increase  
16 those numbers, but in order to be, as we all like to  
17 be, accountable and transparent, we need to support the  
18 motion.

19 TREASURER MINOR: Thank you. The next  
20 is Mr. Bredt.

21 MR. BREDT: Thank you, Treasurer. I  
22 guess I come before you as someone with no brain.

23 TREASURER MINOR: It's been said before,  
24 Mr. Bredt.

25 MR. FALCONER: Judicial notice.

1                   MR. BREDT: So what I would say, I think  
2                   that members of Convocation will be aware that I am a  
3                   strong supporter first of greater transparency and  
4                   accountability in the governance of the Law Society,  
5                   and I'm also a strong supporter of fiscal prudence, and  
6                   that's the careful and prudent managing of the fees  
7                   that we charge our members.

8                   In my view, I think we can accomplish  
9                   both a greater transparency and fiscal prudence by  
10                  adopting the second option. That is, that we webcast  
11                  those Convocations that are likely to attract  
12                  significant interest, as we have in past. But we  
13                  otherwise -- and this speaks, to some extent, to  
14                  Mr. Falconer's comment, we make the full transcripts  
15                  available on our website for each Convocation, which is  
16                  not what we do now, but is what is being proposed that  
17                  we do.

18                  So let me review each part of this  
19                  separately. First of all, let me deal with  
20                  transparency and accountability. So it's clear that  
21                  there is limited interest in the live webcast, and  
22                  you've heard that the figures that we have are  
23                  somewhat inflated by the fact that members of  
24                  Convocation and staff are accessing them.

25                  When Mr. Falconer says we haven't done

1 enough to let people know, well, that's not the problem  
2 when there's issues of interest like TWU or articling.  
3 It's clear that when there are issues of interest, the  
4 Treasurer has in past, and will continue to do in  
5 future, to choose to webcast.

6           The next point I wanted to make about  
7 transparency and accountability is the fact that there  
8 is a media room available, and I take Mr. Falconer's  
9 point, but members of Convocation should be aware that  
10 as the Tribunal moves to its new premises, a hearing  
11 room is being created as a media room, which will be  
12 far more accommodating.

13           So from a current perspective, any  
14 member of the media, any member of the public who  
15 wishes to hear what goes on on a minute to minute basis  
16 has available to them and, once the Tribunal moves,  
17 will have available to them a much more accommodating  
18 place, they can hear what goes on, so we are being very  
19 transparent and accountable.

20           The next point I think in terms of  
21 transparency is to recognize that posting a transcript  
22 on-line has a number of advantages over webcast. It's  
23 searchable, so someone who wasn't able -- not that many  
24 members have the time to sit through a five hour  
25 Convocation and to pick and choose to try -- when

1 they're really interested in one issue. A lot of the  
2 issues we debate are pretty kind of run of the mill.  
3 There are some key issues.

4                   The advantage of a transcript is it's  
5 searchable, so someone could come on the day after  
6 Convocation or whenever the transcript is posted and go  
7 right to the part that they're interested in. And it  
8 will be easier for those people that are interested,  
9 not just to be able to watch, but get a transcript. So  
10 what people say is on the record and is available.

11                   So what I say is that what's being  
12 proposed really does forward our goal of transparency  
13 and accountability and it does so in a fiscally prudent  
14 manner.

15                   Let me speak just to the second point.  
16 The cost of webcasting, as Mr. Wardle said, may be 20  
17 to \$25,000 a year, so it's not a huge sum. But as  
18 someone who has been involved in the finances here for  
19 a while, it's important to recognize that there are a  
20 number of new initiatives that this Convocation is  
21 going to be asked to look at involving some of our key  
22 priorities; mentoring, for one of them. And in order  
23 to accomplish these kind of things, we're going to have  
24 to be looking for savings.

25                   Part of what we have to do as a

1 Convocation is start to prioritize. Prioritize things  
2 that are really at the heart of what we do and also  
3 look at things where we are providing transparency, but  
4 we can save a bit of money. I would not give a high  
5 priority to webcasts when it's clear that there's  
6 little interest in the profession and when there is  
7 interest it can be accommodated at the Treasurer's  
8 discretion.

9                   So, in summary, I'm in favour of the  
10 second option and I'm in favour of it because I think  
11 it satisfies our goal both of transparency,  
12 accountability and fiscal prudence. Thank you,  
13 Treasurer.

14                   TREASURER MINOR: Thank you, Mr. Bredt.  
15 I have a list here. Next Mr. Schabas, Mr. Mercer,  
16 Ms. Criger, Mr. Goldblatt, Mr. Galati, Mr. Epstein, Mr.  
17 Sharda, Mr. Cooper -- I have to ask you, please do not  
18 repeat points and try and be as brief as possible.  
19 Thank you.

20                   MR. SCHABAS: Treasurer, it may not come  
21 as a surprise that I favour transparency and I support  
22 Mr. Falconer's motion and what he said. Transparency  
23 is about accountability. Fiscal prudence doesn't mean  
24 we pick on a new initiative to further foster  
25 transparency because some people think it costs a

1 little bit too much money.

2 The point I want to make really --  
3 because that's really what this is about. We all  
4 believe in transparency. We all would like to have  
5 Convocation webcast, but we know what it costs and we  
6 know that in some situations, the viewership is low,  
7 but that's not a reason to knock it off.

8 Our Convocation meetings today are  
9 extremely expensive. Look at all the people in the  
10 room. Look at all the people, the cost of bringing  
11 everybody here, the cost of organizing this, the cost  
12 of BoardBooks. My goodness, there is a lot of money  
13 that gets spent every time we gather.

14 This is a drop in the bucket. It's a  
15 positive step in making us more transparent. It's a  
16 matter of, in some cases, having the ability readily to  
17 just have people who are interested. As Mr. Bredt  
18 said, we're going to be debating some important issues.  
19 There's a lot of priorities, there's a lot of issues  
20 that we will be debating that will attract attention  
21 and we should have our meetings available for everyone  
22 to see them. We should be accountable in that way.

23 It's not lost on me that the co-chairs  
24 of the Finance Committee are favouring the second  
25 motion. You know, good on them, we have to be fiscally



1 prudent, but this is not the place to do that.

2 TREASURER MINOR: Thank you.

3 Mr. Mercer.

4 MR. MERCER: I'll stand and be very  
5 brief. I see this as a competition of virtues. We're  
6 all in favour of transparency and accountability.  
7 There's no argument about that, you would be foolish,  
8 even if you thought it, to stand up and argue against.

9 We should all be in favour of frugality,  
10 it seems to me, and frugality, I think, is a virtue,  
11 particularly for those who have the ability to command  
12 others to contribute money.

13 The virtue that I call on in aid is  
14 humility, and I think what we've learned is that some  
15 of the issues that we talk about are of great interest  
16 and some of them aren't and I think we can take  
17 guidance from the professions as to what they want to  
18 actually see and what they don't and I think one can  
19 reconcile the three virtues by paying a little bit of  
20 attention to the last.

21 So I'm not in favour of spending money,  
22 even if it's not huge, where people actually don't make  
23 use of the method of access.

24 I should also indicate that I have  
25 called on a higher authority for transparency, I

1 consulted Dr. Google and I've learned that if you put  
2 in the words Convocation, transcript and LSAT, you get  
3 the transcripts back to 1991, and I think that's pretty  
4 good.

5 MR. FALCONER: No, that's actually  
6 inaccurate. You get reference to it. You can't access  
7 them.

8 MR. MERCER: You can.

9 MR. FALCONER: Try it.

10 MR. MERCER: I have done it many times.

11 TREASURER MINOR: Okay. Next, Ms.  
12 Criger.

13 MS. CRIGER: Thank you. I rise to speak  
14 only to the notion of true accessibility.

15 Accessibility is lovely if everybody is in their  
16 office on a Thursday morning at nine o'clock until one  
17 o'clock to watch a Convocation webcast. As we can see,  
18 many members of the profession are not in their offices  
19 from nine to one on a Thursday, and if they are, they  
20 are not watching the webcast.

21 True accessibility, true transparency  
22 revolves around having a permanent record available on  
23 our website that people can access. In this room we  
24 make decisions in an incremental fashion. By the time  
25 we come to the point of decision and true debate our

1 colleagues and the rest of our peers know what's coming  
2 up and the Treasurer will have the opportunity to  
3 webcast those things in her discretion.

4 True accessibility, in my respectful  
5 view, is not a webcast, it is a permanent transcript  
6 archived on our site. Thank you.

7 TREASURER MINOR: Mr. Goldblatt.

8 MR. GOLDBLATT: Thank you, Treasurer. I  
9 guess we could debate the concepts of transparency and  
10 accountability now. I was going to add, as well,  
11 accessibility, and I just say accessibility in response  
12 to the suggestion that the media room is an appropriate  
13 place for people to come and gather in order to watch  
14 Convocation, because not everybody lives within the GTA  
15 and can easily get to the room to watch it.

16 I just want to say that my thinking on  
17 this has changed dramatically in the past 48 hours and  
18 influenced a bit, if not significantly, by what I  
19 referenced earlier in terms of the concerns we got from  
20 a community about the experiential learning by-law that  
21 I was bringing forward, and we reached out to that  
22 community, and I was very comforted to know that that  
23 community could then tune in, if they wanted to, and  
24 see that what we had expressed to them was, in fact,  
25 being carried forward when the debate took place and

1 that we were really putting our money where our mouths  
2 were and doing what we said we were going to do.

3           What I've learned over the past number  
4 of years is that issues arise in Convocation quite  
5 unexpectedly and quite suddenly, but, nonetheless,  
6 issues of significance and importance. With all due  
7 respect, the Treasurer has an exercise in discretion if  
8 he or she knows what's coming.

9           I harken back, and we've heard about the  
10 articling debate, the articling debate changed and was  
11 deferred when it first came forward and then it was  
12 webcast. I don't think we should be, given all of the  
13 objectives and all of the things we are setting out, we  
14 talked about compliance-based, regulation, there's  
15 mentoring, there's racialized, there's the mental  
16 health initiatives. There's a tremendous array of  
17 significant issues that various members of the  
18 community will be interested in and I don't think, with  
19 all due respect, that we should be putting the onus on  
20 the Treasurer to say, well, this is something I think  
21 the community might be interested in.

22           So it's -- the cost, I understand, is a  
23 concern, but I don't think it's a significant concern  
24 weighed against the open transparent objective. If  
25 they want to know what we're doing, they can simply

1 tune in and they'll see it, and if it's 50 people, then  
2 it's 50 people who have been better informed than if we  
3 don't do the webcasting. Thank you, Treasurer.

4 TREASURER MINOR: Thank you, Mr.  
5 Goldblatt. Mr. Galati.

6 MR. GALATI: Thank you, Treasurer. I  
7 just want to fully support this motion by Mr. Falconer  
8 for the following reasons.

9 What I see here is really a debate about  
10 apples and oranges. On the one hand, we have  
11 transparency and accessibility, which is a qualitative  
12 notion which goes to the confidence of both the rest of  
13 the bar and the public in what Convocation and the  
14 other elected Benchers do.

15 On the other hand, we have a  
16 quantitative concern about the cost. But I don't see,  
17 with respect to Mr. Bredt, and I too am fiscally  
18 conservative and prudent, I don't see a contextual  
19 balancing of the qualitative concern with the  
20 quantitative concern which, by my rough calculation,  
21 amounts to 32 cents a year per member of the bar. It's  
22 32 cents a year.

23 I came here -- when I ran for office, I  
24 was one of those cynics who thought that this place was  
25 just a closed shop, closed old boys network. You know,

1 you can't say to the 50 or 100 people who are tuning in  
2 that they're irrelevant.

3 I'll give you -- by analogy, you know,  
4 if we said, if we understand the notion of public  
5 access to the courts, for instance, you walk into a  
6 courtroom, often you're the only lawyer arguing. It  
7 seats a hundred. You don't leave it to a judge to  
8 decide when to pare down a courtroom and what the  
9 important issues are. That's for the public and the  
10 rest of the people who are the recipients of  
11 accessibility to decide, not for those who are in this  
12 room.

13 And so you would never get a discourse,  
14 for instance, that because only once in a blue moon a  
15 courtroom is packed in a case of interest or media  
16 interest, that all of a sudden all the courtrooms  
17 should be shrunk to seat five or ten people in the body  
18 of the courtroom and then save that money at the public  
19 purse.

20 So I fully support this. People are  
21 already cynical enough about us. By the arguments of  
22 Mr. Bredt, since only 30 percent of the profession  
23 votes, the legislature should have annulled all these  
24 elections and gone to a different system, if you look  
25 at that analysis.

1                   TREASURER MINOR: Thank you, Mr. Galati.  
2 Mr. Epstein.

3                   MR. EPSTEIN: Thank you, Treasurer.  
4 First, as a former broadcaster, I can tell you that the  
5 numbers that we see are highly inflated. This only  
6 talks about people who tune in.

7                   Over the course of Convocation, I would  
8 expect there aren't more than two or three people from  
9 outside who happen to be watching at any given time.  
10 If we do think about cost, the costs per person are  
11 very high.

12                   Second, I don't think there is any value  
13 in broadcasting the video portion. If we do decide  
14 we're going to broadcast or make available anything, it  
15 should just be the audio, and that could save us some  
16 money.

17                   One of the possibilities is to consider  
18 a second dial-in number where we can turn off the phone  
19 when we're in camera and there's no opportunity for  
20 people to call in or to become a part of Convocation.  
21 I think that would be much less expensive.

22                   Other than that, I agree with what Mr.  
23 Bredt said earlier and I will be seated.

24                   TREASURER MINOR: Thank you,  
25 Mr. Epstein. Next is Mr. Sharda.

1                   MR. SHARDA: I think the one cost we  
2 haven't been told about is what it costs to create a  
3 transcript. For the litigators in this room, and also  
4 the criminal lawyers in this room, you will know --  
5 well, there's still some costs related to it, but you  
6 will know that when you read a piece of paper as to  
7 when you see a witness in the stand, it's a total  
8 different picture.

9                   So I understand the logic, but I can't  
10 support that. My concern is this. Over the two  
11 elections that -- I ran in 2011, I ran in this  
12 election. What I noticed in particular was that the  
13 relevancy of this organization is declining severely.  
14 Outside of these walls we may not see it, but when you  
15 walk out there and you talk to people -- when I got  
16 called to the bar 19 years ago, I was, hey, just like  
17 those guys we saw this week, right, we're going to  
18 support them, they're bright-eyed, they got a future.  
19 I get into the profession and it's like, oh, the Law  
20 Society, forget them. That was 19 years ago.

21                   When I ran in 2011 people didn't want to  
22 vote because this organization is not relevant to them.  
23 In 2015 I was even more surprised when actively people  
24 said to me, I'd rather not vote. It's not apathy.  
25 Unfortunately, it's the level of disrespect in the



1 community that's going against this organization.

2 The optics of this, for \$25,000,  
3 shutting the doors or locking the doors, even visually,  
4 you guys -- I have been trying to get on the webcast  
5 here. I can't get on. The server is not working.

6 So even -- and what concerns me most is  
7 not everybody will come here. I've come as a member to  
8 the media room and it's not welcoming, it's actually  
9 very cold -- I don't know if you keep it cold so you  
10 can run out, I don't know, but it's cold. But the guy  
11 who is sitting in North Bay is not going to come down,  
12 but they may want to listen to what you have to say and  
13 I think it's important that they hear what you have to  
14 say.

15 Let's not -- I mean, if we quantified,  
16 annualized the amount of food that's left over after  
17 meetings, my sense of it from what I've seen to date is  
18 it would probably be higher cost than the \$25,000.

19 So I urge my colleagues here, this is  
20 not just an issue of costs, this is an issue of  
21 relevancy of this organization amongst the public and  
22 amongst our members. Thank you very much.

23 TREASURER MINOR: I would like to  
24 clarify that we are obliged to have a transcript  
25 pursuant to our by-laws. It's not an option.

1 MR. SHARDA: Thank you.

2 TREASURER MINOR: Mr. Cooper.

3 MR. COOPER: Thank you and good  
4 afternoon, Treasurer. Good afternoon all Benchers.

5 Number one, I support Mr. Falconer's  
6 motion and I thank him for it. Number 2. We all know  
7 that this is not about transparency. We can close our  
8 submissions or our argument and hide behind  
9 transparency. We all want transparency. Nobody is  
10 here saying we do not want transparency.

11 It's not about camera angles, although I  
12 stood up so I can be seen on camera. I am a newbie,  
13 I'm a new Bencher, and I don't want to repeat things  
14 that have been said by my other friends who are new  
15 Benchers, but some points are quite important.

16 There is a disconnect out there between  
17 us as Benchers and the people on the front lines.  
18 There is a disconnect where they do not understand the  
19 relevance of what we do.

20 I know that there has been this look at  
21 the amount of people that have been watching thus far.  
22 I do not accept that low attendance is a metric or  
23 proper metric for irrelevancy or for reasoning for not  
24 to broadcast or web broadcast our meetings. Because  
25 there's a disconnect, the real issue, I think, is

1 relevancy. And I think that we can understand that  
2 there probably is a direct relationship between  
3 relevancy and that what we're looking for is reach,  
4 reach to our community.

5           As we increase our relevancy, and that's  
6 why we are all here, and we have 18 new people that  
7 believe that we want to bring a greater connection  
8 between our members. We understand our obligation and  
9 our fiduciary duty, but we want to be able to send to  
10 licensees a greater understanding of our relevancy. So  
11 I say that there is a direct relationship, direct  
12 proportionality between relevancy and increase of  
13 coverage.

14           We must get the message out, that's why  
15 I support this motion. And not only should we only  
16 consider webcasting, although that's all this motion is  
17 for now, but we should consider about the accessibility  
18 about rebroadcasting through our website so that people  
19 that are not in their office, that are working at these  
20 hours, can see or return to them.

21           Now, I know we have a transcript and  
22 we're required to have a transcript. Courts use a new  
23 player system called Liberty that combines the two. We  
24 may want to think about that in the future and imagine  
25 that instead of our worries about this room, that our

1 media room here will help a small portion of our  
2 licensees, but it doesn't represent and help all of  
3 them -- licensees.

4 So I ask everybody to consider  
5 continuing this project of webcasting so that we can  
6 get our message out. Thank you.

7 TREASURER MINOR: Thank you, Mr. Cooper.  
8 I should add that these past webcasts have been  
9 archived. They're archived now. Ms. Richer.

10 MS. RICHER: I rise, Treasurer, to ask  
11 Mr. Falconer just for a point of clarification because  
12 his motion seemed to tie moving to the Donald Lamont  
13 Centre with what he was saying.

14 TREASURER MINOR: It's not tied.

15 MS. RICHER: That was all.

16 TREASURER MINOR: If that motion  
17 carries, it could be another option that we'll look at,  
18 but it's not directly connected. Ms. Leiper.

19 MS. LEIPER: Two points, thank you,  
20 Treasurer. The first is I agree with the philosophy  
21 that openness is a very important principle for us to  
22 adopt and then reach into the community. I think it's  
23 worth it even if five people tune in.

24 The other thing is that in the space of  
25 accountability and transparency what I have observed in

1 other organizations that adopt measures like this is  
2 that it takes time for the word to get out. It's a  
3 very narrow slice of data that we're being asked to  
4 refer to in order to make this decision.

5 I think it will change and evolve. I  
6 think it's worth it even if the numbers are as they  
7 are, but I don't think they can predictably say that's  
8 what the numbers will be in a year or two years or  
9 three years. I support the motion.

10 TREASURER MINOR: Thank you,  
11 Ms. Leiper. Mr. Porter.

12 MR. PORTER: Yes, I appreciate Mr.  
13 Bredt's caution and it's what he does on that  
14 committee. But at this time with a new bench, the  
15 passion of Mr. Galati is something that should be  
16 listened to, because it's obvious that for some this is  
17 a point of immense principle and it's a point of our  
18 new people coming in thinking that we may be  
19 endeavouring to raise fences. And so I found his  
20 argument persuasive and I think we would be wise to  
21 adopt it.

22 TREASURER MINOR: Thank you, Mr. Porter.  
23 I have Mr. Murray behind me.

24 MR. MURRAY: Well, I -- just a couple of  
25 things. First of all, I have been attending

1 Convocation, I'm starting my 25th year. My wife tells  
2 me never to say that out loud, but the fact is that I  
3 have attended on a pretty regular basis for the past 24  
4 years and I think we could probably accommodate a  
5 change or two and I think this is probably a good  
6 change.

7 I can tell you that in Thunder Bay at  
8 our regional hospital we now broadcast our board  
9 meetings so that the public can turn on the TV and  
10 watch our board meetings. So I think we can do that.

11 MR. FALCONER: So that's who we're  
12 losing our audience to.

13 TREASURER MINOR: Okay. Mr. Wright and  
14 Ms. Murchie. Would you please restrict yourself to new  
15 points, please.

16 MR. WRIGHT: I just want to put this  
17 into perspective. We do not have an accountability  
18 problem. We are fully accountable to everybody we are  
19 supposed to be accountable to. We don't have a  
20 transparency problem because all our decisions are  
21 public.

22 As far as accessibility is concerned,  
23 the membership has overwhelmingly told us that it's not  
24 an issue, except for maybe big issue subjects like TWU.

25 The number of people tuning in is less

1 than .1 percent. 99.93 percent of our members are not  
2 interested, except for big issue items. If you're a  
3 struggling young lawyer and you see us spending \$25,000  
4 a year after year after year, a hundred thousand  
5 dollars per term, for something that 22 people tune  
6 into, they would be pretty annoyed and they would be  
7 justified in being annoyed.

8 I think Mr. Mercer put it exactly right.  
9 The right balance is to webcast the big issues and save  
10 money when nobody else is watching.

11 TREASURER MINOR: I have three more  
12 people. Could you please restrict -- that's in the  
13 room before we go to the phone. Could you please  
14 restrict yourself to new points. Ms. Murchie was next.

15 MS. MURCHIE: Thank you, Treasurer. I  
16 support the motion. A picture is worth a thousand  
17 words and we must remember that. I think it's very,  
18 very clear.

19 I would like to see us being even more  
20 accessible, however, by making sure that our agendas  
21 are clear so that people can realistically tune in for  
22 one issue that's of interest to them.

23 Secondly, when the time comes for the  
24 Lamont Centre, we should keep in mind that those  
25 cameras are in one line and there's not so many angles.

1                   TREASURER MINOR: Thank you. I think I  
2 have Mr. McDowell.

3                   MR. McDOWELL: When I looked at the  
4 numbers, I wondered if there should be a fourth  
5 Scottish option, namely, pay per view. But accepting  
6 the options as they are, I'm in favour of the motion of  
7 Mr. Falconer. Really, what it is in large part is a  
8 prophylaxis against being accused of not being  
9 transparent, and for that reason alone I support it.

10                  TREASURER MINOR: Ms. Strosberg.

11                  MS. STROSBURG: My only hesitancy in  
12 not supporting the motion is that we're supporting a  
13 system that is already a little bit broken. If we  
14 could have a better webcast, if we could have a better  
15 system to show our members and the public what's going  
16 on in this room -- I will support Mr. Falconer's  
17 motion, but that's my hesitancy.

18                  TREASURER MINOR: Well, as I said, that  
19 can be discussed later. All right. On the phone?

20                  MR. SWAYE: Gerry Swaye.

21                  TREASURER MINOR: Any new comments or  
22 points that have not been made? Are you saying that  
23 you have one, Mr. Swaye?

24                  MR. SWAYE: I want to comment on what  
25 Mr. Cooper said. I had the pleasure of watching



1 today's webcast from my office. It is perfect. The  
2 only people I couldn't see were Cooper, Richer, Porter  
3 and Wright. Everyone else, wherever they were sitting,  
4 could be seen, wherever they stood could be seen, and  
5 the angles do move in the room. I should pass that on.  
6 I believe in the Falconer motion.

7 TREASURER MINOR: Thank you, Mr. Swaye.  
8 Anybody with anything further? I'm going to call the  
9 vote. Oh, Mr. Falconer, do you have to?

10 MR. FALCONER: Yes, I have to. Knowing  
11 I stand between lunch and my colleagues --

12 TREASURER MINOR: No, you don't. We  
13 have other things on this agenda.

14 MR. FALCONER: This will be a ten  
15 seconder. I just want to point something out to folks  
16 because it hasn't been mentioned and it bears  
17 mentioning.

18 We speak as a Law Society about an  
19 Aboriginal strategy. We know and have heard about the  
20 alienation from the justice system in the north.

21 I can tell you the installation of  
22 Tbaytel in remote communities means that remote  
23 communities from a First Nations perspective have a  
24 chance of accessing our process. They don't do it  
25 through transcripts. They don't do it through any way

1 other than what you would see through a webcast.

2 I simply point out that when we take  
3 pride in that Aboriginal strategy, one of the things  
4 we're going to be doing through webcasting is, again,  
5 making ourselves accessible. Thank you, Treasurer.

6 TREASURER MINOR: Thank you. I'm  
7 calling the vote. All in favour? One hand only.  
8 Against? Any against on the phone? Motion carried.

9 MR. WRIGHT: Demand a recount.

10 -- Laughter.

11 TREASURER MINOR: We are getting pressed  
12 for time, however, we have some important matters to be  
13 dealt with in camera. We were going to start in public  
14 with the CEO's report, and I'm going to ask him to  
15 defer bringing forward the public part of the CEO's  
16 report until September. It's on BoardBooks if anyone  
17 has any questions which can't wait until then, then I'd  
18 ask you to bring them forward to him personally, but I  
19 would like to move to the in camera part now of our  
20 agenda.

21 So this is the end of the public  
22 broadcast. Thank you all, whoever you are, who were  
23 viewing.

24 --- Whereupon the proceedings adjourned at 12:20 p.m.

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

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